

The status of the implementation of the African Children's Charter A TEN-COUNTRY STUDY



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Edited by Elvis Fokala,
Nkatha Murungi and Mai Aman

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Algeria • Burkina Faso • Burundi • Cameroon • Ethiopia
Ghana • Mozambique • Namibia • Sudan • Tanzania

In 2020, the African Charter on the Rights and Welfare of the Child (ACRWC) celebrates 30 years since its adoption.

To date, 50 African States have ratified the ACRWC, and 28 have submitted the initial report, 12 have submitted both initial and periodic reports to the African Committee of Experts on the African Charter on the Rights and Welfare of the Child (ACERWC) on the implementation of the ACRWC and have received recommendations from the ACERWC.

To ascertain the extent of children's rights protection in Africa, the Centre for Human Rights was commissioned to undertake a study on the implementation of the ACRWC in 10 countries, namely: Algeria, Burkina Faso, Burundi, Cameroon, Ethiopia, Ghana, Mozambique, Namibia, Sudan and Tanzania.

In-country researchers were engaged to collect data using desk-based research to obtain information consisting of literature, documents and online sources that was then thematically analysed.

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PREFACE

Broadly, this publication provides a comparative overview and assessment of the implementation of the African Charter on the Rights and Welfare of the Child (the African Children's Charter or the Charter) in ten African countries, namely, Algeria, Burkina Faso, Burundi, Cameroon, Ethiopia, Ghana, Namibia, Mozambique, Sudan, and Tanzania. The overarching objectives of this publication is to establish the implementation status of the African Children's Charter in the countries under study; to establish common patterns in the domestication, interpretation, and implementation of the Charter; and to inform the assessment of progress made in the implementation of the Charter, since its adoption.

A chapter is devoted to each of the ten study countries. Each chapter starts with a background that introduces the geo-political and socio-economic landscape relating to the general situation of children in the particular country. The chapters then analyse the legislative, policy, administrative, judicial and other measures undertaken by these countries in their respective jurisdictions to give effect to the Charter. The concluding section of each chapter highlights the areas in which the country under study has made progress in the implementation of the African Children's Charter, while also drawing attention to matters of concern that require more attention and emphasis.

This book is a valuable contribution to existing studies on the implementation of the African Children's Charter, such as the volume of essays *State party reporting and the realisation of children's rights in Africa* edited by Remember Miamingi (Pretoria University Law Press (PULP) 2020).

Its importance lies in the close assessment of the status of implementation of the Charter since its adoption and in identifying common patterns that arise in the domestication, interpretation and implementation of the Charter in the countries under study.

A special thanks to previous and current staff of the Centre, in particular, the Manager of the Children's Rights Unit, Dr Elvis Fokala, who steered this project, Dr Nkatha Murungi, who initiated the Project,

and researchers in the children's rights unit – Ms Mai Aman and Mr Nqobani Nyathi for editorial support. The financial assistance of Plan International – AU Liaison office is gratefully acknowledged.

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Godfrey Dalitso Kangaude completed his Doctor of Laws with the University of Pretoria in 2020. His broad area of research is in sexual and reproductive rights. His doctoral research focused on childhood/ adolescence, gender, sexuality and law. His current research interest is in the intersection of sociocultural norms and law (including human rights), and their impact on the sexual health trajectories of children and adolescents.

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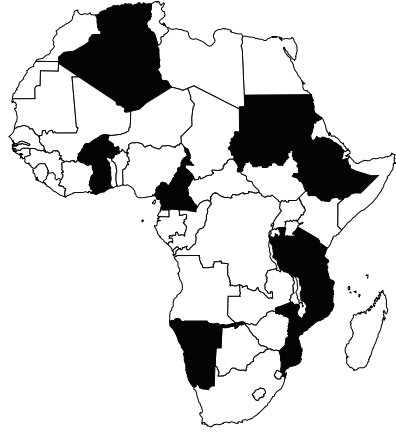
a lecturer and researcher in human rights with a keen focus on the rights of vulnerable groups such as children, women, and persons with disabilities, as well as sexual and reproductive health rights. She has extensive experience in pan-African human rights programming and advocacy, civil society engagement, the African Union and its mechanisms, as well as human rights research, particularly in Africa. Her research covers a range of human rights issues including child rights, education, sexual and reproductive health rights of women and girls in Africa, disability rights, and access to justice.

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1



IMPLEMENTATION OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD: A COMPARATIVE ANALYSIS OF THE STUDY

Godfrey Dalitso Kangaude & Nkatha Murungi***

1 Introduction

In 2020, the African Charter on the Rights and Welfare of the Child (ACRWC) celebrates 30 years since its adoption. To date, 50 African States have ratified the ACRWC, and 28 have submitted the initial report, 12 have submitted both initial and periodic reports to the African Committee of Experts on the African Charter on the Rights and Welfare of the Child (ACERWC) on the implementation of the ACRWC and have received recommendations from the ACERWC.¹ To ascertain the extent of Children's rights protection in Africa, the Centre for Human Rights was commissioned to undertake a study on the implementation

* Godfrey Dalitso Kangaude, holds a Doctor of Laws with the University of Pretoria in 2020. His broad area of research is in sexual and reproductive rights. His doctoral research focused on childhood/adolescence, gender, sexuality and law. His current research interest is in the intersection of sociocultural norms and law (including human rights), and their impact on the sexual health trajectories of children and adolescents.

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1 African Committee of Experts on the Rights and Welfare of the Child, available at <https://www.acerwc.africa/initial-and-periodic-reports/> (accessed 18 April 2021).

of the ACRWC in 10 countries, namely: Algeria, Burkina Faso, Burundi, Cameroon, Ethiopia, Ghana, Mozambique, Namibia, Sudan and Tanzania. In-country researchers were engaged to collect data using desk-based research to obtain information consisting of literature, documents and online sources that was then thematically analysed.

2 Country profiles

2.1 Government and political system

Nine of the ten countries studied, except Sudan, are constitutional democracies because the constitution is recognised as the supreme law. The nine countries, again except Sudan, are republics because the heads of states are elected officials. Sudan suspended its Constitution following a military coup in April 2019 and replaced it with a draft constitutional declaration to operate in the period of transition to the re-establishment of a constitutional democracy.² Sudan does not have a head of state but instead has the Sovereignty Council, which acts as the head of state. The constitutions of the 10 governments including the constitutional declaration of Sudan reflect the principle of separation of powers among the executive, legislature and judiciary.

2.2 Legal system

Ghana, Tanzania and Sudan follow the common law tradition inherited from England, while Algeria, Burundi, Burkina Faso, and Mozambique follow the civil law system originating from Continental Europe. Namibia applies a derivative of a common law system and Roman-Dutch law, inherited from South Africa. Cameroon follows a dual system of English common law in the Anglophone regions in the North West and South West of the country, and French civil law in the Francophone regions.³ A common characteristic of the ten countries, however, is that they operate under systems of legal pluralism where the common and civil laws are applied simultaneously with customary law, and to various extents religious law; for instance, Algeria applies civil law, customary law and Shari'a law. Academic commentators in Namibia have observed that customary law is very influential as most Namibians live in accordance with its norms, and for many people in the rural areas, customary courts

2 Global Legal Monitor 'Sudan: Interim Constitutional Declaration Signed'<https://www.loc.gov/law/foreign-news/article/sudan-interim-constitutional-declaration-signed/> (accessed 8 December 2020).

3 The World factbook: Africa: Cameroon available at <https://www.cia.gov/library/publications/the-world-factbook/geos/cm.html> (accessed 17 August 2020).

are the first point of contact with the legal system.⁴ This has implications for child rights because a significant portion of people are influenced more by customary beliefs than the formal national law and international law.

2.3 Development indicators

Namibia is classified as an upper-middle income country with an estimated GDP per capita of US\$5,828, and a Gini coefficient of 59.7. Algeria, Ghana, Cameroon and Tanzania ranked lower-middle income countries, while Burundi, Burkina Faso, Mozambique, Ethiopia and Sudan fall in the category of low-income economies category.⁵

According to the table of selected indicators, Algeria, though categorised as a lower-middle income country, has better indicators than Namibia (see table 1). The next batch of countries that have better indicators apart from Algeria and Namibia are Cameroon, Ghana, and Tanzania. The lowest ranked of the country is Burundi, but the expected years of schooling in Burundi are better than all the other countries in its category. However, only 2.7% of the Burundi population use internet.

Table 1: Selected development indicators

Country	HDI	Internet users (% of pop.)	Expected years of schooling	Total pop. (millions)	Rank
Algeria	0.759	59.6	14.7	42.2	82
Burkina Faso	0.434	16.0	8.9	16.0	182
Burundi	0.423	2.7	11.3	11.2	185
Cameroon	0.563	23.2	12.7	25.2	150
Ethiopia	0.470	18.6	8.7	109.2	173
Ghana	0.596	39.0	11.5	29.8	142
Mozambique	0.446	10.0	9.7	29.5	180
Namibia	0.645	51.0	12.6	2.4	130
Sudan	0.507	30.9	7.7	41.8	168
Tanzania	0.528	25.0	8.0	56.3	159

4 Canada: Immigration and Refugee Board of Canada, Namibia: Customary and common law including matters of inheritance; how conflicts between the two systems of law are resolved, 14 August 2012, NAM104143.E <https://www.refworld.org/docid/5053390d2.html> (accessed 7 October 2020).

5 <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups> .

3 The environment for children

The economy of Algeria went through a dark decade in the 1990s due to internal conflict, but rebounded thereafter following an extensive program and political, structural, social and economic reforms.⁶ Algeria's abundant oil resources have contributed significantly to sustaining an ambitious social policy. This includes realising the right of all children to social security, granted to people with disabilities, students and trainees. Algeria grants family allowance, school allowance and school allowance benefits.⁷

Despite Namibia being classified as the only middle-income country in the list, Algeria has consistently better indicators with the lowest under-five mortality of 23% while Namibia's under-five mortality is 42.4%. The status of Namibia as compared to Algeria should be understood from Namibia's political history of inequality premised on a racist apartheid system that left the majority of the black population excluded from the formal economy.

Burkina Faso has the highest under-five mortality rate out of the 10 countries, and it also leads the group in the rate of women married or in unions by the age of 18. Out of the 10 countries, Burkina Faso might easily be the country that has the least child-friendly environment. Indeed, a study conducted by the Oxford University found high levels of child deprivations especially in water and sanitation, information, leisure and education, except for nutrition.⁸

6 SIDA, Country profile of Algeria: A review of the implementation of the UN Convention on the Rights of the Child (2011) <http://www.ibcr.org/wp-content/uploads/2016/06/Country-Profile-Algeria-2.pdf>(accessed 19 October 2020).

7 Social security programs throughout the world: Africa 2019, Algeria, <https://www.ssa.gov/policy/docs/progdesc/ssptw/2018-2019/africa/algeria.html> (accessed 19 October 2020).

8 CL Fonta et al 'Decomposing multidimensional child poverty and its drivers in the Mouhoun region of Burkina Faso, West Africa' (2020) 20 *BMC Public Health* 149.

Table 2: Indicators from UNICEF website (<https://data.unicef.org/>)

Country	Height-for-age – 2SD Stunting (%)	Under-5 mortality (per 1000 live births)	Completion rate for children of primary school age (%)	DPT Immunization rates (%)	Women (aged 20-24 years) married or in union before age 18 (%)
Algeria	12	23.3	93	91	3
Burkina Faso	26	87.5	31	91	52
Burundi	54	56.5	50	93	19
Cameroon	29	74.8	74	67	31
Ethiopia	37	50.7	47	69	40
Ghana	18	46.2	66	97	21
Mozambique	42	74.2	41	88	53
Namibia	23	42.4	81	87	7
Sudan	38	58.4	65	93	34
Tanzania	32	50.3	80	89	31

4 Child rights

4.1 Commitments to the Convention on the Rights of the Child (CRC) and its optional protocols

All 10 countries have ratified the Convention on the Rights of the Child (CRC) and the Optional Protocol on Involvement of Children in Armed Conflict (OP-AC). Cameroon and Ghana signed but have not ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OP-SC). Of the 10 countries, only Ghana has signed the Optional Protocol on a Communications Procedure (OP-CP). See table 3.

Table 3: Table showing commitments to the CRC and its optional protocols

Country	Ratified the CRC	Ratified CRC optional protocol on armed conflict	Ratified CRC optional protocol on sale of children	Ratified CRC optional protocol on communications procedure
Algeria	Yes, with reservations to Articles 13,14,16 & 17	Yes	Yes	No
Burkina Faso	Yes	Yes	Yes	No
Burundi	Yes	Yes		No
Cameroon	Yes	Yes	Signed but not ratified	No
Ethiopia	Yes	Yes	Yes	No
Ghana	Yes	Yes	Signed but not ratified	Signed, but not ratified
Mozambique	Yes	Yes	Yes	No
Namibia	Yes	Yes	Yes	No
Sudan	Yes	Yes	Yes	No
Tanzania	Yes	Yes	Yes	No

4.2 Recognition of Child Rights in the Constitution and other law

All countries except Tanzania guarantee child rights in their respective Constitutions. The Constitution of the United Republic of Tanzania does not refer to children. This is a gap the State has acknowledged and stated would be addressed through a constitutional review.⁹

5 Implementing the ACRWC

The 10 countries have to various extents domesticated the ACRWC. Law and policies must protect children from all forms of exploitation, and the basis for this protection is the definition of the child. Burundi's Penal Code defines a child as a person under 18 but sets 16 as the minimum age for child labour.¹⁰ Mozambique also defines a child as a person under 18

9 Tanzania, *Consolidated 2nd, 3rd and 4th reports on the implementation of the African Charter on the Rights and Welfare of the Child by the government of the United Republic of Tanzania (October 2015)*,15.

10 Humanium 'Children of Burundi: Realising children's rights in Burundi' <https://>

unless age of majority is reached earlier.¹¹ The Mozambican Family Law Act stipulates the minimum age of marriage to be 18 but an exception is provided in Article 30 which permits marriage at the age of 16 if parental consent is obtained. In fact, implementing the age of 18 as the minimum age of marriage is one of the issues lagging behind in most of the countries under study as table 4 shows. Only Burundi and Cameroon recognise the age of 18 as the minimum age of marriage without any exceptions.

Table 4: Implementation of the ACRWC

Country	Is definition of the child below the age of 18 without exception?	Can the ACRWC be directly invoked in local courts?	Does the Constitution explicitly recognise child rights?	Is minimum age of marriage 18, without exception?
Algeria	Yes	Yes	Yes	No
Burkina Faso	Yes	Yes	Yes	No
Burundi	No	Yes	Yes	Yes
Cameroon	Yes	Yes	Yes	Yes
Ethiopia	Yes	Yes	Yes	No
Ghana	Yes	Yes	Yes	No
Mozambique	No	Yes	Yes	No
Namibia	Yes	Yes	Yes	No
Sudan	Yes	Yes	Yes	No
Tanzania	Yes	No	No	No

Another important area that reflects on child protection is corporal punishment, which has been negatively associated with children's concurrent and later outcomes including low self-esteem, self-efficacy and poor cognitive outcomes in maths and vocabulary.¹² Save the Children's textual analysis of the ACRWC favours the interpretation that all forms of violence against children including corporal punishment are prohibited

www.humanium.org/en/burundi/ (accessed 10 December 2020); Ordonnance ministérielle 630/1 du 5 janvier 1981, Art 3 <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/34358/57536/F-1405137082/BDI-34358.pdf> (accessed 10 December 2020).

11 Convention on the Rights of the Mozambican Child article 1, resolution no 19/90 of 23th December, http://salcaldeira.com/index.php/en/component/docman/doc_download/92resolucao-n-19-90-convencao-sobre-os-direitos-da-crianca.

12 MJ Oganda Portela & K Pells 'Corporal Punishment in Schools: Longitudinal Evidence from Ethiopia, India, Peru and Viet Nam' (2015) Innocenti Discussion Paper No. 2015-02.

absolutely.¹³ In Mozambique, the Law for the Protection of the Rights of the Child 2008 provides for the concept of justifiable discipline as a legal defence for the use of physical punishment in child rearing.¹⁴ In Burundi, corporal punishment is prohibited in schools, but is not criminalised under the Penal Code.¹⁵ In Cameroon, Article 35 of the Law of Cameroon National Education Guidelines¹⁶ outlaws corporal punishment in schools. However, Corporal punishment is not prohibited in private settings such as in the home.¹⁷ In Namibia, though the Child Care and Protection Act 2015 did not explicitly prohibit corporal punishment in all settings, several court decisions including *S v Van Zyl & Others*¹⁸ and *S v Sipula*,¹⁹ have confirmed that corporal punishment is unlawful and prohibited in both public organs and private settings. In Algeria, corporal punishment is criminalised in school settings.²⁰ In Burkina Faso, laws on prevention of school or domestic violence have not been interpreted to include prohibition of corporal punishment in the home. Further, corporal punishment is prohibited in primary schools but not in other school levels.²¹ In Tanzania, corporal punishment is allowed both in schools and in the home. Sudan also does not explicitly prohibit corporal punishment; in fact, by a 2010 decree, the Minister of Education prohibited corporal punishment in primary school but not in secondary school.²²

13 Save the Children 'Corporal Punishment and the African Children's Charter: An advocacy paper'(2012)

14 http://www.cndh.org.mz/images/legislacao/nacional/Lei_de_Promocao_dos_Dtos_da_Crianca.pdf.

15 Ordonnance ministérielle du 17 juillet 2017.

16 No 98/004 of 1998.

17 Corporal punishment of children in Cameroon' (2018) <https://www.endcorporalpunishment.org> Childpopulation 11,472,000 (UNICEF, 2015) by Global Initiative to end all Corporal Punishment of Children<http://www.endcorporalpunishment.org/wp-content/uploads/country-reports/Cameroon.pdf> (accessed 02 august 2020).

18 CA 25-2014 [2016] NAHCMD 246 https://namiblii.org/system/files/judgment/high-court-main-division/2016/246/2016_246.pdf (accessed on 5 September 2020).

19 1994 NR 41 (HC).

20 Communication from the Minister of Education to Education staff Boubeker BENBOUZID N ° 96March 10, 2009.

21 Global Initiative to End all Corporal Punishment of Children, Corporal punishment of children in Burkina Faso <http://www.endcorporalpunishment.org/wp-content/uploads/country-reports/BurkinaFaso.pdf> (accessed 29 October 2020).

22 The Ministry of Education, Decree Number 10' 29 June 2010.

5.1 Ratification

The process of ratification of treaties varies across the countries under study. In countries like Algeria, the process only involves the president who is mandated under the Constitution to conclude and ratify treaties.²³

In other countries like Burundi, Ethiopia, Ghana, Namibia and Tanzania, the process involves an interplay of the executive and the legislative arms of the government. For instance, in Burundi, the Executive prepares a bill of ratification, which is submitted to the National Assembly for deliberation. Once adopted, the latter transmits it to the Senate. Once adopted by the Senate, the bill can be enacted into law by the President of the Republic within 30 calendar days.²⁴ Within the said period, the Constitutional Court affirms the constitutionality of the bill prior to enactment.²⁵ The instrument of ratification accompanied by the ratification law is then deposited with the relevant body.²⁶

Similarly, in Ethiopia, international agreements are signed by the state's executive, which must subsequently be submitted for ratification to the highest legislative organ of the country - House of People Representative - for ratification.²⁷ Also in Ghana, the President, as the head of the executive branch of government negotiate treaties on behalf of Ghana.²⁸ The treaty is subsequently ratified by parliament through a resolution passed by the majority of members of parliament or through legislation.²⁹

In Namibia, once the government manifests its intent to ratify an international instrument, the Cabinet Secretary presents the instrument and a memorandum to the Cabinet, approved and scrutinised by the Attorney-General. Once approved by Cabinet, the Cabinet Secretary must furnish the treaty and the memorandum setting out the rationale and objective of the instrument to the Speaker of the National Assembly for discussion and approval.³⁰ Once approved, the president is empowered

23 Constitution, Art 91(9).

24 The Constitution of the Republic of Burundi 2018, art 202

25 Constitution (n 23 above) Art 234.

26 An instrument of ratification is a note verbal entitled 'Instrument de ratification par la République duBurundi de (name of the treaty)' signed by the President of the Republic.

27 Federal Democratic Republic of Ethiopia (FDRE) Constitution, Art 55.

28 The Constitution of Ghana 1992, Art 75(1).

29 Constitution of Ghana (n 27 above) Art 75(2).

30 The Namibian Constitution, Art 63(2)(e).

to sign the instrument on behalf of the country. In Tanzania, the treaty is first signed by the Executive arm of Government and then the Ministry responsible for that treaty will prepare a resolution for ratification of the treaty, which will be presented in the National Assembly for deliberations and voting. The National Assembly will thereafter produce a brief resolution for ratification which will contain, *inter alia*, any reservations agreed upon by the Members of Parliament.³¹

In other countries like Cameroon, the process is bifurcated into two parallel processes. On one hand, treaties which fall within the canopy of powers of the president are duly negotiated and ratified by the president. On the other hand, treaties and international agreements falling within the area of competence of the Legislative Power as defined in Article 26 of the Constitution are to be submitted to Parliament for authorisation to ratify.³²

All 10 countries under study have ratified the ACRWC at varying times. First to ratify was Burkina Faso in 1992. This was followed by Cameroon and Mozambique in 1997 and 1998 respectively. Ethiopia ratified in 2002. Thereafter, Algeria and Tanzania ratified in 2003, then Burundi and Namibia in 2004, and lastly Ghana and Sudan in 2005.

Countries are required to carry out a compatibility study of a treaty before ratification. This is a form of research conducted by a country aimed at carrying out a comparative analysis of the treaty norms with relevant domestic laws. This may lead to a country making amendments to a piece of legislation, entering a reservation or making any other change prior to ratification or accession. The primary aim of the study is to align and harmonize domestic laws and policies with relevant treaty norms.³³ It is the case that none of the countries under study conducted a compatibility study before ratifying the ACRWC. Notwithstanding, Sudan entered reservations to article 10 on the protection of privacy, article 11(6) concerning the education of children who become pregnant

31 The procedure for ratification of treaties is not specifically stated in any law; the URT Constitution and the Standing Orders of the Parliament (2016) are silent on this matter. The procedure described has been discerned from Parliament Proceedings on treaty ratification. For ratification proceedings see for example Parliament Proceedings of 3 April 2018, <http://parliament.go.tz/polis/uploads/documents/1523461271-3%20APRILI%202018.pdf> (accessed 6 October 2020); For sample ratification resolutions visit <http://www.parliament.go.tz/resolutions-list> (accessed October 2020).

32 The Constitution of Cameroon, Art 43.

33 F Viljoen International human rights in Africa (2012) 9.

before completing their education, and article 21(2) on child marriage.³⁴ The rest of the countries ratified the ACRWC without reservations.

5.2 Domestication

As the theory goes, countries are dualist if they consider international law to be separate from domestic law, and monist if they consider international law and domestic law to be one inseparable legal system. Tanzania is dualist because after ratification, a treaty must be specifically domesticated by enacting legislation.³⁵ Ghana also requires an act of parliament to implement a ratified treaty. Algeria, on the other hand, is monist, meaning that the provisions of the ACRWC are directly applicable. Further, according to the hierarchy of laws, international treaties have precedence over domestic law in Algeria.³⁶ According to the Transitional Constitutional Charter, Sudan is monist because international agreements ratified by the State such as the ACRWC become an integral part of the Charter.³⁷ Another country that is monist is Burkina Faso because upon ratification, international law becomes directly enforceable.³⁸ Cameroon is also monist because according to article 65 of the Constitution, ratified international law becomes immediately applicable without any other intervening step. Just as Algeria, international agreements take precedence over national laws. Mozambique also follows the monist tradition because according to Article 18 of the Constitution international law would have the same force as legislation. Namibia is also monist because according to Article 144 of the Namibian Constitution, binding international agreements form part of the law of Namibia.

Tanzania enacted the Law of the Child Act in 2009, with the aim to consolidate and reform laws governing child matters. It repealed a number of laws and made amendments to other laws including the Law of Marriage Act, the Employment and Labour Relations Act, the Penal Code and the Criminal Procedure Act.

34 ACERWC 'Reservations' <https://www.acerwc.africa/reservations/> (accessed 26 August 2020).

35 Initial Tanzania Report to the African Committee of Experts on the African Charter on the Rights and Welfare of the Child, 3.

36 S Bourouba, *Jurisprudence in the Application of Human Rights Standards in Arab Courts* (2015).

37 Article 41, para 2.

38 Article 151 de la Constitution de Juin 1991.

5.3 State reporting

State reporting is not only an important tool but also a legal obligation for states to ensure compliance with a treaty that a state has ratified. Article 43 of the ACRWC requires States parties to submit their Initial Report within two years of ratification of the ACRWC and thereafter submit a Periodic Report every 3 years. Table 5 shows how the countries under study have fared in this regard. Only Burkina Faso, Cameroon and Tanzania have followed up on their initial reports to submit periodic reports. Tanzania’s periodic report was submitted as a consolidated report combining the 2nd, 3rd and 4th periodic reports.

According to Cameroon, its late submission of the initial and periodic reports was due to poor mastery of the drafting methodology of its various periodic reports.³⁹

Table 5: Showing submission of initial and periodic reports

Country	Initial report was due (year)	1 st Periodic report would have been due (Year)	Initial report was submitted (year)	1 st Periodic report submitted
Algeria	2005	2008	2014	Not yet
Burkina Faso	2003	2006	2006	2011
Burundi	2006	2009	2017	Not yet
Cameroon	2003	2006	2009	2015
Ethiopia	2004	2007	2014	Not yet
Ghana	2007	2010	2014	Not yet
Mozambique	2003	2006	2014	Not yet
Namibia	2006	2009	2014	Not yet
Sudan	2010	2013	2010	Not yet
Tanzania	2005	2008	2006	2015 – Consolidated 2 nd , 3 rd and 4 th Periodic reports

Tanzania’s report shows that in preparing the reports, the State party consulted stakeholders through workshops, seminars and meetings.⁴⁰

39 Ministry of Justice ‘National Plan of Action for The Promotion and Protection of Human Rights in Cameroon (2015-2019)2015’ 100-101.

40 Initial Tanzania Report to the African Committee of Experts on the African Charter on the Rights and Welfare of the Child, 3.

5.4 Implementation of concluding observations

The ACERWC issued Concluding Observations on eight out of the ten countries under consideration. There is no data of such an issuance to Sudan and Algeria. The dissemination and the translation of the Concluding Observations into local or minority languages seem to be a challenge. Of the ten countries, only in Mozambique and, to a limited extent, in Namibia and Ethiopia are the Concluding Observations disseminated to the general public. With regards to translation into local or minority languages, no efforts have been made in any of the ten countries. Ethiopia, however, has made minimal but unsatisfactory strides by translating the ACERWC's Concluding Observations and recommendations therein into her national language.

Key to implementation of the concluding observation is child involvement and participation. Of the ten countries, only in Ethiopia and Mozambique are children involved in the implementation of the recommendations made by the ACERWC. In Ethiopia, this is done through the children parliaments established at both federal and regional level. In Mozambique, child participation is done through consultations on the process of implementation of the treaty.

While the government, through its mechanisms, is the primary duty-bearer in the implementation of the Concluding Observations and the recommendations made by the ACERWC, CSOs and non-governmental institutions are also very instrumental regarding the same. Further, it goes without saying that it is an indispensable duty incumbent upon States to strategize and devise clear plans of action on how the State would implement the recommendations. However, contrary to this expectation, only Ethiopia and Cameroon have an elaborate plan regarding the implementation of the Concluding Observations.

The nature of the Concluding Observation remarks, the role of government institutions and CSOs, the plans put in place by the countries to implement the same will be considered in turn in the succeeding sections.

6 Algeria

No Concluding Observation has been issued to the country by the ACERWC. However, in the circumstance where such a report is issued, the sub-directorate of bilateral and multilateral treaties, international law and international judicial institutions of the Ministry of Foreign Affairs is responsible for monitoring the implementation of the

concluding observations.⁴¹ In addition, CSOs play an oversight role in the implementation of the Concluding Observations. Most notably is the Algerian Civil Society which often relies on the observations of international bodies to follow up and write reports on their implementation by the government. The most recurring example is the report submitted by the Algerian Civil Society Coalition for the Universal Periodic Review of Algeria where it was able to denounce discrimination and violence against migrants (especially against women and children).

7 Burkina Faso

The ACERWC made extensive recommendations to Burkina Faso regarding the general application measures, the definition of the child, general principles of the ACRWC, civil rights and freedoms, and on special protection measures.

Regarding the general applications measures, the ACERWC recommended the State to implement laws and policies and carry out training and capacity building of the executive arm of the Government and increase the budget allocated to the institutions in charge of the issue of children's rights. Further, the State has to intensify awareness-raising actions on the rights of the child. In addition, it was recommended that the State should ensure accessibility of the Charter to children with disabilities.

With respect to the definition of the child, the State has been advised to harmonise the definition of the child in the Persons and Family Code with the definition of a child as espoused under Article 2 of the Charter.

On the general principles of the Charter, the ACERWC made recommendations on non-discrimination, the best interest of the child, right to life, survival and development and child participation. On non-discrimination, it was recommended to the State to accelerate the development and implementation of activities and strategies to eradicate the phenomenon of gender-based discrimination against girls in access to education, and develop and implement action programs that eliminate the *de facto* discrimination faced by children with disabilities. On the best interest of the child, the State has to ensure that the principle of the best interests of the child is fully adopted in all legal provisions. On the right to life, survival and development, the Committee made a number of

41 Presidential Decree n ° 19-244 of 11 Moharram 1441 corresponding to September 11, 2019 on the organization of the central administration of the Ministry of Foreign Affairs. https://www.mfdgi.gov.dz/images/pdf/textes_reglementaires/F2019056.pdf

recommendations regarding road accidents and what measures the State has to take in order to reduce road accidents.

With respect to child participation, the Committee first recommended that the state should undertake a broad awareness-raising campaign on the importance of children's participation and recommended that the State Party take the necessary measures to ensure respect for the child's view in schools, families, and social and protective institutions. In addition to that, the Committee further recommended to the state to intensify its efforts towards decentralising the children's parliament.

On the civil rights and freedoms of children the recommendations made pertained to the right to a name, nationality, and registration at birth and the protection against abuse and ill-treatment. On the right to a name, nationality, and registration at birth, recommendations were made on the specific measures the state is to take in order to increase the rate of birth registration. Further, it was recommended to the state to authorize the late registration of a birth without subjecting it to judicial proceedings. On protection against abuse and ill-treatment, the Committee, among other things, recommended to the state to ensure the entry into force of the National Observatory for the Prevention of Torture and other similar practices by promulgating the necessary implementing legislation, improve the efficiency of juvenile courts in each district court, prohibit corporal punishment in all settings, allocate adequate resources for the effective implementation of adopted laws as well as action plans to address the abuse, mistreatment and torture faced by children.

The Committee further made recommendations on family environment and alternative protection. The recommendations relate to separation from parents, alternative protection, adoption, and health and medical services. On separation from parents, the state is to reduce the number of children deprived of their family environment. On alternative protection, the state is to establish a national strategy of alternative protection, which allows the Government to meet the needs of children deprived of their family environment. On health and medical services, the state has to firstly collect data on the budgets of ministries working on child health and include it in its next periodic report. Secondly, the state is to work on reducing the high rate of infant mortality. Thirdly, ensure physical accessibility to health centres for children with disabilities, and finally, train health workers in a way that they can meet the specific needs of children with disabilities.

The Committee made recommendation relating to education, leisure and cultural activities. On education, the state is to, among other things,

reinforce the compulsory nature of education and take urgent measures to ensure free basic education for all in the remaining 215 municipalities. Second, equip existing schools with textbooks and other relevant school materials to ensure the quality of education. On leisure, recreational and cultural activities, the state is to adopt a cultural, recreational and leisure policy to be applied throughout its territory for children. Additionally, it was recommended that the state organize cultural festivals for children to allow each child to discover the cultural richness of Burkina Faso.

The Committee's final recommendations related to special protection measures with respect to child labour, children in conflict with the law, children whose guardians are imprisoned, children experiencing drug abuse, child trafficking, sexual exploitation and sexual abuse, and harmful social and cultural practices. Most notably on child labour, the state is to develop a strategy to strengthen the coordination of the interventions of different actors of child protection in the fight against the worst forms of child labour. On children in conflict with the law, the state is to create juvenile courts in all provinces of Burkina Faso. On children whose guardians are imprisoned, the state is to ensure that the children of imprisoned parents are protected and that they receive appropriate services. On children experiencing drug abuse, the state is to strengthen the activities of the Police Anti-Drug Unit (CAD) by providing the resources (human, financial and logistical) necessary for its full functioning and to set up specialized centres for detoxification and rehabilitation. On child trafficking, the state is to ensure the application of applicable laws by investigating, identifying and prosecuting the perpetrators of child trafficking. On sexual exploitation and sexual abuse, the state is to develop and implement a specific national action plan or program to combat sexual exploitation and sexual abuse faced by children; ensuring the application of the legislation in force by allocating a substantial budget and ensuring the training of the police and judicial personnel as well as any other actors confronted with this scourge.

On harmful social and cultural practices, the state is to continue sensitizing the community and religious leaders on the issue of zero tolerance for FGM; to ensure the strict enforcement of sanctions by investigating and prosecuting individuals who promote and perform female genital mutilation.

In Burkina Faso, the National Council for Children⁴² oversees the follow-up with the implementation of the concluding observations. It can also be

42 DECRET N°2014-092/PRES/PM/MASSN/MEF/MATS du 20 février 2014. portant création, attributions, composition et fonctionnement d'un Conseil National

observed that the implementation of most of the concluding observations require political will. Others such as to provide children's parliament for autonomous and appropriate infrastructures require financial resources. It is the government's plan that concluding observations be implemented before the next presentation session. To this end, the national coordinating body held a workshop with all the stakeholders during which each took note of recommendations falling within their jurisdiction.

