A critical legal analysis of the child rights act 2003 and it's implementation in Nigeria under the united nation's convention for the rights of the child

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Abstract
There is no doubt that considerable milestone has been reached in the pursuit of child protection in Nigeria. Countries hurriedly adapt, adopt and domesticate child protection instruments and wave it as diplomatic trophies. However, child rights goes beyond politics and diplomatic correctness. In this paper the authors critically analyzed the challenges and prospects in child rights implementation in the Nigerian legal system. Unlike the case of Nigeria where the Constitution did not specifically provide for Child rights, the Constitution of the Republic of South Africa made provision for child rights tailored after the African Charter on the Rights and Welfare of the Child (ACRWC) and the United Nations Convention on the Rights of the Child (UNCRC) with regard to the definition of a child as a person under the age of 18 years. The paper began this analysis with a critical examination of the legal framework of child rights law in Nigeria and the level of its implementation. The paper offered solutions/recommendations to the myriad of challenges/problems hindering the effective implementation of the child rights laws in Nigeria.

Keywords: child-rights, human-rights, protection, vulnerable, disability, child-welfare, constitution, charter

1. Introduction

Some writers believe that there was a heightened interest in the Rights of Children especially in the 19th century. It is however, not in doubt that Children's rights grew with the development of human rights over the years. The development of the rights of the child has passed through various stages encouraged greatly by child rights advocacy of civil societies and faith based organizations before the institutionalization of international organizations. This fact can be deduced from the plethora of human rights instruments and documents specifically designed to protect the child. The number of State parties who have ratified the UNCRC remained the largest in the history of Treaties [1]. At the turn of the twentieth century there was remarkable development of the international law on the rights of the child as far back as over ninety years ago [2].

As noted from the above discussion, it can safely be said that the theories of rights have influenced the historical development on children's rights. It is as a result of incorporating human rights theories into the development process that the historical and political perspectives on children's rights emerged. And this has in turn shaped the entire discourse on whether children should be regarded as rights holders [3].

2. Philosophy of child rights

The jurisprudence of children's rights emerged based on different schools of thoughts. There are the will/choice theorists and the interests/benefit theorists. The will theory which postulates that the child has natural rights as much as adults for self-expression and protection and in the event of incapacity for self-expression in the case of a child who lacks the capacity to express those rights then the state, his parents or a close friend should assist him to express those rights. While interest/benefits theory posits that the child has an interest to be protected and entitlements which ought to be protected by the State. Some of these rights are substantive in nature and also have ancillary remedial provisions where such rules are accepted as rules or principles of our law, in such cases the state must ensure that they are given due enforcement because if it is accepted as principle of our law it implies that the state has given it recognition. The promotion of children's rights draws heavily and is dependent to a large extent to the theoretical arguments influencing the normative framework on children's rights as reflected in international, regional and national instruments [4].

The discussion of child rights theories shall be limited to the two theories noted above. This is so because this research is not basically about the philosophy of child rights but the social-economic and legal challenges to child rights implementation in Nigeria in particular. An in-depth foray into the philosophy of child rights would derail our purpose. Fortin [5] noted that the term "human rights" only came to the fore in the aftermath of the Second World War when the draftsmen of the 1948 Universal Declaration of Human Rights (UDHR) adopted the term rather than the well-known phrase "rights of man".

Prior to this, the UN Charter of 1945 had proclaimed that one of its primary purposes is to promote and encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. "Fortin points out that the UDHR guarantees "the inherent dignity and equal

and inalienable rights of all members of the human family". This shows that human rights have long been established since 1945. The Second World War and its aftermaths stung the entire world into action to observe and respect the rights of man as a creation of God. Those inherent rights which every man has by reason of being a human were deemed sacrosanct and were to be protected by all. The next discussion is on the child as a right holder.

3. The child as a rights bearer

The marginal progress in child protection which the domestication of the UNCRC in the form of Child Rights Act (CRA) made is not enough as noted earlier in the preceding sections. It amounts to mere tokenism paying lip service to the rights of the child. This is so because after the passage of the law, the child in Nigeria has not experienced any improvement in his/her rights protection. Childhood in Nigeria has remained steeped in the old ethos which viewed the child as an extension or an expansion or even a status symbol. This concept of childhood in Africa is in contrast and completely different from child rights perceptions in other continents especially Europe. The framers of the Nigerian Child Rights Act ought to have taken into consideration ethical underlying factors engrained in the African mindset as long as such concepts were not inimical to the well-being of the child.

