



Full Length Review Article

**THE RIGHT OF THE CHILD TO LIFE AND PROTECTION FROM TORTURE
IN INTERNATIONAL HUMAN RIGHTS LAW (A COMPARATIVE STUDY WITH ISLAMIC
SHARIA LAW)**

***Prof. Suhail Hussein Alfatlawi**

Suhail Hussein Al-Fatlawi, (Post-Doctorate), Faculty of Law, University of Jerash,
Jordan International Law

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ABSTRACT

The current era has witnessed numerous international and internal armed conflicts, which have led to increase in problems faced by children, and particularly in Arab and Islamic states. They have led to a heightening in the number of armed gangs and terrorism which has resulted in bodily infringements including murder, assault, and abduction for the purposes of prostitution or the trade in human organs. The civil wars in various states, and particularly those that were started during the Arab Spring, have led to the killing and displacement of millions of children. Terrorism has also contributed towards the killing of thousands of children. It was because of governments' lack of interest in the protection of children, and their actions in combatting terrorism that the number of cases of children being killed, submitted to torture, trafficked, or being displaced, whether internally or into neighboring countries, was multiplied. The distressing scenes in refugee camps spread across multiple Arab countries continue, demanding International humanitarian involvement to protect children in various regions of the world, in light of the lack of Arab humanitarian organizations for the protection of children. So children in a number of countries have suffered from killing, torture and displacement, which has been heightened by the interference of Western countries in the affairs of the Arab region. Taking this into account, the research has been divided into three themes: in the first we discussed the right of the child to life, and in the second we discussed the protection of child from torture. As for the final theme, it was dedicated to cases of the killing and torture of children in armed conflicts.

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INTRODUCTION

Religious legislation, man-made laws and international human rights law have all guaranteed the human right to life and protection from torture for all, regardless of age, gender, colour, race, religion or nationality, and applied strong punishments on all of those who violate the human body. Indeed, these laws have paid particular heed to children in that they are unable to protect and defend themselves. Often children are exposed, during armed internal or international conflicts, to murder, disabilities, forced displacement from their homes, towns and countries. Looking at the development of humanitarian concepts, states have rushed to issue special laws for the protection of children and the prevention of any transgression against them. Similarly, many conferences have taken place on the topic of the protection of children and have issued numerous international agreements and announcements requiring nations to ensure the special protection of children.

***Corresponding author: Suhail Hussein Alfatlawi**

Prpf. Suhail Hussein Al-Fatlawi, (Post-Doctorate) International Law,
Faculty of Law, University of Jerash, Jordan.

Among these are the Convention on the Rights of the Child, concluded in 1989, and the Convention Against Torture, adopted in 1984, and which sanctioned the physical protection of children, and so prevented any violation to their lives, and protected them from torture and forced displacement. It also sanctioned the particular protection of children in armed conflicts. Islamic Sharia law had preceded the modern international community by several centuries in terms of the protection of children in times of peace and war, and allotted particular rights to them and made their protection and development a shared burden.

Importance of this Research

Concern for children is concern for the future of humanity, and this is what demands of the international community, and academic organizations and studies, that they are concerned with the interests of children and working to create a decent life for all children. The international community is witnessing at the current time a number of armed conflicts in multiple countries of the world, and particularly in the region of the

Middle East, a situation that demands that the international community takes the necessary steps to protect children.

Problematic research

The problem that faces the international community, and Arab countries in particular, is the difficulty of guaranteeing special protection for children because of the raging of wars and the development of weapons and their employment against terrorism. This has intensified the civil wars that the world, and in particular the Arab world, is witnessing, = which were launched by the Arab Spring, and in which millions of children have been exposed to killing, torture, detainment, forced displacement, deprivation and only the most basic of human rights. Developed Western countries themselves have contributed to these conflicts by fanning the fire of sectarian and local conflicts. What has further complicated the problem is the lack of facilities and materials for the protection of children, and of Arab sanctuaries and organization dedicated to the protection of children. This problem remains current, ongoing and increasing at a rapid rate, and there is no sign of humanity on the horizon which could stop the violations that children are suffering from in numerous Arab countries.

Hypothesis of the research

In this study we will discuss the right of the child to life and protection from torture, bodily transgression, sale, forced displacement, or suffering from the effects of international or internal armed forces. This is what has necessitated our dividing the research between three themes: in the first we have discussed the right of the child to life, and in the second the protection of children from torture. The last theme is dedicated to the protection of the child from killing and torture in armed conflicts.

The right of the child to life

The right of the child to life is among the rights which are intimately attached to humankind, and which cannot be relinquished. International law and Islamic Sharia law have arranged the scope of the child's right to life, and we will discuss the position of both international and Islamic Sharia law with regard to the right of the child to life in two sections: First - The Right of the Child to Life in International Law "The child" is used as both the singular and plural¹, and in spite of the differences in terms of what encompasses childhood according to different law systems, usually it includes up to 18 years of age. The right to life is among the rights that all of humanity are blessed with, whatever their age, colour, nationality, religion or denomination. Nonetheless, laws have afforded a special protection to the child because of his inability to protect himself². This guaranteeing of this right of the child to life is necessarily made incumbent upon states and individuals, and upon the person himself who may not end his own life whatever the reasons. It is the right of a person whose life is in danger to defend himself, even if that led to the ending of the lives of others.³ The child is blessed with the

right to life just as adults are, and if someone does not possess the right to end his own life, then he also does not possess the right to begin his life. An individual is born and dies for reasons outside of his will or, more correctly, his will has no bearing upon his birth, the continuance of his life or his death. If an individual goes on hunger strike in order to achieve their demands, then it is the responsibility of the appropriate authority to force him to eat, even if that was through forcefully putting pipes into his body for the purpose of introducing food. This is usually what happens to prisoners, when a number of prisoners go on hunger strike because their demands are not being met, and the prison authorities have recourse to the admission of food to their stomachs by means of force in order to protect their lives. A number of international agreements⁴ and announcements⁵ have guaranteed the rights of the child and made necessary his right to life before birth⁶, and while in utero, so abortion of the fetus is not allowed, whether it is intentionally through assault, or through the agreement of the woman in carrying out a procedure, or through the taking of pills.⁷ Equally, it is not permitted to give tablets that will lead to infertility if the woman is unmarried.⁸ It is not permissible to inflict the death penalty on someone under the age of eighteen. International agreements have prevented the carrying out of the death penalty on people younger than eighteen years old. The right of a person to life is firmly fixed even before his birth, as a foetus in his mother's womb and so it is no permissible to inflict the death penalty on a pregnant woman throughout her pregnancy until she gives birth⁹, even if the pregnancy was not legitimate. It is not permitted to induce early labour in order to execute the woman. Not executing the woman is not out of consideration for her, but rather out of consideration for her foetus. If the child is born deformed suffering from a permanent disability or congenital malformation, it is not permitted to kill the child, even if the malformation or disability is acute. The ending of the life of such a child, is the ending of the life of a human, and such an act is considered a

⁴ Among these are the Convention on the Rights of the Child, concluded in 1989, for special international agreements on the child, see: Muhammad Salah Abu Rajab, "General Principle Around the Rights of the Child in International Agreements, the website of Al-Wafd, 13/06/2012, <http://www.alwafd.org/>

⁵ For announcements specific to 'the child', see: The 1924 Geneva Declaration of the Rights of the Child, sanctioned by the General Assembly of the International Union to Save the Children in a meeting on 23rd February 1923, and the final vote upon it by the executive committee took place in a meeting on 17th May 1923, and the signing by the General Assembly in February 1924. Declaration of the Rights of the Child was adopted and proclaimed by General Assembly resolution 1386 on the 20th November 1959.

⁶ Among these agreements, the Convention on the Rights of the Child, concluded in 1989, for special international agreements on the child, see: Muhammad Salah Abu Rajab, "General Principle Around the Rights of the Child in International Agreements, the website of Al-Wafd, 13/06/2012, <http://www.alwafd.org/>

⁷ Countries differ on their laws regarding abortion. Some countries allow abortion with the permission of the mother and others forbid it. All countries forbid abortion without the permission of the mother. The number of deaths through abortion in countries where abortion is an offence is 330 in 100,000 abortions. This number is reduced to 0.2-1.2 deaths for 100,000 abortions in countries which permit and systematise abortion (54 countries). These numbers suggest that the danger of death resulting from abortion increases the more forbidden and criminalised it is. There are different opinions about abortion: see Abd al-Samad al-Dialmi, "Abortion: Between Permission and Criminalisation", Alawan website, date of publishing: Friday 27th August 2010, <http://www.alawan.org/>

⁸ Dr. Abu al-Yazid Ali al-Mutayt, "Political Systems and Public Freedoms", 3rd Edition, "mu'assasat ash-shabab al-jama'at" (the Organisation of the Young Men of the University), Alexandria, p197

⁹ The 5th paragraph of the 4th article of the International Covenant on Civil and Political Rights: "It is not permissible to carry out the death penalty on the perpetrator of a crime if he/she is under the age of 18, or pregnant"

¹ "Child" is used for both singular and plural in the following expression "the 'child' (children) which have not emerged" in Surat an-Nur, verse 31.