8 Burundi

The first concluding observations were adopted after the consideration of the initial report in 2018. Burundi indicated that the follow-up on ACERWC's recommendations 'will be carried out by a Standing Committee for drafting initial and periodic reports with the coordination of the Department of Treaty Bodies'.⁴³ Further, the Department of Children and Families (within the Ministry of Human Rights, Social Affairs and Gender) also oversees the implementation of concluding observations. It should also be highlighted that the Ministry of Human Rights, Social Affairs and Gender has been 'designated as a key ministry in the promotion and protection of children'.⁴⁴ Thus, the Standing Committee, the Department of Children and Families, together with the Ministry of Human Rights, Social Affairs and Gender are all obligated to drill the implementation of the concluding observations made in Burundi.

The implementation of the concluding observations requires resources and political will. However, no specific plans have been devised to implement the ACERWC's concluding observations. It is the case that the implementation will be carried out according to various plans of ministerial departments and units dealing with children's issues. Added to that, some CSOs indicated that they will disseminate the concluding observations and advocate for their implementation once they become public.⁴⁵

9 Cameroon

The most recent concluding observations regarding the situation of children's rights in Cameroon were released in January 2017. The

pour l'Enfance. JO N°14 DU 03Avril 2014.

43 Initial report of Burundi to ACERWC 12 <https://acerwc.africa/wp-content/uploads/2018/04/EN-Rapport-du-Burundi-sur-la-mise-en-oeuvre-de-la-Charte-Africaine-des-....pdf> (accessed 27 August 2020).

44 Initial report of Burundi to ACERWC (n 42 above) 10.

45 Facebook interview with an employee of a child rights CSO.

Committee made numerous recommendations relating to the general application, and the definition of a child.

On the general application, the Committee recommended that Cameroon should accelerate the development of the National Child Protection Policy and ensure its effective implementation.⁴⁶ On the definition of a child, it was recommended that Cameroon should speed up measures to harmonize its domestic legislation fully with the Charter regarding the definition of the child and urges the State party to raise the legal age of marriage of girls to 18 years so as to be equal with that of boys.⁴⁷

Recommendations were also made on the general principles of the Charter. These include non-discrimination, and on the best interests of the child. The Committee further made recommendation pertaining to civil rights and freedoms. Particularly, the Committee's recommendations relate to the child's right to registration at birth and the protection against abuse and ill-treatment. Notably on birth registration, the state has to strengthen and operationalize its National Civil Status Bureau (BUNEC).⁴⁸ On protection against ill-treatment, the state has to put in place all necessary measures to prevent acts of torture and inhuman or degrading treatment or punishment, the creation of accessible toll-free number throughout Cameroon.⁴⁹ Further, it was recommended that the state should consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁵⁰

Further, recommendations were made relating to family environment and alternative protection. On this, the state has to ratify and implement the Hague Convention and reinforce the system on the supervision of social-oriented public and private activities for a long-term child placement;⁵¹ and also, among other things, increase its budget allocation for health

46 ACRWC Concluding Recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the Republic of Cameroon's Report on the Status of Implementation of the African Charter on the Rights and Welfare of the Child Para 7 https://acerwc.africa/wpcontent/uploads/2018/14/Concluding_%20observations_%20Cameroon_ACERWC-2016.pdf (accessed 6 august 2020) .

47 ACRWC Concluding Recommendations by ACERWC (n 46 above) para 8.

48 ACRWC Concluding Recommendations by ACERWC (n 46 above) para 12.

49 ACRWC Concluding Recommendations by ACERWC (n 46 above) para 16.

50 ACRWC Concluding Recommendations by ACERWC (n 46 above) para 16.

51 ACRWC Concluding Recommendations by ACERWC (n 46 above) para 18.

care services, draw up a strategic plan to fight against viral hepatitis, and provide free treatment for hepatitis B and C.⁵²

On education, leisure and cultural activities, it has been recommended to the state to revise the sectorial strategy in education in order to insert education in urgent situations, and continue recruiting more teachers to improve the student/teacher ratio and ensure full implementation of universal free primary education.⁵³ Further, it was recommended to the state that it is necessary for the state to draw up a cultural policy to be applied throughout its territory.⁵⁴

On special protection, the Committee also made recommendations regarding child labour, children in detention and refugee children. On child labour, the Committee recommended that the state should implement a national plan of action to fight against the worst forms of child labour.⁵⁵ On refugee children, the state has to reinforce the Law on special measures for the protection of the child refugees.⁵⁶

The task of implementing the concluding observation is shouldered by an inter-ministerial committee, which is in charge of monitoring and implementing the recommendations and/or decisions on international and regional human rights promotion and protection mechanisms.⁵⁷ CSOs also play a pivotal role in the implementation of the concluding observations. CSOs pick out certain issues from the concluding observations and work on them according to their area of competence. For example, most of the work of child rights organizations such as Plan International revolve around implementing the Charter.⁵⁸ Also, CSOs are largely consulted by the government when deciding on measures of implementation of the ACRWC.⁵⁹

52 ACRWC Concluding Recommendations by ACERWC (n 46 above) para 19.

53 ACRWC Concluding Recommendations by ACERWC (n 46 above) para 20.

54 ACRWC Concluding Recommendations by ACERWC (n 46 above) para 21.

55 ACRWC Concluding Recommendations by ACERWC (n 46 above) para 23.

56 ACRWC Concluding Recommendations by ACERWC (n 46 above) para 26.

57 Order No. 81/CAB/PM of 15 April 2011 lay down an inter-ministerial committee for the monitoring and implementation of recommendations and/or decisions on international and regional Human Rights promotion and protection mechanisms.

58 Interview with Kankulu John, Center Region (Biteng) Programme Unit Plan International, Yaounde, 25 August 2020.

59 Interview with Etah Obi Martha, Center Region (Biteng) Programme Unit Plan International, Yaounde, 25 August 2020.

10 Ethiopia

The most recent concluding observations by ACERWC on Ethiopia were issued during the First Extraordinary Session of the ACERWC held in October 2014. Various organs of the government, National Human Rights Institutions (NHRI), and civil societies are particularly obligated for the full implementation of the concluding observations. At the governmental level, the key government organ responsible for the implementation of the concluding observations is the Ministry of Women Children and Youth (MoWCY). However, other ministries including the Ministry of Labour and Social Affairs (MOLSA), Ministry of Education (MoE), Ministry of Health, (MoH) and the Federal Attorney General do also collaborate with the MoWCY in the implementation process.

National Human Rights Institutions (NHRIs), in particular the EHRC through its Children's rights department ensures that human rights including rights and freedoms of children provided under the Ethiopian Constitution are respected by all citizens, organs of state, political organizations and other associations as well as by their respective officials. It also ensures that laws, regulations and directives as well as government decisions and orders do not contravene the human rights of citizens guaranteed by the Constitution; in doing so, it makes recommendations for the revision of existing laws, enactment of new laws and formulation of policies to be child friendly. Further, the EHRC undertake investigations upon complaint or its own initiation in respect of human rights violations; and forward its opinion on human rights reports to be submitted to international organs including the ACERWC.⁶⁰

Likewise, the institution of the Ombudsman is also mandated to follow up on the implementation of concluding observations by virtue of its establishment Proclamation no 211/2000. Article 6 of the Proclamation mandates the institution to make recommendations for the revision of existing laws, practices or directives and for the enactment of new law and formulation of polices. The objectives of the aforesaid provision is, among others, to ensure a child friendly governance system and also that directives issued and decisions given by the executive organs and the practices thereof do not contravene the constitutional rights of citizens.

In addition, CSOs are also instrumental in implementing the concluding observations. Firstly, CSOs are currently engaged in facilitating different national consultative workshops aimed at ensuring child friendly

60 Human Rights Commission Establishment (Proclamation No. 210/2000), Art.6.

policy making. Secondly, they undertake dialogues with government to timely consider issues during policy developments, capacity building, child responsive budgeting, accountability mechanisms and others. CSOs also play a key role in child rights governance advocacy and in disseminating the policy document to both national and regional levels.

The implementation of the concluding observations demands both resources and political will from the government. For instance, one of the recommendations was to develop a social protection policy for children who are abandoned or cannot be supported by parents in order to ensure that children who are under parental or family support receive assistance from the State.⁶¹ The other is the review of the previous Charities and Societies law,⁶² which primarily required political will from the Government of Ethiopia to open/ expand the democratic space. Furthermore, a recommendation was given to have the old CSO law revised. Granted, this requires political will from the government. Whereas a recommendation to ensure accessibility of well-equipped care and education services for children in the rural areas⁶³ will require resources beyond political will. Likewise, the Committee has also urged the Government to take necessary measures to combat harmful traditional practices that are prevalent in some parts of the country,⁶⁴ which primarily requires political will of the federal and regional governments.

With a view to implementing the concluding observations, the MoWCY has currently drafted a ten years development perspective plan, which includes key priorities for children. Key objectives of the development plan include enhancing the overall development of children, child protection with a particular focus on vulnerable groups of children including children with disabilities, child participation and capacity building of government institutions working on children's rights.⁶⁵

11 Ghana

The most recent concluding observations were handed down by the ACERWC in December 2016.⁶⁶ The ACERWC made various

61 ACERWC Concluding Observations on Ethiopia (2013) General Measures of Implementation, Para7.

62 As above para 9.

63 As above, General Principles para 13.

64 As above Para 38.

65 Ministry of Women, Youth and Children Affairs, Draft Ten Years Development Plan (2020).

66 ACERWC 'Concluding recommendations by the African Committee of Experts

recommendations pertaining to the general measures of implementation, definition of a child, non-discrimination, best interests of the child, development and survival, name, nationality, identity and registration of birth, protection against abuse and torture, freedom of expression, protection of privacy, family environment and alternative care, education, leisure and cultural activities, children with disabilities, child labour, juvenile justice, protection against harmful social and cultural practices, sexual exploitation, child sale and trafficking, children of imprisoned mothers, and responsibilities of the child. Most of the recommendations made require resource allocation in order to be implemented.

The monitoring and implementation of the Committee's recommendations in Ghana lies with the Department of Children within the Ministry of Gender, Children and Social Protection. In addition to that, civil society organisations play a watchdog role of following up on implementation through advocacy and in some instances providing direct services to children. Although there are no formal government plans on implementation, there is anecdotal evidence that some of the recent policies and programmes of government coincided with the concluding observations, including the implementation of free education at the secondary school level.

12 Mozambique

No data was found on Mozambique's most recent concluding observations. However, it is on record that the country did submit its Initial Report (2003 – 2014).⁶⁷ The government of Mozambique, through its delegation led by H.E Manuel Goncalves, Ambassador of the Republic of Mozambique to Ethiopia, Permanent Representative to the AU and UNECA, has the responsibility of implementing the concluding observations. Added to that, civil society organisations also support the implementation of concluding observations and supporting data collections efforts. This is done through capacity building activities for children in journalism. For example, the 'Rede de Crianças', a network that brings together organizations working in the area of children, trained 22 children in journalism to produce a newsletter.

on the Rights and Welfare of the Child (ACERWC) on the Republic of Ghana initial report on the status of implementation of the African Charter on the Rights and Welfare of the Child' (2016), available at https://acerwc.africa/wp-content/uploads/2018/14/Concluding_observation%20Ghana.pdf (accessed 4 November 2020).

67 Link to the concluding observations: https://acerwc.africa/wp-content/uploads/2018/14/CO_Mozambique_Eng.pdf

13 Namibia

The ACERWC considered Namibia's initial State report during its 25th Ordinary session, held at its seat in Addis Ababa, Ethiopia between 20 and 24 April 2015.⁶⁸ Following the consideration of this report, the ACERWC adopted concluding observations and recommendations to Namibia's State report, appraising progress made as well as key areas of concern pertaining to the implementation of the ACRWC.⁶⁹ Although singling the progress interventions made to advance the rights of children in Namibia, especially on a legislative and policy level, the ACERWC has also raised several shortcomings, predominantly arising out of a lack of implementation. These include, *inter alia*, unduly long process of applying for children's grants,⁷⁰ lack of comprehensive data collection system and disaggregated statistics data on children, generally;⁷¹ the existence of discrimination in intestate succession under customary law,⁷² the need to establish and cement child friendly courts and procedures for child victims and witnesses as well as confidential reporting mechanisms for children who are victims of abuse and violence,⁷³ the continued existence of school development funds which hampers free (primary) education,⁷⁴ prevention of statelessness for refugee and asylum seeking children,⁷⁵ low minimum age of criminal responsibility,⁷⁶ and increased sale, trafficking and abduction of children in Namibia.⁷⁷

The responsibility to follow up on concluding observations generally rests with the Inter-Ministerial Technical Committee on Human Rights and International Humanitarian Law. However, in practice, the line ministry is tasked to integrate and implement as far as possible the

68 ACERWC Concluding Observations and Recommendations by the African Committee of Experts on the Rights and Welfare of the Child on the Republic of Namibia Report on the Status of Implementation of the African Charter on the Rights and Welfare of the Child (2015) https://reporting.acerwc.africa/uploads/3feda0153eee1380b496298450dc5a74324eb8c1/staterep_ort/Namibia_CO_with_NV.pdf (Accessed on 2 September 2020).

69 ACERWC Concluding Observations and Recommendations (n 68 above) 1-12.

70 ACERWC Concluding Observations and Recommendations (n 68 above) 2.

71 ACERWC Concluding Observations and Recommendations (n 68 above) 3.

72 ACERWC Concluding Observations and Recommendations (n 68 above) 4.

73 ACERWC Concluding Observations and Recommendations (n 68 above) 6.

74 ACERWC Concluding Observations and Recommendations (n 68 above) 10.

75 ACERWC Concluding Observations and Recommendations (n 74 above).

76 ACERWC Concluding Observations and Recommendations (n 74 above).

77 ACERWC Concluding Observations and Recommendations (n 68 above) 11.

observations and recommendations made by treaty bodies. This is also the case with the concluding observations of the ACERWC. The Ministry of Gender Equality, Poverty Eradication and Social Welfare as the line ministry responsible for children has the primary mandate to follow-up and implement the concluding observations made by the ACERWC.

The implementation of the concluding observations made to Namibia's State report requires both political will and resources to materialise. While resources may not always be adequate given the economic depression, the country has been facing in recent years, there are strong indications of political commitment in realising children's rights generally. In the context of the above highlighted challenges, for instance, the government has passed several laws to circumvent some of these challenges. For instance, more recently in 2020, the Basic Education Act 3 of 2020 was promulgated to promote and regulate free and compulsory basic education,⁷⁸ eliminating payment of any fees to school development funds. Equally of note, with the adoption of the Child Care and Protection Act 3 of 2015, a reformed system for the payment of grants is introduced, which address the current unduly prolonged process of children's care grant applications.⁷⁹ The Act also aims to address other concerns raised by the ACERWC such as increase trafficking in children,⁸⁰ provision of a confidential and child friendly juvenile justice system and process.⁸¹ The concrete implementation of these relatively progressive laws has the desired potential of enhancing the status and rights of children in Namibia and should therefore be given priority both from a political and economic standpoint.

There is currently no specific implementation plan of action in place to implement the concluding observations and suggestions made by the ACERWC, except that the line ministry, currently the Ministry of Gender Equality, Poverty Eradication and Social Welfare, under its directorate of Child Care and Protection Services is mandated to mainstream the concluding observations into its strategic plans in subsequent financial years and monitor the implementation of progress made on the recommendations made in the concluding observations, as well as the overall domestication and implementation of the ACRWC.

78 See Basic Education Act 3 of 2020 sec 67 <http://www.lac.org.na/laws/2020/7257.pdf> (Accessed on 2 September 2020).

79 The Child Care and Protection Act 23 of 2015 secs 240-248.

80 The Child Care and Protection Act 23 of 2015 sec 202.

81 The Child Care and Protection Act 23 of 2015 secs 38-62.

14 Tanzania

The recent concluding observations are those of July 2017 on the combined 2nd, 3rd and 4th periodic report of Tanzania.⁸² In these concluding observations, the ACERWC commended Tanzania's efforts to realize children's rights but also highlighted areas of concern on the basis of which the Committee made a number of recommendations for improving the human rights situation of children in Tanzania. The positive steps recognized by the Committee included: inclusion of children's rights in the Draft Constitution of 2014, enactment of the Law of the Child Act, reduction of under-five mortality rate, reform of the juvenile justice system, establishment of Junior Councils in most parts of the country, improvements in birth registration, and provision of fee-free primary and secondary education.

The main areas of concern were: uncoordinated structures in Mainland Tanzania and Tanzania Zanzibar on implementation of children's rights, existence of conflicting laws on the definition of the child especially in the context of marriage, existence of laws which allow corporal punishment, attacks on children with albinism, limited attention to children with disabilities especially at the early stages, imprisonment of children with their incarcerated caregivers, widespread child sexual abuse, prevalence of child labor, and harmful traditional practices including FGM. To this end, the Committee made a number of recommendations for addressing the aforementioned areas including adoption of the Draft Constitution of 2014, legal prohibition of child marriages, increasing the budget allocated for child matters, harmonize laws on the definition of a child, provide financial support to Children's Councils, improve access to health services especially in rural areas, improve school infrastructures, and enhance efforts to combat child sexual abuse and harmful traditional practices.

As regards to implementation of the concluding observations and the follow-up on the same, the National Human Rights Action Plan does not specifically state who is specifically mandated to take that task. However, it obligates the following organs to monitor implementation of international human rights treaties: The Ministry of Foreign Affairs and International Co-operation, The Attorney General's Chambers, The National Assembly and its various Standing Committees, The Commission for Human Rights and Good Governance, and Treaty Reporting Entities. In addition, CSOs also assist in the implementation of the recommendations. The National

82 <https://acerwc.africa/wp-content/uploads/2019/07/Tanzania%20CO.pdf> (accessed September 2020).

Human Rights Action Plan provides that its implementation involves key local actors including CSOs. Moreover, the Plan acknowledges the critical role of CSOs in supporting the country to implement and monitor human rights through building local capacity and empowering communities, participating in monitoring and evaluation at national and community level, mobilizing and enhancing community participation, and mobilizing community resources towards achieving the objectives of the Plan.

15 Awareness of treaty

To a satisfactory extent, the ACWRC is generally known to government officials who deal with child rights and the general public in all countries with exception of Burundi and Tanzania where the treaty is only known by government officials. In all 10 countries, there is an indication of utilisation of the treaty provisions by NGOs in various activities, and the incorporation of the same in various university education course curricula, with the exception of Namibia and Sudan.

Various sensitisation mechanisms have been employed to raise awareness of the treaty and the provisions thereof to government officials as well as the public at large in various countries under study. Radio and/or Television programs have been very instrumental in countries like Cameroon, Mozambique and Namibia. Other countries utilised the print media to disseminate information on the ACRWC. For instance, in Algeria the ACRWC was published in an Official journal on July 09, 2003⁸³ in Arabic and French languages providing access to government officials, CSOs and citizens alike. A children's newspaper called "Voz da Criança" is used in Mozambique while in Namibia, the Namibian newspaper produces a weekly eight (8) paged supplement called the "Youth Paper". Other countries like Sudan and Namibia make use of the internet. For example, in Namibia, the ACRWC is widely made available on the various websites of government offices and agencies, most notably the Ministry of Justice, Ministry of International Relations and Cooperation, Office of the Ombudsman. Remarkably, the ACRWC is attached as an addendum to the Child Care and Protection Act 3 of 2015 and is therefore available on every occasion the Act is downloaded. Similarly, Sudan has made provisions of the ACRWC available to the citizens through publication in the NCCW- general secretariat website.⁸⁴

83 <https://www.joradp.dz/FTP/JO-ARABE/2003/A2003041.pdf?znjo=41>.

84 The National Council for Child Welfare 'international treaties' http://www.nccw.gov.sd/ver_content.php?ver=24 (accessed 25 August 2020).

Generally, there is a general awareness and recognisance of the treaty by NGOs, Independent human rights organisations and Higher Education Institutions. Indicators show extensive use and application of the ACRWC by NGOs in their advocacy activities in all countries with the exception of Burkina Faso. Further, with the exception of Burkina Faso, Namibia and Sudan, independent human rights institutions utilise the treaty in the fulfilment of their mandate in all countries. University institutions incorporated the provisions of the treaty in their curricula in all countries except Namibia and Sudan. For instance, in Algeria the treaty has been utilised by NGOs like the CIDDEF,⁸⁵ NADA, and the Voice of the Child in their advocacy activities, and the National Consultative Commission for the Promotion and Protection of Human Rights “CNCPPDH” in its process of drafting reports.

In Ethiopia, the Charter’s provisions have been used by NGOs such as Save the Children, Plan International and ACPF in their workshops. Further, Annual reports of NGOs also use the Charter’s provisions when preparing their knowledge products and other relevant materials.⁸⁶ In addition, the Ombudsman for Children Institution has conducted 37 trainings for members of children’s parliament on the ACRWC.⁸⁷

In Namibia, use and reference to the ACRWC by NGOs and human rights institutions is minimal. However, the Legal Assistance Centre (LAC), the country’s foremost public interest litigation centre often refers to and uses the instruments from the African human rights system, including the ACRWC.

In Sudan, provisions relating to children nationality has been used in campaigns by organisations such as AL-Manar organisation. Additionally, Mutawinat Benevolent Company has used the provision of the Charter in 32 training workshops related to juvenile justice system as well as the issuance of pamphlets providing for the African Children’s Charter. The treaty has featured in the work of Legal and Human Rights Centre in research, campaigns, workshops, advocacy, training materials and in press releases.

85 CIDDEF “Day of reflection on the rights of the African child” Revue N ° 36 January / March 2015 <https://www.ciddef-dz.com/pages-index/revue35.php>.

86 World Vision Ethiopia Report, *Synthesis Report*, Child Protection assessment design, analysis and planning tool & the African Child Policy Forum knowledge resources ‘Spotlighting the Invisible: The Status of Child Justice in Africa’ (2018).

87 As above 26.

The ACRWC is specifically incorporated in law programs or human rights courses in university institutions of countries like Burkina Faso, Algeria, Mozambique and Ethiopia. For instance, in Burkina Faso, University Joseph KI-ZERBO has a Master programme in Child rights,⁸⁸ in which ACRWC provisions are taught.

Although the ACRWC is not specifically incorporated in university programs in countries like Cameroon, Ghana, Sudan, Tanzania and Burundi, the treaty features predominantly in human rights courses offered in higher education institutions. For instance, In Cameroon, individual lecturers in teaching children's rights within the broader framework of vulnerable groups in human rights refer to it in the human rights course in the Faculty of Laws of University of Yaoundé 2, Douala and Bamenda. In Tanzania, the curriculum of the Law School of Tanzania includes a human rights law course.⁸⁹ Further, the curricula of certificate and diploma law programmes at various universities in Mozambique also include human rights and/or law of the child in which the treaty is used.⁹⁰ In Ghana, in all law faculties in public universities, international human rights law is taught as an elective subject.

Table 6: *Showing the extent of awareness and use of treaty*

Country	Are the provisions of the treaty known to government officials?	Has the government made ACRWC available to citizens?	Have the provisions of the treaty been used by NGOs?	Do INHRI use treaty provisions in fulfilling their mandate?	Have the provisions of the treaty been incorporated into curricula at university level?
Algeria	Yes	Yes	yes	yes	yes
Burkina Faso	yes	yes	No	No	yes
Cameroon	yes	No	Yes	Limited	yes
Ethiopia	yes	yes	yes	yes	yes
Ghana	Limited Extent	N/A	Yes	Yes	Yes
Mozambique	yes	yes	yes	yes	yes

88 <https://archive.crin.org/fr/biblioth%C3%A8que/%C3%A9v%C3%A9nements/master-en-protection-et-droits-de-lenfant.html>.

89 The Law School of Tanzania (Curriculum) By-Laws, 2011, 103, file:///C:/Users/Lenovo/Downloads/Curriculum%20By-Laws%202011.pdf (accessed October2020).

90 Examples: Mwenge Catholic University, University of Dar es Salaam, Moshi Co-operativeUniversity and Mzumbe University.

Namibia	yes	yes	Limited	NA	No
Sudan	yes	yes	Yes	No	NA
Tanzania	yes	No	Yes	Yes	Yes
Burundi	yes	No	Yes	No	Yes

15.1 Invoking treaty provisions in court

In theory, treaty provisions can be invoked directly before domestic courts in monist states such as Namibia, Algeria, Mozambique, Burkina Faso and Cameroon. In practice, however, there is no reported court decision in Namibia, Algeria, Sudan, where the provisions of the ACRWC have been invoked. In Tanzania, treaty provisions may not be directly invoked in the courts. Courts have nevertheless referred to state obligations under human rights treaties or used the treaties as interpretive guides.⁹¹ If there was a conflict between provisions of the ACRWC and domestic legislation, domestic legislation would prevail. However, as in the case of *Rebeca Gyumi*, human rights provisions could be used to challenge domestic legislation.

In Cameroon, the ACRWC can be invoked in national courts as in the cases of *Adeline Mangha Ndipisiri v Grace Manka Nkamamyang*: Mezam High Court, 2013⁹² on child custody; *Advence Fuh (Applicant) v Miranda Ngiekem Azise*: Mezam High Court, 2014⁹³ on custody, divorce / separation, maintenance; *Abong Emmanuel Fusi & Tangang Monica Akwano v The People of Cameroon & Tubah Council*: Mezam High Court, 2011⁹⁴ on birth registration.

91 See *Attorney General v Rebeca Z. Gyumi* Civil Appeal No. 204 of 2017; *Rebeca G. Gyumi v Attorney General* Miscellaneous Civil Cause No. 5 of 2016.

92 In the High Court of Mezam Division, Holden At Bamenda. Suit No CMB/350M/2013: Between *Adeline Mangha Ndipisiri v Grace Manka Nkamamyang* Cameroon-Case-High_Court-Adeline_Mangha_Ndipisiri-No_HCMB_350M_2013-2013-en(accessed 21 august 2020).

93 In the High Court of Mezam Division; Holden at Bamenda. Suit No. HCMB/06MC/2013: Between *Advence Fuh (Applicant) v Miranda Ngiekem Azise (Respondent)* Cameroon-Case-High_Court-Advence_Fuh-No_HCB_06MC_2013-2014-en (accessed 21 august 2020).

94 In the High Court of Mezam division; Holden at Bamenda. Suit No. HCB/152M/2011: Between *Abong Emmanuel Fusi & Tangang Monica (Petitioners) Akwano v The People of Cameroon & Tubah Council (Respondents)* Cameroon-Case-High_Court-Abong_Emmanuel_Fusi_&_Anor-No_HCB_152M_2011-2011-en(accessed 21 august 2020).

15.2 Resource allocation

In Algeria, Burkina Faso, Cameroon, Ghana, Sudan and Tanzania, there is no visible or special budget allocated for children rights protection. The Budget is generally allocated to various government ministries and the children are simply beneficiaries of various programs run under the said ministries. In Ethiopia, Mozambique and Namibia, there is visible budget allocation for child rights protection. Specifically in Namibia, of the total amount of N\$5 255 121 262.00 (Five Billion, Two Hundred and Fifty-Five Million One Hundred and Twenty-One Thousand Two Hundred and Sixty-Two Namibia Dollars) allocated to the Ministry of Gender Equality, Poverty Eradication and Social Welfare for the 2020/21 Financial Year, a total amount of N\$22 053 073.00 (Twenty-Two Million Fifty-Three Thousand and Seventy- Three Namibia Dollars) is apportioned to child care and protection services.⁹⁵

As regards to child participation in the budget allocations, only in Mozambique and Ethiopia children do participate in decision making process on the budget through locally established children parliaments.

15.3 National coordination and strategy for implementing the ACRWC

In Cameroon, an inter-ministerial committee created under Order No. 81/CAB/PM of 15 April 2011 monitors the implementation of decisions and recommendations made to the government by international and regional human rights treaty bodies. With regards to the coordination and institutional framework for child protection, about 20 ministerial departments are involved.⁹⁶ The Cameroon National Commission for Human Rights and Freedom (NCHRF) has not played much of a role in the protection of the rights of the child, though it has, at state level, engaged some ministries. There is no other special institution in Cameroon that deals with child rights.

95 D Sioka *Financial Year 2020/2021 budget motivation Speech Vote 36 for the Ministry of Gender Equality, Poverty Eradication and Social Welfare* (2020) 9-10. <http://www.mgecw.gov.na/documents/560522/784752/MGEPESW+National+Budget+Motivation+2020-2021.pdf/aa9faf31-0ef4-4bd7-931a-d3558b293f22> (accessed on 1 September 2020). This budgetallocation represents the merged functions of gender equality, poverty eradication and social welfare, which includes disability affairs and marginalized communities.

96 Document de Politique National de Protection de l'Enfant (2017-2026) Daft January (2017) 41.

Cameroon and Ghana enacted new comprehensive laws on children. Cameroon overhauled its criminal justice system by harmonising the administration of justice in general and extensively covered the administration of juvenile justice.⁹⁷ In Ghana, the Department of Children, within the Ministry of Gender, Children and Social Protection in the national entity responsible for implementing programmes concerning the rights of children in Ghana.⁹⁸ Added to that, the Commission on Human Rights and Administrative Justice, which functions as the national human rights institution, has a Department of Women and Children which engages in research, advocacy, and litigation of children's rights issues.⁹⁹

In countries like Algeria, Burkina Faso, Burundi and Sudan, an intersectoral and inter-ministerial approach has been adopted. For example, in Algeria various ministries and sectors coordinate the implementation of rights under the Charter, of which the National Organ for the Protection and Promotion of Children (ONPPE) is the main executor.¹⁰⁰ In addition, the National Consultative Commission for the Promotion and Protection of Human Rights plays a watchdog role on the government compliance with the Charter. Likewise, Burkina Faso has established the National Council for Children (Conseil National pour l'Enfance: CNE)¹⁰¹ whose mandate is to ensure the coordination, monitoring and evaluation of all plans, policies and strategies for the protection and promotion of children's rights as well as reporting on the implementation of ratified treaties and conventions. Burundi has no dedicated ministry for the children's rights issues. However, various ministries have departments or units dealing with issues affecting children.¹⁰²

In Sudan, the National Council for Child Welfare (NCCW) is the main body responsible for the implementation of international and

97 See Book IV, Part XV of the Criminal Procedure Code. Entitled *Prosecution and Trial of Juveniles*: Chapter 1 deals with Institution of Prosecution, Chapter 2 deals with Temporary Detention of Juveniles; Chapter 3 deals with Composition of the Court of First Instance Sitting in Cases of Juvenile Delinquency; Chapter 4 deals with Competence ...; Chapter XIII deals with the costs arising from measures for the protection of juveniles.

98 Ministry of Gender, Children and Social Protection 'Departments' available at <https://www.mogcsp.gov.gh/about/departments/> (accessed 2 November 2020).

99 A Namanan 'The impact of the Maputo Protocol in Ghana' (2020), on file with author.

100 Permanent Coordination Committee National Authority <http://www.onppe.dz/index.php/ar/2016-12-19-09-44-36/2017-07-02-08-01-24>

101 <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98000/116474/F-1201415008/BFA-98000.pdf>

102 Initial report of Burundi to ACERWC 10-11 <https://acerwc.africa/wp-content/uploads/2018/04/EN-Rapport-du-Burundi-sur-la-mise-en-oeuvre-de-la-Charte-Africaine-des-....pdf> (accessed 27 August 2020).

regional treaties pertaining to children that are ratified by Sudan in coordination with other levels of governance.¹⁰³ However, the NCCW has adopted an integrated approach in dealing with children matters, it does not limit itself to a particular sector or service.¹⁰⁴ Additionally, the National Human Rights Commission is mandated with the task to Protect, publicise human rights and monitor the implementation of the rights and freedoms contained in the rights and freedoms Charter,¹⁰⁵ which include the ACRWC.

To strengthen the national child rights protection and implementation system, countries like Burkina Faso and Ethiopia have adopted policy mechanisms. Burkina has adopted a national child protection strategy (SNPE) accompanied by a three-year action plan (PAT). Ethiopia has also devised the National Children's Policy in 2017, which exhibits principles aligned with basic principles of the ACRWC.

In Mozambique, the PARP (Plan of Action for Reducing Absolute Poverty) is mandated with the implementation of the Charter.¹⁰⁶ Its efforts are invigorated by the Technical Secretariat of the Poverty Observatory. Further, the country has the Ministry of Gender, Child and Social Action, which deals with children's rights issues.

In Namibia, the implementation of ACRWC is delegated to the Ministry of Gender Equality and Child Welfare, especially its Directorate of Child Welfare. However, with the recent adoption of the Child Care and Protection Act of 2015, it is anticipated that the implementation of the ACRWC will either fall squarely within the mandate of the National Advisory Council on Children or be conducted in conjunction with other stakeholders such as the Children's Advocate, and the Directorate of Child Welfare under the coordination of the Inter-Ministerial Committee. Representatives from NHRIs are invited to participate in the deliberations and processes of the Inter-Ministerial Technical Committee.

In Tanzania, The Ministry of Foreign Affairs and International Co-operation, The Attorney General's Chambers; The National Assembly and its various Standing Committees, The Commission for Human Rights

103 The National Council for Child Welfare Act 2008 art 6(g).

104 The National Council for Child Welfare 'Roles and Responsibilities'<http://www.nccw.gov.sd/pageen.php?page=86> (accessed 29 August 2020).

