

## JUSTIFICATION FOR CHILDREN AS RIGHT HOLDERS

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<https://doi.org/10.37602/IJSSMR.2021.4213>

### ABSTRACT

Many writers have suggested that the industrial revolution era in the 18<sup>th</sup> century uncovered the exploitative child labour. During this period, Charles Dickson, a prominent advocate for children and a victim of child labour exposed the hard labour children faced in his writings. In 1919 Jebb Eglantyne, one of the pioneers of the child rights movement drafted the Declaration on the rights of the child. This declaration was later adopted by the United Nation and became the first ever international instrument that recognised children as right holders. In recognition of the hardship of children those times, the year 1979 was declared as the International year of the child. In 1989 the United Nations Convention on the Right of the child (UN, CRC or the Convention) was adopted to establish a universal charter on the rights of the child. However, the child right movement came with a lot of criticism which still exists today. Prominent among them is the idea that children cannot be right holders because they lack the capacity to make choices. Thus the main objective of this paper is to show the justification for children rights. Thus the first section explored the historical development of the child rights movement. The second section explained the concept of children as right holders. The third section analysed the justification for children rights. The paper was able to establish the fact that the concept of human dignity provides a concrete justification for a child's right. Thus a harmful traditional practice in Nigeria where a child is allowed to marry at a tender age is an abuse of the human dignity of a child.

**Keywords:** Justification, child rights, children, child right holders, child right movement, convention, declaration, discrimination.

### 1.0 HISTORICAL DEVELOPMENT OF CHILDREN AS RIGHT HOLDERS

The child rights movement was a response to the hardship children faced in the 18<sup>th</sup> century during the Industrial Revolution.<sup>1</sup> This period marked the transition from agricultural to the industrial community. Child labour during this period was tantamount to slavery.<sup>2</sup> One of the

<sup>1</sup> Hicks, A. 2010. The Industrial Revolution *Child labour: The Tortured Hands That Modernized The World*. Retrieved April 27, 2021, from

<https://www.mtholyoke.edu/~hicks22a/classweb/Childlabor/WebsiteChildlabor/History.html>.

<sup>2</sup> Dutta, A. 2014. Children in Dickens's Novels. *International Journal on Studies in English Language and Literature (IJSELL)* 2.2:1-4 Retrieved April 27, 2021 from <https://pdf4pro.com/amp/view/children-in-dickens-s-novels-arc-journals-4098e7.html>.

greatest advocate for children was an English writer Charles Dickens who wrote the popular novel *Oliver Twist*. Dickens who was born in 1812, the period of the industrial revolution, was himself a victim of child labour. He was forced to leave school at the age of 12 to work in a factory after his father was put in prison due to inability to pay his debt. Thus poverty was a major factor responsible for child labour at these times. The hardship he suffered as a child labourer influenced his writings to a great extent. It therefore prompted him to raise the awareness about the plight of children in those days.<sup>3</sup> His writings depicted the deplorable ways children were being abused in Victorian England.<sup>4</sup> Child labour was the order of the day. The conditions under which children worked during the Industrial Revolution were gruesome. They were compelled to work for long hours. As indicated by various studies, these hours extended from 14 hours per day or 70 hours each week. Children worked in surroundings that were harmful and hazardous to their health. Some of these children lose their legs, were executed in gas blasts; squashed under machines; and consumed. The child labourers had lung malignant growth from the toxic exhaust which later developed into lung cancer. At the point when their work or machines were not hurting them, their bosses and supervisors were hurting them. They were beaten, and when they attempted to escape from the plants, they were handcuffed. These were horrendous condition children were exposed to during the industrial revolution. Charles Dickens in his writings described how he felt being abused as a child thus:

“No words can express the secret agony of my soul as I ..... felt my early hopes of growing up to be a learned and distinguished man crushed in my breast. The deep remembrance ..... of the misery it was to my young heart to believe that day by day, what I had learned and thought and delighted in and raised my fancy and emulation up by was passing away from me..... cannot be written.”<sup>5</sup>

In 1840, Lord Ashley (later the seventh Earl of Shaftesbury) established the Children's Employment Commission, which distributed parliamentary reports on conditions in mines and collieries. As the century went by an ever increasing number of individuals started to acknowledge the possibility that children ought to be protected and allowed to go to school.<sup>6</sup> Consequently, many writers rose to oppose child labour. In their writings, they exposed the horrible working conditions of the children. Many organised campaigns against the abuse of children. Thus many writers fought for the rights of children. This led to the emergence of the child rights movement.