² Review of the human right to life: Jack Ketcham, "Right to Life", Gauntlet Pr. 2002, p6.

Ali Salim Ibrahim, "The Rights of the Child in International Law", al-Ahram newspaper, published 14/03/2014

³ ArobbaJabar Abed "The Rights of the Child: Between Theory and Application", Dar al-Thaqafa (Culture House), Amman 2009, p108

crime punished by the law.¹⁰ In the case of the death sentence being passed on someone, then it is up to the appropriate authority to carry out the sentence according to his rights. It is not permitted to anyone else to carry out the sentence, so if the convicted party is killed by another prisoner, or anyone else then it is considered murder, and must be punished. The right to life continues, even when the person is in a terminal coma, or terminally ill, and if someone were to kill him then he would be liable to punishment for murder, even if the person had no chance of recovering. The ending of the life of a child is not permitted, even if it is achieved through non-physical means.¹¹ It is not permitted to use psychological means to end the life of a person, for instance threatening him via telephone or messages, or chasing him, or kidnapping a member of his family, or someone dear to him, all of which could make him afraid and lead to his death.

The right to life continues even after the death of the person. It is not acceptable to deliver the *coup de grâce* upon the corpse of a dead person ('finish him off'). The culprit will be subject to punishment, even if not for murder. In some countries the law permits the entrusting of a corpse, or part of a corpse, to a medical or scholarly institute, with the purpose of carrying out experiments in order to protect others. Or, the deceased eyes could be donated to a special 'eye bank', or he could leave some of the organs of his body to those ill people who need them. This is done on the proviso that it does not adversely impact general health.¹² The Convention on the Rights of the Child, concluded in 1989, imposed upon nations two rights, recognition and guarantee, meaning that the state recognizes the right of the child to life and that this right is considered basic in the meaning of being fixed and indisputable, and that the state works towards the continuance of this right and the non-examination of it and this through ensuring means of guaranteeing survival and continuance.¹³ The Convention on the Rights of the Child, concluded in 1989, imposed upon nations the commitment to achieve a goal, which they must try to make succeed, but are not responsible for its success or failure, and they are obligations which demand that the state undertakes a number of procedures, including:

- That the country guarantees the health of the child at the highest levels, according to the means of protection that modern medicine has reached, and found developed hospitals and health organizations for the protection of the health of the child.¹⁴ The country also has to expend every effort in order to prevent the

deprivation of treatment and medical attention from any child. With regard to the practical side of things, some states do not have the necessary practical and financial means to found such organizations for the care of children.

- That nations work on the protection of the life of the child and undertake the following steps:
- Working on reducing deaths among children, especially infants.
- Providing the necessary medical assistance and healthcare to all children, with particular emphasis on the guaranteeing of emergency healthcare.
- Combatting illnesses and malnutrition even in emergency healthcare, by means of a few matters including the easy implementation of available technology, through the provision of sufficient nutrition and clean drinking water, taken with recognition of the environmental pollution and its dangers.
- That the country works to provide appropriate pre- and post-natal healthcare for mothers.
- That the state provides all segments of society, most particularly parents and child, with basic information relating to the health and nutrition of the child and the advantages of breast-feeding, as well as the basics of protecting health and environmental sanitation, and the prevention of accidents. Additionally, the education of these elements of society in these matters and assisting them in benefiting from this information.
- That the country works to provide preventative healthcare and guidance for parents, and education and services relating to family planning.¹⁵

It has been observed that these obligations have been made incumbent on countries in order to protect the life of the child from diseases and disabilities which require that the state be highly developed and progressive, meaning that developing and backward countries cannot provide these kinds of care and it was necessary that the Convention on the Rights of the Child define the obligations on the developed states by providing assistance for the care of children in developing and backward countries particularly given that diseases that affect children can spread to other countries, which therefore requires international cooperation between these countries to bring an end to diseases that affect the lives of children. UN statistics indicate the deaths of millions of children due to wars, natural disasters, starvation, poverty, malnutrition and diseases. The international community continues to fail to provide what is needed to save children from this catastrophe. What is the killing of children in Iraq, Afghanistan, Darfur in Sudan, Burundi, Rwanda and other countries if not the conclusive evidence of the failure of the international community to protect children? What is more than this, you find that the UN participated in the killing of millions of children when it launched wars on Iraq, Afghanistan and Kosovo under the auspices of protecting international peace and security. The UN also overlooks the daily processes of killing and annihilation of Palestinian children carried out by Israel and the terrorist Zionist forces.¹⁶ Despite the fact that some Arab

¹⁰ See the second principle of the rights of the child issued by the UN General Assembly in 1959

¹¹ See: Alistair MacDonald QC. "The Rights of the Child: Law and Practice, Family Law, Public Law, International Family", 2011, p4.

¹² Hasan Kira, "Introduction to Law", Manshat al-Ma'araf (Faculty of Knowledge), Alexandria, 1974, p431.

¹³ The 6th article of the Convention on the Rights of the Child stipulated the following: "1.

1. All nation parties must recognise that each child has a fundamental right to life.

2. All nation parties shall ensure to the maximum extent possible the survival and development of the child."

Adopted for signature, ratification and accession by United Nations General Assembly Resolution No. 25/44 dated November 20, 1989 and entered into force on the second of September 1990, in accordance with Article 49.

¹⁴ The first paragraph of the 24th article of the Convention on the Rights of the Child stipulated the following: "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services."

¹⁵ See the second paragraph of the 24th article of the Convention on the Rights of the Child.

¹⁶ See Abd al-Wahab al-Kiyali, "Zionist Expansionist Ambitions", Palestinian Studies 3, Palestinian Liberation Organisation, Markaz al-Abhath (Research Centre), Beirut 1966, p.120 and Dr.Asa'dRazuq, "The Talmud and Zionism", Palestinian Liberation Organisation, Markaz al-Abhath (Research Centre),

children have gained some welfare relating to the right to life, health, nutrition and education, there are still large numbers of children that continue to be deprived of these basic rights from early childhood. Additionally, the number of people living under the poverty line is increasing due to the conflicts and military tensions in the region.¹⁷ We observe that children are currently suffering from discrimination, racism, and mistreatment despite the development that the world is witnessing. Billions of dollars have been spent on the development of lethal weapons, for which children are the fuel, and nothing like this money is spent on the development of children and saving them from the effects of wars, poverty and destitution. Children are also often kidnapped for the purposes of selling their bodily organs.¹⁸ It is necessary to say that guaranteeing the right of the child to life is linked to internal and international conflicts, which are often fed and sustained by a number of developed countries. Children continue to be exposed to killing and destruction, as long as these conflicts continue. The global food shortage contributes to the deaths of millions of children in Africa and numerous countries of the world.

Scorned – The right of the child to life in Islam

Islam protects the rights of children of all ages until their bodies strengthen, and they become able to live and carry responsibilities like any other member of society. It is necessary to provide special protection for the life of the child, given that the child is not able to protect himself due to the weakness of his state. It was the custom among Arabs before the emergence of Islam that the poor kill their children due to their poverty. Islam forbade this practice with the following statement: “Come, I will recite what your Lord has prohibited you from: Join not anything in worship with Him; be good and dutiful to your parents; kill not your children because of poverty - We provide sustenance for you and for them; come not near to Al-Fawahish (shameful sins, illegal sexual intercourse, etc.) whether committed openly or secretly, and kill not anyone whom Allah has forbidden, except for a just cause (according to Islamic law). This He has commanded you that you may understand.”¹⁹

And in the following statement

“And kill not your children for fear of poverty. We provide for them and for you. Surely, the killing of them is a great sin.”²⁰ Many verses of the Quran and the Hadith confirm the right of humans to life. The Islamic Sharia law forbids the ending of the life of a human by any means. The killing of one person is

tantamount to killing of all of humanity²¹, expressed in the following saying: “if anyone killed a person not in retaliation of murder, or (and) to spread mischief in the land - it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all mankind.”²² In this way Islam forbids the killing of a human soul, unless that soul is deserving of retribution, and it is written that the ‘corruption of the land’ means: highway robbery; blood-shed; rape; looting money; oppression of the servants of God; destruction of architecture; the chopping down of trees; and the changing of the routes of rivers. Whoever kills another human soul on purpose, almighty God will send him to hell, and will be angry with him, cursing him and promising for him a great torture, and if he killed all of humanity there would be no greater punishment than this. Whoever saves (‘rejuvenates’) a life: rejuvenating or saving from drowning, from fire, from destruction or death it is as if he has saved all of humanity, in terms of the amount of good he has done.²³ Almighty God has made it so that the killing of a person for no good reason is equal to polytheism. It is written in the following saying: “And those who invoke not any other god along with Allah, nor kill such life as Allah has forbidden, except for just cause, nor commit illegal sexual intercourse and whoever does this shall receive the punishment.”²⁴ God has forbidden killing except with just cause. Killing a human life is considered a just cause if: the person was a Muslim and then became a non-Muslim; or committed adultery; or killed someone without just cause.²⁵

