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International and Regional Legal and Policy Framework on Child Labour

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ABSTRACT

This paper seeks to explore the International and regional legal and policy framework for the protection of children against child labour. The problem of child labour is global, for instance, many children who are engaged in child labour are trafficked from one country to another. It is for this reason that the comity of states is and should be interested in the protection of children against child labour globally. Furthermore, at the international level, it would be shown that relevant instruments exist in this regard at both regional and international levels but the menace persists. This paper will therefore explain the relevant regional and international legal instruments on the issue of child labour.

Keywords: International, Regional, Legal and Policy Framework, Child Labour.

1. INTRODUCTION

Years before the United Nations Convention on the Rights of the Child (NCRC) was implemented, earlier international efforts were made to define the rights of children.² These include among others the 1924 Declaration of the Rights of the Child (Declaration of 1924)³ adopted under the League of Nations and the 1959 Declaration of the Rights of the Child (1959 Declaration)⁴. Others are the Minimum Age (Industry) Convention (ILO Minimum Age Convention 1919) and the International Labour Organization (ILO)⁵.

Despite their enormous efforts, it would appear that these instruments lacked a complete approach to resolving problems relating to children's rights.⁶ It was due to the conceptions of childhood that existed at the time where children were considered to be little human beings in need of protection and objects, rather than subjects of the law.⁷ Therefore, these instruments could not proffer solution to a wide variety of issues concerning children's needs.

The shortcomings of children's rights instruments that predated the CRC prompted the need to adopt a binding instrument. Nevertheless, the issue of concern is that as many other statutory international law instruments such as the Universal Covenant on Civil and Political Rights (ICCPR) and International

² G.V. Beuren, *The International Law on the Rights of the Child*. (Haque: Martinus Nijhoff, 1998) 199-218

³ Declaration of the Rights of the Child (1924 Declaration), adopted by the League of Nations in 1924, League of Nations Official Journal, Supplement No.23

⁴ Declaration of the Rights of the Child (1959 Declaration), adopted by the United Nations in 1959, UN.Doc.A/4354 (1959)

⁵ International Labour Organization (ILO) Minimum Age (Industry) Convention, adopted in 1919 and entered into force in 1921 (ILO Minimum Age Convention 1919).

⁶ Beuren (n1) at 199-218

⁷ Ibid

Covenant on Economic Social and Cultural Rights (ICESCR) contained standards applicable to children,⁸ duplication of effort, time and resources can have a specific instrument for protecting the rights of the child. A dominant opinion, however, came from several countries which favoured the adoption of a Convention for the protection of the rights of children. The argument is that the time preceding CRC's adoption was treated as acts of charity rather than legal entitlements. This was further argued that the earlier instruments of the Convention lacked a comprehensive approach to the issues that affect children.⁹ Accordingly, about 20 years after the adoption of the 1959 Declaration on the Rights of the Child, Poland submitted a resolution to the United Nations in 1978 persuading it to adopt a 'Convention on the Rights of the Child'.¹⁰ To a significant degree, the Polish proposal was greatly modelled on the 1959 Declaration of the Rights of the Child. By couching the resolution similar to the 1957 Declaration, Poland anticipated that not much argument would take place and that would guarantee that the Convention was adopted before the end of 1979, the International Year of the Child.¹¹ This means that it was intended to mark the adoption of the Convention during the celebrated International Year of the Child. Thus, a draft was presented for adoption to the General Assembly ten years later, and it was ratified as the "United Nations Convention on the Rights of the Child" on 20 June 1989. The Convention came into force on 2 September 1990 and received 192 ratifications within two years.¹²

There are several laws for the protection of the Nigerian child from child labour. However, the plethora of laws and policies, the incidence of child labour and other violations of children's rights has persistently increased. This makes it necessary to consider why this is so. Is it that the laws and policies are effective in curbing child labour and other violations of children's rights? Or is it that the legislation is not well enforced? This chapter will objectively examine the effectiveness of UNCRC, ILO and other related laws and policies on children's rights and their applications in Nigeria to answer these questions. In line with this, it will investigate whether the provisions under UNCRC and ILO to combat child labour are adequate and well implemented to achieve their objective. Thus, the key concern when assessing the implementation system will be what changes have arisen in law and practice in Nigeria since the commencement of the implementation procedure and to what degree the procedure and policies for minimizing or potentially eradicating the incidence of child labour in Nigeria have accomplished these objectives.

2. Conceptual Clarification

2.1 Who is a Child?

The definition of a child in Nigerian law is not uniform across the globe. The Child Rights Act (CRA) 2003, which aligns with the United Nations Convention on the Rights of the Child (UNCRC), defines a child as "a person under the age of eighteen years".¹³ This definition is in line with international standards. However, other Nigerian laws present varying definitions. The Labour Act defines a child as a person below the age of twelve for employment.¹⁴ Similarly, the Criminal Code provides that a child under the age of seven cannot be held criminally responsible, while a child aged seven to twelve may be held responsible if it can be proven that they had sufficient capacity to understand the nature of their actions.¹⁵ This discrepancy in definitions creates legal inconsistencies, which can impact the enforcement of child protection laws in Nigeria. Despite these variations, the CRA's definition is widely accepted as the standard in matters relating to child welfare and rights.

⁸ S Detrick, *The U.N. Convention on the Rights of the Child, A Guide to the Travaux Preparatoires* (MartinusNijhoff 1992), 4

⁹ *Ibid*, 19

¹⁰ J Gareth, *Children and development: Rights globalization and poverty* (Sage Publications 2005), 338

¹¹ J. Detrick, *The U.N. Convention on the Rights of the Child, A Guide to the Travaux Preparatoires*, (n 7) 20-21

¹² D. Jaap 'What does the Children's Convention require' (2006) 20 *Emory International Law Review* 208

¹³ Child Rights Act 2003, s277

¹⁴ Labour Act, Cap C38 LFN 2004, s59

¹⁵ Criminal Code Act, Cap 38 LFN 2004, s30

2.2 What is Child Labour?

Child labour is the employment of a child for a job, especially when it is illegal or considered to be exploitative. Under Article 32 of the Convention on the Rights of the Child (CRC), child labour occurs when children, especially young children, are exposed to long hours of work in a dangerous or unsanitary environment with too much responsibility for their age, especially when it is done at the expense of their schooling and social recreation. Nevertheless, child work should be differentiated from child labour. In line with the above definition, the International Labour Organization (ILO) convention on child labour, namely Convention No 138 of 1973, which sets a minimum age for hazardous work, and Convention No 182 of (1999), which seeks to eliminate the worst forms of child labour, cover all practices related to slavery, such as the sale and trafficking of children. Child labour will not only harm the children concerned and hinder the development of a skilled workforce but will also lead Nigeria into a cycle of poverty.

