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ЗАЩИТА ПРАВА РЕБЕНКА НА РОДОСЛОВНУЮ И ПРИМЕНЕНИЕ МЕХАНИЗМОВ ЗАМЕНЫ УХОДА ГОСУДАРСТВАМИ – ЧЛЕНАМИ ОРГАНИЗАЦИИ ИСЛАМСКОГО СОТРУДНИЧЕСТВА

ВВЕДЕНИЕ. *Согласно Венской декларации и программе действий 1993 г., в ходе международного сотрудничества в области защиты и поощрения прав человека необходимо иметь в виду значение национальной и региональной специфики и различных исторических, культурных и религиозных особенностей государств. Принятые под эгидой Организации исламского сотрудничества (далее – ОИС, Организация) международно-правовые акты закрепляют взаимосвязь между защитой и поощрением прав человека и охраной социальных систем государств – членов Организации. Цель данной статьи – выявить влияние исторических, культурных и религиозных особенностей государств – членов ОИС, лежащих в основе «права на родословную», закрепленного в решениях данной Организации, на международную защиту прав ребенка и применение механизмов замены ухода за детьми, лишенными семейного окружения, данными государствами.*

МАТЕРИАЛЫ И МЕТОДЫ. *Автор применяет системный и сравнительный метод к исследованию положений универсальных международно-правовых актов, решений ОИС и национального законодательства государств-членов Организации. Предметом исследования являются международные отношения государств – членов ОИС, связанные с защитой права ребенка на родословную и применением механизмов замены ухода за детьми, лишенными семейного окружения. В результате исследования установлено влияние национального и международно-правового регулирования защиты родословной ребенка на толкование и применение универсальных норм о защите и поощрении прав ребенка.*

РЕЗУЛЬТАТЫ ИССЛЕДОВАНИЯ. *Исламское право закрепляет правовые основы защиты родословной ребенка, под которой понимается его постоянная правовая связь с биологическими родителями. Государства – члены ОИС применяют доктринальную концепцию «родословной» при помощи нормативных терминов "نسب" и "بنوة", которые переводятся на английский язык при помощи понятий "lineage", "descent", "filiation" и "parentage". Государства – члены ОИС указывают на необходимость защиты родословной ребенка в своих международно-*

правовых позициях, однако недостаточная координация их внешней политики в сфере защиты прав ребенка не позволяет государствам эффективно защищать данные позиции в международных организациях и органах системы ООН. Термин «право на родословную», закрепленный в Декларации о правах и заботе о ребенке в исламе 1994 г. и проекте Джиддской Конвенции ОИС о правах ребенка, означает право на постоянную правовую связь ребенка с его биологическим отцом. Данное право неизвестно Конвенции о правах ребенка 1989 г. и не совпадает по содержанию ни с одним из закрепленных в ней прав.

ОБСУЖДЕНИЕ И ВЫВОДЫ. *Защиту родословной ребенка следует считать исторической, культурной и религиозной особенностью некоторых, но не всех государств – членов ОИС. Не существует единого подхода к имплементации права ребенка на родословную. Позиции государств – членов ОИС по вопросам защиты родословной ребенка влияют на правовое регулирование механизмов замены ухода за детьми, временно или постоянно лишенных семейного окружения. Следует различать государства, допускающие полное усыновление, простое усыновление или несколько форм усыновления, а также государства, запрещающие усыновление. Государства – члены ОИС придерживаются различных международно-правовых позиций по вопросам толкования и применения универсальных норм международного права о защите права ребенка, насколько это возможно, знать своих родителей и получать их заботу, а также права ребенка, лишенного семейного окружения, на замену ухода. Поскольку подходы государств к толкованию и применению положений универсальных международных договоров о защите прав ребенка, касающихся института усыновления, различны, их имплементацию следует считать делом, по существу относящимся к внутренней компетенции государства.*

КЛЮЧЕВЫЕ СЛОВА: *права человека, права ребенка, Организация исламского сотрудничества, исламское право, право на родословную, замена ухода, усыновление*

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PROTECTION OF THE RIGHT OF THE CHILD TO LINEAGE AND APPLICATION OF ALTERNATIVE CARE MECHANISMS BY THE MEMBERS OF THE ORGANISATION OF ISLAMIC COOPERATION

INTRODUCTION. *According to the 1993 Vienna Declaration and Programme of Action, during the international cooperation in the field of protection and promotion of human rights, national and regional particularities and various historical, cultural and religious backgrounds of States should be taken into account. The international law acts adopted under the auspices of the Organisation of Islamic Cooperation (OIC, Organisation) enshrine the connection between protection and promotion of the rights of the child and the preservation of social systems of the Members of the Organisation. The present article aims to discover the effect of historical, cultural and religious backgrounds of OIC Members underlying "the right of the child to lineage", as enshrined in the decisions of the Organisation, on the international protection of the rights of the child and application of mechanisms of alternative care for children deprived of family environment by these States.*

MATERIALS AND METHODS. *The article applies the system and comparative method to universal international legal acts, decisions of the OIC and national legislation of its Members. It focuses on legal measures taken by OIC Members aiming at protection of the right of the child to lineage and providing alternative care to children deprived of family environment. The research traces the impact of these measures on interpretation and application of the universal human rights norms.*

RESEARCH RESULTS. *Islamic law provides for protection of lineage which is defined as a permanent legal relationship between the child and his or her biological parents. The general doctrinal concept of "lineage" is applied in national legislation of OIC Members using the normative terms "نسب" and "بنوة" which are commonly translated as "lineage", "descent", "filiation" or "parentage". OIC Members refer to protection of lineage in their international legal positions but lack coordination in assertion of their arguments in international organisations and organs of the UN system. The term "right to lineage", as enshrined in the 1994 Declaration on the Rights and Care of the Child in Islam and the 2020 Draft Jeddah OIC Convention on the Rights of the Child, indicates the right of the child to a permanent legal relationship of lineage towards his or her biological father. The right to lineage is unknown to the 1989 Convention on the Rights of the Child and differs in its scope from any right enshrined in the Convention.*