The Quran made killing children illegal in the following statement: “And so to many of the Mushrikun (polytheists - see V.2:105) their (Allah's so-called) "partners" have made fair-seeming the killing of their children, in order to lead them to their own destruction and cause confusion in their religion. And if Allah had willed they would not have done so.”²⁶ Ibn Abbas said: “In the pre-Islamic periods they would bury their girls alive out of hatred for them, and the men would swear, if such and such a boy is born to me I will kill one of (my sons), just as Abd al-Mutallib swore about his son Abdallah. Their gods had servants who extolled the polytheists to kill their children.” The meaning of the verse is: Just as the banning of cultivation and grazing livestock was extolled, it was extolled to many of the polytheists to bury their girls alive out of hatred for them, and out of fear of poverty. It is said in the Quran: “shurakaa’hum” means their demon partners, and it is said: “sadanatalhitahum”, which means the servants of the idols. So the meaning of “shurakaa’” is murderous infidels, the forerunners and the rest of them. It is written “liyuridūnahum” which means it will kill them. The letter ‘lam’ could be the ‘lam of ‘aqaba’, so it might not be the goal that they die, or it could be the ‘lam of gharq’, because there are some who refuse to do it, and others who do it, but the majority refused to

Beirut 1970, p.57. See also: Gunther E. Rothemberg. *The Anatomy of The Israel Army*, Batsford, London 1979, p23.

¹⁷ Muhammad al-Fatih Abd al-Wahad al-atibi, “The Role of Civil Society Organizations in the Reduction of the Worst Forms of Child Labour”, worksheet presented to the National Symposium around the worst kinds of Child Labour in Arab Countries, Cairo, 3-5th November 2009.

¹⁸ The phenomenon of the abduction of children has become a growing and unchecked crime across the world. Experts in sociology and psychology attribute the reasons for this spread to an absence of religious faith, lawlessness, low morals and states of poverty, in addition to the absence of strict laws.

See Abdullah al-Riyan, “The Abduction of Children”, the One World website, 6/7/2013, <http://www.albayan.ae>

¹⁹ Surat al-An’am, verse 151 (translation taken from <http://www.noblequran.com/translation/>)

²⁰ Surat al-Isra’, verse 31 (translation taken from <http://www.noblequran.com/translation/>)

²¹ Ahmed Kamal ‘Abd al-Aziz, “Sharia Law, and international law in general”, Magazine of Law and Political Science, January 1963, Part 1, Egyptian Book Organization Cairo, 1972, p313.

²² Surat al-Ma’ida, verse 32 (translation taken from <http://www.noblequran.com/translation/>)

²³ Zabdāt al-tafsīr fī Fathāh al-Qadīr, previous reference, p142. See Abu al-Yaqdaan ‘Atia al-Jabouri, “Imam Zafar” – his Juristic Views, section 1, Printing and Publishing Freedom House, Baghdad, 1980, p311. Imam Abu al-Walid bin Ahmad bin Muhammad bin Ahmed bin Rashid al-Qartabi al-Andalusi who had the nickname Ibn Rashid al-Hafid, “Badayat al-Mujtahadwa Nahayat al-Muqtasid”.

²⁴ Surat al-Furqan, verse 68 (translation taken from <http://www.noblequran.com/translation/>)

²⁵ Zabdāt al-tafsīr fī Fathāh al-Qadīr, previous reference, p478.

²⁶ Surat al-An’am, verse 137 (translation taken from <http://www.noblequran.com/translation/>)

do it. It is written,“(Thus) just as We have made their words and works seem fair to them (have their (so called) partners) among the devil (made the killing of their children) their daughters (to seem fair unto many of the idolaters, that they may ruin them) destroy them (and make their faith) the religion of Abraham and Ishmael (obscure for them. Had Allah willed (it otherwise), they had not done so) i.e. killing their daughters and making it seem fair to them. (So leave them alone with their devices) with their lies when they claim that Allah commanded them to bury their daughters alive.”²⁷ And read: “qatalawlādhūmshurakā’hum”, so the word ‘shurakā’ is a descriptor of the children, because their children are their partners in money.²⁸

Devils enjoined them to give God a share of what has been created in terms of tillage and cattle, and to the idols another share, just as they enjoined them to kill their children out of fear of poverty and destitution, and bury their children alive out of fear of shame (the shurakā’ or partners here are the devils). The devils enjoined upon them these evils, that they should be ruined by temptation and let their base instincts ruin them. The emotions of the parents turned their love from compassion and mercy to cruelty and brutality, so that the father slays his son, and buries his daughter alive.²⁹ It is written: “Indeed lost are they who have killed their children, from folly, without knowledge, and have forbidden that which Allah has provided for them, inventing a lie against Allah. They have indeed gone astray and were not guided.”³⁰ Ibn Abbas said: “(They are losers who besottedly) out of ignorance (have slain their children) have buried their daughters alive (without knowledge) this was revealed about Rabi’ah and Mudar, two leaders of Arab clans buried their daughters alive in the pre-Islamic period”³¹ Qatada wrote: “Among the people of ignorance, someone would kill his daughter out of fear of capture or poverty. It is written ‘bighayr ‘ilm’, that is, they do it out of stupidity, without being informed about it. They were denied what livelihood God blessed them with in terms of livestock and cattle, and claimed that God ordered them to do so.”³²

Those who have committed these acts have lost in this world and the next. As for in this world, they have lost their children as they have killed them, and kept them short in terms of their money, and prohibited what they have invented on their own. As for the afterlife, they shall to the worst houses because of their lie to God and their defamation of him.³³ The verse: includes the vilification of their bad actions and the arousing of admiration towards mentioning them in a bad state. Akrama said: infanticide was around in Rabi’ah and Mudar tribes, he said: The Arab public was not doing it, but then some of the people who did it, did so out of fear of poverty and want, and there are some who did so out of jealousy, out of fear of Sheba. “They went astray”: reporting about them in

bewilderment, “and what they were”: he wants in this act, it’s likely that he wants: “Before going astray through this action, they were rightly guided, however through this action they have increased their misguidedness.”³⁴ It is written in the following saying: “kill not your children because of poverty - We provide sustenance for you and for them”³⁵ This means, do not bury your children alive out of fear of bringing poverty on yourselves through expenditure, for surely God is your provider and theirs, and their sustenance is not your responsibility, so fear for their lives yourselves, in your inability to provide for them and show strength for them. Poverty is the source of the following saying which says: “She became poor from excess, so I am poor from poverty, and this if his excess disappeared, his money went, and he was bankrupt” Through Ali and through Ibn Abbas the saying is passed down: “do not kill your children from poverty (al-implaq)”, al-implaq is poverty,³⁶ and they used to kill their children out of fear of poverty.³⁶

The same command is mentioned in Surat al-Isra’ which says the following: “And kill not your children for fear of poverty. We provide for them and for you. Surely, the killing of them is a great sin.”³⁷ The verse: prohibit the infanticide that the Arabs were committing, and “poverty”. Poverty and lack of money. Abu Dawud recounts through Ibn Abbas: God’s Prophet (peace be upon him) said: “When he had a daughter, he did not bury her alive, did not degrade her, and her father did not impact upon her. He said: It means males enter the paradise of God.³⁸ In this verse there are two issues: the first – “al-implaq”: poverty and lack of wealth. The man became poor means that there was nothing left for him except ‘al-mulqaat’ or smooth bonelike rocks. One on its own is a ‘malqa’. I became poor and impoverished so I do not have noble affairs.³⁹ Those who know that God is the provider, their hearts are light and they do not fear for their children, even if they are many.⁴⁰ Whoever does not know that God had planned to provide for him since the beginning of time, he will go astray in wrong paths, and he will have problems in his heart and body. It is said that Abdallah bin Masa’ud said: a man came to the Prophet (peace be upon him) and asked him: “What is the worst sin?” and the Prophet (peace be upon him) responded: “Making an enemy to God, even though God created you.” Then he asked “Oh Prophet of God (peace be upon him), what is after that?” and he replied “Committing adultery with the wife of your neighbour.” Then he asked “Oh Prophet of God (peace be upon him), what is after that?” and he said “That you kill your

³⁴ “Diamonds of Goodness in the Tafsir (commentary) of the Quran”, Abu Zayd Abd al-Rahman bin Muhammad bin Makhluḥ al-Tha’labi, (d. 875 after the Hijra), Section 2, p6.