The Government of Nigeria has put in place so many laws, policies and institutions concerned with the protection of children, including the protection of children from violence, such as National and State Child Rights Implementation Committees, Child Development Departments in the Federal and State Departments of Women's Affairs, National Council of Child Rights Advocates of Nigeria (NACCARAN). Nigeria also ratified the UN Convention on the Rights of the Child (CRC) in 1991. In 2003, the Act which is divided into 24 parts with 275 sections was domesticated by the Child Rights Act (CRC) after a long and tiresome struggle and advocacy.¹⁶

3. International Legal Framework for the Protection of the Rights of the Child

The protection of the rights of the child is primarily predicated on international conventions from the source to the development of national laws. These international treaties and conventions will be examined shortly.

3.1 The Declaration of the Rights of the Child 1924

The Declaration of the Rights of the Child was the first attempt to address the rights of the child on an international level¹⁷. In the preamble, it was stated that; humanity owes the child the best it has to give. The Declaration, which is also referred to as the Declaration of Geneva was the first document that directed international attention to children's rights¹⁸. This Declaration was drafted by the Save the Children Fund, an organization established by Eglantyne Jebb¹⁹. The document was submitted and adopted by the League of Nations in November 1924²⁰. The significance of this declaration is that it highlights the social and economic entitlements of the child. It lays the foundation for setting future international standards for the rights of the child²¹.

The 1924 Declaration set out five principles aimed at fulfilling the rights of children²². The first principle provided that the child must be given the means requisite for his/her healthy development, both materially and spiritually. The second espoused that a hungry child must be fed; the sick child must be nursed. The third principle provided an element of what has come to be commonly known as the children's first principle. It declared that a child must be the first to receive relief in times of distress. The fourth principle states that the child must be protected from all forms of exploitation.

¹⁶ T Nkoyo, 'Revisiting Equality as Right: The Minimum Age of Marriage Clause in the Nigerian Child Right Act' (2003) 27 Third World Quarterly 1299

¹⁷ Declaration of the Rights of the Child (1924 Declaration), adopted by the League of Nations in 1924, League of Nations Official Journal, Supplement No.23 Supp 23

¹⁸ C Cohen, 'Introductory Note: United Nations Convention on the Rights of the ' (1989) 28 ILM 1448

¹⁹ Personal Letters of Eglantynejebb cited in Van Beuren G, *The International Law on the Rights of the Child* (MartinusNijhoff 1994)

²⁰ Ibid

²¹ Beuren (n1)

²² T.Kaime, *The African Charter on the Rights and Welfare of the Child: A Socio-Legal Perspective* (University Law Press 2009) 13

Furthermore, the fifth principle called on states to inculcate in children a spirit of service towards fellow humans²³. However, the 1924 declaration was never intended to create binding legal obligations on states and corresponding legal rights for children²⁴. Although it was called a Declaration of the Rights of the Child, the instrument emphasized the duties that men and women had in ensuring that humanity gave children the best it had got to give. In other words, children were regarded as recipients of welfare rather than holders of specific rights.²⁵

These shortcomings, notwithstanding, the 1924 Declaration is vital in the development of the current children's rights framework in several ways. First, it debunks the perception that the international rights of the child are a recent development in international human rights law. It should be noted that the League of Nations initiative took place well before efforts to codify the Universal rights of all people. The Declaration also laid out the groundwork for the proposition of their rights, a proposition that has been borne out by the United Nations Convention on the Right of the Child (UNCRC) and the African Children's Charter.²⁶ Crucially, by providing for a mixture of political, social and economic aspirations, the Declaration gives credence to the principle that asserts the indivisibility of rights between civil and political, on the other hand; and economic, social and cultural rights, on the other²⁷.

3.2 Universal Declaration of Human Rights (UDHR) 1948

The UDHR which was adopted by the General Assembly of the United Nations (UN) in Paris on the 10th of December, 1948, lays down the foundation for all human rights-related legislation internationally²⁸. It was adopted without a dissenting vote, and with few abstentions, by all member states of the UN.²⁹ It proclaimed a catalogue of human rights that apply to all human beings and therefore implicitly to children.³⁰ It emphasized the child's right to special care and assistance as was previously canvassed in the 1924 Declaration on the Rights of the Child. It was noted that, unlike the UN Charter, the UDHR mentions children, within the context of declaring the family to be the 'natural and fundamental group unit of society' and as such entitled to protection by society and the state.³¹

Thus Article 25(2)³² states: "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection." Again, Article 26 calls for the right to education for all, and deals both with access to and the aims of education".³³ These provisions call for compulsory education, at least at early childhood development and primary education levels.

It establishes the principle that education should be directed to the full development of the human being, the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. The declaration, however, acknowledges the right of parents to choose the kind of education they deem fit for their children.³⁴ The legal value of UDHR reflects on its recognition and acceptance globally, even without binding legal effect it is regarded as 'declaratory of accepted principles within the international community'.³⁵

²³ Ibid

²⁴ Ibid

²⁵ Ibid

²⁶ Beuren (n 5)

²⁷ T. Kaime, (n18)

²⁸ UDHR (GR Res 217A,(III) UNDoc A/ 180 at 71, 1948) adopted 10 December 1948

²⁹ Report of the Working Group on the Draft Declaration on Human Rights, *Doc. E/CN.4/57, see also Summary Records of Group Meetings, Doc. E/CN.4/AC.2/1-9*

³⁰ (1976) 6 CCHCJ 1927

³¹ A MacDonald, *The Rights of the Child: Law and Practice* (Jordan Publishing Ltd 2011)

³² Universal Declaration of Human Rights, 1948, Article 25

³³ Universal Declaration of Human Rights, 1948, Article 26

³⁴ Ibid

³⁵ Beuren (n1)

3.3 Declaration of the Right of the Child 1959

The Universal Declaration of Human Rights (UDHR) was followed by the Declaration of the Rights of the Child,³⁶ an essential document in the history of children's rights because it is child-specific. The League of Nations Declaration (1924) laid the foundation for the UN Declaration of the Rights of the Child (DRC).³⁷ The preamble notes that children need “special safeguards and care, including appropriate legal protection, before and after birth”. The Declaration proclaimed that the child should enjoy all the rights outlined in the Declaration without any exception whatsoever and discrimination. The term ‘entitled’ used in the declaration arguably is analogous to the term ‘right’.³⁸ The (DRC) reiterates the 1924 Declaration’s pledge that “mankind owes to the child the best it has to give” and calls explicitly on voluntary organizations and local authorities to strive for the observance of children’s rights”.³⁹ The principles enshrined in the Declaration on the Rights of the Child are that “a child is to enjoy “special protection” as well as opportunities and facilities, by law and other means”, for healthy and normal physical, mental, moral, spiritual and social development in conditions of freedom and dignity”. The primary consideration in enacting laws for this purpose is the best interests of the child”,⁴⁰ this is a standard feature in all children’s rights instruments, and again, this is a principle that filters through to legislation at the national level as well. The various principles include that a child is entitled to a name and nationality; to adequate nutrition, housing, recreation, and medical services; to education; and for the disabled, to special treatment, education and care. Again, it protects children against neglect and cruelty, and it prohibits exploitation, trafficking, as well as underage labour and discrimination.⁴¹ The 1959 Declaration of the Rights of the Child is the conceptual parent of the CRC.⁴² This notion was further confirmed when Poland submitted the first draft of the Convention to the Commission on Human Rights in 1978, and the text was very similar to the 1959 Declaration. In the same vein, Alston and Tobin described the 1959 Declaration as groundbreaking.⁴³ It is pertinent to mention that with these developments, children were beginning to emerge no longer as passive recipients but as subjects of international law, recognized as being able to enjoy specific rights and freedoms.⁴⁴