DISCUSSION AND CONCLUSIONS. *Protection of lineage should be regarded as a national and regional particularity of certain, but not all, OIC Members. No uniform approach to its implementation exists among OIC Members. Their standpoints with regard to the protection of lineage affect the legal regulation of the mechanisms of alternative care for children deprived of family environment. One should distinguish States allowing full adoption, States allowing simple adoption, States allowing several forms of adoption and States prohibiting adoption. OIC Members assert different international legal positions concerning interpretation and application of universal treaty norms governing the right of the child, as far as possible, to know and be cared for by parents, as well as the right of a child temporarily or permanently deprived of the family environment to special protection and assistance. Given that the approach to interpretation and application of the provisions of universal treaties on the rights of the child concerning adoption differs from State to State, their implementation should be considered a matter within domestic jurisdiction of States.*

KEYWORDS: *human rights, rights of the child, Organisation of Islamic Cooperation, Islamic law, right to lineage, alternative care, adoption*

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1. Introduction

According to para 14 art. 1 of the 2008 Charter of the OIC, the objectives of the Organisation include protection and promotion of human rights and fundamental freedoms, including the rights of children, as well as the preservation of Islamic family values[1]. The Article enshrines the connection between protection and promotion of human rights and preservation of the social systems of States, the importance of which is outlined by Russian international law scholars [Kurs mezhdunarodnogo prava… 1992:166]. The 2008 Charter of the OIC takes into consideration the significance of national and regional particularities and various historical, cultural and religious backgrounds of States in accordance with the 1993 Vienna Declaration and Programme of Action[2]. The present article aims to discover the impact of historical, cultural and religious backgrounds of OIC Members underlying "the right of the child to lineage", as enshrined in the decisions of the Organisation, on protection of the rights of the child and application of mechanisms of alternative care for children deprived of family environment.

The article applies comparative method to universal international legal acts, decisions of the OIC and national legislation of its Members. It focuses on the provisions concerning protection of the child's lineage and their correlation with the universal human rights norms. Section 2 of the Article defines the notion of lineage in Islamic legal doctrine, compares it to the normative terms applied in the national legislation of OIC Members, and establishes the connection between the protection of lineage and the prohibition of adoption. Section 3 analyses the universal treaty norms governing legal relationship between the child and his or her parents and alternative care for children deprived of family environment as interpreted and applied by OIC Members. Section 4 compares the scope of the right to lineage enshrined in the decisions of the OIC with the scope of the rights of the child provided for in the 1989 Convention on the Rights of the Child. Section 5 analyses the national legislation of OIC Members and classifies their approaches to the right to lineage and the prohibition of adoption.

2. Notion of Lineage in Islamic Law

The Islamic legal term "lineage" (نسب) refers to the relationship of affiliation that connects an individual to his or her ancestors, as well as the attachment of a child to his or her parents [Aissaoui et al. 2024:126; Sabreen 2013:21]. It also designates a fundamental principle organising the Arab society according to which "genealogy provides the historical validation of kinship and all that it involves" [The Encyclopaedia of Islam 1993:967]. Islamic law recognises only the lineage of children born to a mother lawfully married to a father, while direct recognition (إقرار) of a child born out of wedlock may result in the legal status of a biological child [Rohe 2019:115; Yassari 2015:937, 939]. Without direct recognition by the father, a child shall not inherit from him [Baderin 2001:299-300]. Nowadays, most States applying Sharia law to personal status follow the same approach [Rohe 2019:247].

Among OIC Members, Saudi Arabia[3] and the State of Bahrain[4] apply the Arabic term "lineage" (نسب) to the legal relationship between the child and his or her parents and the term "filiation" (بنوة) to the legal relationship of paternity. Article 99 of the Family Code of the Union of the Comoros of 2005 (Family Code of the Comoros) defines filiation as "attributing the child to the parentage of his father"[5]. Some other States use the Arabic term "بنوة" in the same meaning as "نسب" and *vice versa.* According to art. 142 of the Family Code of the Kingdom of Morocco of 2004 as modified in 2010 and 2016 (Family Code of Morocco), "parental filiation results from the birth of a child to his or her parents"[6]. Article 150 of the

[1] OIC: Charter of the Organisation of Islamic Cooperation done at the city of Dakar (Republic of Senegal) on March 14, 2008. URL: https://ww1.oic-oci.org/english/charter/OIC%20Charter-new-en.pdf (accessed date: 09.08.2024).

[2] UN: Vienna Declaration and Programme of Action URL: https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action (accessed date: 09.08.2024).

[3] Government of Saudi Arabia: Law of Personal Status of the Kingdom of Saudi Arabia Promulgated by the Royal Decree No. M/73 of March 9, 2022 (in Arabic). URL: https://laws.boe.gov.sa/BoeLaws/Laws/Viewer/f4a877fb-bd67-4f87-92c4-ae5900d38387?lawId=4d72d829-947b-45d5-b9b5-ae5800d6bac2 (accessed date: 08.09.2024).

[4] Ministry of Legal Affairs of Bahrain: Law No. 19 of July 19, 2017, with Respect to the Promulgation of the Family Law. URL: https://www.mola.gov.bh/MediaManager/Media/Documents/Laws/Batch3/L1917.pdf (accessed date: 06.08.2024).