That consideration is the same consideration which comes into play when considering African native laws and customs. As long as such considerations are not inimical to the well-being of the child, they should have been appraised and applied. This is so because the African child lives in a very difficult environment. These very challenging circumstances such as some barbaric customs and other man made setbacks such as corruption are conditions that may in fact present some of the greatest barriers to the full recognition of children as rights-holders. International and regional law, policy and practice ought to be integrated into various countries. Notwithstanding the particular challenges facing the African continent, there are prospects and ample grounds for optimism [6]. Superficial assessment of the situation of the African child cannot bring a much more nuanced meaning to the concept of children's rights. The argument that the making of African children's charter was a result of the loop holes in the drafting processes of the UNCRC is understandable considering the number of participants from Africa (only Algeria, Morocco, Senegal and Egypt participated meaningfully in the drafting process). The need for a home grown charter for children which reflected the specifics of the African context was another major reason for the desire for an African Charter [7]. This can easily be deduced from the wording of the Preamble which states that it emerged out of the social and cultural values of Africa, including those values relating to family, community and society and takes into consideration the virtues of cultural heritage, historical background and values of the African civilization.

The Preamble provides as follows:[...]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 or she needs special safeguards and care. The African child unlike most of the world's children suffers a number of setbacks even from the womb. In most populations of Africa and Nigeria in particular, the health facilities for proper pre natal care are none existent. Post natal care is also poor. The availability of adequate nutritional food is also a problem. In this situation a child at the age of three is forced to start street hawking to support the family economy. Some are not so fortunate to be sent to the streets for hawking, some are sold off to child traffickers. The argument that the African child has a much more challenging childhood is therefore unarguable.

The child is a product of nature and nurture. As a product of his/her milieu, the interactions and impact of his upbringing affects a child's world view and value system. The socio-economic, religious and geo-political circumstance within which the child is raised is to a consideration extent factors which should be taken into consideration in determining the best interests of the child. African region therefore enacting a region-specific child's right instrument, namely the African Charter on the Rights and Welfare of the Child (ACRWC) was therefore a major achievement. The view of some writers that UNCRC was initiated and drafted by the Western nations is not farfetched. Harris Short was right in his view that "human rights as enshrined in the universal declaration of human rights are purely Western construct and can point to their philosophical and historical rooting of the concept in Western liberal thoughts and socio-economic experiences [8]." That observation is trite as follows logically if you consider that with the exception of Senegal and Algeria, few African countries participated consistently in its drafting process [9]. Some writers such as Viljoen [10] in his own view believe the African charter on the rights and welfare of the child sets a higher standard than the UNCRC, he noted among others child marriages is not allowed under the African child charter [11]. The same does not apply to the UNCRC, which defined the age of majority to be attained below the age of 18 or any age determined by a national law [12].

Viljoen correctly observed [13] in a number of respects, the African Children's Charter sets a higher level of protection for children than its UN equivalent. Some of the most dramatic differences are that under the African Children's Charter no person under 18 is allowed to take part in hostilities. The UNCRC allows children between 15 and 18 to be used in direct hostilities.

The UNCRC allows the recruitment of youths between 15 and 18, while the African Children's Charter requires states to refrain from recruiting anyone under 18. Child marriages are not allowed under the African Children's Charter. The same does not apply to the UNCRC, in terms of which the age of majority may be attained below the age of 18. The scope of the protection of child refugees is broader under the African Children's Charter, which allows for 'internally displaced' children to qualify for refugee protection. The causes of internal dislocation are not restricted, but may take any form, including a breakdown of the economic or social order.

Under the African Children's Charter, the best interest of the child is 'the primary consideration', not merely 'a primary consideration', as provided for in the UNCRC. The need for a home grown instrument which would incorporate necessary ingredients of African perspective drove the OAU to seek this supplementary instrument. In their consideration such instrument was necessary in order to guarantee the implementation of the UNCRC in African countries tailored along the local situations, for example, HIV epidemic with its concomitant orphaned children, poor children, abysmal socio economic conditions, and widespread occurrence of armed conflict and its resultant displacement of populations.

