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## The Rights and Welfare of the African Child

*"The situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity he/she needs special safeguards and care."*

African Charter on the Rights and Welfare of the Child

### 1. Introduction<sup>1</sup>

In November 1999, the *African Charter on the Rights and Welfare of the Child* (ACRWC) was adopted by the Assembly of Heads of State and Government of the Organization of African Unity (OAU)<sup>2</sup> and entered into force in the same month. After 21 years of its adoption, 50 countries have ratified it.

The Charter has a long history. The devastation and suffering of the First World War saw the establishment of the League of Nations in the hope that the nations of the world would work together to achieve lasting peace. Various instruments of human rights were developed.<sup>3</sup> It was clear that children had suffered greatly as a consequence of the war and its aftermath. Pioneer child activist Eglantyne Jebb and others established the organisation 'Save the Children' in response to newspaper reports and photographs they had seen of children starving in defeated countries such as Germany and Austria, as Allied troops' blockades would not allow safe passage for much needed food supplies.

### 2. The Geneva Declaration on the Rights of the Child

The lessons learnt in this ultimately successful effort to feed the starving children of Europe led to the 1924 *Geneva Declaration on the Rights of the Children*, which stated that humanity "owes to the Child the best that it has to give." The document highlighted the well-being of children and recognised their basic rights to development, assistance, and relief and protection.<sup>4</sup> The Declaration, which would form the basis of all future instruments of children's rights, summarised the fundamental needs of children in five points:

1. The child must be given the means requisite for its normal development, both materially and spiritually.
2. The child that is hungry must be fed, the child that is sick must be nursed, the child that is backward must be helped, the delinquent child must be reclaimed, and

the orphan and the waif must be sheltered and succoured.

3. The child must be the first to receive relief in times of distress.
4. The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation.
5. The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men.<sup>5</sup>

These themes were endorsed by the General Assembly of the League of Nations on 26 November 1924 as the *World Child Welfare Charter*, which was the first human rights instrument endorsed by the League.<sup>6</sup> However, at the time of the Declaration most of Africa was subject to European colonial rule and remained so under Britain, France, Portugal and Belgium until the late 1960s and 1970s. (German South West Africa became a protectorate of the Union of South Africa.) Bitter wars would be fought, and civil war, famine, pandemics, natural disasters and poverty would characterize Africa for the next century, with children always the ones who would pay the highest price.

### 3. The UN Declaration on the Rights of the Child

The United Nations (UN) was founded after World War II, and it adopted the *Universal Declaration of Human Rights* in 1948. The UN General Assembly then established the International Children's Emergency Fund (UNICEF), with an emphasis on children throughout the world. Article 25 of the Declaration entitled mothers and children to 'special care and assistance' and 'social protection'. However, the advancement in the understanding of human rights, as well as the continued abuses of human rights, highlighted the inadequacy of the 1924 Geneva Declaration as a single tool. Therefore, a second *Declaration of the Rights of the Child* was adopted in 1959, which contributed further to the development of the rights of the child and introduced the 'best interests of the child' principle. It recognized, among other rights, children's rights to education, play, a supportive environment, and health care. It

marked the first major international consensus on the fundamental principles of children's rights and was ratified by and adopted unanimously by all 78 Member States of the United Nations General Assembly.<sup>7</sup>

### 4. Other Human Rights Protections for Children

Over the next few decades there were various other developments in the advancement of human rights which would provide children with further rights and protections.<sup>8</sup>

In 1973 the International Labour Organization (ILO) adopted Convention 138, which sets 18 as the minimum age for undertaking work that might be hazardous to a person's health, safety or morals. This *Minimum Age Convention* sought to ensure the "effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons".<sup>9</sup>

Continuing concern regarding the vulnerability of women and children in emergency and conflict situations led the UN General Assembly to adopt the *Declaration on the Protection of Women and Children in Emergency and Armed Conflict* in 1974. It expressed its deep concern over the sufferings of women and children belonging to the civilian population "who in periods of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence are too often the victims of inhuman acts and consequently suffer serious harm ... Aware of the suffering of women and children in many areas of the world, especially in those areas subject to suppression, aggression, colonialism, racism, alien domination and foreign subjugation".<sup>10</sup>

Article 24 of the *International Covenant on Civil and Political Rights* drew particular attention to children: "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part

of his family, society and the State; every child shall be registered immediately after birth and shall have a name. Every child has the right to acquire a nationality.”<sup>11</sup> The Covenant came into force in 1976.