One of the prominent pioneers of the child right movement was Jebb Eglantyne. In 1919 she started the Save the Children.<sup>7</sup> The main purpose of the organisation was to safeguard and implement the rights of the children. She drafted the first-ever international treaty which established children's right that is the 'Declaration of the Rights of the child.' She then sent

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<sup>3</sup> Charles Dickens Biography. *Encyclopedia of World Biography*. Retrieved April 27, 2021 from <https://www.notablebiographies.com/De-Du/Dickens-Charles.html>

<sup>4</sup> Children in Dickens's Novels. See note 2 at p. 1-4

<sup>5</sup> *Ibid*

<sup>6</sup> *Ibid*

<sup>7</sup> Xenophontos, P. 2017. Children's Rights Movement *Urban Studies 101* Retrieved April 20, 2021 from <http://understandingtheurban.qwriting.qc.cuny.edu/2017/03/11/childrens-rights-movement/>.

the draft to the then League of Nations (now United Nations). According to her “we should claim certain Rights for the children and labour for their universal recognition.”<sup>8</sup> In 1924, the League of Nations adopted the Declaration of the Rights of the Child which for the first time accorded specific rights to children and duties to adults.<sup>9</sup> It is also called the Geneva Declaration.

Although there was no reference to the term ‘rights’ as such in the 1924 declaration, it nonetheless recognised certain fundamental human rights. That is:

- (1) The child must be given the means requisite for its normal development, both materially and spiritually. (2) The child that is hungry must be fed, the child that is sick must be nursed, the child that is backward must be helped, the delinquent child must be reclaimed, and the orphan and the waif must be sheltered and succoured. (3) The child must be the first to receive relief in times of distress. (4) The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation. (5) The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men.<sup>10</sup>

However, the Geneva Declaration was not legally binding on state parties. Furthermore, the introduction of the Universal Declaration of Human Rights in 1948 revealed major flaws in the Geneva Declaration. Subsequently, the United Nations decided to establish its extended version of the declaration. The United Nations needed to create its statement on child’s rights. Therefore in 1959, the United Nations adopted the Geneva Declaration but based on the same form and content as the 1924 declaration. It was the first treaty with an international consensus on the fundamental principles of the rights of the child. It established 10 principles of children’s rights as follows:

- (1.) The right to equality, without distinction on account of race, religion or national origin. (2.) The right to special protection for the child’s physical, mental and social development. (3.) The right to a name and a nationality. 4. The right to adequate nutrition, housing and medical services. (5.) The right to special education and treatment when a child is physically or mentally handicapped. (6.) The right to understanding and love by parents and society. 7. The right to recreational activities and free education. (8.) The right to be among the first to receive relief in all circumstances. (9.) The right to protection against all forms of neglect, cruelty and exploitation. (10.) The right to be brought up in a spirit of understanding, tolerance, friendship among peoples, and universal brotherhood.<sup>11</sup>

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<sup>8</sup> Humanium, Geneva Declaration of the Rights of a Child. Retrieved April 20, 2021 from <https://www.humanium.org/en/geneva-declaration/>.

<sup>9</sup> Humanium, Children’s Rights History. Retrieved April 20, 2021 from <https://www.humanium.org/en/childrens-rights-history/>.

<sup>10</sup> Buck, T. 2014 *International Child Law*. 3 ed. London: Routledge, 89; United Nations Document, Geneva Declaration of the Right of the Child, Retrieved April 20, 2021 from <http://www.un-documents.net/gdrc1924.htm>.

<sup>11</sup> Humanium, Declaration of the Rights of a Child, 1959. Retrieved April 20, 2021 from <https://www.humanium.org/en/declaration-rights-child-2/>.