The apparent cultural differences within the United Nations have always been a knotty issue in every effort to draft a covenant or a Treaty. This is the major underlying factor which has led to calls for a regime of children's rights not only founded upon UNCRC, but also reflective of and informed by African cultural values and heritage. It is important to note that, in the context of African setting, local factors need to be taken into account because children's rights do not seem to enjoy sufficient cultural legitimacy within the various African cultures and respect for children's rights is yet to firmly gain ground. Accordingly, the perception is that international norms with respect to the promotion and protection of children's rights are heavily tilted to a 'Western' rights ideology therefore lacking a meaningful African influence [14]. These researchers agrees to the extent that the product which is the Convention was lacking in African content however, some blame for the apparent vacuity ought to be placed on African Nations who did not deem it expedient to participate in the drafting process. This lack of interest is also manifested in the way and manner State parties such Nigeria have domesticated international child rights instruments including the Convention. It is sad that a document you did not participate in its making, you only ratified in fulfillment of diplomatic propriety, you cannot take out time to convert and adapt such document to suit your peculiarities.

The nagging worries remains, for a Convention obviously not holistic in content, for the Nations of the West it might appear appropriate. There was no excuse to replicate and adopt the entire document completely because it cannot be implementable. However, the observation above by Ihua-Maduenyi that……*children's rights do not seem to enjoy sufficient cultural legitimacy within the various African cultures and respect for children's rights is yet to firmly gain ground* is correct only to a certain aspect. Some African countries such as Kenya and South Africa gave enough time to create a home grown document, which can pass through some level of cultural legitimacy. A generalized disapproval would be tantamount to Philip Aries's [15] conclusion that childhood did not exist in the Middle Ages. Children's rights enjoy cultural legitimacy within the African cultures in a form different from the Western norms. The African child is welcomed with drums and celebration by the entire community and that is why it is a popular aphorism in Africa that it is a village that raises a child not a mere family unit as is the case with the Western nuclear family unit.

The overrated and much hyped Western principles of child protection can be summarized in the 41 Articles of the UNCRC and they are summarized not much more than the demand 'that children should live healthy lives and receive medical care when they are sick, that nobody may harm or sexually abuse them, they should be prevented from using addictive drugs, and may not be denied social benefits, and must be protected from exploitation, prostitution, child trafficking and recruitment as child soldiers. These are all guaranteed for a child under African customs in various ways with punitive sanctions. Cultural legitimacy for child protection in the various African cultures and respect for children's right does exist, though not in the form and nature as the rampaging western construct.

In the African culture, values and history are transmitted informally under the moonlight and skills for survival taught by tutelage. In most communities in Africa raising a child was communal and discipline had limits which were acceptable by all. It is the authors' view in this research that a balanced perspective must not be attuned to the nuances of western liberal constructs. Child rights cannot be sufficiently defined within the context and western principles of UNCRC rather it should be seen as those rights which communities attribute as belonging to the child for his/her total wellbeing. Moreover, Africa must not be seen as one Dark Continent still killing twins, it is a culturally diverse continent. The implementation of the rights of the child under the UNCRC involves the potential consequence of conferring absolute rights on children without commensurate responsibilities to their community. For those of us in the African context, individual autonomy is of smaller status than the pursuit of the communal good. In view of this, it appears that conferring of rights on children without cementing their reciprocal duties erodes interdependent relations between the child and his or her community in the African context. Article 31 of ACRWC places a commensurate duty on the child which is a unique feature of our African communitarian approach to child rearing.

Nigeria as a member of the African Union ratified the African Union Charter on the Welfare of the Child (ACRWC) on 23rd July 2001. By implication, Nigeria is under obligation to submit periodic reports on progress made in the implementation of the Charter as stipulated in its article 43, to the AU Committee on the Rights and Welfare of the Child. Article 4 of the ACRWC provides that each country's periodic report should he submitted within two years of ratification, and every three years thereafter.

