

NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
MASTER OF LAWS IN INTERNATIONAL LAW PROGRAMME (LL.M)

MASTER'S THESIS

**CHILDREN RIGHTS: A COMPARATIVE STUDY BETWEEN
INTERNATIONAL LAW AND ISLAMIC LAW**

HOGRA KHDHIR AHMED

NICOSIA

2016

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Thesis Defence

**Children Rights; A Comparative Study Between International Law
And Islamic Law**

**We certify the thesis is satisfactory for the award of degree of Master of Laws in
International Law**

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DECLARATION

I hereby declare that:

This master thesis is the final product of my own work and has not been submitted before for any degree, examination or any related qualifications at any university or institution and ALL the sources I have used or quoted , have received due acknowledgments as complete references.

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Signature.....

Date.....

ABSTRACT

A child cannot be considered and seen in all ways as an adult which in other words inspires a different approach to separate them from adults in respect to life. As regards rights, an average child is weak, mostly ignorant and less informed to fight for his rights. Even though an adult knows the appropriate ways to contest for his rights, a child will need an adult (with the necessary understanding of child's right) who will take up the responsibility to claim his rights and execute it. This thesis focuses on the intricate and sensitive ways a society and person(s) should embrace to protect a child. It is not a new thing that parents or guardians influence the rights of the children against the children and these calls for a need to understand the Islamic and international backgrounds available to protect the child. The major push of this thesis is to compare the rights of children as defined by international declarations and Islamic Law, with a focus on analyzing the similarities and differences between these sets of laws. It will identify the importance each law has given to the rights of children cum the status of every child in the two dimensions with a reasonable recommendations and conclusion to the identification.

Keywords: Children Rights, International Law, International Conventions, Islamic Law.

ÖZ

Bir çocuk her şekilde yetişkin görülemez, hayata dair yetişkin için farklı bir yaklaşım gerekiyor. çocuklara hak göre ortalama zayıf dir ve çoğunlukla kendini hak için daha az bilgili olduğunu düşünüyoruz. Çocuk Hakları gerekli anlayışmek için bir çocuk yetişkin gerekir çünkü Yetişkin adam kendini hakları biliyor. Bu tez, bir çocuğu korumak için Hakları gereken hassasbir yöntemler üzerinde duruluyor. Ana babaların çocuklarına karşı çocukların haklarını etkileyen yeni bir şey değil bundan İslam ve uluslararası çevrelerden mevcut anlamak sayıdan çocuğu korumak gerek. bu tezin en önemli şey uluslararası tanımlamalar ve İslam Hukuku tarafından tanımlandığı üzere,çocuk hakları ile karşılaştırılmaktadır ve Her Kanunu Çocuk Haklarına verdiği önemi belirleyecektir. tespiti için makul öneriler ve bir sonuç ile iki boyutlu olarak her çocuğun hakları için çok gerekli olan durumudur.

Anahtar Kelimeler: Çocuk Hakları, Uluslararası Hukuk, Uluslararası Sözleşmeler, İslam Hukuku.

DEDICATION

I dedicate this thesis to my family for nursing me with affections and love.

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LIST OF ABBREVIATIONS

UNGA: United Nations General Assembly

IL: International law

WW 1: World War I

WW2: Word War II

UDHR: Universal Declaration of Human Rights

LN: League of Nations

UNSC: United Nation Security Council

PBUM: Peace be upon him

W.H.O: World Health Organization

AIDS: Acquired Immune Deficiency Syndrome

HIV: Human Immuno Deficiency Virus

CHAPTER ONE

INTRODUCTION

1.1 Introduction and the problem

Rights are what one ought to have or have the entitlements to in life as human beings. These rights are imperative and are associated with one another. No one is exempted from having these rights, and nobody can deprive any human from having these rights. Under the law an adult individual has certain unalienable rights that are guaranteed by the constitution and reaffirmed by specific laws; just as adults have been granted such rights under the law, so have children as well.¹ Every child is born with mental faculty and with great ability to think as fast as one can imagine which requires they should be respected and protected by the fundamental rights granted to all human life. As a child grows up, he or she will have more obligations and choices to explore his or her rights as an individual. It is very important to define who is a child, however, for the purposes of this discussion.

According to the Convention on the Rights of the Child of 1989, which was written to universally define and protect the rights of children from unfair treatment and abuse, a child is defined as anyone below the age of 18, unless the laws of a particular country set the legal age for adulthood younger.² Some countries such as Egypt define a child within the context of social care and welfare, to mean all individuals who have not reached the age of (18) prior to the completion of the calendar year which can be verified by means of a birth certificate, an identification card or any other official document.³ The Iraq law, however, is in agreement with the generally accepted concept of defining every human below the age of 18 as a child.⁴

¹ Lindsey, D., & Sarri, R. (1992). What Hillary Rodham Clinton really said about children's rights and child policy. *Children and youth services review*, 14(6), 473-483.

² UNICEF. The Convention on the Rights of the Child. Guiding principles: general requirements for all rights.

³ Nemat O. A. (2006). *Roundtable Conference "Comparative Analysis of Family Law in the Context of Islam"*. Heinrich Boll Foundation, p. 12.

⁴ O'Leary, B. (2006). *The future of Kurdistan in Iraq*. University of Pennsylvania Press, p. 148.

The universal understanding and the application of child rights is very important be it at the poles of religious or political angles. Just as International Law has shown tremendous keenness for, and has assigned extraordinary significance to the treatment of young humans, so has Islamic Legistaion with numerous directions on etiquette and child rearing guidances. According to both views, with respect to their intrinsic rights, both parents and society at large have an enormous sacrosanct responsibility to protect every from harm and injustice.

Children are seen from the Islamic point of view as blessing from God, Allah. Islamic law has pitched its tents with the international law in its definition of a child. In an article titled Covenant on the Rights of the Child in Islam (2004), a child means every human being who according to the law applicable to him/her, has not attained maturity.⁵ Maturity here means puberty stage which is the age of 15.⁶ The principles of this covenant is to ensure the protection of the rights of the child. It sought to enhance Islamic performance in the child sector so as to adapt frameworks and mechanisms to face the ever-accelerating changes and transformations and their repercussions on that sector.⁷ Currently, there are 196 States who are party to this covenant.⁸ In this covenant, it it was clearly stated that the national laws of States who are signatories to the Covenant must be given respect and total adhere to.⁹ This means the national laws drawn from International laws as regards Child's right are to be observed and enforced. Even though there are numerous provisions of Islamic Sharia, they all have in common higher preference for every child's right, protection coupled with interest.

One can also point out that International Rights of Child have enjoyed the existence of Islamic law most especially the *kafalah*. This *kafalah* makes it possible for an abandoned child or child with no family to enjoy parental care from a new family again; the Islamic law are not against the rights of child. In fact, the most paramount right of a child under the Law of Islam is found in parentage. Once this is established, some specific rights and duties follows, the

⁵ Organization of the Islamic Conference (OIC), *Covenant on the Rights of the Child in Islam*, June 2005, OIC/9-IGGE/HRI/2004/Rep.Final, Retrieved 1 January 2016 from : <http://www.refworld.org/docid/44eaf0e4a.html>

⁶ *Islam - Islamic Law, A Childs Upbringing, Duties of Parents, Religious Education - Encyclopedia of Children and Childhood in History and Society*. (2016). *Faqs.org*. Retrieved 1 January 2016, from <http://www.faqs.org/childhood/In-Ke/Islam.html>

⁷ Organization of the Islamic Conference (OIC), *Covenant on the Rights of the Child in Islam*, June 2005, OIC/9-IGGE/HRI/2004/Rep.Final, Retrieved 1 January 2016 from : <http://www.refworld.org/docid/44eaf0e4a.html>

⁸ Ibid.

⁹ Ibid.

major areas are fosterage, custody, maintenance and guardianship.¹⁰ No child should be denied custody from the point of birth. It is a form of guardianship which jurist classified into three and they are guardianship of the infant (*hadhana*), which Islamic law places on women, to look after the child during the child's early life; guardianship of education (*al wilayat at Tarbiya*), which in respect to sharia is the responsibility of the man; and guardianship of property (*al wilaya alal maal*), which entrusts the management of any property of the child to the man.¹¹

One misunderstanding faced by Islamic law in regards to Child Right has to do with the domestic laws drawn from International laws which is believed to have caused some aberrations in Islamic Laws. It can be interpreted that some Islamic knowledge behind caring for children have been lost due to the democratic practice that allows for the balancing of International laws in the domestic laws of Signatory States. For example, a lot of people believe that the United Nations Convention on the Rights of the Child is incompatible with the God-given right and responsibility of parents to raise their children. This people believe that beating of children physically makes the child a better person, despite the condemnation of such acts international laws on child right. But looking deeply at what the Islamic laws actually says about, one can say this is not true that International law deviates from the Islamic law. In *Fataawa Noor 'ala al-Darb*, it was suggested that beating is required, however it is constrained just to situations where beating will be advantageous, because beating a child sometimes may be of no good use to the child, it just makes the child to shout and cry with no advantage. So this *Fataawa* only implies that beating here should not be harmful or agonizing, a light beating that is meaningful and does not bring about any serious pain and injury, for example Prophet of Islam said "Ask your children to start offering prayers at the age of six years. If they don't listen to your repeated warnings, you may beat them to become regular at offering prayers when they are seven years old.

In a nutshell, this study will basically focus on International law and Islamic law, putting them side by side to comparatively explore them. This brings us to the aims of the study

¹⁰ Van Bueren, G. (1998). *The international law on the rights of the child* (Vol. 35). Martinus Nijhoff Publishers, p. xxi.

¹¹ Ibid, xxii.

1.2 Aims of the research

As noted above, this study will build up its aim around the provisions of the International and Islamic law that protects and cement their rights. The following below highlights the major aim of the study:

1. To highlight the principles of international and Islamic laws towards children;
2. To identify the rights entrenched in both laws;
3. To comparatively study both laws with respect to their similarities and differences

1.3 Clarification of terms

Kafalah: means the assumption of responsibility on behalf of others or the presenting of suretyship to the benefit of others. The inclusion of kafalah of Islamic law in the United Nations Convention on the Rights of the Child is the first time an exclusively Islamic concept is recognised in a binding international instrument.¹² In the case of *Harroudj v. France*, the court observed that under the UN Convention on the Rights of the Child, the *kafalah* model is accepted and defined as “alternative care”, which it deemed on par with adoption. The court also noted that the fact *kafalah* is acknowledged under international law should be a decisive factor in determining how States should accommodate it in their domestic law and deal with any conflicts that may arise.

Hadhana: is widely known as children upbringing conducted by the parents and it involves parents’ activities of educating and serving the children.¹³

Tarbiya: it is the ideal approach in developing human nature, both directly through a method of verbal or visual communication, or indirectly through providing a role model, according to

¹² Assim, U. M., & Sloth-Nielsen, J. (2014). Islamic kafalah as an alternative care option for children deprived of a family environment. *African Human Rights Law Journal*, 14(2), 322-345.

¹³ Nuryanto, N. (2014). *Hadhanah dalam Perspektif Hukum Keluarga Islam*. Jurnal Tapis, 14(2), p. 1.

a specific curriculum that employs certain means and mechanisms in order to facilitate positive change.¹⁴

1.4 Methodology and Sources

The methodology used in this study is the direct approach on the subject from the International Conventions and Islamic Laws. There were no case studies and assessment of legal codes in respect to children as this is not the motive of this study.

This study will dwell highly on the International Conventions and Declarations of Child's Rights, Islamic Covenants, works of Islamic Scholars and literatures for the purpose of identifying the rights of children.

1.5 Significance of study

Children's rights are laid down on the International, Regional and sub-regional level but in the context of this study, the rights shall be dwelled on the frameworks of the International Laws and Islamic laws. International law has been a product of development in the past years since the inception of the United Nations when rules and standards regulating the actions executed beyond legal confines of States. So also is the Islamic law which can be said to be religious framework for the protection of children. It constructs the natural rights of child that every adult, parents and guardians must accord to children with maximum level of respect, honour and dignity.

This major significant of this study reveals the legal and Islamic fundamental rights of children which are stipulated in International laws and Islamic laws and can be enforced by National courts and Islamic Judicial court of law

1.6 Structure of thesis

The first chapter delves into the introduction of this research work; it gives in understanding to

¹⁴ General Tarbiyah Definitions And Mechanisms What Is Islamic Tarbiyah? The Usrah. Retrieved 10 June 2016 from <https://thequranblog.files.wordpress.com/2008/06/general-tarbiyah-definitions-and-mechanisms.pdf>

what forms the body of the study such as the aims of the study, its significance and the method employed to realize the study. It also gives explanation to some Islamic terms used in the study.

The second chapter dissects the rights from the international declarations set forth by The Geneva Declaration of 1924, The United Nations Declaration on Child Rights of 1959 and the United Nations Assembly International Convention on the Rights of the Child of 1989 as well as some key Declarations that have been adopted in the 1990's.

The third chapter consists of the Islamic rights granted to children, beginning at the fetal stage and leading to adulthood, as well as parental and individual obligations in a civil society.

The fourth chapter evaluates the thoroughness these laws and compares the rights under the declarations and the sharia laws derived from the Quran and Islamic religious texts. The study ends in chapter five with a few recommendations for international organization governing children's rights.

CHAPTER TWO: RIGHTS OF CHILDREN UNDER INTERNATIONAL LAW

2.1 Introduction

A large number of children in different parts of the world are exposed daily to dangers that hamper their growth and the process of developing their abilities, ripping them off of their rights. Those dangers are exemplified by wars and violence or poverty and economical crises or even epidemics and famine. Every child is the future of every generation and these rights are not easy to be claimed by them, therefore several international documents have paid attention to those rights.¹⁵ These documents take the form of Conventions or Declarations issued by international bodies. The first group of Declarations include the Geneva Declaration on the Protection of Children of 1924 and the Declaration of the Rights of the Child in 1959. The second group of Conventions contains primarily the Convention on the Rights of the Child of 1989. The following is an analytical overview of these Conventions.

2.2 The Geneva Declaration in 1924

The call for the rights of every child started internationally in 1924 which brought about the five-point Declaration known as "International Union for the Protection of the Rights of Children". This Declaration has been known as the "Declaration of Geneva" which was adopted, unchanged, by the League of Nations on 26 September 1924.¹⁶ Although the Declaration did not address, fully, the rights of the child, but its release in that early date is considered a good gesture and positive step to draw the attention of the States to the protection of children and their human rights. It is the first Declaration that classified children as a special group.¹⁷

¹⁵ Abda, M. (1969). *Problems of Quran and Interpretation of Surat Al-Faatihah*. Beirut: Hayat Library

¹⁶ Alston, P., Tobin, J. J., & Darrow, M. (2005). *Laying the foundations for children's rights* (p. 22). Innocenti Research Centre, p. 4.

¹⁷ Unicef. (2008). Rights under the Convention on the Rights of the Child.

In this Geneva Declaration there is a preamble and five principles.¹⁸ The preamble reaffirms the responsibility of the human race to protect children without distinction as to race, sex, social origin or religion. The five set of principles are stated as follows:

1. The child must be given the means requisite for its normal development, both materially and spiritually;
2. The child that is hungry must be fed, the child that is sick must be helped, the child that is backward must be helped, the delinquent child must be reclaimed, and the orphan and the waif must be sheltered and succoured;
3. The child must be the first to receive relief in times of distress;
4. The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;
5. The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men.¹⁹

The Geneva Declaration was adopted by the League of Nations and this Declaration was a social document addressed to the ordinary men and women and to society in General. Furthermore, the Declaration on the Rights of the Child has not been addressed only partially and lacks no international mechanism to monitor the principles²⁰ contained therein. There are some other Conventions and Declarations that address family unit, mothers, pregnant women and civilian protection in times of war or conflicts with the exclusion of children and they include the Slavery Convention of 1926, the Convention relating to the status of stateless persons in 1945, the Genocide and Punishment Convention in 1948, and the Universal Declaration of Human Rights 1948 and adopted the Geneva Declaration earlier.²¹ However, the Declaration that addresses the protection of children after The Geneva Declaration of 1924

¹⁸ Nations, U. (2000, may 25). United Nations Human Rights. Retrieved from <http://www.ohchr.org/en> on January 2016.

¹⁹ Geneva Declaration on the Rights of the Child (1923)

²⁰ Mukhaimar, A. (1993). Convention on the Rights of the Child a step forward or backward. *Rights Magazine* 3. Retrieved from <http://pubcouncil.kuniv.edu.kw/kashaf/abstract.asp?id=2527>

²¹ United Nations, U. (2000). *United Nations Human Rights*. Retrieved from <http://www.ohchr.org/en/OPSCCRC.aspx> on January 2016.

is the Declaration of the Rights of the Child in 1959.²² It was an augmented form of this children's right that was adopted in 1948 by the General Assembly, which was subsequently reviewed again in 1959 by the General Assembly.²³

2.3 The United Nations Declaration on the Rights of the Child (1959)

Due to the painful reality in many countries, millions of children are condemned to a life of suffering and pain and are not receiving as much food and no medical care, education or adequate legal protection; in sequel to this, the General Assembly of the UN issued a declaration of children's rights on the 20th of November 1959 with the approval of 78 countries without objections from or omission of any states.²⁴

This Declaration is an expansion of the previous Geneva Declaration of 1924 which consists of a preamble and ten principles.²⁵ The preamble refers to the Universal Declaration of Human Rights (UDHR) which proclaimed that the child is the beginning of every human race, so it enjoys the rights that are covered by the Declaration. The preamble also refers to the reasons for the children to claim special legal protection, citing incomplete physical and mental status of the child, and explaining the objective of the issuance of the Declaration as to make the child enjoy a healthy being, through the enjoyment of the rights and freedoms set forth in the Declaration.²⁶ The preamble also focused on the shared responsibility of all in the protection of children, and calls upon parents, bodies that, voluntarily, are interested in childhood, and local authorities and governments to recognize the rights of the child contained in the Declaration and to work on their implementation.^{27,28} The ten principles of the Declaration included: the child's right to enjoy all the rights contained in the Declaration

²² Hamuda, M. S. (2007). *Protection of Child Rights in Islam and international law*. Alexandria:dar al jamhat jadedda.