³⁵ Surat al-An’am, verse 151 (translation taken from <http://www.noblequran.com/translation/>)

³⁶ “All Expressions in the Interpretation of the Qur’an”, Muhammad bin Jarir bin Yazid bin Kathir bin Ghalib al-Amli, Abu Ja’far al-Tabari (d.310 after the Hijra), section 12, first edition, realised by Ahmed Muhammad Shakr, “Letter Organisation”, 1420 after the Hijra/2000 AD, p217.

³⁷ Surat al-Isra’, verse 31 (translation taken from <http://www.noblequran.com/translation/>)

³⁸ “Diamonds of Goodness in the Tafsir (commentary) of the Quran”, Abu Zayd Abd al-Rahman bin Muhammad bin Makhluḥ al-Tha’labi, (d. 875 after the Hijra), Section 2, p277.

³⁹ “All of the Provisions of the Qurtabi Qur’anic Interpretation”, Abu Abdallah Muhammad bin Ahmed bin Abi Bakr bin Farah al-Ansari al-Khazraji Shams al-Din al-Qurtabi (d.671 after the Hijra), section 10, edition 2, realised by Ahmed al-Bardoni and Ibrahim Atfish edition 2, the Egyptian Publishing House, Cairo 1384 after the Hijra/1964 AD, p252.

⁴⁰ “Subtleties of the Signs”, Abd al-Karim bin Hawazin bin Abd al-Malik al-Qushayri (d.465 after the Hijra), section 4, p258

²⁷ <http://www.altafsir.com/Books/IbnAbbas.pdf> - [6:137]

²⁸ Quran Commentary attributed to Imam al-Tabrani, Abu al-Qasim Sulayman bin Ahmad bin Ayyub bin Muteer al-Lakhmi ash-Shami at-Tabrani, in the explanation of Surat al-An’am, verse 137.

²⁹ “Aysar al-Tafasir” (Easier Quranic Commentaries), Asa’d Homid, section 1, p927

³⁰ Surat al-An’am, verse 140 (translation taken from <http://www.noblequran.com/translation/>)

³¹ <http://www.altafsir.com/Books/IbnAbbas.pdf> - [6:140]

³² “Zad al-masir fi ‘ilm at-tafsir”, Jamal al-Din Abd al-Rah bin Ali bin Muhammad al-Jawzi (d. 597 after the Hijra), part 2, p422.

³³ “Ali al-Qadir’s Simplification of the Summary of Tafsir Ibn Kathir”, Muhammad Nasib al-Rafa’i, part 1, p800

son out of fear that he would eat your food.”⁴¹ If Islam has forbidden that someone kill someone else, then it has also forbidden that he kill himself: “Do not kill yourself because God is merciful with you.” It was made incumbent on the Muslim that he take care of himself and his health. The Prophet Muhammad (peace be upon him) said: “You owe something to God, and to yourself, and to your family, so give each person what is due to them.”⁴² Islam has required many rights for children in times of war, and these rights, in so far as they are general rights, are applicable to adults and children, and in so far as they are specific rights, are applicable to children. It is said that the Prophet of God (peace be upon him) would command his armies to not maim the bodies of his enemies. It is said that Safwan bin ‘Asaal said: “The Prophet of God (peace be upon him) sent us in a military detachment and said: “March in God’s name and in His way, and kill the infidels but do not maim or act treacherously or kill a child” It is said that Ibn Abbas (may God be satisfied with him) said: “When the Prophet (peace be upon him) sent out armies, he said: “Go out in the name of exalted God to kill the infidels in the way of God, but do not act treacherously, do not be exaggerated in your killing, do not maim, do not kill children, nor the proprietors of monasteries. It was said that Ans said that the Prophet (peace be upon him) said: “Go out in the name of God and be with the communion of God’s Prophet (peace be upon him), and do not kill an old man or a child or a woman, and do not be exaggerated in your killing, and take spoils of war, and be good, for God loves those who are good.”⁴³

The rightly guided caliphs (may God be satisfied with them) complied with this way in all of their wars. Yahya Ibn Sayyid said that Abu Bakr sent his armies to ‘al-Sham’ (Syria, Lebanon, Jordan and Palestine), and he went out walking with Yazid bin Abi Sufyan, and Yazid was prince of one quarter of these quarters, and so Abu Bakr said to him: “I am going to give you ten pieces of advice: do not kill a woman, or young boy, or an old man, or cut down a tree with fruit, or destroy buildings, or kill sheep or camels belonging to your enemies, unless you want to eat them, or cut down a palm tree or burn it, and do not be a coward.”⁴⁴ Among these things is that you treat prisoners of war well, for God praises his believers and promises to them a good reward, as it is said in the Quran: “And they give food, in spite of their love for it (or for the love of Him), to Miskin (poor), the orphan, and the captive,”⁴⁵ For this reason, the companions of the Prophet (peace be upon him) would give food to their prisoners which was better than the food they and their children would eat, and this thing was reported by some of the prisoners, among them Abu Aziz bin Umayr, the brother of Musa’b bin Umayr who reported his story of being a prisoner of the ‘ansar’ (the Muslim converts from Medina). He said: I was with a group of the ‘ansar’ after they captured from the battle of Badr, and when they would

eat their meals they would give me the bread, and they would eat the dates, because of the advice of the Prophet of God (peace be upon him) for the treatment of prisoners. So any one of them who wished to eat, would give me the bread that was in his hand. So I would tell him to eat the bread, but he would return it to me.⁴⁶ This shows that Islam put in place protection for children from the effects of war, whether they be Muslim or non-Muslim. This protection is based on mercy, morality and humanitarian values. The protection of children is of two kinds, the first: humanitarian protection which includes adults. If Islam prohibited the maiming of the corpses of the enemy, then the priority is not maiming of children’s bodies. Equally, Islam prohibited treachery against enemies, so the prohibition of treachery towards children is imperative. Also, there is the condition of the prisoner: if Islam made compulsory the feeding of prisoners, then this is a priority for children. Hundreds of thousands of Muslim children in Burma face mass murder through burning, drowning and all kinds of mass killing, in view of the international community without the UN undertaking any punishment of those who committed this brutal massacre. Islam put in place humanitarian rules for the protection of children from killing, and for the preservation of their lives, even if their parents were not Muslim. This protection includes times of peace and war, and Muslims and unbelievers.

Protection of the child from torture

International law prohibits torture in general, and child torture in particular, meaning any kind of torture. Islamic Sharia law has prohibited the torture of children. We will discuss research about the protection of children from torture in international law and Islamic Sharia law in the following two sections:

Section One - the protection of the child from torture in international law

In general, international law safeguards the protection of the human body from material and emotional torture. Torture means used against someone’s body which may not lead to his death. The Universal Declaration of Human Rights has made the welfare of the human body an obligation⁴⁷ and the International Covenant on Civil and Political Rights has prohibited the torture of a human, and that he be subject to medical experiments, or an operation without his permission.⁴⁸ Children have all of the kinds of protection that are available for adults, as well as special protection given their inability to defend themselves. It is not permissible to attack them, or their bodies, or torture them, or to be unjust towards them, and they are subject to special protection during disasters, either in times of war, or natural disasters.⁴⁹ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified in 1984, recognized torture as being: “...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him

⁴¹ “Sea of Knowledge”, Abd al-Laith Nasr bin Muhammad bin Ahmad bin Ibrahim al-Samarqandi (d. 373 after the Hijra), section 2, p5.

⁴² See: Islamic scholar Barhan al-Din Abi al-Hasan Ali bin Abi Bakr Abd al-Jalil al-Rashdani al-Marghani, “Guidance in the Explanation of the Beginning of the Principle”, section 3, Mustafa al-Babi al-Halbi Cairo edition, p160. Dr. Mustafa Ibrahim al-Zalmi, “Human Rights in Islam”, Bayt al-Hikma, the Free Table Series, Special number of human rights in Islamic Sharia law and international law, number 23, September 1998, the Baghdadi Literary Printing Club Ltd, Baghdad, 1998, p14.

⁴³ Al-Khalili, Hamd bin Ahmad, the scholar of the legalisation of rights in Islam online.