Crucially, the 1959 Declaration was the springboard for the initiative to draft a Convention which is very significant in the development of children’s rights⁴⁵. Although all the Declarations discussed so far have no legally binding force as the CRC is the first legally binding international instrument to address children’s rights comprehensively, these declarations are the foundation on which both the CRC and the African Charter on the Rights and Welfare of the Child (ACRWC) were built.⁴⁶

3.4 International Covenant on Economic, Social and Cultural Rights 1966

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is one of the conventions adopted by the General Assembly of the United Nations that followed the same trend to protect and promote the rights of children.⁴⁷ There is also the International Covenant on Civil and Political Rights.⁴⁸

³⁶ Declaration of the Rights of the Child (1959 Declaration), adopted by the United Nations in 1959, UN.Doc.A/4354 (1959)

³⁷ J September, 'A Comparative Study of Children’s Rights and Child Labour Legislation in South Africa, Brazil and India' (2014) 11 University of Cape Town

³⁸ C Cohen, 'The Developing Jurisprudence of the Rights of the Child' (1993) 6 St Thomas L Rev 10

³⁹ W. Zeldin, 'Children’s Rights: International Law' The (Law Library Congress 2014)

⁴⁰ Declaration of the Rights of the Child (1959 Declaration), adopted by the United Nations in 1959, UN.Doc.A/4354 (1959)

⁴¹ Ibid

⁴² O. Ekundayo, *Does the African Charter on the Rights and Welfare of the Child (ACRWC) only Underlines and Repeats the Convention on the Rights of the Child (CRC) ’s Provisions? : Examining the Similarities and Differences between the ACRWC and the CRC, 147*

⁴³ P. Alston and J and Tobin, *Laying the Foundation for Children’s Rights* (UNICEF 2005)

⁴⁴ Beuren (n 5) 10

⁴⁵ Detrick et al, *A guide to TravauxPrepatiores* (MartinusNijhoff 1993), 34

⁴⁶ O. Ekundayo, (n38)

⁴⁷ K.S Etor, 'Legal Framework for the Rights of the Child in Nigeria and the Imperative Question of Enforceability. Human Rights Review' (2006) 6 *An International Human Rights Journal, An Annual Publication of the Department of Public Law, Ahmadu Bello University, Zaria, 286*

The ICESCR enjoins state parties to accord special measures of protection and assistance to children and young persons without discrimination. The Covenant also provides that children and young persons be protected from economic and social exploitation. In addition, it espoused that child should not be employed to work in a hazardous and harmful environment that can affect their morals, and health or is dangerous to their life or likely to hamper their healthy development. State parties are further required to set the limit below which the paid employment of child labour should be prohibited and punishable by law⁴⁹.

The Covenant recognizes the indivisibility of human rights. It recognizes the inherent dignity, and equal and inalienable rights of all members of the human family. Article 10 states that the broadest possible protection and assistance should be accorded to the family, particularly for its establishment, while it is responsible for the care and education of children.⁵⁰ Article 13(1) of the ICESCR provides that everyone has a right to education, and in more specific terms, “primary education shall be compulsory and free for all by under Article 13 (2a)”.⁵¹

Despite the ICESCR’s provisions to protect and promote the rights of children as well as its attempt to punish violators of the rights of the child against exploitation, it fails to set up the mechanism for achieving that purpose. More so, the use of terminologies like “children” and “young persons” did not in any way improve the provisions of ICESCR and like other similar conventions did not provide for the age limit of who a child or young person is, thereby leaving that power to state parties⁵².

3.5 The International Covenant on Civil and Political Rights (ICCPR)

Article 24 of the International Covenant on Civil and Political Rights (ICCPR) made provisions that protect children from child labour. This Article provides that children have the right to protection from their family, society and the state.⁵³ ICCPR requires states to take special measures to protect children. Article 24 of the ICCPC recognizes the right of every child without any discrimination, to receive from his family, society and the State the protection required by his status as a minor. Consequently, the implementation of this provision entails the adoption of special measures to protect children, in addition to the measures that States are required to take under Article 2 to ensure that everyone enjoys the rights provided for in the Covenant. The reports submitted by States parties often seem to underestimate this obligation and supply inadequate information on how children are afforded enjoyment of their right to special protection.⁵⁴

In this connection, the Committee points out that the rights provided for in Article 24 are not the only ones that the Covenant recognizes for children and that, as individuals, children benefit from all of the civil rights enunciated in the Covenant. In enunciating a right, some provisions of the Covenant expressly indicate to State measures to be adopted to afford minors greater protection than adults. Thus, as far as the right to life is concerned, the death penalty cannot be imposed for crimes committed by persons under 18 years of age. Similarly, if lawfully deprived of their liberty, accused juvenile persons shall be separated from adults and are entitled to be brought as speedily as possible for adjudication; in turn, convicted juvenile offenders shall be subject to a penitentiary system that involves segregation from adults and is appropriate to their age and legal status, the aim being to foster reformation and social rehabilitation. In other instances, children are protected by the possibility of the restriction provided that such restriction is warranted of a right recognized by the Covenant, such as the right to publicize a judgement in a suit at law or a criminal case, from which an exception may be made when the interest of the minor so requires.⁵⁵

⁴⁸ See General Assembly Resolution 2200 A (XXI) UN Doc. (1997) Cmnd 6707 (hereinafter ICCPR). This Covenant entered into force on 23rd March 1976.