²³ Fortin, J. 2005. *Children's rights and the developing law* (Second Edition). Cambridge: Cambridge University Press, p. 35.

²⁴ United Nations. (1948, December 10). *Universal Declaration of Human Rights*. Retrieved from United Nations: http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

²⁵ <http://www.humanium.org/en/childrens-rights-history/references-on-child-rights/declaration-rights-child/>

²⁶ *Declaration of the Rights of the Child* G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959). Retrieved 13 June 2016, from <http://www.cirp.org/library/ethics/UN-declaration/>

²⁷ *Children's Rights: International Laws* | Law Library of Congress. (2015). *Loc.gov*. Retrieved 1 June 2016, from <https://www.loc.gov/law/help/child-rights/international-law.php>

²⁸ UNICEF,. (2003). *The Convention on the Rights of the Child*. *Unicef-irc.org*. Retrieved 1 June 2016, from https://www.unicef-irc.org/portfolios/general_comments/GC5_en.doc.html

without discrimination because of race, color, sex, or language.²⁹ This principle was copied from the second article of the Universal Declaration of Human Rights in 1948 also it includes:

1. the right of the child to the enjoyment of all the rights embedded in this declaration;
2. the right to enjoy special protection of granting legal opportunities to help the child to grow mentally, spiritually and socially consistent with an atmosphere of freedom and dignity;
3. the right, from his birth, to name and nationality;
4. the right to enjoy the benefits of social security and health, and further rights in special care, pre and post natal care, and the right to full nutrition, and housing and sports and medical care;
5. the right of the disabled child to enjoy special treatment, education and care required by his particular condition;
6. the right to love, understanding and under the auspices of the parents, and emphasis on the State's duty to secure the child support and help of the poor families and needy.
7. the right to receive education, which shall be free and compulsory, at least in the elementary stages;
8. the right to enjoy preferential treatment as regards relief and protection;
9. the right not to suffer neglect, cruelty and exploitation coupled with absence of employment abuse that would jeopardize his/her health or education or disturb his physical, mental or moral development;
10. the right to enjoy no discrimination either from race or religion or other forms and upbringing in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood and human companion service.^{30,31}

Declaration on the rights of the child is the first international attempt to enumerate the rights of the child in details and attention to children everywhere, stating that children must enjoy

²⁹ Declaration Of The Rights Of The Child (2003). Retrieved 1 June 2016, from <http://www.unicef.org/malaysia/1959-Declaration-of-the-Rights-of-the-Child.pdf>

³⁰ United Nations. (1948, December 10). United Nations Universal Declaration of. Retrieved from <http://www.jus.uio.no/lm/un.universal.declaration.of.human.rights.1948/portrait.a4.pdf>

³¹ Ibid.

the rights prescribed for just being at the age that fits into the definition of a child. The Declaration on the rights of the child was detailed and more comprehensive than the Geneva Declaration 1924 but not all the rights of the child nor explicitly the rights of groups with particular conditions of children were included.^{32,33} In addition, the Declaration is not considered binding for States that did not sign or ratify it, as it is an international mechanism for monitoring and development of the principles contained therein, but it has added to this declaration provisions contained in other charters binding on all States that have signed and ratified as in the United Nations Covenants on Civil and political human rights, particularly in Articles (22-24) or particularly in (Article 10) in 1966 where the Convention included some texts on the child.³⁴

These covenants were issued by the United Nation General Assembly (UNGA) on 16 December 1966. Generally those Covenants contain special provisions of the rights contained in the Universal Declaration of Human Rights (1948), with some exceptions, on the other hand, those Covenants addressed certain rights not provided, the Convention, or provided in a general way and most importantly the right of peoples to self-determination and the protection of minorities, prohibition of slavery and the slave trade. However, as stated in the two Covenants, this is just a regrouping of rights of the child, but addressed to the child implicitly. It remained so until the year 1979 as United Nations consider the year a children year to secure adequate care for child rights,³⁵ and ensure the practical implementation of the principles and rights, and values contained in the Declaration on the rights of the Child 1989, and allocated United Nations world day for child.³⁶

³² League of Nations,. (2016). *Geneva Declaration of the Rights of the Child of 1924 - UN Documents: Gathering a body of global agreements*. *Un-documents.net*. Retrieved 2 June 2016, from <http://www.un-documents.net/gdrc1924.htm>

³³ *About children's rights | History of children's human rights*. (2016). *Childrensrightswales.org.uk*. Retrieved 2 June 2016, from <http://www.childrensrightswales.org.uk/history-of-children-rights.aspx>

³⁴ Mukhaimar, A. (1993, September 3). Convention on the Rights of the Child a Step Forward or Backward. *Rights Magazine*, 3. Retrieved from Mukhaimar, A. (1993, september 3). Convention on the Rights of the Chil <http://pubcouncil.kuniv.edu.kw/kashaf/abstract.asp?id=2527>

³⁵ UNICEF. (2003). *The Convention on the Rights of the Child*. *Unicef-irc.org*. Retrieved 3 June 2016, from https://www.unicef-irc.org/portfolios/general_comments/CRC.GC.C.11.doc.html

³⁶ Ibid.

2.4 The Convention on the Rights of the Child on 1989

2.4.1 Conditions and the circumstances surrounding the preparation of the Convention

In the international year of the child, a proposal for another Convention on children's rights was prepared by Poland in 1978,³⁷ which had constantly brought about concerns in respect to children's rights being necessary.³⁸ Poland took advantage of this opportunity and submitted it to the economic and Social Council- a principal organs of the United Nations.³⁹ Poland's draft, with insignificant revisions, became a template and the premise for the 1989 Convention on the Rights of the Child (CRC). The explanations behind a global change of core in the direction of the protecting the rights of children were complex,⁴⁰ yet all signatories on a very basic level perceived that the 1959 Declaration on the Rights of the Child no more revealed the necessities of a number of the children globally.⁴¹ The proposal received support and enthusiasm from some states because they realize that there were children in all countries of the world living very difficult conditions and need special consideration because they are the most vulnerable among people, especially in wars and conflicts between states and economic crises.⁴²

The States in support of the Poland proposal settled to entrust the preparation of the content of the Convention to the United Nations Commission on human rights which, formed an integrated team to accomplish this project. After nearly ten years of preparation for the Convention, the project nearly suffered premature end by the second reading in June 1988. However, the draft got to be accepted by the Commission on Human Rights in March 1992 and Economic and Social Council handed it over to the UN General Assembly which, in turn, succeeded on the 20th of November 1989 in announcing the Convention on the Rights of the child which included all articles and provisions for the child in all its previous declarations

³⁷ Poland submitted a draft resolution to be recommended for adoption by the UN Economic and Social Council. The resolution contained a draft text for the Convention on the Rights of the Child. Cf. Detrick (1999:14f.).

³⁸ Van Bueren, G. 1998. *The international law on the rights of the child*. The Hague: Kluwer Law International.

³⁹ United Nations, (1948, December 10). United Nations Universal Declaration of. Retrieved from <http://www.jus.uio.no/lm/un.universal.declaration.of.human.rights.1948/portrait.a4.pdf>

⁴⁰ Van Bueren, G. 1998. *The international law on the rights of the child*. The Hague: Kluwer

⁴¹ Van Bueren (1998).

⁴² Ibid.

or international covenants. The preamble to the Convention did not fail to refer to those covenants and charters on the existing that gave protection to the children.⁴³

2.4.2 The content of the agreement of the Rights of the Child (1989)

The preamble in this Convention refers to what it stated in the Charter of the United Nations and other international documents related to the human rights of the need to protect human rights and recognition of the dignity of all members of the human family.⁴⁴ It notes the preamble as well as what is stated in these documents on the right of the child care and assistance, and appropriate legal protection before birth.^{45,46,47} Also the preamble recognizes that there are children in different parts of the world who does live in very difficult conditions, and those that require special care, hence, need to improve children's living conditions and coming together of concerned bodies to form international cooperation, taking into account of the every tradition and people's cultural values to protect the child.^{48,49,50} As for the provisions of the Convention it is divided into three parts.

The first part (Part I) has in it forty-one articles which encapsulates the definition of a child and the best interest to be accrued to them as human being. It captured their needs and protection and avoiding any form of discrimination towards the child on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.⁵¹

⁴³ Assembly, U. G. (2014). Convention on the Rights of the Child.

⁴⁴ United Nations. (2016). *The Universal Declaration of Human Rights | United Nations*. *Un.org*. Retrieved 4 June 2016, from <http://www.un.org/en/universal-declaration-human-rights/>

⁴⁵ *Children's Rights: International Laws | Law Library of Congress*. (2015). *Loc.gov*. Retrieved 4 June 2016, from <https://www.loc.gov/law/help/child-rights/international-law.php>

⁴⁶ *Declaration of the Rights of the Child* G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).

⁴⁷ *A/RES/44/25. Convention on the Rights of the Child (also contains Corr.1)*. (1990). *Un.org*. Retrieved 3 June 2016, from <http://www.un.org/documents/ga/res/44/a44r025.htm>

⁴⁸ UNICEF. (1989). Convention on the Rights of the Child: Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989: Entry into force 2 September 1990, in accordance with article 49

⁴⁹ Glendon, M. A. (2002). *A world made new: Eleanor Roosevelt and the Universal Declaration of Human Rights*. Random House Incorporated.

⁵⁰ Lawson, E. H., & Bertucci, M. L. (1996). *Encyclopedia of human rights*. Taylor & Francis, p. 227.

⁵¹ *A/RES/44/25. Convention on the Rights of the Child (also contains Corr.1)*. (1990). *Un.org*. Retrieved 3 June 2016, from <http://www.un.org/documents/ga/res/44/a44r025.htm>

The second part (Part II) contains four articles which includes articles (42-45). This part states that party States have the duty of making parents and children to have the understanding of Convention. Also, included in this part are the models to which Party States and parents should implement the rights.

The third part (Part III) covers the terms and Conditions for ratification, accession, amendments, denunciation and the accepted language to be used for the Convention which is covered precisely in articles 46-54.

The main principles underlying the Convention are:

1. the principles of non-discrimination (Article 2);
2. the principle of public or private welfare or care for children which is considered supreme and at best interest of the child (Article 3);
3. the principle of international cooperation (Article 4);
4. the right of the child to life, survival and development (Article 6); and
5. respect for the views of the child (Article 12).⁵²

2.4.2.1 First part of the Convention (definition of the child and human rights)

Article one of the conventions defines the child by stating: "a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier".⁵³ Accordingly, the Convention on the rights of the child is considered the first international document that defines clearly and explicitly what is meant by a child.⁵⁴ It is noted in this definition that trends have taken which tends to put the age of children to the bracket of below '18'. The Convention had indicated in its preamble that in order to take in mind the traditions and cultural values of peoples for child protection, the maximum age of a

⁵² A/RES/44/25. *Convention on the Rights of the Child (also contains Corr.1)*. (1990). *Un.org*. Retrieved 3 June 2016, from <http://www.un.org/documents/ga/res/44/a44r025.htm>

⁵³ UNICEF. (1989). *Convention on the Rights of the Child: Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989: Entry into force 2 September 1990, in accordance with article 49.*

⁵⁴ No, General Comment. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1). *Committee on the Rights of the Child*.

child would be as stipulated in the national legislation of any State party.⁵⁵ In a situation when the age of children in a State ends before the age specified in the Convention, it is stipulated in Article I of the Convention that in this case the State that determines the age of a child less than this is not considered in violation of the Convention.

In Article 2 of the Convention, it was stated that every child should enjoy full rights without any kind of discrimination. However, in Article 3, it stipulates that the State must take into account the best interests of the child in every decision, and should undertake to ensure the protection and care necessary for their well-being by state authorities, public and private institutions.⁵⁶ Article 4 is concerned with economic, social and cultural rights of the child and state actions to guarantee them.^{57,58} Article 5 is concerned with responsibilities and respect of the rights of the child, and personal officials should provide appropriate guidance and advice in the exercise of the child's rights recognized in the present Convention.⁵⁹

Articles 6, 7, and 8 affirm the child's right to life and to be given the maximum attention for survival and development; the right to a name and nationality and registration in accordance with the laws of the state, along with the preservation of identity, nationality and family relations.⁶⁰ To achieve these, Article 9 addresses the child's right not to be separated from his parents, except when the competent authorities decide to the best interests of the child.⁶¹ Then, it specifies the procedures to be followed in the event of separation of the child from one or both parents in terms of communicating with parents.⁶² Article 10 focuses on the right of children to reunion with his family in the entry and departure of any State Party in a humane

⁵⁵ UNICEF. (1989). Convention on the Rights of the Child, p. 2.

⁵⁶ United Nations. (2009). Convention on the Rights of the Child, p. 15.

⁵⁷ *What are the obligations of States on economic, social and cultural rights?*. (2016). *Ohchr.org*. Retrieved 4 June 2016, from <http://www.ohchr.org/EN/Issues/ESCR/Pages/WhataretheobligationsofStatesonESCR.aspx>

⁵⁸ *International Covenant on Economic, Social and Cultural Rights*. (2016). *Ohchr.org*. Retrieved 4 June 2016, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

⁵⁹ United Nations. (2009). Convention on the Rights of the Child, p. 15.

⁶⁰ *A/RES/44/25. Convention on the Rights of the Child (also contains Corr.1)*. (2016). *Un.org*. Retrieved 3 June 2016, from <http://www.un.org/documents/ga/res/44/a44r025.htm>

⁶¹ UNICEF. (1989). Convention on the Rights of the Child: Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989: Entry into force 2 September 1990, in accordance with article 49

⁶² *Children and the law: when parents separate - Rights of Women*. (2016). *Rights of Women*. Retrieved 6 June 2016, from <http://rightsofwomen.org.uk/get-information/family-law/children-law-parents-separate/>

manner.⁶³ Article 11 has to do with the combating of illegal movement of children with no hope of return.⁶⁴ Article 12 makes provision for the right of children to express their views and to be listened to while sharing their testimony.⁶⁵ Article 13 states the child's right to freedom of expression and this right includes freedom to seek all kinds of information and ideas, receive and impart information regardless of frontiers, either by word or writing or art, or through any other media that falls within child's choice in conformity with respect for others and the protection of national security.⁶⁶ Article 14 provides that the child shall have the right to freedom of thought and conscience and religion, while pointing out that this right is subject to the law or laws for the maintenance of public safety, public order or public health and morals.⁶⁷

Article 15 considers the right of the child to freedom of association and freedom of peaceful assembly in accordance with the public order of the state.⁶⁸ Article 16 is concerned with the right of the child to protection of private life or correspondence from arbitrary actions, prejudice or assaulting actions on honor or reputation.⁶⁹ It is striking that this text did not contain any restrictions on the freedom of the child in the exercise of this right and do not provide for parental supervision and control over the child's private life or correspondence.⁷⁰ Article 17 majorly revolves round the rights of the child to obtain information from national and international sources, and refers to the supposed role of the media and its role in the promotion of child welfare along with physical and mental health.⁷¹ Article 18 recognizes the principle that both parents have common responsibilities for the upbringing and development of the child.⁷² It also stipulates that the responsibility of the parents or legal guardians for the upbringing and development of the child comes first.⁷³ Accordingly it mentions the

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ UNICEF. (1989). Convention on the Rights of the Child: Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989: Entry into force 2 September 1990, in accordance with article 49

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ UNICEF (1989).

⁷² Ibid.

⁷³ Ibid.

responsibility of States to provide appropriate assistance to parents and legal guardians to assume the responsibility of raising the child, and also ensure that children of working parents have the right to use the services and childcare facilities, thereof.^{74,75,76} This Article indicates what States party must do to achieve the protection of the child from information and material injurious to his or her well-being.⁷⁷ Article 19 stipulates that States party shall protect the child from physical or mental abuse or neglect, including sexual exploitation, whether the child is in the care of his parents or any other person.^{78,79} States should take measures to prevent such abuse, including judicial intervention, and providing necessary support for the child and for those who are nurturing or caring for the child. Article 20 contains the rights of children deprived of a family temporarily or permanently in the area of education and care and special protection by the State in this case with its commitment as well as to find appropriate alternative care for the child through the foster placement, Kafalah of Islamic law, adoption or if necessary accommodation in suitable institutions for the care of children.^{80,81,82}

Article 21 dwells on the adoption requirements for States that recognize adoption as a means of child care. The Convention obliges States to regulate this issue to ensure that adoption is not used as a means for illicit financial gain and make sure that there is an adoptive passport for the child and the consent of parents, relatives or guardians is sought appropriately.⁸³

Article 22 has to do with the rights of the child, and the right to humanitarian assistance and freedom, whether with the parents or not, which must be consistent with this Convention and

⁷⁴ *The Convention on the Rights of the Child*. (2016). *Ppu.org.uk*. Retrieved 5 June 2016, from <http://www.ppu.org.uk/learn/texts/convention1.html>

⁷⁵ UNICEF (1989).

⁷⁶ Hodgkin, R., Newell, P., & UNICEF. (1998). *Implementation Handbook for the Convention on the Rights of the Child*, p. 240.

⁷⁷ UNICEF (1989).

⁷⁸ *Ibid*.

⁷⁹ Lee, Y., & Svevo-Cianci, K. (2011). General Comment no. 13 to the Convention on the Rights of the Child: the right of the child to freedom from all forms of violence. *Child abuse & neglect*, 35(12), 967-969.

