

**DO AFRICAN CHILDREN
HAVE RIGHTS?**

DO AFRICAN CHILDREN HAVE RIGHTS?

A COMPARATIVE AND LEGAL ANALYSIS OF THE
UNITED NATIONS CONVENTION ON
THE RIGHTS OF THE CHILD

STEPHEN N. ACHILIHU



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*Do African Children Have Rights? A Comparative and Legal Analysis of the
United Nations Convention on the Rights of the Child*

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*To the Blessed Memory
of my Most Beloved Father,*

Late Chief Joseph Emejiaka Achilihu



Children - The Silenced Citizens



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LIST OF ACRONYMS



ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ANPPCAN	African Network for the Prevention and Protection against Child Abuse and Neglect
APRM	African Peer Review Mechanism
AU	African Union
AWP	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women
CDHRI	Cairo Declaration on Human Rights in Islam
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CRIB	Child Rights Implementation Bureau
CSPD	Child Survival, Protection and Development
DAC	Day of the African Child
EAC	East African Community
ECCAS	Economic Community of Central African States
ECOSOC	Economic and Social Council
ECOWAS	Economic Community of West African States
ECPAT	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes
FAO	Food and Agricultural Organisation
GAVI	Global Alliance for Vaccines and Immunization
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice

DO AFRICAN CHILDREN HAVE RIGHTS?

IDG	International Development Goals
ILO	International Labour Organization
IOM	International Organization for Migration
IPEC	International Programme on the Elimination of Child Labour
MDG	Millennium Development Goal
NEPAD	New Partnership for Africa's Development
OAU	Organization of African Unity
OHCHR	Office of the High Commissioner for Human Rights
OIC	Organisation of the Islamic Conference
OMCT	World Organization Against Torture
OVC	Orphaned and Vulnerable Children
SCSL	Special Court for Sierra Leone
UDHR	Universal Declaration of Human Rights
UIDHR	Universal Islamic Declaration of Human Rights
UNAIDS	Joint United Nations Programme on HIV/AIDS
UN CHR	United Nations Commission for Human Rights
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNIFEM	United Nations Development Fund for Women
UNFPA	United Nations Population Fund
UNGASS	UN General Assembly Special Session on Children
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
WHO	World Health Organization

PREFACE



Do African Children Have Rights? is the result of both my personal experiences and my legal studies. Growing up as an African Child, I could not help but see children being constantly exploited, abused, trafficked and violated; most of them loitering the streets with no hope of education. And in the course of my legal studies - specializing in children's rights law under Public International Law - I have dedicated most of my time trying to find the *status quo* of the law in various countries in Africa with regard to children, and how such laws would promote, protect and defend these silenced and innocent citizens. This has ultimately led me to attend many international conferences organized by the United Nations Commission for Human Rights and some Non Governmental Organizations, including UNICEF. The experiences acquired there have helped me to widen the comparative analysis in this book. After my doctorate, I received some invitations to speak on the rights of children from an African perspective, in local and inter-continental conferences, and through these I have also deepened some of the topics discussed here. I am strongly convinced that tomorrow's challenges have to be met by today's children.

Gratitude there should be in every heart for the gift of heaven. To the Triune God, therefore, are my praises and thanks due, for His unfailing love, grace and sustenance all the day long, in spite of me.

A special thanks to my Bishop, Vincent Valentine Ezeonyia C.S.Sp., for the opportunity to complete my studies. My deep sense of gratitude goes to Archbishop Silvano Tomasi and his secretary Msgr. Bert Van Megen for providing me with the atmosphere to carry out my research while in Geneva. To Msgr. Fortunatus Nwachukwu I owe a great deal, for what he represents for me. And in a very special way, I thank Msgr. Alfred Xuereb for his encouragement, advice and prayers all these years.

DO AFRICAN CHILDREN HAVE RIGHTS?

I express my sincere gratitude and thanks to Prof. Marcellus O. Udugbor, Prof. Luis M. Bombin and Prof. Francesco D'Agostino for their critical insight, which helped to enrich this book.

The family into which I was born has a fair share of my unflinching gratitude, for what each and every member of that household means to me. My mother, Ezinne Rachael Achilihu, my brothers, Hon Justice L. A. Achilihu, Chief Orji Achilihu, Kenneth Achilihu, Arch. Eze Achilihu, Chinyere Achilihu and my sister Agatha. May God bless you all for your prayers, moral and financial support.