⁴⁴ Previous reference

⁴⁵ Surat al-Insan, verse 8 (translation taken from <http://www.noblequran.com/translation/>)

⁴⁶ Previous reference

⁴⁷ Article 3 of the Universal Declaration of Human Rights

⁴⁸ Article 7 of the International Covenant on Civil and Political Rights stipulates the following: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

⁴⁹ See our book: “International Laws for Human Rights”, “Dar al-Thaqafa” (Culture House), Amman 2010, p430.

for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.⁵⁰The right to protection from torture is among the rights included in the Universal Declaration of Human Rights, which demands the right of each individual to security of person⁵¹, and prohibits that anyone be subjected to torture or degrading treatment or punishment.⁵² It is necessary that any child who is physically, mentally or socially disabled be cared for with the treatment, education and special care that is required by his condition.⁵³The right to protection from torture is among the rights that are attached to the human body. This right means that the human body is inviolable and enjoys international legal protection.⁵⁴An encroachment upon the body from someone else is not permissible, whether by state authority, or by civilians, whatever the reason. No kind of blow, injury or torture is permissible. The right to bodily security is not just a positive thing which gives someone the right to demand from others, but also makes incumbent upon others the respect of his body. This right surrounds the human body with complete sanctity and prevents any discussion of its violation in any way.⁵⁵ It also forbids torture, even if it would not lead to death, or to a permanent disability. Torture is just forbidden by law.

The human right to security of person does not allow the infliction of suffering on a body from someone else, so it is not permissible to: hit or injure him, or give him harmful material, or commit any act which violates his body, or causes a permanent disability, like the cutting off, detachment or amputation of a limb, or the loss or lack of welfare, or create a state of madness, or a mental illness, or completely or partly, permanently or temporarily, incapacitate one of the senses, or cause mutilation on his body, or cause him pain, or illness or incapacity, or subject him to medical experiments.⁵⁶Protection from torture is an inalienable human right, and the transgression of the body is not permissible, even if the person agrees, or this will save someone else, except if there is a bodily benefit to the person himself. For instance, if someone had an illness in one of their limbs and it is not possible to save him except by amputating or removing the limb. The absolute protection from torture in the law is not a right for the person himself but rather it is the right of society not to have suffering inflicted upon one of their bodies. So, someone cannot, according to this law, behave by selling part of their body, except if it was possible to remove part of this body without inflicting pain, like milk or hair. It is not permissible

for someone to demand the torture of himself, or to undertake the torture of himself, or go on hunger strike, or burn himself. Equally, it is not permissible to give someone materials that would cause him pain without justification, unless there was a physical advantage for the person, for instance the giving of medication that would cause him pain in order to heal him. These, along with other pain inflicted for his physical advantage, which could lead to the saving of his life, or ending current or future pain.

In order to protect children from torture, the Convention on the Rights of the Child, signed in 1989, made incumbent on countries that they take the following steps:

- The issuing of laws and directives: nation parties must undertake all of the appropriate legislative, administrative, social and educational measures to protect child from all kinds of violence, harm, physical or mental abuse, neglect, negligent treatment, ill-treatment or exploitation, including sexual abuse, whether they take place under the care of the parents or the legal guardians, or someone else committed to the child's care. It is desirable that, economy-permitting, these preventative measures include effective procedures to put in place social programmes to provide the necessary support for children and those responsible for their care, as well as other prevention methods, in order to identify the cases of child abuse mentioned even now, and to report them, refer them, investigate, treat and following up on them, and involve the judiciary if necessary.⁵⁷In terms of the burden that the agreement imposes on nations, developed countries can implement these commitments as they have the material and administrative resources.
- Protection from sexual exploitation: nation parties are committed to the protection of children from all kinds of sexual exploitation or violation, and to these ends nations undertake, in particular, all appropriate national, bilateral and multilateral measures in order to prevent:
 - The prompting or coercion of a child to engage in any unlawful sexual activity.
 - The exploitative use of a child in prostitution, or any other kind of unlawful sexual activity.
 - The use of children to make pornographic videos and materials.⁵⁸
- We consider that it should not just be limited to the protection of children from sexual exploitation in the case of coercion, but should also include cases in which the child agrees, as this agreement is considered void, given the child's age. For this reason, it should be made incumbent on the writers of the agreement not to mention coercion.
- Protection from abduction and sale: nation parties must undertake all appropriate national, bilateral and multilateral measures to prevent child abduction or sale, or their trade of any kind, or for any reason.⁵⁹ We note that this commitment is not being implemented by the nations. For instance, a French humanitarian organization kidnapped 104 children from Darfur in Sudan, and the French President visited Chad and

⁵⁰ Paragraph 1, Article 1, The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, presented for signature, ratification and accession by United Nations General Assembly resolution 39/46 of 10 December / December 1984 entry into force: June 26, 1987 date, according to the provisions of Article 27.

⁵¹ Article 3 of the Universal Declaration of Human Rights.

⁵² Article 5 of the Universal Declaration of Human Rights.

⁵³ Principle 5 of the Declaration of the Rights of the Child issued by the UN General Assembly in 1959.

⁵⁴ See: Robert Goldwin, "How Constitution Secure Rights", Washington, 1985, p108.

⁵⁵ Dr. Mustafa al-Jamal and Dr. Abd al-Hamed Muhammad al-Jamal, "A General View on Law", University Publishing House, Beirut, p325.

⁵⁶ Dr. Suhail Hussein Alfatlawi, "The Theory of Rights", Arab Thought Publishing House, Beirut 1995, p17

⁵⁷ Article 10 of the Convention on the Rights of the Child, 1989.

⁵⁸ Article 34 of the Convention on the Rights of the Child, 1989.

⁵⁹ Article 34 of the Convention on the Rights of the Child, 1989

released them [the arrested humanitarian workers], despite the fact that Chad is responsible for their trial.⁶⁰

- Prevention from harmful child exploitation: nations must protect the child from all kinds of exploitation which are harmful to the child's welfare.⁶¹
- Protection of the child from torture: nations are committed to undertake special procedures for the protection of children from suffering from any torture, and in particular they undertake the following:
 - That no child should be exposed to torture, or any other kind of harsh, inhumane or humiliating treatment or punishment. Equally, execution or imprisonment for life should not be imposed for crimes committed by those under the age of 18, without the possibility of release.
 - No child should be barred from freedom in an illegal or abusive manner. It is necessary that the arrest, detention or imprisonment of a child be carried out according to the law, and it must only be carried out as a final and resort, and for the shortest period of time possible.
 - Every child denied his freedom must be treated with humanity and respect for the inherent dignity of the human, and in a manner which takes into account the needs of people of his age. Most importantly, detained children must be kept separately from adults, as long as the child's interest is not compromised by this, and a child must have the right to remain in contact with his family through correspondence and visits, except in exceptional circumstances.
 - Every detained child has the right to rapid access to legal assistance, and other kinds of appropriate help, as well as the right to appeal against the legality of his detention in court, or another appropriate independent and neutral authority, and to a prompt decision in such a case.⁶²
 - It has been noted that these procedures that nations must undertake have not been applied to practice, so children in many countries of the world continue to suffer from persecution and torture because of civil wars in Iraq, Syria, Libya, Sudan, Somalia and numerous other countries of the world. This is particularly the case as numerous developed countries arm the opposition or militias which carry out such acts.

Even if the law had approved, as an exception, the ending of the right to human life, the right to the security of person is among the fixed rights of children. So it is not permissible to torture a child, even if he had carried out a crime which

required punishment, or if he had been sentenced to execution or killing. This is the case for any other related punishment which is harsh and could end his life, as no infringement on the body is allowed, so it is not permissible to remove his eye or leg, with the pretext that this could lead to the ending of his life. The transgression of a child's body is allowed only if it is to his benefit, or the general benefit. For instance, the carrying out of a surgical procedure could be imposed, if he was suffering from an illness which demanded this. Equally, it is permissible to take a blood sample in order to carry out medical tests, or for penal purposes, even if he refused. It is also permissible to detain him, in order to prevent harm coming to him, or if a particular medical condition requires it. The Convention Against Torture, adopted in 1984 requires that nations undertake the following:

- Undertaking effective legislative, administrative and judiciary procedures, and any other procedures, in order to prevent torture in any region under its jurisdiction.
- It is not permissible to justify any exceptional circumstances, whatever they may be, whether in the case of war, or under threat of war, or internal political instability, or any other general state of emergency which could be used as an excuse for torture.
- Orders issued from high-ranking officials or public authority cannot be used as an excuse for carrying out torture.⁶³
- It is not permissible for any country to compel someone to leave, or repatriate them, or hand them over to another country, if there are real reasons suggesting that he will be in danger of suffering from torture.
- The relevant authorities must supervise to determine what these reasons are if they are present, and take into account all relevant considerations, including, if applicable, the presence of a consistent pattern of grave or gross violations, or mass violations of human rights in the country concerned.⁶⁴
- Each country guarantees that all kinds of acts of torture be considered crimes according to their criminal law. The same applies to anyone attempting to commit torture or to carrying out any other act which constitutes complicity or participation in torture. These offenses should be made punishable by appropriate penalties that take into account their grave natures.⁶⁵
- Each country must undertake the necessary procedures, to establish its jurisdiction over the crimes of torture committed on its territory, or the planes or boats belonging to it.⁶⁶
- Nations must commit to handing over criminals who commit the crime of torture to the countries which demand them.⁶⁷ Torture is considered among the crimes for which deportation is permissible.⁶⁸
- Each state must include education and information about the prohibition against torture in their training programs for law enforcement personnel, whether civilian or military, workers in the medical field, public officials, or anyone else involved in the detention, interrogation or treatment of individuals subjected to

⁶⁰ The French President Nicolas Sarkozy visited Chad on 4/11/2007 and returned seven of the 17 Europeans who are being tried on suspicion of involvement in a failed attempt to smuggle 103 African children from Darfur in Sudan. He "returned, in the evening, the three journalists and four Spanish air stewardesses in the case of the "Zoe's Ark" NGO which abducted the children from Sudan. The government of Chad arrested members of the organisation, but the French President released them and took them on a plane to France. French newspaper, La Croix published 4/11/2007. The President of Chad, Idris Dubei, released three journalists and the Spanish air stewardesses, accused of the operation to abduct Sudanese and Chadian children from refugee camps on the Chadian border with Sudan. In contrast, a number of Chadian judges expressed dissatisfaction with the release of the journalists and flight attendants, denouncing what they saw as political pressure exerted on the judiciary to get this release.