⁸⁰ No, CRC. General Comment (2005): *Treatment of Unaccompanied and Separated Children Outside their Country of Origin*. above note 103, para. 61.

⁸¹ UNICEF. (2008). What you can do about alternative care in South Asia—an advocacy tool kit. *Nepal: UNICEF*, p. 6.

⁸² UNICEF. (2006). *Alternative care for children without primary caregivers in Tsunami-affected countries: Indonesia, Malaysia, Myanmar and Thailand*, p. 17.

⁸³ United Nations. (1989, November 20). *Convention on the Rights of the Child*. Retrieved from <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>

other international Conventions,^{84,85} and that States should cooperate with international bodies to work on the protection of refugee children and their families, and the search for the parents of a child refugee who is not accompanied by a parent, or any other members of his family.⁸⁶ Article 23 states the rights of disabled children, and the duty of the State, and about how to obtain free care whenever possible, whether with regard to education or health or rehabilitation.^{87,88} This should be endowed with the spirit of international cooperation in terms of information exchange on prevention and care in accordance with different programs. Article 24 stipulates the right of the child to enjoy the highest possible level of health;⁸⁹ the Convention requires party States to give effect to this right and apply it fully to reduce infant mortality and to combat disease and malnutrition;⁹⁰ and the provision of medical assistance and health care for all children before birth and beyond;⁹¹ it also ensures access of all sectors of the society to basic information on child health and nutrition, the advantages of breastfeeding.⁹² This article also stipulates that party States shall take all effective and appropriate measures to abolish traditional practices prejudicial to the health of the child.^{93,94,95} It also made it clear that States must cooperate with each other in order to give effect to this right contained in this article, taking into account the developing countries in this regard.^{96,97} Article 25 states that States parties should recognize the right of children outside

⁸⁴ United Nations,. (2016). *The Universal Declaration of Human Rights* | United Nations. *Un.org*. Retrieved 26 June 2016, from <http://www.un.org/en/universal-declaration-human-rights/>

⁸⁵ UNICEF (1989).

⁸⁶ No, CRC. General Comment (2005): *Treatment of Unaccompanied and Separated Children Outside their Country of Origin*. above note 103, para. 61.

⁸⁷ UNICEF (1989).

⁸⁸ *Convention on the Rights of Persons with Disabilities*. (2016). *Un.org*. Retrieved 7 June 2016, from <http://www.un.org/disabilities/convention/conventionfull.shtml>

⁸⁹ *Children's Rights: International Laws* | Law Library of Congress. (2016). *Loc.gov*. Retrieved 4 June 2016, from <https://www.loc.gov/law/help/child-rights/international-law.php>

⁹⁰ UNICEF (1989).

⁹¹ United Nation General Assembly (2014). *Convention on the Rights of the Child*.

⁹² Unicef. (1989). *Convention on the Rights of the Child*.

⁹³ United Nation General Assembly (2014). *Convention on the Rights of the Child*.

⁹⁴ *UNICEF in action*. (2016). *Unicef.org*. Retrieved 7 June 2016, from <http://www.unicef.org/programme/breastfeeding/crc.htm>

⁹⁵ *A/RES/52/99*. (2016). *Un.org*. Retrieved 7 June 2016, from <http://www.un.org/ga/documents/gares52/res5299.htm>

⁹⁶ United Nations General Assembly,. (2016). *A/RES/29/3281 - Charter of Economic Rights and Duties of States - UN Documents: Gathering a body of global agreements*. *Un-documents.net*. Retrieved 7 June 2016, from <http://www.un-documents.net/a29r3281.htm>

⁹⁷ *Convention on the Rights of Persons with Disabilities*. (2016). *Un.org*. Retrieved 7 June 2016, from <http://www.un.org/disabilities/convention/conventionfull.shtml>

the family for protection, care and periodic review of their status.⁹⁸ This article shall apply to placement in shelters, or juvenile houses, or the different types of treatment houses.⁹⁹

Article 26 stipulates that party States must recognize the child's right to benefit from social security and take necessary measures to achieve this right fully in accordance with its national law.¹⁰⁰ Also, this article establishes that the child has the right to obtain subsidies where appropriate taking into account the resources and circumstances of the child and persons responsible for livelihood.¹⁰¹ In Article 27, it was contained that there must be the right of the child to live in an appropriate and adequate environment to ensure proper growth and responsibility of parents within their financial capabilities to secure the conditions of living necessary for the child's development.¹⁰² The State should help parents and guardians when required for the implementation of this right. This article encourages the party States to accede to the International Convention or the conclusion of such agreements to ensure the recovery of livelihood for the child from the parents or other persons having financial responsibility for the child or officials in States other than the state in which the child lives.¹⁰³

Article 28 talk about the right of the child to education. States must therefore make primary education compulsory and free, and to encourage the development of forms of general or vocational secondary education, and to make higher education accessible to all on the basis of capacity, and to encourage regular attendance at schools, school discipline should respect the child's dignity.¹⁰⁴ This article calls on party States to work to strengthen international cooperation in matters relating to education and eradication of illiteracy. Article 29 stipulates that party states must agree that the aims of education is to develop the child's personality, talents and abilities, physical and mental capacities. It addresses the development of respect

⁹⁸ No, CRC General Comment. 6 (2005): *Treatment of Unaccompanied and Separated Children Outside their Country of Origin*. above note 103, para. 61.

⁹⁹ United Nations. (1997, February 26). *UNGA*. Retrieved from Nations, United: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N97/769/33/PDF/N9776933.pdf?OpenElement>

¹⁰⁰ UNICEF (1989).

¹⁰¹ United Nations Committee on the Rights of the Child, United Nations Children's Fund, Bernard van Leer Foundation. (2006). *Implementing child rights in early childhood*. Bernard van Leer Foundation.

¹⁰² UNICEF (1989).

¹⁰³ United Nations Committee on the Rights of the Child, United Nations Children's Fund, Bernard van Leer Foundation. (2006). *Implementing child rights in early childhood*. Bernard van Leer Foundation.

¹⁰⁴ *UN Convention on the Rights of the Child*. (2007). *Crin.org*. Retrieved 10 June 2016, from <https://www.crin.org/en/library/legal-database/un-convention-rights-child>

for human rights and fundamental freedoms and the principles enshrined in the Charter of the United Nations,^{105,106} coupled with the development of respect for the child's relatives and cultural identity, language and values, for the child's country, civilization and other civilizations, and prepare children for life with a spirit of understanding, peace, tolerance.^{107,108} Education should make the child notified for environmental and humanitarian commitment and the spirit of responsibility.¹⁰⁹ This Article pointed out that the above is not to be understood as interference in individual liberties in national educational policies, subject to observance of the principles stated in paragraph 1 of this article.

Article 30 affirms the right of the child belonging to ethnic or religious minorities or otherwise, to the enjoyment of linguistic and religious culture and preservation of personal identity.¹¹⁰ Article 31 deals with the children's need for play and recreation and activities that fulfill the perfect leisure and to participate freely in cultural life and arts.¹¹¹

Article 32 addresses child labor, where it stipulates the right of the child to protection from economic exploitation and from performing work that is probably hazardous or that may interfere with the education of, or is detrimental to their health or physical, mental, spiritual, moral or social development.^{112,113} The article obliges party States to take all measures to ensure this right, particularly with regard to the clarity of the minimum age for admission to employment and for appropriate regulation of the hours and conditions of

¹⁰⁵ United Nations,. (2016). *The Universal Declaration of Human Rights* / *United Nations*. *Un.org*. Retrieved 26 June 2016, from <http://www.un.org/en/universal-declaration-human-rights/>

¹⁰⁶ A/RES/45/163. *Strengthening of United Nations action in the human rights field through the promotion of international co-operation and the importance of non-selectivity, impartiality and objectivity*. (2016). *Un.org*. Retrieved 9 June 2016, from <http://www.un.org/documents/ga/res/45/a45r163.htm>

¹⁰⁷ UNICEF,. (2016). *The Convention on the Rights of the Child*. *Unicef-irc.org*. Retrieved 8 June 2016, from https://www.unicef-irc.org/portfolios/general_comments/GC1_en.doc.html

¹⁰⁸ UNICEF (1989).

¹⁰⁹ United Nations (1989). *Convention on the Rights of the Child*.

¹¹⁰ Rights, M. (2010). International Standards and Guidance for Implementation. *United Nations High Commissioner of Human Rights, United Nations: New York*.

¹¹¹ Lester, S., & Russell, W. (2010). *Children's Right to Play: An Examination of the Importance of Play in the Lives of Children Worldwide. Working Papers in Early Childhood Development, No. 57*. Bernard van Leer Foundation. PO Box 82334, 2508 EH, The Hague, The Netherlands.

¹¹² Hindman, H. D. (2009). *The world of child labor: An historical and regional survey*. ME Sharpe, p. 30.

¹¹³ UNICEF (2012). *Labour Beyond Child; Affirming Rights*, p. 6.

work and impose appropriate penalties to ensure the application of this article.^{114,115} Note that this article has appeared in many international labor legislations. Article 33 stipulates the right of the child to protection from narcotic drugs and psychotropic substances, and protection as well as from participating in the production or trafficking of those materials.^{116,117,118,119,120} Article 34 undertakes the right of the child to be protected from sexual exploitation.^{121,122} Article 35 States that party states parties shall make every effort to prevent child abduction or trafficking.^{123,124,125} Article 36 stipulates that party States shall protect the child from all forms of exploitation prejudicial to any aspects of well-being.^{126,127,128} Article 37 decides not to impose the death penalty or life imprisonment for crimes committed by persons below eighteen years of age without and the possibility of release.¹²⁹ The Article has shown what follows the arrest, detention or imprisonment of a child in accordance with the law and

¹¹⁴ United Nations Committee on the Rights of the Child, United Nations Children's Fund, Bernard van Leer Foundation. (2006). *Implementing child rights in early childhood*. Bernard van Leer Foundation, p. 174.

¹¹⁵ Melchiorre, A. (2004). *At what age?-are school-children employed, married and taken to court?*. Raoul Wallenberg Institute of Human Rights and Humanitarian Law, p. 12.

¹¹⁶ Convention on the Rights of the Child 1989. Retrieved 9 June 2016 from <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>, p. 10.

¹¹⁷ Daly, A. (2016). "Article 33: Protection from Narcotic Drugs and Psychotropic Substances", in A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans, M. Verheyde and B. Abramson (eds), written by D. Barrett and P. Veerman. *The International Journal of Children's Rights*, 24(1), 231-234, p. 91.

¹¹⁸ The African Child Policy Forum (ACPF) (2013). Retrieved 9 June 2016 from <http://www.africanchildforum.org>

¹¹⁹ Hodgkin, R., Newell, P., & UNICEF. (1998). *Implementation Handbook for the Convention on the Rights of the Child*, p. 507.

¹²⁰ Stephan Dahlgren and Roxana Stere (2010). *The Right Of Children To Be Protected From Narcotic Drugs And Psychotropic Substances A Human Right/International Law Perspective*, p. 4.

¹²¹ *A rights-based approach to fighting sexual exploitation of children*. (2016). *Ohchr.org*. Retrieved 10 June 2016, from <http://www.ohchr.org/EN/NewsEvents/Pages/fightingSexualExploitationChildren.aspx>

¹²² *Protecting children from violence, exploitation and abuse*. (2016). *UNICEF*. Retrieved 10 June 2016, from http://www.unicef.org/protection/57929_57972.html

¹²³ *UN Convention on the Rights of the Child*. (2007). *Crin.org*. Retrieved 10 June 2016, from <https://www.crin.org/en/library/legal-database/un-convention-rights-child>

¹²⁴ *Optional Protocol to the Convention on the Rights of the Child*. (2016). *Ohchr.org*. Retrieved 10 June 2016, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

¹²⁵ *Protocol to Prevent, Suppress and Punish Trafficking in Persons*. (2016). *Ohchr.org*. Retrieved 11 June 2016, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

¹²⁶ UNICEF (1989).

¹²⁷ *Summary of the Convention on the Rights of the Child | Children's Rights and Business Principles*. (2016). *Childrenandbusiness.org*. Retrieved 11 June 2016, from <http://childrenandbusiness.org/the-principles/summary-of-the-convention-on-the-rights-of-the-child/>

¹²⁸ Unicef. (2009). *The State of the World's Children-Special Edition: Celebrating 20 Years on the Convention on the Rights of the Child: Executive Summary*. Unicef.

¹²⁹ No, General Comment (2007). 10: Children's rights in juvenile justice. CrC/C/gC/10, 25, p. 21.

how to treat the child when the deprivation of liberty is a must.¹³⁰ The right to obtain legal assistance is also mentioned.

Article 38 addresses the right of the child not to be involved in wars, and stipulates the obligation of States to take feasible measures to prevent those under age 15 from direct participation in war, and not to recruit any person who has not attained the age of fifteen years, with priority to those who are oldest.^{131,132,133} Furthermore, the article included respect for what is contained in international humanitarian law on the care of children captured in armed conflicts.¹³⁴ Noteworthy here is that the Convention contradicts itself in this article, since it defines the child in Article 1 as every person below 18 years, while in this article it refers to the right of the child not to participate in the war. But it allows the involvement of those who are below that age in wars.

Article 39 stipulates the obligation for States to take appropriate measures for the physical and psychological rehabilitation and social support for children abused, neglected or detained or armed or has been through armed conflicts to enhance child's health and self-respect.¹³⁵ Article 40 provides for the right of a child accused of violating the penal to treatment incompatible with human dignity and ability.^{136,137} With reintegration into society through confirming the principle of no crime and no punishment without a text, there is the presumption of innocence until proven the child guilty, and to be informed promptly of the charges against him, and the jurisdiction to try him in the presence of a lawyer or a legal adviser and in the presence of his

¹³⁰ Ibid..

¹³¹ *Customary IHL - Practice Relating to Rule 136. Recruitment of Child Soldiers*. (2016). *Icrc.org*. Retrieved 12 June 2016, from https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule136

¹³² *Children and war - ICRC*. (2016). *Icrc.org*. Retrieved 11 June 2016, from <https://www.icrc.org/eng/resources/documents/article/other/57jrlb.htm>

¹³³ *Optional Protocol to the Convention on the Rights of the Child concerning involvement of children in armed conflicts - ICRC*. (2016). *Icrc.org*. Retrieved 11 June 2016, from <https://www.icrc.org/eng/resources/documents/article/other/57jp4u.htm>

¹³⁴ *Protection of Children in International Humanitarian Law - ICRC*. (2016). *Icrc.org*. Retrieved 15 June 2016, from <https://www.icrc.org/eng/resources/documents/article/other/57jmat.htm>

¹³⁵ UNICEF (1989).

¹³⁶ Ibid.

¹³⁷ *Guidelines for Action on Children in the Criminal Justice System*. (2016). *Ohchr.org*. Retrieved 11 June 2016, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CriminalJusticeSystem.aspx>

parents or guardians.^{138,139} It also affirms the right to avoid coercion of a child to give testimony or to confess guilt, and the right to appeal conviction.^{140,141} It also includes the rights to be respected during all stages of the proceedings, and develop appropriate legislation for judicial procedures,^{142,143} and to work out different arrangements as guidance, supervision, education and vocational training programs and other alternatives to institutional care.^{144,145,146}

Article 41 provided that if what is more appropriate than this Convention in national or international law should be applied, it must include greater protection and care for children.^{147,148}

2.4.2.2 Second part of the Convention (1989)

Part II of the Convention contains four articles (42-45). The first among them shows how to disseminate the principles and provisions of the Convention. The second shows how to create the Committee on the rights of the child and its functions.^{149,150} The third shows how

¹³⁸ United Nations.,. (2005). *Human Rights and Prisons: A Manual on Human Rights Training for Prison Officials (Professional training series, 1020-1688 ; no. 11)*. United Nations, p. 13.

¹³⁹ Penal Reform International (2013). *Protecting children's rights in criminal justice systems: A training manual and reference point for professionals and policymakers*. London E1 6LT United Kingdom, p. 92.

¹⁴⁰ Keene, D. & Handrich, R. (2012). "Only the Guilty Would Confess to Crimes" : *Understanding the Mystery of False Confessions. The Jury Expert*. Retrieved 13 June 2016, from <http://www.thejuryexpert.com/2012/11/only-the-guilty-would-confess-to-crimes%E2%80%A8-understanding-the-mystery-of-false-confessions/>

¹⁴¹ *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003 / Legal Instruments / ACHPR*. (2016). *Achpr.org*. Retrieved 13 June 2016, from <http://www.achpr.org/instruments/principles-guidelines-right-fair-trial/>

¹⁴² Plattner, D. (1984). Protection of children in *international humanitarian law*. *International Review of the Red Cross*, 24(240), 140-152.

¹⁴³ Krill, F. (1985). The protection of women in international humanitarian law. *International Review of the Red Cross*, 25(249), 337-363.

¹⁴⁴ Center for Substance Abuse Treatment. (1998). —Guidelines for Institution and Community Programs.

¹⁴⁵ Hammarberg, T. (2009). Children and juvenile justice: proposals for improvements.

¹⁴⁶ UNICEF (1989).

¹⁴⁷ No, General Comment 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1). *Committee on the Rights of the Child*, p .3.

¹⁴⁸ *Children's Rights: International Laws / Law Library of Congress*. (2016). *Loc.gov*. Retrieved 13 June 2016, from <https://www.loc.gov/law/help/child-rights/international-law.php>

¹⁴⁹ Weissbrodt, D., Hansen, J. C., & Nesbitt, N. H. (2011). Role of the Committee on the Rights of the Child in Interpreting and Developing International Humanitarian Law, *The. Harv. Hum. Rts. J.*, 24, 115.