The African Committee of Experts on the Rights and Welfare of the Child stipulated in the guidelines for the report writing process that: a state party that has already submitted to the UN Committee on the Rights of the Child may use elements of that report for the AU Charter report… the report shall, in particular highlight two areas of rights that are specific on the children's charter, and must specify the action taken by the state party in response to any recommendations made to it by the Committee and or the UN Committee on the Rights of the Child.

The Committee is a supervisory body and is made up of Experts, which simply means every State party nominates persons with expertise on child protection. This body has a

broader mandate than the UNCRC Committee. The African committee of experts is not only tasked to examine state reports but is also to make recommendations arising from individual or interstate or intrastate communication. It is noted that apart from setting a higher standard than the UNCRC that African children's charter introduced some unique Africanness, especially in placing a duty on the child [16]. One of the observations in this research is the composition of the committee of experts. The committee is made of persons knowledgeable in the matters concerning child welfare. The knowledge discussed here refers to their academic trainings. This criteria alone in these authors' view is not enough qualification, there should be included persons knowledgeable in other fields which have interactive influence on the child's wellbeing such as persons knowledgeable in the native law and custom of the child, as well as religious leaders in order to have a proper blend. There is a practicality about child rights which goes beyond mere academic qualifications in child psychology. In the next section we shall consider the issue of definition.

How do we define a child? Is it purely based on the western construct as defined in juristic writings and international child protection instruments? In this research it is our view that the child in Africa would rather be defined within the prism of our African communitarian perspective. The modern nuclear family which according to Phillip Aries is a recent development is not consistent with our African family concept. It contrasts with the universal advocacy for children's rights and the resurgence of activism and scholarly criticism against old hegemonic conceptions such as the status of children in civil society. The definition of the child as a distinct person and current idea of personhood, need to be defined without bias in order to achieve the right African perspective.

4. Who is a child?

The problem of definition with regard to who is a child in the African context goes beyond the chronological age. This perspective is critical because children mature at different times. A child is a developing person with evolving capacities that include autonomy, mental (decisional) capacity and capacity to assume responsibility. Some children at 18 years in some cultures are already perceived as adults and can leave the "nest" in a manner of speaking. In some other cultures at 18 years a person is still a child. These differences were what the drafters of the UNCRC faced and as a result defined a child to mean *"every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier"* this definition is not weak, it has left children vulnerable and has been exploited by some members of the UN State parties to justify child marriages, underage labour or child labour and enlistment of children in armed forces [17]. Without clearly defined rules children are at risk of being treated in ways though acceptable to adults may not be suitable to children.

The issue of putting a ceiling on the age of majority has faced a number of difficulties and the varying definitions of a child show to an extent the lack of uniformity on the beginning and end of childhood. The ACRWC 1999 moved away from the diplomatic compromise of the UNCRC and defined a child as "every human being below the age of eighteen years" and the Nigeria Child Rights Act (CRA) defines a child as a person under the age of eighteen whereas the UK Children Act 1989 defines a child as "a person below the age of eighteen years". Some researchers [18] find it more accommodating definition of a child in the UNCRC which provides that "a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier". This compromise which the UNCRC sought to make by that so called accommodation has made the issue of childhood more relative than necessary. This is because without a clear definition, State parties are inadvertently granted a window to abuse children with legislative recklessness especially as it relates to child marriage. In spite of the above differing definitions, Bainham is of the view that although there seems to be a common ground on the age of a child, there are disagreements over when childhood begins and ends. Ihua-Maduenyi [19] believes that "it is not only accommodating but appears to be more acceptable as it allows different national legislations to determine when childhood begins and ends in accordance with the law applicable to the child. This is done owing to the difficulty in understanding the concept of childhood. Also, the definition given by the UNCRC can be said to create room for a more accommodating definition of childhood especially because it takes into consideration the variation across societies. In effect, what the UNCRC has done is to allow for flexibility so that multicultural societies such as Nigeria can capitalize on, in its law-making process".

