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KAMPALA INTERNATIONAL UNIVERSITY LAW JOURNAL is the official journal of the School of Law, Kampala International University. It is a peer-reviewed journal providing distinctive and insightful analysis of legal concepts, operation of legal institutions and relationships between law and other concepts. It is guided in the true academic spirit of objectivity and critical investigation of topical and contemporary issues resulting from the interface between law and society. The result is a high-quality account of in-depth assessment of the strengths and weaknesses of particular legal regimes with the view to introducing reforms. In furtherance of the requirements of advanced academic scholarship, the Journal places high premium on originality and contribution to knowledge, plain and conventional language, and full acknowledgment of sources of information among other things. It is superintended by a Board of respected academics, lawyers, and other legal professionals.

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Scope

Kampala International University Law Journal (KIULJ) is the official Journal of the School of Law, Kampala International University, Uganda. It is a peer-reviewed Journal providing an objective and industry focused analysis of national and international legal, policy and ethical issues. The Journal publishes well researched articles that are in sync with sound academic interrogation and professional experience on topical, legal, business, financial, investment, economic and policy issues and other sectors.

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FROM THE EDITORIAL SUITE

The primary objective of the **KAMPALA INTERNATIONAL UNIVERSITY LAW JOURNAL (KIULJ)** is to provide a platform for a robust intellectual discourse, through the publication of incisive and insightful articles and other contributions from a variety of scholars, jurists and practitioners across jurisdictions. The desire to accomplish this objective guides the choice of the materials being presented to the reading public in every edition. The peer review and editing processes of the papers that are finally selected for publication are equally influenced largely by the pursuit of this goal.

To this end, articles from seasoned scholars and practitioners in each edition address a wide spectrum of issues from different branches of the law, such as, International Criminal Law, Law of International Institutions, Environmental Law, Human Rights Law, Medical Law, Oil and Gas Law, Constitutional Law, Corporate Governance to mention but a few. You will, no doubt, find these scholarly works a worthy contribution to knowledge in their respective fields.

On behalf of the Editorial Board, I wish to appreciate all our reviewers, internal and external, for their constructive criticisms, comments and suggestions. These go a long way to enrich the quality of the papers published in this Journal. The various contributors who painstakingly addressed the observations and suggestions of the reviewers, thus facilitating the achievement of the purpose of the review process also deserve our commendation.

We also, with a grateful heart, acknowledge the interest our teeming readers have continued to show in the succeeding editions of the journal just as we assure them of our readiness to give them the best always. We equally thank our editorial consultants for their useful advice and comments that have contributed to the continuous improvement of the quality of the journal. Legal practitioners and scholars are hereby informed that contributions to our journal are received on a rolling basis. They should feel free to send in their manuscripts and ensure they comply with the submission guidelines as spelt out in the Call for Papers obtainable from the journal's website (www.kiulj.kiu.ac.ug). All contributions should be addressed to the Editor-in-Chief and forwarded to the email addresses supplied in this edition.

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AGE PROFILES IN CHILD LABOUR LAWS AND THE QUEST FOR INCLUSIVE DEVELOPMENT

ADERONKE A ADEGBITE, PhD*

Abstract

*Prominent intercontinental regimes protect vulnerable persons, especially children, from hazardous engagements. However, till date, controversies on the universal age of maturity still water down the consensus to protect all children without discrimination. This paper reviews prominent laws on Children's development (economic and education), then queries why these laws usually stereotype childhood with different age grades. This is notwithstanding evidence that children possess varying economic ingenuity. Also, that their outstanding potentials can be expressed and economized at childhood ages. This paper is a doctrinal research of qualitative methods that especially rely on the content analysis of primary and secondary sources of Law. The primary sources of laws in this regard include both domestic laws and international treaties, while the secondary sources are in forms of reported data and information from existing anti-child labour regimes. This study concludes that laws can prohibit children's exploitations without discriminating their capacity per ages. Children's protection rules should only be complimentary enough to (a) emphasize their developmental right to education and leisure (b) focus on the liberty of **all children** to benefit from their own economic ingenuity under safe conditions for fair wages.*

Key Words: Age Profiles, Child Labour, Education, Child Ingenuity, Development, Nigeria

Introduction

According to United Nations Children's Fund (UNICEF)¹, the fight against child labour in Africa appears to be stagnating. This situation is also confirmed by an International Labour Organization (ILO) 2018 report,² that, despite measures taken by African governments to fight child labour, the population of under aged workers increased between 2012 and 2016. For this purpose, the ILO regards Child Labour as work that deprives children of their childhood, their potential and their dignity,

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¹ More About Child Labour, *Better Business For Children* at www.unicef.org accessed 28 May 2020.