Although the above principle was a major milestone, the Geneva Declaration not widely ratified.<sup>12</sup> Thus the United Nations needed to create a Charter of Human Rights which would be enforceable and would obligate states to honour it. Along these lines, a Commission on Human Rights was set up to compose this document. Thus two documents emerged. The first one was the International Charter for Economical, Social and Cultural Rights which identified protection from economical abuse, right to education and medical care.<sup>13</sup> The second one was the Charter on Civil Rights which identified the right to a name and nationality.

In 1979, the United Nations adopted the international year of the child.<sup>14</sup> According to Karin the international year of the child served two main purposes. The first was to present a framework to create the necessary attention towards the recognition of the special need of the children. Secondly, create awareness on the need to organise programmes for children as part of the economic and social development goals.<sup>15</sup> Subsequently the Convention on the Rights of the Child (hereinafter referred to as the 'UN CRC' or 'The Convention') was adopted by the General Assembly in 1989. This became the international charter of child rights and established the rights of the child socially, economically and culturally. Today the convention so far is the most ratified international treaty in the history of the United Nations.<sup>16</sup> The Worst Forms of Child Labour Convention was also adopted by the International Labour Organisation (ILO) an arm of the United Nations in 1999. In order to strengthen the UN CRC, two optional protocols were adopted in 2000. The protocol deals with children in armed conflict, child prostitution and sale of children. A third protocol was however introduced in 2011. This protocol allows children to make their complaints to the Human rights committee (hereinafter referred to as 'the committee') which is responsible for the implementation of the convention.<sup>17</sup> Presently, 196 states have ratified the UN CRC except for the United States.<sup>18</sup> Nonetheless, today the Convention is the most universally accepted convention that recognised a child as a right holder.

Africa was not left out of the child rights movement. The African union were of the opinion the Child Rights Convention did not adequately capture the situation in Africa.<sup>19</sup> Thus emerged the birth of the African Charter on the Rights and Welfare of the Child. Unlike the

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<sup>12</sup> *Ibid*

<sup>13</sup> Humanium, Children's rights history. See note 9

<sup>14</sup> *Ibid*; UN General Assembly. 1979. *International Year of the Child*. 18A/RES/34/4

<sup>15</sup> Karin, C.J.M. 1993. The International Protection of Children's Rights in Africa: the 1990 OAU Charter on the Rights and Welfare of the Child. *African Journal of International and Comparative Law*. 139-162

<sup>16</sup> UNICEF. What is the Convention on the Rights of the Child? Retrieved April 20, 2021 from <https://www.unicef.org/child-rights-convention/what-is-the-convention#>

<sup>17</sup> International Catholic Child Bureau. 2014. History of the Rights of the Child. Retrieved April 20, 2021 from <https://bice.org/en/history-rights-child/>; UNICEF. Strengthening the Convention on the Rights of the Child: Optional Protocols. Retrieved April 20, 2021 from <https://www.unicef.org/child-rights-convention/strengthening-convention-optional-protocols>

<sup>18</sup> United Nations Treaty Collection. Convention on the Right of a Child. Retrieved April 20, 2021 from [https://web.archive.org/web/20200908154226/https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg\\_no=IV-11&chapter=4&lang=en](https://web.archive.org/web/20200908154226/https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-11&chapter=4&lang=en)

<sup>19</sup> National Commission for UNESCO. Children's Charter. *Claiming Human Right*. Retrieved April 29, 2021 from [http://www.claiminghumanrights.org/childrens\\_charter.html](http://www.claiminghumanrights.org/childrens_charter.html).

convention the charter dealt with issues of children in apartheid, refugee camps, harmful cultural practices such as child marriages, female genital mutilation etc. It touched on issues that were peculiar to the African environment. According to Karin C.J., Africa is the leading continent in terms of providing a standard for a child's rights.<sup>20</sup> It has been tagged as the only regional instrument.<sup>21</sup> Many African countries including Nigeria have ratified the African Charter. Also Nigeria has domesticated the UN CRC as the Child Rights Act 2003. However many states in Nigeria are still yet to adopt the Act. Nigeria is one of the countries where children's right are not being implement. As we will find out in the course of the discussion that this is due some destructive cultural practices.

