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Child Participatory Rights in the Arab World

M Siraj Sait

Child rights advocacy in the Arab world appears frustrated by unequal development, religion-state nexus, continuing conflicts and a democratic deficit in the region. Yet the Convention on the Rights of the Child provides an opportunity to explore universal child rights approaches alongside Islamic child rights discourses.

Arab Participation within the Convention's Framework

The Arab world has a rich tradition of welfare and protection of children but it is the 1989 Convention on the Rights of the Child (the 'CRC') which has focused attention on child participatory rights in the region. The CRC itself was introduced as a product of cross-cultural dialogue, more so than other 'universal' human rights instruments. Though participation of Muslim and Arab countries¹ in the early phases of the CRC's ten-year drafting process was limited, the final negotiations saw Muslim countries' active participation. As Lawrence Le Blanc points out, 'the main objective of the Islamic states was to push through last minute substantive changes and... the increased participation by Islamic states towards the end of the negotiations worked to their advantage'.² Muslim and Arab countries present during the concluding sessions neither contested the general thrust of the Convention itself nor sought to veto compromises reached with regard to specific provisions.

At least 20 Muslim governments now recognise civil and political rights alongside socio-economic and cultural rights for children. While nearly half of the 54 articles of the CRC are subject to reservations, a majority of these are in fact from non-Muslim states. The reservation pattern from Arab states mirrors that of the larger body of Muslim states in presenting neither a unified or consistent approach. Of the 22 states of the Arab League, six states (Bahrain, Comoros, Libya, Lebanon, Sudan and Yemen) have no reservations at all. Six member states created blanket reservations justifying them on Islamic, religious or cultural grounds (Egypt, Mauritania, Oman, Qatar, Saudi Arabia and Djibouti). Seven others opted out of specific provisions for similar reasons (Algeria

Articles 2 and 14, Iraq Article 14, Jordan Articles 14, 20-21, Kuwait Articles 7 and 21, Morocco Article 14, Syria Articles 2, 14 and 21 and United Arab Emirates Articles 4, 7, 17 and 21). Tunisia founded its reservations on national law, Somalia has signed but not yet ratified the CRC and Palestine is yet to become an independent state. The main Arab reservations predictably relate to contentious matters such as the scope of religious freedom, but significantly, no Muslim or Arab state has proposed reservations relating to Article 12 involving child participatory rights.

State periodic reports, required under Article 44 of the CRC, have supplied the Committee on the Rights of the Child (the Committee) with valuable information. Furthermore, constructive dialogue has served to identify key issues and obstacles, as well as progress in Arab countries' implementation of the CRC. The 18-member Committee presently includes five independent experts from Arab countries (Algeria, Egypt, Qatar, Saudi Arabia and Tunisia), which has helped contextualise child participation issues in the region. The Committee which expressed limited interest in child participatory issues when dealing with Yemen, Syria, Libya and Iraq from 1996-1998, has since shown a more focused approach, castigating Kuwait for, 'lack of awareness regarding child participatory rights', or Comoros for its limited interpretation of Article 12. It has been consistent in questioning Arab states on child participation initiatives, noting positive features such as the children's parliaments in the United Arab Emirates and Jordan but raising concerns over traditional attitudes, gender discrimination and limited information available to children on the opportunities to express themselves.

In the past three years, its concluding observations regarding Oman, Qatar,

Bahrain, United Arab Emirates, Tunisia, Saudi Arabia, Egypt and Jordan, the Committee has asked states to reconsider their reservations and reiterated several themes. First, that the scope of Article 12 extends to all matters concerning children within the family, the school, institutions, the courts, and administrative bodies. In particular, the Committee insisted that children be involved in the process of curriculum and teaching methodology reform to stimulate critical thinking and in the formulation of adolescent health policies and programmes, including sexual health – both sensitive issues. Second, the Committee sought a more pro-active approach with regard to skills-training for teachers, social workers and local officials in order to assist children to express their informed views and opinions, and to have them taken into consideration. The Committee has also proposed greater involvement of the civil society, incorporation of human rights in the curricula and need for a legislative framework to secure child participation in all decisions affecting them. As the reporting system gathers momentum and the Muslim states become familiar with the expectations of the CRC, it is hoped that the CRC will begin yielding further dividends. Thus, the Committee's approach to child participation issues in the Arab countries has been similar as compared to other regions or states, but it must contend with the force of Islamic arguments in the field of human rights in the Arab world.

The Islamic Child Rights Framework

Arab countries generally lack legislation and mechanisms to secure the rights of the child, and the Arab world does not possess a regional child rights treaty (though some states are part of the 1990 African Charter on the Rights and Welfare of the Child). An Arab Charter on Human Rights drafted by the Council of the League of Arab States in 1994 has yet to come into force, which in any case makes no reference to child rights beyond a passing reference to care and special protection for the, 'family, mothers, children and the aged'.³ Instead, Islamic

human rights documents such as the 1981 Universal Islamic Declaration of Human Rights drafted by the Islamic Council of Europe or the 1990 Cairo Islamic Declaration on Human Rights in Islam adopted by the Organisation of Islamic Conference (OIC) are projected as the authentic regional alternatives to universal human rights treaties. Still, Article 7(b) of the Cairo Declaration, for example, dilutes the child participation ethos by leaving it to parents to, 'choose the type of education they desire for their children, provided they take into consideration the interest and future of the children in accordance with ethical values and principles of the *Shar'ia* (Islamic law).' Neither binding nor providing for implementation mechanisms, such formulations, far from consulting the various human rights constituencies or reflecting the vibrant internal Arab discourses on human rights, largely rely on conservative views, which are accepted as the settled readings of sacred texts. However, revisiting original Islamic sources through *ijtihad* (personal reasoning sanctioned by Islamic jurisprudence) indicates the potential of finding Islamic child rights strategies to support a much wider framework of child participation.

