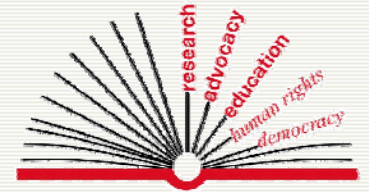


# The overarching definition of a child: What is in a number?

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# 1. Introduction

Who is a child?

No guidance from the 2 declarations

A child defined as a comparative negative

Childhood is a social construct-

Indeed setting an age for the acquisition and/or loss of certain rights is complex

**Definition is critical** b/c it determines which rights apply to childhood and which remedies are available to children as a class. Among others, it also relates to data collection.



# 1. Introduction...cont'd

Enormous differences between societies and cultures as to the role of children within community

Minority states argued for a lesser age limit b/c states with high infant mortality and low age life expectancy allow children to participate

General Assembly had set 15 in connection with IYC

Some argued 14 b/c of end of compulsory education

Debate was also informed by GC No 17 on ICCPR- and it was clear that protection ages can't be set "unreasonably low" - and a State can't absolve itself of obligation under the Cove. for persons below 18

The domestic legislation of these states was already in conformity with the age of 18, and they believed that the qualification contained allowed them to fit



## 2. The beginning of childhood

Article 1 leaves starting of childhood open

Birth? Conception? Somewhere b/n?

States hold such fundamentally conflicting views on issue

No guidance from 1924 and 1959 Declarations.

Preamble "b/c of immaturity special care before as well as after birth" inserted in understanding that it shouldn't prejudice interpretation of article 1



## 2. The beginning of childhood...cont'd

Some argued that conception as a starting point should be acceptable b/c many domestic laws protected the inheritance rights of children.

Other arguments based on ICCPR (art 6(4))- death imposed but not executed on pregnant women

Intention is to avoid taking position on abortion and other pre-birth issues

Article 41- more conducive domestic law

Reservations/Declarations show that states hold fundamentally conflicting views



## 2. The beginning of childhood...cont'd

Cases brought not under "who is a child"? But under the right to life

CRC leaves individual States to balance for themselves the conflicting rights & interests involved in abortion...this is evidenced by declarations and reservations... **BUT...**

CROC has commented at the issue at different occasions

On high rates of abortion

Abortion as a method of family planning

"clandestine" abortions...

And the future (with the advancement of technology) might pose further challenges



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### 3. The end of childhood/beginning of adulthood

“it takes only 1 (18<sup>th</sup>) birthday”

“Arbitrary?” - Nonetheless it is important to arrive either at a definition or mark out its possible boundaries

Article 1 is more prescriptive, but not inflexible-

18 as a general upper benchmark

The use of the word “majority” and not “age of majority” implies that majority can be attained with other factors apart from age-proposal of the Netherlands.

Concept of “emancipation” with parental consent



### 3. The end of childhood...cont'd

The age 18- particularly for protection rights- is reinforced by ICCPR (imposing no death penalty) and ILO Convention 132 of 1973, the Supplementary Convention on the Abolition of Slavery 1956 prohibits the delivery for exploitation of persons under the age of 18

Finally the position that prevailed was 18- as a bench mark- so as to offer protection to as large a group as possible



## 4. Defining specific minimum ages

Respect for CRC's general principles (2, 3, 6)

3 types- CRC prescribing 18, or another number below 18, or no prescription

Legal counselling

Vital for enforcement of other rights

Lodging complaints and seeking redress

Medical counselling

Medical treatment or surgery- some provide minimum age and others use "sufficient understanding" standard-

Court intervention allowed- best interest



## 4. Defining specific minimum ages... cont'd

Sexual consent and marriage?

Minimum age of criminal responsibility?

Military recruitment

Participating in administrative and judicial procedures (art 12(2))- No specific age limit

Giving testimony in court- 3 situations

Consent to change of identity (art. 8)- CRC doesn't suggest a minimum age



## 4. Defining specific minimum ages... cont'd

Info about child's biological family (art. 7)

Legal capacity to inherit, contract, join  
and/or create associations (art. 15)- child  
headed households

Choosing religion (art. 14)

Consumption of alcohol and other controlled  
substances-(art. 31)- CROC has commented  
on this

## 5. ESARO experience

In Africa childhood not necessarily associated with numerical age- but ACRWC offers definition as "18"

Some legis/cons promulgated before 1990  
9/18 countries - including Bur, Eth, Madag, Moz, Nam, Swaz, Tan and Zim - have no official definition of a child in their legislation or Constn.

SA offers good eg. in constitutionlising defn.  
Discrimination on the basis of gender is "common" to many countries- eg marriage age



## 5. ESARO experience...cont'd

Many of the surveyed countries have set the age of criminal responsibility very low

Some do not have additional special measures to recognise the age and discernment of child.

In Leso, Mala, Nam, SA and Swaz, children as young as 7 can be held legally accountable for their acts under penal law.

Use of different terms also creates confusion

Good news also exists- some of the draft legis in the countries harmonizes the CRC and ACRWC



## 6. Conclusions & Recommendations

Need for review where legislation provides below 18 is important.

Always keep cardinal principles plus article 5 on "evolving capacities"

African countries have a higher standard to stick to under the ACRWC

Constitutionalizing definition is ideal-SA

Legislation within a country must speak with the same voice

Situation "may be challenging at some points (especially with customary law at play)- advocacy, awareness raising, role of education comes very relevant

Harmonization not an event but a process



## 6. Conclusions & Recommendations..cont'd

Protection ages should be as high as possible- (even more than 18 is possible but for purpose of CRC... 18)

Right to birth registration ("If there is no proof of age, the child is entitled to a reliable medical or social investigation that may establish his/her age and, in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt")

Not only about age but also about the term "child"- baby, infant, juvenile, adolescent, youth, young persons, minor...

In conclusion, what is in a number?-