[5] Droit Afrique: Loi du 3 juin 2005 portant Code de la famille. URL: https://www.droit-afrique.com/upload/doc/comores/Comores-Code-2005-de-la-famille.pdf (accessed date: 05.08.2024).

[6] Officiele du Bulletin Officiel du Royaume du Maroc datant 6 octobre 2005. P. 683.

Act defines "paternal filiation" (النسب) as legal relationship uniting the father and his child and transferring from the father to his descendants. The Family Code of Morocco uses the term "filiation towards the mother" (البنوة بالنسبة للأم) in art. 147 but does not define it. The Family Code of the Federal Republic of Senegal of 1972, as modified in 1999 (Family Code of Senegal), distinguishes "maternal" and "paternal filiation" (la filiation maternelle; la filiation paternelle)[7]. The Family Code of the People's Democratic Republic of Algeria of 1984[8] (Family Code of Algeria) does not define the term "filiation" and, therefore, by virtue of art. 222 of the Code, jurists rely on the provisions of Sharia law governing its interpretation and application [Aissaoui et al. 2024:127].

As Dr. J.J.A. Nasir describes it, the establishment of parentage is one of the most important rights emanating from marriage [The Islamic Law… 2009:145]. It creates a set of rights and duties, including the right to fosterage, custody, maintenance, guardianship, and inheritance [Assim, Sloth-Nielsen 2017:327; The Islamic law… 1990:167; Sabreen 2013:21]. According to art. 99 of the Family Code of the Comoros "filiation serves as the basis of inheritance rights and produces obstacles for the marriage as well as rights and duties of the father, the mother and the child". At the same time, no legal paternity exists between a father and his unlawfully born child [Ibrahim 1979:163]. According to art. 148 of the Family Code of Morocco and art. 100 of the Family Code of the Comoros, the birth of a child in an unlawful marriage does not produce any effects of lawful parental filiation with regard to the father.

According to Islamic legal doctrine, a child's lineage is established through marriage, acknowledgement, or evidence. [The Islamic Law… 2009:145-146]. According to art. 67 of the 2022 Law of Personal Status of the Kingdom of Saudi Arabia, paternal lineage is established through birth in a lawful marriage, acknowledgement or evidence while maternal lineage is established through the fact of birth. National legislation of OIC Members enshrines similar circumstances for the establishment of the child's filiation. Article 152 of the Family Code of Morocco and art. 1158, 1161 and 1164 of the 1928 Civil Code of the Islamic Republic of Iran[9] name conjugal relations, recognition by the father and erroneous sexual relationship as circumstances upon which parental-filiation (parentage) is established. According to art. 86 of the Law of the State of Qatar no. 22 promulgating the Family Law as of June 29, 2006, parentage (النسب) shall be established by the existence of a conjugal relationship, admission or testimony[10]. As enshrined in art. 40 of the Family Code of Algeria, filiation is established upon lawful marriage, recognition of paternity and evidence. The above analysis demonstrates that "lineage" is a general doctrinal concept applied in national legislation of certain OIC Members using the normative terms "نسب" and "بنوة" which are commonly translated as "lineage", "descent", "filiation" or "parentage".

Adoption (تبني), which was widespread among the Arabs before Islam, is prohibited by virtue of verses 4 and 5 of surah "Al-Ahzab" of the Quran [Assim, Sloth-Nielsen 2017:326-327; The Islamic law… 1990:166]. According to verse 4 of the Surah, "Allah does not… regard your adopted children as your real children. These are only your baseless assertions". Verse 5 of the Surah declares "Let your adopted children keep their family names. That is more just in the sight of Allah". The prohibition of adoption applies to children of unknown parentage and orphans [Aissaoui et al. 2024129; Afrat 2013:302]. Islamic law scholars draw connection between the protection of lineage and prohibition of adoption under the provisions of Sharia law [Religious Dimensions… 1996:19].

Instead of adoption, Islamic law provides for a system of guardianship known as kafalah (كفالة) which is considered a form of religious duty and an act of piety on behalf of a Muslim [Baderin 2001:300; Ishaque 2008:401]. The legal term "kafalah" originates from Islamic law of obligations and applies to a contract by which a person undertakes certain obligations in favour of another person provided that the latter has a material or moral interest in such undertaking [Assim, Sloth-Nielsen 2017:329]. According to the definitions given in the national acts of the

[7] Ministère de la Justice de la République du Sénégal: Loi n°72-61 du 12 juin 1972, telle que modifiée en dernier lieu par la Loi n°99-82 du 3 septembre 1999. URL: https://justice.sec.gouv.sn/publications/textes/droit-civil-et-procedure-civile/droit-de-la-famille/ (accessed date: 05.08.2024).

[8] Journal Offiiciel de la République Algérienne du 12 juin 1984. P. 614.

[9] The Civil Code of the Islamic Republic of Iran adopted on May 23, 1928. URL: https://www.refworld.org/legal/legislation/natlegbod/1928/en/102142 (accessed date: 08.09.2024).

[10] Official Journal of the State of Qatar as of June 30th, 2006. P. 53.

Kingdom of Morocco[11] and the People's Democratic Republic of Algeria[12], in family law the term denotes the voluntary commitment to protect, educate and maintain an abandoned child in the same way as a father would do for his son. No filiation arises from the establishment of kafalah. Islam prohibits considering children under guardianship as the actual children of their guardians or attributing them by name or otherwise to the lineage of the guardian [Aissaoui et al. 2024:129; Ishaque 2008:400]. The child under guardianship may not be denied the right to know his or her lineage or biological parents as well as the choice to maintain a relationship with them [Afrat 2013:302; Ishaque 2008:401]. Islamic law does not put restrictions upon marriages between the child under guardianship and biological children of the guardian [Ishaque 2008:402]. As shown by U.M. Assim and J. Sloth-Nielsen, the legal status of kafalah children differs from that of children in other universally recognised forms of alternative care [Assim, Sloth-Nielsen 2017:331-336].