⁴⁹ Article 10 (3) ICESCR

⁵⁰ *Ibid* Article 10 ICESCR

⁵¹ Article 13(2a) ICESCR

⁵² K.S. Ettor (n43)

⁵³ Article 24 of the International Covenant on Civil and Political Rights

⁵⁴ *Ibid*

⁵⁵ *Ibid*

In most cases, however, the measures to be adopted are not specified in the Covenant and it is for each State to determine them in the light of the protection needs of children in its territory and within its jurisdiction. The Committee notes in this regard that such measures, although intended primarily to ensure that children fully enjoy the other rights enunciated in the Covenant, may also be economic, social and cultural. For example, every possible economic and social measure should be taken to reduce infant mortality and eradicate malnutrition among children and to prevent them from being subjected to acts of violence and cruel and inhuman treatment or from being exploited by means of forced labor or prostitution, or by their use in the illicit trafficking of narcotic drugs, or by any other means. In the cultural field, every possible measure should be taken to foster the development of their personality and to provide them with a level of education that will enable them to enjoy the rights recognized in the Covenant, particularly the right to freedom of opinion and expression. Moreover, the Committee wishes to draw the attention of States parties to the need to include in their reports information on measures adopted to ensure that children do not take a direct part in armed conflicts.⁵⁶

The right to special measures of protection belongs to every child because of his status as a minor. Nevertheless, the Covenant does not indicate the age at which he attains his majority. This is to be determined by each State party in the light of the relevant social and cultural conditions. In this respect, States should indicate in their reports the age at which the child attains his majority in civil matters and assumes criminal responsibility. States should also indicate the age at which a child is legally entitled to work and the age at which he is treated as an adult under labour law. States should further indicate the age at which a child is considered an Adult. However, the Committee notes that the age for the above purposes should not be set unreasonably low and that in any case, a State party cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law.

3.6 The United Nations Convention on the Rights of the Child 1989

The UN General Assembly unanimously adopted the CRC on November 20 1986⁵⁷The CRC is the most comprehensive document on children's rights and the most widely ratified human rights treaty in the world. It does not place children's rights within a hierarchical framework. It is based on the notion that all human rights are indivisible, as declared by the Vienna Declaration.⁵⁸ It is very peculiar as it protects the broadest scope within one treaty, including economic, social, cultural, civil and political rights. It is equally the first binding treaty to incorporate civil, political, economic, social and cultural rights into one treaty, placing equal emphasis on all these rights. It was adopted by the UN General Assembly, to protect the civil and political rights and economic, social and cultural rights of all children.⁵⁹ It encompasses the rights contained in ICESCR and ICCPR though the rights recognized in the CRC are more comprehensive.⁶⁰

Crucially, some provisions of the CRC contain a framework of rights relevant to child labour, especially Article 32, which protects the child from economic exploitation and child labour.⁶¹

During the drafting process of the CRC, the Committee held a day of general discussion on the issue of economic exploitation of children where situations of child labour, including the question of domestic servants, child prostitution pornography and the sale of children, were considered by the participants⁶². The statement emanating from this event recorded that more than 100 million children are forced into jobs destroying their health or preventing them from going to school.⁶³ In some cases, their condition amounts

⁵⁶ Ibid

⁵⁷ Convention on the Rights of the Child. G.A. Res 14/25 UNGAOR, 44 Sess, Supp No 49 at 167, UNDOC A./44/49 (1989)

⁵⁸ Vienna Declaration and Programme of Action. Adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

⁵⁹ O. Ekundayo, (*n 38*) 147

⁶⁰ Ibid

⁶¹ Article 32 of UNCRC

⁶² T. Buck, *International Child Law*, (2nd edn Routledge 2011) 186

⁶³ Ibid

to slavery.⁶⁴ Article 34 highlights three specific aspects of sexual exploitation and abuse of children; the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual practices; and the exploitative use of children in pornographic performances and materials.⁶⁵ The Committee stressed the need for countries to consider how children could be protected and child labour prevented in programmes of economic reform.⁶⁶ The Committee also recommended the need for a review of education policy and to ensure free and compulsory primary education.⁶⁷ Indeed, there are five provisions in the CRC which support child labour. In Article 1 CRC defines a child as a person under the age of eighteen.⁶⁸ Article 19 provides that children need protection from violence and exploitation⁶⁹ while Article 28 states that children need protection from sexual exploitation and abuse.⁷⁰

In addition, Article 32 stipulates that every child should be protected from exploitative and hazardous jobs which hinder children's education or harm their health and development⁷¹. Furthermore, Article 34 stipulates that all children have the right to access primary education⁷² while in Article 36, it is stated that a child has right to be protected from all forms of exploitation⁷³.

The UNCRC is not without criticisms. The arguments over the universality and enforceability of the UNCRC are well documented. However, it has been suggested that a notion of universal applicability can be problematic despite well-meaning intentions. Critics argue that because of the cultural differences, some aspects of the UNCRC are at variance with certain belief systems and values and that those variations conflict with the idea of universalism.⁷⁴

Thus, Ncube in a discussion about universality states that:

“The difficulty with children's right is that while they are expressed in abstract formulation embodying universally accepted general norms and ideals, there remains a yawning gap in the understanding of the specific practices, laws, traditions and customs...thus there is often significant disagreement from one culture to another...on whether or not a particular account or practice is in the best interest of the child”.⁷⁵

In addition, Ncube and Goodman argue that the major assumptions behind most international legislations emanate from Western ideologies which do not take cognizance of non-Western societies and that it creates a massive gap between the demands of local practice and those of international legislation.⁷⁶ The UNCRC's near universal ratification demonstrates a consensus that children should be provided for and protected against any form of abuse and their welfare and best interest promoted at all times. However, the major challenge is how to implement this legislation and make it relevant within the various signatory countries. Various scholars cautioned that the near-universal acceptance of the UNCRC should not make one forget the social, economic and cultural diversities that exist in the participating societies. It is suggested, therefore, that the application of international conventions should be made with utmost sensitivity considering these diversities.⁷⁷

⁶⁴ Ibid

⁶⁵ Article 34 UNCRC 1989

⁶⁶ Buck, *International Child Law*, (n 42) 186

⁶⁷ Ibid

⁶⁸ Article 1 UNCRC 1989

⁶⁹ Article 19 UNCRC 1989

⁷⁰ Article 28 UNCRC 1989

⁷¹ Article 32 UNCRC 1989

⁷² Article 34 UNCRC 1989

⁷³ Article 36 UNCRC 1989

⁷⁴ R.Burr and H. Montgomery, *Children and Rights, Understanding Childhood: An Interdisciplinary Approach* (Wiley 2003)

⁷⁵ W. Ncube, *Law Culture, Tradition and Children's Rights in Eastern and Southern Africa* (Ashgate 1998)

⁷⁶ Ibid

⁷⁷ Ibid

Furthermore, UNCRC has been too Western and too broad, thereby making application and enforcement to local situations and environments difficult.⁷⁸ It should be noted that one of the major factors which have influenced discourses on children and children's rights is the differences between Western and non-western notions of childhood and of children having rights which vary from place to place, and which also depend on the child's immediate community and family setting.⁷⁹ It was indeed argued that the CRC usually transmits popular Western Euro-American values and notions of childhood, which fails to address cultural specificities and children's opinions.⁸⁰

Another critical issue with the UNCRC is the lack of consensus over what constitutes abuse, what kind of work is hazardous to a child, what practices are contrary to or in keeping with a child's best interest and who defines what is detrimental or discriminatory to a child. Nevertheless, it was noted that the CRC did not make provisions for local interpretations, however, acknowledges that the CRC does recognize that all children are not the same everywhere in the world and that as contained in UNCRC preamble II, some live in exceptional circumstances and need special consideration.⁸¹ Indeed, preamble 12 notes that differences exist in the traditions and cultural values of member states. It was also argued that although CRC recognizes that these rights should be adapted within the local laws of each state, it does, however, show that the international provisions should prevail over customary and cultural practices, especially those that are deemed discriminatory, prejudicial and out of tune within the universality treaty.⁸² It is suggested, therefore, that the Convention's recognition of local contexts seems ineffectual because it uses Western standards and definitions to judge and assess other cultures' children.⁸³ Notwithstanding these criticisms, the CRC remains the most comprehensive, global, binding human rights instrument for protecting children worldwide.