² ILO (2017), *Ending Child Labour By 2025: A Review of Policies and Programs*, Geneva 2017. Pg 7-13.

and that is harmful to physical and mental development. Typically efforts against child labour have focused on those economic engagements that³:

- a. mentally, physically, socially or morally are dangerous and harmful to children;
and/or
- b. interferes with their schooling by: depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work.

As at 2016, a preview of the impacts from global efforts reveals, that although child labour in the above regard has declined worldwide, the pace of progress has slowed significantly.⁴ The data equally emphasizes the complex differentia in States circumstances and approach to child labour⁵, despite their allegiances to similar international anti child labour regimes.⁶ By the ILO, hazardous child labour remains the largest category of child labour, with an estimated 73 million children, aged 5-17, working in dangerous conditions in a wide range of sectors. In this regard, girls and boys often start carrying out hazardous work at very early ages. The organization also estimates that some 22,000 children are killed at work every year, while the numbers of those injured or made ill because of their work are not known⁷.

However, a more cumbersome dimension flows from the various other meanings attached to the concept of child labour by different stakeholders. Whether particular forms of “work” can be called “child labour” or not has also depended on different perspectives on; varying stipulated childhood ages; different notions about the mental and physical capacity of children; the type and hours of work performed and the conditions under which the works are performed among others. All these conditions are further subjected to controversial national socio-cultural, economic and political status/attitudes. Furthermore, existing reports on the menace have been blurred by general and individual experiences of children who work to feed and survive. These experiences have been captured across varying childhood ages and different jurisdiction. An example narrated on the international space is that of Alli,

³ <https://www.ilo.org/ipec/facts/lang--en/index.htm> retrieved August 19th 2022

⁴ ILO (2018), Ending Child Labour By 2025: A Review of Policies and Programs, 2nd Edition, Geneva 2018. P 4.

⁵ The Report of the Secretary-General on children and armed conflict, submitted to the UN Security Council in 2015, p 1-4

⁶ Countries classified as “affected by armed conflict, especially the Central African Republic, Mali, Nigeria, South Sudan, and Democratic Republic of the Congo, fall ⁶ significantly at the tail end of the progress spectrum

⁷ ILO, Global estimates of child labour: Results and trends, 2012-2016, at www.ilo.org retrieved on 20/05/2020

a 13 year old Nigerian⁸, who has worked as a shoe shiner for two years. He feeds and clothes himself as he equally supports his brother. Alli's experience was recorded as one among the scores of children, all trying to make a living by polishing strangers' shoes. Other examples from Nigeria include orphans who necessarily live on the streets because their parents were killed by Boko Haram. In fact, the Nigerian National Bureau of Statistics confirms that at least 50.8% of Nigeria's children are full time workers; especially those would rather remain voluntary labourers, than be saved⁹. An example of another child whose condition exposed the above irony is Adri (13 years old), who was rescued from a boat of irregular migrant, intercepted on its way to Garbon. He insisted that he was just a migrant and not a slave. He lamented that he and his contemporaries paid smugglers to help them into greener pastures for fishing and upon rescue he and his co-under aged had to go back to their villages to save money in order to leave again.