Thus, Islamic law provides for protection of lineage as a permanent legal relationship between the child and his or her biological parents established upon factual circumstances recognised by law. The establishment of lineage results in a set of rights and duties on behalf of biological parents and the child. The prohibition of adoption and legal regulation of alternative care for children deprived of family environment in Islamic law aim at protecting the lineage of the child.

3. International Law Norms Governing Protection of the Rights of the Child by the Members of the Organisation of Islamic Cooperation

Universal and Regional treaties on protection of the rights of the child enshrine the concept of adoption implying the formation of a permanent legal relationship between the adoptive parents and the child. According to art. 3 of the 1993 Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, the treaty "covers only adoptions which create a permanent parent-child relationship"[13]. Thirteen OIC Members are parties to the Convention. By virtue of art. 1 of the 1984 Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors the Treaty "shall apply to … institutions that confer on the adoptee a legally established filiation"[14]. The European conventions on the adoption of children of April 24, 1967[15], and November 27, 2008[16], define the scope of their application *rationae materiae* as "legal institutions of adoption which create a permanent child parent relationship" and specify that upon adoption the legal relationship between the child and his or her father, mother and family of origin shall terminate[17].

Universal international law acts recognise the Islamic legal institution of kafalah. According to the Preamble of the 1986 Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with special reference to foster placement

[11] Dahir n. 1-02-172 du 1°rabii II 1423 (13 juin 2002) portant promulgation de la loi n. 15-01 relative a la prise en charge (la kafala) des enfants abandonnés. Edition de Traduction Officielle du Bulletin Officiel du Royaume du Maroc datant de 5 septembre 2002. P. 914.

[12] Art. 116 of the Family Code of Algeria.

[13] Hague Conference on Private International Law. URL: https://www.hcch.net/en/instruments/conventions/full-text/?cid=70 (accessed date: 12.07.2024).

[14] Organisation of American States. URL: https://www.oas.org/juridico/english/treaties/b-48.html (accessed date: 12.07.2024).

[15] Council of Europe: European Convention on the Adoption of Children of April 24, 1967. URL: https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=058 (accessed date: 12.07.2024).

[16] Council of Europe: European Convention on the Adoption of Children (revised) of November 27, 2008. URL: https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=202 (accessed date: 12.07.2024).

[17] Article 10 of the 1967 European Convention on the Adoption of Children and art. 11 of the 2008 European Convention on the Adoption of Children (revised).

and adoption nationally and internationally, kafalah is an institute providing substitute care to children who cannot be cared for by their own parents[18]. Article 20 of the 1989 Convention on the Rights of the Child defines kafalah as a form of alternative care for a child temporarily or permanently deprived of his or her family environment[19]. Article 3 of the 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children qualifies kafalah as a measure directed to the protection of the person or property of the child[20]. Among OIC Members, the Kingdom of Saudi Arabia, the Republic of Mauritania, and the Republic of Sudan, qualify kafalah as a form of adoption according to art. 21 of the 1989 Convention on the Rights of the Child in the reports submitted to the Committee on the Rights of the Child (CRC). The approach is inconsistent with the universal international law acts as they consider adoption and kafalah as different forms of alternative care for children deprived of their family environment.

The institution of kafalah is not recognised by certain States not following Islamic legal tradition, which in practice results in denial of access to the territory of State for the purposes of kafalah children's reunification with their guardians [Assim, Sloth-Nielsen 2017:339]. In 2013, however, the Italian Court of Cassation issued a decision according to which completely excluding Italian citizens from the range of subjects entitled to achieve reunification with foreign children under kafalah would be incompatible with Italian constitutional values and international law obligations. A. Marotta describes the decision of the Court as launching "a new judicial course, laying the foundations for both understanding and accepting a different legal and cultural institution" [Marotta 2016:201, 210].

All 57 OIC Members are parties to the 1989 Convention on the Rights of the Child. Undertaking commitments enshrined in the Convention, 16 of them made reservations to art. 20 and 21 of the Treaty excluding from the scope of their obligations measures with regard to adoption[21]. The States' reservations fall into two groups, first being general reservations to all provisions of the Convention incompatible with Sharia law[22], and second being reservations to the above-mentioned articles in particular[23]. Some States, like the Kingdom of Morocco and the People's Democratic Republic of Algeria, made neither reservations nor interpretative declarations to the provisions of the Treaty concerning adoption in spite of the prohibition of the legal institution by their national legislation. Thus, OIC Members' reservations do not directly indicate their recognition or prohibition of the institution of adoption.

The reservations made by OIC Members were countered by objections, all of them on behalf of European States. The practice of States' objections is inconsistent. For instance, nine States objected to the reservation made by the Islamic Republic of Iran cited above while none objected to the reservation of the Islamic Republic of Mauritania "to articles or provisions which may be contrary to the beliefs and values of Islam, the religion of the Mauritanian People and State". The reservation receiving most objections was made by the Federative Republic of Somalia. According to the reservation, the State "does not consider itself bound by art. 14, 20, 21 of the above stated Convention and any other provisions of the

[18] United Nations Digital Library. URL: https://digitallibrary.un.org/record/124232?ln=en&v=pdf (accessed date: 12.07.2024).

[19] UN: Convention on the Rights of the Child. New York, 20 November 1989. URL: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en (accessed date: 12.07.2024).

[20] Hague Conference on Private International Law. URL: https://www.hcch.net/en/instruments/conventions/full-text/?cid=70 (accessed date: 12.07.2024).

