

CHILD RIGHTS LAWS GLOBALLY: A TRAJECTORY FROM CRADLE TO CIVILIZATION

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"There can be no keener revelation of a society's soul than the way in which it treats its children."

~ Nelson Mandela.

ABSTRACT

For a considerable length of time, the concept of child rights was alien to many jurisdictions. Children were mainly regarded as chattels and factors to bolster economic production. On that premise, child labour was rampant and child exploitation was the norm. Over time, the conceptualization of children evolved and children were gradually accorded human status. This evolution began under the guise of the child labour reform movement, and through more aggressive and radical activism emerged into the corpus of charters, treaties, and domestic legislation ensuring and safeguarding the rights of children. The compelling tale of the trajectory of child rights laws is the pith of this article, as it seeks to travel down history lane, noting the struggles, the impediments to, and the eventual protection of child rights laws. The author's viewpoint is that of enamoured yet critical observers thus this article winds down with a succinct examination of the consequential impacts of child rights laws in selected facets of life. In the end, this article hopes to serve as a clarion call for the recognition and full-fledged enforcement of child rights laws considering the onerous hurdles it has surpassed and the transitional development it has undergone.

Keywords: human rights, child rights, liberty, freedoms, international law, history.

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INTRODUCTION

Hitherto, child rights were a foreign and almost ignoble concept, the concept of child rights gained widespread support only in the last few decades.⁴² A more pecuniary approach was resorted to in relation with children. They were often used for mercantile purposes till they attained maturity, and the conscience of the man seemed to be the only guiding principle as far as children were concerned.

With the advent of civilization, reforms were undertaken to reposition children in the social strata. Across the continent of Europe and America, laws were passed to regulate, albeit not entirely prohibit, child labour. This progressive trend towards the recognition of the rights of a child was heavily punctured during the era of the Trans-Atlantic slave trade (1526 to 1867). This era often referred to as the triangular trade, witnessed the most disheartening violations of what is now known as the rights of a child. Infant children were separated from their slave mothers at childbirth, others were brutally murdered by dashing their heads on trees, yet others were thrown away to rot. Those who were spared were enslaved from childbirth and were forced to undertake labour unsuited to their age and developmental stage. With time, the rights of children became an absolute mirage, when viewed from the angle-point of slave children.

Ironically, slavery and white supremacy helped to shape or redefine the societal perspective of children. With the abolition of the Trans-Atlantic slave trade in 1807, and the promulgation of the 13th amendment to the US Constitution, the rights of children began to gain prominence, as the class distinctions on the grounds of race and ethnicity were officially abrogated.⁴³ Frankly speaking, there was no lesser human being anymore, and the contemplation shifted to what status will be accorded children who were the erstwhile occupiers of that class before the emergence of the slave trade. Thus, child rights became the recognition of the humanity of children and much more, the

⁴² S. N. Hart, 'From property to person status: Historical perspective on children's rights' [1991] *American Psychologist* 46(1), 53.

⁴³ The 13th Amendment to the U.S. Constitution provides that: 'Neither slavery nor involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction'.

dignity, liberty, and respect they were entitled to as a result of that humanity. Child's Right advocate and Co-chair of the Jolie-Pitt Foundation, Angelina Jolie had this to say: 'No young boy and no young girl deserves to be treated less than a human being'. And they are all equally entitled to justice⁴⁴.

Simplistically, child rights are the benefits that accrue to children firstly as human beings, and as a specific consequence of their childhood, predicated on their vulnerability within this age bracket, which was not premeditated or predetermined. Legally speaking, child rights are the compendium of entitlements owed to children by law. They are the fundamental normative rules that govern the treatment of children, the relationship of minors amongst themselves, with adults, and institutional structures such as the school, hospital, and overwhelmingly the State. Simply put, the law has a controlling interest over a child with regard to formal matters, without prejudice to whatever degree of control or authority the parents or guardians of the child may exercise. This creates the need for a holistic study of child rights laws, cascading down from antiquated legal rules to more modern regulatory frameworks, in a bid to understand and fully appreciate the development that child rights laws have undergone, and are yet still undergoing.