The above, inter complex episodes reveal that child labour is experienced by children of different ages especially 5-18, engaged in economic activities which may be construed as forced, voluntary or hazardous.¹⁰ Understanding the enormity of these diversities vis a vis the real experience and wishes of children have informed several studies on the nature of childhood. So far, studies written by Aries(1973)¹¹, Hutchinson and Charlesworth¹², and Mason and Steadman¹³ among other literature have illustrated the realities, incidents and experience of childhood that make it pertinent for contemporary researchers to re-evaluate their existing presumptions in order to enable tangible interventions. States may also be largely responsible for delay or frustrations in achieving anti-child labour standards.¹⁴ This is especially where countries address issues on economic abuse with regulations that defeat straight forward interpretations. For example, where the zeal to accommodate diverse arguments on childhood ages and capacity to work, are reflected on the faces of laws, to the extent that they frustrate the enforcement of these rules.

Records have shown that efforts to construe maturity and capacity of children per childhood ages often fail because they are constituted by generalized perspectives

⁸ Ninja Charbonneau (2019), Report as presented as a representative of the United Nations Children's Fund in- A Ban on Child Labour in Africa is not Enough, on *World's Day Against Child Labour*, 12/6/2019, retrieved from www.m.dw.com.

⁹ Neil Howard (2017), When NGO save children who don't want to be saved, 27 April 2017. www.aljazeera.com retrieved 18/5/2020

¹⁰ Rossana Galli (2017), The Economic Impact of Child Labour, DP/128/2001 Decent Work Research Programme, University of Lugano, Switzerland at www.researchgate.net/publication/228426229 accessed 20 July 2020

¹¹ Centuries of Childhood. Suffuk, UK, The Chaucer Press

¹² Securing the welfare of Children: Policies Past, Press and Future: Families in Society, The Journal of Contemporary Human Services. V 81,I 6,576-695

¹³ Conceptualization of Childhood, Oxford, UK. Blackwell

¹⁴ By the programs of the Sustainable Development Goals 2030, especially the Agenda 8.7 on ending child labour by 2025

about children. According to Wigley¹⁵ most constructions of childhood necessarily involve questions of moral judgment that rests on implicit ideas of children's place in the social order. In this regard, the prominent perspectives are of those that describe children as a single entity in need of special care and protection until adulthood¹⁶, while the second project children as Agentic entities.¹⁷ The latter opine that rather than limit opportunities for children under any guise (including protections), childhood is a status with distinct rights too. Children are therefore active actors from the beginning of their own lives which already exist. They live their own experience and therefore should not be cadred on a ladder of "becoming" adults at some future date before economic manifestations.

To address existing issues and debates on the categorization of childhood ages which have negatively paralyzed many anti child labour laws, this paper presents "childhood" as a single community with two basic needs, which are;

- (a) Interventions that protect every child's development rights (especially formal education and recreation)
- and
- (b) Those that promote their economic ingenuity irrespective of their ages.

The above dual thesis considers that children indeed require special protection against exploitations. However, existing constructions on what constitutes childhood ages and capacity should not be perpetuated by adults, to inadvertently or consciously disenfranchise children's economic capacity¹⁸. This perspective will also consider how varying ideas that exist may be unified to achieve straight forward purposes.

Exploitative Labour: Narrowing Issues Down for Children

The ILO Forced Labour Convention, 1930 No 29, provides an initial background into the basic elements that distinguish human employment from economic arrangements that are exploitative. With reference to the tones earlier set by previous anti-slavery laws;¹⁹ the 1930 treaty prohibits forced labour. The law equally laid a preliminary, although inadequate foundation that propelled the evolution of successive treaties on employment and human dignity. In this regard, the innovations in consequent treaties address the facts that, apart from forced servitude, there are circumstances where unfair attitudes are meted on human beings

¹⁵ Symbolic Childhood Review, Conte4morary Sociology, Vol 32,I 6, p.693

¹⁶ United Nations Convention on the Right of the Child 1989

¹⁷ Corsaro A. (1997), The Sociology of Childhood, USA, Pine Forge Press 14

¹⁸ See, Sorin R. and Galloway G(2006), Construct of Childhood: Construct of self. Retrieved from www.researchgate.net on 23/9/2021

¹⁹ Abolition of slave Trade act 1807, Slavery Abolition Act 1833, Slave Trade Act 1843, Slave Trade Act 1873.

simply because they have little or no choices. In other words, apart from circumstances where penalties would be levied, lack of basic needs make victims consent to economic exploitations.