These researchers considers it valid that there is evident plurality and variations across societies, it is however needful for the UNCRC to prescribe a basic age limit because without clearly defined rules children are at risk of been treated unsuitably. Concomitantly, children who are sufficiently capable of making certain decisions for themselves will have their decisions ignored because there is no rule. Children as part of their rights have autonomy to participate in decisions about their lives. If there is no specific age when they can exercise that right as the UNCRC tends to stipulate then it puts them at a further disadvantage. This is the challenge addressed eloquently by the ruling on Gillick [20] Lord Scarman stated "that as a matter of law the parental right to determine whether or not a minor below the age of 16 receives medical treatment terminates if and when the child has sufficient understanding and intelligence so that they are able to comprehend what is proposed" The South African Law reduces the age of autonomy to 12 years in their Children's Act 38 of 2005. In section 129 of the Act: a child may consent to his or her own medical treatment provided that he or she is over the age of 12 years and is of sufficient maturity and decisional capacity to understand the various implications of the treatment including the risks and benefits thereof. There is need for consistency on the acceptable age of majority. The UNCRC transferring the determination of age to State parties denies them the power to supervise and sanction violations. Further, the inconsistencies in various legislations in Nigeria are part of the challenges

examined in this research. Legislations in the country have various ages for a child. For instance, the Children and Young Persons Law (CYPL) (still applicable in the States) defines a child as a person under the age of fourteen years, and a young person as a person who has attained the age of fourteen years and is under the age of eighteen years. Even though there is no doubt that this is an older law which has been overtaken by the Child Rights Act (requires re-enactment by the various states legislatures), it is still applied in most States who have not enacted the Child Rights Act.

Trafficking in Persons Act of 2003 on the other hand sets the limit at eighteen years where any person who exports from Nigeria or into Nigeria any person under the age of eighteen years with intent that such a person will be forced or seduced into prostitution. Cybercrimes, Prohibition, Prevention etc. Act, 2018 section 23 refers to any person below the age of 18 years as a child. There is a pressing need for a uniform definition of a child in Nigeria. The age defined in the Child Rights Act which is any person below 18 years is the most appropriate and should cut across all legislations in Nigeria. In the next section we shall consider a knotty question which is the move for a uniform definition of childhood. Definition legislations and jurisdictions have differing definitions of childhood. In the children and Young Persons Act of Singapore a child is defined as a young person of 14 years. In India the age is fixed at 18 years under the Constitution but different in other legislations. In South Africa the Constitution fixes the age of majority of a child at 18 years but denies the child of 18years the suffrage to vote in an election. We shall interrogate these differences briefly in the next section.

5. Analysis of Child Rights Act 2003

The earlier sections of this paper was basically an interrogation of the challenges and emergent prospects in the implementation of child rights laws Nigeria as enshrined in the United Nations Convention on the Rights of the Child (UNCRC) which was ratified in Nigeria in the year 1991. The Convention was domesticated as Child Rights Act, 2003 in Nigeria hereinafter referred to as CRA. The principles of UNCRC formed the template for the policy formulation and legislation of Child Rights Act as part of Nigeria's laws. The UNCRC in actuality was not the first international instrument on children's rights. It appears to have assumed that position of being the foremost treaty on the rights of the child because it is undoubtedly the first legally binding international instrument that focused on children's rights exhaustively.

It is still adjudged the most ratified convention in history as about 195 countries [21] ratified it making it the most widely ratified human rights treaty in the world with the exception of United States of America and South Sudan who have signed but failed to ratify the Convention [22].

Similarly, the African Charter on the Rights and Welfare of the Child (ACRWC) [23] was a follow up Treaty in the African continent, it was adopted in 1990, designed undeniably to retain the spirit as well as substance of the letter of the UNCRC while at the same time having special provisions guided by the peculiar situations in Africa. The two instruments have striking similarities except some little additions in the ACRWC as will be discussed subsequently. The UNCRC was domesticated in Nigeria as the Child Rights Act 2003 and about 21 states in Nigeria have further adapted the Act into their own state laws. However, there is a notable alignment among the states which have domesticated the Act in Nigeria. The larger number tilts more towards the South and Western part of Nigeria. The states in the North have mostly resisted the domestication of this Act. There is no doubt that the reluctance or outright refusal to domesticate is not unconnected with resistance from religious leaders, not purely political resistance. A critical question that should be considered in this book however is whether the existence of the child rights laws in the compliant states of Nigeria improved the condition of the Nigerian Child in those states? The answer to that question is one of the issues for resolution in this book. It is sad considering the fact that the Nigerian State is in the forefront of the ratification of most international human rights and child specific instruments such as UNCRC, its protocols, the African regional treaty on the rights of the child (ACRWC) and the passage of the Child Rights Act of 2003.