¹⁵⁰ *Committee on the Rights of the Child: What it is and how it works / Humanium – Together for Children's Rights*. (2016). *Humanium.org*. Retrieved 16 June 2016, from <http://www.humanium.org/en/convention/committee/>

the party States put down reports on their measures to implement the rights of the child and the outcome of this application.^{151,152,153} The fourth article is concerned with the working methods of the Committee.¹⁵⁴

2.4.2.3 Third part of the Convention (1989)

The third part includes Articles 46-54 which encompasses the signing and ratification; depositing their texts with the Secretary General of the United Nations and opening then for accession to all States; commencement of implementation and suggesting participants to modify some provisions and reservations and how to withdraw from the text considering the Secretary General of the United Nations entrusted to this Convention which has the same authority in all languages.¹⁵⁵ The General Assembly of the United Nations appended two Optional Protocols to the Convention on the rights of the child on 25 May 2000, International and Regional Conventions on Human Rights.¹⁵⁶

2. 5 The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

The preamble in this protocol interprets and implements the Convention on the rights of the child, especially the articles about the need to combat exploitation, sales of children and trafficking.¹⁵⁷ The Convention pointed out concern about the increasing sale of children and child pornography by promoting it on the Internet.^{158,159} It also called for the adoption of a

¹⁵¹ Hodgkin, R., Newell, P., & UNICEF. (1998). Implementation Handbook for the Convention on the Rights of the Child, p. 21.

¹⁵² Jerónimo, P., & Finch, N. (2012). *Judicial implementation of article 3 of the Convention on the Rights of the Child in Europe: the case of migrant children including unaccompanied children*. UNICEF. Office of the United Nations High Commissioner for Human Rights Regional Office for Europe.

¹⁵³ A/RES/44/25. *Convention on the Rights of the Child (also contains Corr.1)*. (2016). *Un.org*. Retrieved 15 June 2016, from <http://www.un.org/documents/ga/res/44/a44r025.htm>

¹⁵⁴ United Nations. (1989). *Convention on the Rights of the Child*.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Revaz, C. R. (2001). The Optional Protocols to the UN Convention on the Rights of the Child on Sex Trafficking and Child Soldiers. *Hum. Rts. Br.*, 9, 13-30, p. 14.

¹⁵⁸ *Optional Protocol to the Convention on the Rights of the Child*. (2016). *Ohchr.org*. Retrieved 17 June 2016, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

comprehensive plan to address factors contributing to the sale and exploitation of children, including poverty and underdevelopment, the absence of the role of the family in education and discrimination and armed conflicts.^{160,161}

The preamble referred to international Conventions concerning the protection of children and, praisingly, noted the World Congress against commercial sexual exploitation of children, held at Stockholm from 27 to 31 August 1996;^{162,163,164} noting the importance of international cooperation for the protection of children, taking into account the traditions and cultural values of peoples.^{165,166,167,168} With respect to the material contained in the Protocol, it includes the prohibition of party States from the sale or exploitation of children. It also indicated the meaning of exploitation and sale of children¹⁶⁹ coupled with fact that some States must outlaw practices in sale and exploitation by taking the necessary measures to establish its jurisdiction over such offences when they are committed in its territory or on board a ship or aircraft registered in that state.^{170,171,172} The preamble affirmed the need for international cooperation with respect to help criminal investigation or extradition proceedings of

¹⁵⁹ Montoyer, R., & Jones, V. (2003). Position paper on child pornography and Internet-related sexual exploitation of Children, p. 5.

¹⁶⁰ United Nations. (1997, February 26). *UNGA*. Retrieved from Nations, United: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N97/769/33/PDF/N9776933.pdf?OpenElement>, p. 12.

¹⁶¹ UNICEF. (2003). For every child, Health, Education, Equality, Protection. *Advance Humanity*: <http://www.unicef.org/rosa/InfoKit.pdf>

¹⁶² Commitment, Yokohama Global (2001). Adopted at the Second World Congress against Commercial Sexual Exploitation of Children. *Yokohama, Japan*, 17-20.

¹⁶³ UNICEF. (2013). The Stockholm declaration and agenda for action.

¹⁶⁴ Bang, B., Baker, P. L., Carpinteri, A., & Van Hasselt, V. B. (2014). *Commercial sexual exploitation of children*. Springer.

¹⁶⁵ UNICEF (1989).

¹⁶⁶ *Optional Protocol to the Convention on the Rights of the Child*. (2016). *Ohchr.org*. Retrieved 17 June 2016, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

¹⁶⁷ Lawson, E. H., & Bertucci, M. L. (1996). *Encyclopedia of human rights*. Taylor & Francis, p. 227.

¹⁶⁸ Andrews, A. B., & Kaufman, N. H. (1999). *Implementing the UN Convention on the Rights of the Child: A standard of living adequate for development*. Greenwood Publishing Group, p. 220.

¹⁶⁹ *Optional Protocol to the Convention on the Rights of the Child*. (2016). *Ohchr.org*. Retrieved 17 June 2016, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

¹⁷⁰ *CRC - Optional Protocol on Exploitation*. (2016). *Childrenandarmedconflict.un.org*. Retrieved 19 June 2016, from <https://childrenandarmedconflict.un.org/keydocuments/english/crcoptionalproto20.html>

¹⁷¹ UNICEF. (2003). For every child, Health, Education, Equality, Protection. *Advance Humanity*: <http://www.unicef.org/rosa/InfoKit.pdf>

¹⁷² *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse / Humanium – Together for Children's Rights*. (2016). *Humanium.org*. Retrieved 16 June 2016, from <http://www.humanium.org/en/council-of-europe-convention-on-the-protection-of-children-against-sexual-exploitation-and-sexual-abuse/>

committing the offences set forth in this Protocol^{173,174} and the states should include appropriate measures to the muzzle and the forfeiture of property used to commit the offences referred to, and protect the rights and interests of child victims.

2. 6 Optional Protocol to the Convention on the rights of the child on the involvement of children in armed conflict which is composed of a preamble and thirteen articles

The preamble asserts that the rights of children require special protection, and indicates its concern at the harmful impact of armed conflict on children and condemns targeting places protected under international law such as schools and hospitals.^{175,176,177} It also condemns the involvement of children in armed conflicts and wars and calls for adoption of rising the age at which persons could be recruited.^{178,179,180} It also urges the international cooperation to apply, publish and disseminate that Protocol. The Articles include taking the necessary measures for securing non- involvement of people under the age of 18 in the armed forces.^{181,182,183} It stipulated that recruitment should be voluntary in States that permit

¹⁷³ Customary IHL - Practice Relating to Rule 161. *International Cooperation in Criminal Proceedings*. (2016). *Icrc.org*. Retrieved 17 June 2016, from https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule161

¹⁷⁴ A/RES/ 52/85. (2016). *Un.org*. Retrieved 16 June 2016, from <http://www.un.org/ga/documents/gares52/res5285.htm>

¹⁷⁵ Kolieb, J. (2009). *The Six Grave Violations Against Children During Armed Conflict: The Legal Foundation*, p. 4.

¹⁷⁶ Karimova, T., Giacca, G., & Casey-Maslen, S. (2013). *United Nations human rights mechanisms and the right to education in insecurity and armed conflict*. Geneva Academy of International Humanitarian Law and Human Rights, p. 70.

¹⁷⁷ Najjar, G. B. (2011). *The Protection of Children in Armed Conflicts under the Rules of International Law*, p. 12.

¹⁷⁸ United Nations,. (1998). *Children under 18 years should not be recruited into armed forces nor participate in conflict, third committee told 19981022 | United Nations Office of the Special Representative of the Secretary-General for Children and Armed Conflict*. *Childrenandarmedconflict.un.org*. Retrieved 18 June 2016, from <https://childrenandarmedconflict.un.org/press-release/22Oct98/>

¹⁷⁹ United Nations,. (1998). *Security Council Strongly Condemns Targeting Of Children In Situations Of Armed Conflict, Including Their Recruitment And Use As Soldiers | Meetings Coverage and Press Releases*. *Un.org*. Retrieved 18 June 2016, from <http://www.un.org/press/en/1999/19990825.sc6716.html>

¹⁸⁰ United Nations,. (1998). *Security council considers involvement of children in armed conflict; action to ease suffering is urged | United Nations Office of the Special Representative of the Secretary-General for Children and Armed Conflict*. *Childrenandarmedconflict.un.org*. Retrieved 18 June 2016, from <https://childrenandarmedconflict.un.org/press-release/29Jun98/>

¹⁸¹ *Child Soldiers International - International Standards*. (2016). *Child-soldiers.org*. Retrieved 18 June 2016, from http://www.child-soldiers.org/international_standards.php

voluntary recruitment into its armed forces under the age of 18.^{184,185,186,187} In addition, any form of recruitment must not be lacking the consent of the parents or guardians. Armed groups separate from the armed forces of any state should not be recruiting or using children under the age of 18 in hostilities. The party States have to work on the implementation of the Protocol according to the scope of their mandates, and disseminate its principles and provisions among adults and children.¹⁸⁸ The Protocol also urges all party States to cooperate with each other for the realization and implementation of this protocol. Articles 8-13 contain the conditions and arrangements for the Convention to take effect. However, the texts of the two protocols are not considered binding on party States and signatories to the Convention on the rights of the child under the Convention. It is essential that party States ratify the protocols before they enter into force.¹⁸⁹

2.7 The most important advantages and disadvantages of the Convention in 1989

2.7.1 The most important features of the Convention comparing to other Conventions

1. The Convention on the rights of the child is superior to other human rights Conventions dealing with the protection of the child, where the child has been granted rights and freedoms not explicitly contained in other conventions;¹⁹⁰ in other words, one can use the detailed rights interpreted thereunder to understand and interpret general provisions on children rights provided for in the general human rights Conventions.
2. The Convention contained all basic rights of the child and became an International

¹⁸² United Nations,. (2016). *Optional Protocol to the Convention on the Rights of the Child*. *Ohchr.org*. Retrieved 18 June 2016, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>

¹⁸³ UNICEF (1989).

¹⁸⁴ United Nations,. (2016). *Optional Protocol to the Convention on the Rights of the Child*. *Ohchr.org*. Retrieved 18 June 2016, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>

¹⁸⁵ *Child Soldiers International - International Standards*. (2016). *Child-soldiers.org*. Retrieved 18 June 2016, from http://www.child-soldiers.org/international_standards.php

¹⁸⁶ *Child Soldiers International - FAQs*. (2016). *Child-soldiers.org*. Retrieved 17 June 2016, from <http://www.child-soldiers.org/faq.php>

¹⁸⁷ *Child Soldiers International - Straight-18*. (2016). *Child-soldiers.org*. Retrieved 17 June 2016, from http://www.child-soldiers.org/theme_reader.php?id=1

¹⁸⁸ UNICEF (1989).

¹⁸⁹ United Nations. (2000). *United Nations Human Rights*. Retrieved from <http://www.ohchr.org>

¹⁹⁰ No, General Comment. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1). *Committee on the Rights of the Child*.

law; while giving party States free reservation right on items.¹⁹¹

3. It identified exactly who is a child; an issue that was neglected in most of the human rights conventions.
4. It took the maximum age of eighteen years as demarker of childhood, giving States the right to consider lesser upper bound if they have laws defining adulthood. It gave priority to the interests of the child in case of conflict with other interests.^{192,193}
5. It handled child affairs in peacetime and in time of war.¹⁹⁴
6. In addition to its interest in the rights of the child, it paid attention to the right of those children to live properly under normal circumstances, the Convention also have dealt with the rights of children with disabilities or special circumstances, such as disabled children, children belonging to cultural minorities, linguistic or religious minorities and delinquent children.¹⁹⁵
7. The Convention called for international cooperation to protect and care for children and meet their needs, and called for measures to be taken at the international level to achieve this purpose.¹⁹⁶
8. The Convention was the first about international human rights to be ratified upon approval by over one hundred and fifty States, and the total number of ratifications amounted to 191 States.¹⁹⁷ It is considered a universal document applicable to children everywhere.

2.7.2 The drawbacks of the Convention in 1989

The Convention undertook the rights of the child as received in most human rights documents

¹⁹¹ A/RES/44/25. *Convention on the Rights of the Child (also contains Corr.1)*. (2016). Un.org. Retrieved 15 June 2016, from <http://www.un.org/documents/ga/res/44/a44r025.htm>

¹⁹² "Best Interests of the Child" – *Child Custody Project*. (2016). *Childcustodyproject.org*. Retrieved 18 June 2016, from <http://childcustodyproject.org/essays/best-interests-of-the-child/>

¹⁹³ No, General Comment. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1). *Committee on the Rights of the Child*, p. 9.

¹⁹⁴ Titzel, M. (1919). Building a Child-Welfare Program in War Time. *American Journal of Sociology*, 24(4), 411-422. Retrieved from <http://www.jstor.org/stable/2763838>

¹⁹⁵ No, General Comment. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1). *Committee on the Rights of the Child*, p. 10.

¹⁹⁶ *Children's Rights: International Laws* | Law Library of Congress. (2016). Loc.gov. Retrieved 13 June 2016, from <https://www.loc.gov/law/help/child-rights/international-law.php>

¹⁹⁷ Lauren, P. (2011). *The evolution of international human rights*. Philadelphia: University of Pennsylvania Press, p. 241.

without taking into account a reworked form to fit the special physical and mental condition of the child in particular, especially when the Convention clearly demonstrates the need for child protection and special care due to the lack of physical and mental maturity.^{198,199} For example, regarding the right to life, it was required that the Convention prohibits abortion.²⁰⁰

1. Despite the key role that the Convention recognized for the family and parents in child care and protection, it took away substantial rights recognized for them by other human rights documents.²⁰¹ The International Covenant on economic, social and cultural rights issued by the United Nations recognized parents and guardians' freedom to choose schools for their children discretionarily, and provide their children's religious education and moral conformity in accordance with their own convictions.^{202,203} A similar text was contained in the International Covenant on Civil and political rights (Article 14 and 17) and while this right of the parents in these documents is clearly recognized, the Convention on the rights of the child had omitted this right of the child's parents, which is a decrease of the rights established in the international documents.^{204,205}
2. The Convention tied parental authority over the child by granting the child rights exercised independently and not subject to any control as freedom of correspondence and freedom of thought conscience and freedom to access

¹⁹⁸ UNICEF,. (2016). *The Convention on the Rights of the Child*. *Unicef-irc.org*. Retrieved 19 June 2016, from https://www.unicef-irc.org/portfolios/general_comments/GC1_en.doc.html

¹⁹⁹ UNICEF (2006). *General comments of the Committee on the Rights of the Child*. Florence, Italy.

²⁰⁰ Puppink G (2015). *Abortion In European Law: Human Rights, Social Rights And The New Cultural Trend*. Ave Maria International Law Journal.

²⁰¹ United Nations Committee on the Rights of the Child, United Nations Children's Fund, Bernard van Leer Foundation. (2006). *Implementing child rights in early childhood*'. Bernard van Leer Foundation, p. 8.

²⁰² Tomasevski K. (2003). "School Fees as Hindrance to Universalizing Primary Education." *United Nations Education, Scientific and Cultural Organisation*.

²⁰³ Powell, F. M. (2008). "The Rights of the Child, the Rights of Parents, and the Role of the State in Relation to Education-Freedom of Education and the Cultural Right to Education." Retrieved 18 June 2016 from *Academia.edu*.

²⁰⁴ Guggenheim, M. (2005). *what is wrong with children rights*. Cambridge: harvard univirsty.

²⁰⁵ United Nations Committee on the Rights of the Child, United Nations Children's Fund, Bernard van Leer Foundation. (2006). *Implementing child rights in early childhood*'. Bernard van Leer Foundation, p. 70.

information and the right to private life.²⁰⁶ The role of parents has been made limited only to provide direction to the child in the exercise of those rights in a manner consistent with the evolving capacities of the child.^{207,208,209}

3. Although the Convention had dealt with many of the fundamental rights of the child, it had omitted a number of details which includes the rights of the child before birth where the declaration was confined on a casual reference in its preamble.²¹⁰ Also omitted is the need for appropriate legal protection before birth and beyond where the declaration did not contain any reference for abortion.²¹¹ Omitted again is the right of the child during natural disasters and wars to get priority to meet the basic needs of food, shelter and health care.^{212,213} Also, the right of the child to express his feelings by means of different attitude toward occupation, racism and social injustice which should go unpunished could lead to injury or mental health disabilities.
4. The Convention omitted links between childhood and motherhood which resulted in neglecting the mentioning of any rights of motherhood and childhood care and protection, except as described in articles 2 and 24;^{214,215} also omitted is the duty of party states to ensure appropriate health care for mothers before and after childbirth.^{216,217,218,219}

²⁰⁶ United Nations Committee on the Rights of the Child, United Nations Children's Fund, Bernard van Leer Foundation. (2006). *Implementing child rights in early childhood*. Bernard van Leer Foundation, p. 70.

²⁰⁷ Lansdown G. (2011). *Every child's right to be heard a resource guide on the UN committee on the rights of the child general comment no.12*. The Save the Children and Unicef, p. 36.

²⁰⁸ UNICEF,. (2011). *The Convention on the Rights of the Child*. *Unicef-irc.org*. Retrieved 19 June 2016, from https://www.unicef-irc.org/portfolios/general_comments/CRC.C.GC.13_en.doc.html

²⁰⁹ Hafen, B. C. & Hafen, J. O. (1995). *Abandoning Children to Their Rights*. *Leaderu.com*. Retrieved 18 June 2016, from <http://www.leaderu.com/ftissues/ft9508/articles/hafen.html>

²¹⁰ United Nations Committee on the Rights of the Child, United Nations Children's Fund, Bernard van Leer Foundation. (2006). *Implementing child rights in early childhood*. Bernard van Leer Foundation, p. 70.

²¹¹ Fleming, D. J. I., & Hains, D. M. G. (1997). What Rights, If Any, Do The Unborn Have Under International Law?. *Australian Bar Review*, 16(2), 181-198.