Consequently, the Universal declaration on Human Rights 1948 and the 1966 Bills of Rights provide wider verses.²⁰ Unlike existing forced labour precedents²¹, the Bills of rights addressed matters arising in the realm of labour place security, employment rights, and human dignity. Accordingly, the *UDHR 1948* provides in Article 4 that;

No one shall be held in slavery or servitude; and slavery shall be prohibited in all forms

In Article 5;

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment

In Article 23, the treaty specifically allows;

Everyone the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment

Everyone, without any discrimination, the right to equal pay for equal work

Everyone who works, the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection

Everyone, the right to form and to join trade unions for the protection of his interests.

These treaties protect all persons' employment rights irrespective of their age, sex, and background. Nevertheless, while the Universal Declarations may be adequate for adults, the nature of children necessitated further specialized statutory innovations.

Due the peculiarity of childhood and other legal issues on their culpability and responsibility²², paternalists²³ insist that children by virtue of immaturity cannot be classified as persons who are capable of either giving or withholding consent to work. In this instance while the principle "*volenti non fit injuria*"²⁴ would explain adults' obligations not to complain about arrangements that they have voluntarily entered into, it is presumed that children, especially those under 12 years cannot adequately reason out the impact of their own actions. In addition, they are helpless

²⁰ Articles 7 and 8 of the two International Covenants on Human Right 1966. Especially Article 7 of the International Covenant on Economic and Socio-Cultural Rights 1966.

²¹ Forced Labour Act 1930.

²² These include cultural variations in the ages of smoking, candidacy, consent, drinking, driving, attend school, sexual engagement among others.

²³ Samantha Godwin(2020) Children's Capacity and Paternalism , *Journal of ethics* 2020.

²⁴ Voluntary assumption of risk or the Consent to run a risk

and susceptible to manipulations by adults. Paternalists then conclude that encompassing protections should ensure that children especially those under 12 years old, are exempted from all forms of paid employments.²⁵ In addition, protective frameworks assert that all children, notwithstanding their ages should not be exposed or made to participate in economic activities that are hazardous. Consequently, *Article 3(d) of the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of Worst Forms of Child Labour, 1999 (No. 182)* defines hazardous labour as;

Work which, by its nature or the circumstances in which it is carried out is likely to harm the health, safety or morals of children

To save children, member states began to conceive appropriate ages for different forms of child economic participation. Such perceptions were based on adults' opinion on children's inadequacy, incapacity, irresponsibility, vulnerability and immaturity. Unfortunately, incompatibilities in cultural dispositions have frustrated the ambition to reach a conclusion on what childhood is and when it actually ends. Many Treaties provide that anyone below 18 years is a child²⁶, while other laws engage in the distinction between children, adolescents, young persons, early youths and others variances before under 18 years of age²⁷. At most, some rules leave a lot of discretion to individual state parties in cases where their own children attain maturity earlier than 18 years²⁸. These unsettled attempts to determine childhood capability per ages, permeate the protection clauses of many child labour laws. As such, treaties on children and labour profess from four ideological standings;

Those that indulge varying age profiles and different protections per age grade: A preview of such treaties would likely reveal a demarcation of childhood into two or more categories; infant, toddlers, children, adolescents, teenagers, older children, young persons among others. Such categories usually rank ages as between 0-5yrs, 5-12yrs, 12-15yrs, 15-18yrs, 18-24yrs or 24-30yrs among other profiles. In attendant with each grade would be the specific work, freedom or prohibition that is applicable to that age grade. For example the *ILO Minimum Age Convention 1974* provides varying age grade demarcations that has been replicated by member states as follows;

²⁵ Section 59(1) of the Nigerian Labour Act, 1974.

²⁶ Article 2, African Charter on the Right and Welfare of the Child 1990.

²⁷ The World Health Organization (WHO) and other United Nations (UN) organizations have been defining "adolescent", "(10-19), youth", (20-24) and "young people" (10-24) by age spans and then using the words interchangeably.