In actuality, there appears to be little or no impact on the lives of the Nigerian child. According to a damning report by UNICEF [24] which noted inter alia "… the alarming rate of violence against children at home, school, institution amongst others. Similarly, the United Nation's Secretary-General in 2006 commissioned a Study on Violence against Children-, the report provided alarming revelations on the scope of violence against children. This study and other reports show that many children are routinely exposed to physical, sexual and psychological violence in their homes, schools and care institutions. It is appalling that 15 years later, the situation has not changed, instead it has gotten worst presently with the kidnapping of school children (males and females) and putting through traumatic experiences which will no doubt affect their life in the future. It has been noted that the processes leading to the making of CRA lacked the scrutiny and preparation needed to have a wholesome document. It lacked the inclusiveness and broad consultation which some other state parties engaged in the processes leading to the production of their child rights document.

The making of the Kenyan Children's Act was strongly influenced by the commitment and engagement of FIDA Kenya, NGOs and faith based organizations. These stakeholders made broad consultations before making their recommendations. In the case of the Nigerian Child Rights Act there is a noticeable vacuity and halfhearted engagement. The sensitivity of the Act required diligent consultation in order to incorporate necessary African texture and footprint into the document. In spite of the law coming nine years after the Nigeria's ratification of the UNCRC, there is no inferable Africanism in the entire document.

The processes leading to the ACWRC on the other hand considered African content and it showed the perception and mindset of its framers. As a foremost regional charter on child rights, there is an undeniable appreciation of the African value system and its multi-culturalism. Nigeria sadly bypassed the

needed rigor in content brewing process; as a result there are no notable changes to the texts of the Convention but a seeming transliteration. The African child is completely in a different social setting resulting from peculiar acculturation, economic and social environment. The differences in social-economic and political context naturally result in a different value system as well as world view. This is much more glaring when considering the parameters for ascertaining what would amount to an African child's best interest. What may necessarily be the best interest of a child in a nation such as Nigeria may not be the same with that of a child in a nation such as Norway.

6. Recommendations

1. There is need for child rights legislations in Nigeria as it is in South Africa to confer on the child some degree of autonomy to participate in their affairs. This particular feature is of much interest to children, their parents and loved once in Nigeria because many citizens believe that there has to be a balance between a child's autonomy and the demands on parents, care givers and even the government who owe the child a duty of care. The autonomy should not be viewed in such a way that it becomes difficult to guide the child or what one may refer to as child rights tyranny.
2. There is a need for subsidiary legislation to strengthen the Child Rights Act 2003 particularly in enforcement to include the following actions as criminal acts against the child:

- Ill treatment of the child;
- Allowing ill-treatment of the child;
- Abandonment of child by parents or guardians;
- Failure to care for a child by a person who is legally liable to maintain them. This means that parents, adoptive parents, foster parents or guardians must provide for the child adequate food, clothing, shelter and medical assistance;
- The commercial sexual exploitation of the child;
- Allowing sexual exploitation of the child in your property;
- Abducting or removing or assisting a child to abscond from any institution, place of safety or custody in which a child has been legally placed;
- Removing a foster child from the country;
- Employing a child under the age of 15 years (unless permission has been granted by the Minister of Labour) [25].

This Nigerian Child Rights Act 2003 does not fully cover children who are victims of child labour, unaccompanied foreign children, children who are victims of child trafficking, street children (such as the'Almajiris) and children in child-headed households. However, in the view of these researchers, these are bold steps that Nigeria ought to take in her child rights implementation efforts.

3. The Constitution [26] is the grund-norm or the basic norm which is the supreme law of the land in any democratic country. All other laws derive their validity from the constitution. The recognition of child rights in the South Africa Constitution is one of the most significant attributes of their legal system. The Constitution recognizes that children are particularly vulnerable to violations of their rights and that they have specific and unique interests. Provision is made in section 28, therefore, for the protection of specific rights of children. These researchers strongly recommend that a constitutional review be done to include the Nigerian children and their specific unique rights in the constitution.