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INTRODUCTION



The Convention on the Rights of the Child (hereinafter, the CRC) constitutes a landmark in the development of international human rights law and reflects an historic turn in universal thinking about children and their rights. As UNICEF rightly remarked:

It is the most widely ratified treaty in history, the first virtually universal human rights convention, it is the most far-reaching, the most forward-looking, the most comprehensive, it is the embodiment of a whole new vision for children, a definitive turning point in the struggle to achieve justice for children, and a document with an unprecedented potential to bring about dramatic change.¹

The CRC marks the beginning of a new stage during which due attention has been given to the challenge of translating the new international standards into the domestic law and practice of States and of ensuring that the international community, in its many manifestations, contributes in all relevant ways to the promotion of children's rights.

It was not easy to arrive at a comprehensive document as ten years elapsed between the submission of the first draft by Poland and the unanimous vote by the UN General Assembly. The members of the Working Group responsible for the drafting of the CRC were greatly assisted by various UN agencies, individual experts and Non-Governmental Organizations (NGOs). Although the CRC, like any other international agreement, is a compromise between various interests and approaches, it re-affirms the indivisibility and interde-

pendence of human rights, and creates a dynamic and forward-looking framework for its implementation.

It is a well-known fact that the realities of the fate of children in many countries of the world are a far cry from the noble values proclaimed and standards set forth in the CRC. Africa is one of the continents in the world where the rights of the child are still a mirage. The sad reality for many African children is that violation of their rights is not seen as a serious problem. These violations in most cases have severe consequences for children even beyond their childhood, thus posing direct threats to peace, stability and development in Africa. A typical example is the participation of children as soldiers which is ‘...one of the most alarming trends in armed conflicts.’² To be noted, however, is that despite the fact that children are victims of human rights violations, they also have responsibilities to the family, society and the continent as contained in the African Charter on the Rights and Welfare of the Child (ACRWC). Viljoen points out that children are more likely to be victims of human rights violations than adults, and that African children are more likely to be victims than children in other continents. Human rights violations in Africa contribute to poverty, HIV/AIDS, warfare, famine, and harmful cultural practices, and these have a disproportionate impact on the continent’s children.³

Increasingly, African children are becoming victims of child exploitation and child labour. It occurs within families, in neighbourhoods, and even in schools. A brief look at the figures on child labour suffices to show this. According to the International Labour Organization (ILO), Africa has the highest incidence of child labour. One child in three below the age of 15 is economically active, and the number of child labourers is expected to increase by as many as one million every year for the next 10 to 15 years. This sad state of affairs spells disaster. It foretells a future of uneducated, undernourished and unhealthy workers who, far from being the foundation and building blocks of a modern, dynamic economy, will perpetuate the continent’s lack of development and poverty and further marginalise Africa from the world economy.

According to UNICEF, there are 200 thousand child slaves in Western and Central Africa and the practice is spreading to other parts of the continent. These children are forced to work on cotton and cocoa plantations and in domestic service. Other forms of human bondage, including forced marriage, debt bondage and forced prostitution, are appearing. These are aspects of a wider problem

facing African children. One could ask: what is going on? And one would be forgiven for asking: do African people really care?

An analysis of the percentage of children under 18 in some specific countries in Africa is illuminating: Angola (52%); Ethiopia (53%); Ghana (51%); Liberia (50%); Mozambique (51%); Sierra Leone (50%); and Uganda (56%), et cetera.⁴ A situation in which around half of a population has little, if any, say in decisions directly affecting their lives every day could lead to a serious disenfranchisement of a significant percentage of society. However, the African view on human rights manifests itself in the recognition that children are the future of the society and hence must be protected and nurtured. International instruments now protect children's rights⁵ but their protection is limited to some specific aspects of children's rights.⁶

African Governments have an impressive record in their formal accession to the relevant child-focused international treaties. But the extent of their commitment to children's issues varies widely, and the gap between promises and reality remains wide in many countries. Many countries in Africa have ratified and domesticated most of the international conventions on human and people's rights, children's rights, women rights, indigenous people's rights and many others. The great question becomes, to what extent have these rights been respected? What mechanisms exist to prevent rights abuse? What mechanisms exist to sanction rights abusers? Have these rights had any impact on the life of Africans? In other words, is there any difference between the reality and rhetoric of rights?