Responding to the clarion call for global reformation of child rights laws, many jurisdictions have begun to incorporate elaborate legal provisions upholding the rights of a child into their legal system. Others have been content to ratify and domesticate those made by international organizations, and in bilateral treaties, of which they were signatories. With time, however, and owing to a lackadaisical approach to enforcement, prior traditions have encroached on the legal provisions guaranteeing and protecting the rights of a child, making them moribund. And if this nonchalance is not meted the appropriate diligence, the rate of violation of child rights promises to escalate. In recent times, we have seen egregious breaches of the rights of a child, from child soldiering – equipping children with firearms and assigning them to undertake militant

⁴⁴ Angelina Jolie, United Nations High Commission for Refugees (UNHCR) Special Envoy, speaking to the Council on Foreign Relations on November 12, 2008 <<https://m.youtube.com/watch?v=psghKmKHIKk>> accessed 23 September 2022.

assignments – to bush wives i.e enslaving female children and forcing them to marry boys and men who are engaged in militant activities.⁴⁵

The preoccupation of this paper is to render a critical analysis of the rights of a child, internationally noting the effects of the trajectory of developments that child rights have undergone in these cultures, in a bid to inspire the continuous development of child right laws globally.

CONCEPTUAL CLARIFICATION

Who is a Child?

The Merriam-Webster's Dictionary defines a child as a human being who is between the developmental stages of infancy and puberty(adolescence).⁴⁶ Legally speaking, a child is a human being who is classified as a minor and is younger than the legally stipulated age of majority. For example, in Nigeria, the law stipulates that the age of majority is 18 years old and thus a person younger than the age of 18 years old is deemed a child and a minor in the eyes of the law.⁴⁷

The Child's Right Act 2003 defines a child as "a person under the age of 18."⁴⁸ The United Nations **Convention on the Rights of the Child 1989 defines a child as "a human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier (or later)."**⁴⁹

There are major discrepancies and contradictions in the legally stipulated age of majority of most countries. The resultant effect is that a child in country A might already be an adult in country B and vice versa. While this is largely due in part to diverse cultural, religious, and social views about children, one cannot also ignore the major role that other factors like colonialism, poverty, and the state of the nation play in determining the legally acceptable age of majority in a jurisdiction.

⁴⁵ C.C. Jalloh, 'Immunity from Prosecution for International Crimes: The Case of Charles Taylor at the Special Court for Sierra Leone [2004] 21(8) *American Society of International Law*.

⁴⁶ Merriam-Webster, *Merriam-Webster.com Dictionary* <<https://www.merriam-webster.com/dictionary/child>> accessed 23 September 2022.

⁴⁷ Child Right's Act 2003, s 277.

⁴⁸ Ibid.

⁴⁹ UNCRC, art 2.

What Are Rights?

Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative values about what is allowed of people or owed to people according to some legal system, social convention, or ethical theory.⁵⁰ Human rights are those rights that belong to all just because we are human.⁵¹ This is based on the understanding that all people are inherently and naturally equal and deserve fundamental rights, such as social and civil rights.⁵² Rights may **be based on humanity (human rights), or society's laws, customs, statutes, or legislative actions.** Human rights, which is the specific focus of this article are those inalienable fundamental rights to which a person is inherently entitled simply because he or she is a human being.

What Are Child Rights?

Juxtaposing the two previous expositions, Child rights are a class of human rights with a specific focus on the rights of protection and care afforded to minors. Child rights are a specific consequence of the vulnerability of children, and their significance as the future generation. The rights afforded to a child are not substantially different from the rights and privileges that adults enjoy. Although, some human rights such as the right to marry are inoperative for a child until they attain a specific age. Notwithstanding, children also have special rights that are necessary to protect their minority. Some of these rights include the Right to special protection during childhood; the right to education regardless of race, gender, identity, national origin, religion, disability, colour, sexual orientation, ethnicity, or any other characteristic, etc.⁵³

LEGAL FRAMEWORK OF CHILD RIGHTS

International Legal Framework

The first attempt to recognize and protect the rights of children was made by the League of Nations after World War I in 1924 by adopting the Geneva Declaration on the Rights of the Child,

⁵⁰ O. P. Ogheneare and C. M. Nduka, 'The Rights of Prisoners in Nigeria: A Constructive Criticism' [2022] 1(1) *DELSAN Law Journal*, 17-30

⁵¹ L.M. Healy, 'Exploring the History of Social Work as a Human Rights Profession' [2008] 51(6) *International Social Work*, 735–748.