7. Conclusions

The concept of childhood in Africa is not based purely on chronological age. It is The UNCRC in art.1 that defined a child as a person under the age of (18) eighteen years unless under the law applicable to the child, majority is attained earlier. It is unfortunate even though there is no doubt about the difficulty of having a uniform or common ground for definition in a body as vast as the UN, the UNCRC should have stated a particular age for purposes of enforceability. This is so because opening a window for different national legislations to determine their age limit for a child in accordance with the law applicable will lead to abuse.

Age in African is not only determined by mere chronology, it is seen also in terms of obligations of support and reciprocity between the parents, the community and the child from childhood to old age. The Western notion of child requires the child who has attained 18 years to leave the 'nest' but in Africa on the other hand, a child could remain in the care of his parents after he attains adulthood, in which case some factual dependency continues. The UNCRC due to plurality of its signatories must have tried to be flexible but the challenge is about enforcement. Haven given them the opportunity, most national legislations would be below global standards and lead to further abuse in the areas of child marriage, child soldiers and child labour.

The CRA 2003 has made a commendable provision by enacting a single definition for a child. Section 277 defines a child to mean 'a person under the age of eighteen years'. In an attempt to avoid any inconsistencies, the Act goes further to void any other contrary definition of a child in any previous enactment [27]. Mere definition in an enabling Act is inadequate, the state needs to further ensure that other legislations with differing age limits are re-enacted or amended in line with the UNCRC.

Further, there was a consideration of the number of Treaties and International Agreements which Nigeria had ratified without enactment into Nigerian law several years after such ratification. The following Treaties and Protocols have been ratified by the Nigerian Government and not yet enacted into Nigerian Law. They include: ILO Convention 182 on Minimum Age, ILO Convention 138 on Elimination of the Worse Forms of Child Labour, Optional Protocol to the Convention on Elimination of All Forms of Discrimination Against Women, Optional Protocol on the involvement of Children in armed Conflicts, Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, Convention Against Torture and other Cruel, Inhuman and

Degrading Treatment or Punishment and Convention on person living with disabilities since September 2010 with its Optional Protocols.

The Federal Government has failed to enact these instruments into Nigerian law in order to give them the needed legality and enforceability. As long as Nigeria has not passed them into law in line with Section 12 of the 1999 Constitution (As Amended) these Treaties and Protocols are of no benefit to the target beneficiaries. In the area of reporting to UNCRC, Nigeria has also not met its reporting obligations to the committee established under Article 34 of the Convention requiring Nigeria to report every two years the extent of its implementation of the Convention. It is sad that even the Treaties Nigeria has domesticated they have failed to be up to date in their report to the Committees. For example, Nigeria has not made any State Party report in line with Article 19 of UNCRC to the Committee on Child Right implementation since the last report was examined on 26th May, 2010. It is supposed to be bi annual.

In this research it is proposed that the issue of dualism in our international law application should be reassessed. The requirement of domestication for applicability of Treaties is a drawback to the implementation of Treaties and enjoyment of its benefits. A number of critical Treaties are lying inchoate due to executive-legislative power tussles. It is argued therefore that Section 12 of the 1999 Constitution be amended to exclude the requirement of child protection Treaties and Agreements to pass through domestication processes before implementation can be effective.

In our survey of three countries and examination of their legal framework and other mechanisms on child rights protection, it was observed that though these countries share similar historical as well as legal heritage with Nigeria as English colonies, they have advanced and created workable peculiarities in their approach to child rights and the implementation processes. Notably, the three Countries enacted child rights into their constitutions. This was necessary as the constitution as the basic norm is superior to every other law. It is a basic constitutional trait that any other law inconsistent with the constitution was null and void to the extent of the inconsistency. This is one reason why it was laudable that these three countries South Africa, Kenya and India made provisions for child rights in their constitutions.