## 1.1 Criticisms of Child's Rights Movement

The wide ratification of the UN CRC, clearly shows that there was a general acceptance of children's right. However, there are mistaken assumptions and reactions of the child's rights, which is dependent on cultural beliefs about childhood. In examining the criticism on children rights some major arguments which form the basis of this discussion will be considered. The first argument which will be discussed is the assertion that children are not entitled as adults to possess rights. Secondly, some object to attributing rights to a child because they believe that such attribution is a misconception about the nature of a child, childhood and their relationship to adults. Thirdly, those who say children should not have rights assert that children can be guaranteed protection through other ways. We shall consider these three arguments against rights.

The first argument questions the capacity of a child as right-holders. According to the will theory of rights, a person qualifies to possess rights due to the capacity to choose. Thus, it was stated by Professor Lord Plant, a political economist expert that "Children cannot be citizens with rights because they cannot make rational choices."<sup>22</sup> This line of the argument believes that children do not have certain intellectual capacities. That is they cannot reason, create consistent ideas, study and understand the implication of their actions. Also, they lack the capacity to make decisions on their own. In other words, they are not unique beings that deserve attention. This also applies to mentally unstable adults. Therefore all of us as adults were once children who at the time were disqualified as right- holders. This line of thought seems to mean a child could not have rights. Thus a child is found to be in a 'normative predicament'. Adults are viewed as human beings who possess character, while children do not possess characters. Therefore attributing the status of an adult to a child can be misleading. As children cannot attain the same status as that of an adult.<sup>23</sup> It can therefore be argued that while children may lack the capacity to make choices, they however possess certain interests that are worth protecting.<sup>24</sup> Thus interest theory comes into play. Based on this theory, the function of rights is to protect the interests of right-holders. According to the

<sup>20</sup> The International Protection of Children's Rights in Africa. See note 15

<sup>21</sup> Ekundayo, O. 2017. Protection of Right to Free Primary Education for Children in Nigeria. Mauritius: Lambert p. 78

<sup>22</sup> Freeman, M. 2018. *Children's Rights: New issues, New themes, New Perspectives*. 1-5

<sup>23</sup> Schapiro, T. 1999. What is a child? *Ethics* 109. 4: 715-738 Retrieved April 20, 2021 from <https://www.jstor.org/stable/10.1086/233943>.

<sup>24</sup> *Ibid* at p.1



interest theory, an individual has a right not because he has choices but for the reason that he has interests that are worth protecting. Therefore children are right-holders whose interest are worthy of protection.<sup>25</sup>

The second argument against a child possessing a right is that claiming that a child should have rights is a result of a misconception of who a child is, what childhood means and the relationship that ought to exist between adults and the child. This argument is presented in various ways. In her study, Onora O'Neil argued that children ought to be protected because they are vulnerable, however, according to her this should not qualify as possessing rights.<sup>26</sup> In the same vein, Huntington in his work also argued that the well-being or security of a child isn't best accomplished through the advancement of their right. According to him 'a solely rights-based model of child welfare does not protect the interests of parents or children.'<sup>27</sup> To him, a problem-solving approach is a way forward. There is the need to concentrate on more important things that affect the survival of a child such as poverty, child abuse and neglect. This according to the author is more important than the issues of right.<sup>28</sup> These authors seem to have a misconception about the nature of rights and what rights truly entails. Protecting the rights of a child include all the aforementioned by these authors. Thus issues such as a child's welfare or security, child abuse etc are all embedded in the subjects of rights.