²⁸ Article 1 of the ILO Minimum Age Convention on the Rights and Welfare of the Child 1973, Article 1 of the Child's Rights Convention 1989.

- a. Article 2(3): *The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.*
- b. Article 2(4): *Member whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.*
- c. Article 3(1): *The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.*
- d. Article 3(3): *where such exist, states may authorize employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.*
- e. Article 7(4): *a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this Article.*
- f. **Regulations that emphasize prohibitions and protections with little reference to childrens age grades:** These laws often start with a single definition of who a child is. After which all attending provisions are especially applicable to all persons who fall under the category as earlier defined. For example, *Article 2 of the ILO's, Convention on the Immediate Elimination of Worst Forms of Labour Convention 1999* contains the only age clause in the Treaty. It provides;

For the purposes of this Convention, the term child shall apply to all persons under the age of 18.
- g. **Anti labour regimes that emphasise childhood economic personality without age consideration:** Recent calls for sustainable and inclusive development uphold the quest to eliminate child labour. For example, the targets no 8.7 and 16.2 of the SDG 2030 on forced labour, child labour, exploitative labour, child trafficking, and armed children among others. However, this

does not deter the more popular call for inclusive development: to emancipate all persons including children. Such regimes assume that under safe conditions children are capable participants and beneficiaries of development strategies. The AU Agenda 2063 and 2040 equally present similar verses that do not tolerate the postponement or prohibition of human capital ingenuity till some future periods(maturity). Notwithstanding, most development regimes emphasise the relevance of promoting children's needs and rights.

- h. **General laws that attend to children as human beings, without or with little recourse to childhood peculiarities:** This include Treaties that are promulgated for all persons without discrimination as to age or sex. Such rules retain general and universal coverage on all human beings. Beneficiaries are hence regarded as “ all persons”, “everyone”, “anyone” among others terms. ILO Forced Labour Convention, 1930 (No. 29) provides that forced labour include:

All work or service which is exacted from any persons under the threat of a penalty and for which the person has not offered himself or herself voluntarily.

Likewise, *Article 7 of the International Covenant on Economic and Socio-Cultural Rights 1966* provides that States Parties should recognize everyone's right to the enjoyment of just and favorable conditions of work which ensure, in particular:

1. Remuneration which provides all workers, as a minimum, with:
Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; and
A decent living for themselves and their families in accordance with the provisions of the present Covenant;
2. Safe and healthy working conditions;
3. Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
4. Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Universal Children's Rights Against Exploitative Labour

Notwithstanding the attendant discrepancies in the conditions for protections per ages, most regimes that cater for children mostly assert that, hazardous exposure to works deter children from the amenities they require to grow into relevant, healthy and productive adulthood. Generally, these amenities are constituted by the developmental rights and needs of the child such as: health, growth, education and recreation. It is pertinent to note that all laws irrespective of their age programs, posit that any form of work to be done by an under-aged person should not negative children's rights. Under *Article 3(d) of ILO Convention concerning the prohibition and Immediate Action for Elimination of the Worst Forms of Labour, 1999(No 182)*, Hazardous child labour is defined as

*work which by its nature or circumstances in which it is carried out, is likely to harm the **health, safety or morals of children.***

Under the ILO Minimum Age Convention 1973, article 3(1) states;

*The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the **health, safety or morals** of young persons shall not be less than 18 years.*

By Article 31(1-2) and 32(1) of the Child's Rights Convention 1989,

*States Parties recognize the right of the child to **rest and leisure, to engage in play and recreational** activities appropriate to the age of the child and to participate freely in **cultural life and the arts.***

*States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for **cultural, artistic, recreational and leisure activity.***

Under Article 32(1)

*States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's **health or physical, mental, spiritual, moral or social development.***

Finally by Article 15(1) of the African Charter on the Right and Welfare of the Child 1990;

*Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's **physical, mental, spiritual, moral or social development.***