105 The National Commission for Human Rights Act 2009, art 9(1).

106 https://www.mef.gov.mz/index.php/documentos/instrumentos-de-gestao-economica-e-social/estrategia-para-reducao-da-pobreza/parpa-i-2001-2005/7-parpai/file%3Fforce_download%3D1+%&cd=1&hl=pt-PT&ct=clnk&gl=mz

and Good Governance, and Treaty Reporting Entities are responsible for the coordination the implementation of the ACRWC. No information was found on whether children are represented. Additionally, The Commission for Human Rights and Good Governance (CHRAGG) is charged with the role of monitoring implementation of human rights instruments.¹⁰⁷ The Ministry of Health, Community Development, Elderly and Children has the overall mandate over child matters including their rights and welfare.

16 Child Participation

16.1 The Legal Basis for Child Participation

Key to child participation is the availability of a clear legal or policy framework that supports child participation. All countries except Algeria, Ethiopia and Tanzania have a clear basis for child participation. In countries like Cameroon and Sudan, child participation is based on the guaranteed child's freedom of expression. In Cameroon, freedom of expression is grounded on its monist approach to international law, which automatically imports Article 7 of the ACRWC which guarantees freedom of expression to children.¹⁰⁸ In Sudan, on the other hand, the right is guaranteed under the Child Act 2010. Namibia adopts a more rigorous approach to child participation by specifically providing for the right to participate under the Child Care and Protection Act No. 3 of 2015.¹⁰⁹ Special principles and guidelines relating to child participation have also been promulgated under the said Act.¹¹⁰ Policy forms the basis for child participation in Mozambique. The National Plan for Children II (2013- 2019) is a policy which aspires to increase participation of children in social protection programs. Special decrees have been made in countries like Burkina Faso and Burundi for the introduction of platforms that purport to allow children's participation through children's parliament and other like forums.

16.2 Children's Parliament

One of the forums that provides a good platform for children's participation is the children's parliament. With the exception of Algeria, all countries have a child parliament or a forum akin to child parliament, whose establishment varies over the countries. In Burkina Faso and Cameroon,

107 National Human Rights Action Plan, 51.

108 By virtue of Section 7 of the Cameroon Constitution, all treaties duly approved and ratified by the state can override domestic laws.

109 Sec 4.

110 Sec 4(3).

the child parliament was established in 1997 and 1998, respectively. In Mozambique, it was established in 2000, Ethiopia in 2007, and Tanzania in 2002, and is referred to as the Junior Council of the United Republic of Tanzania (JCURT). The most recently instituted children's parliament is one in Burundi, established in 2012.

The frequency of the meetings varies across the countries. While in some countries, meetings are done once annually, in Cameroon, for example, the meetings are done as part of the celebrations of the Day of African Child on 16th June every year. In other countries meetings are done twice or thrice a year. For example, in Burundi the National Children's Forum, which serves as a Child Parliament,¹¹¹ meetings are regularly held during the summer holidays of July – September and also during the Easter and / or Christmas holidays. No indicators that the meetings are regular were found in Ethiopia, Mozambique and Burkina Faso.

An effective and efficient child participation demands that the participation has to be based on the principles of representation, inclusion and accountability. It is thus incumbent upon states to ensure that children with disabilities, indigenous children and other minority groups are adequately represented and included. There are indicators which show that child participation is based on the aforementioned principles in Burkina Faso, Cameroon, Mozambique and Tanzania. Children who do not go to school, children living on the streets and children with disabilities are represented and thus included in children's parliament in Burkina Faso and Cameroon. However, while the inclusion and representation of minority groups is either limited or low in countries like Namibia and Ethiopia, their participation and inclusion is not expressly stipulated in Burundi. In Tanzania, well established and elaborate guidelines have been adopted to ensure inclusion and representation of children with disabilities.¹¹² These guidelines ensure that children with disabilities and other vulnerable children are elected in various representative positions, failure of which special seats are reserved for them.¹¹³

With respect to gender in child participation, there is an equal balance of males and females in Burkina Faso, Mozambique and Tanzania. The establishing instruments of children parliaments and other like platforms do not refer to gender in countries like Cameroon and Burundi. No data

111 <https://www.yaga-burundi.com/2016/parlement-enfants-mission-impossible/> (accessed 20 August 2020).

112 The Child Participation Toolkit and the National Plan of Action for Child Participation.

113 M Couzens & K Mtengeti, 'Creating Space for Child Participation in Local Governance in Tanzania: Save the Children and Children's Councils' Research Report 11/1 21.

was obtained on what happens in practice. In Ethiopia, the participation of males and females in child parliament varies.

The child parliament has been very instrumental in the promotion and protection of child rights. In Cameroon, the parliament has since its inception helped in the raising awareness of child rights, orient children to democratic practices, enhanced freedom of expression on matters that affect them, and create a consideration of relevant concerns of children in national policies and programmes. In Ethiopia, the model children parliaments have proved to be instrumental in the prevention of maladministration and violations of the rights of children. Laws and policies that address issues of child rights violations have been created as a direct impact of the child parliament in Mozambique. In Burundi, the National Children's Forum actively contributed to the development of the National Child Protection Policy (2020-2024).

16.3 Specific Areas

16.3.1 *Children in conflict with the law*

The ACRWC provides special safeguards and protection regarding the rights of children who come in conflict with the law. These include the right to be presumed innocent, the right to legal counsel representation, the right to remain silent, the right to be informed the charge brought against them in a language they understand, the right to be heard, the right to speedy trial, the separation of children from adults in their place of detention or imprisonment (segregation) and prohibition of public trial.¹¹⁴

All countries except Algeria have a juvenile justice system which is provided by either a special separate legislation or within the general justice system. Countries like Burkina Faso, Cameroon and Ethiopia has no specific legislation providing for child justice. The child justice system is provided by provisions within the general criminal or civil procedure legislations. For instance, in Burkina Faso, each *Tribunal de Grande Instance* has one or several juvenile judges competent to take all necessary measures to protect the child at risk.¹¹⁵ The juvenile judges sit as a Children's Court, which is attached to the Court of Appeal. It has competence for hearing cases where a minor is accused of a felony. However, these institutional mechanisms are not in full compliance with the ACRWC due to financial and human resources constraints.

114 See generally the ACRWC art 17.

115 <https://lavoixdujuristebf.files.wordpress.com/2013/08/loi-nc2b015-portant-protection-de-lenfant.pdf>.

In Cameroon, the Criminal Procedure Code converts the court of first instance into a juvenile court with jurisdiction to try offences committed by children and young persons.¹¹⁶ This juvenile justice system, to a large extent, complies with the requirements of the ACRWC.

As with Ethiopia, there is no separate child justice system under the current law. However, the criminal procedure code is being revised to include diversion programmes for children in conflict with the law. As of October 2018, the special measures taken and penalties prescribed to child offenders as well as the institutional mechanism in place are in line with the ACRWC.

Countries like Namibia, Sudan and Tanzania have a child justice system that has been provided by a special piece of legislation enacted for that purpose. In Namibia, the Child Care and Protection Act enacted in 2015 establishes Children's Courts,¹¹⁷ modelled on a child friendly and conducive court environment.¹¹⁸ However, the institution is not compatible with the ACRWC as the age of the criminal responsibility is much lower than the set standard under the Charter. Furthermore, there is no segregation of detention of children and juvenile offenders from other adult offenders.

In Sudan, the Child Act 2010 establishes various agencies and institutions that cater for the protection of children in conflict with the law. The Act creates a specialised police force called 'the family and child protection unit',¹¹⁹ a separate children prosecutor¹²⁰ and it establishes Child courts¹²¹. The Act further provides regulations for children in detention and detention institutions.¹²² These institutions and measures are in full compliance with the tenets of the ACRWC. In Tanzania, The Law of the Child Act establishes Juvenile courts.¹²³ This institution and the guiding laws and principles thereunder are in full compliance with the ACRWC.

Despite not having a robust well-established child justice system, Algeria has provisions within her Child Protection Act, which provide

116 Criminal Procedure Code sec 713.

117 See Child Care and Protection Act 3 of 2015 sec 38.

118 See generally Child Care and Protection Act 3 of 2015 secs 54-56.

119 The Child Act 2010 art 54.

120 The Child Act 2010 art 60

121 The Child Act 2010 art 62.

122 The child Act 2010 arts 58-59.

123 Part IX of the Act.

for procedures regarding child offenders.¹²⁴ The said provisions are in full compliance with the ACRWC.

16.3.2 Sexual and Reproductive Health

A comprehensive sexual and reproductive health approach is marked by sexual and reproductive health indicators. Among others, they include contraceptive prevalence (CP), which is the percentage of women of reproductive age (15–49 years) who are using (or whose partner is using) a contraceptive method at a particular point in time, the maternal mortality ratio (MMR), which is the number of maternal deaths per 100 000 live births, number of facilities with functioning, basic, essential obstetric care, perinatal mortality rate, percentage of live births of low birth weight (less than 2500 g), and HIV prevalence in pregnant women.¹²⁵

Sexual debut, defined as the age at which one had first sexual intercourse, influences the rate of teenage pregnancy and HIV infection rate. Early sexual debut has the tendency of increasing the rate of HIV/AIDS infections and teenage pregnancies. In the countries under study, Namibia has the earliest sexual debut pegged at 14, followed by Ethiopia, Mozambique, and Tanzania, which is at about 15. While the sexual debut of young persons is from the age of 17¹²⁶ in Algeria, 37.7% (80/214) of young people (77/188 men and 3/26 women) aged 15-24 reported having had sex before the age of 15.¹²⁷ Countries like Burkina Faso, Burundi and Ghana has the highest ranging between 18 and 22.

With respect to teenage pregnancies, there was no uniform data available in the countries under study for a thorough comparative analysis. However, it was observed that teenage pregnancies are prevalent in all 10 countries. Mozambique has one of the highest rates of teenage pregnancy with 40% of girls pregnant by the age of 18.¹²⁸ Some countries exhibit some gradations in rate with respect to urban and rural areas, and levels of one education. For example, in Ethiopia, teen pregnancies are more

124 Secs 32-109.

125 MMF Fathalla 'Sexual and Reproductive Health: Overview' (2017) In SR Quah & WC Cockerham(eds.) 'The International Encyclopaedia of Public Health' (2nd edition. vol. 6 Oxford: AcademicPress)481, 484.

126 Radio Algeria "AIDS: More than 15% of young people (aged 15 - 24) have correct knowledge of this disease" <https://www.radioalgerie.dz/news/fr/article/20180503/140513.html>.

127 Aids Algeria "Epidemiological data on STIs / HIV / AIDS in Algeria"<https://www.aidsalgerie.org/vih-sida/sida-chiffres>.

128 Mozambique's teenage pregnancy challenge <https://devex.shorthandstories.com/mozambique-teenage-pregnancy-challenge/index.html>.

common in rural than in urban areas (15% and 5%, respectively), and among women in the Afar (23%) and Somali regions (19%) compared to the capital, Addis Ababa (3%). Teen pregnancy is highest among those without an education (28%) as compared with teen pregnancy rates at primary and secondary educational levels which are at 12% and 3% respectively.¹²⁹ In Burundi, teen pregnancy rate is at 10% in urban areas, and 8% in rural areas.¹³⁰

Prevalent in the countries under study is HIV/AIDS infection. There is an overlap of data for children and adults on HIV/AIDS infection rate. It was, however, observed that the infection rate varies across gender, with a higher prevalence rate among females than males in countries like Mozambique and Ghana, and vice-versa in other countries such as Burundi. The HIV prevalence rate in the general population aged 15-49 years was estimated at 1% in Burundi representing 0.2% and 0.8% for women and men, respectively;¹³¹ whereas in Ghana, HIV prevalence rate among children 14 years and younger is at 0.08, with young women having a 1% prevalence rate as against 0.3% for young men.¹³²

The contraceptive prevalence rate among young people in the countries under study varies. The rate is lower at 5.9% in Mozambique of persons between the ages of 15 and 19 as compared to Ghana, which is at 27.6 – 35.6% on the same age group. Between the ages of 15 and 49, the prevalence rate is higher in Tanzania, which is at 38.4% as compared to Sudan at 1.22% (12.2 per 1000). The rate is at 23% in Burundi and Cameroon. In Algeria, 51% of young people aged between 15 and 24 years old admitted never using condoms during sex.¹³³

129 CSA-Central Statistical Agency and ICF: 2016 *Ethiopia demographic and health survey*.

130 <https://www.iwacu-burundi.org/englishnews/8-of-adolescent-girls-fell-pregnant-in-burundi-reveals-isteebu-report/> (accessed 5 August 2020).

131 DP/FPA/CPD/BDI/8 DP/FPA/CPD/BDI/8 2 <https://www.unfpa.org/data/transparency-portal/unfpa-burundi> (accessed 5 August 2020).

132 UNAIDS 'Country factsheets: Ghana 2019' <https://www.unaids.org/en/regionscountries/countries/ghana>(accessed 7 October 2020).

133 Radio Algeria "AIDS: More than 15% of young people (aged 15 - 24) have" correct "knowledge of this disease" (2018) <https://www.radioalgerie.dz/news/ft/article/20180503/140513.html>.

Table 7: Prevalence of Sexual Reproductive Health Issues

Country	Sexual Debut	Teenage Pregnancy		HIV/AIDS Infection		Contraceptive Prevalence	
		Rate	Age	Rate	Age	Rate	Age
Algeria	17	9.8338	15 - 19	-	-	51% No use	15 - 24
Burkina Faso	18.6 in Girls 20.9 in Boys	1016 pregnancies	Girls of school Age	0.8%	15 - 49	28%	Un-married Women
Burundi	19 in Women 22 in Men	8% Rural 10% Urban	-	11 % 1.2% Women 0.8% Men	15 - 49	23%	-
Cameroon	15.5	25/26% 6.4% 29.9 %	Girls of school Age < 15 < 18	31000 [24000-38000]	0 - 14	23%	Young Persons
Ethiopia	15.51	15% Rural 5 % Urban	-	0.14 -8%	15 - 49	-	-
Ghana	18.3	14% 7% 18% Rural 11% Urban	15 - 19 15 - 17	0.86% 1 % Women 0.3 % Men	< 14	99% (only Knowledge) 27.6 (Married) & 35.6% (Unmarried) Actually used	15 - 19
Mozambique	15	40%	< 18	39,000 Women 20,000 Men	-	5.9%	15 - 19
Namibia	14	19% 3500 in 2017/18 Alone	15 - 17	11.5% 13.1%	15 - 49 15 - 19	-	-
Sudan	N/A	87 per 1000	15 - 19	0.27%	15 - 49	12.2 per 1000	15 - 49
Tanzania	15.5	25% of Adolescents	15 - 19	0.3% 1%	0 - 14 15 - 24	38.4%	15 - 49

One of the indicators of SRH is the maternal mortality rate. The Maternal Mortality Estimation Inter-Agency Group had recorded 195 maternal deaths in Namibia.¹³⁴ This is a relatively low figure compared to other countries such as Burundi (estimated at 548 deaths),¹³⁵ Cameroon (estimated at 529 deaths),¹³⁶ Ethiopia (estimated at 401 deaths),¹³⁷ Ghana (estimated at 308 deaths),¹³⁸ Mozambique (estimated at 289 deaths),¹³⁹ and Sudan (estimated at 295 deaths).¹⁴⁰

There exist varying degrees to which access to basic services such as primary health care, water and sanitation, adequate food is guaranteed in the countries under study. The status on provision and access to the said services of each country is hereunder considered in turns.

Algerian Constitution guarantees free access to health services in the public sector. However, the state of enjoyment by the citizenry of these services reveals disparities in access and use between regions and social groups. Important differences exist in access to maternal and child health services between the most disadvantaged regions of the country and the highest and lowest income quintiles. For example, neonatal mortality was at its highest in rural areas, with 19.2 child deaths per 1,000 live births, compared to 13.3 in urban areas.¹⁴¹ With respect to adequate food, the Constitution of the People's Democratic Republic of Algeria does not expressly guarantee the right to adequate food. With regard to sanitation, the Algerian state has invested heavily in improving access to the public service of the water obtained, which results in the average connection rate of 98% in 2017.

In Cameroon, similar to Algeria, the status quo on access to basic health services do not resonate with the Constitution's theoretical guarantees.¹⁴² This has been the case due to the atrocities of terrorism of

134 Maternal Mortality Estimation Inter-Agency Group Namibia: Maternal Mortality in 2000 to 2017 (2017) 1 https://www.who.int/gho/maternal_health/countries/nam.pdf?ua=1 (accessed 1 October 2020).

135 As above.

136 As above.

137 As above.

138 As above.

139 As above.

140 As above.

141 UNICEF "Maternal and Child Health" <https://www.unicef.org/algeria/sant%C3%A9-de-la-m%C3%A8re-et-de-lenfant>.

142 As per Law No. 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972 in its preamble, '--The State shall provide all its citizens with the conditions necessary for

Boko Haram and the war between the government and freedom fighters. Owing to the later conflict alone, thousands of people lack access or have reduced access to basic services such as healthcare and safe drinking water. As of December 2018, about 40% of health facilities in the South-West region were reportedly not functioning.¹⁴³ Further, almost a third of children (32%) suffer from chronic malnutrition and 13% is severe with about 38% children in rural areas more affected than those in urban areas, which is 38% and 23% respectively.¹⁴⁴ As a response, the state has developed a National Early Childhood Development Policy Document (December 2017).¹⁴⁵

Burkina Faso has made considerable strides to guarantee access to quality health facilities. As part of improving the nutritional status of the population, the country has facilitated the availability of nutritional inputs in all health facilities in 2018 through, among others, the adoption and implementation of a National Nutrition Policy (2011) and its review (2014), the allocation of a specific budget line for the purchase of nutritional inputs since 2014, the implementation of an Integrated Protocol for Acute Malnutrition, the implementation of the 2013-2025 infant and young child feeding plan (ANJE) awareness raising among pregnant and breastfeeding women.¹⁴⁶

In Burundi, pregnant women and children under 5 years are entitled to free public healthcare.¹⁴⁷ In 2017, '81% of the population had access to improved sources of drinking water, while 61% of the population could obtain safe drinking water within a 30-minute round-trip from their

their development'.

"---every person has a right to life, to physical and moral integrity and to humane treatment in all circumstances".

"---the Nation shall protect and promote the family which is the natural foundation of human society. It shall protect women, the young, the elderly and the disabled;"

"---the State shall guarantee the child's right to education. Primary education shall be compulsory. The organization and supervision of education at all levels shall be the bounden duty of the State;"

"---every person shall have a right to a healthy environment"

143 UNICEF 'Cameroon' <https://data.unicef.org/country/cmr/> (accessed 18 August 2020).

144 Document de Politique Nationale de Protection de l'Enfant (n 99 above) vi.

145 Referred in French to as 'Document De Politique Nationale De Developpement De La Petite Enfance'.

146 <http://212.52.150.148/index.php/fr/droits-des-enfants-au-bf/2-documents-recentes/4-protection/5-rapport-de-recherche-consultation-2/314-4eme-5eme-et-6eme-rapport-cadbe-2016-vf-sp-cne-mai-2017/file> 18.

147 <https://www.unicef.org/french/sowc09/docs/SOWC09-Encadres-4.5-FR.pdf> (accessed 5 August 2020).

households. Access to basic sanitation remained limited as only 46% of the population were having access to basic sanitation facilities.¹⁴⁸ In 2019, UNICEF noted that Burundi has one of the highest stunting rates in the world; boys are more affected than girls (59.4 and 52.4% respectively), and rural children are more at risk of being stunted than their urban counterparts, 58.8% and 27.8% respectively. The same geographic disparity is noted for severe acute malnutrition (0.3% urban and 1% rural).¹⁴⁹

In Ethiopia, the government has built many health institutions, adopted policies, strategies and packages to improve children's health. The Ministry of Health (hereafter MoH) developed a National Strategy for New-born and Child Survival 2015/16-2019/20, which aims to reduce under five mortality from 64/1,000 live births (2013 level) to 29/1,000 live births and infant mortality rate from 44/1000 live births to 20/1000 live births and NMR from 28/1,000 live births to 11/1,000 live births. The strategy identified and prioritized 39 high impact and cost effective new born and child survival interventions with key guiding principles for implementation of the strategy including the provision of quality maternal and child health services. In 2012, Ethiopia has led the development of the "Promise Renewed Child Survival Roadmap" with a commitment to end preventable child death, with the goal of dropping under-five mortality rate to less than 20/1,000 live births by 2035. Further, the country also developed the National Health Policy, which has child health as one of the priority areas. The country has implemented the Health Sector Development Program, which proposes long term goals for the health sector, in making targeted interventions in combating HIV/AIDs.

In Ghana, 1.2 million children live in extreme poverty, with limited access to food.¹⁵⁰ As a result, 1 in every 5 children in Ghana experiences stunted growth in the first 3 years of their lives.¹⁵¹ Government response to child poverty and its impacts include Livelihood Empowerment Against Poverty (LEAP) programme, a cash transfer programme that supports poor households including those consisting of orphaned and vulnerable children and infants under 12 months old.¹⁵² Other mechanisms include the school feeding programme, which provides at least one hot meal

148 <https://www.unicef.org/burundi/water-sanitation-and-hygiene> (accessed 5 August 2020).

149 <https://www.unicef.org/burundi/nutrition> (accessed 5 August 2020).

150 UNICEF 'Social policy and protection' <https://www.unicef.org/ghana/social-policy-and-protection>(accessed 7 October 2020).

151 UNICEF 'Early Childhood development' <https://www.unicef.org/ghana/early-childhood-development>(accessed 7 October 2020).

152 As above.

to children in basic education institutions across the country. Further, sexual and reproductive education has been incorporated in the school curriculum. In 2013, the National HIV and AIDS STI Policy advocated for the inclusion of 'age-appropriate, sound adolescent sexual and reproductive health education' in the school curricula.¹⁵³ The Adolescent Health Policy of 2015¹⁵⁴ provided further policy basis for the inclusion of sexual and reproductive rights in the curricula of Junior and Senior High Schools.¹⁵⁵ However, attempts by government to introduce a new curriculum on comprehensive sexuality education in 2019¹⁵⁶ was not well received by the public over concerns that it had explicit LGBTI content.¹⁵⁷

The Government of Mozambique has recognized food and nutrition security as key priorities within its Five-Year Plan, which emphasizes the importance of improved access to food, living conditions and the development of human capital.¹⁵⁸ Besides, the government has undertaken a Multisectoral Action Plan for reducing chronic malnutrition in Mozambique 2011 - 2014 (2020) and to provide measures for its prevention.¹⁵⁹

Namibia has an appreciable national health care system that provides either free or discounted medicinal and pharmaceutical services to its citizens through State subsidies. Of primary concern are the serious disparities in terms of service quality and medical personnel per

153 National HIV and AIDS STI Policy (2013) para 6.2.1.

154 Ghana Health Service 'Adolescent Health Service and Policy Strategy (2016-2020) <https://www.afro.who.int/sites/default/files/2017-10/ADOLESCENT%20HEALTH%20SERVICE%20POLICY%20%20AND%20STRATEGY.pdf> (accessed 31 October 2020).

155 K Awusabo-Asare & M Stillman et al 'From Paper to Practice: Sexuality Education Policies and Their Implementation in Ghana' (2017) 20 https://www.guttmacher.org/sites/default/files/report_pdf/sexuality-education-ghana-report.pdf (accessed 31 October 2020).

156 Government of Ghana 'Guidelines on comprehensive sexuality education' (2019) <https://www.scribd.com/document/428167168/GUIDELINES-FOR-COMPREHENSIVE-SEXUAL-EDUCATION-IN-GHANA> (accessed 31 October 2020).

157 Africa news 'Here's why Ghana's sex education program is controversial', <https://www.africanews.com/2019/10/03/here-s-why-ghana-s-sex-education-program-is-controversial/> (accessed 31 October 2020) S Appiah 'Understanding the outcry against comprehensive sexuality education in Ghana' <https://medium.com/@Appiah/understanding-the-outcry-against-comprehensive-sexual-education-in-ghana-1dfd77b4baf2> (accessed 31 October 2020).

158 World food population. <https://www.wfp.org/countries/mozambique>

159 World Health Organization. Mozambique national strategy reductionist. Available at https://www.who.int/nutrition/landscape_analysis/MozambiqueNationalstrategyreductionstunting.pdf

population. At least seven (7) per cent of all Namibians have to travel more than 40 kilometres to reach a hospital or health facility.¹⁶⁰

Sudan guarantees, by the Constitutional Charter¹⁶¹ and the Child Act 2010, the right to access free primary health care at governmental hospitals and centres.¹⁶² However, acute malnutrition and stunting remain a public health concern in Sudan. The frequency of acute malnutrition on the national level ‘too thin for height’ is 14.1%; about 522,000 children suffer from acute malnutrition while 2.7 million suffer from wasting on a yearly basis. It is estimated that one out of three children in Sudan is malnourished and do not grow to reach their full potential intellectually and physically.¹⁶³ These prevailing conditions are fostered by low health status and comprehensive health services coverage, unavailability of clean water and food insecurity.¹⁶⁴ To address this, several Sudanese ministries have developed strategies and policies addressing the issue of food and nutrition. These ministries are the Federal Ministry of Agriculture and irrigation, the Federal Ministry of Education, Federal Ministry of Water Resources and Federal ministry of health (FMOH).¹⁶⁵

In Tanzania, the government has implemented the National Nutrition Strategy (July 2011/12 – June 2015/16),¹⁶⁶ which outlines measures to address nutrition challenges including those facing children in difficult circumstance and most vulnerable children. It also addresses issues of household food security and child malnutrition. Recently, the government adopted the National Multisectoral Nutrition Action Plan (NMNAP) for the period 2016/17-2020/2021,¹⁶⁷ which is a logical continuation of the Nutrition Strategy. The two documents drawn their basis from the National Food and Nutrition Policy of 2016. All these instruments

160 UNICEF Situational Analysis of the Status of Children’s Rights and Adolescents Rights 2010-2013 (2015) 41 https://www.unicef.org/namibia/SitAn_part_2.pdf (accessed on 6 September 2020).

161 The Sudanese Transitional Constitutional Charter 2019, art 64.

162 The Child Act 2010, art 14. http://www.nccw.gov.sd/ver_contenten.php?ver=25 (accessed 6 September 2020).

163 United Nations World Food Program (UNWFP) briefing on Sudan <https://www.wfp.org/countries/sudan> (accessed 8 September 2020).

164 FAO & WHO Second International Conference on Nutrition ‘National Nutrition Strategy Paper - Sudan’ http://scalingupnutrition.org/wp-content/uploads/2016/08/3.-Sudan-Nutrition-strategic-apaer-ICN_2.pdf (accessed 9 September 2020).

165 As above.

166 https://www.tfnc.go.tz/uploads/publications/sw1538745120-NNS%20FINAL_Sept%202011.pdf (accessed October 2020).

167 <https://www.tfnc.go.tz/uploads/publications/sw1556116940-NMNAP%202016%20-%202021.pdf> (accessed October 2020).

aim at addressing nutrition challenges especially those facing children. The government has also been facilitating provision of vitamin A and deworming medication to children below 5 years. In this exercise, the government has managed to reach 95% of the children.¹⁶⁸

17 Child Participation at School Level

At school level, children's participation and leadership has been reinforced in school management in all countries except Algeria and Tanzania. The creation of student's councils, which liaise with the school management boards on matters that affect children, has been an effective tool to ensure child participation at school level in countries like Namibia, Ethiopia and Burundi. In Namibia, all schools have Learner Representative Councils (LRC) and at least one member of the LRC is allowed to serve as *ex officio* members of School Boards which allows for maximum involvement of children in the school administration. In Burundi, however, the involvement is to a limited extent as the children representatives do not take part in the school management. In Tanzania, there is no child participation at school level owing to the fact that the provisions on school management in the Education Act,¹⁶⁹ which cover the composition and functions of school boards and committees, do not provide for representation or participation of students.

18 The legal protection vis-à-vis children's right to assemble, organise and access information, and freedom of expression

Article 7 of the ACRWC guarantees the right of every child who is capable of communicating his or her own views the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws. Further, Article 8 provides for the right to free association and freedom of peaceful assembly in conformity with the law to every child. State parties to the Charter have an obligation to take necessary steps, in accordance with their constitutional processes, to adopt such legislative or other measures as may be necessary to give effect to the above provisions.¹⁷⁰

168 Ministry of Health, Community Development, Elderly and Children, Budget Speech for 2020/2021, 21. file:///C:/Users/Lenovo/Downloads/HOTUBA%20YA%20WIZARA%20YA%20AFYA%20MAENDE L E O % 2 0 Y A % 2 0 J A M I I % 2 0 J I N S I A % 2 0 W A Z E E % 2 0 N A % 2 0 W A T O T O % 2 0 2 0 - 2 1 % 2 0 1 . pdf (accessed October 2020).

169 Chapter 353, Revised Edition of 2002, secs 39 and 40.

170 See generally ACRWC art 1.

The existing domestic legal safeguards in Burkina Faso, Cameroon, Mozambique, Namibia, Sudan, Tanzania and Burundi exhibit the protection of the children's right to organise and access information, and freedom of expression. The domestic guarantees to the right to assemble, the right to access information and the right to express oneself freely are general principles that are applicable to all persons without a special mention of children in Cameroon, Mozambique, Tanzania, Namibia and Sudan. In Namibia, the rights are provided under Article 17 of the Constitution. In Sudan, the Transitional Constitutional Charter provides for the freedom of expression,¹⁷¹ and freedom of assembly and organization to all citizens.¹⁷² Also, school regulations provide for the same rights.

In Tanzania, the Constitution of the United Republic of Tanzania guarantees the rights to freedom of association and assembly¹⁷³, and freedom of expression¹⁷⁴ with some limitations. However, the child's right to express their opinions have been specifically guaranteed under the Law of the Child Act.¹⁷⁵ With regards to the right to access information, in 2016 the government enacted the Access to Information Act,¹⁷⁶ which provides the right of every person, which invariably include children, to access information held by public authorities.

In Burundi and Algeria, children are expressly excluded in the enjoyment of the right to assembly and association. However, the Burundian Constitution guarantees the right to information and expression to children.¹⁷⁷

19 Child Consultations and Involvement

The ACRWC requires that in all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, an opportunity ought to be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and that those views shall be taken into consideration by the relevant authority.¹⁷⁸ In Algeria, Burkina Faso, Ethiopia and Namibia, children are not afforded the right to be consulted and heard in proceedings

171 The transitional Constitutional Charter 2019 art 56.

172 The transitional Constitutional Charter 2019 art 57.

173 Art 20(1).

174 Art 18.

175 Sec 11.

176 Act 6 of 2016.

177 The Constitution of Burundi arts 19 & 31.

178 Art4(2).

involving or affecting them. In Cameroon, Mozambique and Burundi, children are consulted and do participate in proceedings affecting them.

In Sudan, the Child Act guarantees to every child the right to express their opinions and desires with every freedom, and to actually take part in the special judicial, administrative, social or instructional procedure, in accordance with the age of the child and degree of their maturity.¹⁷⁹

In Tanzania, the Law of the Child Act protect a child's right to be heard in various matters affecting them. The Act has general provisions on the child's right to express his/her opinion, to be listened and to participate in decisions which affect their wellbeing, provided that the child is capable of forming views.¹⁸⁰ Additionally, in making an order for custody or access¹⁸¹ and maintenance the Court is required to, *inter alia*, sort the independent views of the child concerned¹⁸² and pay due regard to the rights of the child as provided under the Act,¹⁸³ which includes the right of opinion.¹⁸⁴

20 Conclusion

20.1 Impact of the treaty

The ratification of the ACRWC has brought notable impacts in various countries. For instance, Algeria has since the ratification of the ACRWC in 2016 had a special delegation to monitor the progress of children's rights at the national level; called the National Organ for the Promotion and Protection of Children (ONPPE). In addition, judges have had recourse to the provisions of the Charter when adjudicating over cases involving child rights. Furthermore, education and healthcare access has been made free for all children. In recognition to the principle of child development and survival, state subsidizes the food necessary for the survival of the children such as milk and bread. Lastly, as a direct consequence of the ACRWC ratification, CSOs meetings are organized to raise awareness of the importance of educating children and protecting them against violence.

179 Art 5.

180 Law of the Child Act sec 11.

181 Law of the Child Act of 2019 sec 38, Access refers to a situation where a parent, guardian or a relative who has been caring for a child is allowed periodic access to the child prior to the court order placing the custody of that child to another person.

182 Sec 39(2)(d).

183 Sec 44(3).

184 Sec 11.

In Burkina Faso, the ratification of the treaty caused the state to have an institution on the realisation of the rights of children: The National Council for Children (Conseil National pour l'Enfance). In addition, judges rely on the provisions of the treaty and the general comments when deciding on matters related to children. Further, there has been a remarkable increase in the budget allocation for children. It has increased from 22,000,000 in 2009 to 55,000,000 in 2019, representing 37% increase.

In Burundi, domestic laws and policies adopted after the ratification of ACRWC are more child-friendly. Additionally, the reporting process has to some extent increased awareness with respect to children's rights among CSOs. Accordingly, CSOs have been organising training programmes featuring the provision of the Charter on their agenda.

In Cameroon, the ratification of the ACRWC brought about the repeal of formerly applicable laws on the administration of juvenile justice in Cameroon, the amendment of the Penal Code¹⁸⁵ and the coming into force of the Criminal Procedure Code.¹⁸⁶ Effectively, Cameroon has overhauled its criminal justice system by harmonizing the administration of criminal justice, in general, and extensively covered the administration of juvenile justice.¹⁸⁷ Further, the state has also devised national action plans on the realisation of child rights. These plans are contained in the National Early Childhood Development Policy Document December 2017 and the National Child Protection Document (2017-2026) January 2017.

In Ghana, several legislation and policies have been adopted, which reflects or refer to the provisions of the African Children's Charter. Further, a special governmental institution, the Department of Children within the Ministry of Gender, Children and Social Protection, has been charged with the duty of ensuring the realisation of children's rights generally and

185 The Cameroon criminal system has seen some of its substantial dispensations modified and extended by Law N° 2016/007 of 12 July 2016 relating to the Penal Code.