⁵² J. Ife, *Human Rights and Social Work* (3rd edn, Cambridge University Press 2012).

⁵³ *Brown v. Board of Education of Topeka* (1954) 347 U.S. 483.

a simple document drafted by Eglantyne Jebb, the founder of ‘Save the Children’.⁵⁴ This piece of document presented by Eglantyne Jebb contained rights that she believed were for all children **including those children that were ‘forgotten’**⁵⁵ Upon its disbandment and replacement with the United Nations in 1945, the declaration was carried over to the new organization.⁵⁶ By 11 December 1946, the United Nations General Assembly took another step towards the protection **of the rights of children by establishing the International Children’s Emergency Fund (now known as United Nations Children’s Fund-UNICEF)** to help to mitigate the devastating effects of the World War II by providing emergency food and healthcare to children and women in areas affected by the war. UNICEF would later go on to become a permanent body in the United Nations in 1953.⁵⁷

Subsequently, by 20th November 1959, the United Nations General Assembly through resolution 1386 (xiv) moved to adopt another Declaration of the Rights of the Child to replace the Geneva Declaration on the Rights of the Child. This DRC was adopted to cure the shortcomings of the Geneva Declaration. It contained eleven principles and emphasized the duty of mankind to give the best to children.⁵⁸ 20 years later, the United Nations in commemoration of the 20th anniversary of the Declaration of the Rights of the Child, marked the year 1979 as the International Year of the Child. It was during this period that the thought of having a Convention on the Rights of the Child came up. By 1978, the first draft of the convention was presented to the Commission on Human Rights and subsequently, a revised draft was presented in 1979. This led to the adoption of the Convention on the Rights of the Child in 1989 by General Assembly Resolution 44/25.⁵⁹

⁵⁴ ‘History of Child Rights’ (UNICEF) <<https://www.unicef.org/child-rights-convention/history-child-rights>> accessed 30 December 2022.

⁵⁵ ‘Our Fonger: Eglantyne Jebb’ (Save the Children) <<https://www.savethechildren.org/us/about-us/why-save-the-children/eglantyne-jebb>> accessed 31 December 2022.

⁵⁶ ‘Declaration of the Rights of the Child, 1959’ (Humanium) <<https://www.humanium.org/en/declaration-rights-child-2/>> accessed 31 December 2022.

⁵⁷ UN-CCOI, ‘UNICEF’ (un.org) <<https://www.un.org/en/ccoi/unicef-united-nations-childrens-fund>> accessed 31st December 2022.

⁵⁸ ‘Declaration of the Rights of the Child, 1959’ (Humanium) <<https://www.humanium.org/en/declaration-rights-child-2/>> accessed 31 December 2022.

⁵⁹ International Committee of the Red Cross, ‘Convention on the Rights of the Child, 20 November 1989’ (ICRC) <<https://ihl-databases.icrc.org/en/ihl-treaties/crc-1989?activeTab=undefined>> accessed 31 December 2022.

The United Nations Convention on the Rights of the Child (UNCRC) is one of the nine core human rights treaties.⁶⁰ It is the primary convention protecting the rights of children. It was adopted in 1989 and came into force on 2 September 1990. The CRC is the most ratified convention in the world, having been ratified by 197 countries.⁶¹ Unlike the previous international instruments on child right, the UNCRC is a legally binding document, making it the first legally binding international instrument on Child Rights.⁶² The adoption of the UNCRC was a great milestone for the protection of the rights of a **child**. **Nelson Mandela described it as “that luminous, living, document that enshrines the rights of every child without exception, to a life of dignity and self-fulfilment”**.⁶³ It is made up of three (3) parts containing fifty-four (54) articles. The convention mandates state parties to protect the rights of the children and make known/publicize the rights in this convention to children and adults.⁶⁴

A child under the Convention is defined as any person below the age of eighteen (18) years, except majority is attained earlier under the national law applicable to the child.⁶⁵ The convention sets out guiding principles for the child. The first Part of the Convention (articles 1 - 41) guarantees every child the right to life, protection from discrimination, expression of their views, and access to education, healthcare, and a supportive environment. It also addresses issues such as adoption, protection from abuse and exploitation, and legal assistance, prioritizing the child's best interests in all matters.

