'The best interests of the child': international child law as interpreted in the Libyan High Court jurisdiction

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‘THE BEST INTERESTS OF THE CHILD’:

INTERNATIONAL CHILD LAW AS INTERPRETED

IN THE LIBYAN HIGH COURT JURISDICTION

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ABSTRACT

The intent of this thesis is to examine how local cultures affect the interpretation of international human rights law. By exploring the Islamic legal system in its approach to the concept of ‘the best interests of the child’ and, more specifically, the approach of the Libyan legal system through a study of existing legislation and Libyan High Court (LHC) interpretation as revealed in its decisions, this thesis aims to show how the cultural background affects the interpretation of international human rights in domestic legal systems.

The approach adopted in studying the Convention on the Rights of the Child (CROC), Libyan law and Islamic law, has been to examine: CROC and its official implementation body, the Committee on the Rights of the Child (CRC), and its responses to the reports of the State party (Libya); Libyan legislation, specifically the provisions of the Law of Marriage and Divorce Rules and their Effects (10/1984) and its interpretation by the LHC regarding its guardianship jurisdiction; and an examination of guardianship (Hadannah) from the perspective of the Islamic schools of thought (Mathhabs), with the focus on the Malikiyah Mathhab, as the official and historical Islamic interpretation applying in Libya.

The main question addressed here is: ‘How is the international human rights concept of “the best interests of the child” being implemented in the Libyan legal system?’ Having examined relevant data and evidence for the research areas selected and the questions formulated, the thesis argues that the interpretation of international human rights in domestic legal systems will inevitably, understandably and legitimately be affected by local cultures. This process of ‘translation’ occurs when legislatures take
concepts outlined in international law and seek to integrate or restate them within domestic legislation. It is evident in the approach that Libya has taken to implementing ‘the best interests of the child’, where the influence of Islamic law is apparent. The ‘best interests of the child’ has also been an area of concern for, and a focus of interpretation by, the LHC in the implementation by Libyan law of the international law.

The CRC claims that Libyan law does not cater for the needs of the child. This thesis has proven otherwise and shown examples and cases (representative of different situations) which illustrate how ‘the best interests of the child’ have been catered for.

There are cultural differences that exist among and within countries and among lawmakers of the various countries, and Libya is no exception. Yet legislation is in place to uphold and protect the rights of all citizens, including those of children. Although reasons may vary, as may beliefs, the underlying aim of most systems of law is to take into consideration ‘the best interests of the child’. The Libyan legal system has aimed to cater for the needs of the children and take into account ‘the best interests of the child’ according to the circumstances that pertain to each case. Thus, ‘the best interests of the child’ are clearly exercised and affected by the cultural values. This thesis has also shown that this area of research is, as a whole, one worthy of further development and examination.

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ABBREVIATIONS LIST

CRC: the Committee on the Rights of the Child
CROC: Convention on the Rights of the Child
DEAP: Declaration on the Establishment of the Authority of the People
BPC: Basic People’s Congress
GPC: General People’s Congress
LHC: Libyan High Court
LHC-GJ: Libyan High Court Guardianship Jurisdiction
ND: No Date
NGOs: Non-Governmental Organisations
PBUH: Peace Be Upon Him
RCC: Revolutionary Command Council
UDHR: Universal Declaration of Human Rights
UN: United Nations
WWII: World War II
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