186 The Criminal procedure code entered into force on the 1st January 2007 putting an end to the dual criminal procedural system operated in the country reflecting its bi-jural nature, a legacy of colonialism. This code is instituted by law n°2005/07 of 27th July 2005 and governs criminal procedure through the territory of Cameroon. According to its Section 2, "The Code shall be of general application except where there is provision to the contrary as provided in the code of Military Justice or in any special law".

187 See Book IV, Part XV of the Criminal Procedure Code. Entitled *Prosecution and Trial of Juveniles*: Chapter 1 deals with Institution of Prosecution, Chapter 2 deals with Temporary Detention of Juveniles; Chapter 3 deals with Composition of the Court of First Instance Sitting in Cases of Juvenile Delinquency; Chapter 4 deals with competence ...; Chapter XIII deals with the costs arising from measures for the protection of juveniles.

the implementation of Ghana's obligations related to children's rights. Furthermore, UNICEF reports that trainings on child friendly policing have been conducted through various police training schools, which reasonably included provisions of the ACRWC.¹⁸⁸ The Judicial Service has also developed a Gender Based Violence Training Manual,¹⁸⁹ as part of broader plan to strengthen the capacity of the Judicial Service in addressing sexual and gender-based violence and following the establishment of Child-Friendly Gender-Based Violence Courts to increase access to justice for women and children in line with international standards.¹⁹⁰ There is nationwide training of staff of the judicial service based on the manual which is currently being supported by UNICEF.¹⁹¹ The training manual lists the ACRWC among the timeline of legal instruments which Ghana has ratified and which informs the contents of the training manual.¹⁹² In December 2018, the Judicial Service inaugurated the first child friendly gender based violence court.¹⁹³ This was followed by the Operational Guidelines¹⁹⁴ in 2019, specifically indicating that the establishment of the child-friendly gender-based violence courts is in line with Ghana's international human rights obligations, including the ACRWC.¹⁹⁵

In Mozambique, the ratification of the ACRWC has since witnessed the adoption of several pieces of legislation on child rights. These include, the Basic Law on the Protection of the Child, no. 7/2008, 9/7/2008;¹⁹⁶ Law of Organisational Guardianship of Minors, no. 8/2008, 9/7/2008;¹⁹⁷

188 UNICEF Ghana 'Justice for children' <https://www.unicef.org/ghana/justice-children> (accessed 5 November 2020).

189 Judicial Service of Ghana 'Gender based violence training manual' (2019) <https://www.unicef.org/ghana/media/3301/file/Module%201%20-%20Gender%20Sensitivity.pdf> (accessed 7 November 2020).

190 UNICEF Ghana 'Gender based violence training manual for law enforcement' <https://www.unicef.org/ghana/reports/gender-based-violence-training-manual-law-enforcement> (accessed 7 November 2020).

191 As above.

192 Judicial Service of Ghana 'Gender based violence training manual (2019) 47.

193 UNICEF Ghana 'A new child-friendly court established in Accra' <https://www.unicef.org/ghana/press-releases/new-child-friendly-court-established-accra> (accessed 7 November 2020).

194 Judicial Service of Ghana 'Operational guidelines: Child-friendly gender based violence courts in Ghana' (2019) <https://www.unicef.org/ghana/media/2781/file/Operational%20Guidelines%20for%20Child-Friendly%20Gender-Based%20Violence%20Courts%20.pdf> (accessed 7 November 2020).

195 As above, 2.

196 http://www.cndh.org.mz/images/legislacao/nacional/Lei_de_Promocao_dos_Dtos_da_Crianca.pdf

197 http://www.scaldeira.com/index.php/pt/publicacoes/artigos/doc_download/96-lei-n-8-2008-lei-da-organizacao-da-tutela-de-menores

Law on Trafficking of Persons especially Women and Children no. 6/2008, 9/7/2008.¹⁹⁸ Further, various plans of action have been devised tailored at realising children rights. These include the National Plan of Action for the Child, PNAC I (2006-2011),¹⁹⁹ PNAC II (2013-19) and the Plan of Action for Orphans and Vulnerable Children (PACOV) - parallel to PNAC I and integrated in PNAC II.²⁰⁰

In Namibia, several institutions have been devised to cater for the implementation of child rights. First, the Office of the Ombudsman created a position of the Children's Advocate in the division of the Human Rights and Legal Services. It assists the Office of the Ombudsman in the performance of its children's rights and well-being related functions by receiving and investigating complaints and resolving such complaints. Second, at the ministerial level, the Ministry of Gender Equality and Child Welfare works closely with various international agencies such as the United Nations International Children's Emergency Fund (UNICEF), the Global Fund and the United States Agency for International Development (USAID) in monitoring children's rights violation.²⁰¹ Third, the Children's Parliament and the National Advisory Council on Children contribute to the realisation of children's rights, especially their inclusion in processes of decision making. In terms of budget allocation, the two ministries that are crucial to the realisation of children's rights, namely the Ministry of Education, Arts and Culture (MoEAC) and the Ministry of Health and Social Services (MoHSS) are amongst the most highly prioritised ministries in the national budget.

In Sudan, Following the ratification of the Children Charter, Sudan has adopted the Child Act 2010, amendments were made to the Nationality Act 1994 and the Penal Code 1991. Several strategies were adopted such as the National Strategies for the elimination of FGM 2008-2018, the National Plan to Combat Violence Against Children 2010 and the National Strategy to develop the Civil Registry Act 2015.²⁰² Further,

198 <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/86030/96743/F88437680/MOZ86030.pdf>

199 www.mgcas.gov.mz/st/FileControl/Site/Doc/1995plano_nacional_de_acciao_para_a_crianca.pdf.

200 [http://www.mgcas.gov.mz/st/FileControl/Site/Doc/1995plano_nacional_de_acciao_para_a_crianca .pdf](http://www.mgcas.gov.mz/st/FileControl/Site/Doc/1995plano_nacional_de_acciao_para_a_crianca.pdf)

201 Parliament of Namibia Children's Parliament (2020) 1 <https://parliament.na/index.php/parl-events/children-s-parliament#:~:text=The%20primary%20goal%20of%20the,legal%20instruments%20and%20the%20international> (accessed on 5 September 2020).

202 The National Council for Child Welfare 'Policies and Strategies' http://www.nccw.gov.sd/ver_content.php?ver=26 (accessed 29 August 2020).

a special national institution, The National Council on Child, has been entrusted with the realisation of children's rights. In addition, the treaty provisions have been used both by the government and CSOs in training programs. Also, CSOs use the provisions of the treaty in campaigns, advocacy work and training programs.

In Tanzania, Judges have had recourse to the provisions of the treaty in deciding cases. Most notably are the decisions of the High Court and the Court of Appeal in *Attorney General v Rebeca Z. Gyumi*,²⁰³ which challenged provisions of the Law of Marriage Act which allow girls below 18 years to get married. Equally, in *Judith Patrick Kyamba v Tunsumbe & Others* the Charter was invoked to indicate Tanzania's international obligations on specific child rights matters.²⁰⁴ Further to this, the treaty is mostly used by civil society organizations as the basis for emphasizing the need to protect children's rights and for pushing the government to strengthen its mechanisms for safeguarding children's rights. Also, the treaty largely features in the work of most human rights NGOs including the Legal and Human Rights Centre (LHRC), ActionAid Tanzania, Tanzania Gender Networking Programme (TGNP) and Action for Justice in Society (AJISO).

20.2 Immerging challenges

Despite having a positive impact of the treaty among the countries under study, the countries still exhibit some challenges with regards to child rights that need to be addressed. One of the key challenges in countries like Burkina Faso, Cameroon, Mozambique and Ethiopia is political unrest due to civil war and terrorism. For instance, in Burkina Faso there are security threats caused by terrorism in many regions of the country. This has impacted negatively on children's right to education. In 2019 alone, persistent and growing insecurity in the Sahel forced nearly 2,000 schools in Burkina Faso, Mali and Niger to close or cease functioning. Threats against teachers, attacks on school facilities and the use of schools for military purposes disrupted the education of more than 400,000 children in the three countries and forced more than 10,000 teachers out of work or move around because of the violence.

In Cameroon, the Ambazonia War or the Cameroonian Civil War, a conflict in the Southern region of Cameroon, part of the long-standing Anglophone problem²⁰⁵ has resulted into massive killings,

203 Civil Appeal No. 204 of 2017.

204 Probate & Administration Cause No.50 of 2016, [2020] TZHC 1364.

205 M Gebremichael (Ed) Peace & Security Report (2020) Vol. 1 March 2020 Cameroon

torture, and kidnapping of civilians, including teachers, students, and government officials. Like Burkina Faso, this has impacted negatively on education. For example, only 6% of the 2020 targeted 355,000 children affected by crisis have had access to quality formal or non-formal basic education.²⁰⁶ Further, since 2013, the populations of the Far North of Cameroon have suffered from the horrors of the Islamist sect Boko Haram (BH). Repeated incursions by Boko Haram in the border strip of northeast Cameroon with Nigeria, Chad and villages along Lake Chad are frequent. These recorded abuses range from the burning of villages and fields, kidnappings of children and women, intimidation of the civilian population to bloodshed in inhuman conditions or suicide bombing operations.²⁰⁷

In Ethiopia, there are internal conflicts rooted in the ethnic inequalities followed by public discontent leading to inter-communal violence, which has now escalated to internal armed conflict. Children in Ethiopia have been subjected to various internal unrests causing school interruption and closures at times, destruction of houses, forced eviction and internal displacement, migration, rape, and hunger. Currently, the country is on a brink of civil war between the Federal Government of Ethiopia and Tigray National Regional State.²⁰⁸ Children can be primarily (directly) victimized and can, at the same time, be a secondary victim.

In Mozambique, due to the conflicts situation through insurgents in the north of Mozambique (Cabo Delgado), children in most affected areas are being displaced and, as a result, they are schooling and health services have been disrupted. Also, children are being kidnapped or beheaded.²⁰⁹

Other issues which are still challenging among the countries under consideration are climate change, the Internet, migrant children, resource allocation, and LGBT. In Algeria, the issue of migrant children still remains a socio-political taboo. The flow of migrants is constantly growing and Algeria still has not taken positive measures to address it, especially the issue of children from migrant parents. Similarly, although

Conflict Insight <https://media.africaportal.org/documents/Cameroon-Conflict-Insights-vol-1.pdf> (accessed 26 august 2020).

206 Cameroon: North-West and South-West - Situation Report No. 20, As of 30 June 2020 OCHA 24 July 2020 Origin <https://reliefweb.int/report/cameroon/cameroon-north-west-and-south-west-situation-report-no-20-30-june-2020> (accessed 26 august 2020).

207 Document de Politique National de Protection de l'Enfant (n 99 above), 8.

208 <https://www.bbc.com/news/world-africa-54826875> (accessed 13 November 2020).

209 <https://www.unhcr.org/news/briefing/2020/2/5e3d2d8f4/fresh-violence-northern-mozambique-forces-thousands-flee.html>, <https://www.hrw.org/news/2018/06/19/mozambique-armed-groups-burn-villages>.

Namibia has ratified the OAU Refugee Convention, there has not been any serious attempt to protect refugee children in Namibia. For example, under Namibia's legal framework, unaccompanied and undocumented children are excluded from the government's foster care alternate home care programmes. In Burkina Faso, there is lack of resources to regularly hold the sessions of children's parliament. In Burundi, poor quality of education is a growing issue. The passing note from basic to secondary education is 38% in 2020.²¹⁰ In 2019, the passing note was 35%.²¹¹

In Namibia, the increasing actual and potential impact of climate change on children poses a real threat to children rights. Its geographic position on the continent and sub-continent renders it prone to erratic, variable and unreliable rainfall patterns. Its most immediate impacts include agricultural deficits, and flooding, especially in Northern Namibia, leaving many households without natural harvests and/or displaced. Children are affected in that many are left internally displaced, malnourished as a result of food shortage, which has negative implications on their health and early development. It also has the potential to impact children's right to education, health, food security, basic water and sanitation. Yet, the National Policy for Disaster Risk Management (2010) and National Climate Change Policy (2010) falls short of adequately mitigating the negative effects of climate change on children.

In addition, the plight of LGBTI children, and the lack of health services for their needs such as hormonal changes, and the implications that LGBTI parenting may have on children (i.e., adoption, citizenship) is another area that may in the near future raise serious concerns on the rights and welfare of children. This is true given Namibia's stringent position on sexual minority rights.

In Tanzania, children are more particularly vulnerable to the negative side of ICT such as access to offensive sexuality, violent acts, vicious ideas and ideologies, fake news and information. It is sometimes difficult for parents/guardians to control what children can access through ICT. There must be relentless efforts to prevent, as far as possible, the negative effects of ICT on children. Moreover, on the positive side, ICT poses a challenge especially to children in the rural areas where computers and other supportive infrastructure are yet developed.

210 Ordonnance ministérielle 610/1277 du 12 août 2020 portant note minimale et modalités d'orientation à l'enseignement post-fondamental, art 1.

211 <https://www.sosmediasburundi.org/2019/08/16/burundi-35-soit-une-note-de-70-200-pour-acceder-a-lenseignement-secondaire-post-fondamental/> (accessed 15 August 2020).

20.3 Best Practices

Notwithstanding the prevailing the challenges, there are significant best practices in the ten countries on the implementation of the African Children's Charter. In Algeria, there has been a drop in infant mortality owing to the expanded vaccination program established by state. Further to that, the promulgation of the Child Protection Law 15 -12 of July 15, 2015, the installation of the National Body for the Promotion and Protection of Children, the application of the right to name and nationality for the child born out of wedlock, the limitation of the penal age of the child, the drop in the rate of underage marriage and the extensive schooling at the national level are also some of the positive strides that the country has achieved.

In Burkina Faso, there has been advancement in the realisation of a number of rights under the Charter. Most notably are the right to education through the numerous constructions of preschool, primary and secondary schools, the right to health through free healthcare for children under five and construction of health centres, and the right to protection by removing children from the streets, artisanal gold mines; the fight against child marriage; the massive issuance of birth certificates; opening of transit centres for children on the move. Further, heavy sanctions are imposed on perpetrators of violence against children to deter other people from perpetrating the same.

Burundi has done well in providing free healthcare to children under five years²¹² and in the immunisation against diphtheria, tetanus, whooping cough, tuberculosis and hepatitis B with an immunisation rate of 98%.²¹³

The Government of Cameroon has made efforts to safeguard the rights of children by ratifying regional and international instruments protecting the rights of children. Steps have also been taken by the government to domesticate these instruments thereby making them available to children in Cameroon along with adopted measures to implement recommendations from treaty bodies with the creation of an inter-ministerial committee under the office of the Prime Minister.²¹⁴ Further, a Code on Child Protection and the Code on Persons and Family has been drafted, which harmonizes the definition of a child with that of

212 Ministère de la santé publique et de la lutte contre le SIDA (n 34 above) 20.

213 <https://www.yaga-burundi.com/2020/couverture-vaccinale-burundi/> (accessed 5 August 2020).

214 ACRWC Concluding Recommendations (n 46 above), Para 3

the Charter and also establishes the minimum legal age for marriage of boys and girls at the age of 18 years.²¹⁵

Further, Cameroon has taken measures to facilitate the access to school and retention of children, especially the girl child,²¹⁶ fight against torture, inhumane or degrading treatment and sexual violence against children,²¹⁷ ensure the full and harmonious development of the child in key areas such as education and health.²¹⁸ In addition, birth registration has been increased.²¹⁹ Children's Parliament and Youth Municipal Councils have been established and student and children are given the right to be heard through the use of magazines and other avenues.²²⁰ A manual on procedures for child adoption has been adopted.²²¹

On children with disabilities Cameroon has taken measures to safeguard and protect the rights of children with disabilities, notably the establishment of platforms such as the Inclusive Society for Persons with Disabilities.²²² On child labour Cameroon has taken measures to tackle child labour, including the setting up, in 2014, of a National Committee on the fight against the worst forms of child labour, the organization of several multisector campaigns and workshops on issues related to child trafficking as well as the adoption of the National Policy on the Comprehensive Development of the Young Child.²²³

On the protection against harmful social and cultural practices Cameroon created a platform for collaboration between the State (MINPROFF) and the Council of Imams and Muslim Dignitaries of Cameroon (CIDIMUC) to eliminate FGM, which has finally culminated to its criminalisation.²²⁴ On sexual exploitation Cameroon has made efforts to ensure child protection against all forms of violence, more especially sexual abuse by recognizing and implementing the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the

215 As above para 8.

216 As above para 9.

217 As above para 16.

218 As above para 13.

219 As above para 14.

220 Ekwen Lovet Tarh-Nyuo 'The Protection of Children's right in Cameroon' unpublished Master's Thesis, University of Buea, 2015 para 17 <https://www.grin.com/document/349811>.

221 ACRWC Concluding Recommendations (n 46 above) para 18.

222 ACRWC Concluding Recommendations (n 46 above) para 22.

223 ACRWC Concluding Recommendations (n 46 above) para 23.

224 ACRWC Concluding Recommendations (n 46 above) para 25.

Prostitution of Others and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.²²⁵

225 ACRWC Concluding Recommendations (n 46 above) para 27.

2



STUDY ON THE IMPLEMENTATION OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD IN ALGERIA

*Ayadi Zineb**

1 Background

Algeria experienced a civil war between 1991 and 2001 and as a result the human rights situation was drastically affected. Until 2004 when a national reconciliation took place. The former president Abdelaziz Bouteflika saw no other option to restore peace in Algeria other than lifting of the state of emergency in 2008. It is from this moment that all the NGOs and civil society organisations looked into the question of respect for human rights. The field of children's rights was no exception; civil society organisations were able to advocate with the government for the adoption of a law that specifically deals with issues of children and which would exclusively protect children. A draft law on children's protection was presented in 2013, and finally Algeria passed its own Law on Child Protection on 15 July 2015, and for better application, this law was accompanied by the establishment of a delegation which can follow and promote the rights of the child in Algeria, namely, the National Organ of the Promotion and the Protection of Childhood.

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To date, no comparative study has been carried out by Algerian civil society in the field of the implementation of the African Charter on the Welfare and the Rights of the Child (ACRWC), to this end, this report on the implementation of the ACRWC in Algeria is an opportunity to highlight what has been achieved in the field of children's rights and Algeria's respect for the application of the ACRWC at the level of domestic laws.

The People's Democratic Republic of Algeria follows a republic style of government that is composed of three branches. The executive is headed by the president of the country, who is the head the high security council and the prime minister, who is the head of the council of ministers and heads the government jointly with the president.¹ The judicial branch has different divisions, the highest of which is the Supreme Court and a distinct feature of the Algerian judiciary is that it does not consist of Sharia courts.² Finally, the legislative authority is vested in Parliament, which consists of the Council of the Nation and the People's National Assembly.³ Algeria is governed by the Constitution of 1976 which was amended in 1996. The 1996 Constitution provides that Algeria is founded on the principles of democracy and social justice. It also provided for more personal rights and political freedoms. While the Constitution adopts a multi-party system, it does, however, forbid the establishment of religious parties.⁴

Algeria has a territory of 2.4 million km² and a population of 44 million inhabitants as at January 2020, it also has the 4th largest GDP on the African continent (169 billion USD in 2019) and the highest GDP per capita in North Africa.⁵ According to the World Bank, Algeria is classified as an upper-middle income country. Nevertheless, it faces several economic challenges such as the high rates of unemployment among youth and women.⁶ Algeria was ranked 82nd out of 189 countries noted in the 26th edition of the 2019 Annual Report on the World Ranking of Countries

1 Global EdGE 'Algeria – Government' <https://globaledge.msu.edu/countries/algeria/government> (accessed 4 September 2021).

2 As above.

3 As above.

4 Constitutionnet 'Constitutional history of Algeria' <https://constitutionnet.org/country/constitutional-history-algeria> (accessed 04 September 2021).

5 'Algeria: Indicators and conjuncture' 04 June 2020 <https://www.tresor.economie.gouv.fr/Pays/DZ/indètres-et-conjonctures#:~:text=Avec%20un%20territoire%20de%202,%C3%A9lev%C3%A9%20d'Africa%20du%20North> (accessed 04 September 2021).

6 US News 'Algeria overview' <https://www.usnews.com/news/best-countries/algeria> (accessed 04 September 2021).

according to the Human Development Index (HDI). Algeria was ranked the first Maghreb country and third African country with a 'high' Human Development Index (HDI).⁷

Algeria's economy remains dominated by the state, a legacy of the country's socialist post-independence development model. In recent years, the Algerian government has halted the privatisation of state-owned industries and imposed restrictions on imports and foreign involvement in its economy, pursuing an explicit import substitution policy.⁸ The population of Algeria is approximately 44 million, with a steady growth rate of 1.85 per cent annually.⁹

The breakdown of the population of Algeria by gender shows a slight predominance of the male population, which represents 50.7 per cent of the total population. The average age of the population continues to grow under the effect of the increase in life expectancy at birth, increasing from 28 years to 29.4 years between 2009 and 2019, while the median age increased from 24.5 years to 27.7 years during the same period. Examination of the structure of the population by age and sex, as at 01 July 2019, shows that there is a continued increase in births, but at a slower pace. The proportion of the population aged under 15 continues to increase, rising from 30.1 per cent to 30.4 per cent during 2017 and 2019. The number of the female population of reproductive age between 15 and 49 years reached 11 million, almost stagnant compared to 2018.

The maternal mortality rate in Algeria has experienced a 'sharp decline' in recent years and is expected to be around 57.5 deaths per 100 000 live births in 2015 while it was 230 cases per 100 000 births in 1990.¹⁰ The main causes of maternal mortality vary between obstetric causes such as genital bleeding, puerperal septicaemia and non-obstetric causes such as heart diseases and infections.¹¹

7 'Human Development Index (HDI): Algeria 82nd out of 189 countries' 24 December 2019 <https://www.algerie-eco.com/2019/12/24/indice-developpement-humain-idh-algerie/> (accessed 04 September 2021).

8 'Algeria Economy 2020' *Theodora* 27 January 2020 https://theodora.com/wfbcurent/algeria/algeria_economy.html (accessed 18 September 2021).

9 Worldpopulationreview 'Algeria population 2021 (Live)' <https://worldpopulationreview.com/countries/algeria-population> (accessed 4 September 2021).

10 'Health: Maternal mortality in "sharp decline" in recent years in Algeria' *Transaction D'Algeria* <http://www.transactiondalgerie.com/index.php/actualite/440-sante-la-mortalite-maternelle-en-net-recul-ces-dernieres-annees-en-algerie> (accessed 18 September 2021).

11 B Hafsa, B Sabrine & B Ablal 'Maternal Mortality' University of Tlemcen (2013/2014) at 12-13 <http://dSPACE.univ-tlemcen.dz/bitstream/112/6553/1/LA-MORTALITE->

Among the challenges identified in the National Plan for the Accelerated Reduction of Maternal Mortality (2015-2019), are the high prevalence of pregnancies among at-risk women, the lack of knowledge of repositories and of access to essential information by professionals for the management of pregnancy and childbirth, inadequate and poorly distributed human resources with an overload of certain maternities, an inadequate distribution of material resources, continuous training and unstructured and unsystematic communication.¹²

The infant mortality rate reached 21 030 in 2019, with a drop of more than 800 deaths compared to 2018. Also, Algeria is witnessing a stagnation of the infant mortality rate, observed since 2016, with a level of 21 per cent. It reaches 22.5 per cent for boys and 19.4 per cent for girls. The probability of death between birth and the exact age of 5, expressed by the infant and child mortality quotient, is also stagnant compared to 2018 with a level of 24.2 per cent. This quotient is 25.7 per cent for boys and 22.7 per cent for girls. Based on the general prevalence rate of HIV which is estimated at 0.1 per cent, it is estimated that the numbers of infected infants exceed 40 000 cases.¹³ In 2016, the vaccination rate in Algeria for vaccine-preventable diseases stood at 83.7.¹⁴ The age of sexual debut in Algeria's youth is 17 years old, as this is when they usually engage in their first sexual intercourse.¹⁵ The numbers reveal that 37.7 per cent (80/214) of young people (77/188 men and 3/26 women) aged 15-24 have reported having had sex before the age of 15.¹⁶

Algeria was one of the top eight African countries where the age of adolescent fertility declined by more than 50 per cent between 1990-1995 and 2015-2020.¹⁷ However, according to the GeoFred Map site, Algeria

MATERNELLE.pdf (accessed 04 September 2021).

- 12 UNICEF Algeria 'Maternal and child health' (2013) <https://www.unicef.org/algeria/sant%C3%A9de-la-m%C3%A8re-et-de-lenfant> (accessed 18 September 2021).
- 13 A Imene 'Pediatric AIDS in Algeria: 500 children with HIV receive treatment' *Algeria360* 29 October 2018 <https://www.algerie360.com/sida-pediatrique-en-algerie-500-enfants-atteints-du-vih-suivent-un-traitement/> (accessed 18 September 2021).
- 14 Trading Economics 'Actual value and historical data chart for Algeria vaccinations: All vaccinations – Percent of children ages 12-23 months' <https://tradingeconomics.com/algeria/vaccinations-all-vaccinations-percent-of-children-ages-12-23-months-q2-wb-data.html> (accessed 18 September 2021).
- 15 'AIDS: More than 15% of young people (aged 15-24) have "correct" knowledge of this disease' *Radio Algeria* 03 May 2018 <https://www.radioalgerie.dz/news/fr/article/20180503/140513.html> (accessed 18 September 2021).
- 16 Aids Algeria 'Epidemiological data on STIs/HIV/AIDS in Algeria' <https://www.aidsalgerie.org/vih-sida/sida-chiffres> (accessed 18 September 2021).
- 17 UN Department of Economic and Social Affairs 'World Fertility 2019: Early and later childbearing among adolescent women' UN Doc ST/ESA/SER.A/446 (2020)

has reached the number of 9.8338 births to adolescents between 15 and 19 years old.¹⁸

According to a report from the Ministry of Health and UNAIDS, the number of people infected with HIV, all ages combined, reached 1 300 cases in 2018, while the number of HIV-positive people is close to 16 000 cases, including 15 000 over the age of 15 years old, 7 000 women and 8 300 men.¹⁹ During the presentation of the study which is part of the ACT 2030 initiative (bringing together around fifteen youth associations), on the dangers of real contamination faced by young people aged between 15 and 24 years old, it was explained, '51% of them admitted that they did not use condoms during sex'.²⁰

While the Algerian Constitution guarantees free access to health services in the public sector, the disparities in access and use between regions and social groups are worrying. Important differences exist in access to maternal and child health services between the most disadvantaged regions of the country and the highest and lowest income quintiles.

In 2012, the under-5 mortality rate ranged from 34.5 deaths per 1 000 live births in the South to 15.7 in the north-central part of the country, with substantial inequalities also persisting between socio-economic groups. Neonatal mortality was at its highest in rural areas, with 19.2 child deaths per 1 000 live births, compared to 13.3 in urban areas.²¹ In December 1992, the Presidential Decree 92-461 was issued alongside interpretive declarations that resulted in the ratification of the Convention on the Right of the Child (CRC) which provides in article 29 that:

States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to the benefit of medical and rehabilitation

https://www.un.org/en/development/desa/population/publications/pdf/fertility/World_Fertility_2019.pdf (accessed 18 September 2021).

18 Geofred '2018 adolescent fertility rate by nation' https://geofred.stlouisfed.org/map/?th=yIgn&cc=5&rc=false&im=fractile&sb&lng=0.0&lat=40.0&zm=2&sl&sv&sti=1478&rt=country&at=Not%20Seasonally%20Adjusted%20Birth%20Women%20Ages%2015-19,%20no_period_desc&fq=Annual&dt=2018-01-01&am=Average&un=lin (accessed 18 September 2021).

19 '16000 seropositive in Algeria' *Journal el Watan* 01 December 2019 <https://www.elwatan.com/pages-hebdo/sante/16-000-seropositifs-en-algerie-01-12-2019> (accessed 04 September 2021).

20 *Radio Algeria* (n 15).

21 UNICEF (n 12).

services. They strive to ensure that no child is deprived of the right to access these services.²²

While the Constitution of the People's Democratic Republic of Algeria does not explicitly protect the right to adequate food. There is an implicit protection to the right to adequate food in the Algerian Constitution in articles 66 and 73 respectively.²³

In Algeria 4.1 per cent of children are wasted and 11.7 per cent are stunted. Compared to the countries of North Africa, the situation is more or less the same. Algeria has slightly more wasted children, but fewer cases of stunting. Referring to a larger scale, the child nutrition situation in Algeria seems better than the world average.²⁴ Algeria has not directly targeted child food security, however, this fringe is part of society, so any decision includes it. In 1980, a decree established the operating methods of homes for assisted children. In January 2012, these establishments, within the framework of the protection of children deprived of the family, were established with a view to providing children with safety, assistance and comfort for harmonious development. Monthly financial assistance is granted to guarantee a paid quality foster care that meets the needs and expectations of each child who does not benefit from an establishment. Aid in kind is addressed to women raising their children alone.

The family code prohibits adoption (Tabanni) in accordance with the Sharia and the same law in its article 116, provides for the 'Kafala': 'the legal collection is the commitment to take charge of maintenance, education and the protection of a minor child, just like a father would for his son. It is established by a legal act'.²⁵ The law of 08 May 2002, relating to the protection and promotion of people with disabilities stipulates that prevention and early detection for care, education aimed at school inclusion in a specialised or mainstream environment, equipment, care and rehabilitation are implemented for increasing autonomy with age. A legislative and regulatory support system for children with disabilities

22 Presidential Decree 92-461 of 19 December 1992 ratifying, with interpretative declarations, the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989 (JORA 91 of 23- 12-1992).

23 Food and Agriculture Organisation of the United Nations 'The right to food around the globe: Algeria' <http://www.fao.org/right-to-food-around-the-globe/countries/dza/fr/> (accessed 04 September 2021).

24 H Rachid 'Food and nutritional security in Algeria' University of Tahri Mohamed, Béchar – Algeria, from 16-19 November 2019.

25 UNICEF 'Guide to the rights of the child' (2015) at 37 https://www.unicef.org/algeria/sites/unicef.org.algeria/files/201905/Guide%20des%20Droits%20de%20l%27Enfant%20FR_0.pdf (accessed 18 September 2021).

has been put in place. The inter-ministerial decree of 06 March 2011 sets the standards of accessibility for people with disabilities to the built environment and facilities open to the public. The inter-ministerial decree of 13 March 2014 sets out the procedures for opening special classes for children with disabilities.²⁶

The decree of 06 September 1994, organising the Ministry of National Education, recognises the right of all children to social security. The right to health insurance is also granted to people with disabilities, students, trainees and apprentices in vocational training. The Algerian state grants a family benefit to all workers with care for children. The family allowance system has two types of benefits: a family allowance, the amount of which is uniform for all children, whatever the size of the family; and a monthly schooling bonus of 3000 DA for each child in school.²⁷

The Orientation Law on Education (L.08-04 of 28 January 2008), in its Article 38, defines preschool as: 'a set of stages of socio-educational support for children from 3 to 6 years old'. Preparatory education corresponds according to this law to the final stage of preschool. Currently, pre-schooling efforts are being deployed primarily in favour of children aged five to six. As the admission of children aged three and four is not excluded by law, spaces are open to them within the limits of the reception capacity of establishments or structures.²⁸ Primary education in Algeria is guaranteed to all as the Orientation Law on National Education 2008 provides in article 11 that: 'The right to education is made concrete by the generalization of basic education and by the guarantee of equal opportunities in terms of schooling conditions and the pursuit of studies after basic education'. Article 12 provides: 'Education is compulsory for all girls and boys aged 6 to 16 years old'. Article 13 provides:

Education is free at all levels in establishments belonging to the public sector of national education. In addition, the State provides support for the education of underprivileged students by allowing them to benefit from multiple aids, particularly in terms of scholarships, textbooks and school supplies, food, accommodation, transport. and school health. However, the parents'

26 UNICEF (n 25) 38.

27 UNICEF (n 25) 39.

28 A Benamar 'Preschool in Algeria at the time of the reform: Comparative dynamics of public and private offers' (2010) 30 *Carrefours de l'Éducation* 90. [https://www.cairn.info/revue-carrefours-de-l-education-2010-2-page-91.htm#:~:text=La%20loi%20d'orientation%20sur%20l'%C3%A9ducation%20\(L.,de%203%20%C3%A0%206%20ans%20C2%BB.&Text=Currently%20les%20efforts%20de%20pr%C3%A9scolarisation,de%205%20%C3%A0%206%20years](https://www.cairn.info/revue-carrefours-de-l-education-2010-2-page-91.htm#:~:text=La%20loi%20d'orientation%20sur%20l'%C3%A9ducation%20(L.,de%203%20%C3%A0%206%20ans%20C2%BB.&Text=Currently%20les%20efforts%20de%20pr%C3%A9scolarisation,de%205%20%C3%A0%206%20years) (accessed 18 September 2021).

contribution to certain costs related to schooling and, without infringing the principle of free education, may be requested according to provisions defined by regulation.²⁹

During the 2018-2019 school year, a total of 4 513 749 students were enrolled in the primary cycle as opposed to 4 373 459 students during the previous period, an increase of 3.21 per cent (140 290 students). New pupils enrolled in the first year of primary school amounted to 934 521 pupils as opposed to 884 712 in 2017-2018, up 5.63 per cent, which represents 49 809 new pupils. For middle education, all indicators are on the rise. This cycle welcomed 2 979 737 students with a feminisation rate of 48 per cent, against 2 811 648 students in 2017-2018, an increase of 6 per cent (168 089 students).³⁰ School completion rate for primary level stands at 94.24 per cent³¹ while for secondary level it stood at 56.50 per cent.³²

According to the information on the Ministry of Solidary, there are 137 Medico-Pedagogical Centres for children with disabilities.³³ Access to the normal school is recommended by parents for a first integration into society, especially in preschools or during the first years of primary school, so special classes were opened at the level of normal establishments, numbering 700 during the school year at the start of the 2019-2020 school year.³⁴

Efforts have been made in this direction, either by civil society or by the government (and sometimes jointly), the number of children suffering

29 Law 08-04 of 15 Moharram 1429, corresponding to 23 January 2008 on the orientation law on national education <http://www.unesco.org/education/edurights/media/docs/a7e0cc2805ceafd5db12f8cf3190f43b66854027.pdf> (accessed 18 September 2021).