According to UNICEF, despite the rhetoric in the international community about the importance of children's rights, monitoring of the CRC shows "the rights, norms and principles involved are regularly ignored and seriously violated virtually throughout the world... on a scale ...unmatched in the field of [human] rights implementation."⁷

This book will therefore endeavour to answer the questions: to what extent has the provision of the CRC been implemented in the national legislations of African States? After the domestication of the CRC, what effect has it had on children in Africa? How has the ratification of the CRC been able to meliorate the lives of millions of children in Africa?

This book will explore the extent to which the CRC has succeeded in African nations in translating laws into reality. The book addresses the legal and institutional arrangements which have been put in place at the international, regional and national levels to ensure

that the CRC is promoted effectively in Africa and to the various national legislations which are the hallmark of the realization of human rights. While law is by no means the only way that the CRC could influence the policies, it nonetheless remains a crucial ingredient in securing the effective implementation of the CRC.

This book situates the CRC within the process of the historical evolution of children's rights and examines the extent to which the international human rights regime and the systems developed at the regional levels – in particular in Africa - have been adapted to take full account of the principles and provisions of the CRC. It presents a survey of achievements at the national level, in terms of the constitutional recognition of children's rights and the development of national institutions designed to ensure their promotion. Consideration is also given to the efforts undertaken by the international community to promote children's rights.

The strength of this book is its systematic focus on the steps needed to establish adequate legal and institutional foundations at the various levels to ensure that the rights recognized in the CRC will be respected and promoted. The book reflects an extensive empirical research as well as careful legal analysis of the various reports submitted to the Committee on the Rights of the Child and constitutes a major contribution to the global influence of the United Nations 1989 Convention on the Rights of the Child on the continent of Africa.

The book focuses on how the advent of children's rights, in particular the CRC, has impacted on the national legislations and policies relating to children in Africa and embarks on a practical examination of law reform in this regard in an African context. In order to achieve this, focus is placed on a number of African countries that have embarked on or completed child law reform in the aftermath of the ratification of the CRC.

Chapter One introduces the topic. It looks at the roots and development of the CRC, tracing its historical development after the First World War. It goes on to examine the crucial period of the drafting of the CRC, identifying the various actors in it. It finally evaluates the onerous task of the Children's Committee of experts. Chapter Two turns attention to the regional instruments for the protection of rights. It dedicates attention to the various categories of rights being protected: the rights of the people, the rights of children and the rights of children in a Muslim country. The main argument in this Chapter is that the advent of a children's rights model

has ushered in an alternative theoretical lens through which children's rights can now be viewed, both in light of the CRC and other 'soft law' derived from human rights instruments in Africa.

Following the guidelines on the international standards on measures and obligations of States Parties to the CRC, Chapter Three discusses the actual processes of harmonizing the CRC with the national laws. In other words, it looks at the various constitutions and national policies to see how the CRC has been incorporated. An important issue that is highlighted in this Chapter is the extent to which the law reform processes give flesh to the *omnibus* obligations in Articles 4 and 40 of the CRC directed to States Parties to undertake 'legislative measures.' More importantly, Chapter Four deals with selected individual topics, ranging from the influence of customary law, the impact of socio-economic rights of children, through child trafficking and child labour, children in armed conflict and child refugees, to protection of children from all forms of abuse and neglect. The topics selected in Chapter Four are of critical significance to Africa as a whole. And finally, Chapter Five offers some recommendations on the issues raised.

The CRC creates several rights for children. It also creates obligations for State Parties and requires them to put measures in place for the effective enjoyment of the rights arising from the CRC. Whether the obligations have been and will continue to be discharged by State Parties remains to be seen.

¹ BELL, B., BERETT, R., MARCUS, R., MUSCROFT, S., *Children's Rights: Reality or Rhetoric? The UN Convention on the Rights of the Child: The First Ten Years*, Save the Children, London, 1999, p. 295.

² *The Impact of Armed Conflict on Children: Report of the Expert of the UN Secretary-General*, 26 August 1996.

