

AN OVERVIEW OF INTERNATIONAL AND REGIONAL INSTRUMENTS SAFEGUARDING CHILD RIGHTS"

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ABSTRACT This Paper highlights significant legal milestones and the “best interest of the child” premise in international and regional child rights treaties. The 1959 UN Declaration of the Rights of the Child and the 1989 CRC establish broad, enforceable rights for children, including protection, participation, non-discrimination, and development. Child protections are strengthened and regionalized by the Minimum Age Convention (MAC), Optional Protocols on child trafficking and child soldiers, and African and European charters. These frameworks address child labor, trafficking, legal procedural rights, education, and adoption. Regional charters and conventions add children's duties in the African Charter or procedural rights in the European Charter to global norms. Despite broad legislative frameworks, the “best interest of the child” premise requires judicial and administrative discretion to adapt specific circumstances. Jurisprudential development works to guarantee that legal instruments articulate and successfully implement children's rights worldwide and regionally, building a legacy of protection and empowerment.

Key Words: Child, Protection, Best Interest, Rights, Int. Law, Convention, Protocol

INTRODUCTION

The protection and promotion of child rights is a central concern for both international and regional legal frameworks. Over the decades, a robust body of treaties, conventions, and charters has emerged, shaped by the guiding principle of the “best interest of the child.” Foundational instruments such as the 1959 UN Declaration of the Rights of the Child and the 1989 Convention on the Rights of the Child (CRC) have set comprehensive standards for child protection, participation, development, and non-discrimination. These global standards are further strengthened and contextualized by regional agreements like the African Charter on the Rights and Welfare of the Child and the European Convention on the Exercise of Children's Rights, as well as targeted instruments addressing issues such as child

labor, trafficking, and adoption. While these legal milestones provide a broad legislative framework, their successful implementation depends on the capacity of judicial and administrative bodies to interpret and apply the “best interest of the child” to individual circumstances. This paper examines the evolution, scope, and interplay of international and regional child rights instruments, highlighting their common goals and unique contributions to the ongoing work of safeguarding children worldwide.

DRC 1959

The U.N. Declaration of the Rights of the Child (DRC) is based on the 1924 League of Nations Declaration. The Preamble states that children need “special safeguards and care,

including appropriate legal protection, before as well as after birth,” repeats the 1924 Declaration's oath that “mankind owes to the child the best it has to give,” and encourages voluntary organizations and local authorities to promote child rights. The DRC states that a child has the right to “special protection” and “opportunities and facilities, by law and by other means,” to have a positive and routine environment in physical, psychological, spiritual, and social growth “in conditions freedom and dignity (UNICEF. 2005).” The “paramount consideration” in forming laws for this purpose is “the best interest of the child,” which remained a set st. Multi DRC principles state that children have the right to a name, nationality, food, housing, entertainment, medical care, education, and “special treatment, education, and care” for disabled children. Other safety principles cover neglect, assault, child trafficking, child labor, and bias (Marshall, 1999).

MAC 1973

The Minimum Age Convention (MAC) aims to end child labor by creating a standard mechanism on the minimum age for child labor (Wallage, 2000). Each participating state must “pursue a national policy designed to ensure the effective abolition of child labor and to raise progressively the minimum age for admission to employment to a level consistent with the fullest physical and mental development of young persons” (Article 1). The minimum age for service or labor exclusions under MAC must be determined by member states. The minimum age for compulsory education should be below fifteen, however if the state is underdeveloped in economy and education, it may start at fourteen. The age limit may be waived if the job is not severe or needs artistic performances (Articles 7 and 8). If the work is dangerous to a child's health, security, or character, the minimum age is normally 18. Article 3 (1)

UN CONVENTION ON THE RIGHTS OF THE CHILD 1989

The Convention on the Rights of the Child (CRC) is sufficient to outline children's rights. It stands alone from measures and is based on various substantive rights. It is the longest U.N. human rights pact and unusual in that it

protects children in wartime (Sharon, 1999). The CRC includes, “for the first time in binding international law, the principles upon which adoption is based, viewed from the child's perspective” (Geraldine, 1995). The CRC covers four domains of children's rights (“the four ‘P’s”): ensuring children's participation in decisions affecting them, protecting them from prejudice, negligence, and abuse, preventing threats, and helping children meet their basic needs. According to Article 1 of the CRC, a child is “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