[21] UN: Convention on the Rights of the Child. New York, 20 November 1989.

[22] E.g. according to the reservation made by the Islamic Republic of Iran upon ratification of the Convention, the State reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect. See also the reservations made by Brunei Darussalam, the Islamic Republic of Mauritania, the Islamic Republic of Pakistan (withdrawn), the Kingdom of Saudi Arabia, the Republic of Djibouti (withdrawn), the State of Kuwait and the State of Qatar.

[23] E.g. according to the reservation to article 21 made by the United Arab Emirates upon accession to the Convention, the State, 'given its commitment to the principles of Islamic law, … does not permit the system of adoption, it has reservations with respect to this article and does not deem it necessary to be bound by its provisions. See also the reservations made by the Arab Republic of Egypt (withdrawn), the Federal Republic of Somalia, the Hashemite Kingdom of Jordan, the Republic of Bangladesh, the Republic of Indonesia (withdrawn), the Sultanate of Oman (withdrawn) and the Syrian Arab Republic (withdrawn).

Convention contrary to the General Principles of Islamic Sharia". The objecting States qualify art. 14, 20 and 21 as the "essential element of the treaty", the reservations to which are incompatible with its object and purpose. As K. Hashemi outlines, art. 21 excludes the States that do not recognise adoption from its scope *ratione personae* [Hashemi 2007:219]. Thus, hardly could it be considered as an article non-application of which would be incompatible with the object and purpose of the treaty. Although some States claim that art. 20 and 21 are "an essential element of the treaty", the OIC Members' reservations and arguments presented therein demonstrate the absence of universal recognition of the obligatory nature of the norms governing adoption enshrined in these articles.

The OIC Members did not refer to protection of lineage neither in their reservations, nor in their responses to the objections of other States. The communication received by the UN Secretary General from the Government of the Syrian Arab Republic with regard to the objection by the Government of the Federative Republic of Germany is an exception in that it mentions the notion of lineage in the description of the forms of alternative care applied by the State. According to the 1998 Periodic report of the Hashemite Kingdom of Jordan submitted to the CRC, "God abolished the system of adoption…, it being more just and proper for people to be known by their true lineages"[24]. According to the 1995 Initial Report of the Libyan Arab Jamahiriya submitted to the Committee, the Holy Quran prohibits adoption because it is "a form of dishonesty used to assert false claims of filiation"[25]. As outlined in the 2003 Periodic Report of the Republic of Yemen, adoption is prohibited "to ensure that there is no confusion over kinship and that the child, once adult, is not forbidden from marrying whomsoever he or she is permitted to marry, or does not, as may occur, marry a person to whom marriage is not permitted"[26]. The legal positions cited demonstrate the connection between protection of lineage and prohibition of adoption in national legislation of OIC Members.

One should agree that Islamic law strongly influences the foreign policy of OIC Members notwithstanding the lack of uniformity in application of its provisions [Baderin 2001:266]. However, the reluctance of States to enter into a comprehensive legal discussion, as outlined by S.V. Chernichenko with regard to the principle of non-intervention in matters which are essentially within the domestic jurisdiction of a State [Chernichenko 2021:71], is also notable in cases concerning national and regional particularities and historical, cultural and religious backgrounds of States. OIC Members refer to protection of lineage in their international legal positions but lack coordination in assertion of their arguments with regard to protection of the rights of the child under the auspices of the UN.

4. Right to Lineage in the Acts of the Organisation of Islamic Cooperation

Neither the Dhaka Declaration of Human Rights in Islam of 1983[27], nor the Cairo Declaration of Human Rights in Islam of 1990[28] enshrine the notion of lineage. Para 4 of the 1994 Declaration on the Rights and Care of the Child in Islam is dedicated to "the right to lineage" (الحق في النسب)[29]. According to the Declaration, "Islam has given every child the inalienable right to a relationship of lineage to his or her father and, therefore, Islam prohibits adoption because it deprives the child of this right". The Declaration enshrines the prohibition of adoption as a legal consequence of protection of the right of the child to lineage. S. Afrat describes the right to lineage as a right that arises before the birth of the child, the scope of which includes the right to be born from

[24] Jordan. Periodic Reports of States Parties due in 1998 to the Committee on the Rights of the Child (CRC). Para 63.
[25] Libyan Arab Jamahiriya. Initial Reports of States Parties due in 1995 to the CRC. Para 92.
[26] Yemen. Third Periodic Report of States Parties due in 2003 to the CRC. Para 147.
[27] OIC: Resolution No. 3/14-Org The Adoption of the Draft Document on Human Rights in Islam adopted by the Fourteenth Islamic Conference of Foreign Ministers held in Dhaka, Peoples Republic of Bangladesh, on 6-11 December 1983. URL: https://ww1.oic-oci.org/english/conf/fm/14/14%20icfm-org-en.htm#RESOLUTION%20No.%203/14-ORG (accessed date: 26.07.2024).
[28] OIC: Annex to Resolution No. 49/19-P The Cairo Declaration on Human Rights in Islam adopted by Nineteenth Islamic Conference of Foreign Ministers held in Cairo, Arab Republic of Egypt, on 31 July – 5 August 1990. URL: https://ww1.oic-oci.org/english/conf/fm/19/19%20icfm-political-en.htm (accessed date: 26.07.2024).
[29] OIC: Annex I to Resolution No. 16/7-C (IS) adopted by the Seventh Islamic Summit Conference held in Casablanca, Kingdom of Morocco, on 13-15 December, 1994. URL: https://ww1.oic-oci.org/english/conf/is/7/7th-is-sum(cultural).htm#RESOLUTION%20NO.16/7-C(IS) (accessed date: 26.07.2024).

legally married parents [Afrat 2013:302]. S. Ishaque outlines that responsibility towards future generations is a particularity of the concept of human rights in Islam, which influences the interpretation and application of the rights of the child [Ishaque 2008:397-398]. Such interpretation, however, is not enshrined in the decisions of the OIC concerning the right to lineage.