²¹² Jabry, A. (2002). *Children in Disasters: After the cameras have gone*. Plan UK, p. P7 of 51.

²¹³ ICRC (2009). *Children at war*. International Committee of the Red Cross 19, avenue de la Paix 1202 Geneva, Switzerland, p. 6.

²¹⁴ Cleaver, H., Unell, I., & Aldgate, J. (2011). *Children's Needs-Parenting Capacity: Child Abuse-Parental Mental Illness, Learning Disability, Substance Misuse and Domestic Violence*. The Stationery Office, p. 150.

²¹⁵ Bennett Jr, W. H. (1987). Critique of the Emerging Convention on the Rights of the Child, A. *Cornell Int'l LJ*, 20, 1, p. 6.

²¹⁶ UNICEF. (1989). Convention on the Rights of the Child: Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989: Entry into force 2 September 1990, in accordance with article 49

²¹⁷ World Health Organization. (2002). Essential antenatal, perinatal and postpartum care. *Geneva: WHO*, p. 1.

5. In the recommendations on the reports, it should have resorted to the criminalization of certain inhumane practices against children at a time of mounting call for the respect of human rights, which is at a time when escalating violations of children's rights in many parts of the world are happening.²²⁰

The main contents of the declarations and the Convention on the rights of the child are;

1. The child's right to nutrition;
2. The child's right to health care;
3. The right of all children to enjoy their rights without discrimination;
4. The right to a name and nationality;
5. The right of children with disabilities in treatment and care;
6. The right to free education in the compulsory stages;
7. Right of the child to protection and relief when disasters;
8. The right to legal protection from cruelty and all forms of exploitation, physical and mental abuse;
9. Right of the child to hear opinion on all matters affecting their lives;
10. The child's right to play and recreation;
11. The child's right to protection at work;
12. The right of children to protection in armed conflicts and protection from drugs;
13. The right to rehabilitation;
14. The child's right to life and survival, growth and freedom;
15. The right of a child on the family in providing alternative care;
16. The right of the child that its supreme interests in the works and policies of party states be taken into account;
17. The child's rights to freedom of opinion or expression, of individual and collective

²¹⁸ *Access to Maternal Health Care from a Human Rights Perspective*. (2016). *Cidh.org*. Retrieved 19 June 2016, from <http://cidh.org/women/SaludMaterna10Eng/MaternalHealthChap3eng.htm>

²¹⁹ *Children's Rights: International Laws / Law Library of Congress*. (2016). *Loc.gov*. Retrieved 13 June 2016, from <https://www.loc.gov/law/help/child-rights/international-law.php>

²²⁰ World Report (2013). *Events of 2013*. Human Rights Watch.

participation in cultural life and access to information.^{221,222}

2.8 Overview of Most declarations after the Convention on the rights of the child

After the Declaration of the Convention on the rights of the child of 1989, other complementary international Declarations were issued which includes:

1. The World Declaration on the survival, protection and development of children and plan of action for implementing the Declaration in the 1990s which was issued by the World Summit for children;²²³
2. The Cairo Declaration on the (human rights in Islam), meeting in Cairo from the 9th to the 13th of Muharram 1411 which is the same as 1990.^{224,225} The declaration consists of a preface and twenty-five articles. It affirms, in Article VII, the need to protect the rights of children, and the obligations of States to those rights;^{226,227,228}
3. The Declaration on the rights of the child care in Islam adopted by the Islamic Summit Conference (session of fraternity and emission) held in Casablanca of Morocco from 11th to the 13th of Rajab 1425 which is the same as 1993.²²⁹ Child rights were put in the declaration in a time-division manner, as the child passes through different phases.²³⁰ Thus, the declaration decided the rights for the child through attention to the child's family right from when it becomes a fetus in the mother's womb, to

²²¹ UNICEF (1989).

²²² *Convention on the Rights of the Child (CRC) - Global Initiative to End All Corporal Punishment of Children.* (2016). *Endcorporalpunishment.org*. Retrieved 18 June 2016, from <http://www.endcorporalpunishment.org/prohibiting-corporal-punishment/hrlaw/crc/>

²²³ Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s. (1990). *Asia-Pacific Journal Of Public Health*, 4(2-3), 102-110. <http://dx.doi.org/10.1177/101053959000400304>

²²⁴ Cairo Declaration on Human Rights in Islam: Done at Cairo, 5 August 1990. (2008). *Refugee Survey Quarterly*, 27(2), 81-86. <http://dx.doi.org/10.1093/rsq/hdn020>

²²⁵ Cairo Declaration on Human Rights in Islam Adopted and Issued at the Nineteenth Islamic Conference of Foreign Ministers in Cairo on 5 August 1990. *Islam, human rights and displacement*. Retrieved 18 June 2016 from <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/Human-Rights/cairo.pdf>

²²⁶ Runzo, J., Martin, N., & Sharma, A. (2014). *Human Rights and Responsibilities in the World Religions*. New York: Oneworld Publications.

²²⁷ UNICEF (1989).

²²⁸ Sheahan F. (2010). EXECUTIVE SUMMARY: STATE OBLIGATIONS, CHILDREN'S RIGHTS AND BUSINESS

²²⁹ General Assembly Security Council (2006), p. 192.

²³⁰ French G. (2007). Children's early learning and development. National Council for Curriculum and Assessment (NCCA), p. 11.

when born, in normal circumstances, then finally his rights in exceptional circumstances.²³¹ But it is noted that these declaration are not mandatory, as is the case in the Convention on the rights of the child of 1989.

It is worth mentioning that the Arabic League had issued, before the Convention on the rights of the child of 1989, the Charter on the rights of the Arab child in 1983 which consisted of an introduction and 51 articles distributed on several topics.²³² The Charter has mentioned, in the introduction, the United Nations Charter and the Declaration on the granting of the right of peoples to self-determination, and the development and social development, and the Universal Declaration of human rights, the Universal Declaration of the rights of the child, and the Charter of the Arabic League and the competent agencies, and Social Work Charter of Arab countries, and others. The fundamental rights adopted by this Charter were:

1. Right of the child to care and upbringing based on family stability;
2. The child's right to social security;
3. The child's right to health care, for the child and the mother from the day she becomes pregnant;
4. The child's right to a healthy environment;
5. The right to adequate and appropriate nutrition;
6. The child's right to a name and a nationality from birth;
7. The child's right to free education and upbringing in pre-school and primary education as a minimum;
8. The right of children to social service;
9. The right of children in state's care and protection from exploitation, neglect, and their right for regulating their employment, and to be upfront to obtain disaster relief;
10. The child's right to openness to the world and to be raised on love of humanity. The Charter of the Arab child differs from the Convention on the rights of the child in

²³¹ United Nations Committee on the Rights of the Child, United Nations Children's Fund, Bernard van Leer Foundation. (2006). *Implementing child rights in early childhood*'. Bernard van Leer Foundation, p. 16.

²³² Rishmawi M. (2015). *The League Of Arab States Human Rights Standards And Mechanisms: Towards Further Civil Society Engagement: A Manual For Practitioners*'. Open Society Foundations and Cairo Institute for Human Rights Studies.

that it considers the maximum age of a child to be fifteen years, while, the International Convention considered it to be eighteen years;²³³

The Charter did not overlook the role of religion in the upbringing of children in the Arabic regions whose inhabitants believe in their Lord and adheres to the principles of their faith, unlike the Convention on the rights of the child that avoided reference to religion. The Charter aims to report the rights of the Arab child, for Arab children in particular. The Convention, on the other hand, is addressed to all the children of the world. It was considered a negative of the Charter of the Arab child that it concentrated on fundamental rights only and that there were many rights of children not exposed to the Charter. However, the absence of explicit reference to some rights was not to be taken as denying them.

²³³ UNICEF (1989).

CHAPTER THREE: RIGHTS OF CHILDREN IN ISLAMIC LAW

3.1 Rights of the child before birth

There are a vast number of treaties that safeguards the life of an unborn baby and such treaties are embodied in human rights treaties. Before the full development of the child which in this regard is called a fetus, immaturity and mental limitations are the main characteristics that surround the so called child in the mother's womb.²³⁴ This justifies its rights to protection before birth.^{235,236} The Convention on the Rights of the Child (1990) and the U.N Declaration of the Rights of the Child (1959) have significant strides to clarify and reinforce measures to protect the rights of an unborn babies. A major hindrance that poses threats to the Rights of the child before birth is therefore chiefly regarded as being abortion.²³⁷

3.1.1 The rights of the child upon his father

Right to alimony

The right to alimony also encompasses the need to take care of pregnant women or spend on them till they deliver or divorce.²³⁸ This has been reinforced by many scholars including Ibni Abbas and a range of predecessor and successor groups that pregnant women be maintained properly.

3. 1.2 The rights of the child upon the mother

1. **Select the good father:** This basic notion is that a good man is able to save his children and is responsible for their upbringing.²³⁹
2. **Child care and taking care of him since inception up until the birth.** The Islamic

²³⁴ Pronczuk-Garbino, J. (2005). *Children's health and the environment*. Geneva: World Health Organization.

²³⁵ The Right to Life and International Law. International Law and the Right to Life. (n.d.). Retrieved January 20, 2016, from <http://lr.avemarialaw.edu/Content/articles/V4i1.wilkins.copyright.pdf>

²³⁶ Center For Reproductive Rights (2014). *Whose Right To Life? Women's Rights And Prenatal Protections Under Human Rights And Comparative Law*. Retrieved January 20, 2016 from http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/RTL_3%2014%2012.pdf

²³⁷ Williams, M. (2006). *Adoption: opposing viewpoints*. Detroit: Greenhaven Press, p. 19.

²³⁸ Alkhateeb, Maha. (2012). *Islamic Marriage Contracts: A Resource Guide for Legal Professionals, Advocates, Imams, and Communities*. Peaceful Families Project, Asian & Pacific Islander Institute on Domestic Violence, and Battered Women's Justice Project, p. 34.

²³⁹ Bibee, G. a. (1995). *Turning the rights of the child into reality* (1 ed.). Beirut: Al Maward Arabya. Retrieved from http://www.mawared.org/sites/default/files/yh_lmwrdrd_2014.pdf

Sharia has put rules and foundations protecting the child since its composition in mother's womb until it becomes a complete life structure. One of the most important bases and foundations that protect the child related to his mother is outlawing abortion. A lot of laws such as Islamic laws also prohibit abortion and provide for the right of the child to life while the child is in his mother's womb. Abortion can be defined as that act of women dropping their fetuses induced by medication or otherwise, or a similar act of other on those women.²⁴⁰

- **Ruling on abortion by the ancient scholars**

The first which prohibits abortion was represented by Maliki Fiqh, Ghazali and some Hanfi Scholars. Their argument is that during the beginning of ontogenesis the embryo is an inviolable human being.²⁴¹ The other scholar goes into supporting abortion and is represented by Shaafa'is and Hanbalia. Their argument is that the product of pregnancy before ontogenetic creation is piece of meat that may not be a foetus, and is threatened by spontaneous abortion and becoming of that creation a human is still not certain.^{242,243,244}

Secondly, some others set of scholars noted that after ontogenetic and before breathing of the soul, in particular, during the period between forty days and fourth months of pregnancy, abortion was considered closer to haram, and becomes closer and closer to haram as pregnancy advances.^{245,246} At the end of the fourth month, it is closer to haram and entails an earthly and a hereafter penalty, but abortion is allowed for if the need that may arise of an imminent threat to the life of the mother as determined by medical personnel which may

²⁴⁰ Rowan A. (2015). *Prosecuting Women for Self-Inducing Abortion: Counterproductive and Lacking Compassion*. Policy Review Summer 2015 | Vol. 18, No. 3, p. 71.

²⁴¹ Hubert J. P. (n.d.). Defending Human Embryonic Life – Essay. Catholic Online

²⁴² Bevington L. K. & Disilvestro M. A. (2003). The Pill; addressing the scientific and ethical questions of the abortifacient issue. The center for Bioethics and Human Dignity, p. 40.

²⁴³ *GALLERY: Protesters oppose proposed new abortion bill*. (2012). *TheJournal.ie*. Retrieved 22 January 2016, from <http://www.thejournal.ie/gallery-protesters-oppose-proposed-new-abortion-bill-415721-Apr2012/>

²⁴⁴ *Spontaneous Abortion (Miscarriage)*. (2016). *Ferrellduncan.com*. Retrieved 24 January 2016, from http://www.ferrellduncan.com/fdc_body.cfm?id=5096

²⁴⁵ Abou El Fadl, K. (2001). *Fatwa by Dr. Abou El Fadl: On Abortion*. *Scholar of the House*. Retrieved 23 January 2016, from <http://www.scholarofthehouse.org/fabydrabelfal.html>

²⁴⁶ *BIRTH RELATED*. (2016). *Islamicislamic.com*. Retrieved 23 January 2016, from http://www.islamicislamic.com/birth_related.htm

include cases like: a relaxed heart and renal, breast cancer etc.²⁴⁷

Third: after the soul has been breathed into, then abortion is forbidden by the agreement of scholars. In fact it is a misdemeanour that was penalized by Addiyah and Alkaffar.²⁴⁸

- **Abortion according to contemporary scholars**

Based on what the doctors have agreed on, scientific facts indicate the presence of life in the foetus not only from the first confluence of sperm with the egg but found life right before fertilization.²⁴⁹ The meaning of life here is biological life and is not the spirit life.^{250,251,252} Evidence has it that any life is associated with plant organisms but not any soul.^{253, 254} For that, more medical scientists and contemporary Sharia scholars outlaws abortion in all stages of the foetus and only if it may cause maternal death that cannot be avoided except by abortion. It then becomes permissible to avoid the death of the mother, otherwise it is prohibited whatever the motives and reasons. They, in this opinion, agree with the Maliki, Hanafi, and Imam al- Ghazali.

3.1.3 The rights of the child upon others

The right of the child to others while in his mother's womb must be protected always. It was

²⁴⁷ Enriquez, L. (2013). *Is abortion ever necessary to "save the life of the mother"?* | Live Action News. Live Action News. Retrieved 23 January 2016, from <http://liveactionnews.org/abortion-ever-necessary-save-life-mother/>

²⁴⁸ *Impowerment of Women in Islam: Islamic Propaganda about the Pre-Islamic Arab Practice of Burying Daughters Alive.* (2016). *Islam-watch.org*. Retrieved 25 January 2016, from <http://www.islam-watch.org/home/117-ghalib/1659-impowerment-of-women-in-islam-islamic-propaganda-about-the-pre-islamic-arab-practice-of-burying-daughters-alive.html>

²⁴⁹ Alcorn, R. (2016). *Why Life Begins at Conception* | NAAPC. *Naapc.org*. Retrieved 25 January 2016, from <http://naapc.org/why-life-begins-at-conception/>

²⁵⁰ Irving, D. N. (1999). When do human beings begin? scientific myths and scientific facts. *International journal of sociology and social policy*, 19(3/4), 22-46.

²⁵¹ Swedene, J. K. (2009). *Staying Alive: The Varieties of Immortality*. University Press of America, p. 85.

²⁵² Seachris, J. (2016). *Meaning of Life: The Analytic Perspective* | Internet Encyclopedia of Philosophy. *Iep.utm.edu*. Retrieved 24 January 2016, from <http://www.iep.utm.edu/mean-ana/>

²⁵³ Lorenz, Hendrik, "Ancient Theories of Soul", *The Stanford Encyclopedia of Philosophy* (Summer 2009 Edition), Edward N. Zalta (ed.), Retrieved 24 June 2016 from <http://plato.stanford.edu/archives/sum2009/entries/ancient-soul/>

²⁵⁴ Ali El-Najjar, H. (2016). *Creation and Evolution in the Holy Qur'an By Hassan El-Najjar*. *Aljazeera.info*. Retrieved 24 January 2016, from <http://www.aljazeera.info/Islamic%20Editorials/2007/October/Creation%20and%20Evolution%20in%20the%20Holy%20Qur'an%20By%20Hassan%20El-Najjar.htm>

narrated by Abu Hurayrah that two women from Huthail quarrelled. “One of them stroked the other with a stone and killed her along with the embryo contained in her womb. The quarrel was presented to the Messenger of Allah peace be upon him. He judge that the Diah of both the killed women and the embryo should be paid to the killed women heirs by the tribe of the offender.”²⁵⁵ This follows from a felony committed to a foetus, in case of wilful act, some scholars went to say retribution should be imposed on the aggressor, in contrast to the majority of scholars which did not see retribution as killing a foetus.^{256,257} Islam care of children amounted to the limit of preventing intimidation of pregnant women that might lead to miscarriage, and even arranged a financial penalty of intimidating a pregnant woman if this intimidation led to miscarriage.²⁵⁸

3.2 Rights of the child after birth

The child is received, under Islamic law, with care and attention.²⁵⁹ Those are types of care that are not endowed on the child in any other States. But some poor communities in particular, have seen in the child a new economic burden, perhaps pushing some people to kill their children for fear of poverty. These rights consist of several things:

3.2.1 The right to life

The most important right is the right to existence or life, which is the basis of all other rights. While some Arabs in pre-Islamic times were known to killing their children, especially girls in fear of poverty, or fear of shame that may open the doorway into captivity and so on, it came to a point when it got to the height of cruelty, and devoid of all emotions. As a result, Islam has prohibited such an act absolutely, and the Almighty has said that when the female or infant is buried alive (as the pagan Arabs used to do) questions should be raised: For

²⁵⁵ Düzbakar, Ö. (2006). Abortion in the Islamic-Ottoman Legal Systems. *JISHIM*, 5, p. 28.