Major CRC accomplishments are five-dimensional. It grants children the right to protected self-recognition (articles 7 and 8), the right of exposed children, such as minor refugees, to have privileged access to safety (articles 20 and 22), and the right of non-native children to live according to their own culture (articles 8 and 30). Munro, Pinkerton, ... & Benbenishty (2011) found unorthodox practices in child-friendly manifestos, such as freedom to expression (article 13) and the right to a fair trial (article 40). The CRC states in an international treaty of rights that had only existed in case law contained in local human rights treaties (e.g., children's right to be heard in litigation connected to them) (article 12). In article 21 and 23, the CRC replaced non-binding ideas with mandatory standards (e.g. adoption protection principles affecting disabled children). States Parties must now prevent customary practices that harm children's health and ensure healing for children who have been negligently abused or mistreated (articles 28 (3) and 39). The CRC clearly requires State Parties not to suffocate children's rights (Bennett, Hart, & Svevo-Cianci, 2009). The right to participate in litigation, “together with the principles of non-discrimination in Article 2 and provision for the child's best interests in Article 3, form the guiding principles of the Convention, which reflect the vision of respect and autonomy which the drafters wished to create for all children” (Mower, 1997).

OPSTAC 2000

On May 25, 2000, the UN passed two protocols to the CRC: the Sex Trafficking Protocol and the Child Soldiers Protocol. STP addresses sex trafficking, one of several causes of child trafficking, along with forced labor, adoption, wars, marriages, and organ trading (Revaz, 2001). The Preamble urges States Parties to apply Articles 34 and 35 on expanded safety measures to stop child trafficking, sexual abuse, and other forms of child abuse. The purpose statement also uses CRC terminology to protect children from financial abuse and dangerous jobs (Valentine, 2003). Additionally, "that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation" and are overrepresented among the sexually abused, and "the growing availability of child pornography on the Internet and other evolving technologies" are concerns (Breen, 2003). State Parties must apply criminal penalties for child trafficking, prostitution, and pornography under the STP. It defines when State Parties can exercise jurisdiction over unacceptable activities and extradite offenders. Abused children are protected and assisted by the STP throughout the litigation process, keeping the child's best interests in mind (Scarpa, 2006). Article 94 requires harmed children to be able to sue abusers to prevent and compensate them. Article 12 of the STP requires State Parties to report child sex trafficking to improve international cooperation (Dennis, 2005).

CSP 2000

The Child Soldiers Protocol's Preamble states that "the rights of children require special protection," acknowledges "the harmful and widespread impact of armed conflict on children," and opposes their victimization. The Rome Statute of the International Criminal Court lists "the conscripting or enlisting of children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts" as a wartime crime. The Preamble references Article 1 of the CRC's definition of a child and believes that raising the employment age limit will improve the application of the best interest of the child in all actions affecting children.

The Child Soldiers Protocol raises the minimum age limit for direct war participation and enrollment to 18 years (articles 1 and 2) and bans insurgency or other private armed forces from hiring or employing under-18s in combat (article 4). It does not specify an age limit for voluntary hiring, but requires State Parties to extend the minimum age limit from 18. States Parties must take "all feasible measures to ensure" the discharge or liberation of children from war or aggression and provide "all appropriate assistance" for their treatment and return to normal social life under the Child Soldiers Protocol (Boothby, & Knudsen, 2000).

REGIONAL DOCUMENTATION AFRICAN CHARTER FOR CHILD RIGHTS AND WELFARE, 1990

The African Charter on the Rights and Welfare of the Child (ACRWC), the first regional treaty on children's rights, is based on the 1979 Declaration on the Rights and Welfare of the African Child and aligns with the Convention on the Rights of the Child (CRC) (Union, 1999).

The biggest difference is article 31's rules on children's duties, which follow the African Human Rights Charter. The Preamble states that "the child occupies a unique and privileged position in the African society" and requires legal protection and "particular care with regard to health, physical, mental, moral and social development" (Chirwa, 2002). Article 2 defines a kid as "every human being below the age of 18 years". The ACRW states that children have an inherent right to life that is protected by law, unprejudiced behavior, and best interests. Children cannot be executed (articles 3-5). They also have the right to a name at birth, nationality, to speak what they want, to enjoy right of association and assembly for peaceful purposes, thinking, to practice religion and act as per their conscience, privacy, education, and relaxation. Disabled children should get extraordinary protection and thrive physically, psychologically, and spiritually (articles 13-14). They should not face financial threats and work involving threats (article 15), mental or physical torture, mistreatment, and abuse (article 16), cultural or societal acts likely to harm children (article 21), sex or other abuse (article 27), or drug use, including illegal drug use.