³ VIJJOEN, F., "The African Charter on the Rights and Welfare of the Child", in DAVEL, C., (ed.), *Introduction to Child Law in South Africa*, Juta and Co, Cape Town, 2000, p. 182.

⁴ *Ibid.*

⁵ See for example articles 25/26 Universal Declaration, articles 14, 18, 22, 23 and 24 ICCPR and articles 10, 12 and 13 CESC.

⁶ LLOYD, A., "Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: "Raising the gauntlet", in *International Journal of Children's Rights* 10, (2002), p. 179.

⁷ UNICEF, *Innocenti Digest No. 3 on Juvenile Justice*, Florence, 1998.

CHAPTER I



THE DEVELOPMENT OF THE CHILDREN'S CONVENTION

A. Convention on the Rights of the Child (CRC)

The United Nations Convention on the Rights of the Child (hereinafter, The CRC)¹ is the first binding universal treaty solely dedicated to the protection and promotion of children's rights. The CRC was adopted by the United Nations General Assembly on November 20, 1989, after a ten-year preparatory period. It was opened for ratification on January 26, 1990, and, by September 2, 1990, it had received the 20 ratifications required for its entry into force. The CRC, remarked Glenn Mower, Jr., "appeared at a time when the need for improvement in the status of the world's children was primarily apparent."²

The time was due to turn attention to children, to see their plight. It was a time when it seemed that "no country protects the rights of all its children or provides them with an adequate standard of health care, education, day care, housing, and nutrition, or properly protects them from abuse, neglect and exploitation."³

The CRC was initially delayed by a long and difficult drafting process, but the resulting document is nonetheless "both ambitious and far-reaching"⁴ and the potential exists within the CRC to advance considerably the rights of children all over the globe. The CRC can be regarded as an "historic milestone"⁵ in that it is the culmination of a difficult struggle over decades, aiming at improving the lot

of children in society, and the beginning of a new way of dealing with children,⁶ now enshrined in 'a hard' law by the international community.

The CRC is a significant legal and political achievement: it elevates the child to the status of an independent rights-holder and places children's issues at the centre of the mainstream human rights agenda.⁷ No doubt the CRC generated considerable enthusiasm among States as evidenced by the fact that on the day it opened for signature in January 1990, 61 States signed up to the CRC⁸, and it came into force nearly seven months later. This in itself is quite exceptional since some UN treaties may even take several years and even decades to obtain the necessary ratification to come into force. For example, the International Covenant on Civil and Political Rights (ICCPR) took 10 years to obtain the ratifications required to come into force.⁹ The CRC, by contrast, achieved almost universal acceptance within eight years and today it is ratified by all but two States.¹⁰ The universal ratification is unique for a human rights treaty and it gives the CRC considerable political, legal and even moral force.¹¹

Origins and Background

The emergence of the child as an independent rights-holder is not a recent phenomenon in international law.¹² The CRC is rooted in the change that occurred in the nineteenth century when the child ceased to be viewed simply as a property item, completely subservient to his or her father and valued primarily in economic terms.¹³ This conceptual change was accompanied by an increasing tendency on the part of States to take a more active interest in the well-being of children by intervening in family affairs to support, add to, or correct the treatment given to children by their parents.

It was not until the last half of the 20th century, however, that the child was accorded status as a person under the law. This century also witnessed the expansion of the human rights movement to include the rights of the child.¹⁴ This expansion was due, in no small part, to the human suffering caused by the 20th century's two world wars. Bearing with particular force on civilian populations, this experience dramatized the special vulnerability of children. The sympathy felt by England's Eglantyne Jebb¹⁵ for these defenceless victims of the First World War led her to start a campaign for better protection of the world's children. The first step in this campaign was her establishment of the *Save the Children International Union*, which she fol-

lowed in 1923 with the drafting of the Children's Charter, considered to be the basis of the present CRC.¹⁶

The concern for children that motivated this pioneer in the field of the rights of the child also found expression in a wide variety of international instruments and actions by numerous international organizations,¹⁷ global in scope, prior to the adoption of the CRC. The ILO, for example, was the source of an impressive list of instruments dealing with such relevant matters as minimum age for employment, working hours and conditions for children, protection of child workers from dangerous work and substances, training and apprenticeship, and youth employment.¹⁸ The ILO also adopted conventions requiring States Parties to suppress or abolish child labour in both the state and the private sectors.¹⁹

A number of other multinational agreements also sought to protect children and promote their welfare.²⁰ These included treaties whose terms applied to children: on trafficking of children and on slavery, on refugees and stateless persons, on the rules of war, against discrimination in education, on child custody, on abduction, support, illegitimacy and adoption and on consent to marriage, minimum age for marriage, and registration of marriages.