This third argument rests on the fact that denial of a child's right is not bad for them. That adult must safeguard the welfare of the children does not correlate to having rights against adults. Childhood is not a permanent state that is related to discrimination. It is a human development stage that everyone goes through. They believe that it is their obligation that the children pass from infancy into adulthood. Thus as vulnerable children, they must be protected not necessarily through the acquisition of rights. This line of argument could be countered by pointing out that whatever means that adults use to safeguard the welfare of a child is an allusion to the fact that these are interests (which is a function of right) to be protected. According to Ekundayo, 'children's rights are a necessity.'<sup>29</sup>

## 2.0 THE CONCEPT OF CHILDREN'S RIGHT

The concept of children as rights-holders is based on the general principle that a child is a human being and as such deserves to have rights. Under international law, children are seen as subjects of human rights. Children rights are thus viewed as human rights. Thus the UN CRC is founded upon four basic principles. It outlines non-debatable and globally recognised principles and standards in a single instrument that all State Parties is expected to respect and abide by. Children are birth into the world with the very same rights and these rights can't be removed. These rights are related and of equivalent significance. In other words, we can't

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<sup>25</sup> Leif, W. 2021. Rights. *The Stanford Encyclopedia of Philosophy*. Retrieved April 20, 2021 from <<https://plato.stanford.edu/archives/spr2021/entries/rights/>>.

<sup>26</sup> O'Neill, O. 1988. Children's Rights and Children's Lives. *Ethics* 98.3:445-463. Retrieved April 17, 2021 from <http://www.jstor.org/stable/2380960>.

<sup>27</sup> Huntington, C. 2005. *Rights Myopia in Child Welfare*, 53 *UCLA Law Review*. 637 Retrieved April 17, 2021, from [https://ir.lawnet.fordham.edu/faculty\\_scholarship/177](https://ir.lawnet.fordham.edu/faculty_scholarship/177).

<sup>28</sup> *Ibid*

<sup>29</sup> Protection of Right to Free Primary Education for Children in Nigeria. See note 21 at p.39.

guarantee some rights to the detriment of other rights.<sup>30</sup> Therefore the UN CRC gives a clear definition of rights children are entitled to. This section will consider the four fundamental principles which form the basis of children as right-holders.

## 2.1 The Principle of Non-discrimination/ Equality

Discrimination is not defined in the convention and in the International Covenant on Civil and Political Rights which has a similar clause on non-discrimination.<sup>31</sup> Article 2 thus provides as follows:

(1.) States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. (2.) States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

The Convention prohibits discrimination against children 'on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.'<sup>32</sup> It means no children should be discriminated against on any grounds.<sup>33</sup> All children are to be given equal rights. Young children are particularly at risk of discrimination due to their vulnerability. Thus the committee identified various forms of discrimination against children. According to the committee;

'Discrimination may take the form of reduced levels of nutrition; inadequate care and attention; restricted opportunities for play, learning and education; or inhibition of free expression of feelings and views. Discrimination may also be expressed through harsh treatment and unreasonable expectations, which may be exploitative or abusive...'<sup>34</sup>

The committee further gave instances of practices of discrimination. Firstly we have discrimination against a girl child which is an infringement of child rights that affects every facet of her life. Discrimination against a girl child is very rampant in Nigerian society. Some families sponsor the education of a male child rather than that of a female child. Cultural beliefs in Nigeria further promote such discrimination. It is the general belief that the place of a woman is in the kitchen and as such she need not be educated.<sup>35</sup> They might be required to take on unnecessary family duties and denied the opportunity to take part in childhood and

<sup>30</sup> European Commission, CRC and its four guiding principles. Retrieved April 17, 2021 from <https://europa.eu/capacity4dev/sites/default/files/learning/Child-rights/2.7.html>.

<sup>31</sup> Hodgkin, R. & Newell, P. Implementation handbook for the convention on the rights of a child. 3ed. 18-30

<sup>32</sup> The United Nations. 1989. Art. 2 Convention on the Rights of the Child. *Treaty Series*. 1577, 3.

<sup>33</sup> Committee on the Rights of the Child. 2005. General Comment No. 7, *CRC/C/GC/7/Rev.1*, para. 11)

<sup>34</sup> *Ibid*

<sup>35</sup> Nakpodia, E. D., & Urien, J. 2012. Gender Discrimination in Nigerian School System. *International Journal of Development and Management Review* 74-79.

essential education. Furthermore, most girl children are victim's female genital mutilation, child marriage, abortion and child murder. Such cultural practices are therefore inconsistent with the principle of gender equality. Thus the education of a child is a major key in combating gender discrimination.