ECECR 1996

In the Preamble, the European Convention on the Exercise of Children's Rights (EXECCR) promotes children's rights and "best interests" (Hrabar, 2012). Children should be given correct facts (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 opinion should be given "due weight" in family litigation involving them. States, including parents, should participate "where necessary." Article 1(1) of the ECECR applies to minors under 18 (Kilkelly U. (2001)). ECECR procedural rights include the right of children to stay informed and express their opinions during litigation, the right to appoint a representative, and "other possible procedural rights" such as the right to seek help from a person sufficiently equipped to help them express their opinions and of their own choice.

ADDITIONAL INTERNATIONAL AND REGIONAL INSTRUMENT CLAUSES UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948

The 1948 Universal Declaration of Human Rights has two provisions on children. Motherhood and childhood deserve special care and help, per Article 25(2). Article 26 guarantees education for all, including access and goals. Primary education must be free and compulsory, "directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms" (Morsink, 1999). "Parents have a prior right to choose the kind of education that shall be given to their children" (UNO, 1948).

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS 1966

The Preamble to the International Covenant on Economic, Social, and Cultural Rights (ICESCR) must be applied to children's rights as it recognizes non-divisible human rights (Assembly, 1966). Thus, "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice,

and peace in the world" and "these rights derive from the inherent dignity of the human person" (Article 31). Articles 10 and 12 mention child rights. According to article 10, families should get maximum protection and help, especially during establishment and when caring for and educating dependent children. It also states that "special measures of protection and assistance" should be taken on behalf of minors without prejudice, that they should be protected from economic and social abuse, that enrolling them in ethically or physically or mentally harmful or dangerous work or service that disrupts their routine progress should be punished by law, and that the age criteria for child paid service should be determined. Article 12 gives everyone the right to "enjoyment of the highest attainable standard of physical and mental health," which includes States Parties' contributions "for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child" (Craven, 1995). According to the ICESCR, "primary education shall be compulsory and available free to all" (article 13(2a)) (Hoag, 2011).

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 1966

The International Covenant on Civil and Political Rights (ICCPR) includes both general provisions that minors can use and specific provisions for child protection in the court system and as family members. Article 2 requires States Parties "to respect and to ensure to all individuals within its territory and subject to its jurisdiction" the rights in the ICCPR, "without distinction of any kind;" to accept laws to give material shape to those rights; and to ensure working solutions for disobedience. Article 14(1) states that "any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children." Criminal proceedings "should take account of juveniles' age and the desirability of promoting their rehabilitation" (article 14(4)) and the penal system. The ICCPR, like the ICESCR, recognizes the family's right to safety from society and the state (article 23(1)) and requires

States Parties to respect parents' freedom to educate their children in religion and morality according to their personal beliefs (article 18(4)). If a marriage ends, minors must be protected (article 23(4)). ICCPR Article 24 is dedicated to children. It states that "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." Children should also be enrolled immediately after birth and given a name.

EUROPEAN CONVENTION ON HUMAN RIGHTS 1950

The European Convention on Human Rights (ECHR), the first international law agreement on human rights to establish a mechanism for supervision and enforcement of laws, requires States Parties to "secure everyone within their jurisdiction" the rights and freedoms it outlines (article 1). The ECHR uses "everyone" (or "no one" where appropriate), therefore children must sue on their own or as co-applicants with their parents (Joseph & Castan, 2013). Two ECHR articles mention children during litigation. Article 5(1)(d) enables the legally approved imprisonment of a kid for educational monitoring or presenting him to the judicial authority with jurisdiction. Article 6(1) guarantees everyone a fair and public hearing and a public announcement of the verdict, but the trial may be conducted discreetly to protect the participants' personal lives or the interests of minors. Protocol No. 7 to the ECHR specifies that nations can take "such measures as are necessary in the interests of the children" (article 5) even though both parents have equal rights and duties with minors.