A preview of the rules above, shows some consistencies in laws as to the major effect of exploitative labour on the child. All laws acknowledge that the child has the right to life and all amenities to grow into a healthy and productive adult. Whatever work a child would indulge in should therefore, not interfere with his/her physical, moral, social, religious, mental and cultural development. Such work should also enable the child the opportunity for recreation. That is the right to play. On the right to education, only the provisions of the Child's Rights Convention made express reference to the need to protect the child from economic activities that affects his or her education. Other laws acknowledge the need to go to school and the fact that the process of schooling, whether formal or informal should not be prejudiced. However, they do not provide express clauses prohibiting exploitative jobs that affect the child's right to "education". Although in treaties that heavily profile by ages, issues on schooling are not outrightly abandoned. However, due to the complexity of interpretations and enforcement, schooling agenda are not resounded. For example, Article 2(1) of the 1973 Convention provides;

The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

According to Article 7(1 and 2);

National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is--

Art 7(1a). not likely to be harmful to their health or development;

Art 7(1b). not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

Art 7(2). National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.

Excessive Age Profiling in the Scheme of Childrens' Protection : Nigeria's Situation

Presently, Nigeria has enacted the provisions of the *ILO Convention on the Age of Entry into Employment 1973*. The content of the ILO treaty is reflected in the *Nigerian Labour Act 1974*. Nigeria is also a state party to the *International Bills of Human rights 1966* and the *UN Declaration of Human Rights 1948*. In 2003, the government enacted the *Nigerian Child's Rights Act*, a law that enables the prescription of the *UNCRC Act 1989*, in addition to the *African Charter on the*

Rights and Welfare of the Child 1990. Other relevant Nigerian Statutes on development of children include the:

- a. Childs Rights Law of each State of the federation;
- b. Trafficking in Persons (Prohibition) Law Enforcement and Administration (Amendment) Act, 2005;
- c. the Nigerian Criminal Code;
- d. the Nigerian Compulsory, free Universal Basic Education Act 2004;
- e. the Marriage Act; and
- f. Nigerian Children's Trust Fund (Amendment) Decree 1993 among others.

On the essence of people's participation in the course of national growth and development, the government acknowledged the need to enable people to live within decent means through equitable livelihood and employment opportunities²⁹. *Section 17(3) of the 1999 Constitution on the Fundamental Objectives and Directive Principles of States Policy* provides that State shall direct its policy towards ensuring that-

- a. ***all citizens, without discrimination*** on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment;
- b. *conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life;*
- c. *the health, safety and welfare of **all persons** in employment are safeguarded and not endangered or abused;*
- d. ***children, young persons and the aged*** are protected against any exploitation whatsoever, and against moral and material neglect;
- e. *provision is made for public assistance*

Like earlier human right treaties, the provisions of the Nigerian 1999 Constitution priorities the general protection of all persons, which include prescribing a standard for the type of environment and conditions suitable for every human beings including children. By section 1(a) of the quoted provision, all persons should be engaged in works that do not negatively affect their lives. For this purpose the constitution did not isolate children as incapable or work or distinguish childhood into various age grades. Rather, section 1(d) ensures that in whatever circumstances that children are, they are not neglected or exploited.

In Nigeria, the specific law on children and their right to development is the *Child's Right Act 2003*. Protections contained in the Act are not profiled per age grades. The law simply provides that a child means anyone under 18 years of age, while Section 18 of the 2003 Children's Act prohibits a person under the age of 18 years,

²⁹ Chapter II, section 13 of the Fundamental Objectives and Directive Principles of States Policy,

from engaging in any form of contract except such a contract is for necessities. The implication of this law corroborates the decision of the full court in *Labinjoh v. Abake* (1924) 5 NLR 33, a case that was determined according to the provisions of the English Infants Relief Act 1874 at a time when 21 years was the majority's age. In that case, it was held that any contract with a person under the majority age of 21 years was void and hence the adult would not be able to recover his money against the child.