Secondly, the international principle frowns at discrimination based on disability. Thus children who suffer from HIV/AIDS should not be subject to discrimination. The Convention seeks to protect children regardless of their health issues. Discrimination against a child with disabilities affects the psychological development of a child. These children are qualified for the consideration obtainable by other children. They may likewise need extra help, thus the necessity to pay special attention to them.

Thirdly children should not be exempted from participation in society. It includes exemption from participation 'related to ethnic origin, class/caste, personal circumstances and lifestyle, or political and religious beliefs (of children or their parents)'<sup>36</sup> Such exclusion is said to affect their self-worth and confidence in life. Lastly, children may likewise endure discrimination from their parents. An example is children born out of wedlock. Although there is a development of the law with regards to the rights of children born out of wedlock in Nigeria, however, societal beliefs tend to regard them as bastards. Today children born out of wedlock can now inherit their father's property so long as there is proof of paternity.<sup>37</sup> Thus under section 42 of the Nigerian constitution, 'no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.'

## 2.2 The Principle of Best Interest of the Child

Article 3 provides that:

(1.) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (2.) States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. (3.) States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

The convention also established the best interest principle. For all matters pertaining to a child, the best interest of the child must be of paramount consideration.<sup>38</sup> By the provisions of Article 3(1) of the convention, the government, Judicial, administrative and legislative body are to ensure that this principle is carried out to the letter. Every other body concerned with

<sup>36</sup> Implementation Handbook for the Convention on the Rights of a child. See note 31 at p.19

<sup>37</sup> *Okonkwo v Okonkwo* 2014 17 NWLR (Pt. 1435), 18.

<sup>38</sup> The United Nations. 1989. Art. 3 Convention on the Rights of the Child. *Treaty Series*. 1577, 3



the welfare of the children must also consider this best interest principle. According to Article 3(2) states parties are obligated to safeguard the best interest of the child and provide a framework that will assist them in this line. In ensuring the best interest principle, state parties must have regard for the rights as well as obligations of parents/guardians. Article 2(1), Article 4 and Article 3(2) sets out general enforcement commitments of the State. The best interest principle is not only a subject in international law but in other areas of law. The principle has been incorporated into National legislations and also included in the Convention on the Elimination of All Forms of Discrimination against Women( CEDAW). According to Article 5(b), state parties must 'ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of children is the primordial consideration in all cases.' Likewise, Article 16(1) (d) states that in all matrimonial cases the interests of the child should be of paramount consideration. Thus the best interest principle does not apply only to state parties but also to private bodies.

## 2.3 The principle of Survival and Development

By Article 6 of the Convention states parties must 'recognize that every child has the inherent right to life and ensure to the maximum extent possible the survival and development of the child.' The survival and development of a child are essential to the enforcement of the convention as a whole.<sup>39</sup> This is because development is viewed as an encompassing principle. Safeguarding a child from all practices of exploitation is crucial to his survival. Thus the committee encourages this principle to be entrenched in national legislations. Also, the article emphasizes the right of a child to life. This right is universal to all human beings. Thus article 3 of the Universal Declaration of Human Rights provides that 'Everyone has the right to life, liberty and security of person.' This right is incorporated in many states national legislation. Similarly, Article 6 of the International Covenant on Civil and Political Rights supports the principle and states that 'every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.' Thus this principle justifies the fact that children's right are human rights and as such, have tangible rights that should be protected.

## 2.4 The Principle of Child Participation

According to Article 12 of the Convention;

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

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<sup>39</sup> Implementation handbook for the convention on the rights of the child, see note 31 at pp. 83-94.