30 'Education: More than 9.2 million students enrolled in 2018-2019' *Algeria Press Service* 01 January 2020 <http://www.aps.dz/algerie/99633-education-plus-de-9-2-millions-d-eleves-scolarises-en-2018-2019> (accessed 18 September 2021).

31 UNESCO Institute for Statistics 'Education' <http://data.uis.unesco.org/?lang=fr&SubSessionId=da1fa224-5fec-49e1-918d-b6d5d227a969&themetreeid=-200#> (accessed 18 September 2021).

32 UNESCO (n 31).

33 Ministry of National Solidarity, Family and the Status of Women 'Medico-Pedagogical Centre for Mentally Handicapped Children' https://www.msnfcf.gov.dz/fr/?p=annuaire_etablisements_detail&id_annuaire_show=9

34 'Back to school 2019-2020: 700 special classes nationwide' *Algeria Press Service* 4 September 2019 <http://www.aps.dz/algerie/94018-rentree-scolaire-2019-2020-700-classes-speciales-al-echelle-nationale#:~:text=%22Le%20nombre%20de%20classes%20sp%C3%A9ciales, since% 20l'Ecole% 20des% 20jeunes> (accessed 4 September 2021).

from a disability is more visible, too, with the actions carried out with NGOs such as Humanity and Inclusion, associations are better able to advocate for these children. Between the opening of special classes and the reorientation towards specialised centres, challenges remain but there is hope. The problem lies in the application and the lack of staff training.

While the law guarantees education to all children up to the age of 16. The social structure in Algeria, as a predominantly Muslim country poses a great challenge against teenage girls who fall pregnant in continuing their educational journey. While efforts have been made to include sexuality education in Algeria, society has rejected it, considering this subject taboo and even seeing it as encouraging intimate relationships out of wedlock. However, in secret, many adolescents have already experienced intimate relationships, the Algerian state must recognise that society has changed and Islamic education has regressed in homes. Between the non-popularisation of the religious prohibition and the refusal of sex education, our adolescents have found themselves testing and reproducing what they see on pornographic sites without being aware of the risks involved and in particular the poor understanding of intimate relationships.

2 Ratification of the African Charter on the Rights and Welfare of the Child

According to article 91 of the Constitution the president enjoys several powers, among them is the power to ratify conventions.³⁵ In Algeria, the ratification of treaties is done by presidential decree.³⁶ As such, Presidential Decree 03-242 of 8 Jomada El Oula 1424 corresponding to 8 July 2003, ratified the African Charter on the Rights and Welfare of the Child, adopted in Addis Ababa, in July 1990.³⁷ No reservations were made for the ACRWC. In Algeria, the International Conventions on the Rights of the Child are applied more than the ACRWC, however, this Charter is studied at the level of the law department at various Algerian universities.

35 Constitution of the Peoples' Democratic Republic of Algeria 16-01 of 6 March 2016, Official Journal 14 of 7 March 2016 <https://www.joradp.dz/TRV/Fcons.pdf> (accessed 04 September 2021).

36 Decision 1-DL-CC of 20 August 1989 relating to the electoral code https://www.persee.fr/doc/aijc_0995-3817_1991_num_5_1989_1119 (accessed 20 September 2021).

37 'International conventions and agreements - Laws and decrees orders, decisions, opinions, communications and announcements' *Official Journal* 41 of 9 July 2003 <https://www.joradp.dz/FTP/jo-francais/2003/F2003041.pdf> (accessed 20 September 2021).

3 Government focal point

The Permanent Coordination Committee National Authority (ONPPE) is an inter-sectoral and inter-ministerial mechanism which was established in 2016 for the protection of children's rights, is the main executor of the Charter.³⁸ The Child Protection Body (body annexed to the presidency of the republic) is a body vested with the obligation of protecting children, as specified in article 15 of the Child Protection Law:

The national delegate of the protection of the child is seized by any child, his legal representative or any natural or legal person, of the denunciations relating to the infringements of the rights of the child.³⁹

4 Domestication or incorporation of the Charter

Article 2 of the Child Protection Act defines 'child' as follows: 'any person who has not reached eighteen (18) years of age. The term "minor" has the same meaning.'⁴⁰ Article 2 of the law cited above also defines the age of criminal responsibility as follows: 'reaching the age of eighteen (18) years'. The minimum legal age for marriage for both men and women is the age of legal majority, which is 19 years of age. However, minors may marry with parental consent, regardless of gender.⁴¹

The age of sexual consent is implied in article 334 of the Algerian penal code, as sexual intercourse with a minor under 16 years of age is indecent assault, so jurists have concluded that 16 is the age of sexual consent.⁴² In Algeria, the civil majority is 19 years of age, which means that this condition also applies to consent to medical treatment as stipulated in article 343, under Chapter 2:

38 Peoples' Democratic Republic of Algeria, National Commission for the Protection and Promotion of Children 'Standing coordination committee' <http://www.onppe.dz/index.php/ar/2016-12-19-09-44-36/2017-07-02-08-01-24> (accessed 20 September 2021).

39 National Body for the Protection and Promotion of Children, Law 15-12 of 28 Ramadhan 1436 corresponding to 15 July 2015 relating to the protection of the child <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/99843/119311/F177738812/DZA-99843.pdf> (accessed 20 September 2021).

40 As above.

41 'Marriage laws around the world' https://assets.pewresearch.org/wp-content/uploads/sites/12/2016/09/FT_Marriage_Age_Appendix_2016_09_08.pdf (accessed 28 September 2021).

42 Ordinance 66-156 of 8 June 1966 on the penal code, amended and supplemented <https://www.joradp.dz/TRV/FPenal.pdf> (accessed 20 September 2021).

Ethical aspects related to patients, no medical act or treatment can be carried out without the free and informed consent of the patient. The doctor must respect the patient's wishes, after having informed him of the consequences of his choices. This information relates to the various investigations, the treatments or preventive actions offered to it, their usefulness, their possible urgency, their consequences, the frequent or serious risks normally foreseeable that they involve as well as the other possible solutions and the foreseeable consequences in case of refusal. Information is provided by all healthcare professionals within the framework of their skills and in compliance with the ethical and professional rules applicable to them.

*The rights of minors or incapable persons are exercised, depending on the case, by the parents or by the legal representative.*⁴³

Corporal punishment has been criminalised in Algeria since 1991 in schools. In 2009, a ministerial note was clear on the obligation to combat school violence and stated that education personnel can be sued in the case where there has been violent physical or verbal practices against children (Note 96-2009 of 10 March 2009).⁴⁴ Also following the sensitisation of civil society on the popularisation of the law prohibiting violence against children on school premises, the number of complaints that parents brought against teachers increased, which pushed the minister of the time to act and send another ministerial note on 11 November 2012 (1881-2012) to all education personnel at the national level, reminding them of the law and the obligation to respect the physical and moral integrity of the child.⁴⁵ The penal code is also severe when it comes to child abuse.

Algeria has also ratified the CRC which was adopted on 2 September 1990 and ratified on 19 December 1992, with reservations on articles 13, 14, 16 and 17 respectively (publication of OJ 91 of 23 December 1992). The Optional Protocol to the CRC on the Involvement of Children in Armed Conflict was adopted on 25 May 2000 and ratified on 2 September 2006 (publication of OJ 55 of 06 September 2006). Algeria also adopted and ratified the Optional Protocol to the Convention on the Rights of the

43 Law 18-11 of 18 Chaoual 1439 corresponding to 2 July 2018, relating to health <http://extwprlegs1.fao.org/docs/pdf/Alg181216.pdf> (accessed 20 September 2021).

44 Communication from the Minister of Education to Education staff Boubeker Benbouzid, 96 of 10 March 2009.

45 Correspondence from the national educational inspectorate 1881 of 11 November 2012: 'The propagation of physical and verbal violence towards students'.

Child on the Sale of Children, Child Prostitution and Child Pornography on 2 September 2006 (publication of OJ 55 of 06 August 2006).⁴⁶

As to the Optional Protocol to the CRC Establishing a Procedure for the Presentation of Communications, Algeria has neither adopted nor ratified it. Algeria, however, ratified the Worst Forms of Child Labour Convention on 09 February 2001.⁴⁷

5 Legislative reform and adoption

In Algeria, the births of children are declared by the father or the mother or by doctors of medicine, midwives or others who attended the birth. Birth declarations are made within five days of giving birth to the registrar of the place of birth. In the wilayas (provinces) of the Saoura and the Oases, declarations are made within 20 days of childbirth. When a birth has not been declared within the legal time limit, the registrar can only note it in his registers by virtue of an order issued by the president of the district court in which the child was born, and summary mention is made in the margin at the date of birth.⁴⁸

The Code of Algerian Nationality regulates issues of acquisition of nationality in articles 6, 7 and 8 respectively. The Nationality Code clearly stipulates the conditions for acquiring Algerian nationality for a child as being born of an Algerian father or an Algerian mother. Or, in accordance with article 7, being born in Algeria with unknown parents. However, the child will be deemed not of Algerian nationality if, during his minority, his filiation is legally established with connection to a foreigner or and if he has, in accordance with the national law of this foreigner, acquired the nationality of the latter. A child born in Algeria of an unknown father and of a mother whose name is the only name that appears on the child's birth certificate, without any other mention that can prove the nationality of the father.

Lastly, a child who has acquired Algerian nationality, by virtue of article 7 above, is deemed to have been Algerian from birth, even if the

46 Ministry of Foreign Affairs 'Instruments ratified by Algeria' <http://www.mae.gov.dz/Les-instruments-ratifies-par-lAlgerie.aspx> (accessed 20 September 2021).

47 International Labour Organisation 'Ratifications of C182 - Worst Forms of Child Labour Convention, 1999 (No 182)' https://www.ilo.org/dyn/normlex/fr/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312327 (accessed 20 September 2021).

48 Ministry of the Interior and Local Authorities 'Declaration of the birth' <https://www.interieur.gov.dz/index.php/fr/mes-d%C3%A9marches-administratives/etat-civil/acte-de-naissance.html#faqnoanchor> (accessed 20 September 2021).

existence of the conditions required by law are only established, after his birth. The attribution of Algerian nationality from birth as well as the withdrawal or repudiation of this, by virtue of the provisions of article 7 above, do not affect the validity of the acts passed by the person concerned, nor the rights acquired by third parties considering the nationality previously acquired by the child.⁴⁹

Before the promulgation of any law, Algeria recruits' experts and organises meetings with ministers in order ascertain the effectiveness of implementing new legislation. Also, in the case of existing laws, Algeria often reviews laws that can be improved like the 1984 family code, which was amended in 2005 through a complete review and the participation of civil society. Civil society called on the Algerian state to review the method applied to the protection of children, and to bring together all the existing articles in the different codes on the same topic. The Algerian state gathered its ministers and understood the urgency of the situation, in close collaboration with civil society, a preliminary draft was made public in 2013. It was studied and then promulgated on 15 July 2015.

The modification of the Penal Code has been requested over and over again by child protection actors in Algeria. Adrar Abderrahmane, President of the Nada Network, for the protection of children stated:

This is a good step forward in improving child protection. This bill should fight effectively against crime, since it includes a protection and prevention component. This will make it possible to fight against begging, sexual or physical violence

He added:

It's a good social start, especially for child protection, which has never really been a priority in Algeria. But it is never too late, and now the government seems to want to react. What is certain is that we will participate in this process... It is true that the accumulation of sordid affairs this year has led

49 Ordinance 05-01 of 18 Moharram 1426 corresponding to 27 February 2005 modifying and supplementing ordinance 70-86 of 15 December 1970 on the code of Algerian nationality http://www.algerianembassy.pl/pdf/code_nationalite_modif.pdf (accessed 20 September 2021).

to the state reacting to the situation of its children. Kidnappings, murders, begging network, Algerian childhood has suffered too much.⁵⁰

The ACRWC was one of the sources of the law on child protection, the latter was stipulated in the Preamble:

The President of the Republic, Considering the Constitution, in particular its articles 34, 35, 53, 54, 58, 59, 63, 65, 119, 122, 125/2, 126 and 132; Considering the convention relating to the rights of the child, adopted by the General Assembly of the United Nations on November 20, 1989, ratified, with interpretative declarations, by presidential decree n ° 92-461 of December 19, 1992; Having regard to the African Charter on the Rights and Welfare of the Child, adopted in Addis Ababa, in July 1990; ratified by presidential decree n ° 03-242 of 8 Joumada El Oula 1424 corresponding to July 8, 2003.⁵¹

Algeria does not have a comprehensive juvenile justice law. However, it does have legislative provisions in sections 32-109 of the Child Protection Act, which provide for procedures regarding child offenders. An alternative was indicated by this law by proposing recourse to mediation.⁵² Once mediation is finished, the minutes must be delivered to both parties as well as to the Attorney General. Article 115 states 'The execution of the mediation report puts an end to the criminal proceedings'.⁵³ Thus, the child can avoid lengthy legal proceedings.

Examples of the Algerian legislator's adoption of the articles of the ACRWC in the national law can be observed in the following practices: compulsory assistance of a lawyer during the hearing;⁵⁴ a child whose age is less than 13 years of age who is presumed to have committed or attempted to commit an offense may not be placed in police custody;⁵⁵ a minimum age must be fixed, below which children are presumed not to have the capacity to infringe criminal law;⁵⁶ child protection during

50 'Algerian children at risk: Can the government really protect them? *Algerie360* 30 September 2013 <https://www.algerie360.com/enfants-algeriens-en-danger-le-gouvernement-peut-il-reellement-les-proteger/> (accessed 20 September 2021).

51 Law 15-12 on child protection (n 39).

52 As above

53 As above.

54 As above.

55 As above.

56 As above.

hearings,⁵⁷ and prohibition of the press and the public from attending the trial.⁵⁸

Articles 7, 8 and 9 of the ACRWC guarantee freedom of expression and the freedom to assemble. Algeria has implemented laws that contradict the ACRWC and the CIDE; because in order to be able to create an association or join it and claim to be a member, you must reach the age of 19, that is the civil age. For freedom of expression, no national programme or plan has been implemented to encourage this exercise. Apart from the guarantee to be heard in court, stipulated by Law 15-12; no other procedure guarantees the right to be consulted either in the national plan, or in the socio-economic policy or in programmes concerning them.

6 Policy reform and adoption

According to the written responses of the government on the occasion of the examination of Algeria's second periodic report by the Committee on the Rights of the Child, the Algerian state specifies that one of the references of national legislative practices is the African Charter on the rights and welfare of the child. The legal status enjoyed by the ACRWC is that of an international convention, therefore inferior to the Algerian Constitution and superior to domestic laws.

The second source of law is international conventions and treaties ratified by the Algerian state, once their publication in the official journal has been executed. To this end, we can see the importance of this notion when reading with article 358 paragraph 7 of the code of civil and administrative procedure on the rule regarding "violation of international conventions"⁵⁹ The ACRWC is no exception to the rule, it remains invocable and enforceable with and by the Algerian authorities.

An event of a conflict between the provisions of the ACRWC and those of national legislation cannot be found in the courts, because Algeria studies the conventions and issues its reservations before ratification to avoid any form of conflict. This is what it did in the case of the CIDE, with regard to the adoption provisions (art 20).⁶⁰ While Algeria follows

57 As above.

58 As above.

59 Law 08-09 of 18 Safar 1429 corresponding to 25 February 2008 on the code of civil and administrative procedure. <https://www.joradp.dz/TRV/FPCivil.pdf> (accessed 20 September 2021).

60 Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by the General Assembly in its resolution 44/25 of 20 November 1989, entered into force on 2 September 1990, in accordance with article 49 <https://www.>

Sharia (Muslim law), which means that the family can sponsor a child without adopting him as a legal member, which is called KAFALA.⁶¹ In the case of the ACRWC, Algeria ratified each article without issuing a reservation.

Algerian law promotes the interests of the child by relying on the legal status of the guardian, for this purpose, the family code has devoted an explicit explanation to this case from articles 87 to 91.⁶² Children do not have the right to make an appeal on their own in Algeria, however, the guardian can take care of all the necessary legal procedures. Furthermore, a child can seek help and representation from the Child Protection Body. The Algerian Constitution guarantees the rights of the child as it provides in article 72 ‘... The family, society and the State protect the rights of the child. *The state takes care of abandoned or unaffiliated children. The law punishes violence against children...*’⁶³

In addition to the Child Protection Law 15-12, the Algerian state is launching, with UN partners in child protection, programmes such as the case of the popularisation of the rights of the child with UNICEF. Algeria does not know the excision of girls or genital mutilation, this is linked to the taboo regarding the body of women from an early age. However, the excision of boys does exist which is due to a religious practice, but it is supervised, no family can practice it outside a hospital or a private clinic. The child protection law warned against any form of physical or moral violence and went so far as to protect the image of the child as indicated in articles 6 and 10.

Article 6 provides:

The State guarantees the protection of the Child against all forms of prejudice, neglect, violence, ill-treatment, exploitation or any physical, moral or sexual attack. *To this end, he takes all appropriate measures to protect him, meets the necessary conditions for his development, his safeguard, the protection of his life and*

ohchr.org/FR/ProfessionalInterest/Pages/CRC.aspx (accessed 20 September 2021).

61 Kafala is a legal collection in accordance with the Muslim religion.

62 Law 84-11 of 9 June 1984 relating to the family code, amended and supplemented Chap II ‘Guardianship’ <http://www.formulairesdumonde.com/index.php?id=815&r=Chapitre-ii--de-la-tutelle> (accessed 21 September 2021).

63 Constitution of the Democratic and Popular Republic of Algeria Law 16-01 of 6 March 2016: Official Journal 14 of 7 March 2016 <https://www.joradp.dz/TRV/Fcons.pdf> (accessed 21 March 2021).

ensures him an honest and safe education in an environment, healthy and clean and to protect their rights in emergencies, disasters, wars and armed conflicts.

Article 10 provides:

It is prohibited, under penalty of criminal prosecution, the use of the child in advertising spots, films, photos or recordings in any form whatsoever, without the authorization of his legal representative and outside school hours in accordance with the laws and regulations in force.⁶⁴

At the same time, the Algerian law remains silent against consensus between children. Even so, we understand that if the two minors are over 16 and under 18, consensus can work in their favour. However, a minor under the age of 13, who has not reached the age of reason, cannot be declared criminally responsible. This presumption is absolute. This is the solution in principle enshrined in Algerian law.⁶⁵

The law and policies remain silent on the issue of children's access to sexual and reproductive health services. Nevertheless, contraceptive products are only sold in pharmacies so they are sold under supervision. Algerian children also lack meaningful representation as there is no policy on the representation of children, some small programmes have been started without sustainability. Currently, Algeria does not have a children's parliament.

In order to protect Algerian children from violence and all the dangers that threaten their physical and psychological integrity, the public authorities are working to finalise the implementing texts of Law 12-15, relating to child protection. These bills will, among other things, define the mechanisms for implementing the provisions of this Law, including those governing centres for the protection of children in distress and the Educational Action Services in Open (AEMO), in addition to the measures taken in terms of a notification mechanism for monitoring the situation of children. The process assigned to the Ministry of National Solidarity, the Family and the Status of Women, is 'still in progress' and aims to concretise the comprehensive approach to child protection expressed in the Constitution of 2016. In detail, the ministry said that 'intense efforts are being made to develop a new national action plan on child protection and well-being'.

64 Law 15-12 (n 39).

65 R Zerguine 'The criminal responsibility of minors in the internal and international legal order' (2004) 75 *International review of penal law* 103.

This mainly concerns the completion of the promulgation of executive decrees, in particular those governing the centres for the protection of children in distress, resulting from Law 15-12, in addition to the measures taken in terms of the notification mechanism for the monitoring of the childhood situation. The Ministry of National Solidarity considers that the protection of children in Algeria obeys a comprehensive approach capable of guaranteeing social prosperity and development, according to the principle of the framework of society and the protection of the family and the child, through a comprehensive national strategy, expressed in the Constitution of 2016 which affirms the will of the State to protect society and the family, while forcing them to work for the protection of the child.

In this vein, he specified that effective instruments have been adopted to guarantee the protection of the rights of children without families, including those born out of wedlock, through a network of establishments distributed throughout the national territory, numbering 51 establishments operating under the supervision of the Ministry of National Solidarity and governed by Executive Decree 12-04, dated 2012, on the standard status of establishments for assisted children with a capacity of 3 328 beds. Some centres take in children from birth until the age of six and others take care of children from six to 18 years of age, according to the same source. In addition, child protection programmes include measures aimed at placing the child without a family under kafala to ensure a family climate capable of preserving his psychological balance and helping him build a balanced personality to enable him to integrate and flourish in society. Remember that the Law on the Protection of Children in Mortal Danger and in Conflict with the Law was promulgated in July 2015. It was followed, in June 2016, by the creation the National Organ for the Protection and Promotion of Children, directly under the supervision of the Prime Minister, and is responsible for ensuring the protection and promotion of children's rights. These measures constitute a major step forward for the country in terms of child protection.⁶⁶ Unfortunately, children's rights strategies do not include children in decision-making or even in information. However, The National Directorate of Children's Rights is responsible for monitoring children's rights and the implementation of the law on child protection.⁶⁷

66 L Boufassa 'National action plan on child protection: The legal arsenal being finalized' *Le Courrier d'Algérie* <https://lecourrier-dalgerie.com/plan-daction-nationale-la-protection-de-lenfant-larsenal-juridique-en-voie-de-finalisation/> (accessed 21 September 2021).

67 Department of Children's Rights 'Tasks' <http://www.onppe.dz/index.php/ar/2016-12-19-09-44-36/2017-07-02-08-02-55> (accessed 21 September 2021).

As to budgeting for children, the only visible budget known to the general public is that of national education, which amounts to 509 billion dinars. The budget is allocated by social insurance within the framework of family benefits which are provided for the dependent children of the worker, aged under 17 years and 21 years in case of continuation of studies or apprenticeship, if the remuneration does not exceed half of the SNMG, or in the event of disability. Children are included in family allowances⁶⁸ and tuition allowance.⁶⁹ Children are not involved in the decision-making process regarding the percentage of the budget allocated to them.

7 Court judgments

No internal court decision invoked the ACRWC. Also, the observations are not a source of law in Algeria and do not have the force of law.

8 Awareness and use by Civil Society Organisations

In Algeria, each Convention is published in the official journal, which makes it accessible to the member of state, CSOs and the general public. The ACRWC was published on 09 July 2003⁷⁰ in both Arabic and French. Several NGOs use the ACRWC in their advocacy like the CIDDEF,⁷¹ NADA, and the Voice of the Child. The National Consultative Commission for the Promotion and Protection of Human Rights uses the provisions of the treaties in its process of drafting reports; this same commission invokes the ACRWC in its reports on children's rights.

Civil society is not involved exclusively in the implementation of the ACRWC, in Algeria, the CIDE has largely won people's minds, in particular that the Convention is studied in the school curriculum in the primary cycle. Also, civil society works in close collaboration with UNICEF, which remains accessible and distributes manuals in connection with the CIDE. Since 2015, and by appropriating the Algerian Law on Child Protection, civil society has changed direction, and prefers to promote and raise awareness of the content of this internal law accessible to Algerian citizens. Aside from small activities, large-scale programmes

68 The Algerian social security system 'Employees' https://www.cleiss.fr/docs/regimes/regime_algerie_salaries.html#:~:text=600%20DZD%20par%20mois%20et,partir%20du%206e%20enfant (accessed 21 September 2021).

69 As above.

70 Algeria Official gazette 2003 <https://www.joradp.dz/FTP/JO-ARABE/2003/A2003041.pdf?znjo=41> (accessed 21 September 2021).

71 CIDDEF 'Day of reflection on the rights of the African child' Revue 36 January/ March 2015 <https://www.ciddef-dz.com/pages-index/revue35.php> (accessed 21 September 2021).

have not been carried out on the ACRWC, so civil society submits shadow reports to the UN Committee on the Rights of the Child. For lack of popularisation, the ACRWC is not one of the sources of work for CSOs. No programme concerning the ACRWC has been implemented, to this end, nobody has been involved in its monitoring. The government consulted widely during the Child Protection Bill, to say that there is a will on the part of the state to safeguard the interests of the child. However; the ACRWC remains in the shadows and no programme has been developed to bring it to light.

9 Awareness and use by lawyers and the judiciary

The Algerian government has never organised training on the ACRWC. However, since 2016, the ONPPE state organ for the protection of the rights of the child – one of the sources of its creation is the ACRWC – regularly organises sessions and training for journalists and CSOs.

10 Higher education and academic writing

At the level of the Algerian University, we have a course on CABDE as part of the Master 2 of international humanitarian law in the module of international conventions for the protection of human rights.

11 National Human Rights Institutions

The National Consultative Commission for the Promotion and Protection of Human Rights plays a very important role in reminding the government of the articles of the ACRWC and the obligation to apply them. This same commission prepares periodic reports for the Human Rights Committee in Geneva. It also has the task of invoking the articles of the ACRWC in these communications and its reports that it disseminates to the general public. In 2016, the National Consultative Commission for the Promotion and Protection of Human Rights asked the state to eradicate child begging, this request was based on articles of the ACRWC by invoking the following articles: 3, 11, 12, 13, 14, 15 and 29.⁷²

The National Organ for the Protection and Promotion of Children (ONPPE), is a ministerial body. In terms of autonomous organisations, we observe the coordination of civil society such as the NADA network which often draws up counter reports on the situation of children's rights

72 'The CNCPPDH calls for an end to the use of children in begging' *Algeria 360* 17 August 2016 <https://www.algerie360.com/la-cncppdh-appelle-a-mettre-un-terme-a-lemploi-denfants-dans-la-mendicite/> (accessed 04 September 2021).

in Algeria. No ministry is devoted exclusively to the rights of the child. However, Algeria has given prerogatives to the Ministry of National Solidarity, Family and the Status of Women, one of which concerns the situation of the child, and this ministry works in close collaboration with the ONPPE and UNICEF.

12 State reporting

A report was sent by the Algerian state: The initial report which was due on 24 September 2005 was only submitted in 2014, and was examined by the experts at the 26th session (16-19 November 2015). The reason for the delay is Algeria has gone through several troubled periods in the course of its implementation of various social policies, as well; reporting on children's rights was not prioritised given the urgent political situation that continues to this day. The initial report covered several issues such as the institutional framework; the legal framework and concrete measures; general implementation measures of the Charter; definition of the child; non-discrimination (article 2 of the ACRWC); best interests of the child (article 4 of the ACRWC); right to life, survival and development (article 5 of the ACRWC); name, nationality and birth registration (article 6 of the ACRWC); respect for the views of children (article 7 of the ACRWC); and many other.⁷³

The introductory part of the initial report mentioned that the report submitted by Algeria was compliant with the reporting guidelines, this was further supported by the African Committee in its concluding observations addressed to Algeria.⁷⁴ CSOs such as Nada, Forem, Iqraa, Muslim Scouts and the Algerian Red Crescent are often asked for seminars, to issue their reports and opinions to the state on the situation of children's rights. However, other CSOs such as the Voice of the Child are often side-lined while these same CSOs base their advocacy on real field work. Also, NHRIs and NGOs are not solicited while their reports have a lot of visibility at the international level such as the League of Human Rights; Disappeared SOS etc.

73 African Charter on the Rights and Welfare of the Child Initial Report <https://acerwc.africa/wp-content/uploads/2018/04/EN-Algeria-Initial-Report.pdf>.

74 Concluding observations and recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the People's Democratic Republic of Algeria: Report on the Status of Implementation of the African Charter on the Rights and Welfare of the Child https://acerwc.africa/wpcontent/uploads/2018/14/Concluding_Observations_Algeria.pdf (accessed 21 September 2021).

Several supplementary reports have been submitted to the UN Committee. However, there is no evidence that any were submitted to the African Committee of Experts. The issues raised in the reports are often related to articles of law, legal loopholes or issues omitted in the report submitted by the Algerian state. To this end, these alternative reports have a shocking effect on the Algerian state, recalling in particular the obligation to implement the signed treaties and respect for human rights. Moreover, it is these alternative reports that helped the Special Rapporteur on Education (UN) to better understand the Algerian context outside of the reports submitted by the state, the breaches were judged by what was submitted by the CSOs, as at 27 January 2015.⁷⁵

The government delegation presenting the initial report was made up of representatives from each ministry and is overseen by the Ministry of Foreign Affairs because the issue of children cuts across all sectors. Each ministry appoints its representative.⁷⁶ Children were not involved in the reporting process.⁷⁷ The Ministry of Foreign Affairs is responsible for the reporting process in accordance with article 6, paragraphs 2 and 3 of the Decree establishing the Powers of the Ministry of Foreign Affairs that stipulates that only this present ministry is authorised to take all the steps concerning international conventions and it is for them to designate the diplomatic representatives (including delegations).⁷⁸ Admittedly, there is no explanation on the drafting of the reports, however, seeing that there is no explanatory law, the government relies on this present law to entrust the mission of the reports to this ministry. There is no evidence on whether the Ministry has hired a consultant to prepare the report.

The reporting process was indeed interdepartmental as the Ministry of Foreign Affairs sends the questionnaire of the Committee to each ministry and each one must answer the questions which concern it; inter alia the Ministry of Education, Solidarity, Sports, Labour, Social Affairs and Health. They must take stock of the situation in figures and say whether the recommendations made to them in the previous report have been lifted or not. The experts of the committee will not fail at the presentation of

75 'The UN welcomes the efforts made for the consecration of the right to education in Algeria' *Radio Algerie* 31 January 2015 <https://www.radioalgerie.dz/news/fr/article/20150131/28735.html> (accessed 21 September 2021).

76 E-mail from Dr Nadia AIT ZAI, Attorney and Head of CIDDEF NGO on 08 September 2020.

77 As above.

78 Presidential Decree 02-403 of 21 Ramadhan 1423 corresponding to 26 November 2002 setting the Responsibilities of the Ministry of Foreign Affairs.

the report of the Algerian state to tell them what they have done since the last report.⁷⁹

The Ministry of Foreign Affairs uses the information provided by the ministries. It has happened that associations have been invited to the Ministry of Foreign Affairs during the preparation of the report and have given their point of view. However, there are sources stating their opinion was not taken into consideration, especially when a question of lifting the interpretative declarations or of changing the law such as that concerning the Kafala is raised.⁸⁰

As to publication of the report, article 16 of the Law establishing the Powers of the Ministry of Foreign Affairs only mentions conventions, protocols, regulations and treaties, with regard to reports there was no mention. However, the reports are also under the supervision of the Ministry of Foreign Affairs and it is the only one authorised to publish it.⁸¹ Comments from NGOs and other stakeholders were not allowed in the final version of the report as there is no reference to the remarks and observations of the organisations that prepare the reports.⁸²

The two working languages in Algeria are Arabic and French; these two languages are largely mastered by citizens. The Algerian Constitution provides that treaties are superior to the law. Treaties are published in the official journal, which obliges the national judge to apply the provisions of the treaties. The Supreme Court, the highest judicial body, has already accepted the appeal of citizens for non-application of a treaty superior to the law. An example of this can be seen in article 11 of the International Covenant on Civil and Political Rights provides as follows: 'No one may be imprisoned for the sole reason that he is unable to perform a contractual obligation'. The supreme court froze the application of a law which authorises the judge to pronounce the imprisonment of the citizens who have not fulfilled contractual obligations.⁸³

Algeria has made enormous progress in realising children's rights since the submission of its initial report, in particular in the promulgation of a law exclusively reserved for the rights of the child, Law 15-12 relating to the protection of children. This made it possible for the installation of the ONPPE, classes for autistic students have been set up in schools, and

79 E-mail from Dr Nadia (n 76)

80 As above.

81 Presidential Decree 02-403.

82 E-mail from Dr Abdlouhab CHITER, Attorney on 07 September 2020.

83 As above.

brigades for the protection of minors were created in 2011.⁸⁴ The latest progress to date was the decree on changing the position of child born to be legally taken under the (Kafala) system: Executive decree 20-223 of 8 August 2020 amending and supplementing decree 71-157 of 3 June 1971 relating to the change of name.⁸⁵ Since Algeria last reported in 2012 to the Committee, it has made progress in the change of laws, adoption of the law on child protection, modifications of the penal code on sexual violence, laws on early childhood, nurseries and day care, on the placement of children in volunteer families, in terms of mother and child health.⁸⁶ As to concluding observations, the last Final Observation concerned Algeria's fourth periodic report CCPR/C/DZA/CO/4 submitted by the United Nations Human Rights Committee on the execution of the International Covenant on Civil and Political Rights on 17 August 2018.⁸⁷

The entity responsible for monitoring the implementation of the concluding observations is the sub-directorate of bilateral and multilateral treaties, international law and international judicial institutions of the Ministry of Foreign Affairs, this is governed by Presidential Decree 19-244 of 11 Moharram 1441 corresponding to 11 September 2019 on the organisation of the central administration of the Ministry of Foreign Affairs.