Part II (articles 42-45) of the convention provides for the Treaty Monitoring Body – the Committee on the Rights of the Child, which is to be made up of 10 experts acting and serving in a personal capacity.⁶⁶ State parties are to submit two reports to the Committee; an initial report to be submitted 2 years after ratification and a periodic report to be submitted every 5 years.⁶⁷ The

⁶⁰ OHCHR, ‘The Core International Human Rights Instruments and their Monitoring Bodies’ (United Nations) <<https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies>> accessed 31 December 2022.

⁶¹ Only the United States is yet to ratify it.

⁶² ‘History of the UNCRC’ (Child and Youth Advocate) <<https://www.childandyouthadvocatepei.ca/history-of-the-uncrc>> accessed 30 December 2022.

⁶³ Nelson Mandela, ‘Statement on Building a Global Partnership for Children’ (One World One People, 6 May 2000) <https://www.oneworldonepeople.org/articles/mandela_children.htm> accessed 31 December 2022.

⁶⁴ Arts 14 and 42.

⁶⁵ Art 1.

⁶⁶ Art 43.

⁶⁷ Art 44.

convention allows expert advice from certain agencies to aid the implementation of the Convention and gives the committee the power to make suggestions and give recommendations for the implementation of the convention.⁶⁸ The last part of the convention (part III, articles 46 – 54) is the miscellaneous provisions which contain the procedures and processes for signatures, dispute resolution, ratification and accession, amendments, and reservations.

The convention has three optional protocols; two were adopted on 25th May 2000 and the last was adopted on 19th December 2011. The first protocol is the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, the second is the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (raising the age for direct participation in hostilities to 18 years), and the last is the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (allowing children to report directly to the Committee on violation of their rights).

As earlier stated, the Convention is a major milestone in the advancement and protection of the rights of children worldwide. However, it failed to take cognizance of the peculiarities and cultures of certain countries which are detrimental to the rights of children. For example, it did not recognize the issue of child marriage which is in vogue in some countries.⁶⁹ In addition, the joining clause under the definition of a child (unless majority is attained earlier under the national law applicable to the child) is counterproductive because it gives state parties leeway to set an unreasonable age which would invariably defeat the very essence of the convention. Countries have adopted ages lower than 18 even though the Committee has urged state parties to raise the majority to 18.⁷⁰

⁶⁸ Art 45.

⁶⁹ Statista, ‘Countries with the highest child marriage rate as of 2021’ (Statista, April 2021) <<https://www.statista.com/statistics/1226532/countries-with-the-highest-child-marriage-rate/>> accessed 2 January 2023.

⁷⁰ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, ‘All Persons Below the Age of 18 Years are Children: Upholding All the Rights of All Children, Everywhere, at All Times’ (United Nations, 6 October 2022) <<https://childrenandarmedconflict.un.org/2022/10/all-persons-below-the-age-of-18-years-are-children-upholding-all-the-rights-of-all-children-everywhere-at-all-times/>> accessed 2 January 2023.

Regional Legal Framework

The African Charter on the Rights and Welfare of the Child (ACRWC) is the only specific **regional treaty on children's rights**.⁷¹ It was adopted by the Member States of the Organization of African Unity in 1990 and entered into force in 1999. It has been ratified by 53 member states of the African Union. The ACRWC contains similar provisions to the United Nations Convention on the Rights of the Child (UNCRC) with modifications that reflect the cultural heritage, historical background, and values of Africa.⁷² In addition, the ACRWC provides for other rights which are important in protecting the dignity and right of the child based on the peculiarities of the African culture and practices.⁷³