It was the attempt to address these weaknesses and make the CRC more applicable and relevant to local circumstances that led to the drafting of regional laws such as the African Charter on the Rights and Welfare of the Child, which will be next discussed.

3.7 The Minimum Age Convention No. 138 of 1973

The 1973 Minimum Age Convention (Convention No.138) provides a broad policy framework and necessary policy measures to prevent and eliminate child labour. This convention fills the lacuna in Article 32 of the CRC which fails to prescribe the age of admission of children into employment. The purpose of the Convention, among others, was the total abolition of child labour and progressive increases in minimum age standards.⁸⁴ Thus, Article 1 of the Convention sets out its purposes, which include is to encourage member states to⁸⁵ undertake to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to work to a level consistent with the fullest physical and mental development.

It is important to note that this Article only encourages member states to draft legislation that abolishes child labour, but it does not define what child labour is in the Article or anywhere else in the Convention. Thus, it is very challenging for member states to eliminate or abolish child labour if they are not aware of the kind of work or practices, they are targeting to abolish. The effect of this is that the definition of child labour will differ from country to country, thus hindering the universal implementation of the Convention.⁸⁶ For instance, some cultures encourage children to work to support their families, developing a skill or trade that will assist them in the future. Member states, therefore, may define child labour in a less formal way than other countries, thus causing differences in the general implementation of

⁷⁸ M Hill and K Tisdall, *Children and Society* (Longman 1997)

⁷⁹ Burr and Montgomery, *Children and Rights, Understanding Childhood: An Interdisciplinary Approach*, (n 54) 157

⁸⁰ Boyden, Ling and Myers, *What Works for Working Children*

⁸¹ Boyden, *A comparative perspective on the Globalisation of Childhood, 184-215 in James A. and prout A. Constructing and Reconstructing Childhood: Contemporary Issues in Sociological Study of Childhood*, (n 55) 14-15

⁸² Ibid

⁸³ Ibid

⁸⁴ Article 1 of Convention 138 of 1973

⁸⁵ Article 1 of Convention 138 of 1973

⁸⁶ D.M Smolin, 'Strategic Choices in the International Campaign Against Child Labour' (2000) 22 Human Rights Quarterly 942

the Convention.⁸⁷ In addition, Article 1 does not impose an obligation to take any specific measures beyond the drafting of legislation to ensure the effective abolition of child labour. It seems that to comply with the obligations established by the Convention, it would be sufficient to establish the required minimum age without engaging in other activities aimed at abolishing child labour. Unfortunately, the Convention does not provide much guidance as to what ought to be the form or content of any policy which is directed towards the attainment of its objectives.⁸⁸

In addition, child labour is a complex problem that requires more than a simple legislative provision to abolish.⁸⁹ It is asserted that one reason why legislation can fail to achieve the objective of reducing or eliminating child labour is that it often applies only to specific activities. It was argued that even if legislation were to cover the entire economy, it might not be enforced equally in all sectors, such as in domestic services or production, agriculture, and illegal employment activities and would, thus, prevent the effective implementation of the Convention.⁹⁰

Again, Article 2(1) of this Convention states that:

“Each member who ratifies this Convention shall specify in a declaration appended to its ratification a minimum age for admission to employment or work within its territory...no one under that age shall be admitted to employment or work in any occupation”.⁹¹

This Convention places a positive duty on member states to specify a minimum age for employment in any occupation or sector.⁹² This Article refers to all labour performed by children whether or not it is performed under a contract of employment or while a child is self-employed is subject to the terms of the convention. However, it is not always easy to monitor the implementation of such legislation as many children work within informal sectors and domestic households.

3.8 Convention 182 on The Worst Forms of Child Labour, 1999

Having adopted the CRC and ratifying Convention No. 182, a country commits itself to taking immediate action to prohibit and eliminate the worst forms of child labour, such as slavery, child prostitution, use of children in criminal activities, and hazardous labour. The focus is the total elimination of child labour. Public pressure mounted against organizations especially multinational organizations and consumers became concerned about the conditions under which the goods they purchased were produced. Images of luxury goods being produced by the labour of children in bondage or in near slave-like conditions surfaced, highlighting the plight of children in agriculture and factories in many developing countries desperate for the economic prospects increased investment would bring to their shores, thereby, neglecting the conditions under which workers were employed. A consensus thus emerged in the 1990s that “the highest priority should be given to eliminating the worst forms of child labour, that visible results should be achieved within a short time-frame rather than in some indefinite future, and that a concerted programme of action should be launched at the national and international levels in order to achieve rapid results.”⁹³ It was under these conditions that the Worst Forms of Child Labour Convention: No 182 was prepared. “The elimination of the worst forms of child labour is thus proclaimed to be a major and urgent priority for national and international action.” Within two years almost all countries had adopted this convention, however, this does not imply that the ultimate goal to completely eliminate all

⁸⁷ R. A Mavuga, 'Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999' (2013) 16 Potchefstroom Electronic Law Journal 121

⁸⁸ Ibid

⁸⁹ Ibid

⁹⁰ B Boockmann, The effect of ILO Minimum age Conventions on Child Labour and School Attendance: Evidence from Aggregate and Individual-Level Data 2009 World Development, 678-692

⁹¹ Article 2(1) of Convention 138 of 1973

⁹² Ibid

⁹³ Handbook for Parliamentarians, No 3 — 2002. Eliminating the Worst Forms of Child Labour. A practical guide to ILO Convention No 182, p19

forms of child labour had been abandoned. "Giving priority to combating the worst forms of child labour is simply a matter of doing first things first."⁹⁴

In terms of Article 3, of the Convention, "the term worst forms of child labour comprise: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children."⁹⁵ Crucially, the Convention contains no flexibility clauses and makes no distinction between developed and developing countries. It further applies to all girls and boys under 18 and is one of the fastest ratified agreements in the ILO's history since 1919.

3.9 The Optional Protocol on the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography

The Optional Protocol on the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (OPSC) was adopted by the United Nations General Assembly in 2000 and entered into force in 2002. It supplements the Convention on the Rights of the Child (CRC) by addressing specific forms of child exploitation, ensuring that states take stronger legal and procedural measures against these crimes. The OPSC aims to protect children from being sold, trafficked, or exploited for sexual and economic purposes. This paper analyses the key provisions of the OPSC, its significance, and its implementation under international law, with appropriate.