Other pre-convention global actions included treaties having an indirect effect on child welfare: treaties on the elimination of all forms of discrimination against women and genocide, torture, and all forms of racial discrimination.²¹ In addition, the terms of two major United Nations human rights treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), apply either directly or indirectly to children.²² The Inter-Governmental Organizations also played an important role, like the United Nations International Children's Emergency Fund (UNICEF), which was established in 1946, and whose basic function is to help Governments of developing nations improve the quality of life of their children.

Declaration of Geneva (1924)

One of the earliest international human rights instruments was the Declaration on the Rights of the Child,²³ passed by the League of Nations in September, 1924. It was drafted by the *Save the Children International Union*.²⁴ It was "heavily influenced by British and elitist considerations."²⁵ Its author was Eglantyne Jebb, who, in the immediate aftermath of the war, was the president of the *Save the Children Fund* and *The International Red Cross Committee*, and she set up the *Save*

the Children International Union in 1919, to relieve children from famine. Its immediate endorsement was helped by the domination Britain exerted on the various agencies of the League.²⁶

This early initiative was essentially paternalistic and welfare-oriented, its conceptualization of the child stressed vulnerability and the emphasis was on the protective strategies. The Declaration of Geneva was non-binding and few States incorporated it into their domestic laws. Consequently, its impact on the practice of States or international organizations was limited and its significance today is largely symbolic.

Accordingly, the Declaration of Geneva recognized five mandates for the care and protection of all children “beyond and above all considerations of race, nationality, or creed.”²⁷ These mandates protected children’s most basic material needs and recognized the essential conditions for fostering normal child development. In addition, the Declaration of Geneva recognized affirmative children’s rights, including the child’s right to be “put in a position to earn a livelihood” and to be “brought up so that it will devote its talents to the service of its fellow men.”

Although it represented an important step in the international movement for children’s rights, the Declaration of Geneva had several major limitations. First, the Declaration of Geneva was concerned principally with children’s “care and protection” rights and failed to address civil and political rights. Second, the term “right” did not appear in the text. It focused upon “acts which must be done to or for the child,” providing that the child “must be ‘fed,’ ‘nursed,’ ‘reclaimed,’ ‘sheltered,’ and ‘succoured.’” It was silent as to what the child is allowed to do. Finally, the Declaration of Geneva failed to provide an implementation mechanism because it was a document of a “moral and political nature” and was not considered legally binding. However, the Declaration of Geneva was to become the cornerstone of all future international legislative initiatives regarding children’s rights.

Declaration of the Rights of the Child (1959)

Immediately after the Second World War, attempts were made to have the earlier Declaration of Geneva adopted, and thereby reconfirmed by the United Nations. The UN therefore asked the International Union for Child Welfare to assist in the drafting of a newly revised Declaration of the Rights of the Child. This draft was sent to the Economic and Social Council (ECOSOC) with the recommendation that

the Commission on Human Rights be asked for its observations on the draft. The Commission's response, in the form of a revised draft, was then submitted to the UN General Assembly which, on November 20, 1959, gave the official recognition to children's rights by adopting the ten article Declaration of the Rights of the Child.²⁸ The 1959 Declaration was inspired by the Declaration of Geneva and expanded on the mandates contained therein. But compared to the Geneva Declaration, this Declaration is far more precise, and the earlier content and principles have been considerably widened. In practical terms, apart from the preamble, the 1959 Declaration contains 10 principles, summarized below:

1. Every child shall enjoy all the rights set forth in the Declaration without any form of discrimination.
2. The child shall enjoy special protection and shall be given opportunities to develop in a healthy and normal manner, and in conditions of freedom and dignity.
3. The child shall be entitled from birth to a name and nationality.
4. The child shall enjoy the benefits of social security, including adequate pre- and post-natal care both for him and for his mother. The child shall have the right to adequate nutrition, housing, recreation and medical services.
5. The child who is physically, mentally or socially handicapped shall be given special treatment, education and care.
6. The child shall, where possible, grow up in the care and under the responsibility of his parents, in an atmosphere of affection and of moral and maternal security. A child of tender age shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall extend particular care to children without family and to those without adequate means of support.
7. The child is entitled to receive education, which shall be free.
8. The child shall in all circumstances be among the first to receive protection and relief.
9. The child shall be protected against all forms of neglect, cruelty and exploitation. The child shall not be admitted to employment before an appropriate minimum age.
10. The child shall be protected from racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance and friendship among peoples, peace and universal brotherhood.²⁹

Like the Declaration of Geneva, the 1959 Declaration provided that the child should be the first to receive relief and protection; the

child should be protected from exploitation; and the child must be given the means to develop in a healthy and normal manner. The 1959 Declaration embraced the proposition of its predecessor, proclaiming in the preamble that “mankind owes to the child the best it has to give.”³⁰ It further proceeded on the proposition that the child should “have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms ... set forth.”³¹ With these propositions in mind, the 1959 Declaration commanded “parents, ... men and women as individuals, and ... voluntary organizations, local authorities and national Governments”³² to recognize the rights included therein and to strive for their observance. Whereas the child’s welfare was historically considered the responsibility of the family, the 1959 Declaration recognized that the welfare of the child was the concern of the community and the State.

The 1959 Declaration embodied one international response to the dislocation, economic instability, discrimination, and maltreatment suffered by children during and after the Second World War. Accordingly, the 1959 Declaration mandated that every child, “without distinction or discrimination” of any type, was entitled to enjoy the rights set forth therein. Similarly, it protected the child from “practices which may foster racial, religious, and any other form of discrimination.” The 1959 Declaration also reflected international concern with the problem of child refugees, and it confronted this problem by mandating that every child “shall be entitled from his birth to a name and nationality.” The 1959 Declaration’s prohibition against discrimination and recognition of the child’s right to a name and nationality from birth were the first steps in the international children’s rights movement toward recognizing individual personality rights.

The 1959 Declaration also encompassed the achievements of the general humanitarian reform movement of the nineteenth century. Included in the 1959 Declaration were “principles” providing for special education, treatment, and care for the handicapped; compulsory public elementary education; and restrictions on child labour. Notably, it made no mention of the protection of delinquents by ensuring their separation from adult prisoners or of the criminal prosecution of juveniles - concerns that had been addressed by most Western legal systems by the beginning of the 20th Century.

Although the 1959 Declaration either directly or indirectly included virtually all of the rights set forth in the Declaration of Geneva, there were important differences between the 1959 Declaration

and its predecessor. First, the term "right" actually appeared twice in the text of the 1959 Declaration, specifically in Principle 1 (prohibiting any type of discriminatory distinctions among children) and in Principle 4 (giving the child the "right to adequate nutrition, housing, recreation, and medical services.") Moreover, the 1959 Declaration used the term "entitled," which is arguably analogous to the term "right," in Principles 3, 4, and 7, addressing issues of name and nationality, health, and education. Second, the 1959 Declaration presumed that nations would enact laws that protect the child's welfare, by commanding "national Governments" to protect the rights included therein "by legislative and other measures."³³ Third, unlike the Declaration of Geneva, the 1959 Declaration included "principles" devoted to the parent-child relationship that expressed a preference for parental care and emphasized that the responsibility for the child's education and guidance lies with the parents. The declaration puts succinctly thus;

The child for full harmonious development of his personality needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.³⁴

Finally, whereas the Declaration of Geneva used the language "the child must be given," the 1959 Declaration stated that "the child shall enjoy"³⁵ the rights set forth therein. The language used by the 1959 Declaration reflects a change in the treatment of children from being viewed as objects of international law to being perceived as subjects of international law.

Despite its important additions to the international children's rights movement, the 1959 Declaration retained many of the limitations that plagued the Declaration of Geneva. First, like the Declaration of Geneva, the 1959 Declaration focuses almost entirely on children's "care and protection" rights.³⁶ Second, although the term 'right' is used in the 1959 Declaration, its ten articles overwhelmingly refer to a "principle." Finally, neither the Declaration of Geneva nor the 1959 Declaration was a legally binding international agreement