See the newspaper Al-Sharq al-Awsat, edition released Monday 25th Shawwal 1428 after the Hijra, or 5th November 2007, edition 10569.

⁶¹ Article 36 of the Convention on the Rights of the Child, 1989.

⁶² Article 37 of the Convention on the Rights of the Child, 1989.

⁶³ Article 2 of the Convention Against Torture, 1984.

⁶⁴ Article 3 of the Convention Against Torture, 1984.

⁶⁵ Article 4 of the Convention Against Torture, 1984.

⁶⁶ Article 5 of the Convention Against Torture, 1984.

⁶⁷ Article 6 of the Convention Against Torture, 1984.

⁶⁸ Article 8 of the Convention Against Torture, 1984.

any form of arrest or imprisonment. Each nation party must guarantee the inclusion of this prohibition in the rules and instructions issued in regard to the duties and functions of any such persons.⁶⁹

- The foundation of a committee for the opposition of torture to carry out the functions set out in the convention. The committee should be composed of ten experts possessing a high level of morality, whose skill in the area of human rights has been witnessed, and who will serve on the committee in a personal capacity. Countries must elect them, taking into account equitable geographical distribution and the usefulness of including some persons having legal experience. This committee will undertake the monitoring in implementing the commitments mentioned in the Convention Against Torture.⁷⁰
- Despite the international agreements and announcements, the means of torture have increased with the development of technology. Both landline and mobile phones have been used in torture, as well as social media tools, the internet and other means of torture, and particularly psychological torture, and the defamation of people and their families.

Children in many countries of the world continue to suffer from systematic torture from the state, and torture committed by the society for a variety of reasons.⁷¹

The protection from torture in Islam

Islam prohibited the violation of the security of person, and specified appropriate punishments for each case, and they called it non-murderous crime. Like cutting someone, or their hand, or their finger, or removing teeth, or twisting the head.⁷² Equally it prohibited torture, treating an accused criminal in an inhumane manner, because this is an assault on human dignity. It has been reported that Omar bin al-Khattab said: "A man cannot believe in himself if he suffers from torture or imprisonment."⁷³ Also, in the account of a Muslim, God's Prophet (peace be upon him) forbade blows to the face, or branding someone's face.⁷⁴ Islam also prohibited torture by using fire.⁷⁵ There was a consensus on the prohibition of torture by fire.⁷⁶ In Islam a rule was put in place that if someone tortures someone else, he should undergo something

similar to that which he has committed, as seen in the following saying: "We wrote for them: a soul for a soul, an eye for an eye, a nose for a nose, a tooth for a tooth, injuries are a reprisal, for whoever you deem to deserve the punishment, this is penitence for him, for whoever does not rule by God's revelation, they are the oppressors."⁷⁷ If someone acted in a shameful manner towards his relation, then as he has acted, the relation should act towards him.⁷⁸ By "[what] we wrote for them" he intends the Torah/Old Testament, "a soul for a soul", as he wrote "injuries are a reprisal", and this verse is decreed for this nation (umma), and all of what God mentioned in the Qur'an: that he made a revelation in the first book, and he did not repeal it in the Qur'an, which is a confirmation of His previous work.⁷⁹ Retribution to the self and other parties is introduced in this verse.⁸⁰ So, a soul for a soul, an eye gouges an eye, a nose amputates a nose, an ear mutilates an ear, a tooth removes a tooth, and the injuries are a retaliation which return like for like upon the injurer.

However, when the person is already injured, or a rotting corpse, or has a broken thigh so he gives an amount for the murder of the person instead. That is to say, whoever forgives someone who has wronged them, God will forgive them for all their sins.⁸¹ Not only does Islam prohibit the torture of people, but indeed it prohibits the torture of animals, so it prohibits their confinement while they are alive and throwing things at them. A woman imprisoned a cat, and so went to hell. It is said that Ibn Masa'ud (may God be satisfied with him) said: "We were travelling with God's Prophet (peace be upon him), and he went to his need, and we saw a female donkey with two young, and we took the young, and the donkey came braying and then the Prophet (peace be upon him) and said: "Who inflicted suffering on her child? Return her son to her" and he said an ant colony that we had burned and asked: "Who burned this?" and we replied "us" and he said "no-one should torture with fire, except the Lord of fire."⁸² Muslims in many countries, particularly Burma and other countries of South-East Asia face torture on the grounds that they are Muslim without the intervention of the UN, in order to prevent it or put a stop to these heinous crimes. On Friday 3rd June 2012 the Burmese army surrounded mosques in order to guard against protests coming out after prayers, and they prevented Muslims from leaving in one thrust, and during the exit of the Muslims from the prayers the Buddhists threw stones at them, and strong clashes broke out. So the army imposed a military curfew, strictly enforcing it on Muslims while leaving the Buddhists to wreak havoc. The Buddhists wandered around in

⁶⁹ Article 10 of the Convention Against Torture, 1984.

⁷⁰ Article 17 of the Convention Against Torture, 1984.

⁷¹ The British newspaper "The Daily Mail" has uncovered in a filmed report what it called "Chinese torture camps for the children of the Olympics" in order to defeat the American athletes and win gold medals. They provided a very harsh image of a young girl who appears to be 4 or 5 years old, and her face is wracked with horrible pain, while a gymnastics coach stands on her tiny feet attempting to form her body to become incredibly flexible and suited to the sport of gymnastics, in which China achieves gold medals.

⁷² See: Islamic scholar Barhan al-Din Abi al-Hasan Ali bin Abi Bakr Abd al-Jalil al-Rashdani al-Marghani, previous reference, p165 and Ahmed Kamal Abd al-Aziz, previous reference, p314

⁷³ Narrated by a Muslim: See: Muhammad Ali bin Muhammad bin Alan bin Ibrahim Al-Bakri al-Sadiqi al-Shaf'ai, "Dalil al-Falihin li-Turuq Riyadh al-Salihin", section 8, Knowledge House for Printing, Publishing and Distributing, Beirut 2004, 446, p23.

⁷⁴ Muhammad bin Ali bin Muhammad bin Abdallah al-Shokani al-Yemeni, "Neil al-Awtaar", realised by Asam al-Din al-Sababti, Dar al-Hadith, section 3, p148.

⁷⁵ Abu al-Hasan UbaydAlah bin Muhammad Abd al-Salam bin Khan Muhammad bin Aman Allah bin Husam al-Din al-Rahmani, "Observance of the Keys of Explaining the Latern of the Lamps", Management of Scientific Research, Missionary Work and the Office of Mufti, The Salafi University, Varanasi, India, 1984, third edition, p484.

⁷⁶ Surat al-Ma'ida, verse 45.

⁷⁷ Muhammad Rashid bin Ali Ridha bin Muhammad Shams al-Din bin Muhammad Buha' al-Din bin Minla 'ala Khalifat al-Qalmuni al-Husayni, "Commentary of the Wise Qur'an (tafsir al-Manar)", the General Egyptian Organisation for the Book, Cairo 1990, section 6, p331.

⁷⁸ Abu Abdallah bin Abdallah bin 'Aisa bin Muhammad al-Muri, al-Ilberi, known as Ibn Abi Zamin al-Maliki, "Tafsir al-Qur'an al-Aziz", realised by: Abu Abdallah Hussein bin 'Akasha - Muhammad bin Mustafa al-Kanz, al-Farouq al-Haditha, section 2, Cairo 2002, p20.

⁷⁹ Abu al-Muthfar, Mansour bin Muhammad bin Abd al-Jabar Ibn Ahmed al-Marozzi al-Sama'ani al-Tamimi al-Hanifithum al-Shafa'i, "Tafsir al-Qur'an", realised by: Yasir bin Ibrahim and Ghanim bin Abbas bin Ghanim, National Publishing House (Dar al-Watan), Riyadh, 1997, section 2, p42.