Article 1 Prohibition of the Sale of Children, Child Prostitution, and Child Pornography. This Article explicitly obliges states to prohibit the sale of children, child prostitution, and child pornography. This provision aligns with the fundamental principles of the CRC, particularly Articles 34 and 35, which mandate state parties to prevent all forms of child exploitation.⁹⁶

Article 2 provides clear definitions of the terms "sale of children," "child prostitution," and "child pornography":

- The "sale of children" refers to any act or transaction whereby a child is transferred by any person or group to another for remuneration or any other consideration.
- "Child prostitution" entails the use of a child in sexual activities for remuneration or other consideration.
- "Child pornography" is any representation, by whatever means, of a child engaged in explicit sexual activities.⁹⁷

These definitions are crucial in establishing a uniform international legal framework for addressing these crimes.

Article 3 contains the criminalization of offences. Article 3 require state parties to ensure that offences related to the sale of children, child prostitution, and child pornography are fully covered under domestic criminal law, which includes criminalising acts such as:

- Offering, delivering, or accepting a child for sexual exploitation.
- Transferring organs of a child for profit.
- Using a child in forced labour.⁹⁸

Again, it requires that such offences be punishable by appropriate penalties that reflect their gravity.

⁹⁴ Ibid

⁹⁵ The Worst Forms of Child Labour Convention — C182, 1999. www.ohchr.org/english/law/childlabour.htm (last accessed on 17 February 2014)

⁹⁶ United Nations Convention on the Rights of the Child (Adopted 20 November 1986) 1577 UNTS 3, Arts 34-35

⁹⁷ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (Adopted 25 May 2000, entered into force 18 January, 2000, UNGA RES 54/263: Art 2

⁹⁸ Ibid, Art 3

Article 4 provides for jurisdiction and extradition. Article 4 extends the jurisdiction of state parties to cover offences committed beyond their territories when the accused is a national or a habitual resident. It also facilitates international cooperation in extradition processes to ensure that perpetrators cannot evade justice by relocating to another country.⁹⁹

Article 6 provides for assistance to victims. This Article obliges state parties to adopt measures ensuring the protection and assistance of child victims throughout legal proceedings. It also emphasises the need to promote the child's best interests by providing recovery and reintegration services.¹⁰⁰ Furthermore Article 8 deals with awareness and prevention. Article 8 requires state parties to engage in public awareness campaigns to prevent child exploitation. This includes educational programmes and training for relevant professionals such as law enforcement officers, social workers, and educators to effectively identify and combat these crimes.¹⁰¹

Despite the legal framework established by the OPSC and the progress made in its adoption, implementation remains a challenge. Furthermore, several state parties struggle with inadequate resources, weak law enforcement, and judicial inefficiencies. Besides, the rise of online child exploitation poses new challenges that require enhanced international cooperation and updated legal instruments. It is vital therefore that continued efforts are necessary to ensure full compliance and effective enforcement. Enhancing international cooperation, increasing public awareness, and improving victim support systems are crucial steps toward the absolute eradication of these grave violations of children's rights.

3.10 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC) in 2000

The recruitment and use of children in armed conflicts is another grave violation of human rights. To strengthen the protection of children from military coercion and exploitation, the United Nations (UN) adopted the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC) in 2000. OPAC supplements the Convention on the Rights of the Child (CRC) by establishing stricter age limitations on recruitment and direct participation in hostilities. Article 1 prohibits direct participation. It prohibits States Parties from recruiting or using children under the age of 18 in direct hostilities. This provision is a major advancement in the provisions of CRC as it ensures that children are legally shielded from being placed in combat roles.¹⁰²

Again, Article 2 provides an absolute prohibition on compulsory recruitment in armed conflict. Thus, Under Article 2, States Parties are forbidden from engaging in the compulsory recruitment of individuals under 18 into their armed forces.¹⁰³ This provision eradicates the possibility of underage conscription, thereby reinforcing child protection in national military policies.

In addition, Article 3 regulates the voluntary recruitment process. Notably, whereas Article 2 bans forced recruitment, Article 3 addresses voluntary enlistment by individuals under 18. Crucially, States must raise the minimum age above 15 and establish safeguards such as parental consent, proof of age, and clear information on military service obligations.¹⁰⁴ Article 3 ensures that voluntary recruitment does not become a disguised form of coercion and exploitation.

Crucially, Article 4 contains the prohibition of child recruitment by non-state armed groups. One of OPAC's primary provisions is Article 4, which requires States Parties to prevent the recruitment and use of children by non-state armed groups.¹⁰⁵ It recognizes that in modern conflicts, many child soldiers are recruited by rebel factions and militias rather than national armies.

⁹⁹ Ibid, Art 4

¹⁰⁰ Ibid, 6

¹⁰¹ Ibid,

¹⁰² UN General Assembly, Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

¹⁰³ Ibid, Art 2

¹⁰⁴ Ibid, Art 3

¹⁰⁵ Ibid, Art 4

Again, Article 5 provides stronger domestic protections for the child. The article encourages States to adopt stronger national measures to protect the children beyond the OPAC's minimum requirements.¹⁰⁶ This provision ensures that OPAC does not limit more comprehensive child welfare laws already in place within domestic jurisdictions.

Furthermore, Article 6 provides for the implementation and enforcement. Under Article 6, States must take all necessary legal, administrative, and practical measures to ensure the implementation of OPAC.¹⁰⁷ States are also required to submit periodic reports to the Committee on the Rights of the Child reflecting their progress while Article 7 provides for international cooperation. Thus, Article 7 underscores the role of international cooperation in ensuring OPAC's effectiveness.¹⁰⁸ It encourages assistance from international organizations, NGOs, and other states to assist in the rehabilitation and reintegration of former child soldiers.

The legal and humanitarian impact of OPAC cannot be overlooked. It has been widely ratified, reflecting a strong international consensus on the need to protect children from military involvement and coercion. Since its adoption, various states have adjusted their military recruitment policies, raised the minimum enlistment age and implemented verification mechanisms. Furthermore, international criminal tribunals, including the International Criminal Court (ICC), have recognized the recruitment of child soldiers as a war crime under Article 8 of the Rome Statute.¹⁰⁹

These advancements are not without challenges. Armed groups in conflict zones continue to exploit children, and enforcement mechanisms remain weak in some states. Therefore, continued advocacy and legal reforms are necessary to ensure full compliance with OPAC's provisions.

4. Regional Instruments:

Regional instruments are crucial as nations are organized in regional blocks where specific dynamics, like issues of tradition and culture, usually influence legal instruments. However, this also shows the extent of influence a particular convention may have, and often, states are more comfortable being guided by their neighbours at the regional level than they are at the bigger international level. Regional instruments are further important in a context where regional courts and/or other accountability and support mechanisms are being established.