Article 2 of the information law encourages media coverage and the dissemination of situations related to human dignity and individual freedoms states that:

- 84 Algeria 360 'The brigades to protect minors, cybercafés and nightclubs under surveillance' *Algeria360* 24 June 2011 <https://www.algerie360.com/des-brigades-pour-protéger-les-mineurscybercafés-et-boîtes-de-nuit-sous-surveillance> (accessed 21 September 2021).
- 85 Abdelghani Aichoun 'A decree evoking the change of name of adopted children: Controversy over a procedure that has existed since 1992' 22 August 2020 <https://www.elwatan.com/edition/actualite/polemique-autour-dune-procedure-qui-existe-depuis-1992-22-08-2020> (accessed 21 September 2021).
- 86 E-mail from Dr Nadia AIT ZAI, Attorney and Head of CIDDEF NGO, on 08 September 2020.
- 87 Concluding observations on the fourth periodic report of Algeria, HRC (4 August 2018) UN Doc CCPR/C/DZA/CO/ (2018) <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsupCifjZpImgcLMaz30WluRQ3nFGey6bTgPxWpOk%2BHxuM5AWE2y8tRGO%2FjXXBzw%2Bf8zXtAoY%2BEdjMxiyZE%2FJmqImCAqZAKnFPQRF0AVDVa09> (accessed 21 September 2021).

Information is an activity freely exercised within the framework of the provisions of this organic law, of the legislation and regulations in force... the dignity of the human person and individual and collective freedoms.⁸⁸

However, it is not clear if the concluding observations were indeed disseminated and whether they were translated into local and minority languages. The presidential decree of the central administration of the Ministry of Foreign Affairs is clear, containing 18 articles, the decree is explicit on the monitoring of each sub-directorate for the application of concluding observations and/or discussions to improve the practice of human rights in Algeria; for example, in article 4 of the same decree, it stipulates the prerogatives of the sub-leadership of the African Union as:

The sub-directorate of the African Union, responsible for: the preparation of the participation of Algeria in the activities of the African Union and its subsidiary organs, monitoring the implementation of decisions taken in this context.

And this demonstrates a political and legal will to implement the procedures for following up on the recommendations and observations of the latter.⁸⁹

The visibility of the plan established by the government for the implementation of the concluding observations has not been clear, however, in 2018, a national plan was announced by the Ministry of Solidarity regarding the planning of changes to articles of the various laws to guarantee much better protection for Algerian children. Algerian civil society often relies on the observations of international bodies, to follow up and write reports on the implementation by the government. The most recurring example is the report submitted by the Algerian Civil Society Coalition for the Universal Periodic Review of Algeria where it was able to denounce discrimination and violence against migrants (especially against women and children).⁹⁰ Unfortunately, Algerian children were not involved in the implementation process.

88 Algerian Constitution.

89 Presidential Decree 19-244 of 11 Moharram 1441 corresponding to 11 September 2019 on the organisation of the central administration of the Ministry of Foreign Affairs https://www.mfdgi.gov.dz/images/pdf/textes_reglementaires/F2019056.pdf (accessed 21 September 2021).

90 Report of the Algerian Civil Society Coalition for the Universal Periodic Review of Algeria: Third Cycle, submitted in September 2016 at 6 <https://www.euromedrights.org/wp-content/uploads/2017/02/Rapport-conjoint-EPU.pdf> (accessed 21 September 2021).

13 Communications

No communication has been submitted against Algeria to the ACERWC.⁹¹ This is due to the fact that the Charter is not binding on the member states, and that there is no material or moral provision taken against the signatory country which does not respect the ACRWC. Algeria (in particular the CSOs) prefers to go to the UN. NGOs are discouraged from submitting communications because there is no agency as binding as UNICEF at the level of each signatory country to safeguard the ACRWC and to remind countries of the importance of respecting the rights of the child within the framework of the African Charter.

14 Special mechanism: Promotional visits of the African Committee of Experts on the Rights and Welfare of the Child

The Committee has not made any country visits to Algeria since its inception.⁹² Also, no investigation has been carried out on the situation of children's rights in Algeria by the ACRWC. At the same time, Algeria does not publish observations and comments against it, whether they come from the UN or the AU. The observations of the ACERWC are on the website and therefore accessible. But in Algeria, unfortunately, there is no trace. This is always a matter of whether or not it is binding when ratifying treaties.

15 Factors that may impede or enhance the impact of the Charter and the Committee

The treaty has been one of the official sources of Law 15-12 (as explained above). However, no plan has been implemented for the realisation of the ACRWC. Since 2016, Algeria has had a special delegation to monitor the progress of children's rights at the national level; which is known under the name: National Organ for the Promotion and Protection of Children (ONPPE).

The reporting mechanism of the Committee is inefficient. The Committee on the Rights of the Child at the UN level has issued observations against Algeria on three occasions. In 1997, in 2005 and in

91 ACERWC 'Table of communications' <https://www.acerwc.africa/table-of-communications/> (accessed 3 October 2021).

92 ACERWC 'Missions: Country visits' <https://www.acerwc.africa/missions-country-visits/> (accessed 3 October 2022).

2012. It took until 2015 for Algeria to insert the provisions of the CRC and the two protocols into the 2015 law. So just before submitting the 2017 period report. That is, the Committee exerts political pressure on states to modify or approve laws aimed at protecting children.⁹³

In the field, we have often observed the use of the CIDE as a basis for working and developing various programmes concerning children, it should be noted that the presence of UNICEF in the field facilitates the integration of the CIDE in the various national plans and even with CSOs.⁹⁴ The judges consider only those provisions of the Treaty which are legally binding under the Constitution. The judges ignore the Committee's observations, because they do not have the force of law.⁹⁵

The budget allocated to children has not increased. The state grants very symbolic family allowances to children: 3 000 da for each child. On the other hand, education at school and access to healthcare are free for all children. It is necessary to understand that the Algerian state subsidises the food necessary for the survival of the children such as milk and bread.⁹⁶ The provisions of the treaty are on the agenda of civil society organisations.

Meetings are organised to raise awareness of the importance of educating children and protecting them against violence. Civil society plays an important role in this area. And the state provides them with the necessary means to disseminate the provisions of the CRC. However, the ACRWC can be invoked as a source during these awareness programmes, but are not the subject of the working theme.⁹⁷

16 Conclusion

The Covid-19 pandemic has affected all fringes of Algerian society, and raises questions regarding the promotion of children's rights. Compulsory confinement reduces access to the right to leisure. Pertaining to the right to education, the schoolchildren had a tumultuous year, on the eve of the second trimester exams, they overnight found themselves no longer joining the benches of their schools. In April, the ministry of education launched a strategy to handle the situation.⁹⁸ However, this strategy was aborted,

93 E-mail from Dr Chiter (n 82), Attorney on 07 September 2020.

94 As above.

95 As above.

96 As above.

97 As above.

98 'Covid-19 pandemic in Algeria, confinement and education!' *Jil Jadid* 04 July 2020

and it was necessary to resort to another strategy by using passage of the students of the three cycles counting the homework and exams of the 1st and 2nd quarter, optional secondary school end-of-cycle examination for students and that the Bacalaureate exam is compulsory. Algeria must address the issue of migrant children which still remains a socio-political taboo, the flow of migrants is constantly growing and Algeria still refuses to address this issue, especially the issue of children from migrant parents.

According to Professor Khiati, the progress that Algeria has been able to make in the field of children's rights is

the drop recorded in infant mortality thanks to the expanded vaccination program established by Algeria and which has enabled the 'eradication of several childhood illnesses which were previously responsible for the death or disability of the child'⁹⁹

Other areas that are commendable are the promulgation of the Child Protection Law 15-12, the installation of the National Body for the Promotion and Protection of Children, the application of the right to name and nationality for the child born out of wedlock, the limitation of the penal age of the child, the drop in the rate of underage marriage and extensive schooling at the national level.

Nevertheless, concerns still remain in the area of regulations that do not determine the same age for civil and criminal majority; comments from UN and AU bodies must be disseminated; specific status for the child born out of wedlock must be developed; the law of violence against children at school on the part of educators must be strengthened; deadlines for periodic reports to be submitted to the ACERWC and the Committee on the Rights of the Child (UN) must be respected; the brigade for the protection of minors should receive a free hotline for rapid intervention; and a sex offenders database is needed. In the area of education improvements need to be made in adapting the number of pupils to the capacity of the classes, adapting a different schedule in the study schedules between the north and the south (desert) and training teachers on ACRWC and CIDE in addition to Law 15-12. As to the socio-economic rights of children, Algeria must work towards the eradication of the economic exploitation of children, increase awareness of internet risks, implement a programme to track stalkers, increase the low alimony awarded to children by the head

<https://jiljadid.org/fr/2020/04/07/pandemie-covid-19-en-algerie-confinement-et-scolarite/> (accessed 21 September 2021).

99 'Children's rights: Important progress' *Elmoud Jahid* 18 November 2019 <http://www.elmoudjahid.com/fr/actualites/144664>

of the family in the event of parental divorce and create relaxation areas accessible to low-income households.

3



THE IMPLEMENTATION OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD IN BURKINA FASO

*Sawadogo Lamoussa Carol**

1 Background

The people of Burkina Faso adopted the Constitution for the country's Fourth Republic in June 1991. The current Constitution establishes a political system the exact nature of which is difficult to define. Without being a semi-presidential system, executive power is nevertheless shared between the President du Faso and the government headed by a Prime Minister. The two positions, President and Prime Minister, are both important under the Fourth Republic because of the ambivalent nature of the regime.¹ As far as the parliament is concerned, the legislature, the 'Assemblée nationale (National Assembly) is composed of 'députés' (Members of Parliament) elected through direct universal suffrage (article 80) for five years (article 81). The National Assembly is vested with legislative powers and holds two ordinary sessions yearly. In accordance

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1 College of Liberal Arts, Trans-Saharan Elections Project 'The electoral system: Burkina Faso' <https://tsep.africa.ufl.edu/the-electoral-system/burkina-faso/> (accessed 22 September 2021).

with article 84, the National Assembly passes laws, fixes taxes and monitors government action.²

The Constitutional Council is competent to decide on the constitutionality of the laws, parliamentary rules and regulations, ordinances, treaties and international agreements. Organic laws are automatically referred to the Constitutional Council before their promulgation. It regulates the functioning of public institutions and settles conflicts arising from their attributions and ensures regularity, transparency, sincerity of referendums, and presidential and parliamentary elections. It decides all electoral disputes and proclaims the final results of presidential, parliamentary and local elections, and administers the oath of the president (article 152 of the Constitution).

Regarding the judicial and administrative jurisdictions, the judiciary consists of the Supreme Court of Appeal (Cour de cassation) which is the highest jurisdiction of the judicial order; the Council of State (*Conseil d'Etat*) which is the highest jurisdiction on administrative matters; and the Court of Accounts (*la Cour des comptes*) which is the highest jurisdiction in matters relating to controlling public finances, the courts, and tribunals instituted by law. These jurisdictions apply the existing laws (article 126).³ Burkina Faso is a former French colony; its legal system is based on Civil Law. Local customary laws also apply to some extent.⁴

Pursuant to the *Loi 010/93/ADP portant organisation judiciaire au Burkina Faso*, the jurisdictions of the judicial order in Burkina Faso are: the Supreme Court of Appeal; the Appeal Court; the High Instance Tribunals; the Instance Tribunals; the Department Tribunals; the District (Arrondissement) Tribunals; the Labour Tribunals; the Judges for Children; and the Tribunals for Children.

The same law determines the geographical and material competence, the headquarters, and the composition of the above-mentioned jurisdictions.⁵ According to the World Bank, Burkina Faso is one of the poorest countries in the world with a 'GDP per capita of 744 dollars' per annum. In 2019, Burkina Faso's GDP stood at nearly \$14.88 billion for

2 KA Somé 'Burkina Faso legal information and research' Hauser Global Law School Program (November 2007) https://www.nyulawglobal.org/globalex/Burkina_Faso.html (accessed 22 September 2021).

3 As above.

4 As above.

5 As above.

20 million inhabitants'.⁶ It is a low-income country with limited natural resources, and it ranks 144th amongst 157 countries in the new Human Capital Index established by the World Bank. Furthermore, insecurity linked to frequent terrorist attacks since 2016 has created an unprecedented humanitarian crisis.⁷

The population of Burkina Faso was estimated in 2019 to be 20 870 060 inhabitants with 51.68 per cent women and 48.32 per cent men. The demographic structure of the country is characterised by the youth of the population. The population of children under 18 is estimated at 11 089 641, or 53.14 per cent of the total population. Girls represent 5 676 384 or 51.18 per cent of children, and boys 5 413 357 or 48.82 per cent.⁸

Despite efforts, maternal intra-hospital mortality remains high. Mortality fluctuated between 2010 and 2019. For a target of 90, 143 deaths occurred per 100 000 parturient women in 2019. The main causes are the insufficient technical platform, the poor monitoring of women during pregnancies and the low operational capacity of healthcare services.⁹ For instance, according to a study conducted in 2014, the rate of maternal deaths attributable to haemorrhages, infections and obstructed labour is in the order of 72 per cent and Post-Partum Bleeding (PPH) represents 37.9 to 43.1 per cent of deaths, while 80 per cent of them are considered avoidable by fast, effective and quality care.¹⁰ Infant mortality among children under five decreased from 66 to 51 per cent between 2010 and 2017, as did neonatal mortality, which fell from 31 per cent in 2010 to 25 per cent in 2017. Overall, infant-juvenile mortality fell from 116 per cent in 2010 to 81 per cent in 2017.

Immunisation rate in DTP-Hep-Hib3 is 56.5 per cent for the cumulative period from January to May and from November to December

6 '22nd ex aequo: Burkina Faso, 851 dollars of GDP per capita' *Journal Dunet* <https://www.journaldunet.com/patrimoine/finances-personnelles/1208753-pays-pauvres-classement-2019/1208794-burkina-faso> (accessed 08 August 2020).

7 As above..

8 Worldometer 'Burkina Faso Population: Live' <https://www.worldometers.info/world-population/burkina-faso-population/> (accessed 22 September 2021).

9 Health Planning Sector '2019 Annual performance report' (February 2020) https://www.sante.gov.bf/fileadmin/user_upload/storages/rapport_annuel_performance_2019.pdf (accessed 08 August 2020).

10 J Vallet 'Application of WHO recommendations on post-partum haemorrhage: Immediate analysis of the practices of midwives and auxiliary midwives at the Bousé Center (Burkina-Faso) between July 14 and August 4, 2014' *Human medicine and pathology* (2015) <https://hal.univ-lorraine.fr/hal-01772001/document> (accessed 22 September 2021).

2019 against 62.3 per cent for the same period of 2018. This coverage varies from 92.3 per cent in the Centre Region to 36.7 per cent in the Sahel Regions.¹¹

The median age of first sexual intercourse is 18.6 years for girls and 20 years for boys in Ouagadougou, and 17.4 years and 20.9 years respectively in rural areas (INSD and ORC Macro, 2004).¹² Although there are not many available documents on the scale and impact of unwanted pregnancies among girls of school age in Burkina Faso, a recent study by UNICEF and the Ministry of Education (MENA) of Burkina Faso, suggests that the problem is alarming. The study recorded 1 016 pregnancies among adolescent girls in seven of the 13 regions of the country during the 2011-2012 school year alone. The unwanted pregnancies of adolescent girls in school have the consequences of the drop in school performance of young girls, dropouts, early and forced marriages, and clandestine abortions.¹³ Regarding the HIV prevalence, there were 94 000 people living with HIV in Burkina Faso in 2017. The HIV prevalence rate among adults aged 15 to 49 was 0.8 per cent. Approximately 4300 people became newly infected with HIV in 2017 and there were 2 900 AIDS-related deaths, a fall of 46 per cent since 2010. It is estimated that 65 per cent (49-82) of people living with HIV have access to antiretroviral medicines. However, only 28 per cent (18-36) of children aged 0-14 have access to antiretroviral medicines.¹⁴

According to the Performance Monitoring and Accountability (PMA) 2017-2018, there is a total of 27 per cent of unwanted births in Burkina Faso. The contraceptive prevalence rate in 2017-2018 among unmarried women is 28 per cent. In Burkina Faso as everywhere else, young people very often encounter problems related to sexuality but few have confidence in contraception despite the various contraceptive methods which are modern, and which are more accessible to young people.¹⁵ To improve the

11 2019 Annual Performance Report (n 9).

12 C Rossier, N Sawadogo & A Soubeiga 'Premarital sex, gender relations and unplanned pregnancies in Ouagadougou' (2013) 68 *Population* 97 <https://www.cairn.info/revue-population-2013-1-page-97.htm#:~:text=L%C3%A2ge%20m%C3%A9dian%20au%20premier,et%20ORC%20Macro%2C%202004> (accessed 22 September 2021).

13 UNFPA 'Unwanted pregnancies of young girls in schools in Burkina Faso: More than 1 000 cases recorded during the 2011-2012 school year' (28 February 2014) <https://burkinafaso.unfpa.org/fr/news/grossesses-non-d%C3%A9sir%C3%A9es-des-jeunes-filles-en-milieu-scolaire-au-burkina-faso-plus-de-1-000-cas> (accessed 22 September 2021).

14 UNAIDS 'Country: Burkina Faso' <https://www.unaids.org/en/regionscountries/countries/burkinafaso> (accessed 22 September 2021).

15 A Tall 'Contraception in Burkina Faso: What conception of young people?' *Plantification Familiale* 26 May 2018 <https://partenariatouaga.org/la-contraception-au-burkina-faso-quelle-conception-des-jeunes/#:~:text=Les%20jeunes%20filles%20>

reproductive health of young people and adolescents, the ‘access to health services’ programme, adopted in 2016, provides for free care for pregnant and breastfeeding women and for children aged 0-5. This programme covers gynaecological diseases, childbirth and contraceptive methods.¹⁶

A study conducted by Oxford University found high levels of child deprivation in all dimensions particularly water and sanitation, information and leisure and education except in nutrition. Health and housing show moderate levels of deprivation. Specifically, 72 per cent of children come from households that are deprived of income, 67 per cent from households that are deprived of housing, and 61 per cent from households that are deprived of health. Nutrition on the other hand, had the lowest prevalence rate of 22.1 per cent among children.¹⁷ As part of improving the nutritional status of the population, the country has facilitated the availability of nutritional inputs in all health facilities in 2018. Thus, they were able to take care of 126 382 cases of moderate acute malnutrition and 91 825 cases of severe acute malnutrition (SAM) including 80 541 cases of SAM on an out-patient basis and 11 286 cases of SAM with complications, with a case fatality rate of 1.7 per cent, which is lower than the WHO standard (3 per cent).¹⁸ All those measures have been accompanied by others such as the adoption and implementation of a National Nutrition Policy (2011) and its Review (2014); the allocation of a specific budget line for the purchase of nutritional inputs since 2014; the implementation of an Integrated Protocol for Acute Malnutrition; the establishment of a programme for the fortification of popular foods (salt, oil); and the annual commemoration of breastfeeding day.

The implementation of the 2013-2025 infant and young child feeding plan (ANJE) which promotes the conditions for the success of exclusive breastfeeding (AME) aims at increasing the rate of its practice in children under 6 months from 38 per cent in 2012 to at least 80 per cent in 2025.

percent%20qu,prot%C3%A8gent%20pas%20contre%20les%20IST (accessed 22 September 2021).

- 16 5th and 6th Monitoring Reports on the Implementation of the Convention on the Rights of the Child and its two Optional Protocols (2019) at 28.
- 17 CL Fonta et al ‘Decomposing multidimensional child poverty and its drivers in the Mouhoun region of Burkina Faso, West Africa’ (2020) 49 *BMC Public Health* 20 <https://bmcpubhealth.biomedcentral.com/articles/10.1186/s12889-020-8254-3> (accessed 22 September 2021).
- 18 Combined fourth, fifth and sixth periodic report of Burkina Faso on the implementation of the African Charter on Rights And Welfare of the Child for the period from 2011 to 2015 (December 2016) <http://212.52.150.148/index.php/fr/droits-des-enfants-au-bf/2-documents-recenses/4-protection/5-rapport-de-recherche-consultation-2/314-4eme-5eme-et-6eme-rapport-cadbe-2016-vf-sp-cne-mai-2017/file> (accessed 22 September 2021).

It has raised awareness among pregnant and breastfeeding women.¹⁹ As far as health is concerned, Law 012-2010/AN of 01 April 2010²⁰ on the protection and promotion of the rights of people with disabilities integrates the prevention, screening and caring of disabilities of children regardless of their age into the health policy. It institutes a disability card for persons with disability. Other specific actions are carried out in particular the Organisation of Reconstructive Surgery and Psychosocial Support campaigns for disabled children; providing reference structures with rolling stock for the transport of disabled children; strengthening of the technical and material capacities of the fitting centres; the opening of a training course for physiotherapists in 2015; and the implementation of the early warning programmes for disabling diseases such as measles and meningitis.²¹ As part of the implementation of the 2012-2021 Strategic Development Programme for Basic Education, 742 Preschool Education Centres were built between 2012 and 2018 compared to 90 in 2010. In the Preschool Education Centres, 4 150 agents benefitted from continued training on specific topics. These efforts made it possible to increase the preschool rate from 2.9 per cent in 2011 to 4.1 per cent in 2018.²²

In Burkina Faso, Law 013-2007²³ makes education compulsory and free in public schools for all children aged from six to 16. In addition, the pupil/teacher ratio which is the number of pupils enrolled in primary school divided by the number of primary school teachers has fallen. In 2015/2016, the indicator of 49 remains acceptable compared to the national standard (less than 50 students/teacher). The increase in teaching staff has been accompanied in all regions by a drop in the pupil/teacher ratio²⁴

These efforts led to an increase in the gross primary school enrollment rate, which rose from 77.6 per cent in 2010-2011 to 90.7 per cent in 2017-2018. Over the period 2008-2015, the gross enrollment rate at the national level rose from 77.1 per cent to 85.9 per cent for boys and 67.7 per cent to 86.4 per cent for girls. From 2009 to 2014, the gross enrollment rate

19 As above.

20 <http://www.unesco.org/education/edurights/media/docs/7acf2274ca1fc6ef2add6e175eaf2afe96d8a4c.pdf> (accessed 22 September 2021).

21 Combined fourth, fifth and sixth periodic report (n 18).

22 Combined fourth, fifth and sixth periodic report (n 18)

23 UNESCO Portal of Education Plans and Policies 'Law 013-2007/AN on the orientation law of education' <https://planipolis.iiep.unesco.org/en/2007/loi-no-013-2007an-portant-loi-dorientation-de-1%C3%A9ducation-4372> (accessed 22 September 2021).

24 Index of content/periodicals/dashboards/TBS http://www.insd.bf/n/contenu/pub_periodiques/tableaux_de_bord/TBS/TBS_2017.pdf (accessed 08 August 2020)

of boys remained higher than that of girls, but the trend reversed in 2013/2014. Indeed, the gender parity index (GPI) on the gross enrollment rate has risen from 0.87 to 1 in 2013 and reflects education for girls in 2015.²⁵ In 2014/2015, the gross enrollment rate for all post-primary and secondary schools was 34.1 per cent for men against 30.8 per cent for women. In all regions, there is an increase in the completion rate over the period 2008/2009-2015/2016. The completion rate is higher among boys than in girls during the same period. This increase in completion rates within the 2 sub-populations is accompanied by a decrease in the gender gap over the period. However, since 2012, this indicator which measures the internal efficiency of the system shows a reality in favour of girls. Overall, the indicator rose from 41.7 per cent in 2008/2009 to 58 per cent in 2015/2016, an increase of almost 17 percentage points.²⁶

At post-primary and secondary level, the completion rate increased over the period 2008/2009 to 2014/2015, rising respectively from 15.8 per cent to 26.4 per cent for post-primary and from 6.4 per cent to 11.3 per cent for secondary. Over the same period, the completion rate of boys in post-primary and secondary has remained higher than that of girls. In 2014/2015, the completion rate of boys in post-primary was 28 per cent compared to 24.8 per cent for girls. Regarding the completion rate of secondary education, the indicator was 13.7 per cent for boys against 8.7 per cent for girls.²⁷

Regarding inclusive education, article 9 of Law 012-2010/AN states that: 'inclusive education is guaranteed in preschool, primary, post-primary, secondary schools and universities in Burkina Faso'. Thus, the following actions were carried out:

- (a) the enrollment of 39 628 PE at the primary level, 8 920 at the post-primary and secondary level in 2018;
- (b) payment of tuition fees and school supplies for 5 637 children with disability;
- (c) sensitisation of 519 student teachers, 766 customary and religious authorities, members of the Association des Parents d'Elèves/Association des Mères Educatrices (APE/AME), Management Committee (COGES) and local authorities on IS; and

25 Combined fourth, fifth and sixth periodic report (n 18).

26 As above.

27 As above.

- (d) material, financial and human resource support provided by the Ministry of National Education (MENA) to educational structures in charge of disabled and/or vulnerable children.²⁸

However, those assertions contrast with some statements from people on the ground. For them, there is no material in the current training programme to equip future teachers with adequate care for children with disabilities. So the teachers have no background to teach children with disabilities. Some of them nevertheless benefit in the field of continued training even if the outlook is for the creation of modules on inclusive education in the different teachers' training schools.²⁹

In many African countries, girls who become pregnant are excluded from education because they do not have a postpartum reintegration policy. Some countries with high rates of teenage pregnancy, such as Angola and Burkina Faso, do not have policies to manage teenage pregnancies in schools.³⁰ There is no teaching module on sexuality emphasising the serious dangers of premature sexuality. Comprehensive sexuality education is not integrated into school curricula throughout the nation, and no budget line dedicated to the provision of youth-friendly family planning services exists in the cities.³¹ Furthermore, during awareness activities on the risks, such as early pregnancy, people focus on contraceptive methods with sharing of condoms at random. Such an act instead of solving the problem, complicates it and leads to uncontrolled sex life thus opening the door to other consequences such as STIs.³² NGOs led advocacy and in the National Economic and Social Development Plan sexuality education appears as a priority for the government.³³

28 As above.

29 Burkina Faso National Coalition for Education for All 'Education for All: Burkina Faso and the date of 2030' <https://cneptbf.org/spip.php?article8> (accessed 13 August 2020).

30 Human Rights Watch 'Africa: Pregnant girls and young mothers are excluded from school – African governments should guarantee the right to education' <https://www.hrw.org/fr/news/2018/06/14/afrique-des-filles-enceintes-et-des-jeunes-meres-sont-exclues-de-lecole> (accessed 22 September 2021).

31 PRB 'Expanding comprehensive sexuality education and youth-friendly family planning services in Burkina Faso' <https://www.prb.org/expanding-comprehensive-sexuality-education-and-youth-friendly-family-planning-services-in-burkina-faso/> (accessed 22 September 2021).

32 'School pregnancies: A silent pain that causes a lot of bitterness according to the A.E.E.M.B' *Lefaso* 09 March 2018 <https://lefaso.net/spip.php?article82332> (accessed 22 September 2021).

33 PNDES 'Operationalisation project on free family planning in Burkina Faso' 2016-2020 <https://www.pndes2020.com/pdf/fr/FICHES%20SANTE/Projet%20gratuit%20C3%A9%20planification%20familiale.pdf> (accessed 22 September 2021).

2 Ratification of the African Charter on the Rights and Welfare of the Child

According to article 149 of 1991 Constitution:³⁴

Peace treaties, trade treaties, treaties that commit finances of the State, those which modify the provisions of a legislative nature, those which are relating to the status of persons, can only be ratified or approved by virtue of a law. They take effect only after being ratified or approved.

The constitutional text seems to require that, to be validly invoked, an international convention on human rights must have been ratified or approved by Burkina Faso in accordance with the constitutional prescriptions which govern the ratification of international agreements, in particular with regard to the competence and internal procedure.³⁵ Burkina Faso ratified the ACRWC on 8 June 1992 with no reservations (*Ordonnance 92-217 du 26 août 1992, non publiée au JO*). Burkina Faso did not carry out any compatibility study before ratifying the treaty.

Awareness raising and information on children's rights in Burkina Faso is above all based on dissemination of the Convention on the Rights of the Child (CRC) and explanation of its contents. Specific rights under the ACRWC do not receive special attention.³⁶ The provisions of the Treaty may be invoked before courts including those which have not been subject to internal regulation. Article 5 of the Criminal Code reads as follows: 'Treaties, agreements or conventions duly ratified and published are binding on internal criminal provisions'. Based on these provisions, the criminal court can directly apply the contents of the Treaty.³⁷

34 https://www.constituteproject.org/constitution/Burkina_Faso_2012.pdf (accessed 22 September 2021).

35 A Soma 'L'applicabilité des traités internationaux de protection des droits de l'homme dans le système constitutionnel du Burkina Faso' ('The applicability of international human rights protection treaties in Burkina Faso's constitutional system') (2008) 16 *African Yearbook of International Law* 313.

36 Educo 'Situational analysis of the rights of the child in Burkina Faso in the province of Yatenga a look at the enjoyment of the right to education in Yatenga' (December 2015) https://educowebmedia.blob.core.windows.net/educowebmedia/educospain/media/documentos/Paises/informe_ASDE_burkina-Faso_1.pdf (accessed 22 September 2021).

37 Burkina Faso Ministry of Foreign Affairs 'Initial report on the promotion and protection of human rights' (October 1998) https://www.achpr.org/public/Document/file/English/staterep1_burkinafaso_1998_fra.pdf (accessed 21 September 2021).

3 Government focal point

Burkina Faso has established the National Council for Children (Conseil National pour l'Enfance: CNE).³⁸ The mandate of the CNE is to ensure the coordination, monitoring and evaluation of all plans, policies and strategies for the protection and promotion of children's rights as well as reporting on the implementation of ratified treaties and conventions. As such, the CNE is the decision-making body for the protection and promotion of children's rights at the national level.

Regarding the composition of the CNE, from over 54 members only one is a representative of the Children's Parliament.³⁹ Other members are from ministries and NGOs working in the field of children's rights.⁴⁰ To strengthen the national child protection system, Burkina Faso has adopted a National Child Protection Strategy (SNPE) accompanied by a three-year action plan (PAT). The validation of the SNPE and its action plan took place on 6 August 2019 during a 24-hour workshop held in Ouagadougou. During the workshop, participants, among other things, examined the draft documents and formulated suggestions and recommendations for a successful implementation of the SNPE and its action plan. Eight major issues are covered in the strategy including child marriage, female genital mutilation and child labour.⁴¹ Progress and challenges in implementing the strategy are reported to the Ministry of Social Affairs.

4 Domestication or incorporation of the Charter

Due to the monist nature of the Burkinabè constitutional system, international law, and especially the ratified international human rights treaties in force in the country are directly applicable in its internal legal

38 Decree 2014-092/Pres/Pm/Massn/Mef /Mats of 20 February 2014 on the creation, attributions, composition and functioning of a National Council for Children, OJ 14 of 03 April 2014 (DECRET N°2014-092/PRES/PM/MASSN/MEF/MATS du 20 février 2014. portant création, attributions, composition et fonctionnement d'un Conseil National pour l'Enfance. JO N°14 DU 03 AVRIL 2014) <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98000/116474/F-1201415008/BFA-98000.pdf> (accessed 22 September 2021).

39 Article 6 of the Decree on the National Council for Children.

40 As above.

41 Omega Burkina Faso 'Burkina: The national strategy for child protection and its three-year action plan' <https://www.omegabf.info/societe/burkina-la-strategie-nationale-de-protection-de-lenfant-et-son-plan-daction-triennal-fin-prets/> (accessed 23 September 2021).

order.⁴² By virtue of this monism, there can be no internal procedures for the incorporation of human rights international law beyond those which contribute to the expression of its international consent to be bound by the state. Nothing can oppose either individuals directly invoking their guaranteed international human rights before national courts, or even lawyers to plead the human rights of their clients or judges to justify their decisions based on applicable human rights before them in interindividual horizontal disputes or vertical disputes between the individual and the state.⁴³

According to the Law on the protection of the child, article 2 states that a child means any human being under the age of 18.⁴⁴ For its article 9, the age of criminal responsibility is 13 years old. The age of criminal majority is set at 18. This age is assessed on the day of the commission of the crime.⁴⁵

Article 238 of the Family Code⁴⁶ states that marriage can only be contracted between a man over 20 years old and a woman over 17, however, age exemption can be granted for serious reasons by the civil court. This age exemption cannot be granted in any case for a man under 18 years and a woman under the age of 15.⁴⁷ There is no information on consent to sex, however, according to article 238 of the Family Code, a girl of 17 can contract to enter into a marriage. By this statement, we can assume that the legal age of consent to sex is 17 and all sex below the of age 17 is prohibited.⁴⁸

There is no law on the age of consent to medical treatment. In practice, children can have access to contraceptive treatment without restrictions, subject to their health conditions. According to article 8 of the Sexual

42 Art 151 de la Constitution de Juin 1991.

43 Combined fourth, fifth and sixth periodic report (n 18).

44 Law 015-2014/AN on protecting children in conflict with the law or in danger (LOI 015-2014/AN portant protection de l'enfant en conflit avec la loi ou en danger) <https://lavoixdujuristebf.files.wordpress.com/2013/08/loi-nc2b015-portant-protection-de-lenfant.pdf> (accessed 22 September 2021).

45 Combined fourth, fifth and sixth periodic report (n 18).

46 Burkina Faso: Code des personnes et de la famille [Burkina Faso] (November 1989) <https://www.refworld.org/docid/3ae6b4da27.html> (accessed 22 September 2021).

47 As above.

48 As above.

Reproductive Healthcare Law:⁴⁹ ‘No individual can be deprived of this right, which he/she enjoys without discrimination on the basis of age, sex, fortune, religion, ethnicity, marital status or any other consideration’.