ACH PRP 1981

The African Charter on Human and People's Rights (ACHPR) (Banjul Charter) covers civil, political, economic, social, and cultural rights. As for children, it emphasizes family rights and obligations rather than family members' rights and responsibilities, which is a ghost of African customary law (Gittleman, 1981). Thus, the ACHPR requires people "to preserve the

harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need" (article 29(1)) (Evans, & Murray, 2008). In article 18(3), the ACHPR relies on international child rights laws rather than adding any special rights for minors. Like other international law documents, the ACHPR discusses rights in regard to "the individual" or "every individual" (Heyns, 2003). The African Charter on Human and Peoples' Rights' Protocol on the Rights of Women in Africa has several references to minors, particularly girls. "Any practice that hinders or endangers the normal growth and affects the physical, emotional and psychological development of women and girls" is condemned in the Preamble (Ouguergouz, 2003). States Parties must prevent all dangerous practices (article 2(1)(b)), protect women and girls from sexual crimes and other brutality, including trafficking, and "ensure that in times of conflict and/or war, such acts are considered war crimes and are punished as such" (article 4(c) and (d)) (Odinkalu, 2001). States Parties should also denounce dangerous practices like female genital organ mutilation and such sacrifices, which violate the basic rights of women and girls as human beings and violate international standards, and take steps to stop them, such as providing remedies to victims and asylum support to those at risk (article 6(b-d)). Article 11(4) requires States Parties to protect women and children in disasters and deadlocks. "All appropriate measures" should be taken to eliminate discrimination against women and girls, with specific positive action to promote girls' education and training "at all levels and in all disciplines" and their retention in schools and other training institutions (article 12) to expand the right to education and preparation.

AMERICAN CONVENTION ON HUMAN RIGHTS 1969

The American Convention on Human Rights (ACHR) requires States Parties to "ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic

status, birth, or any other social condition” (Buerghental, 1971). According to article 1, “person” in the ACHR means “every human being”. Each person has the right to a legal personality, to life, respectful behavior, personal independence, and a fair trial, among other rights (Goldman, 2009). Parents or guardians “have the right to provide for the religious and moral education of their children or wards that is in accordance with their own convictions” (article 12(4)), and “public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence,” without affecting the right to think and express freely (article 13(4)). When a marriage ends, the ACHR requires that minors be protected “solely on the basis of their own best interests” and that law must identify equal rights for minors born in that connection (article 17(4) & (5)). Article 18 grants all minors a birth name and one or both parents' surnames. The ACHR states, “Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state (article 19).” This document may not be ignored during war, public threat, or other urgent situations. Article 27(2).

CHILD PROTECTION AND PLACEMENT AGREEMENTS

GROUP HCJ. CONVENTION 1996

The 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children covers “from orders concerning parental responsibility and contact to public measures of protection or care, and from matters of representation to the protection of children's property” (Nygh, 1997). According to the Preamble, “that the best interests of the child are to be a primary consideration.” Article 2 states that the Convention applies “to children from the moment of their birth until they reach the age of 18 years.” The 1996 Convention provides a way to resolve communication and custody disputes between parents living in segregation and in different countries. Identification and implementation requirements validate the 1980 Hague

Convention by giving preference to judgments made by authorities of the state where the child lives most often. Good will processes can protect alienated youngsters who cross countries and are in vulnerable conditions and children in substitute care across borders. Foster care and the Kafala, established under Islamic law to care for children, are alternatives to adoption that are outside the 1993 Intercountry Adoption Convention (Wardle, 2008).

ECAC 1967

The European Convention on the Adoption of Children (ECAC) allows legal adoption of adolescents under eighteen who are unmarried and not underage (article 3). Its guidelines are minimum criteria; States Parties may make arrangements that benefit adopted children (article 16). ECAC ensures that national child protection rules are applied to children from other states as well as adoptions from States Parties (Baldwin & Edwards, 1997). The essential provisions require each Party to develop adoption standards for national legislation (Checkel, 1997). Adoption must be decided by a judicial or administrative authority to be legally binding (article 7), and the empowered official shall not grant an adoption unless it “will be in the interest of the child” (article 8(1) Freeman & Alen, 2007). Article 9 requires the empowered authority to investigate minor adoption wishes and child-adopter compatibility. The adopted child should normally inherit the adopter's surname and succession rights (article 10 (3) and (5)). Article 15 requires States Parties to prohibit inadequate economic advantage from child adoption. Four additional provisions demanding only the States' Parties' concern state, inter alia, that provision be enacted to facilitate adoption without the adopter's personality being revealed to the minor's family (article 20(1)) and to demand or allow in-camera adoption proceedings (article 20(2)). Children cannot know their biological parents' whereabouts (Kilkelly, 2001).