⁸⁰ Abu al-Abbas Ahmad bin Muhammad bin al-Mehdi bin 'Ajib al-Hasani al-Anjri al-Fasi al-Sufi, "Al-Bahr al-Mudid fi Tafsir al-Qur'an al-Majid" ("The Stretching Sea in the Commentary on the Holy Qur'an"), realised by: Ahmed Abdallah al-Qarshi Raslan, published by: Dr. Hasan 'Abbas Zaki, Cairo, 2002, section 2, p44.

⁸¹ Abu Zakriya Muhi al-Din Yahya bin Sharif al-Nuwi, "Riyadh al-Salihin", Letter Organisation ("Mu'asasat al-Rasala), Beirut 1998, p455.

⁸² Abu Zakriya Muhi al-Din Yahya bin Shari al-Nuwi, Previous reference, p456.

Muslim neighborhoods with swords, sticks and knives, burning houses and killing them before the eyes of the security forces. Many Muslims (Arakan) began to escape at night through the Bay of Bengal to neighboring countries and many of them died at sea amid an acute media blackout on the issue of Burma in Arakan, as people are exposed to the process of systematic extermination, claiming the lives of more than 2,000 Muslims and forcing the displacement of more than 90,000 of them. Those who were hard for them to kill, but did not escape, were brought together in camps to be subjected to a slow, Sadist death. Neither international bodies, nor charitable organizations nor forms of media are allowed access to these groups and what is known so far is that they have completely enslaved the Burmese army. Young and old are being made to do forced labour, and for free. As for Muslim women, they are being circulated in the Burmese army, where they face the ugliest kind of rape.⁸³

The protection of children from murder and torture in armed conflicts

Children are exposed to the dangers of armed military operations. That is to say, children are most effected by international wars and civil wars, and particularly since the development of modern weapons, whose destruction is total.⁸⁴ By armed conflicts we mean international and civil wars:

First- The Protection of Children from Murder and Torture in International Law

International law has placed many commitments on nations for the protection of children from the effects of armed conflict. Among these commitments are:

- In all circumstances children must be among the first to receive protection and aid.⁸⁵
- Nations are committed to respect the rules of international humanitarian law applied upon them during armed conflicts and having relation to children. They must guarantee respect of these laws.
- Nations must undertake all possible measures to guarantee that those under the age of 15 do not participate directly in the war.
- Nations must refrain from recruiting anyone under the age of 15 into the armed forces. With regard to the recruitment of those who are over the age of 15, but not yet 18, the priority must be given first to those over the age of 18.
- Nations must undertake, according to the required commitments of international humanitarian law for the protection of the civilian population during armed conflicts, all possible practical measures in order to guarantee the protection and welfare of children affected by the armed conflict.⁸⁶

- Nations must undertake the appropriate measures to be responsible children seeking refuge, or those who are considered refugees according to international laws and procedures, or the local laws in effect, receiving protection and humanitarian assistance according to the rights contained in international convention, whether or not they are accompanied by their parents, or someone else.
- Nations must guarantee, according to what they consider appropriate, cooperation with any efforts launched by the United Nations, and any other authorised international governmental organisations, or non-governmental organisations cooperating with the UN, to protect children or to search for the parents or any other family members of an unaccompanied refugee child, in order to obtain the information necessary to reunite the family. In cases where the parents or other members of his family cannot be found, the child shall be accorded the same protection as any other child deprived permanently or temporarily from the family environment for any reason.⁸⁷

The result of the suffering experienced by the women and children of the civilian population, who fall into excessively difficult conditions, during emergencies and armed conflicts in the struggle for peace and self-determination, national liberation and independence, are victims who suffer severe harm. Women and children suffer greatly in many areas of the world and especially areas subject to suppression, despotism, colonialism, racism and rule by foreigners. The powerful continuance of colonialism, racism, foreign rule despite definitive general condemnations subjecting many of the peoples of the yoke and the suppression of the national liberation movements, through cruelty and inflicting heavy suffering losses upon countless populations under their domination, especially women and children. Continued perpetration of serious assaults on the fundamental dignity of the human person's freedoms, and the continuation of the colonial regimes, racism and the rule by foreign countries in violation of international humanitarian law, and the realization of the international community of its responsibility for the fate of the rising generation and the fate of mothers, who have come to play a public role in society and in the family, especially in the upbringing of children. We need to provide special protection for women and children among the civilian population, for this reason the United Nations General Assembly issued a formal declaration calling on nations to do the following:

- Prevent attacks on civilians and bombing. This causes untold pain, particularly to women and children, who are the least immune members of society, and the acts are condemned.
- The use of chemical and biological weapons during military operations is one of the gravest violations to the Geneva Protocol of 1925, and the Geneva Conventions of 1949, and the principles of international humanitarian law, and inflicts heavy losses on the civilian population, among whom the women and children do not have the means to defend themselves, and is subject to heavy condemnation.

⁸³ Alahale.net website, <http://alahale.net/article/4167>, 3rd July 2012. See: Salma Samir Ali, "The Muslims of Burma Suffer from Murder and Torture Over Three Centuries", 28/06/2012, Masress website, <http://www.masress.com/elgomaa>.

⁸⁴ For details on children affected by wars see the following: AlaaFaour and Nader Abdul Quddus Abdul Rahman Abdul Khaliq, "Children and War", the Al-Ahram Center for Human Rights Studies, Cairo 1999.

⁸⁵ The eighth principle from the Declaration of the Rights of the Child issued in 1959.

⁸⁶ The first paragraph of the 22nd article of the Convention on the Rights of the Child, 1989.

⁸⁷ The second paragraph of the 22nd article of the Convention on the Rights of the Child, 1989.

- The fulfilment of the commitments attendant upon them from according to the Geneva Protocol of 1925 and the Geneva Conventions of 1949, and equally other contracts under international humanitarian law linked to the respect of human rights during armed conflicts, which offer important guarantees for the protection of women and children, is incumbent upon all nations.
- It is incumbent upon all nations participating in armed conflict or military exercises in foreign territories, that they do everything in its power to spare women and children from the ravages of war. They must take all necessary steps to guarantee the prevention of the undertaking of measures such as persecution, torture, punishment, degrading treatment and violence, most particularly against that segment of the population that is composed of women and children.
- All kinds of suppression, harsh and inhumane treatment against women and children, including confinement, torture, execution by firing squad, group arrest, mass punishment, destruction of residences, and forced displacement, carried out by fighting troops during military operations or in occupied territories, are considered to be criminal acts.
- It is not permissible to deprive civilian women and children, who find themselves in states of emergency or armed conflicts during the struggle for peace and self-determination, national liberation and independence, or who live in occupied areas, from food and shelter, or medical assistance, or any other fixed rights, according to the Universal Declaration of Human Rights, or the International Covenant on Civilian and Political Rights, or the International Covenant on Economic, Social and Cultural Rights, or the Declaration of the Rights of the Child, and other international agreements on humanitarian law.⁸⁸
- In the case in which one or both of the parents fall victim to proceedings during armed conflict, or suffer arrest, detention, exile, deportation or death (including death arising from any cause during the detention of the person by the state), that state must provide on request by the parents, the child or, when necessary, to another state, basic information concerning the whereabouts of the missing family member (or members), unless this information is not in the best interests of the child. Also, states must ensure that the provision of such information does not lead to any damaging consequences for the person (persons) involved.⁸⁹
- Nations are committed to respecting the rules of international humanitarian law applied upon them during armed conflicts and having relation to children. They must guarantee respect of these laws.⁹⁰
- Nations must take all possible practical measures to ensure that those under the age of 15 do not directly participate in the war.⁹¹
- Nations must refrain from recruiting anyone under the age of 15 into the armed forces. With regard to the recruitment of those who are over the age of 15, but not

yet 18, the priority must be given first to those over the age of 18.⁹²

- Nations must undertake, according to the required commitments of international humanitarian law for the protection of the civilian population during armed conflicts, all possible practical measures in order to guarantee the protection and welfare of children affected by the armed conflict.⁹³

In spite of international treaties on the protection of children in international and internal conflicts, children are nonetheless exposed to various types of murder, torture and disability. When the USA began strikes on Iraq in 2003, millions of children were exposed to murder, disability and illnesses caused by weapons containing depleted uranium. Just as wars in Kosovo, Afghanistan and Libya led to the deaths of many children. Civil wars have contributed to the deaths of 200,000 children each year in 22 countries, largely Arab countries, and they are: Sudan, Iraq, Libya, Syria, Somalia, Palestine and many other countries. They have also caused the detainment, displacement and separation from their families of millions of children. Often the occupation forces arrest and detain children and kill them in front of their families.