4.1 The African Charter on the Rights and Welfare of the Child

The attempt to prescribe the African Charter on the Rights and Welfare of the Child can be traced back to 1924 when the League of Nations adopted the Declaration of the Rights of the Child¹¹⁰ which proclaimed that humanity owes to the child the best it has to give. As we saw earlier, this Declaration was subsequently followed by the 1959 Declaration.¹¹¹ However, at the time these documents (1924 and 1959 Declarations) were promulgated, the majority of African states were still under colonial rule.¹¹² The principles in these documents were arguably not intended to benefit children who found themselves under colonial rule despite the universalistic tones in which they were couched. Despite these shortcomings, when African states adopted the Declaration on the Rights and Welfare of the Child (African Children's Declaration)¹¹³ in 1979 at the 16th ordinary session of the Assembly of Heads of State and Government of the Organization of African Unity (OAU) in Liberia, Monrovia, they explicitly recognized the 1959 UN Declaration suggesting therefore that the OAU subscribed to the ideas enunciated in the 1959 UN

¹⁰⁶ Ibid, Art 5

¹⁰⁷ Ibid, Art 6

¹⁰⁸ Ibid, Art 7

¹⁰⁹ Rome Statute of the International Criminal Court (Adopted 17 July 2002) 2187 UNTS 90, Art 8

¹¹⁰ Declaration of the Rights of the Child (1924 Declaration), adopted by the League of Nations in 1924, League of Nations Official Journal, Supplement No.23

¹¹¹ Declaration of the Rights of the Child (1959 Declaration), adopted by the United Nations in 1959, UN.Doc.A/4354 (1959)

¹¹² B Ibhawoh, 'Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State ' (2002) 22 Human Rights Quarterly 839

¹¹³ Declaration on the Rights and Welfare of the African Child AHG/St 4 XVI Rev 1 1979, <http://www.chr.upac.za/hr-doc/african/doc/ahsg/ahsg36.doc>

Declaration. At the same time, the African Children's Declaration gave political force to an otherwise particularistic account of children's rights which did not have an African cultural foundation.

Crucially, the African Children's Declaration grounded the conception and implementation of children's rights within the African socio-political context by declaring that African Children are inheritors and keepers of African cultural heritage and consequently called on member states that:

"Efforts should be made to preserve and develop African arts, language and culture and to stimulate the interest and appreciation of African children in the cultural heritage of their own countries and of Africa as a whole".¹¹⁴

The implication is that no conception of children's rights should deny African Children their legacy and inheritance as children of the continent. At the same time, the Declaration was explicit on the fact that the recognition of cultural values should not assume primacy over the protection of children's rights. Instead, the two paradigms should complement each other and help achieve the adequate protection of African children.¹¹⁵

Importantly, despite the total acceptance of the provisions of CRC, African states still sought to adopt a specific instrument which reflected African cultural values in dealing with the rights of children.

This concern became critical because of the desire to address certain peculiarities and African problems which had not been addressed by CRC. Among other issues, it was thought that the peculiar challenges of African children living under apartheid, their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, disadvantages facing the girl child, the problems of internal displacement arising from civil wars and domestic insurrections, were either omitted or not adequately addressed by the provisions of CRC.

This problem was attributed to the fact that African nations were grossly underrepresented during the drafting process of CRC where only Algeria, Morocco, Senegal and Egypt participated meaningfully in the drafting process.¹¹⁶ It was noted that Africa was the lowest percentage in the continents, contrasting sharply with Western Europe 61% of the and even Latin America 29% participation over a similar period.¹¹⁷ Consequently, potentially divisive and emotive issues were omitted in the search for consensus between states from diverse backgrounds.¹¹⁸ It was evident therefore that although CRC addressed every aspect of children's lives, specific provisions and aspects peculiar to Africa fell victim to the overriding aim of reaching a compromise. The African Children's Charter was therefore intended to fill that void in terms of African concerns. Accordingly, the African Children's Charter, not only, incorporates the universalistic outlook of the CRC but cloths its conception within the African cultural context. It is, obviously, a document with a cultural-universalist perspective and a perfect starting point for the consideration and elucidation of children's rights in Africa.¹¹⁹ This Charter, therefore, became the first regional treaty on children's rights. Thus, State Parties to the African Children's Charter are to ensure that African children do not engage in hostilities and customs, traditions, cultural and religious practices that are inconsistent with the provisions of the treaty.¹²⁰ Importantly, Article 15 of the African Children's Charter deals specifically with child labour and provides that: 'Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development'.

¹¹⁴ African Children's Declaration, Para 10.

¹¹⁵ African Children's Charter, Para 2

¹¹⁶ O. Ekundayo, *Does the African Charter on the Rights and Welfare of the Child (ACRWC) only Underlines and Repeats the Convention on the Rights of the Child (CRC)'s Provisions? : Examining the Similarities and Differences between the ACRWC and the CRC*, (n 26) 147

¹¹⁷ F Viljoen, 'National Human Rights Instruments for the Protection of Children in Africa: The Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child' (1998) 31 *The Comparative and International Law Journal of Southern Africa*, 205

¹¹⁸ Ibid

¹¹⁹ Kaime (n18)

¹²⁰ African Children's Charter Articles 22 and 1(3) respectively

The Charter charges that the concept of the rights and welfare of the child should be inspired and characterized by the virtues of African cultural heritage, historical background and the values of African civilization. The implication is that the charter requires that the rights and welfare of the child, which are derived from universal sources, must be alive to the reality of African children¹²¹. Having said this, it may be mentioned that there are serious concerns and criticisms about the drafting and provisions of the Charter. Without a clear and good understanding of the Charter, implementation will be difficult. Article 1 states that:

“Member States of Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake the necessary steps, in accordance with their constitutional processes and with the provisions of the present Charter, to adopt such legislative and other measures as may be necessary to give effect to the provisions of this Charter”.¹²²

However, Article 1(2) states that:

“Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Covenant or agreement in force in that state”.¹²³

Article 1.1 stipulates that those states must follow the provisions of the Articles enshrined within the Charter and make necessary adjustments to their constitution to suit them. However, Article 1(2) added that if a state’s constitution accords children with a higher and more refined constellation of rights, then the provisions of the Charter can be overridden by the law of the State Party. The implication is that these two articles provide a loophole for states to undermine the provisions of the ‘blueprint’ under the pretext that their local laws accord children greater rights which could give room for the manipulation of the Charter and of course undermining the obligation previously imposed on the state in Article 1(1) of the Charter.

Again, Article 4 contains the provisions for the best interest of the child.