*The International Covenant on Economic, Social and Cultural Rights* focused on the rights of the family, its role in the protection and education of children, and on maternity leave and social security. “Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation”.<sup>12</sup> The Covenant also came into force in 1976.

One can only be painfully aware that 1976 was the year of the Soweto uprising, when the children of South Africa marched against ‘Bantu Education’ and were met with brutal force by the apartheid state.

## **5. United Nations Convention on the Rights of the Child<sup>13</sup>**

The *UN Convention on the Rights of the Child* (UNCRC) brought together the rights contained in the preceding documents and developed them into a single document. It consists of 54 articles that set out children’s rights and how governments should work together to make them available to all children. There were four central themes which gave an ethical and ideological dimension to the convention.<sup>14</sup> These were: non-discrimination; the best interests of the child; the right to survival and development; and, very importantly, that the views of the child must be taken into account. It is a legally-binding international agreement setting out the civil, political, economic, social and cultural rights of every child, regardless of their race, religion or abilities.<sup>15</sup>

The treaty was ground-breaking in that it created new rights for children under international law. It replaced non-binding recommendations with binding standards, and in so doing it imposed new

obligations on States Parties concerning the protection of children. It sets forth an express provision requiring States Parties not to discriminate against children’s enjoyment of rights as articulated in the UNCRC. The UNCRC is the most ratified of all international agreements. Somalia and South Sudan are the most recent signatories. Only the United States of America has failed to ratify the Convention.

## **6. World Declaration on the Survival, Protection and Development of Children**

The World Summit on Children was held in September 1990. At the time this was the largest gathering of world leaders ever to assemble at the United Nations.<sup>16</sup> It was also the first occasion in history when a summit-level meeting was held exclusively to address children’s issues. The Declaration stated that “the children of the world are innocent, vulnerable and dependent. They are also curious, active and full of hope. Their time should be one of joy and peace, of playing, learning and growing. Their future should be shaped in harmony and co-operation. Their lives should mature, as they broaden their perspectives and gain new experiences”.<sup>17</sup> However, they recognized that for countless children their survival, protection and development was in no way assured. The nations of the world undertook a collective effort of making a world fit for children. The Declaration concluded: “We do this not only for the present generation, but for all generations to come. There can be no task nobler than giving every child a better future”.<sup>18</sup> Investing in the children of today is investing in the children of tomorrow.

## **7. The African Charter on the Rights and Welfare of the Child**

The *African Charter on the Rights and Welfare of the Child* (ACRWC) sought to build on the UNCRC so as to properly address the African context. The Charter recognized that “that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality, the child should

grow up in a family environment in an atmosphere of happiness, love and understanding". Furthermore, the Charter asserted that "the child, due to the needs of his physical and mental development requires particular care with regard to health, physical, mental, moral and social development and requires legal protection in conditions of freedom, dignity and security".<sup>19</sup>

Dr Robert Nanima comments that "the ACRWC was intended to be a complementary mechanism to the UNCRC to enhance the enjoyment of the rights of the child in Africa. The ACRWC does not replace the existing standards, instead, it adds to them. The two instruments complement and reinforce each other. A significant difference is that the ACRWC creates not only rights for the child but also responsibilities towards family and society, while the UNCRC stipulates rights only. The ACRWC represents a different way of viewing children and the relations between children and society".<sup>20</sup> The Charter came into force in 1999.

## 8. Worst Forms of Child Labour Convention

By the 1990s the *Minimum Age for Admission to Employment Convention* of 1973 was no longer seen as providing adequate protection for children. There was a clear need to adopt new instruments of child rights for the prohibition and elimination of the worst forms of child labour.<sup>21</sup> The Convention noted that "the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children

concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families".<sup>22</sup> The Convention came into force in 1999.