Firstly, from the above article states parties are expected to guarantee that any children proficient enough to form a view has the right to express them at will. Secondly, the views of a child are attached much weight based age and maturity.<sup>40</sup> In other words, children have the freedom of expression, thought, conscience and religion which is a guaranteed fundamental right for adults also. They have the right to be heard as human beings. This clearly shows that children's rights are human rights. The right of a child to be heard shows that they also have a will and can therefore make choices of their own. This is contrary to the belief that a child cannot make any choice, however, even a baby can communicate his feelings by crying. The baby may cry if hungry and smiles to show his expression of satisfaction. In addition, the right to be heard relates to other articles under the convention. They include Article 13 which deals with the child's right to seek out, obtain and convey information; Article 14 deals with freedom of thought, conscience and religion and Article 15 deals with freedom of association. These provisions are called 'participatory rights' of a child.<sup>41</sup>

## 2.5 Justification for a child's right

Notwithstanding the international recognition of children as right-holders, some writers still believe it is over-rated. One of the major reason that was given for the failure of the United States to sign the Convention was that some feared that it might 'weaken parental authority.'<sup>42</sup> Critics and opponents of children's right tagged it as a means of children divorcing their parents.<sup>43</sup> It seems that the opposition against the rights of children stems from a misconception of what rights entails. Thus an understanding of the concept of rights would provide a solid justification for advocating for children's right. Thus it was necessary for this paper to first lay a foundation which was to explore the four principles behind the rights of the child. Thus this next section seeks to provide a solid basis or justification for the rights of a child. It explores whether the concept of children as right-holders can be justified under the UN CRC. One major concept has been identified as the overall foundation for establishing children as right-holders. It is the concept of human dignity. Although there are other justifications for children having rights but the concept of dignity in the opinion of this research paper carries more weight. Thus the next section will explore the dignity of a child as the foundational justification for children's right.

## 2.6 Human Dignity as the Justification for children's right

One of the major justification for the rights of a child is the fact that they are human beings. According to Article 1 of the Universal Declaration of Rights, 'All human beings are born free and equal in dignity and rights.' Also, Maria Montessori gives the humanity of a child more superiority than any other. In her words "children are human beings to whom respect is due, superior to us by reason of their innocence and of the greater possibilities of their future."<sup>44</sup> The word superior might be too strong a word to use, however, the whole idea is to

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<sup>40</sup> *Ibid* at pp. 149-172.

<sup>41</sup> The United Nations. 1989. Convention on the Rights of the Child. *Treaty Series*. 1577, 3

<sup>42</sup> Minow, M. 1995. What ever Happened to Children's Rights? *Minnesota Law Review* 1897. 80,267 Retrieved April 20, 2021 from <https://scholarship.law.umn.edu/mlr/1897>.

<sup>43</sup> Thomas, C. Palmer, Jr., 1992. How much Power Should a Child Wield, Anyway?, *Boston Globe*, 57

<sup>44</sup> This is one out of her many quotes. Maria Montessori was an Italian physician, educator, philosopher, humanitarian and devout Catholic; she is best known for her philosophy and the Montessori method of

recognise the fact that the innocence or the vulnerability of a child does not make them any less humane. Every human possesses rights because of their common humanity and all human beings are entitled to equal rights. These rights are 'interrelated, interdependent and indivisible.' Thus Children have the same rights as adults because of their common humanity. Consequently, children's rights are human right. Therefore if children are humans, they have the rights to the respect of their human dignity.

The concept of human dignity was established in the United Nations conventions on human right. It became an international legal standard based on its incorporation in the convention. Likewise, the term human dignity as inalienable in each individual can be seen in the preamble of the 1948 Universal Declaration of Human Rights when it stated thus: 'Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,'<sup>45</sup> Also, article 1 of the declaration affirms the dignity of all humans. From that point forward, the concept of dignity is routinely incorporated in UN conventions and declarations, for example, the Declaration of the Rights of the Child (1959) and the introduction of the Committee on the Rights of the Child (CRC) (1989). The concept can now be found in the preamble to the UN CRC. Those behind the drafting of the United Nations Charter and the Universal Declaration of Human Rights<sup>46</sup> stressed the fact that human dignity has viable importance in advancing human right. Human dignity is the justification on which human right could be said to exist.<sup>47</sup> Thus the idea of human dignity gives a theoretical basis for human rights. Human dignity is the foundation of human rights and thus a reasonable justification for children's right. It shows that each individual has worth and is deserving of respect, and this awards them their rights and privileges. This in itself is the central theme of humanity.<sup>48</sup>