²⁵⁶ *Fifth Greater Sin: Murder*. (2016). *Al-Islam.org*. Retrieved 25 January 2016, from <https://www.al-islam.org/greater-sins-volume-1-ayatullah-sayyid-abdul-husayn-dastghaib-shirazi/fifth-greater-sin-murder>

²⁵⁷ Syed, I. B. (2016). *Abortion*. *Irfi.org*. Retrieved 25 January 2016, from http://www.irfi.org/articles/articles_101_150/abortion.htm

²⁵⁸ Lyons., N. (2016). *Abortion Review: Abortionreview.org*. Retrieved 24 January 2016, from <http://www.abortionreview.org/index.php/site/article>

²⁵⁹ UNICEF (2005). *Children in Islam Their Care, Upbringing And Protection*. Cairo., p. 3.

what sin has she committed to deserve death?²⁶⁰ It is also said that they will not kill their children.²⁶¹ If that verse was revealed about killing female infants in particular, it indicates that it is haram to kill any infant, however.²⁶² As such, Islam protected the child life, male or female.

3.2.2 The right of descent

The right of the child upon his parents is their kinship, therefore, child to father rights in this wise must be proved accordingly. All other rights of a child to his father includes protection from loss and displacement, and protection of the child from the Idlib in which he must preserve his dignity and achieved happiness and tamaninth. The importance of man's descency in fornication allows for preserving the genealogy of mixing.²⁶³ The first beneficiary is the child because they receive the care and their needs must be met. If they have mixed ancestries, it will create for children a situation of inability to trace their parents making them to suffering from a situation where they will be deprived of care.

3.2.3 The right of the child to have a good name

One of the rights of the child upon his father is to give his child a good name. The Prophet gave a great importance for naming a child, urging Muslims to name their children with good names, "because the name had a positive impact on the child's personality and behaviour, and his ambitions in life."²⁶⁴

3.2.4 Breastfeeding

Islam decided the right of the child to the mother's milk of breastfeeding for up to two years

²⁶⁰ *Impowerment of Women in Islam: Islamic Propaganda about the Pre-Islamic Arab Practice of Burying Daughters Alive.* (2016). *Islam-watch.org*. Retrieved 25 January 2016, from <http://www.islam-watch.org/home/117-ghalib/1659-impowerment-of-women-in-islam-islamic-propaganda-about-the-pre-islamic-arab-practice-of-burying-daughters-alive.html>

²⁶¹ *The Right of PARENTS AND CHILDREN In Islam - Chapter 3 - Section 6.* (2016). *Themodernreligion.com*. Retrieved 25 January 2016, from http://www.themodernreligion.com/family/children_rights.htm

²⁶² Syed, I. (2012). *Zina and Rajm*. *Irfi.org*. Retrieved 25 January 2016, from http://www.irfi.org/articles/articles_51_100/zina_and_rajm.htm

²⁶³ James E. (2012). *From Cain to Khazaria: The True Genealogy of the Jewish People, Documented From the Bible and From Jewish Writings*. Retrieved 25 January 2016 from <https://lists.gnu.org/archive/html/help-gnu-emacs/2012-03/msg00452.html>

²⁶⁴ *Aqeeqah | Muslim Names and Meanings.* (2016). *Muslimnames.info*. Retrieved 26 January 2016, from <http://www.muslimnames.info/articles/aqeeqah>

and mothers shall breastfeed their children for two whole years, that is, for those parents who desire to complete the term of suckling.^{265,266} One of the aspects of child care in Islam, is that Islam called to feed the child from mother's milk. Islam made it mandatory that father spends on the baby's breastfeeding even if the mother was divorced.²⁶⁷ The father of the child bears the cost of the mother's food and clothing on a reasonable basis. Both parents are responsible towards baby's care irrespective of whether they are divorced or not. The mother is feeding the baby and the father should be providing clothes and food for her so that she becomes capable of providing milk for the baby, and each should do that within capacity.²⁶⁸

If obligatory breastfeeding from the mother is impossible to fulfil, the father should spend on breastfeed of the child from another woman. If the mother is unable to breastfeed and the father is incapable of spending, the right of the child to breastfeeding would be upon the State.²⁶⁹ To any poor Muslim or non-Muslims living in the Islamic State and affirming the right of the child to breastfeeding mother, the Hanafia Fuqaha said that breastfeeding of the child on the mother is religiously obligatory which must fulfil the marriage roles.²⁷⁰ Hence it would follow that it remains obligatory even if she became divorced. Hence if she did not feed the baby while she is physically capable of, she would be a sinner in front of Allah. However, she would not be forced to feed the baby unless she is specified to do that in a case when the baby is refusing to suck milk from another woman or the father has no money to hire a nurse for the baby. In such cases she is forced by the judge to nurse her baby to preserve the baby's life whether she liked or not.²⁷¹

²⁶⁵ *Breastfeeding in Islam.* (2009). *mariahussain*. Retrieved 27 January 2016, from <https://mariahussain.wordpress.com/2009/01/23/breastfeeding-in-islam/>

²⁶⁶ *Breastfeeding for 2 years in the Noble Quran. Science had confirmed Islam's Divine Claims..* (2016). *Answering-christianity.com*. Retrieved 27 June 2016, from http://www.answering-christianity.com/breast_feeding.htm

²⁶⁷ Cook, S. (1986). *Breast Feeding and Islamic Teaching*. *Islamicgarden.com*. Retrieved 27 June 2016, from <http://www.islamicgarden.com/article1025.html>

²⁶⁸ Qutb, S. (1996). *in the shade of the Qur'an* (25 ed.). Cairo: Dar Al shrok.

²⁶⁹ *PARENTS AND CHILDRENS.* (2016). *Islamicislamic.com*. Retrieved 27 January 2016, from <http://www.islamicislamic.com/parents.htm>

²⁷⁰ UNICEF (2005). *Children in Islam Their Care, Development and Protection Summary*. Al-Azhar University International Islamic Center for Population Studies and Research, p. 6.

²⁷¹ Qassem, M. A. (1998). *Children without families* (1 ed.). Alexandria: Alexandria Center of book.

3.2.5 Right of children to health care and treatment

Child health care means protecting the child from disease and damage. Islam wants to ensure everyone has good health and functioning body system which is considered as trust kept with a person himself. Accordingly "your body has right upon you"^{272,273} In accordance with that, parents should care for the child's health and keep the child away from physical and health harm. If illness struck the child, the child should be treated promptly. It has been confirmed by the prophet that every disease has a cure.²⁷⁴ Parents are accountable to Allah for their child's health so that the child may be raised strong and sound. This means everyone is a carer and accountable for that.²⁷⁵

3.2.6 The child's right to play

Play is one of children's basic innate needs which a child cannot do without. Through gaming the child feels pleasure to learn a lot of. Thus, playing is considered an integral part of the process of mental and physical building of the child.²⁷⁶ Play means working to develop behavioural patterns for the child and help him to fit into social interaction, adaptation and affiliation so that the child is raised strong in body and mind, able to do the due costs when entering adulthood.^{277,278} In order to fulfil this, it was necessary to recognise the right to play and some sports that are part of the play in childhood. This caused the interest of Islam to provide this right. The Messenger of Allah (peace be upon him), the nation's leader and role model for Muslims usually played with children and shared their pleasure and

²⁷² *Hadith - Book of Wedlock, Marriage (Nikaah) - Sahih al-Bukhari - Sunnah.com - Sayings and Teachings of Prophet Muhammad (PBUH).* (2016). *Sunnah.com*. Retrieved 29 January 2016, from <http://sunnah.com/bukhari/67/133>

²⁷³ *Hadith: Moderation.* (2016). *Islamawareness.net*. Retrieved 29 January 2016, from http://www.islamawareness.net/Hadith/htopic_moderation.html

²⁷⁴ *Daily Hadith -- Hadith Explanation / Every Disease has a Cure.* (2016). *Dailyhadith.adaptivesolutionsinc.com*. Retrieved 29 January 2016, from <http://dailyhadith.adaptivesolutionsinc.com/hadith/Every-Disease-has-a-Cure.htm>

²⁷⁵ Anabtawi, M. S. (1999). *The art of raising children in Islam*. palestine: introduction to workshop: Children Festival.

²⁷⁶ Ginsburg, K. R. (2007). The importance of play in promoting healthy child development and maintaining strong parent-child bonds. *Pediatrics*, 119(1), 182-191.

²⁷⁷ Kernan, M. (2007). Play as a context for early learning and development. *The Framework for Early Learning*, p. 6.

²⁷⁸ Social Competence - Importance of social competence, Social competence deficits and peer rejection, Developmental changes and social competence. Retrieved 29 January 2016 from <http://psychology.jrank.org/pages/591/Social-Competence.html>

delight. According to Goldstein (2012) parents must provide appropriate quality toys for children, and allow them to play with selected peers and share the toys, and not to be deprived of this right, because that affects children psychology negatively.²⁷⁹ Where it is found that the houses where children suffer strict and segregation most, children were the most aggressive comparing to children who undergone less penalties. Studies made it clear that encouraging play led to the development of children's abilities.²⁸⁰ Play is important for children and the approval of the Prophet for children in their play signifies the urgent need for play and the need to provide this right to them.²⁸¹

3.2.7 The child's right to education

Education in Islam is a fundamental right of every human being whether young or old. Education in Islam has great appreciation and was honoured by the first verse that descended upon the Messenger of Allah (peace be upon him) which states that read in the name of your Lord who created all that exists.^{282, 283} This verse ordered people to seek knowledge; reading and writing was vivid evidence of the respect and appreciation endowed by Islam for science and knowledge. It is because childhood is the most fertile period in scientific and intellectual building of a human, identifying elements of personality and features of their identity,²⁸⁴ so Islam invited the head of the family to teach Islam and take interest in the members of the family, and not merely to seek a livelihood.²⁸⁵ Islam urged the parents to send their children to learning institutions so that they graduate and after the graduation, they too can take up the job of teaching others, and developing their society at large. Respected knowledge in Islam does not stop at the borders of knowing rulings of Sharee'ah, but all sciences. This basic knowledge, if neglected, might lead the person to embrace kufr,

²⁷⁹ Goldstein, J. (2012). Play in children's development, health and well-being. *Toy Industries of Europe*. Brussels, p. 25.

²⁸⁰ Ibid.

²⁸¹ Brockman, E. (2012). *Educational Philosophy / Children's Creativity Museum Education Blog*. *Childrenscreativity.wordpress.com*. Retrieved 29 January 2016, from <https://childrenscreativity.wordpress.com/category/educational-philosophy/>

²⁸² Surah Al-'Alaq [96]. (2016). *Surah Al-'Alaq [96]*. Retrieved 29 January 2016, from <http://quran.com/96>

²⁸³ *The Light of The Holy Qur'an (Sura 'Alaq (The Clot))*. (2016). *Alseraj.net*. Retrieved 29 January 2016, from http://www.alseraj.net/maktaba/kotob/english/quran/TheLight/english/quran/light/096/96_1-5.htm

²⁸⁴ Pramling Samuelsson, I. (2008). The Contribution of Early Childhood Education to a Sustainable Society, p. 12.

²⁸⁵ *The Family from an Islamic Perspective*. (2016). *Dar al-Ifta al Misriyyah*. Retrieved 29 January 2016, from <http://www.dar-alifta.org/Foreign/ViewArticle.aspx?ID=371&CategoryID=3>

then one proceeds to acquire further knowledge about this life and the hereafter.²⁸⁶

3.2.8 The right of the child to participate and express an opinion

As the Muslim community is a consultative society, Islam gave to everyone including children the freedom to express their views as their opinion in their education, type of their craft, and their hobbies that do not constitute disobedience of Allah.²⁸⁷ It educates children on independent opinion.

3.2.9 The right of the child to justice and equality between him and between his brothers

Islam ordered the parents to equal treatment among their children - males and females –and to equal moral and material giving.^{288,289} This equality was recommended by the Messenger of Allah (peace be upon him) to children in compassion and affection so that the children psychology and behaviour would not be affected by unequal treatment between the child and one of the brothers or sisters. The Prophet (peace and prayer be upon him) was urging parents and educators to realize the principle of Justice and equality between brothers and sisters so that inequity would not grow some hate among brothers and sisters. Through these narrations, it is clear how keen Islam is about justice and equality of children boys and girls in love, affection and emotion, spirituality, and in the gifts and grants, without distinction or discrimination. Only if the conditions of particular child were different like being affected by a chronic disease or, according to the opinion of some the scholars, if a child was receiving learning it would be permissible that that particular child receives distinct attention.

3.2.10 The right of the child not be used in war before reaching the appropriate age

That is decided in Sunna (the tradition) where the Messenger of Allah peace and prayer be

²⁸⁶ Zarabozo, J. A. D. M. (2007). *A Guide For A New Muslim. IslamKotob*, p. 6.

²⁸⁷ al-Qaradawi Y. (2013). *The Lawful and Prohibited in Islam*. Retrieved 30 January 2016 from <http://www.2muslims.com/directory/Detailed/226100.shtml>

²⁸⁸ *What are children's rights over their parents? | Questions on Islam*. (2010). *Questionsonislam.com*. Retrieved 29 June 2016, from <http://www.questionsonislam.com/node/12858>

²⁸⁹ *PARENTS AND CHILDRENS*. (2016). *Islamicislamic.com*. Retrieved 27 January 2016, from <http://www.islamicislamic.com/parents.htm>

upon him sets the age to fifteen years. Ibn Omar may Allah be pleased with him said: "The Messenger of Allaah (peace and prayer be upon him) examined me for fighting on the day of Uhud but did not agreed to let me fight and I was fourteen years old at the time. He examined me again at the day of Khandaq (the trench) and permitted me to fight. I was fifteen at the time."²⁹⁰ The Prophet peace and prayer be upon him prevented Ibn Omar may Allah be pleased with him before he was fifteen years from getting into the fight because hostilities form a danger to minors who are unable to take the risk of fighting.

3.2.11 The right of children to protection in times of war and disaster

Islam focused on the protection of immigrant children in emergency and disaster situations by providing them with shelter and sustenance.^{291,292,293} It is forbidden to harm women and children during war except in two cases.

The first: if the women and children fight during the war, fuqaha scholars agree on the permissibility of killing them. According to Ibn Hazm, "The killing of women and children is haram, unless they participate in war and Muslim fighters cannot survive without killing the women and children fighting them."^{294,295}

Second: Forbidding of killing the enemies children would become devoid if access to enemy combatant army could not be done without putting them under the possibility of being killed. For a proof of this resolution, one might site what Assa'b bin Jathamah quoted Al-Bukhari about saying: The prophet (peace and prayer be upon him) passed throughout Al-Aboua' or Budan and was asked about surprise night attacks on the Mushrikeen

²⁹⁰ *Interpretation of the Quran: Surah Al-Imran (3)- Lesson (31)- Verse [121]: 'Uhud' battle.* (2011). Nabulsi.com. Retrieved 1 February 2016, from <http://www.nabulsi.com/en/art.php?art=8864>

²⁹¹ *Brotherhood Established Between Migrants and the Ansar | Questions on Islam.* (2011). Questionsonislam.com. Retrieved 2 February 2016, from <http://www.questionsonislam.com/article/brotherhood-established-between-migrants-and-ansar>

²⁹² *The Significance of the Hijrah (622 CE).* (2011). History of Islam. Retrieved 2 February 2016, from <https://historyofislam.com/contents/the-age-of-faith/the-significance-of-the-hijrah-622-ce/>

²⁹³ *Center for Muslim-Jewish Engagement.* (2016). Usc.edu. Retrieved 3 February 2016, from <http://www.usc.edu/org/cmje/religious-texts/hadith/bukhari/059-sbt.php>

²⁹⁴ Arlandson, J. (2016). *Jihad: The truth about the rules of Islamic warfare.* Answering-islam.org. Retrieved 4 February 2016, from <http://www.answering-islam.org/Authors/Arlandson/jihad.htm>

²⁹⁵ *Muslim Scholars 'Refute' Islamic State's Islamic Case — While Endorsing Jihad, Sharia, Caliphate.* (2014). Frontpage Mag. Retrieved 4 February 2016, from <http://www.frontpagemag.com/fpm/241767/muslim-scholars-refute-islamic-states-islamic-case-robert-spencer>

(pagans) that could lead to casualties among women and children. He replied "they are from them." Ibn Hajar said commenting: "The meaning of "they are from them" means in that case it is not intended to permit killing the women and children intentionally.²⁹⁶ The meaning is that if the access to the fathers (the fighters) is not gained because of mixing, then killing the women and children would be allowed as an avoidable act.²⁹⁷ Finally, the provision for children and those who are not allowed to be killed among the enemies is imposed in Sharia.²⁹⁸ If Muslim fighters warned the enemy fighters to separate from children and civilians generally and they did not comply, then killing children would be because of their parents.²⁹⁹ It would not be the Muslim fighters' guilt. It would be a killing of necessity.^{300,301} These are the rights of the child decided by Islamic Sharia in the texts of the Qur'aan and Sunnah, and jurisprudence scholars may Allah have mercy on them.³⁰² They are as a whole revolves around protecting the child from what might hurt him; protecting the child from all kinds neglect, cruelty, and exploitation and guaranteeing security and social stability. Every thing that is in the interest of the child is a right for him upon the parents or the guardians in case the parents were missing since the child does not possess the full will or strength to fetch those rights for self. As is keeping the child from all that might harm is considered one of the basic rights of the child and the responsibility of parents and society. This was for the fact that the child is weak and unable to protect himself from harm. As such, the life of the child becomes upright and the child would then become a righteous individual in the society. This exception is not intended to permit killing women and children intentionally, but should access to the fighters not be possible due to mixing of women and children in the line battle, then killing them would be allowed and viewed as an avoidable act.

²⁹⁶ Shahid, S. (2005). Rights of Non-Muslims in an Islamic State. *The Myth of Islamic Tolerance*, (Part II).

²⁹⁷ Ibid.

