

12-11-1988

DEC 22 1988

Distr.  
LIMITED

E/CN.4/1989/WG.1/WP.3  
28 November 1988

ENGLISH  
Original: ARABIC

COMMISSION ON HUMAN RIGHTS  
Forty-fifth session  
Pre-sessional open-ended Working Group  
on the Question of a Convention on  
the Rights of the Child  
28 November-9 December 1988

By note verbale dated 7 September 1988, the Permanent Mission of the Libyan Arab Jamahiriya to the international organizations at Geneva requested the Centre for Human Rights to circulate the attached document at the meeting of the Working Group on a draft convention on the rights of the child.

GE.88-13813/0778A

Comments of the Libyan Arab Jamahiriya on the draft convention of the rights of the child

The Libyan Arab Jamahiriya reaffirms its full support for the drafting of a convention on the rights of the child, in view of the importance that it attaches to this question at the national level. The health, education and social and cultural welfare of children are catered for in the Libyan Arab Jamahiriya, as can be seen from its various legislative enactments and actual practices. The human rights instrument drafted by the General People's Congress at the end of its emergency session held at El-Beida on 12 June 1988 showed special concern for children, to whom paragraphs 13, 14 and 20 were devoted.

Those paragraphs emphasize that one of the most sacred human rights is the right to be brought up in a family characterized by close and harmonious relations between mother, father and brothers and sisters. They also stipulate that society should manifest solidarity, guarantee a decent life for its members and ensure the welfare of children, and that every human being has a natural right to education and knowledge, as well as the right to choose the most appropriate education, without being subjected to undue influence or coercion.

The Libyan Arab Jamahiriya welcomes the endeavours that have so far been made to draft a convention on the rights of the child and hopes that the international community will succeed in formulating a convention that is acceptable at the widest possible level.

With a view to contributing to the achievement of this aim, the Jamahiriya wishes to make the following comments on the draft convention:

1. In its present form, article 11 of the draft convention, concerning adoption, constitutes a major obstacle to the convention's acceptance by the Islamic States, including the Libyan Arab Jamahiriya. This is because its present wording conflicts with one of the imperative principles of the Islamic Shari'a, which does not permit or recognize this relationship in the case of a Muslim, regardless of his nationality. Persons who believe in and observe the provisions of the Shari'a cannot engage in the prohibited practice of adoption. As everyone is aware, the Islamic Shari'a, while prohibiting adoption, allows full scope for the care of children whose proper upbringing is impeded by various circumstances, such as the loss of their parents, poverty, etc. In fact, the Shari'a strongly advocates the provision of assistance in their upbringing and education until they reach the age of maturity and makes such assistance an individual and collective responsibility.

Accordingly, the Libyan Arab Jamahiriya is proposing an amendment to remove this major obstacle to the acceptance of the convention by a large number of States. The amendment could take one of the following forms:

(a) The deletion of both paragraphs of the article, on the understanding that this question would be regulated in bilateral or multilateral agreements among the States that recognize or permit the practice of adoption;

(b) The inclusion of a stipulation confining the application of this article to the States that recognize or permit the practice of adoption;

(c) The inclusion of the following phrase at the end of the article:  
", without prejudice to public order".

This amendment would apply to every reference to adoption in the convention, such as article 10, paragraph 2.

2. The Libyan Arab Jamahiriya believes that a greater effort should be made to improve the wording of the convention and ensure that the text is consistent.

In this connection, the Jamahiriya wishes to refer to examples of passages that could be improved in the Arabic version, although this does not imply that there are defects in the Arabic translation or that these proposals are final.

Article 1: Proposed alternative wording

"Under the present Convention, a child is every human being under the age of 18 years unless, under the law of his country, he has attained the age of majority earlier."

Article 3, paragraph 2

[Does not affect the English text]

Article 8, paragraph 1

The first line should read as follows: "Parents or guardians, as the case may be, have the primary responsibility ...".