Article 531-538 of the Criminal Code punishes domestic violence.⁵⁰ The prevention of violence in schools has resulted in:

- (a) the creation of the National Council on the Prevention of Violence in School (CNPVE 2009) endowed with a Permanent Secretariat which has set up peace cells in schools (2017-2019) in order to monitor and report cases of violence ;
- (b) the development of a national strategy for the fight against drugs, drug addiction and violence in schools and its action plan, which objective is to create an environment conducive to the promotion of a culture of non-violence and ensure favorable conditions for teaching / learning;
- (c) the adoption of decree 2016-926/PRES/PM/MATDSI/MJDHPC/MINEFID/MENA of 03 October 2016 on the protection of the school to secure and guarantee peace and serenity; and
- (d) the gradual establishment of school social services to strengthen the institutional framework for the fight against violence in that environment.⁵¹

Burkina Faso ratified the CRC on 31 August 1990 (Decree AN VII-383 of 23 July 1990, J.O.BF 35 of 30 August 1990 at909). It also ratified the Optional Protocol to the CRC concerning the Sale of Children, Child Prostitution and Child Pornography on 31 March 2006 (Decree 2005-660 of 30 December 2005; JO BF 05 of 02 February 2006 at 150),⁵² as well as the Optional Protocol relating to the Convention on the Rights of the Child concerning the Involvement of Children in Armed Conflict (Decree 2005-661 of 30 December 2005; jo bf 05 of 02 February 2006 at 151). Burkina Faso has ratified the ILO Convention (182) on the Prohibition of the Worst Forms of Child Labor and Immediate Action for their Elimination on 25 July 2001 (Decree 2001-240 of 25 May 2001, jobf 24 of 14 June 2001 at 1025). According to the Burkinabè government, in Burkina Faso, there is no specific mechanism for the dissemination of the ACRWC. Activities

49 Law 049-2005/AN on reproductive health (Loi N° 049-2005/AN portant sante de la reproduction) http://www.africanchildforum.org/ctr/Legislation%20Per%20Country/burkina%20faso/bfaso_reproductivehealth_2005_fr.pdf (accessed 21 September 2021).

50 Loi 025-2018/AN portant code penal <https://lavoixdujuristebf.files.wordpress.com/2018/11/code-pc3a9nal-nouveau.pdf> (accessed 23 September 2021).

51 Combined fourth, fifth and sixth periodic report (n 18).

52 <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/73655/75369/F1168766643/BFA-73655.pdf> (accessed 23 September 2021).

pursued fall within a general framework of information, awareness and promotion of the rights of the child.⁵³

One of the recommendations made to Burkina Faso during the presentation of its Initial Report was related to the translation of the Treaty in local languages. It stated that the ACERWC noted the efforts made by the government to make the rights of the child known as provided for in the Charter. The Committee, however, recommended that the state popularise at a very broad level the Charter by translating it if possible, into the main national languages.⁵⁴

In that regard, with support from UNICEF, Burkina Faso was able to acquire a 'guide on the rights of the child'. This guide provides a simple translation of the CRC and the ACRWC and offers illustrations highlighting the rights of children in positive and negative ways. This method of teaching by explaining the situation to children is necessary as they are the main recipients of this guide. The guide is translated into seven local languages.⁵⁵ In the same vein, Plan Burkina Faso (a NGO) has developed an educational guide with the support of the Ministry of Basic Education, with the aim of helping teachers to better promote and understand the rights of the child in school.⁵⁶ Some citizens are not aware that the government and its partners have developed an educational guide which is translated into seven languages. Others seem to be aware of the guide, but as they cannot read it in their own local languages they choose to rather listen to radio stations to get more information.⁵⁷

To meet the requirement of the CRC the Burkinabè law was enriched in 2004 by a new legal system devoted to children. By instituting a children's judge specially dedicated to the issue of childhood, the Burkinabè legislator not only complied with its international commitment, but also wanted to guide the attitude of the children's judge in his/her decisions and in his/her behaviour towards minors. The Law⁵⁸ provides that each *Tribunal*

53 https://www.ecpat.org/wp-content/uploads/2016/04/a4a_v2_af_burkina_faso_2.pdf (accessed 23 September 2021).

54 Recommendations and Observations addressed to the Government of Burkina Faso by the African Committee of Experts on the Rights and Welfare of the Child on the Initial Report on the implementation of the African Charter on the Rights and Welfare of the Child https://acerwc.africa/wp-content/uploads/2018/14/CO_Burkina%20Faso_French.pdf (accessed 23 September 2021).

55 ECPAT 'Burkina Faso' https://www.ecpat.org/wp-content/uploads/2016/04/a4a_v2_af_burkina_faso_2.pdf (accessed 23 September 2021).

56 As above.

57 Phone call with the representative of the Ministry of Education on 14 August 2020.

58 Law 015-2014/AN (n 44).-

de Grande Instance has one or several juvenile judges competent to take all necessary measures to protect the child at risk. However, in practice, only seven judges have been appointed, including two in Ouagadougou. The juvenile judge also has jurisdiction to hear cases where children are accused of having committed offences.

The Children's Court is attached to the Court of Appeal and is competent to hear cases where a minor is accused of a felony. It also hears the Juvenile Judge's business appeals.⁵⁹ There are two courts for children, attached to the two Courts of Appeal (Ouagadougou and Bobo Dioulasso). According to the representative of the Ministry of Justice, these mechanisms, institutions, and procedures are not completely in line with the provisions of the ACRWC because of several shortcomings such as insufficient financial and human resources.

As to children's participation, the Children's Parliament was established on 16 June 1997 by *décret n° 98-007/PRES/PM/MASF du 28/01/98*.⁶⁰ The Children's Parliament brings together young people aged between ten and 17 and who are from private and public primary schools, high schools, colleges and childcare structures. They are democratically chosen by their peers to be members of the Children's Parliament.⁶¹ Burkina Faso's Children's Parliament has 126 members spread across the country's 45 provinces.⁶² The percentage of children compared to the percentage of youth is about 62 per cent. It consists of children who did not go to school and children who attend school. All social strata and religious denominations are represented. Children living on the streets and disabled children are represented, so all these children are considered at the level of Children's Parliament.⁶³ There is a perfect equality between girls and boys in the Children's Parliament. During the transition in 2015, children were represented in the National Council of the Transition.

59 Reliefweb 'Burkina Faso: Access to justice for children' (27 March 2015) https://reliefweb.int/sites/reliefweb.int/files/resources/burkinafaso_access_to_justice_fr.pdf (accessed 23 September 2021)

60 A Kayorgo, AllAfrica 'Burkina Faso: Children's Parliament: First positive mandate, despite everything' <https://fr.allafrica.com/stories/200211130282.html> (accessed 23 September 2021).

61 Mediaterrre 'Burkina Faso: Revitalization of the children's parliament, urgent need' 27 May 2016 <https://www.mediaterrre.org/afrique-ouest/actu,20160427132624.html> (accessed 23 September 2021).

62 Y Boudani 'Children's Parliament, political and citizen engagement for the democracy?' Learning by Ear 2009, Children's Rights Series 03, Children's Parliament <https://www.dw.com/downloads/26674223/kr-03-okparlement-enfants-burkinaboudani.pdf> (accessed 23 September 2021).

63 As above,

Furthermore, the Children's Parliament is invited to activities concerning children such as the African Child Day, the anniversary celebration of the ACRWC and CRC.

Since the establishment of the Parliament, children have been called upon on several occasions to ceremonies or to give their opinions on matters concerning them both at the national and local levels.⁶⁴ In Burkina Faso, freedom of association is affirmed by the adoption of Law 10/92/ADP of 15 December 1992. It was reinforced in October 2015 to adapt it more to reality by the Law 064-2015/CNT of 20 October 2015 on freedom of association. There are several innovations, including the explicit precision of the character of non-political associations, the introduction of the morality investigation procedure, the registration fees, the creation of a database, etc. This is progress that allows for accurate data on the number of associations and possibly those concerning children.⁶⁵

Children in conflict with the law benefit from the support of children's judges. The legal framework for legal aid to minors in conflict with the law as presented considers two main models of juvenile justice. These are the protection model and the justice model. Indeed, since 2004, Law 7-2004 of 6 April 2004⁶⁶ institutes community service in Burkina Faso. The juvenile judge considering the profile and the personality of the minor may commute a prison sentence to a sentence of community service and it should be noted that in practice, the judges of Ouagadougou and Bobo-Dioulasso often resort to restorative justice system.⁶⁷

5 Legislative reform and adoption

The Constitution of Burkina Faso recognises and protects children's rights in article 2: the protection of life, safety and physical integrity are guaranteed. Slavery or slavery practices; inhuman, cruel, degrading, and humiliating treatment; physical or moral torture; abuse and mistreatment

64 Phone call with the representative of Ministry of Social Affairs on 24 August 2020.

65 Law 064-2015/CNT of 20 October 2015 on freedom of association <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101523/122351/F-1724755500/BFA-101523.pdf> (accessed 23 October 2021)..

66 Loi No 007-2004/AN portant administration du travail d'interet general au Burkina Faso <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/67769/64983/F-297620816/BFA-67769.pdf> (accessed 23 September 2021).

67 A Ouedraogo 'Legal assistance for minors in conflict with the law in Burkina Faso' presented to the Children's Rights Education and Research Unit of the Kurt Bösch University Institute for obtaining the degree of Interdisciplinary Master of Arts in Children's Rights (February 2016) https://doc.rero.ch/record/258936/files/Ouedrago_Aboubakar_M_moire_Orientation_recherche_VF_DE_2016_MIDE_12-13_02.pdf (accessed 23 September 2021)..

of children; and all forms of degradation of human beings are prohibited and punished by law. Article 23 states that the family is the basic unit of society. The state owes protection to it. Marriage is based on the free consent of men and women. Any discrimination based on race, colour, religion, ethnicity, social origin and fortune is prohibited in matters of marriage. Children are equal in rights and duties in their family relationships. Parents have the natural right and the duty to bring up and educate their children. They owe them respect and assistance and article 24 prescribes that the state promote the rights of the child.

The rights provided for by the various international instruments relating to human rights including the African Charter on Human and Peoples' Rights are included in the Preamble and in the body of the Constitution of 1991.⁶⁸ According to article 125 of the Constitution the competent authority in matters of human rights is the judiciary: 'The judiciary is the guardian of individual and collective freedoms. [It] ensures that the rights and freedoms defined in this constitution are respected'. This important role is exercised by the courts.⁶⁹

Birth registration is free of charge in Burkina Faso. In 2011, the creation of an office to modernise civil status has provided more administrative responsibility for the organisation of the civil status system, the control of the activity and the training of civil servants on civil status.⁷⁰ A National Strategy for Civil Status 2012-2022 is being implemented with the aim of improving the coverage rate of civil status centres from 20 to 90 per cent at least and reducing the Average Theoretical Access Radius (RMAT) to a civil status centres of 55km to 2km by 2025. Thus, at the end of 2017, 1 847 secondary civil status centres were operational.⁷¹ As for birth registration in public and private health facilities, there were 741 830 in 2017.

In 2016, the government acquired civil status data processing software called 'CITIZEN' to allow the interconnection of all the country's provinces, and the digitalisation and centralisation of civil status documents.⁷²

According to the Family Code,⁷³ the Burkinabè Nationality is granted to child in:

68 N 34.

69 N 34

70 N 34

71 N 34.

72 N 34.

73 N 34.

- (a) Article 140. A Burkinabè child is born from a Burkinabè father or mother. However, if only one of the parents is Burkinabè, the child, who was not born in Burkina Faso, has the faculty to repudiate the quality of Burkinabè in the six months preceding his majority.
- (b) Article 141. A Burkinabè child born in Burkina Faso from unknown parents. However, he/she will be deemed never to have been Burkinabe if, during his/her minority, the parenthood is established with regard to a foreigner and if he/she has the nationality, in accordance with the national law of this foreigner, without affecting the validity of the acts passed by the interested party, nor the rights acquired by third parties on the basis of the apparent nationality possessed by the child.
- (c) Article 142. A newborn child found in Burkina Faso is presumed to have been born in Burkina Faso until proof to the contrary.
- (d) Article 143. A child born in Burkina Faso who cannot claim any other origin nationality. However, the concerned person will be deemed never to have been Burkinabè if, during his/her minority, he/she receives the nationality of one of his/her authors, without affecting the validity of acts passed by the concerned person nor to the rights acquired by third parties on the basis of the apparent nationality possessed by the child.
- (e) Article 144. A child born in Burkina Faso from a father or a mother who was himself/herself born there, except the right to renounce this quality in the six months preceding his/her majority.
- (f) Article 145. The provisions contained in the preceding article are not applicable to children born in Burkina Faso from diplomatic agents of foreign nationality. However, these children have the option of voluntarily acquiring the status of Burkinabè, in accordance with the provisions of article 159 below.
- (g) Article 146. A child who is Burkinabè by virtue of the provisions of this chapter is deemed to have been Burkinabè from birth, even if the existence of the conditions required by law for the attribution of Burkinabè nationality was only established after his/her birth. However, in the latter case, the attribution of the quality of Burkinabè from birth does not carry infringement of the validity of acts carried out by the interested party nor of the rights acquired by third parties on the basis of the apparent nationality possessed by the child.
- (h) Article 147. Filiation does not take effect in terms of attribution of Burkinabè nationality, unless it is established by civil status certificate or by judgment.
- (i) Article 148. Any minor child who has the right to renounce Burkinabè nationality in cases referred to in this chapter may, by declaration made in accordance with articles 192 exercise this right without any authorisation. He can renounce this option under the same conditions if he has reached

the age of 18. If he is under 18 years of age, he must be authorised under the conditions provided for in article 160.

According to Article 151 of the Constitution: ‘Treaties and agreements regularly ratified or approved have, from their publication, a superior authority to that of the laws, subject, for each agreement or treaty, to its application by the other party’.

In the light of the above-mentioned, the ACRWC is directly applicable in Burkina Faso and can be validly invoked by parties in their disputes. The Constitution enshrines the supremacy of international law standards ratified by the country over those of domestic law. These norms of international law after ratification integrate the internal legal ordering at a higher level, so does the ACRWC.

According to the Code of Civil Procedure,⁷⁴ children have the right to file a complaint with the civil courts in order to challenge violations of their rights. However, the Code of Civil Procedure does not provide any specific procedures or guidelines regarding the participation of children in civil cases. The Family Code states that under the age of 20 a child has no legal capacity. According to a local lawyer, this provision means that children must be represented by a parent or guardian to bring the case before national courts. We have not identified any provision to this effect in the Code of Civil Procedure or the Family Code.⁷⁵

In practice, children are only allowed to bring cases to court with the help of a representative. According to a local lawyer, these representatives do not necessarily have to be a parent or guardian, any adult can assist the child. We have not identified any formal factor limiting a child from bringing a case to court. However, practical constraints (including economic factors) limit children’s access to courts. In addition, children who are not registered at birth may face additional difficulties in accessing the justice system.

Children’s access to sexual and reproductive health services is dealt with in the law 049-2005/AN relating to sexual reproductive health.⁷⁶ Article 7 of the Reproductive Health Law 049-2005/AN⁷⁷ deals with the

74 Law 022/99/AN relating to the Code of Civil Procedure

75 Reliefweb (n 59).

76 Law 049-2005/AN on reproductive health http://www.africanchildforum.org/clr/Legislation%20Per%20Country/burkina%20faso/bfaso_reproductivehealth_2005_fr.pdf (accessed 23 September 2021).

77 As above.

health of the child and youth health. Therapeutic abortion is permitted. The Criminal Code, in its article 513, authorises abortion in the first 14 weeks of pregnancy for cases where the continuation of the pregnancy endangers the health of the mother or there is a probability that the child will be born with an infirmity or an incurable disease, as well as in cases of rape or incest. Article 10 on reproductive health law adds that individuals including adolescents have the right to decide freely and with discernment on matters relating to their reproductive health in compliance with the laws in force, public order and *mores*.⁷⁸

The law⁷⁹ is not explicit on the age that access to sexual reproductive healthcare is permissible. However, in the practice, receiving sexual reproductive healthcare is confidential and parents are not allowed to assist their children without the consent of the latter. A study revealed that population of adolescents aged 13 to 17 are the target of many sensitisation campaigns through which they can access sexual reproductive healthcare.

6 Policy reform and adoption

Regarding the prevention and protection of children from any form of violence, article 531(8) of the Criminal Code punishes domestic violence. Additionally, the adoption of Decree 2016-926⁸⁰ of 03 October 2016 protecting the school domain prohibits corporal punishment. The provisions of the said Decree have been transposed into the internal regulations of schools. Violence in school settings is perceived as a huge problem and the authorities of Burkina Faso have set up the National Council for the Prevention of Violence in Schools which has developed a national strategy for child protection alongside other laws such as:

(a) The Child protection law which in article 97 states that:

The child is in danger when his/her living condition does not allow him/her a good physical or psychological development. The cases of danger are among others violence, physical abuse or serious risks of physical abuse, sexual abuse or serious risks of sexual abuse, psychological ill-treatment, incest, abandonment, neglect, deprivation of the family environment, exposure to trafficking or exploitation in the workplace, educational deficiencies of

78 As above.

79 N 77.

80 O Kima 'Burkina Faso adopts a decree protecting the school sector' *Mediaterrre* 23 December 2016 https://atca-africa.org/images/pdf-fr/Decret_n_2016_926_PRES_PM_MATDSI_MJDHPC_MINEFID_MENA__portant_protection_du_domaine_scolaire.1.pdf (accessed 23 September 2021).

parents, running away, school absenteeism, risk of suicide, drug addiction, prostitution, begging, vagrancy.

- (b) Law 011-2014/AN of 17 April 2014 prohibiting the sale of children, child prostitution and child pornography makes it possible to prosecute and try the perpetrators and accomplices of offences covered by the Protocol.
- (c) Law 061-2015 / CNT of 6 September 2015 on the prevention, repression and reparation of violence against women and girls and the care for victims.

Based on Law 029-2008/AN on the fight against trafficking of persons and similar practices of 15 May 2008, children are protected from sexual exploitation and pornography.⁸¹ In Burkina Faso, to date there is no specific law on sexual consent,⁸² but the Family Code prohibits sex below the age of 17. Children are prosecuted for being involved in consensual sexual conduct with other children. According to article 132(7), the age of criminal responsibility is 13 and at this age children can be prosecuted for consensual sexual conduct, depending on the circumstances.

There is no visible budget for children. As a cross-cutting matter, every governmental department that deals with a child rights issue has its own budget in which it can carry out its missions.

Meetings of the Children's Parliament do not take place on a regular basis and the budget of that institution is located at the Ministry of Social Affairs. The participation of children in the decision-making process with respect to the percentage of the budget allocated to them is not meaningful because the Ministry alone runs the budget. In the Burkinabé context, the state remains isolated from families because of a lack of human, financial and material resources; the Ministry of Social Action has less than 1 per cent of the national budget.⁸³

7 Court judgments

A local lawyer confirmed that courts sometimes mention the ACRWC and other international instruments. However, we were unable to find an

81 <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/79122/84952/F1942473436/BFA-79122.pdf> (accessed 23 September 2021).

82 'Sexual consent' *Radio Rurales* 3 July 2019 <http://scripts.farmradio.fm/fr/radio-resource-packs/112-ensemble-des-ressources-pour-la-radio-agricole/consentement-sexuel/> (accessed 23 September 2021).

83 J Wouango & D Turcotte 'Institutional configurations of child protection: Views of Africa, Europe and North America' (2014) 21 *Enfances Familles Générations* 237 <https://journals.openedition.org/efg/776> (accessed 23 October 2021).

example of a court decision that applied the ACRWC or other relevant international instruments.

8 Awareness and use by Civil Society Organisations

Many associations and NGOs have been helping enlighten people about their rights and work to raise awareness of the issue of human rights in general but not especially the concluding observations. Regarding education and the rights of the child, NGOs set up a consultation framework to better harmonise their interventions and to play their advocacy role for a better fulfilment of children's rights in general and especially the right to education. Their mission is to ensure the respect, promotion and protection of children's rights through the implementation of ratified international conventions.⁸⁴ Civil society organisations are very composite and dynamic in Burkina Faso. They include trade unions, human rights organisations, NGOs and associations, customary and religious authorities. According to the 2014 statistical yearbook of the Ministry of Social Affairs, 1 180 associations, NGOs and other private structures were involved in the protection and promotion of children and adolescents throughout the national territory.⁸⁵ Regarding the recommendations and observations made to the Burkinabè government on the various reports relating to the implementation of the CRC and the African Charter, CSOs play a key role in their implementation.⁸⁶

At the initiative of the Child Protection Working Group, the 'child protection network approach' was developed to holistically address the needs of the child victim. There are 45 Child Protection Networks (RPE), each made up of state services, community representatives and CSOs. Consultation meetings are regularly organised with these actors as well as awareness-raising and training activities.⁸⁷ CSOs have not submitted alternative reports to the Committee. CSOs are involved in the monitoring of the implementation of the ACRWC. According to the Coalition for the Rights of the Child (COBUFADE)

84 Educo (n 36).

85 Educo 'Situational rights analysis of the child to protection in the Yatenga province, Burkina Faso' (June 2017) https://educowebmedia.blob.core.windows.net/educowebmedia/educospain/media/documentos/Paises/asdn_proteccion_BF_2017_pantalla.pdf (accessed 23 September 2021).

86 'Children's rights in Burkina Faso: COBUFAD calls on the government' *Burkina24* 3 October 2016 <https://www.burkina24.com/2016/10/03/droits-des-enfants-au-burkina-faso-la-cobufad-interpelle-le-gouvernement/> (accessed 23 September 2021).

87 As above.

Unlike other countries in the sub-region, the State of Burkina Faso stands out honourably in terms of the production and presentation of the various reports on the implementation of international legal instruments to which it is a party.⁸⁸

However, the coalition deplors the delay by Burkina Faso in the transmission of its interim reports which does not allow it to always have reliable data to objectively report on the situation of implementation of commitments in real time.⁸⁹

9 Awareness and use by lawyers and the judiciary

Through promotion and sensitisation activities such as conference, media coverage on child rights, celebration of African Child day, government contributes to disseminate the treaty among its representatives and the population in general. The activities carried out include the organisation of capacity building towards local authorities and community and religious leaders, childcare personnel, judges, law enforcement officers, members of local NGOs promoting child rights, and school's management committees.⁹⁰ It is important to mention the increase in the number of media outlets which contribute to the information being received by both adults and children on the best interests of the child in proceedings concerning him/her. Media further contributes to this information and participation by arranging special sections for children such as the children's club and the broadcast of certain programs by children. The Superior Communication Council (CSC) ensures the respect for the texts and protects children against violence resulting from the activity of media.⁹¹

In order to best prevent possible damage to the rights of the child, the Ministry of Social Affairs and the SP-PAN/Enfance (current National Council for Children) adopted a National Action Plan, in December 2005, in order to introduce the rights of the child within school programmes for the period 2006-2010. Among the sub-objectives of the Action Plan, we note in particular the development of training modules and tools to support teaching on the rights of the child, support structures for early childhood

88 As above.

89 Educo (n 86).

90 Second and third cumulative periodic reports of Burkina Faso on the implementation of the African Charter on the Rights and Welfare of the Child https://acerwc.africa/wp-content/uploads/2018/04/Burkina-Faso_2%C3%A8me-et-3%C3%A8me-rapprt-CADBE-VERSION-final-d%C3%A9c-2011.pdf (accessed 23 September 2021).

91 As above.

development, strengthening teachers' skills, and finally the declared desire to promote the creation and participation of children's rights committees in schools.⁹² The following activities were carried out: training of members of the news reporters' network for the promotion of human rights created in 2014; the organisation of 13 awareness-raising sessions in 2015 for the benefit of 400 local media professionals on the inclusion of human rights and citizenship in programme schedules; and the training of 1 000 internal security and defence force members, local authorities, community leaders, political parties and economic actors between 2014 and 2016.⁹³ One needs to note that all these activities were more focused on children's rights but especially on the ACRWC. Training is organised by various entities such as the National Human Rights' Commission, the Ministry of Human Rights, the Child Protection Coordinating Body and the participants are chosen on the basis of their commitment to improve children's rights in the country. The representative of the Ministry of Justice has affirmed that judges rely on the provisions of the treaty and the general comments when deciding on matters related to children but we were unable to find such a decision to substantiate his statement.

10 Higher education and academic writing

University Joseph KI-ZERBO has started a Master's programme in child rights,⁹⁴ in which the ACRWC provisions have been taught to students.

11 National Human Rights Institutions

For the time being, the National Commission of Human Rights does not play any role in the implementation of the ACRWC because of its limited operational capacity and there is no special section in the National Human Rights Commission at the moment although it is planned when the institution will be fully operational. The National Commission of Human Rights used to promote children's rights in workshops and seminars but not specifically on the ACRWC provisions.⁹⁵

As a cross-cutting matter, many ministries deal with children's rights issues namely the Ministries of Social Affairs, Human Rights and Justice.

92 As above.

93 As above.

94 Child Rights International Network 'Masters in protection and rights of the child' <https://archive.crin.org/fr/biblioth%C3%A8que/%C3%A9v%C3%A9nements/master-en-protection-et-droits-de-lenfant.html> (accessed 23 September 2021).

95 Phone call on 10 August 2020.

12 State reporting

Burkina Faso has submitted six reports so far and on time. The reports were prepared in accordance with the guidelines on the form and content of periodic reports adopted by the Committee on 7 November 2013 in Addis Ababa and entered into force on 7 December 2013. They covered the following issues:

- (a) General information on Burkina Faso
- (b) General measures of implementation (article 1(1))
- (c) Definition of the child (article 2)
- (d) General principles (articles 3, 4, 5 and 6)
- (e) Civil rights and freedoms (articles 6-10 and 16)
- (f) Economic, social and cultural rights (articles 11-12 and 14)
- (g) Family environment and alternative care (articles 18-20 and 24)
- (h) Protection of children in vulnerable situations (articles 13, 22-23 and 25)
- (i) Harmful practices (article 1 (3) and 21)
- (j) Juvenile justice (article 17) and
- (k) Responsibilities of the child (article 31)

The preparation of reports requires contributions from various stakeholders: Public administration, civil society (including children's organisations), technical and financial partners, direct or indirect actors in the promotion and protection of children's rights or useful information holders. However, it has come out from the discussion with the National Human Rights Commission that it has never been involved in any reporting process regarding Burkina Faso's report to the ACRWC. Furthermore, its interaction with the National Council for Children is very informal.⁹⁶ Civil society organisations have prepared and submitted complementary reports on the ACRWC. The issues raised in the complementary reports did not differ too much from those contained in the state reports except the figures they have provided to substantiate their viewpoints. It seems that children were not involved, as mentioned by the representative of CNE, as CNE avoided taking children out of school for their workshops or meetings.

The delegation responsible for the presentation of the report was made up of four members from the Ministry of Social Affairs (two), the Ministry of Education (one) and the Ministry of Territorial Administration (one). The respective department did not make use of a consultant. An editorial

96 Phone call with the Secretary General of Commission Nationale des Droits Humains on 10 August 2020.

committee oversees writing the report which will be submitted to the committee of supervision. The final draft will be discussed in a workshop and the amended document will be forwarded to the Minister of Social Affairs before its adoption in the Council of Ministers.⁹⁷

With regard to the recommendations made following the presentation of the second and third reports, with a view to ensuring their wide dissemination at national level and their consideration by all the actors and partners concerned in the plans and programmes for the well-being of the child, they were brought to the attention of the different concerned ministries through official correspondence. In addition, after an information meeting of stakeholders in civil society in January 2015, the Permanent Secretariat of the National Council for Children organised a national workshop to disseminate these recommendations to public administration and partners in May 2015.⁹⁸

Burkina Faso has made some progress regarding the right to health and especially mother-to-child transmission of HIV. Over the past 15 years (1999-2017), significant progress deserves to be noted. The maternal mortality rate fell from 484 to 330 per 100 000 live births, the neonatal mortality rate from 41 to 23 per cent, that of under-5s from 219 to 82, the prevalence of acute malnutrition from 13 to 9 per cent, that of chronic malnutrition from 37 to 21 and that of being underweight from 34 to 16 per cent.⁹⁹

The most recent concluding observations that Burkina Faso have received covered different issues such as the definition of the child, general principles (non-discrimination, the best interests of the child and child participation), civil and political rights of children, family environment and alternative protection, education, leisure and cultural activities, and special protection measures. The National Council for Children¹⁰⁰ oversees the follow-up with the implementation of the concluding observations. Representatives of the CNE sustained that the concluding observations received in November 2019 have been widely disseminated by the media.

97 Phone call with the representative of the CNE on 12 August 2020.

98 As above.

99 Burkina Faso Ministry of Health 'Ameliorer la sante de la reproduction, de la mere, du nouveau-ne, de l'enfant et de l'adolescent-jeune, de la nutrition et de l'etat civil et statistiques vitales: Dossier d'investissement' https://www.globalfinancingfacility.org/sites/gff_new/files/documents/Burkina-Faso_Investment_Case_FR.pdf (accessed 23 September 2021).

100 Decret 2014-092/PRES/PM/MASSN/MEF/MATS du 20 février 2014, portant création, attributions, composition et fonctionnement d'un Conseil National pour l'Enfance. JO N°14 DU 03 AVRIL 2014.

However, our research has not found any sources either in official or local languages to substantiate their statement. The implementation of most of the concluding observations require political will. Others, such as providing the Children's Parliament with autonomous and appropriate infrastructures, require financial resources.

The government has planned to implement the concluding observations before the next presentation session. As soon as the government received the concluding observations, the national coordinating body held a workshop with all the stakeholders during which everyone took note of recommendations falling within their jurisdiction. Reports of some workshops on the dissemination of recommendations from treaty bodies relating to the rights of the child are available.¹⁰¹ Children have not been involved in the process of implementing the concluding observations because meetings of the Children's Parliament are no longer held on a regular basis due to financial constraints. Even though the representative said that the coordination body (CNE) is aware of the general comments, he was not informed further about it, the representative of National Commission of Human Rights said the same thing. Some well-informed local NGOs urge the government to take measures to implement the recommendations and observations made to Burkina Faso on the various reports relating to the implementation of the CRC and the African Charter.¹⁰² During our informal exchange with some citizens, they stated they are not informed on general comments. This situation illustrates that the government has not made the general comments available to them. We have not found any translated document on the general comments and the representative of the CNE did not mention it in his talk, as he did for the ACRWC. Media have not given special coverage on the general comments. They talk about children's rights without mentioning the general comments.

13 Communications

No communication has been submitted to the Committee. The reasons are the lack of available information on the Committee and above all the ACRWC, and the reluctance to admit to children's rights because of cultural belief. For the time being, representatives of NGOs defending children's rights states not having experienced any factor that discourages the submission of communications in Burkina Faso.

101 See attached report.

102 *Burkina24* (n 87).

14 Special mechanism: Promotional visits of the African Committee of Experts on the Rights and Welfare of the Child

The Committee undertook a promotional visit to Burkina Faso on 12-17 December 2012 to assess the implementation of the ACRWC. During that visit, the delegation visited children's care centres, such as the Centre of Gampela and of Laye (Ouagadougou). Another visit was undertaken in 2015 and it was an opportunity for the Committee to assess the candidacy of Burkina Faso to host the secretary of the Committee.¹⁰³ The Committee has not undertaken any investigative visit in Burkina Faso.

15 Factors that may impede or enhance the impact of the Charter and the Committee

The third and fourth reports on the monitoring of the implementation of the CRC, the initial reports relating to the two optional protocols, as well as the recommendations made by the Committee on the Rights of the Child were widely distributed to the public. Thus, reporting workshops were organised for members of the CNE, CREs, various ministerial departments, regions, funding partners, NGOs and associations working in the field of children. The summary of these reports has been posted online.¹⁰⁴ Furthermore, the issue of children is increasingly considered in municipal development plans and the creation of reintegration centres for children in conflict with the law draws its existence from the Treaty.¹⁰⁵ A national plan of action for the monitoring and implementation of the provisions of the Treaty has not been especially established. However, by reading other plans of action, provisions of the Treaty have been considered without special mention of it.

Burkina Faso made some efforts to respond positively to the requests issued by the Committee during the presentation of each report. In practice this has not brought about much change for children. This can be seen in the daily difficulties experienced such as child labour, violence against children, the situation of orphans and vulnerable children as well as youth

103 Phone call with the representatives of CNE and CNDH on 10 August 2020.

104 Ministry of Women, National Solidarity and the Family https://www.action-sociale.gov.bf/recherche?tx_news_pi1%5Bcontroller%5D=News&cHash=920316aacc63dd09137901afc36e6402 (accessed 23 September 2021).

105 Phone call with the representative of the Ministry of Social Affairs on 24 August 2020.

unemployment.¹⁰⁶ Training programmes tailored for key actors dealing with children have been organised but not specifically on the ACRWC.

As to the budget allocated for children. It is very difficult to compile data on the budget exclusively allocated to children in Burkina Faso. However, when reading the budget of the coordination body, we can deduce that the budget for children has been increased.¹⁰⁷

As result of the Covid-19 pandemic, the rights of the child are severely restricted (inability to come together to play, closure of schools, limitation of children's movement, suspension of socio-educational activities). To deal with this, the state has initiated education through media such as TV, the radio and donations of child protection kits.¹⁰⁸ Other challenges are the lack of resources to regularly hold sessions of the Children's Parliament and the security threats caused by the terrorism in many regions of the country. According to UNICEF, in 2019, persistent and growing insecurity in the Sahel forced nearly 2 000 schools in Burkina Faso, Mali and Niger to close or cease functioning. Threats against teachers, attacks on school facilities and the use of schools for military purposes disrupted the education of more than 400 000 children in the three countries and forced more than 10 000 teachers out of work or to move around because of the violence. This situation has created a large movement of the population within the affected communities (internally displaced persons) and of refugees in other neighbouring countries. These movements, which children are not spared from, constitute serious violations of their rights.¹⁰⁹

16 Conclusion

Burkina Faso has done quite well in advancing: the right to education through the numerous constructions of preschool, primary and secondary school; the right to health through free healthcare for children under five and construction of health centres; the right to protection by removing

106 AM Sie Tioye & D Bahan 'Analysis of the Population and Housing Census 2006: Theme 11 – The socioeconomic situation of children and youth in Burkina Faso' Ministry of Economy and Finance (October 2009) http://cns.bf/IMG/pdf/theme_11_enfants_et_jeunes-revision_fev_10.pdf .