Consequently, an infringement of the child's right simply means an infringement of his/her human dignity.<sup>49</sup> Physical and mental abuse of a child is an infringement of human dignity. The committee has supported the connection between human dignity as well as the psychology of a child. In addressing the issue of violence against children, the committee stated clearly that the concept of dignity 'requires that every child is recognized, respected and protected as a right holder and as a unique and valuable human being with an individual personality, distinct needs, interests and privacy.'<sup>50</sup> Thus any form of physical or mental violence against a child is an abuse of his human dignity. The concept of dignity is now a principle of law upon which human right is based.<sup>51</sup> Thus a 'violation of a human right is a

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education of children from birth to adolescence. Her educational method is in use today in a number of public as well as private schools throughout the world.

<sup>45</sup> Preamble to the 1948 Universal Declaration of Rights.

<sup>46</sup> Among them are Jacques Maritain and René Cassin

<sup>47</sup> McCrudden, C. 2008. Human Dignity and Judicial Interpretation of Human Rights. *European Journal of International Law* 19.4: 655–724. Retrieved April 20, 2021 from <https://doi.org/10.1093/ejil/chn043>; Dupré, C. 2013. Constructing the Meaning of Human Dignity: Four Questions. *Understanding Human Dignity*. 113 Retrieved April 20, 2021 from <https://doi.org/10.5871/bacad/9780197265642.003.0005>.

<sup>48</sup> Sigurdson, R. 2019. Children's Right to Respect for their Human Dignity. *Children's Constitutional Rights in the Nordic Countries* 5, Brill: Nijhof 19-36

<sup>49</sup> *Ibid*

<sup>50</sup> UN Committee on the Rights of the Child. 2011. General Comment No. 13: The Right of the Child to Freedom from all Forms of Violence *CRC/C/GC/13* para 2, 3c and 7.

<sup>51</sup> *General Comment No. 13*, para 3d

violation of human dignity.<sup>52</sup> The dignity of a child is in-built in all humans and an inherent desire to be treated with respect. Thus human dignity can be viewed as a right. That is we can assume a right to dignity- a right to be treated with respect and dignity.<sup>53</sup>

Lastly, it is pertinent to note that the problem of child abuse in Nigeria stems from the fact that we do not yet appreciate the fact that a child has human dignity. Harmful traditional practices which harm the child is against the concept of dignity. Despite the cry against child marriages, some northerners in Nigeria still practice child marriage. The cultural ideology in Nigeria where a child is shipped off to marry at an early age, used as a slave and sex object is an affront against the very dignity of a child.

### 3.0 CONCLUSION

The objective of this paper was to provide a justification for affirming children as right-holders. This is because the idea of children possessing rights has been met over the years with a whole lot of criticism. Therefore the various criticism adduced by those who deny children's right in one form or the other has been explored in this work. The first set of critics which was considered are those who deny child rights because they are unable to make choices. This line of argument was countered by stating the fact that although children may not be able to make choices of their own they have interests that need to be protected. Interests such as protection from abuse. The second sets of people were of the view that the vulnerability of a child does not entitle him to rights. However, these authors seem to have a misconception of the topic of rights. As the vulnerability of the child itself is the reason to accord them such rights so that they would not be taken advantage of. The last sets of critics that were considered in this paper were those who believed that denying that a child has rights is not bad in itself as long as they are protected. However such critics seem to be misguided as to the actual function of right which in itself is to protect the child. In proving those who deny a child's right wrong, this paper explored the very concept of rights which is founded upon the four fundamental principles. The four principles are the principle of non-discrimination, best interest, survival and development and child participation. More importantly, this paper was able to provide a justification for claiming children as right-holders. Thus the concept of dignity is the link to holding children as right-holders.

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<sup>52</sup> Children's right to respect See note 48 at pp19-36

<sup>53</sup> *Ibid*