Second – The Protection of Children from Armed Conflict in Islamic Sharia Law

Islamic Sharia law requires the protection of children during armed conflict, and not only for Muslim children, but also for the polytheists. So, childhood in Islam has inviolability and protection. The issue has inspired controversy between Muslim jurists on the issue of polytheist children. They say that the children of unbelievers follow the system of justice according to their parents. The Islamic scholars ask, if we go to kill the unbelievers, will we kill their children? The principle is that we do not kill a child, or a woman, or an old man. The problem is, if they bring their children and their descendants out and line them up, then all of the women and children will die collectively, as children flee with their parents. For this reason, when it has been confirmed that he is the son of unbelievers, he remains their son in times of war, whether they were 'Zemin' (non-Muslim subjects living free in Muslim land) or fighters. This is conveyed only in well-known Islamic rulings.⁹⁴ Islam makes fighting compulsory for all Muslims with the exception of women, old people, young women, the mentally ill, the weak and unbelievers under Muslim rule.⁹⁵ These cannot be recruited in times of war.

Islam has forbidden the recruitment of children in times of war. The age of military service is 15 years old. It is reported that Ibn Omar said: "One day the Prophet of God (peace be upon him) bid me to the fighting, but I was just a boy of 14 years old so he did not permit me. One day he bid me to battle, and I was a boy of 15 years old, so he permitted me." The caliph Omar bin Abd al-'Aziz ruled that this age was the boundary between childhood and adulthood. He wrote to his workers to impose that those over the age of 15 [be

⁹² The fourth paragraph of article 38 of the Convention on the Rights of the Child, 1989.

⁹³ Al Jazeera News interview with the representative of the Secretary General of the United Nations regarding the protection of children on 06.04.2014.

⁹⁴ Mansour bin Younis bin Adris al-Bahuti, "Kashaf al-Qana' 'an Matan al-Iqna'", part 3, Riyadh, p36.

⁹⁵ Sahih al-Muslim, "Atomic Explanation", part 13, Beirut 1972, p12 and the Mother to al-Shafa'i, volume 2, part 4, Knowledge Publishing House (Dar al-Ma'rafah), Beirut, p162

⁸⁸ Article 9 of the Convention on the Rights of the Child, 1989.

⁸⁹ The first paragraph of article 38 of the Convention on the Rights of the Child, 1989.

⁹⁰ The second paragraph of article 38 of the Convention on the Rights of the Child, 1989.

⁹¹ The third paragraph of article 38 of the Convention on the Rights of the Child, 1989.

differentiated from] those under the age of 15, who remain dependents.⁹⁶ On this basis, it is not possible to recruit children, even if they consent. That is, if they are not intent on it. If they are thrown into battle they could be exposed to danger given their inability to defend themselves.⁹⁷ It was mentioned in stories that Zubayr said: about the scenes which he witnessed, he said: "I witnessed God's Prophet (peace be upon him) one day in battle with the BeniQuraytha (a Jewish tribe), and said whoever has a pubis [pubic hair], kill him, and whoever does not have a pubis [pubic hair], leave him. I was among those who did not have pubic hair, so they left me. I asked "who does not have pubis?" In this language, pubis is the place where hair grows, however they did not mean the place, but rather the hair.

Al-Malik said that what is meant here by 'pubic hair' is that a person is an adult, but pubic hair is not necessarily a sign of adulthood because, for example, Indians have pubic hair early, but the Turks get this hair late. However, the Prophet (peace be upon him) had a talent to know from God that in this particular tribe, whoever had pubic hair was an adult. Or, he wanted to follow the ruling of Sa'ad bin Muath (may God be pleased with him) who said that everyone upon whose skin a razor moves are fighters. Najda and Naafi' bin al-Azraq differed on this matter. Najda said: "The children who are in polytheistic lands, they are hypocrites but not unbelievers (kufar)." The evidence given by the Azaraq and their followers is that God said: "Surely, if You leave them they will mislead Your worshipers and father none but the immoral, and unbelievers". They said about this verse that it was very clear that the children of unbelievers are born unbelievers. The response to this has different sides to it:

- The children of unbelievers are unbelievers in this life. Take Noah, who had given up in trying to preach to his people, so God told him that his people would not believe unless they were already believers. So then he punished them.
- Almighty God has said: "They are not born unless debauched unbelievers". That is to say they will be raised in unbelief and so when they grow up they will be unbelievers. This does not mean that as soon as they are born they are disbelievers, but rather that he born following his instincts, as is shown in the hadiths, but that those people will lead them astray, just as those born in a communist environment will be communist. So, the expression is about the state that a child will be in if he had been raised in the shade of this environment and this society.
- An agreement is attributed to the Imam Ahmed – almighty God's mercy upon him – and some of the ancestors on the ruling towards children of polytheists, which is: we do not say they are among the people of heaven, or the people of hell, and this is expressed in the following:
- They consider that the evidence is confused and not clear.
- What is rightly attributed to the Prophet (peace be upon him) in a true hadith is that he said: "Only God knows what they used to do."

- The Islamic thinkers Ibn Taymiyya, Ibn al-Qayyim and Ibn Kathir, and other scholars were of the opinion, and thought probable that the children of polytheists will be judged on doomsday, and if they are believers then they will enter heaven, and if they are unbelievers they will enter hell. Someone could hesitate in leaning towards this point of view, and the reasons for this hesitation include that the judgement hadith is not a single, reliable one, but rather in truth a collection of ways that can be described as: they are good and they support each other, and the judgement hadith was narrated by the Imam Ahmed, Abu Ya'ala and others in different ways and expressions, however they closely resemble each other: that the Day of Judgement will come, and along with it those who need holy God, in some accounts a deaf person, a mute man, a fool, a man who died before hearing about Islam and in other accounts a small boy, a crazy person in place of the fool, or a lunatic, and in the third account a man who died before hearing about Islam and in the fourth an old man. Those will come and the small child will say: "Oh Lord I am only young and I did not hear what the Prophet (peace be upon him) said." The old man will say: "Oh Lord, when the Prophet (peace be upon him) was sent I did not understand what he said." The crazy person, or the lunatic, will say: "Oh Lord, when the Prophet (peace be upon him) was sent, the children were throwing stones at me and I did not understand anything." The deaf and the mute will say similarly.⁹⁸

These points of view are evidence of the extent of the respect of Islam towards children, and their non-participation in fighting, and the prohibition of their murder. Many jurists have suggested that the killing of the children of polytheists is prohibited, and they do not go to hell. Islam has shown concern to protect children from war. This protection is founded on the basis that children are not parties in the war and are not affected by it. From the practical perspective, children are weak and cannot protect themselves. Islam has ratified the protection of Muslim and non-Muslim children. It is clear from this that Islam forbids the killing of children and especially those who do not fight Muslims. As for those who fight Muslims, Islam has made compulsory checking for the presence of pubic hair in order to ascertain whether the person is an adult and therefore able to fight. Whoever does not fight the Muslims, whether old or young, is entitled to protection from the fighting of the Muslims.

Conclusion

Children suffer in most countries of the world, and most particularly in developing or backward countries, from all kinds of persecution, including murder, torture, displacement, starvation and lack of social and health care. This is particularly in countries that are witnessing armed conflicts and civil wars such as Iraq, Syria, Libya, Tunisia, Egypt, Yemen, Somalia and other nations, where conflicts were launched by the 'Arab Spring'. Direct and indirect foreign involvement in these countries, and the provision of arms and money to armed factions, has contributed towards the aggravation of the state of children in numerous countries of the world, which has increased their misfortune, and suffering

⁹⁶ Shams al-Din al-Sarkhasi, "al-mabsoot" ("The smiling person"), part 10, paragraph 27.

⁹⁷ Shams al-Din al-Sarkhasi, op, cit, part 10, paragraph 27.

⁹⁸ Mansour bin Younis bin Adris al-Bahuti, "Kashaf al-Qana' 'an Matan al-Iqna'", part 3, Riyadh, p36.

from all kinds of murder, torture, human trafficking, and the trafficking of human organs. This painful situation will continue as long as the people of these nations do not take responsibility for the protection of children, as well as for the increase in the cases of Western intervention to help armed factions, and the use of indiscriminate weapons in the fighting between the factions and the armed government forces. Children in the Arab world suffer from neglect, illness, lack of education, and seeking internal and external refuge in shelters which do not provide for their basic needs, despite the wealth possessed by the Arab states. This situation will continue indefinitely, and will perhaps involve other countries, and this demands that wealthy Arab countries avoid fuelling sectarian and racial conflicts, in order to save children from this ordeal. If the combatants do not respect international conventions on the protection of children, Islamic law necessitates action to protect children from the effects of armed conflict and requires everyone to spread the culture of tolerance and acceptance of others in order to spread peace and security in the Arab world in order to protect everyone, particularly children.

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