The Covenant on the Rights of the Child in Islam of 2004 does not enshrine the right to lineage, which demonstrates lack of persistency in recognition of this right by OIC Members[30]. In line with art. 8 the 1989 Convention on the Rights of the Child, art. 7 of the Covenant confers upon State Parties the obligation to "safeguard the elements of the child's identity, including his or her … family relations in accordance with their domestic laws". According to para 3 of the Article, "the child of unknown descent or who is generally assimilated to this status shall have the right to guardianship and care but without adoption". The Arabic text of the Article applies the term "نسب" instead of the English term "descent"[31]. The Covenant has not entered into force lacking the necessary number of accessions.

According to the Independent Permanent Human Rights Commission, the Intergovernmental Group of Experts is finalising the treaty entitled Jeddah OIC Convention on the Rights of the Child (Jeddah Convention)[32]. The scope of para "a" art. 7 of the 2020 draft of the Convention is similar to the scope of art. 7 of the 1989 Convention on the Rights of the Child, the only difference being that the former enshrines the child's "right to a descent"[33]. The Arabic text of the Article uses the term «الحق في النسب», which suggests that the authors of the Draft meant to apply the Islamic notion of lineage as enshrined in the 1994 Declaration on the Rights and Care of the Child in Islam[34]. The Article stipulates that all children shall, from birth, have a right to descent, whether they are born in or out of wedlock. Article 8 of the Draft enshrines the right of a child separated from his parents "to continue links with them" and the right of the child deprived of his or her family environment to the care of a foster family. It does not mention the institution of adoption.

Article 7 of the 1989 Convention on the Rights of the Child enshrines the right of a child to a name and the right, as far as possible, to know and be cared for by his or her parents. According to para 1 art. 7 of the Convention, the child shall from birth have the right to a name. Russian legal scholars define this right as an absolute subjective right to have and to use the name attributed at birth, to change it in cases defined by law as well as to demand the termination of unlawful use thereof [Korol' 2007:31; Temnikova 2011:200; Shershen' 2007:97]. Although the right is vested in the child, the obligation to give a name is attributed to his or her parents, adoptive parents, State organs or medical or social organisations depending on the case [Temnikova 2011:200]. Legal scholars consider the establishment of paternity a legal ground for attribution of the name of the father (patronymic) to the child [Temnikova 2011:201-202]. The amendments to art. 58 of the 1995 Family Code of the Russian Federation adopted in 2017 prohibit using symbols other than letters as well as abusive words and words defining rank, post or title in the name of the child[35]. The measure aims at ensuring the child's right to a decent name and preventing parents' abuse of their obligation to give a name to the child [Ruzakova 2017:88].

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[30] Covenant on the Rights of the Child in Islam adopted by the Thirty Second Islamic Conference of Foreign Ministers held in Sanaa, Republic of Yemen, on 28-30 June 2005. Independent Permanent Human Rights Commission (IPHRC). URL: https://oic-iphrc.org/docs/en/legal_instruments/OIC_HRRIT/327425.pdf (accessed date: 26.07.2024).

[31] IPHRC: عهد حقوق الطفل في الإسلام. URL: https://oic-iphrc.org/ar/data/docs/legal_instruments/OIC_HRRIT/756174.pdf (accessed date: 26.07.2024).

[32] OIC Holds Fourth Meeting to Discuss OIC Jeddah Convention on the Rights of the Child. OIC. URL: https://new.oic-oci.org/SitePages/NewsDetail.aspx?Item=5431 (accessed date: 06.12.2024).

[33] OIC: Annex II "OIC Convention on Human Rights" to Resolution No. 1/47-IPHRC on Matters Pertaining to the Work of the OIC Independent Permanent Human Rights Commission adopted by the Forty Seventh Session of the Council of Foreign Ministers of the Organization of Islamic Cooperation held in Niamey, Republic of Niger, on 27-28 November 2020. URL: https://www.oic-oci.org/docdown/?docID=6638&refID=3255 (accessed date: 06.09.2024).

[34] OIC: Annex II "OIC Convention on Human Rights" to Resolution No. 1/47-IPHRC on Matters Pertaining to the Work of the OIC Independent Permanent Human Rights Commission adopted by the Forty Seventh Session of the Council of Foreign Ministers of the Organization of Islamic Cooperation held in Niamey, Republic of Niger, on 27-28 November 2020 (in Arabic). URL: https://www.oic-oci.org/docdown/?docID=6615&refID=3255 (accessed date: 06.09.2024).

[35] The Federal Law of May 1, 2017, No. 94-FZ 'On Amending Article 58 of the Family Code of the Russian Federation and Article 18 of the Federal Law on Acts of Civil Status'. – *Legal Reference System "Consultant Plus"* (accessed date: 05.08.2024).

Research into Islamic legal doctrine demonstrates the importance of giving a decent name to the child in this legal tradition [Ishaque 2008:398]. The name of the lineage forms a part of the child's name and it cannot be given to a child unless he or she is born in a lawful marriage or acknowledged as a biological child by the father [Ishaque 2008:399]. Article 7 of the 2020 Cairo Declaration of the OIC on Human Rights enshrines the child's right to a name[36], while the 2004 Covenant on the Rights of the Child in Islam and the 2020 Draft of the Jeddah Convention proclaim the child's "right to a good name". However, the exercise of the right to lineage results not only in the right to be attributed the name of the lineage but also in the right to fosterage, custody, maintenance, guardianship, and inheritance. Although the right to a name and the right to lineage are connected, their scope and the legal consequences of their implementation differ significantly.