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8. Harris Short: Listening to the other side? the convention on the rights of the child. www.law.unimelb.edu.au.assets(pdf) accessed 26th January, 2021.
9. Ihua-Madueyi, F supra.
10. Viljoen, F (2001) ‘Africa’s contribution to the development of international human rights and humanitarian law ahrlj, vol.1, no.1, (cited in Ihua-Madueyi: Considering the Best Interests of a Child in a Multi-Cultural Civil Society with Special Reference to Nigeria (Thesis) https/Ira/ie/ac/UK accessed 26th January, 2021).
11. Art. 21(2) read within Art 2 of African Children’s Charter.
12. Art.1 UNCRC
13. Viljoen F. (2001) Africa's contribution to the development of International Human Rights and Humanitarian Law. 1 AHRLJ 18-39 http://www.ahrlj.up.ac.za/viljoen-f (accessed 6/02/2021).
14. Ihua-Maduenyi, F supra
15. Supra
16. Art. 31 ACRWC
17. Viljoen supra
18. Ibid Ihua-Maduenyi
19. Ibid
20. Gillick v. West Norfolk & Wisbach AHA{1986}AC 112(House of Lords)
21. https://news.un.org/en/story/2015/-un-lauds-somalia-country-ratifies-landmark-childrens-rights-treaty accessed 6/02/2021.
22. The Convention on the Rights of the Child, with a Preamble and 54 articles, was adopted by the U.N. General Assembly on November 20, 1989, and entered into force on September 2, 1990. G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 28 I.L.M. 1448 (1989). For an online text, see the OHCHR Web site, http://www.ohchr.org/english/law/crc.htm (accessed 6/02/2021); it includes the 1995 amendment to article 43, paragraph 2 (G.A. Res. 50/155 (Dec. 21, 1995)), which entered into force on November 18, 2002. For the status of signatures, ratifications, and accessions, available at the OHCHR Web site, http://www.ohchr.org/english/bodies/ratification/11.htm (accessed 6/02/2021).
23. The African Charter on the Rights and Welfare of the Child, with a Preamble and 48 articles, was adopted on

July 11, 1990, and entered into force on November 29, 1999. For an online text, see the African Union Web site, http://www.africa-union.org/official_documents/Treaties on the child (PDF) (last visited 12/02/2021) (unofficial source). For a list of signatures, ratifications, and accessions, available http://www.pdf (PDF) (last visited 12/02/2021).

24. National Child protection consultant on violence against children in schools, Abuja. https.www.unicef.org/Nigeria/about_12122html (accessed 7/02/2021).
25. Summary of Child Care Act, no 74 of 1983-ESST-OSS Africa www.ossafrica.com/esst/index.php?title=problems (accessed 28/08/2020).
26. The Constitution of the Republic of South Africa 200 of 1993 (hereafter referred to as the Interim Constitution) came into force on the 27th April 1994. It effected radical changes in the sense that henceforth the franchise and associated political and civil rights would be accorded to all citizens without racial qualification and the doctrine of Parliamentary sovereignty was now replaced by the doctrine of constitutional supremacy. The Interim Constitution was formally adopted as an Act of the pre-democratic Tri-cameral Parliament and was only meant to be a transitional Constitution. One of its principal purposes was to set out the procedures for the negotiation and drafting of a final Constitution. The Constitution of the Republic of South Africa 108 of 1996 (hereafter referred to as the Constitution) completes the negotiated revolution. The Constitution was drafted and adopted by an elected Constitutional Assembly which had been given two years to produce a constitution that conformed to 34 constitutional principles that had been agreed upon during the pre-1993 political negotiations. In Ex parte Chairperson of the Constitutional Assembly: in re Certification of the Constitution of the Republic of South Africa 1996 (First Certification judgment) 1996 4 SA 744 (CC) the Constitutional Court refused to certify that the Constitution conformed to the said principles and it was only in the so-called Second Certification judgment 1997 2 SA 97 (CC) that the Constitutional Court was prepared to find that the text was consistent with the constitutional principles. The Constitution was signed into law by President Nelson Mandela at Sharpeville on 4 February 1997. See De Waal, Currie & Erasmus The Bill of Rights Handbook (4th ed) ch 1 (hereafter referred to as De Waal *et al*). In the preamble to the Constitution it is specifically stated that the injustices of the country's past are recognized and that the Constitution is adopted as the supreme law of the country so as to heal the divisions of the past and to establish a society based on democratic values, social justice and fundamental human rights.(cited by JA Robinson: Children's Rights In The South-African Constitution:(*http//sayas/org.za/per/article/view/(accessed 28/9/2020).
27. CRA 2003 s 274.