However, contradictions sets in when, notwithstanding its universal disposition, the Nigerian *Childs Rights Act*³⁰ in one of its sections adopts the provisions of the Nigerian Labour Act (A law that heavily profiles children capacity per ages). It is trite to note that the Nigerian Labour Act replicates the provisions of the ILO minimum age conventions 1973. These provisions are transmitted into in sections 58, 59, 60, 61, 62 and 63 of the *Nigerian Labour Act 1974*. Invariably the Childs Right Act 2003 and its counterpart the *Nigerian labour Act 1974* are the prominent statutes that cover issues of child employment in Nigeria. The implication of their corroboration is that anyone under 12 years old must not engage in economic activities. However, a child below 12 years may be employed by a member of his family on light work of an agricultural, horticultural or domestic character. These laws also allow the use of young person's as domestic help only in their own home or family environment. In addition, children under age 12 are not allowed to in any case, to lift, carry or move anything so heavy as to be likely to adversely affect his physical, mental, spiritual, moral or social development. Furthermore, the rules re-iterate that no child shall be employed or work in an industrial undertaking unless it is work done in the course of supervised learning in technical schools or similar approved institutions.

After the special clause to protect under aged 12 years, the Labour Act proceeds into the age per capacity distinctions between children and young persons. In addition the law described the community of "young persons" as consisting of grades with different work capacity at 14 years, 15 years, 16 years and below 18 years respectively³¹. A breach of the provisions on children and young person's constitutes an offence³² under both the CRA and Labour Act³³

No Young persons shall be employed in any employment which is injurious to his health, dangerous, immoral or otherwise unsuitable, the employer shall discontinue the employment without prejudice to the right of the young person to be paid such wages as he may have earned up to the date of discontinuance

³⁰Section 4.

³¹ See sections 59(2)- 64 and Sections 64(2) of the Nigerian Labour Act

³² Nigerian Labour Act Cap LI 2004.

³³ Sections 59(6).

Further complexities arise where, similar to the content of the *ILO Convention 182, 1999*, Nigerian government has re-enacted the *Trafficking in Persons (Prohibition) Law Enforcement and Administration (Amendment) Act 2003*³⁴. Under the Nigerian 2003 Trafficking Act, the age of economic maturity is 18 years. Without further age grading or demarcations, section 22 of the *Trafficking Act* simply repeats some provisions of the existing Nigerian Labour Act, which provides that unlawful forced labour occurs when any person;

- a. *employs a child to work in any capacity except where he is employed by a member of his family or light work of an agricultural, horticultural or domestic character,*
- b. *employs a child in any case to lift, carry or move anything so heavy as to be likely to adversely affect his **physical, mental, spiritual, moral or social development,***
- c. *employs a child as a domestic help outside his own home or family environment,*
- d. *employs a child in an industrial undertaking*

Nonetheless, a prominent oversight in all Nigerian child labour laws is that, despite the zeal to protect children from hazards, these laws refrain from mentioning the right of the child to education as a condition for regulating child labour. This approach appears to be a mimic of the ILO Minimum Age Convention at Article 3, which does not mention ‘education’ in its major prohibition clause;

*The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the **health, safety or morals** of young persons shall not be less than 18 years.*

The neutral provisions of the examined Nigerian labour statutes on child work and formal education, as well as the Nigerian 1999 Constitution, also appear similar to the provisions of the African Charter on the Right and Welfare of the Child 1990.

On the contrary, the provisions of the United Nations Convention on the Right of the Child 1989 are different. Article 32 of Child’s Right Convention 1989 expressly states that child work must not affect the child’s education. Accordingly, nations are to prohibit all children

*from economic exploitation and work that are likely to be hazardous or to interfere with the **child's education,** or to be harmful to the child's health or physical, mental, spiritual, moral or social development.*

³⁴ as amended in 2004, 2005 and 2015.

The UNCRC 1989 contents on child labour are better modeled by countries that expressly prohibit all children from work that are detrimental to education. For example, Article 7 of the revised version of the European Charter provides that:

*the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or **education**;*

The complexities in the Nigerian frameworks is therefore that, the Child's Rights Act 2003 that is supposed to be a reflection of the UNCRC 1989 instead adopts the Labour Act with attending discrepancies on the child's right to work, right to education, and serial age for capacity profiles. The Nigerian situation is hence far behind nations that properly model the UNCRC 1989. The latter already identifies the economic relevance of children to inclusive development. Hence, they can tolerate paid employment for all children under strict, prescribed safe conditions for fair wages.