The primary source of the *Shar'ia*, the *Qur'an*,⁴ engages with the special status of the child as protected by God: every child (note female infanticide is strictly prohibited) is born blemishless and has not only basic rights of name, identity and paternity but is guaranteed physical, material (such as the right to property), emotional and spiritual rights. The 'best interests of the child' and the 'evolving capacities of the child' principles are based on mental maturity (*rushd*) and physical development, and are embedded in the *Qur'an*, as seen in references to guardianship and family relationships. The *Qur'an* calls for respect and kindness towards parents and elders but does not assume their infallibility. There is no obligation to follow them if they are wrong. One influential translator of the *Qur'an*, Yusuf Ali adds that, in some contexts, 'disobedience becomes the highest duty'.⁵ Repudiating blind allegiance to all parental control, the *Qur'an* recognises the individuality of the child and every individual's duty to participate in the pursuit of knowledge and truth.

The secondary source of the *Shar'ia*, the voluminous *Sunnah* (practice attributed to the Prophet) are selectively and uncritically employed by conservatives to insist on strict discipline and sanctions for refusal to perform religious obligations, violating the

CRC prohibition against all forms of corporal punishment. Yet, this finding that children have an evolving capacity from the age of seven to comprehend the divine message should, on the same logic, establish that they are equally competent to participate in worldly affairs.

Unfortunately, a fuller discussion of Islamic perspectives on the rights of the child is complex and problematic, and beyond the scope of this article.⁶ In addition, the nature and scope of Islamic human rights continues to be a contested domain with a plurality of positions employing a host of interpretative strategies.⁷ For instance, within the Islamic framework, child participatory rights could be realised through a historical analysis – reliance on the example of A'isha the wife of the Prophet who played an active multiple role despite her young age; through processes – revisiting the foundations of Islamic education opportunities for children to analyse its sources; or through networks and mobilisation – Arab feminists/gender activists and human rights advocates recognising child participation as a foundation to the more open and productive society they seek.

Geraldine Van Buren rightly notes, 'the (CRC) promotes an ethos of both cultural plurality and universalism... It does not want to promote a single fixed universal image of childhood. Yet it does want to promote universal opportunities for 'children'.⁸ The pragmatic way to achieve a normative consensus, Abdullahi An-Na'im argues, is through procedural universality, where the dynamic interplay between changing Islamic folk models and international standards is heard through internal discourse and cross cultural dialogue, while minimum safeguards protect the best interest of the child and lead to fuller child rights.⁹ The issue of child participation cannot be viewed in isolation, and the socio-economic and political events – not just Islamic or legal issues – in the Middle East will no doubt determine the success of the child participation project. The effect of sanctions and war on Iraqi children and the displacement and violence affecting Palestinian children have already given child rights an impetus. Though child participation is noticeably on the increase in Arab societies, Nizar Rammal of the Arab Resource Collective points out that, 'young people's right to participation is not supported by the current political and social systems'.¹⁰ Yet with broadening access to information and education and increased socio-political consciousness, Arab children are better placed to seek that vital role in

healing and transforming their troubled world. ■

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- 1 For the purposes of this article, the 55 member states of the Organisation of Islamic Conference (OIC) are referred to as 'Muslim countries' while 'Arab states' refers to the 22 member states of the Arab League. For a convenient chart on the ratification of major human rights treaties by the OIC members, see 'Status of Selected International Human Rights Instruments in relation to States Members of the Organisation of Islamic Conference' 10:1 *INTERIGHTS Bulletin*, (1996) 42.
- 2 L. LeBlanc, *The Convention on the Rights of the Child: United Nations Lawmaking on Human Rights* (Lincoln and London: University of Nebraska Press, 1995), 34.
- 3 See Article 38, Arab Charter on Human Rights, 15 September 1994, reprinted in 18 Hum. Rts. L.J. 151 (1997). See Mona Rismawi, 'The Arab Charter on Human Rights: A Comment', 10:1 *INTERIGHTS Bulletin* (1996) 8.
- 4 See *Qur'an* 16:58-59, 42:49-50, 17:31, 81:8-9, 2:220.
- 5 *Qur'an* 31:15, 29:8 See also Yusuf Ali, *The Holy Qur'an: Translation and Commentary* (Beirut: Holy Qur'an Publishing House, 1934), 1083.
- 6 M Siraj Sait, 'Islamic Perspectives on Child Rights' in Deirdre Fottrell (ed), *Revisiting Children's Rights: 10 Years of the UN Convention on the Rights of the Child* (London: Kluwer, 2000).
- 7 See Abdullahi An-Na'im, 'Islamic Law and Human Rights Today', 10:1 *INTERIGHTS Bulletin* (1996) 3.
- 8 Geraldine Van Buren, 'Children's Rights: Balancing Traditional Values and Cultural Plurality' in Gillian Douglas and Leslie Sebba (eds), *Children's Rights and Traditional Values* (Aldershot: Ashgate, 1995), 19.
- 9 Abdullahi An-Na'im, 'Cultural Transformation and Normative Consensus on the Best Interests of the Child' in Philip Alston (ed), *The Best Interests of the Child: Reconciling Culture and Human Rights* (Oxford: Clarendon, 1994), 62-81.
- 10 Nizar Rammal, 'Why Sharing Matters When You are Young and Powerless in the Arab World', 6 *Crin Newsletter* (October 2002) 17-18.