Article 4(1) stipulates that:

“In all actions concerning the child undertaken by any person or authority the best interest of the child shall be the primary consideration”.¹²⁴

In addition, Article 4(2) states that:

“In all judicial and administrative proceedings affecting a child who is capable of communicating his/or her own views, an opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of the appropriate law”.¹²⁵

Considering Article 4(1), it is clear that the article is vague as it does not define or explain what is in the ‘best interest of the child’. The implication is that States and other Parties are free to interpret these ‘best interests’ provisions in any way that suits them and in some cases to the detriment of the child’s physical, mental, emotional and spiritual development, under the guise of adhering to the ‘best interests’ provisions. For instance, some states in Nigeria may interpret female genital mutilation, early marriage and child labour as the best interest of the child. There is no doubt, therefore, that this Article can lead to various forms of child abuse. Furthermore, it would appear that Article 4(2) discriminates against children

¹²¹ *Ibid*

¹²² African Children’s Charter, Article 1, 1999

¹²³ African Children’s Charter, Article 1(2), 1999

¹²⁴ African Children’s Charter, Article 4, 1999

¹²⁵ African Children’s Charter 4(2) 1999

who are not capable of communicating. This article only provides for children capable of communicating in judicial and administrative proceedings. Unfortunately, Children who are physically and mentally impaired are more prone to abuse which is a clear case of discrimination and of course, the violation of the right of the child.

Article 7 covers the freedom of expression, which states that:

“Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinion subject to such restrictions as prescribed by law”.¹²⁶

This article is very contradictory. On the one hand, children are given the right to express themselves freely. However, their rights are then inhibited by restrictions imposed by municipal law by the level of freedom of expression.

Another issue is the provision of Article 11, which contains the right to education. This article stipulates that children must have access to education. Article 11(2a) is of paramount importance, and it states that:

“The education provided to children shall be aimed at, upholding the preservation and strengthening of positive African morals, traditional values and cultures”.¹²⁷

Again, there is no clear definition of what constitutes ‘positive African morals, traditional values and cultures. This lack of clarity could lead to abuse of children as states are free to give their interpretations to suit them.

Furthermore, article 13 covers the rights of disabled children and provides for special measures of protection aimed at meeting the physical and moral needs of such children and the creation of conditions which ensure the dignity, promote self-reliance and active participation of such children in the community. However, Article 13(2) states that:

“States Parties to the present Charter shall ensure, subject to available resource, to a disabled child and to those responsible for his care, of assistance for which application is made and which is appropriate to the child’s condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving fullest possible integration, individual development and his cultural and moral development”.¹²⁸

This article seems to incorporate a double standard and is contradictory. The implication is that it gives state parties room not to cater for the needs of the children strictly. This assertion is indicated in the phrase ‘subject to available resources’ which shows that states can only go ahead to cater to the needs of disabled children when they have the resources to do so. It is suggested, therefore that, this phrase seem to relegate the importance of providing for the disabled children. The implication is that if a country claims not to have available resources, the disabled children will not be provided for as their issues are not treated as a priority. It is submitted that this provision should be one of the major priorities of the state considering their peculiar circumstances.

Another contradictory article is Article 31(b) and (e), which states that:¹²⁹

The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty:

- (a) to serve his national community by placing his physical and intellectual abilities at its service;
- (e) to preserve and strengthen the independence and the integrity of his country.

¹²⁶ African Children’s Charter, Article 7, 1999

¹²⁷ African Children’s Charter, Article 11(a) 1999

¹²⁸ African Children’s Charter, Article 13(2) 1999

¹²⁹ African Children’s Charter, Article 31(b) and (e) 1999

One contradiction is that children have been given the responsibility to serve the state and the national community by ‘placing their physical and intellectual abilities at its service’ suggesting that it has defeated the essence of the Charter. The tone and commitment of the State to the Charter seem to indicate that the state is a primary custodian of children and their rights thereby eroding the institution of the family as the utmost actor in the provision of children’s rights. In addition, Article 31(e) states that children should preserve and strengthen the independence and integrity of their country. The primary way to fulfil this obligation is through acts of war and the use of force to ward off potential threats to the state's sovereignty, territorial integrity and independence. Considering the combination of Article 3(e) and 3(b), it appears that Article 31 is generally beaconing for the participation of children in armed conflict on behalf of the state, thereby contradicting Article 22, which stipulates those states must ensure that children are not recruited as soldiers.

4.2 European Convention on Human Rights, 1950

“The Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (ECHR), the first international human rights agreement to establish supervisory and enforcement machinery, obliges States Parties to “secure everyone within their jurisdiction” the rights and freedoms it sets forth (article 1).¹³⁰ While the European Convention on Human Rights(ECHR) of 1950 does not explicitly mention “ child labour” in its text, it can be interpreted to protect children from exploitative child labour practices through its border provisions under Article 2 on the right to life, Article 3 Prohibition of torture or inhuman treatment and prohibition from discrimination, Article 2 of Protocol 1 of the ECHR guarantees the right to education which could imply to as protection against child labour that deprives children of their education. However, the most direct protection against child labour within the European legal framework is Article 32 of the EU Charter of Fundamental Rights, which explicitly prohibits child labour and protects young persons at work. In addition, using the terms “everyone” and “no one” the European Convention on Human Rights successfully brought children into the fold. Specific references to the young are found in two articles of the European Convention on Human Rights (ECHR) concerning legal proceedings. Article 5(1)(d), on the lawful procedures for depriving a minor of his or her liberty, permits the lawful detention of a minor for educational supervision or for bringing him before the competent legal authority. Article 6(1) stipulates that everyone is entitled to a fair and public hearing and that judgment will be pronounced publicly, but the hearing may be held in private when required by the interests of juveniles or the protection of the parties’ private life.¹³¹ The principle of the interest of the child is further entrenched at the European level through this Convention.

4.3 European Convention on the Exercise of Children’s Rights, 1996

The European Convention on the Exercise of Children’s Rights (ECECR) stresses in the Preamble the aim of promoting the rights and “best interests” of children, and as in specific terms states “that children should have the opportunity to exercise their rights, particularly in family proceedings affecting them; they should be provided with relevant information (defined as information appropriate to the child’s age and understanding, given to enable the child to exercise his or her rights fully, unless contrary to the welfare of the child) and their views should be given “due weight”; and, “where necessary,” States as well as parents, should engage in the protection and promotion of those rights and best interests (Preamble). Children under 18 have a right to be included in proceedings affecting them, including being allowed to express their views on the matters at hand, and they may even apply for a special representative to assist them. The Convention also gives children the same or all of the rights of the other parties to the proceedings.

5. CONCLUSION AND RECOMMENDATIONS

The international legal framework on child labour is comprehensive. This paper examined the key international legal frameworks, their implementation, and their effectiveness in addressing child labour. It

¹³⁰ Zeldin, Wendy. *International Laws: Children’s Right*, August 2007, the Law library congress

¹³¹ European Convention on human rights, 1950

is obvious that various international instruments, such as conventions and treaties, have been established to combat child labour and to protect children from exploitation. However, enforcement remains inconsistent, necessitating stronger national commitments and international cooperation. However, despite the existence of a strong legal framework, several challenges hinder the eradication of child labour, which, include weak enforcement mechanisms in many developing countries, and socioeconomic factors such as poverty and lack of education, which drive children into labour. It is, therefore, recommended that addressing child labour effectively requires not only legal measures but also socioeconomic reforms, including education, poverty alleviation, better enforcement mechanisms and awareness campaigns.