IAC 1984

The Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors (IAC) applies to complete adoption,

legitimizing on adoption, and “other similar institutions” when the adopting person's domicile and the child's routine staying place are in different States Parties (article 1). Article 12 prohibits changing these adoptions. A State Party may announce that the IAC also applies to “any other form of international adoption of minors” (article 2), and cancellations will be handled by the routine home country of the adopted child at the time of adoption (article 12). The IAC states that the minor's normal residence law applies to competence, assent, and other adoption requirements, as well as adoption processes and technicalities (article 3). The IAC protects biological parents' information, except for medical records (article 7). Adoptees and adopters (and their families) normally have equal succession rights (article 11). If the adoptee is over 14, they must consent to the alternation of a simple adoption into a comprehensive adoption, legitimizing on adoption or the same institutions (article 13, paragraph 2). Article 14 protects the child's interests if an adoption is canceled. No doubt, the IAC conditions and laws to be implemented under it must be explained “consistently and in favor of the validity of the adoption and the best interests of the adoptee” (article 19), but empowered State Party officials may refuse to implement laws that are “manifestly contrary to its public policy” (article 18).

HCPCIA 1993

The 1993 Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption has three goals: to build safety measures to ensure that cross-country adoptions are in the best interest of the child and in accordance with fundamental rights; to design a mechanism to prevent crimes like child trafficking; and to get States Parties to recognize adoptions. The 1993 Convention states that “although it is difficult to define the best interests of the child, the child's interests should always take priority over those of the prospective adopters,” yet implementing this regulation was challenging. The 1993 Convention requires authorities to ensure, taking into account the minor's age and maturity, that he or she has been guided and detailed of the adoption's outcomes and of his

or her assent to the adoption, if required; that concern has been shown to the child's desires and views; that the child's assent has been obtained without coercion, in the binding legal mode, and in written expression; and that Save the child's background record, notably the parents' recognition and medical record, but the minor can only access it to the degree allowed by the state's law (article 30). Personal records collected or spread under the 1993 Convention must be used “only for the purposes for which they were gathered or transmitted,” without discrimination under article 30 (Pfund, 1994).

HCCACA 1980

The Hague Convention on the Civil Aspects of International Child Abduction governs parent kidnapping and the displacement of minors under 16 across borders, giving conflicting courts jurisdiction (Copertino, 1990). Its stated goals are to protect the immediate return of children illegally displaced to or kept in any member state and to ensure that the other state involved in a contract honors the custody and reach rights of one member state (Musa, & Tihana, 2012). Displacement or retention of a minor is illegal if: a) it violates custody rights to which a person is entitled, or are extended to an institution or other body, either in common or in segregation, in accordance with the law of the State in which the child was habitually living right before the displacement or retention; and b) those rights were practiced, or would have been exercised but for the displacement.

WFCLC 1999

The Preamble of the Worst Forms of Child Labour Convention (WFCLC) requires adopting new documents to prevent and end the worst forms of child labor, “to complement the Convention and the Recommendation Concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labor.” The term “child” refers to all people under 18 (Dessy, The “worst forms of child labor” include (a) all shades of slavery or conditions similar to it, such as the trade and trafficking of children and imposed labor (including forced enrolment for wars); (b) the employing, gaining, or extending of a minor for sex trade or pornography or pornographic

demonstrations; (c) illegal activities like drug dealing; and (d) service that endangers children. Each State Party must stop the use of children in the gravest forms of child labor, support direct help for their removal and re-establishment and social merger, provide free early education and occupational training for all minors removed from such labor, and identify and rescue children in extreme risk situations.

CONCLUSION

International law's "best interest" principle cannot be conclusive, and while the laws attempt to provide a list of factors to consider when deciding a minor's case, the list is only a guide. Stare decisis 61 and judicial precedent underpin our courts. Most courts prefer mutual judgments, which rigidifies them. It will need judges and judicial officers to be proactive to decide each case with extraordinary circumstances on its own merits. In the last stage, the judiciary, administrative bodies, and other institutions that must decide child-related issues must consider each case individually. It is expected that it will develop a competent corpus of jurisprudence that will shape this norm into a legal legacy that will protect children and establish whether this principle protects their best interests.

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