## 9. The Optional Protocols to the UNCRC

The early 2000s saw the adoption of two Optional Protocols to the UNCRC, namely that on the *Sale of Children, Child Prostitution, and Child Pornography* and that on the *Involvement of Children in Armed Conflict*, which addressed the sexual exploitation of children and child soldiers respectively. In 2010 a global campaign was launched to promote the universal ratification of the Optional Protocols. The campaign was designed to mobilize the widest political and social support for children's protection.

## 10. Conclusion

"The nurture that is the right of every child is most needed where it is most difficult to guarantee: in those areas of the world where the seemingly intractable grip of violence, poverty, and devastating epidemics subjects our children daily to fear and desolation."<sup>23</sup> The past century has seen significant progress in our understanding of the rights of children. It is critically important that the rights set out in this paper are implemented as a matter of urgency. As Professor Benyam D. Mezmur of the African Committee of Experts on the Rights and Welfare of the Child observes, "the one thing children do not have is time".<sup>24</sup>

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<sup>1</sup> The writer of this paper attended THE COMMUNICATIONS PROCEDURE OF THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD AND CHILD RIGHTS JURISPRUDENCE, hosted by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), in collaboration with the Dullah Omar Institute for Constitutional Law, Governance and Human Rights (DOI), University of the Western Cape.

<sup>2</sup> The Organization of African Unity (OAU) would later become the African Union (AU)

<sup>3</sup> <https://www.savethechildren.org/us/about-us/why-save-the-children/eglantyne-jebb>

<sup>4</sup> <https://www.google.com/search?client=firefox-b-d&ei=beErYK-SLoXExgO-67OYBQ&q=the+geneva+convent>

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<sup>5</sup> [International Save the Children Union](#) in Geneva on 23<sup>rd</sup> February 1923. The rather archaic language is that of the original document which is nearly 100 years old

<sup>6</sup> It was reaffirmed by the League in 1934. Heads of State and Government undertook to incorporate its principles in domestic legislation. In France, it was ordered to be displayed in every school!

<sup>7</sup> <https://www.humanium.org/en/declaration-rights-child-2/>

<sup>8</sup> There are a number of different protocols and agreements regarding adoption, both nationally and internationally, and these will be the subject of another paper.

<sup>9</sup> [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C138](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138)

<sup>10</sup> [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.19\\_declaration%20protection%20women%20armed%20conflict.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.19_declaration%20protection%20women%20armed%20conflict.pdf)

<sup>11</sup> <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>12</sup> <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

<sup>13</sup> The UN Convention on the Rights of the Child was the first international instrument of human rights ratified by post-apartheid South Africa.

<sup>14</sup> <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>15</sup> <https://www.savethechildren.org.uk/what-we-do/childrens-rights/united-nations-convention-of-the-rights-of-the-child>

<sup>16</sup> There were 71 heads of state and 88 senior government officials.

<sup>17</sup> <http://www.un-documents.net/wsc-dec.htm>

<sup>18</sup> <http://www.un-documents.net/wsc-dec.htm>

<sup>19</sup> [https://www.un.org/en/africa/osaa/pdf/au/afr\\_charter\\_rights\\_welfare\\_child\\_africa\\_1990.pdf](https://www.un.org/en/africa/osaa/pdf/au/afr_charter_rights_welfare_child_africa_1990.pdf)

<sup>20</sup> Dr Robert Nanima, Lecture Notes Online Course The African Committee of Experts on the Rights and Welfare of the Child (ACERWC), in collaboration with the Dullah Omar Institute for Constitutional Law, Governance and Human Rights (DOI), University of the Western Cape

<sup>21</sup> [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182)

<sup>22</sup> [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182)

<sup>23</sup> 'No Room at the Table: Earth's Most Vulnerable Children', Donald H. Dunson, Orbis Books, Maryknoll

<sup>24</sup> Webinar, The African Committee of Experts on the Rights and Welfare of the Child (ACERWC), in collaboration with the Dullah Omar Institute for Constitutional Law, Governance and Human Rights (DOI), University of the Western Cape

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