Conclusion and Recommendations

The reality of exploitative labour is that it can affect adults and children alike and can also be imposed by authorities, private enterprises, individuals and even family members.³⁵ However, child labour regimes should be more circumspect. A disaggregation of the childhood community and their common need for protection, based on adults' assumption of incapacity contradicts the universal mandate for all children. Also, verses of laws that prohibit all persons less than 12 years from practical human capital development merely avoid governing the reality of these children's economic existence. On their freedom to only work in family arrangements, records have shown that many children are actually forced to do extremely exploitative activities in their family circles. Apart from this, it is doubtful whether a country as Nigeria has the capacity to prescribe the type of light unpaid work that children can do for their benefactors, do correct assessment of ages or prohibit adult family members from exploiting children's ingenuity. Also, this work observes that³⁶ the³⁷ right to education seems not to be a statutory requisite against child labour in Nigeria. While further studies may connect this fact

³⁵ ILO, Global estimates of child labour: Results and trends, 2012-2016, at www.ilo.org retrieved on 20/05/2020.

³⁶ Although in the Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) v The Federal Government of Nigeria & Anr: Suit No: ECW/CCJ/APP/12/07, the ECOWAS court Nigerian government has a legal responsibility to provide as of right, free, quality and compulsory basic education to every Nigerian child. The ECOWAS Court judgment has not yet been implemented. This is similar to the decision of the Nigerian Supreme Court in the case of *Ondo State and Others Vs. Attorney General of the Federation* (2002) 9 NWLR (Pt. 772) 222.

³⁷ Article 11 of the African Charter on the Right and Welfare of the Child 1990, Article 1, 2, 17, 21, & 22 of the African Charter on Human and Peoples' Rights (ACHPR), Section 15 of the Child's Rights Act 2003, Articles 13 of the International Covenant on Economic, Social and Cultural Rights.

to the high rate of child economic exploitation in the country, it is safe to opine that Jurisdictions that under-represents basic children rights like that of education, in favor of extreme age grading of children's economic capacity, is likely to encounter problems with the enforcement of this adults presumptions about children.

It is tidier to simply prescribe safe work conditions and fair wages for every child that is economically dexterous. Without reference to their ages, it is legally sound to prove that a child of a particular stature, disability, intelligence, capacity, ingenuity has been exploited. In addition, it is justifiable that a child who is supposed to be in school is at work, or that such a child is being unduly bonded or restrained. The above backgrounds of facts are easier to prove as against the undue age grade categorization for children's capacity. Age prescriptions in statutes often reflect adults discrimination based on their-over fixated conception of children's weakness and innocence. Adults are not justified when they assume that children's level of economic only matures at 18 years, or that children should only be engaged by family members who do not need to pay them.

This paper concludes that if the child universal age of maturity is simply stated as 18 years, then no child- whether under 12 years or below 18 should be exposed to hazardous labour. Child labour instruments would provide sufficient regulations, if they move beyond the age grading distractions to emphasize three (3) Targets. That:

1. every child notwithstanding their age shall be protected from all forms of economic exploitation and from performing any work that is detrimental to his/her physical, moral, social, religious, mental and cultural development;
2. State Parties shall ensure that the child's economic ingenuity is encouraged and therefore shall take all appropriate legislative and administrative measures to ensure;
 - a. the enactment and full implementation of laws that protect all children that work in both formal and informal sectors of employment;
 - b. provide adequate protective legislations and minimum wage structures for children who work;
 - c. ensure that no form of work is allowed to deter the child's right to recreation and education;
 - d. Provide adequate social welfare packages for children in economically vulnerable conditions;
 - e. provide for appropriate regulation of hours and conditions of children's employment;
 - f. provide for appropriate penalties or other sanctions to ensure the effective enforcement of laws;
 - g. Train efficient child labour experts and enforcement officers, whose roles in child employment matters shall be to give requisite approvals,

monitor, assess, sanction, make arrests and rescues where necessary;
and

- h. promote the dissemination of information on the hazards of child labour to all sectors of the community.

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