Some of the notable distinctions and additions of the Charter include recognizing the rights of unborn children,⁷⁴ prohibiting harmful cultural practices like Female Genital Mutilation,⁷⁵ setting a minimum age for marriage at 18,⁷⁶ and prohibiting children's involvement in direct hostilities.⁷⁷ It also emphasizes parental and community responsibilities towards children, reflecting African cultural values and addressing unique regional challenges.⁷⁸

The ACRWC is a great improvement as it recognizes the existing culture and practices and peculiarities (both prejudicial and integral cultures and practices) of Africa. However, despite these provisions, there has not been an optimum success in its adherence and implementation amongst member states. Child labour, child marriage, child trafficking and exploitation, malnutrition, and out-of-school children are still the order of the day in member states.⁷⁹ It is recommended that these laws take full effect in member states, otherwise the purpose of the ACRWC will be defeated.

⁷¹ Benyam Dawit Mezmur, 'The African Children's Charter @ 30: A distinction without a difference?' [2020] 28 *The International Journal of Children's Rights* 693, 694.

⁷² ACRWC, preamble.

⁷³ *Ibid.*

⁷⁴ *Ibid.*, para 10.

⁷⁵ ACRWC, art 21(1).

⁷⁶ *Ibid.*, art 21(2); It also makes registration of marriages compulsory.

⁷⁷ *Ibid.*, art 22.

⁷⁸ *Ibid.*, art 31.

⁷⁹ International Labour Office and United Nations Children's Fund, *Child Labour: Global estimates 2020, Trends and the Road Forward* (New York: ILO and UNICEF, 2021); ANPPCAN News, 'The African Charter on The Rights and Welfare of the Child (ACRWC)' (ANPPCAN, 15 June 2021) <<http://www.anppcan.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acrwc/>> accessed 1 January 2023.

THE EFFECT OF CHILD RIGHTS IN OUR WORLD TODAY

- I. The recognition of Child Rights and adoption of legislation of same changed the narrative of children as mere assets or properties in the family and as victims or objects of charity. It recognized and protected the child as a significant entity in the family and community with rights, one that possess the attribute of being rational, and has the capacity to make decisions and choices distinct from the parents and legal guardians.⁸⁰
- II. It recognized the vulnerabilities of children, thus needing special forms of protection, prohibition from certain activities and practices, and prioritization during crisis.⁸¹
- III. The recognition and protection of Child Rights ensures that state policies and laws accommodate children especially as they have limited participation in government affairs and overall decision making.⁸²
- IV. It also ensured that children are not left in the background at the peril or dictates of their parents and legal guardians but are well catered for in a manner suitable and essential for their growth and development.

CONCLUSION

The world over, child rights protection and realization has become a legal norm, pervading even the most obstinate nations and reforming the global conceptualization of children. Cascading down from antiquated times when the rights of children were non-existent and obsolete, this article has trailed the herculean task to rubber-stamp child rights with the apposite legislative and judicial imprimatur. Hitherto, cases of child right violations and infractions did abound, and was greatly exacerbated by the Trans-Atlantic slave trade, the Industrial Revolution, and the upsurge in the demand for labour.

Following radical reforms in the 16th Century, the malevolence against children was decried and this continued unabated, garnering support from movements, sectoral associations, organizations, and institutions of government till it gained international recognition in the late Twentieth

⁸⁰ History of the UNCRC' (Child and Youth Advocate) <<https://www.childandyouthadvocatepei.ca/history-of-the-uncrc>> accessed 30 December 2022.

⁸¹ Philip Alston, 'Children's Rights in International Law' (Cultural Survival, 19 February 2010) <<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/childrens-rights-international-law>> accessed 31 December 2022.

⁸² Ibid.

Century. Thereafter, a spree of legal positivism ensued with legislation being enacted to protect the rights of children. Much of the extant legal framework governing child rights internationally and regionally has been reviewed, and the resultant effects have been succinctly examined.

In conclusion, this paper recommends swift ratification of the existing international legal framework for child rights by the state-parties. Furthermore, it is recommended that each jurisdiction should bolster the implementation of their child rights protection laws so as not to be covertly aiding the perpetration of child rights offences, thus impugning their character and credibility internationally.