The right of the child to know his or her parents before adulthood is considered a novelty of the 1989 Convention on the Rights of the Child [Besson 2007:139]. The formula "as far as possible" limits the scope of obligations of States with regard to this right. Several States (the United Kingdom, the Czech Republic, the Grand Duchy of Luxembourg and the Republic of Poland) insisted on including the formula into the Article in order to allow national derogations from its provisions. They also supported the broad interpretation of the term "parents", which in some cases applies to "social" or "legal" parents, not "biological" ones [Besson 2007:143]. The right to lineage as enshrined in the 1994 Declaration on the Rights and Care of the Child in Islam implies not only unqualified right of the child to know and be cared for by his or her biological parents but also the right to keep a permanent legal relationship with them. In line with this approach, the 2004 Covenant on the Rights of the Child in Islam does not restrict the exercise of the child's right to know his or her parents. Article 7 of the 2020 Draft of the Jeddah Convention contains the formula "to the extent possible" which limits the child's right to know his or her "parents, relatives and foster mother".

The procedure of establishment of paternity is considered a measure protecting the child's right to know and be cared for by his or her parents [Krasitskaya 2011:110]. However, Russian legal scholars express the position according to which the principle of primary consideration of the best interests of the child limits the judicial enforcement of establishment of paternity. As M.V. Antokol'skaya outlines, "the considerations of biological paternity should not so heavily prevail upon the social dimension of the establishment of paternity" [Krasitskaya 2011:107]. This approach differs significantly from the standpoint of the 1994 Declaration on the Rights and Care of the Child in Islam and Islamic legal doctrine in general as they assign primary importance to legal and social relationship between the biological parent and the child.

The secret of adoption restricts the right of the child to know and be cared for by his or her parents. In the Russian Federation, the secret of adoption may be disclosed to the child or to third parties only upon the consent of adoptive parents. Besides, the 1995 Family Code of the Russian Federation allows changing the name and the date of birth of an adopted child, which is considered a measure protecting the secret of adoption [Kornakova, Chigrina 2018:820]. The complex analysis of the Islamic legal doctrine and national legislation of OIC Members allows concluding that States applying Sharia law provisions to personal status consider concealing any information on the child's origin and biological parents unacceptable as a violation of the right to know and be cared for by the child's parents and the right to lineage.

The above analysis demonstrates that the right to lineage as enshrined in the decisions of the OIC is unknown to the 1989 Convention on the Rights of the Child as the main treaty aiming at codification and progressive development of international law norms in this area. At the same time, the right to lineage differs significantly in its scope from the right to a name and right, as far as possible, to know and be cared for by the child's parents which are enshrined in the above-mentioned Treaty.

5. Right to Lineage in National Legislation of the Members of the Organisation of Islamic Cooperation

Research into national legal systems of OIC Members demonstrates that their approaches to the right to lineage and the institution of adoption differ. The laws of several OIC Members enshrine the

[36] IPHRC: The Cairo Declaration of the Organization of Islamic Cooperation on Human Rights adopted by the Forty-Seventh Council of Foreign Ministers of the Organization of Islamic Cooperation on 28 November 2020. URL: https://oic-iphrc.org/ckfinder/userfiles/files/FINAL%20OHRD%20CLEAN%20%20VERSION%2024_12_2020.pdf (accessed date: 30.07.2024).

right of the child similar in its scope to the right to lineage. According to art. 11 of the 2014 Child Law of the Sultanate of Oman, "the child shall have the right to be attributed to and be cared for by his or her parents, and may not be attributed to other parents"[37]. According to art. 16 of the Federal Law of the United Arab Emirates No. 3 of March 8, 2016, on Child Rights, "taking in consideration applicable law, the child shall have the right to meet his or her natural parents and family and receive their care and to maintain personal relationship and direct contact with both of them"[38]. One should conclude that since its proclamation under the auspices of the OIC in 1994, the right to lineage has not received wide recognition in the national legislation of the Members of the Organisation.

As regards the institution of adoption, N. Yassari divides Muslim jurisdictions in three groups, first allowing adoption generally or to all confessions except Muslims, second explicitly prohibiting adoption, and third being silent on the issue in their statutory law [Yassari 2015:944]. Among OIC Members, one should distinguish States allowing full adoption, States allowing simple adoption, States allowing several forms of adoption and States prohibiting adoption. Certain OIC Members consider adoption the most preferable form of alternative care, like the Kyrgyz Republic[39], the Republic of Turkmenistan[40] and the Republic of Tajikistan[41]. The national legislation of these Republics, as well as that of the Republic of Azerbaijan, the Republic of Kazakhstan and the Republic of Uzbekistan, considers adopted children equal to biological children of the adoptive family in legal status and terminates legal relationship between the adoptive child and his or her biological parents upon adoption. The other OIC Members allowing full adoption are Malaysia, the Republic of Cameroon, the Republic of Chad, the Republic of Côte d'Ivoire, the Republic of Gabon, the Republic of the Gambia, the Republic of Guinea, the Republic of Guinea-Bissau, the Republic of Indonesia, the Republic of Lebanon, the Republic of Niger, the Federal Republic of Nigeria, the Republic of Sierra Leone, the Federal Republic of Somalia, the Republic of Suriname, the Republic of Togo, the Republic of Türkiye and the Republic of Uganda. The Union of Comoros recognises the institution of simple adoption. Article 2 of the Family Code of the Comoros stipulates that "the adopted child retains his or her rights in the family of origin, including inheritance rights".