²⁹⁸ *Understanding Islamic Law*. (2016). *Islamic supremecouncil.org*. Retrieved 5 February 2016, from <http://www.islamic supremecouncil.org/understanding-islam/legal-rulings/52-understanding-islamic-law.html>

²⁹⁹ *Islam - A Religion Based On Terrorism*. (2016). *Targetofopportunity.com*. Retrieved 6 February 2016, from <http://www.targetofopportunity.com/islam.htm>

³⁰⁰ El Fadl, K. A. (1999). The rules of killing at war: An inquiry into classical sources. *The Muslim World*, 89(2), 144.

³⁰¹ *Ex-Islamic State fighter in Syria: 'All we wanted was to bring the regime down'*. (2016). *UPI*. Retrieved 7 February 2016, from http://www.upi.com/Top_News/World-News/2016/05/11/Ex-Islamic-State-fighter-in-Syria-All-we-wanted-was-to-bring-the-regime-down/5601462815909/

³⁰² *Understanding Islamic Law*. (2016). *Islamic supremecouncil.org*. Retrieved 5 February 2016, from <http://www.islamic supremecouncil.org/understanding-islam/legal-rulings/52-understanding-islamic-law.html>

CHAPTER FOUR: COMPARATIVE BETWEEN RIGHTS OF CHILDREN IN INTERNATIONAL LAW AND ISLAMIC LAW

4.1 Introduction

By comparing the rights of the child in international charters and Islam, we find that the most fundamental rights are consistent among both Sharia and international charters. International child's rights are mostly in agreement with Islamic law and consistent with the objective of proper child rearing. The rights granted by the Sharia laws date back fifteen centuries ago and are granted by Allah almighty to realize the full interest of the individual, and restricts actions only to prevent harm to the child, other individuals and the community. The international rights granted to children are more modern, placed into effect after world war I with the Geneva Declaration of 1924 (Turki, 1980) after a period children were forced into situations of neglect, torture, cruelty and denied basic needs. Unlike the Sharia laws which are immune to alteration and change, international laws are created by man and are subject to revision, alteration, reversion and deletion.³⁰³

Despite agreement between Sharia law and the convention rights granted to children there are some differences between the two sets of laws.

4.2 The rights of the child before birth in international conventions and Sharia

The Geneva declaration in 1924 did not contain anything about the rights of the child before birth. However, the 1959 Declaration mentioned the rights of the child in Article 4 where it stipulates that child care and special protection is necessary before and after birth. This right is also indicated by the preamble to the Declaration, and reaffirmed by the Convention on the rights of the Child in 1989.³⁰⁴ In the preamble of the 1959 Declaration and in Article IV it is stated mothers have the right to adequate health care before and after childbirth. While Sharia recognizes this right, it also recognizes the right of the child before birth from being harmed while still considered a foetus. This is an important right granted to the foetus as it will

³⁰³ Awda, A. Q. (1969). Islamic criminal legislation a comparative positive law. Beirut: Arab .daraketab.

³⁰⁴ Arrawi, J. I. (1985). Protecting the right to life in the Islamic Shariah. published by the Islamic Organization for education, science and culture.

influence the future of the child after birth.

4.2.1 Limiting legitimate relationship between men and women in marriage

Sharia law limits the relationship between a man and a woman to marriage in order to protect and provide a healthy environment for the child. The international conventions do not directly address this right to a healthy environment prior to childbirth. While this limitation on relationships may seem unrelated to children's rights, it is in fact directly related to preserving the health of the child and the mother. Relationships outside of the bond of marriage may lead to sexually transmitted diseases, such as AIDS, which would both harm the child and the mother.

4.2.2 The right of the child upon his father prior to birth

According to Sharia, a father must choose a righteous mother fit for marriage who is both religious and in good health. This sharia law, as well as the previous one, grant Islam the right to intervene in the interests of the child even before birth. Under the international rights, children are not granted such rights as no rights of its kind exist prior the formation of a foetus.

4.3 Overview of abortion laws in international conventions and Sharia

The problem of abortion is not a newcomer but is facing societies since ancient times between permissive and blocker parties. In this respect, laws of modern societies are divided into three views:

4.3.1 Prevention of miscarriage

In Sharia law, under certain conditions abortion may be granted if it saves the life of the mother. Although the conventions do not discuss this issue, some nations have established their own rules surrounding this issue. Among those nations who holds this view is Austria

where the Austrian law permits an abortion conducted by a doctor when necessary. It further grants permission to perform the act without the consent of the mother should it be required in order to save her life. Other nations who take this position include Cambodia, Senegal, Pakistan, Turkey, Tanzania, Hong Kong, much of the United States, and almost all the Commonwealth states.³⁰⁵

4.3.2 Restrict abortion with pregnant consent

Another midway position has not permitted abortion with pregnant consent, but at the same time expanded on the reasons that allow abortion to save the mother's life to include the preservation of mother's life to physical and psychological reasons such as Ghana, Malawi, and Mauritius, Tunisia, Canada, Argentina and Honduras, and some of the United States.³⁰⁶ Under the Islamic law, aborting the baby before it has been changed into an individual with a spirit in the womb is not named or seen as killing a person and along this perspective, it is not prohibited (haram). In any case, in the event that this act is not done with the consent of the father and mother, then it becomes an act of mistreatment to them two or to one of them.

4.3.3 Punishment

Abortion is not punishable by law, however there are restrictions in place to prevent and discourage clandestine abortions.³⁰⁷ Such procedures, often performed in illegal clinics, are more dangerous and pose greater health risks. Among the States which adopt this position are Scandinavia, United Kingdom, Switzerland, United States, Japan, and France. These States have been leading the path to sanction abortion; such sanctions include that of 1979 which declared pregnant women must decide to perform the abortion prior to the first ten weeks of pregnancy with the consent of a doctor or legal representative at a hospital.³⁰⁸ As the conflict between opinion rages on, with one side permitting abortion and the other prohibiting it, a few States remain firm on their stance to prevent or limit abortions such as Germany, Italy, Spain,

³⁰⁵ Allawzi, D.-M. F. (1996). *Abortion, Criminal and Drug Fair*, (1Ed.). Omaan: Directorate of Military presses.

³⁰⁶ Roih, A. A. (2015). *Abortion, Social Moral Problem Getting her Rejectionists*. Retrieved from <https://translate.google.iq/translate?hl=en&sl=ar&u=http://annabaa.org/arabic/ethics/1799&prev=search>

³⁰⁷ Rabee, H. M. (1995). *Abortion in the eyes of the criminal legislator, comparative study*. Cairo: Dar Al-Nahdha.

³⁰⁸ Nijsten, M. (1990). *Abortion and constitutional law: a comparative European-American study*.

Sweden, Netherlands, Belgium, Greece, and most of the Latin American countries. It should be noted that the states that legalized abortion did so in order to reduce criminal abortions.³⁰⁹

In Japan, for example, the number increased to millions of criminal abortions after legalizing of abortion. Not only Japan, according to the Intensive Therapy Unit statistics, it was recorded that there was an estimate of around 30 million abortions annually.³¹⁰ This is one of the most important reasons for mortalities among women; women who have abortions, usually girls under the twenty-fifth year, are estimated to be approximately 61%. However, the main motivation for abortions in all societies is the illegal pregnancy.³¹¹

Generally, through the world there are about 46 million abortions annually, 20 million abortions are carried out in those countries in which abortion without reason is prohibited such as Arabic countries in general except for Tunisia.³¹² 26 million abortions are carried out in those countries in which abortion is allowed legally such as Canada, Mexico, Salvador and Colombia, Spain, Poland, Russia, France, Finland, Japan, Chine, Vietnam, German, France, Sweden.³¹³

According to the World Health Organization (WHO), every 8 minutes a woman in a developing nation will die of complications arising from an unsafe abortion.³¹⁴ Women who have undergone one, two or three abortions are prone to risk of preterm birth.³¹⁵ Also, women who have undergone abortion several times, are prone to the risk of late delivery, or ectopic pregnancy, which is kind of unusual pregnancy, threatening the lives of mother and the

³⁰⁹ Donohue, J., & Levitt, S. (2000). *The impact of legalized abortion on crime*(No. w8004). National Bureau of Economic Research, p. 4.

³¹⁰ Singh, S., Darroch, J. E., & Ashford, L. S. (2014). Adding it up: The costs and benefits of investing in sexual and reproductive health 2014, p. 4.

³¹¹ Bankole, A., Singh, S., & Haas, T. (1998). Reasons why women have induced abortions: evidence from 27 countries. *International Family Planning Perspectives*, p. 119.

³¹² Henshaw, S. K., Singh, S., & Haas, T. (1999). The incidence of abortion worldwide. *International family planning perspectives*, S30-S38.

³¹³ Roih, A. A. (2015). Abortion .. social moral problem getting her rejectionists. Retrieved from <https://translate.google.iq/translate?hl=en&sl=ar&u=http://annabaa.org/arabic/ethics/1799&prev=search>

³¹⁴ Haddad, L. B., & Nour, N. M. (2009). Unsafe abortion: unnecessary maternal mortality. *Reviews in obstetrics and gynecology*, 2(2), 122.

³¹⁵ Calhoun, B. C., & Smith, M. R. Significant Potential for Harm: Growing Medical Evidence of Abortion's Negative Impact on Women, p. 4.

foetus together.³¹⁶

However, man-made legislation differed between permitting and prevention. Abortion was denied in all religions only if leaving the pregnancy threatens the mother's life. The Islamic Shariah permitted abortion in the case of fetal deformity if confirmed by medical scientists accurately and if not curable.³¹⁷ In order to avoid unwanted pregnancy, governments should legislate and facilitate the access of women to family planning services.³¹⁸

This is the reality in the regions where family connections are destroyed by the laws permitting sexual freedom, which led to widespread abortion of corruption as well as the proliferation of illegitimate births.³¹⁹ The issue of abortion in these countries is associated mainly as a way to get rid of pregnancy when the outcome of sexual relationships leads to pregnancy while, in Islam, the relationship between the two sexes is characterized by purity and cleanliness in marriage.³²⁰

4.4 Rights of the child after birth in international Conventions and Sharia

In spite of the agreement between Sharia law and international conventions in terms of the similarity of the rights granted to the child after birth, however, there are some key differences between them.

4.4.1 Childhood in Sharia and International Conventions

Convention on the rights of the child has been singled out among Declarations and conventions on the rights of the child. Article 1 of the Convention defines the child by saying: "a child means every human being below the age of eighteen years unless, under the law

³¹⁶ *Abortion Risks: A list of major physical complications related to abortion / After Abortion.* (1999). *Afterabortion.org*. Retrieved 13 February 2016, from <http://afterabortion.org/1999/abortion-risks-a-list-of-major-physical-complications-related-to-abortion/>

³¹⁷ Rishi, D. S. (2003). "abortion in Islamic law and jurisprudence. Beirut: Arabic book House

³¹⁸ Fischer, C., & Kasper, J. (2013). Access to Contraception. *Geo. J. Gender & L.*, 15, 37.

³¹⁹ Global Protection Cluster Working Group. (2007). *Handbook for the protection of internally displaced persons*. Global Protection Cluster Working Group.

³²⁰ Rishi, D. S. (2003). "abortion in Islamic law and jurisprudence. Beirut: Arabic book House.

applicable to the child, majority is attained earlier".³²¹ The Convention did not make age of 18 compelling for the signatories. But the freedom or reservation on articles that are not in line with the peculiarities of States was left to each state. From the legal point of view, this specification is not in accord with the Sharia law scholars that have been determining the limit of childhood. The Islamic law had taken into account adulthood as a standard in this regard.³²²

4.4.2 Right to Breastfeeding

Islam supports breastfeeding the child by his mother. As a confirmation, some scholars have gone to the opinion that feeding and taking care of the mother is a must by the husband, and it is a sin not to do that if the mother is able to feed her child. And in some cases, to put the child's interest at priority, the mother can be forced to feed her child by the judge. Moreover, Islam has mandated the father of the child to bear the cost of the mother's food and clothing on a reasonable basis.³²³

Conventions on the rights of the child, despite admitting most of the basic needs of the child, a fundamental and necessary area was bypassed which did not provide for the right of the child to breastfeeding, and were confined only to the undertaking in article (24/2) to provide the community, especially parents with brochures and articles about the feasibility and advantages of breastfeeding. Expenditure on mothers during lactation is not provided for or against by the Convention.³²⁴

4.4.3 The rights of the child to a name from birth.

The text of the Declaration contained a reference to the rights of the child to a name from birth. This has, also, been mentioned in the Convention on the rights of the child of 1989 in article VII but did not address the part of giving a child a good name. No such expression was stated about name to have a positive or negative effect on the psychology of the child.

³²¹ UNICEF. (1989). Convention on the Rights of the Child: Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989: Entry into force 2 September 1990, in accordance with article 49.

³²² Asha'ir, N. (2004). reproductive health issues from an Islamic perspective. Nablus.

³²³ *Children's Rights*. (2016). *Islamstory.com*. Retrieved 20 February 2016, from <http://islamstory.com/en/node/38125>

³²⁴ Kent, G. (2006). Child feeding and human rights. *International breastfeeding journal*, 1(1), 1.

Regardless of religion or not, a child is meant to be given a good name. It was said that the Prophet (peace and blessings be upon him) in his time changed some names because they were not good. Thus Islam was the first to take care of the child's name and introduced this new scholastic concept.³²⁵

4.4.4 The right to fixing descent

Sharia has confirmed the right of the child to fix descent to his parents which is proved by legitimate birth, and there is no doubt that the issue of descent represent a protective measure to ensure the child's rights. Therefore Islam prohibited adoption that would mix the genealogy and relationship of child to parent or family for native upbringing into another family. It further issues such as alimony and inheritance, prohibition of marriage.³²⁶

Conventions on the rights of the child did not provide for the right of the child to fixing descent to his parents, which is rightly a cornerstone in recognition of children's rights. With regard to adoption, the Convention on the rights of the child of 1989 as one of the options for providing alternative care for children deprived of a family for the States that permit the system of adoption in their laws. It provided for the adherence of other States to alternative systems conformant with the set of observances and like the system of "Kafala" in Islam. Although Sharia outlaws adoption, it does not prevent the Muslim to treat another person like a son; with the same kindness, mercy and material gifts, no less than an adopted son in the adoption system.³²⁷

4.4.5 The child's right to freedom

Article XII of the Convention on the rights of the child of 1989 states that the child has the right to freedom of expression, and make this right restricted to, only by, respect of the

³²⁵ Saeed, L. A. (1984). The rights of the child in the family: A comparative study. *Journal of Rights*.

³²⁶ Abrams, K. (2012). Marriage Fraud. *California Law Review*, p. 17.

³²⁷ Rizvi, S. (2016). *Adoption in Islam*. *Al-Islam.org*. Retrieved 15 February 2016, from <https://www.al-islam.org/articles/adoption-islam-sayyid-muhammad-rizvi>

rights or reputations of others, protection of national security, public order or public health or morals.³²⁸ This is similar to the position of the Shariah as it allowed freedom of expression and made it real for everyone, but it is not absolute rather it is constrained by not falling outside the limits of public decency and morality, or in contravention of the provisions of the Shariah. The Convention further stipulates in article XIV that States parties to the Convention must respect the child's right to freedom of thought, conscience and religion. It decided that the role of parents or other guardians of the laws on child guidance is commensurate with the child's evolving capacities only.³²⁹ The second article in the paragraph stated the inadmissibility of subjecting the religion or beliefs only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the rights or freedoms of others. Islam, on the other hand, ordered parents to encourage the child to religiosity and commitment terms and concepts and rituals so that the child is raised by these religious concepts.³³⁰

4.4.6 Freedom of belief

The Shariah allowed freedom of belief and worked to maintain and protect this freedom to the utmost borders as illustrated by the saying of the Almighty: There is no compulsion in religion.³³¹ Freedom of belief is guaranteed in the Islamic community, but taking into account the hard top for this community is submission to Allah, and from this Islamic community has expanded the presence of religious pluralism prior to the cohabitation with members who embraced Judaism and Christianity leaving them free to organize their personal affairs, while not accepting other pagan religions, as these two religions are heavenly in origin and still proclaim to be affiliated with the umbrella of servitude to God in

³²⁸ Bresner K. (2014). *Understanding The Right to Freedom Of Expressionan International Law Primer For Journalists*. International Human Rights Program (IHRP), Toronto, p. 17.

³²⁹ Hodgkin, R., Newell, P., & UNICEF. (1998). *Implementation Handbook for the Convention on the Rights of the Child*, p. 344.

³³⁰ Bridges, L. J., & Moore, K. A. (2002). *Religion and spirituality in childhood and adolescence*. Washington, DC: Child trends, p. 15.

³³¹ *Understanding Islamic Law*. (2016). *Islamic supremecouncil.org*. Retrieved 5 February 2016, from <http://www.islamicsupremecouncil.org/understanding-islam/legal-rulings/52-understanding-islamic-law.html>

general.³³² All of the deviation and distortion in these two religions that collide with real servitude to Allah narrowed the circle of freedom of expression for those two religions to the right to freedom of belief.³³³ Both are not entitled to call or conduct missionary activities within the Islamic community. They are not also allowed to publicise their rituals that contain their deviation outside so as not to breach the system and destroy the hard base and the pyramid of values of the Islamic society. Although Islam does not punish, or compels anyone to embrace and engage it, for a starter (And say: "The truth is from your Lord." Then whosoever wills, let him believe, and whosoever wills, let him disbelieve.³³⁴ It does not prevent, nor punish those who convert from a religion to another religion that are both under the Islamic society, but at the same time prevents and punish converting from it to other religions and consider that converter an apostate.³³⁵ Therefore, the adoption of the freedom of religion of children as set out in article XIV of the Convention contradict explicit texts in Islamic law for child- parenting, religious upbringing, education in Islam based on maintenance and human righteousness and redress from its inception until the end of education, according to the teachings and guidance of Sharia, and achieved through teaching, religion, worship and practice performance of habituation which is chiefly prayer and uphold ethics.^{336,337}

4.5 Rights of children with special needs in international conventions and Islamic law

The Shariah made provision for children full rights as human beings which they must live secure from vulnerabilities and doom, whether was an ordinary child or otherwise. This section will address the rights of the three categories of children with special conditions and circumstances in the Sharia and in international Conventions.

³³² Legenhausen, M. (1999). *Islam and religious pluralism*. London: al-Hoda.

³³³ Venice Commission. (2010). Blasphemy, insult and hatred: finding answers in a democratic society. *Science and Technique of Democracy*, (47), 1-306.

³³⁴ *The Quranic Arabic Corpus - Translation*. (2016). *Corpus.quran.com*. Retrieved 22 February 2016, from <http://corpus.quran.com/translation.jsp?chapter=18&verse=29>

³³⁵ Mawdudi, A. A. (1994). The Punishment of the Apostate According to Islamic Law (translated and annotated by Syed Silas Husain and Ernest Hahn). Rec.

³³⁶ *Understanding Islamic Law*. (2016). *Islamic supremecouncil.org*. Retrieved 5 February 2016, from <http://www.islamic supremecouncil.org/understanding-islam/legal-rulings/52-understanding-islamic-law.html>

³³⁷ *Core Values of Islam - The Religion of Islam*. (2016). *Islam religion.com*. Retrieved 28 February 2016, from <http://www.islamreligion.com/articles/10256/core-values-of-islam/>

4.5.1 The rights of foundlings in the International Conventions and Islamic law

The rights of foundlings in the conventions on the rights of the child are entrenched in the Geneva Declaration of 1924 and Declaration of the rights of the child of 1959 and the rights of the child of 1989 on the rights of the foundlings. But the Universal Declaration of human rights article (25/2), reading: "all children enjoy the same social protection, whether born in or out of wedlock illegal."³³⁸ Article 2 of the Geneva Declaration states the sheltering and rescue abandoned children, as in article 6 of the Declaration on the rights of the child which States "children deprived of a family."³³⁹ Also the Convention on the rights of the child provides in article 20, which states that "a child temporarily or permanently deprived of a family environment have the right to special protection and assistance provided by the State."³⁴⁰

It was asserted that opposing the Islamic States during the preparation of the Convention on the rights of the child on the basis of legality that prohibits adultery and prohibit having children outside marriage as legitimate child equal to other illegitimate children means promoting illegal child.³⁴¹

It is worth mentioning that approving the foundlings rights does not necessarily encourage the birth of illegitimate children, and that it is not the child's fault to be born this way, as the Sharia prohibits adultery at the same time and adopted strict penalties for adulterers and explicitly the rights of foundlings as mentioned.³⁴²

4.5.2 The rights of disabled children in International Conventions and Islamic law

The Article 23 of the Convention on the rights of the child of 1989 was devoted to special protection of disabled children. According to this article, States recognize the right of disabled children to enjoy care and special assistance, and to help them in their situation and circumstances coupled with the parents or others caring for the child with a view to

³³⁸ Kalra K. & Barupal P. (2013). *Law Sex and Crime*. Vij Books India Pvt Ltd, p. 238.

³³⁹ UNICEF (1989).

³⁴⁰ Ibid,

³⁴¹ MacEoin, D. (2009). *Sharia Law Or'one Law for All?'*. Civitas/Inst for the Study.

³⁴² Arda, B., & Rispler-Chaim, V. (2011). *Islam and Bioethics*. Ankara Universitesi Basmevi.

ensuring access to education, training, health care services, rehabilitation services and preparing them for employment and recreation opportunities in a manner conducive to the child's social integration, individual, cultural and spiritual growth.³⁴³ In addition to the possible resolution of the Convention, disabled children should enjoy a full and decent life and conditions which ensure dignity and self-reliance, which would facilitate active participation in the community. It is evidenced by the statistics released by the United Nations Specialized Organizations that there is one out of ten of the world's population infected in one form or another, impaired mental or physical and they are estimated to number more than 500 million person³⁴⁴ and it has been the international interest in special Declarations on the rights of the disabled. Among these special Declarations are the Declaration on the Rights of Mentally Retarded Persons, proclaimed by the United Nations General Assembly on 20 December 1971 and the Declaration on the Rights of Disabled Persons proclaimed by the Assembly in the 17th of December, 1975 (Nations Human Rights Group, 2004). The first includes a preamble and seven principles emphasizing that disabled are to be given equal treatment as other human rights and the right to treatment and care, education, training, guidance and the right to work according to their ability. Also included is the right to live with family, the right to receive assistance in addition to the right to guardianship, and right to treated with dignity. The second declaration contained a preamble and three dozen articles in its first article which defined a disabled person as any person unable to secure himself the imperatives of individual and normal social life in whole or in part because of a congenital deficiency in physical or mental abilities.³⁴⁵,³⁴⁶ The rest of the other articles were identical to the previous declaration with further detail. The United Nations launched in 1981 the international year of disabled persons, including public campaigns to create awareness, understanding and acceptance of people with

³⁴³ UNICEF., (2011). *The Convention on the Rights of the Child*. *Unicef-irc.org*. Retrieved 19 June 2016, from https://www.unicef-irc.org/portfolios/general_comments/CRC.C.GC.13_en.doc.html

³⁴⁴ World Health Organization. (2011). *World report on disability*. World Health Organization.

³⁴⁵ *UN Enable - Human Rights and Disabled Persons* 2/6. (2016). *Un.org*. Retrieved 30 February 2016, from <http://www.un.org/esa/socdev/enable/dispaperdes1.htm>

³⁴⁶ Varandani G. *Law-Relating To Disabled Persons And The Proposed Remedial Measures In The Context Of Prospective Action Plan*. Retrieved 28 February 2016 from <http://14.139.60.114:8080/jspui/bitstream/123456789/672/21/Law%20Relating%20to%20Disabled%20Persons.pdf>

disabilities.³⁴⁷ On the 17th of November, 1991, the General Assembly of United Nations General ratified 25 principles for the protection of persons with mental illness and improving mental health care.³⁴⁸

Under the Sharia Law, there are provisions for the rights of disabled children in the Islam law. There are many disabled people who need international help due to losing their body or having some incapacities either completely or partly because of accidents or illness or born.³⁴⁹ Disabled children before anything have needs just like any child, however because of incapability that they are suffering from in senses, mind or behavior, will make them in needs of more special treatment. Because of that and in respect of disable children being a human, Islam gave them fundamental rights that should be made available for them by parents, government and society.

Also, Islam orders the right of child for having a shelter which should be provided by parents by considering the incapacities of the child which means they should be treated. This is a great responsibility for the parents as Islam records it that it is a test from Almighty God and parents who endure the responsibilities of taking care of a disabled child will have a great reward in the day of judgment: Almighty God said “I tested my servants by their loved ones and they endured it then, I will reward them with paradise”,³⁵⁰ and it’s upon the parents that they provide education and learning for them according to their mental and bodily capabilities and also they should provide such children with medical; economical and social needs.

This sheltering must be provided for them till they reach adulthood. If the child reached adulthood and was incapable of taking care of himself, then it may be decided by the wise ones if to ensure the care of the child to the mother or give the responsibility to the father; this lies in the opinion of the Shafii and Hanbali. Another opinion is that of Al Maliki: he says if

³⁴⁷ UN Enable - International Year of Disabled Persons 1981. (2016). Un.org. Retrieved 31 February 2016, from <http://www.un.org/esa/socdev/enable/disidydp.htm>

³⁴⁸ Resolution, U. N. (1996). 46/119: The Protection of Persons with Mental Illness and the Improvement of Mental Health Care, 1991. *Guidelines for the promotion of human rights of persons with mental disorders*, Geneva.

³⁴⁹ World Health Organization. (2002). *Ethical Choices in Long-term Care: What Does Justice Require?*. World Health Organization.

³⁵⁰ Elias, A. (2013). *Patience with trials and tribulations in Islam. Faith in Allah الإيمان بالله*. Retrieved 30 February 2016, from <http://abuaminaelias.com/patience-with-trials-and-tribulations/>

the child reaches adulthood, responsibility falls from the mother and goes to another individual of the family. Whichever of the opinions is true, the taking care of disable child falls on the shoulders of one the family members which could be the father, mother, and sister, brother or others.

4.6 The rights of orphans in International law and Islamic law

The rights of orphans in the Declaration of Geneva in 1924 were simple and clear. In Article 2 of the Declaration of Geneva in 1924, it was stated that the orphans must be sheltered and supported. The Declaration of the rights of the child in 1959 and the Convention on the rights of the child of 1989 did not expressly stipulate the rights of orphans. Under the Islamic law, there are special cares granted to the orphans. This was reflected in the verses and Hadeeth of the Prophet which urges the need for attention and cares to help them.³⁵¹

Scholars unanimously agreed that an orphan is a child who lost his father before reaching puberty.³⁵² An orphan in Islam enjoys all the rights of a normal child ranging from kindness to attention. It is required that good manners and respect are directed towards them. Allah stated in Quran that “and worship Allah, and do not join aught with him: and to parents, show kindness and also to kinsmen and orphans and the needy, the near neighbor, the distant neighbor, the companion by your side, the wayfarer and those whom your right hand possess. Surely Allah does not love the vainglorious and boastful.”³⁵³ It was said that harshness should be avoided towards them. In showing compassion to them, the Islamic law demonstrated this in Abu Hurairah’s report which states that “the best home of Muslims is one wherein there is an orphan who is treated well; and the worst home of Muslim is one wherein there is an orphan who is treated badly.”³⁵⁴

³⁵¹ Nations, U. (2004). Human Rights Group Seeking Admission Conventions,. New York and Geneva: United Nations For prenting. Retrieved from <http://www.ohchr.org/Documents/Publications/training11Add1ar.pdf>

³⁵² *Is supporting an orphan who lost his mother the same as supporting an orphan who lost his father - Islam web - English.* (2013). *Islamweb.net*. Retrieved 11 March 2016, from <http://www.islamweb.net/emainpage/index.php?page=showfatwa&Option=FatwaId&Id=123237>

³⁵³ *an-Nisa` 4:36.* (2016). *IslamAwakened*. Retrieved 30 March 2016, from <http://islamawakened.com/quran/4/36/>

³⁵⁴ *Be Like a Merciful Father to Orphans.* (2016). *Helpyateem.org*. Retrieved 30 March 2016, from <http://www.helpyateem.org/blog/be-like-a-merciful-father-to-orphans>

As regards charity, Islamic law used this as a channel to take care of the poor. It is generally known that orphans are weak, sometimes ill-treated, and suffer oppression. With charity, they have higher hopes in avoiding being a destitute with a misery life. Ibn AbbAs has reported what the Prophet said by stating that “whoso gives shelter to an orphan with his food and drink, Allah will grant him paradise unless he has committed a sin which cannot be pardoned.”³⁵⁵

Islamic law allowed justice for orphans in every situation that revolves round them. The Prophet said “and if they ask you of orphans, say: to set their affairs in order for them is best; if you mix with them, then they are your brothers in religion; Allah knows the foul-dealer from the fair-dealer. Allah had Allah so willed, he could have afflicted you; surely he is mighty, the wise.”³⁵⁶

When it comes to inheritance, Islamic law has mandated it that orphans should not be denied of their inheritance once they have attained the age of puberty. Taking advantage of them and claiming their inheritance was said to be unlawful. This is seen in what Allah says in the Quran that “Verily those who devour the property of the orphans wrongfully, only devour fire into their bellies, and soon they will roast in the Blaze.”³⁵⁷ Also, Allah has made it a responsibility for all to invest on orphans so that they can become independent and be part of the society in sufficiency and not deficiency. Without mincing word, Islamic laws accrued upon orphans high level of respect, appreciation, acknowledgement and honor more than the International Laws in a society.

³⁵⁵ *110 Hadith Qudsi / Chapter No: 1 / 110 Ahadith Qudsi (Sacred Hadith)*. (2016). *Ahadith.co.uk*. Retrieved 30 March 2016, from <http://ahadith.co.uk/chapter.php?cid=144&page=1&rows=100>

³⁵⁶ *Surah Al-Baqarah [2:215-221]*. (2016). *Surah Al-Baqarah [2:215-221]*. Retrieved 30 March 2016, from <http://quran.com/2/215-221>

³⁵⁷ *an-Nisa` 4:10*. (2016)

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

The international declaration of children's rights and Sharia law have a great deal in common on the protection of children and expecting mothers. Sharia law permits grants children some rights that are not found in the international laws while the international laws grant some rights that are also not explicitly stated in sharia law. Under sharia law children are granted the the right to a good name and the right to their descendant, which according to Islam, will benefit the child in adulthood by setting forth a path for success through a good name, and increasing a sense of community through knowledge of ancestry. While the international laws don't address this directly, they do state children should be given a name and should be cared for. Sharia law prohibits the relationship of boys and girls prior to marriage, which the international laws don't address this issue directly for children under the age of 18, it does ban childhood prostitution and pornography. The international declaration of children's rights does not address the issue of abortion, however islamic law has some very specific laws surrounding the issue. Despite popular belief, Sharia does grant women the right to an abortion prior to 40 days of pregnancy, in the case of child deformations or incurable diseases and in cases of complications that could end the mother's life. Some nations have clearly defined the legal boundaries of abortion rights, while others have not addressed the issue.

The international declarations have set specific laws regarding children and labour laws, which are still continuously violated today world wide. Sharia law does not provide such specific laws on child labour. Children who suffer from disabilities are granted special protection under the international rights to protect them from harm. However Islamic law has no such laws in place other than addressing the broader issue of familial responsibility to look after the disabled child and provide care for him.

In general the two sets of laws often complement each other rather than clash one another; the international laws are in some cases specific about the rights granted to children than sharia

law, while in some cases the sharia laws are more specific in addressing some rights than the international laws. Neither the international laws nor the islamic laws forcibly bring another nation to obey and follow its laws, however both encourage working with society to create a better world through the exchange of knowledge and ideas. By accepting both sets of laws as legitimate sources of knowledge, international organizations and islamic societies can implement better laws by combining the two together to form a more cohesive body of rights for children. If nations choose to follow a combination of laws prescribed by both the international declaration and by Islamic law, a more perfect society for children can be created. Both sets of laws discuss the issues surrounding children's rights equally well and either of them can be enforced according to each nation's statutes and the needs of its society.

The international declaration of children's rights does not clearly and thoroughly address the relations between boys and girls under 18 years of age. The sharia law prohibits boys and girls from relations outside of marriage regardless of age. In this instance the sharia law is recommended to form the ideal society because the number of abortions is directly related to relationships that occur outside of marriage among both teenagers and adults. Additionally relationships outside of marriage are one of the reasons for the spread of AIDS and HIV which often leads to transmission of the virus to the fetus.

The international declaration of children's rights does not address the issue of abortion. Some nations have clearly defined the legal boundaries of abortion rights, while others have not addressed the issue. However Islamic law prohibits abortion except in the case where it threatens the life of the mother or the mother is less than 40 days pregnant. According to Islam, one cannot forcibly bring another person to obey the teachings of Islam however one can spread its ideas. The international community cannot be coerced to adopt these laws, but they can be informed about abortion rights according to Islam as they are clearly and thoroughly defined.

The rights that have been discussed in the various international declarations have also been discussed in Islamic laws for centuries. If nations choose to follow the laws as prescribed by either the international declaration or by Islamic law, a more perfect society for children can be created. Both sets of laws discuss the issues surrounding children's rights equally well and either of them can be enforced according to each nation's statutes and the needs of its society.

Recommendations

By taking the knowledge on children's rights from both international organizations and Islamic texts the international community develop a more cohesive outline to protect children. Below are some recommendations that could be used to implement these rights.

-Spread of Knowledge

Information about the rights of children from both international declarations and Islamic law should be spread to the public in print form and visual media. Children should be informed what rights they are granted by their nations and international organizations during their public education years, especially during primary education. This will enable children to become aware of the rights granted to them from an early age and enrich their childhood experience. By increasing the distribution of knowledge, the world can better fight for the rights of children.

-Abortion Clinics

While abortion is still a heated issue, the procedure should nonetheless be made available to expectant mothers in standardized clinics that follow the guidance of International and Islamic laws, depending on the laws adhered to in the particular nation, to protect the mother's health and to reduce the dangers and complications of illegal abortion operations. Nations should be allowed to implement the specific laws surrounding abortions, as they currently do, however the operation of the clinics should be made available in all countries and should follow international health guidelines on performing medical procedures.

-Child warriors

Despite the text in both international organizations and Sharia law which serve to protect and defend children's safety, both sets of laws currently allow for children as young as fifteen

years old to take up arms. These laws should be modified, and under no circumstance should children under the age of 18 be allowed to bare arms or take part in armed conflicts, even if they desire to do so. The freedoms of children should be limited to protect the child from harmful actions. Children's thoughts and actions should be guided as they do not yet have the mental faculties to make the correct decision and take the right course of action. Allowing children to part-take in conflicts will increase children's death rates and increase the likelihood of manipulation of their mental thought process and which could result in actions that ultimately physically harm the child.

-Age of Adulthood

According to international declaration adulthood begins at the age of 18, however in the Islamic law adulthood begins at the age of 15. Nations should be responsible for choosing the age of adulthood (between 15-18 years old) as they see fit in their own society, for the exception on the ban of joining an armed conflict and picking up arms where the age should remain 18 world wide. Islamic laws were the predecessor to international declarations and both should be considered when implementing new laws in a nation.

-Creation of World Wide Annual Conference

A worldwide conference to discuss the right of children should take place annually to discuss issues facing children and implement new solutions to solve these issues. Any nation failing to protect and provide to children as described in the international declarations and/or Islamic laws should be punished and encouraged to address the problems.

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