The national legislation of the Federative Republic of Senegal, the Republic of Burkina-Faso and the Republic of Mali enshrine two forms of adoption, full adoption and limited adoption. Article 223 of the Family Code of Senegal and art. 470 of the 1989 Code on the Individual and the Family of the Republic of Burkina-Faso[42] stipulate that "the adoption creates, by virtue of law, a relationship of filiation independent of the origin of the child". According to art. 241 of the Family Code of Senegal, the full adoption results in the change of filiation of the child who is attributed to the adoptive family in all except prohibition on marriage. According to art. 247 of the Code, in cases of limited adoption the child retains his or her legal relationship with the biological family, including inheritance rights. The 2011 Personal Status and Family Code of the Republic of Mali[43] and the 2004 Civil Code of the Republic of Mozambique[44], distinguish two types of adoption as well. Article 34 of the former stipulates that adoption in the form of filiation confers upon the child the name of the adoptive parents, while adoption in the form of protection allows the child to retain his or her filiation. The 1977 Civil Code of Afghanistan[45] and the 1992

[37] Royal Decree No. 22/2014 of May 19, 2014, Promulgating the Child Law. – *The Official E-Government Services Portal of the Sultanate of Oman*. URL: https://oman.om/docs/default-source/default-document-library/child-lawe08c75f29e-404631be4b408bde1861e7.pdf?sfvrsn=5a3bbfdf_4 (accessed date: 05.08.2024).

[38] Government of the United Arab Emirates: Federal Law No. 3 of March 8, 2016 on Child Rights Law (Wadeema). URL: https://uaelegislation.gov.ae/en/legislations/1176/download (accessed date: 05.08.2024).

[39] Para 5 of the Regulation Concerning the Procedure of Adoption by the Citizens of the Kyrgyz Republic and Foreign Citizens adopted by the Decree of the Government of the Kyrgyz Republic No 733 of October 27, 2015.

[40] Para 2 Article 106 of the Family Code of the Republic of Turkmenistan of January 10, 2012.

[41] Para 1 Article 125 of the Family Code of the Republic of Tajikistan of November 13, 1998.

[42] Zatu an VII 13 du 16 novembre 1989 portant institution et application d'un code des personnes et de la famille du Burkina Faso. URL: https://www.refworld.org/legal/legislation/natlegbod/1989/fr/103276 (accessed date: 05.08.2024).

[43] Secrétariat Général du Gouvernement de la République du Mali: Loi No.°2011 – 087 du 30 Décembre 2011 portant Code des personnes et de la famille. URL: https://sgg-mali.ml/codes/mali-code-2011-personnes-famille-2.pdf (accessed date: 05.08.2024).

[44] Suplemento. Boletim da República de Moçambique de 8 de Dezembrio de 2004. P. 535.

[45] FAOLEX: Republic of Afghanistan Ministry of Justice. Official Gazette No. 353 in 4 Volumes of January 5, 1977. Unofficial Translation by Afghanistan Legal Education Project. URL: https://www.fao.org/faolex/results/details/en/c/LEX-FAOC204715/ (accessed date: 05.08.2024).

Personal Status Act of Yemen distinguish adoption of the child of known lineage and the child of the unknown lineage. According to art. 228 of the Civil Code of Afghanistan, the former shall not have the effects resulting from the proof of parentage, such as alimony, custodial remuneration, inheritance and prohibition of marriage.

Article 149 of the Family Code of Morocco declares adoption legally void and producing no legal effects of lawful parental filiation. According to art. 46 of the Family Code of Algeria, adoption is prohibited by Sharia and the law. Article 4 of 1996 Child Law of the Arab Republic of Egypt[46] and art. 80 of the 2002 Family Code of the Republic of Djibouti[47] prohibit adoption as well. According to art. 70 of the 2017 Family Law of the Kingdom of Bahrain, "paternal filiation may not be established through adoption. Adoption does not produce legal effects of paternal filiation enshrined in Sharia law". According to the initial reports submitted to the CRC, the national legislation of the Hashemite Kingdom of Jordan, the Islamic Republic of Pakistan, the Republic of Iraq, the Republic of Mauritania, the United Arab Emirates, the Kingdom of Saudi Arabia, the Sultanate of Oman, the State of Palestine, the State of Kuwait, and the Republic of Yemen prohibits adoption.

The above analysis demonstrates that the approaches of the OIC Members to the right to lineage and its legal effects vary significantly and only allows concluding that protection of lineage and application or prohibition of adoption remain a matter within domestic jurisdiction of States.

6. Conclusion

The OIC unites 57 countries in Africa, Asia and Europe. The present article demonstrates the variety of their approaches to the protection of lineage which affect the legal regulation of the mechanisms of alternative care for children deprived of family environment, including adoption. Protection of lineage should be regarded as a national and regional particularity of certain, but not all, OIC Members originating in their historical, cultural and religious backgrounds. The analysis above does not allow concluding that a uniform approach to implementation of the right to lineage exists among OIC Members. It demonstrates, however, that States assert different international legal positions concerning interpretation and application of the universal treaty norms governing the right of the child, as far as possible, to know and be cared for by his or her parents, as well as the right of a child temporarily or permanently deprived of the family environment to special protection and assistance provided by the State. The evidence suggests that interpretation and application of such norms governing adoption remain a matter within domestic jurisdiction of States.

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[47] Ministère de la Femme et de la Famille de la République du Djibouti: Loi n°152/AN/02/4ème L portant Code de la Famille de 31 janvier 2002. URL: https://famille.gouv.dj/uploads/Textes/49887676991fe80ad479afa3fac8f9cf.pdf (accessed date: 06.08.2024).

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