107 Tioye & Bahan (n 109) 55.

108 'Fight against Covid-19: The Children's Parliament flies to the aid of the talibés of Dédougou' *Lefaso.Net* 30 April 2020 <https://lefaso.net/spip.php?article96557> (accessed 23 September 2021).

109 I Sanon, ADEA & YA Maiga 'Children's rights must be a priority of humanitarian action in Africa' GPE 2 July 2019 <https://www.globalpartnership.org/fr/blog/faire-des-droits-de-lenfant-une-priorite-de-laction-humanitaire-en-afrique> (accessed 23 September 2021).

children from the streets; the fight against child marriage; the massive issuance of birth certificates; opening of transit centres for children on the move; and imposing sanctions on perpetrators of violence against children. More needs to be done to guarantee the right to leisure and rest due to the lack of play space for children. Also, Children's right to participate needs to be enhanced as children are not sufficiently involved in issues that concern them, especially in recent years.

4



STUDY ON THE IMPLEMENTATION OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD IN BURUNDI

*Eric Bizimana**

1 Background

Burundi is an independent, secular and multiparty country governed by a presidential system.¹ The Country counts 18 provinces, 119 municipalities (*communes*) and 2 908 hills including 97 districts (*quartiers*) of Bujumbura City.² The Constitution provides for the separation of powers with the balance leaning clearly towards the Executive in that the President of the Republic can refuse to enact a bill passed by the Legislature³ and has the authority to dissolve the National Assembly,⁴ while the latter cannot remove him. The President of the Republic also chairs the Superior Council of the Judiciary and appoints its members after approval by the

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1 The Constitution of the Republic of Burundi, 2018, arts 1 & 75 <https://www.assemblee.bi/IMG/pdf/constitution.pdf> (accessed 27 August 2020).

2 Initial Report of Burundi to the ACERWC (28 August 2017) 7 <https://acerwc.africa/wp-content/uploads/2018/04/EN-Rapport-du-Burundi-sur-la-mise-en-oeuvre-de-la-Charte-Africaine-des-....pdf> (accessed 27 August 2020).

3 Constitution art 202.

4 Constitution art 208.

Senate.⁵ Furthermore, the President of the Republic is the guarantor of the Judiciary's independence.⁶ The fact that the Superior Council of the Judiciary is the highest disciplinary authority of the Judiciary⁷ gives the Executive disciplinary authority over judges. The Superior Council of the Judiciary consists of the President of the Republic, the Minister of Justice, the President of the Supreme Court, four members from the private sector shortlisted by the Minister of Justice, and six judges shortlisted by their peers.⁸ A former official in the Ministry of Justice indicated that in practise the selected judges have to be informally approved by the Minister of Justice prior to formally sending him/her their names.⁹ Once the candidates are shortlisted by the Minister of Justice, their names are conveyed to the Senate for approval.

Burundi follows a civil-law system inherited from Belgium. However, 'inheritance, marital property, gifts/liberalities, acquisition and sale of non-registered land and relationships between employers and workers of the traditional or unstructured sectors' are still governed by customary law.¹⁰ The judiciary consists of ordinary courts (*Tribunaux de résidence, Tribunaux de grande instance*, courts of appeal, and the Supreme Court) and specialised courts (the Constitutional Court, *Cour spéciale des terres et autres biens*, labour tribunals, commercial tribunals, administrative courts and military courts). The judiciary also consists of the public prosecution (*Ministère Public*) whose magistrates can be appointed to serve as judges in courts and vice-versa.

Burundi is a low-income country whose GDP was worth 3.01 billion US dollars in 2019 with an annual growth of 1.9 per cent.¹¹ In 2018, the human development index was at 0.423, ranking Burundi 185 out 189 countries and territories.¹² The population of Burundi was 8 038 618

5 Constitution arts 223 & 224.

6 Constitution art 214.

7 Constitution art 216.

8 Loi 1/02 du 23 janvier 2021 portant modification de la loi organique 1/03 du 12 juin 2019 portant organisation et fonctionnement du conseil supérieur de la magistrature, arts 13 & 15.

9 Interview with JDDN (anonymous) on 7 June 2021.

10 J-C Barakamfitye & J Ncamatwi 'UPDATE: The Burundi legal system and research' (March/April 2021) <https://www.nyulawglobal.org/globalex/Burundi1.html> (accessed 7 June 2021)

11 The World Bank 'Data Bank: World development indicators' <https://databank.worldbank.org/reports.aspx?source=world-development-indicators#> (accessed 5 August 2020).

12 UNDP 'Human Development Report 2020 – The next frontier: Human development and the Anthropocene: Burundi' (2020) http://hdr.undp.org/sites/all/themes/hdr_

according to the last census that took place in 2008.¹³ The population is currently estimated at 11 890 874.¹⁴ More than 60 per cent of them are below 25 years of age.¹⁵ In 2008, the female population was at 50.8 per cent against 49.2 per cent for the male population.¹⁶

The rate of maternal mortality was 2.8 per 1000 lives for the period 2010-2017,¹⁷ due mainly to the insufficiency of qualified medical personnel and essential drugs.¹⁸ In 2019, the infant rate of mortality stood at 40.99 per 1000 live births,¹⁹ while the under-five mortality rate in Burundi was 58.5 per 1000 live births.²⁰ The rate of mother-to-child transmission of HIV was estimated at 8.5 per cent in 2016.²¹ In 2016-2017, the immunisation rate was at 98 per cent for diphtheria, tuberculosis, whooping cough, polio, tetanus, and hepatitis B; at 94 per cent for measles, and 90 per cent for polio.²²

theme/country-notes/BDI.pdf (accessed 5 August 2020).

- 13 ISTEERBU - Ministère des Finances et de la Planification du Développement Economique 'BURUNDI - Recensement Général de la Population et de l'Habitat 2008' <https://isteebu.bi/nada/index.php/catalog/3/datafile/F4> (accessed 5 August 2020).
- 14 Worldometers 'Burundi population: Live' <https://www.worldometers.info/world-population/burundi-population/> (accessed 5 August 2020).
- 15 Country programme document for Burundi, UN Population Fund (5 July 2018) UN Doc DP/FPA/CPD/BDI/8 (2018) 2; Initial Report of Burundi to the ACERWC (n 2) 7.
- 16 Recensement général de la population et de l'habitat du Burundi (2008) 37. https://20122017.usaid.gov/sites/default/files/documents/1866/2008%20Burundi%20Population%20Survey_Status%20and%20Structure%20of%20Population.pdf (accessed 30 August 2020).
- 17 MMEIG et al 'Maternal mortality in 2000-2017: Burundi' https://www.who.int/gho/maternal_health/countries/bdi.pdf?ua=1 (accessed 5 August 2020).
- 18 Organisation mondiale de la Santé 'Stratégie de coopération de l'OMS avec le Burundi, 2016-2018' at 8 <https://apps.who.int/iris/bitstream/handle/10665/272368/ccs-bdi-2016-2018-fre.pdf?ua=1> (accessed 2 September 2020) ; Observatoire national des ressources en santé du Burundi 'Profil de ressources humaines en santé au Burundi' at 18, 26 & 28 <https://docplayer.fr/3720427-Profil-de-ressources-humaines-en-sante-du-burundi.html> (accessed 2 September 2020).
- 19 UNICEF: For every child 'Country profiles: Burundi' <https://data.unicef.org/country/bdi/> (accessed 5 August 2020).
- 20 As above.
- 21 WHO 'Burundi: HIV country profile 2016' https://www.who.int/hiv/data/Country_profile_Burundi.pdf (accessed 5 August 2020).
- 22 Y Irakoze 'Où en est-on avec la couverture vaccinale au Burundi?' (Burundi) 4 June 2020 <https://www.yaga-burundi.com/2020/couverture-vaccinale-burundi/> (accessed 5 August 2020).

According to a study conducted by the Burundi Institute of Statistics and Economic Studies in 2016 and 2017, the average age of sexual debut was 19 years for women and 22 years for men.²³ This study shows that the age of sexual debut is slightly above the legal age of marriage which is 18 years for women and 21 years for men.²⁴ The Penal Code criminalises homosexuality²⁵ and treats children as lacking maturity to consent to sex.²⁶ The study showed that the teen pregnancy rate was at 10 per cent in urban areas, and 8 per cent in rural areas.²⁷

In 2018, the HIV prevalence rate in the general population aged 15-49 years was estimated at 1 per cent: 1.2 per cent and 0.8 per cent for women and men respectively.²⁸ The contraceptive prevalence rate was at 23 per cent in 2016.²⁹

Since 2006, pregnant women and children under five are entitled to free public healthcare.³⁰ In 2017,

81% of the population had access to improved sources of drinking water, while 61% of the population could obtain safe drinking water within a 30-minute round-trip from their households. **Access to basic sanitation** remained limited as only 46% of the population were having access to basic sanitation facilities.³¹

In 2019, UNICEF noted that Burundi has one of the highest stunting rates in the world:

- 23 'Les Burundais et la sexualité : Les femmes plus précoces que les hommes' 4 July 2018 <http://akeza.net/les-burundais-et-la-sexualite-les-femmes-plus-precoces-que-les-hommes/> (accessed 2 September 2020).
- 24 Décret-loi 1/024 du 28 Avril 1993 portant réforme du code des personnes et de la famille, arts 335&337 <http://www.droit-afrique.com/upload/doc/burundi/Burundi-Code-civil.pdf> (accessed 8 August 2020).
- 25 Loi 1/27 du 29 décembre 2017 portant révision du code pénal, art 590 <https://www.assemblee.bi/IMG/pdf/N%C2%B027%20du%2029%20d%C3%A9cembre%202017.pdf> (accessed 27 August 2020).
- 26 Code pénal (n 25) art 577.
- 27 '8% of adolescent girls fell pregnant in Burundi, reveals ISTEERU report' (Burundi) 19 January 2018 <https://www.iwacu-burundi.org/englishnews/8-of-adolescent-girls-fell-pregnant-in-burundi-reveals-isteerbu-report/> (accessed 5 August 2020).
- 28 Country programme document for Burundi (n 15) 2.
- 29 As above.
- 30 UNICEF: For every child 'Covid-19: The latest news and information' <https://www.unicef.org/french/sowc09/docs/SOWC09-Encadres-4.5-FR.pdf> (accessed 5 August 2020).
- 31 UNICEF: For every child – Burundi 'Water, sanitation and hygiene: Every child should have equal access to water, sanitation and hygiene' <https://www.unicef.org/>

boys are more affected than girls (59.4 and 52.4% respectively), and rural children are more at risk of being stunted than their urban counterparts, 58.8 and 27.8% respectively. The same **geographic disparity** is noted for severe acute malnutrition (0.3% urban and 1% rural).³²

Although there are no desegregated data on children's access to shelter and basic housing, it is worth noting that children were affected by the floods and landslides that occurred in 2018, 2019 and 2020 which led to displacement of more than 4 000 women and children.³³ In 2021, many children living in the vicinity of the Rusizi river, more particularly in Gatumba District, were displaced due to flooding.³⁴

A study conducted by World Food Programme (WFP) in 2016 indicates that families cope with hunger and food insecurity by eating less expensive food, seeking assistance from friends and parents, avoiding wastage of food, giving priority to children in sharing food, and reducing the number of meals.³⁵ It is worth mentioning that 68 per cent of Burundians live below the poverty line.³⁶

2 Ratification of the African Charter on the Rights and Welfare of the Child

The ratification of human-rights treaties is governed by articles 197 and 277 of the Constitution. The Executive prepares a bill of ratification which it submits to the National Assembly. Once adopted, the latter transmits it to the Senate. Once adopted by the Senate, the bill can be enacted into law by the President of the Republic within 30 calendar days.³⁷ The constitutionality of the bill has to be confirmed by the Constitutional

burundi/water-sanitation-and-hygiene (accessed 5 August 2020).

32 UNICEF: For every child – Burundi 'Nutrition: Burundi has one of the highest stunting rates in the world and in contrast the highest exclusive breastfeeding rate' <https://www.unicef.org/burundi/nutrition> (accessed 5 August 2020).

33 ION: UN Migration '5000 displaced Burundians move to long-term housing as four displacement camps close' (29 March 2018) <https://www.iom.int/news/5000-displaced-burundians-move-long-term-housing-four-displacement-camps-close> (accessed 5 August 2020).

34 Z Boujrada 'The Gatumba Floods in Burundi and UNICEF Burundi's emergency response' UNICEF: For every child – Burundi (29 April 2020) <https://www.unicef.org/burundi/stories/gatumba-floods-burundi> (accessed 11 June 2021)

35 World Food Programme 'Analyse de la sécurité alimentaire d'urgence au Burundi' (May 2016) 43 <https://docs.wfp.org/api/documents/WFP-0000069338/download/> (accessed 6 August 2020).

36 Initial Report of Burundi to the ACERWC (n 2) 20.

37 Constitution art 202.

Court prior to enactment.³⁸ The instrument of ratification in addition to the ratification law is then delivered to the relevant body.³⁹ Lawmakers assess the compatibility with the Constitution prior to adopting the ratification law. But, no further compatibility study was conducted prior to ratifying the ACERWC on 28 June 2004 without reservations.⁴⁰ Seventeen years after its ratification, the provisions of ACERWC are widely unknown among the citizenry. Apart from sporadic training workshops organised by the government and civil society – which reach few people – there is no national strategy of dissemination of the ACERWC.

In addition to the Charter, Burundi ratified the Convention on the Rights of the Child (CRC) on 19 October 1990, its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography on 6 November 2007, and its Optional Protocol on the Involvement of Children in Armed Conflicts on 24 June 2008.⁴¹ Burundi has yet to ratify the Optional Protocol to the CRC on a communications procedure. Burundi ratified the Worst Forms of Child Labour Convention on 11 June 2002.⁴²

3 Government focal point

Burundi has established a Department of Treaty Bodies, Special Procedures, Universal Periodic Review, and other UN Mechanisms responsible for preparing initial and periodic reports.⁴³ Children are not represented in the Department, but they are consulted within the framework of the National Children's Forum or within other community mechanisms for the protection of children.⁴⁴

Burundi has not yet established a national cross-sectoral implementation mechanism.⁴⁵ However, many ministries have units dealing with issues

38 Constitution art 234.

39 An instrument of ratification is a note verbal entitled 'Instrument de ratification par la République du Burundi de (name of the treaty)' signed by the President of the Republic.

40 ACERWC 'Ratifications table' <https://www.acerwc.africa/ratifications-table/> (accessed 8 August 2020).

41 OHCHR 'Status of ratification interactive dashboard' <https://indicators.ohchr.org/> (accessed 8 August 2020).

42 ILO 'Ratifications of C182 - Worst Forms of Child Labour Convention, 1999 (No 182)' https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312327 (accessed 25 August 2020).

43 Annex 1.

44 As above.

45 Concluding Observations on the Initial Report of Burundi, ACERWC (2018) para 6.

affecting children.⁴⁶ Among these units, the Department of Children and Families (within the Ministry of Human Rights, Social Affairs and Gender) plays an important role in the implementation of ACRWC.⁴⁷ The coordination includes different ministerial departments and units such as the Department of Children and Families, and child units in the Ministry of Education, the Ministry of Justice, the Ministry of Health, and the Interior Ministry.

All activities aimed at promoting children's rights are coordinated at the level of the Department of Children and Families (within the Ministry of Human Rights, Social Affairs and Gender).⁴⁸ However, Burundi does not yet have a strategy specific to the implementation of the ACRWC.

4 Domestication or incorporation of the Charter

The domestication is done through incorporation of ratified treaties into the Constitution⁴⁹ and through aligning ordinary laws and policies with the relevant treaties. For instance, the minimum age of criminal responsibility has been raised from 13 years (article 14 of the 1981 Penal Code) to 15 years in the 2009 Penal Code,⁵⁰ and in the 2017 Penal Code⁵¹ which is in the remit of commendable level.⁵²

5 Legislative reform and adoption

Burundi has not conducted a comprehensive review of all relevant laws. However, some laws have been revised in accordance with the ACRWC: Law 1/17 of 29 April 2006 on the status of troops in the national army which increases the recruitment age from 16 to 18 years; Decree 1/19 of 10 September 2013 on the organisation of basic and secondary school which provides for free basic school education; Law 1/28 of 29 October 2014 on preventing and combatting trafficking in persons and protecting victims of trafficking; Law 1/13 of 22 September 2016 on the prevention, protection of victims and repression of gender-based violence; Law 1/27 of 29 December 2017 revising the Penal Code which defines a child as any person below 18 years; Law 1/09 of 11 May 2018 on revising the Penal Procedure Code which contains provisions on the protection of

46 Initial report of Burundi to the ACERWC (n 2) 10-11.

47 Annex 1.

48 Annex 1.

49 Constitution art 19.

50 Code pénal (n 25) art 29.

51 Code pénal (n 25) art 28.

52 CRC General Comment 10, para 30.

child offenders; and the Penal Code which increased the minimum age of criminal responsibility from 13 to 15 years.

Burundi does not have a child protection act which provides a unique definition of a child. For the time being, national laws define a child differently. The Penal Code defines a child as any person below 18 years of age.⁵³ The majority to vote⁵⁴ and to join the armed forces is at 18 years.⁵⁵ The majority for marriage is attained at 18 years for girls and 21 years for boys.⁵⁶ The age of majority to work is 16 years.⁵⁷ Article 28 of the 2017 Penal Code fixes the age of partial criminal responsibility and full criminal responsibility at 15 and 18 years respectively. The majority for marriage is reached at 18 years for girls and 21 years for boys.⁵⁸ Under the Penal Code a child cannot validly consent to sex.⁵⁹ Burundi law is silent about the age of consent to medical treatment. In practice, children aged 10 years and above do receive medical treatment including confidential sexual and reproductive health services.⁶⁰

Corporal punishment is prohibited in schools,⁶¹ but is not criminalised under the Penal Code. However, corporal punishment can be characterised as wilful bodily harm⁶² or assault.⁶³ The Penal Code criminalises violence and abuse against children but this is 'not interpreted as prohibiting all corporal punishment in childrearing'.⁶⁴

53 Code pénal (n 25) art 535.

54 Loi organique 1/11 du 20 mai 2019 portant modification de la loi 1/20 du 3 juin 2014 portant code électoral, art 4 <https://www.assemblee.bi/IMG/pdf/code%20electoral2019.pdf> (accessed 27 August 2020).

55 Loi 1/17 du 29 avril 2006 portant statut des hommes de troupe de la force de défense nationale https://www.assemblee.bi/IMG/pdf/loi_n1-17_du_29_avril_2006-2.pdf (accessed 27 August 2020).

56 Burundi country profile (n 21).

57 Ordonnance ministérielle 630/1 du 5 janvier 1981, art 3 <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/34358/57536/F-1405137082/BDI-34358.pdf> (accessed 8 August 2020).

58 Code des personnes et de la famille (n 24) arts 335 & 337.

59 Code pénal (n 25) arts 577-579

60 WhatsApp interview with a medical doctor at Gahombo District Hospital, Dr Arsène Saburegeya, on 9 August 2020.

61 Ordonnance ministérielle du 17 juillet 2017.

62 Code pénal (n 25) art 221.

63 Code pénal (n 25) art 226.

64 End violence against children: End corporal punishment 'Country report for Burundi' (last updated December 2018) <https://endcorporalpunishment.org/reports-on-every-state-and-territory/burundi/> (accessed 9 August 2020).

Under the Persons and Family Code, the mother and father, and, in their absence, any witness to the birth of a child has a duty to declare his/her birth to the municipality where the mother of the said child is domiciled within 15 days following the birth.⁶⁵ Each municipality is responsible for the registration of births within its jurisdiction.

The acquisition of nationality by descent is governed by article 2 of the nationality code,⁶⁶ which grants primacy to the father in the transmission of nationality to children. A Burundian mother plays a subsidiary role in the transmission of nationality to her children as she can only transmit nationality to her child born in the territory of Burundi if the father is unknown or has denied the paternity of the child.⁶⁷ A child born in Burundi to a foreign mother and whose Burundian father is unknown or has denied the paternity of the child as well as a child whose mother and father are not known is at high risk of becoming stateless.

Children's rights are recognised and protected by the Constitution. Article 19 of the Constitution recognises children's rights enshrined in human-rights treaties binding on Burundi. Ordinary laws and policies also recognise and protect children's rights. By way of illustration, the Persons and Family Code provides for the deprivation of parental authority against parents responsible for abusing their children.⁶⁸ The Penal Code characterises carnal knowledge with an under 18 persons as rape.⁶⁹ Although the age of marriage is legally 18 years for girls, 18 per cent of marriages were contracted with girls below the legal age due to poverty, between 1987 and 2006.⁷⁰

Children are protected from exposure to sexual exploitation and child pornography through the criminalisation of multiple sexual behaviour affecting children. Thus, under articles 577-578 of the Penal Code, any sexual relationship with a child is characterised as rape. If the victim is below 15 years of age, the perpetrator is liable to an imprisonment of 15 to 30 years. In addition, molestation, soliciting, incitement to debauchery, prostitution, and pimping are criminalised under articles 562-576 of the Penal Code. Furthermore, online child sexual abuse images or videos can

65 Code des personnes et de la famille (n 24) arts 37-40.

66 Loi 1/013 du 18 juillet 2000 portant réforme du code de la nationalité <http://www.droit-afrique.com/upload/doc/burundi/Burundi-Code-2000-nationalite.pdf> (accessed 8 August 2020).

67 Loi 1/013 (n 66) art 2(d).

68 Code des personnes et de la famille (n 24) art 298.

69 Code pénal (n 25) arts 577 & 578.

70 Initial Report of Burundi to the ACERWC (n 2) 47.

be reported to the expert analysts of the Internet Watch Foundation, via its Reporting Portal in Burundi.⁷¹

Burundi law recognises the right to assembly and association for persons who are at least 21 years old,⁷² thus excluding children. Students do elect representatives who can convey their concerns to school authorities, but they are not involved in school management. The ACERWC recommended Burundi

strike a balance between freedom of association of children and the legal requirement to attain majority to be a member of an association, and to allow children to enjoy their right to freedom of association pursuant to the African Children's Charter in line with their evolving capacities.⁷³

Children have the right to information and expression by virtue of articles 19 and 31 of the Constitution.

Burundi does not have a Sexual Offences Act. The Penal Code criminalises consensual sexual conduct involving children aged between 15 and 18 years. Article 577 of the Penal Code provides as follows:

Any act of sexual penetration, of whatever nature and by any means whatsoever, committed by a person criminally responsible on a minor under the age of eighteen, even if consenting, is deemed to be violent rape.

The only fact of the carnal rapprochement of the sexes committed on a minor under the age of eighteen, even if consenting, is also deemed to be violent rape.

The prosecution of children involved in consensual sexual conduct with other children depends on the age and sex of the concerned children. According to a judge, a prosecutor and two employees of a Burundi based human-rights CSO, only the older children in the sexual act, often boys, are

71 Internet Watch Foundation 'Burundi takes vital step to remove child sexual abuse imagery from the internet by launching a public reporting system' (4 September 2018) <https://www.iwf.org.uk/news/burundi-takes-vital-step-to-remove-child-sexual-abuse-imagery-from-internet-by-launching-a> (accessed 9 August 2020).

72 Décret-Loi 1/11- 1992 Cadre des Associations sans but lucratif, art 8. The terms 'majorité civile' in that provision are construed to mean 21 years of age as it appears from the Burundi initial report to ACERWC (n 2) 18. The new law 1/02 of 27 January 2017 is silent on the age requirement https://www.assemblee.bi/IMG/pdf/02_janvier_2017.pdf (accessed 27 August 2020).

73 Concluding Observations (n 45) 22.

prosecuted and punished.⁷⁴ A prosecutor indicated that the prosecution of boys is grounded on the fact that the spirit of the Penal Code is to protect girls from consequences associated with early sexual intercourse.⁷⁵

The Medical Care Act explicitly recognises the right of mature persons to sexual and reproductive health services.⁷⁶ But it is not clear whether a mature person means an adult. For others, this right can be inferred from legal provisions prohibiting discrimination in the administration of medical care.⁷⁷ According to a medical practitioner, children aged ten years and above do receive confidential sexual and reproductive health services including contraceptives.⁷⁸ The same doctor explained that the selection of the age of ten is based on the fact that it is the age at which many girls start menstruating. However, there is no standardised medical practice in this respect. Teenage girls who get pregnant are deprived of free birth delivery which is afforded to adults.⁷⁹ The Penal Code criminalises abortion.⁸⁰

As indicated above, children aged ten years do receive confidential sexual and reproductive services without parental consent. According to Centre Seruka (a local NGO providing medical support to survivors of sexual violence), 60 to 70 per cent of their patients are below 18 years of age and 46 per cent are below 13.⁸¹ Street children as well as child workers who live far from their families can receive treatment without the requirement of parental consent. Other children can only receive urgent

74 WhatsApp interviews with a judge (AM), a prosecutor (Longin Nkurunziza, at the of Makamba and focal point on sexual and gender based violence) & two employees of a civil society organization (of Association des Femmes Juristes du Burundi (Stève Nininahazwe, programme officer and another anonymous) on 10 August 2020.

75 WhatsApp interview with Longin Nkurunziza, at the of Makamba and focal point on sexual and gender based violence on 10 August 2020.

76 Loi 1/012 du 30 mai 2018 portant code de l'offre des soins et des services de santé au Burundi, art 34 <https://www.assemblee.bi/IMG/pdf/N%C2%B012%20du%2030%20mai%202018.pdf> (accessed 10 August 2020).

77 Loi 1/24 du 2 octobre 2009 portant dispositions particulières du statut général des fonctionnaires applicables au personnel de la santé publique, art 5 https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_145397.pdf (accessed 10 August 2020); Loi 1/012 du 30 mai 2018 portant code de l'offre des soins et des services de santé au Burundi, art 9.

78 WhatsApp interview with a medical doctor at Gahombo District Hospital, Dr Arsène Saburegeya on 9 August 2021.

79 Concluding Observations (n 45) para 30.

80 Code pénal (n 25) art 528.

81 'Centre Seruka: Près de 70% des victimes des VBG sont des mineurs' 28 November 2017 <https://medium.com/@1509105160699/centre-seruka-pr%C3%A8s-de-70-des-victimes-des-vbg-sont-des-mineurs-ace5e5e71cb1> (accessed 3 September 2020).

care without parental consent while further medical treatment is subject to parental consent.⁸²

It can therefore be argued that the provision of sexual and reproductive health services without parental consent is grounded on the subjective assessment of the needs and circumstances of the concerned child.

6 Policy reform and adoption

Burundi has adopted many policies protecting children. In 2008, Burundi adopted a policy aimed at orphans and other vulnerable children. The policy consists of assisting families to undertake income-generating activities, improving the productivity and food storage of households and orphans' centres, strengthening nutritional education, responding to basic needs of vulnerable children and their families, ensuring the right to education and healthcare, and protecting vulnerable children against all forms of abuse.⁸³ Indigent persons were already entitled to free healthcare since 2005.⁸⁴

WFP provides assistance to vulnerable children through: temporary food assistance to households in areas of high food insecurity; food assistance for social institutions that provide accommodation, training and other support for orphans, street children, old people and persons with disabilities; and nutritional supplementation programmes for children under five with acute malnutrition.⁸⁵

Burundi has adopted a national strategy to end child begging which consists of forcing begging persons to go back to their families and areas of origin and places a duty on local authorities to assist persons returning to their hills.⁸⁶

82 A WhatsApp interview with an employee of Centre Seruka (anonymous) on 7 September 2020.

83 Politique nationale en faveur des orphelins et des autres enfants vulnérables at 11-14 https://hivhealthclearinghouse.unesco.org/sites/default/files/resources/iiep_burundi_politique_orphelins.pdf (accessed 2 September 2020).

84 Ministère de la santé publique et de la lutte contre le Sida 'Processus d'élaboration de la politique et du plan de développement des ressources humaines' at 2 https://www.who.int/hac/techguidance/training/analysing_health_systems/4_politique_et_developpement_des_ressources_humaines_minisante_08.pdf (accessed 2 September 2020).

85 World Bank & UNICEF 'Assessment of social safety nets in Burundi: Contribution to the operationalisation of national social protection policy' (September 2014) 35 https://www.unicef.org/evaldatabase/files/Assessment_of_Social_Safety_Nets_in_Burundi.pdf (accessed 6 August 2020).

86 E Nkurunziza 'Bujumbura veut en finir avec la mendicité' (Burundi) 19 May 2018

The government adopted a Sector Plan for the Development of Education and Training aimed at offering pre-school education to children aged 4 to 6 years, and raising awareness for parents of children aged nought to three years.⁸⁷

In 2013, Burundi adopted a reform of the school system with the transition from primary school to basic education (up to grade 9).⁸⁸ Primary education is tuition free and compulsory since 2005⁸⁹ and so is basic education since 2013. Indirect fees such as food, uniforms and books lead to school dropouts.⁹⁰ The enrolment rate in basic education was 70 per cent in 2014.⁹¹ The teacher/student ratio in basic schools varied from 41 to 70 in 2018.⁹² The rate of completion at basic education varies from 37 per cent to 83 per cent.⁹³ The completion rate stands at 50 per cent in secondary schools.⁹⁴

The Constitution recognises the right to education of every child and prohibits any form of discrimination in the enjoyment of education.⁹⁵ However, education is not inclusive in as much as children with disability are concerned. Burundi has one school for deaf-mute children, two schools for the blind, and two schools for the care of children with mental disability. Other children with disabilities are enrolled in mainstream schools,⁹⁶ but there are no assistive measures for these children to enjoy education on a par with their non-disabled fellow students. On 26 June 2018, the Ministry of Education issued an instruction to all education authorities to outlaw pregnant girls and boys who impregnate them from

<https://www.iwacu-burundi.org/bujumbura-veut-en-finir-avec-la-mendicite/> (accessed 19 August 2020).

87 Initial Report of Burundi to ACERWC (n 2) 31.

88 Republic of Burundi 'Plan transitoire de l'éducation au Burundi, 2018-2020' at 11. https://www.globalpartnership.org/sites/default/files/plan_transitoire_education_du_burundi.pdf (accessed 6 June 2020).

89 Initial Report of Burundi to ACERWC (n 2) 35.

90 Republic of Burundi (n 89) 18.

91 Initial Report of Burundi to ACERWC (n 2) 32.

92 Republic of Burundi (n 89) 16.

93 As above.

94 Initial Report of Burundi to ACERWC (n 2) 33.

95 Loi 1/19 du 10 septembre 2013 portant organisation de l'enseignement de base et secondaire, art 10 https://www.assemblee.bi/IMG/pdf/N%C2%B01_19_10_septembre_2013.pdf (accessed 7 August 2020).

96 Initial Report of Burundi to the ACERWC (n 2) 35.

continuing mainstream education. The concerned girls and boys are only allowed to attend vocational training.⁹⁷

In 2014, Burundi adopted a national module for Comprehensive Sexuality Education in all schools which is taught from grade 5 up to the end of secondary school. The module covers various topics including love, sexuality, relationships, the bodily development of young people, gender, self-esteem, friendship, parent/adolescent communication, pregnancy, contraceptives, STIs and HIV/AIDS and sexual violence.⁹⁸

According to a basic-school teacher, the module is not age-appropriate as it can incite children to have sex instead of observing abstinence in accordance with Burundian cultural norms.⁹⁹ Likewise, a basic-school principal indicated that the module has a negative impact on young students in that it arouses their desire to have sex while they lack a sound understanding of the risks that such relationships can entail.¹⁰⁰ The module for Comprehensive Sexuality Education in all schools can contribute to curbing the prevalence of child marriages. But, so far, the introduction of the module has not curbed the increase of teen pregnancies in schools, which a teachers' journal blaming parents, who still think talking about sexuality with their children is taboo.¹⁰¹

Burundi has established a National Children's Forum as a platform for the participation of children through the Decree 100/167 of 5 June 2012 on the creation, organisation, composition and functioning of the National Children's Forum in Burundi.

97 Ministère de l'Éducation et de la Formation Technique et Professionnelle, Letter No Ref: 620/CAB/DGEFPF/5176/2018 <https://twitter.com/Ikiriho/status/1012280371197640704/photo/1> (accessed 6 August 2020).

98 Le manuel du formateur (2016) 7 https://www.rutgers.international/sites/rutgersorg/files/PDF/2016_LMCpM_Manual_formateur_preview_LowRes.pdf (accessed 6 August 2020).

99 WhatsApp interview with a teacher (anonymous) on 10 August 2020.

100 WhatsApp interview with a basic-school principal (anonymous) on 7 September 2020.

101 Conapes 'BURUNDI: Education – Sexual health education does not decrease unwanted pregnancies' (28 February 2020) <https://www.voixdelenseignantconapes.org/burundi-education-lenseignement-de-la-sante-sexuelle-ne-diminue-pas-les-grossesses-non-desirees/> (accessed 2 September 2020). Regarding the taboo around sexuality in Burundi, see D Munezero & J Bigirimana 'Amélioration de la santé sexuelle et reproductive des adolescents et jeunes au Burundi' (2017) 11 & 63 https://www.rutgers.international/sites/rutgersorg/files/PDF/French_material/2017_Rapport_etude_de_base%20programme_conjoint_Burundi_FR.pdf (accessed 8 September 2020).

The National Children's Forum consists of 34 children aged between ten and 18 years.¹⁰² The Decree creating the National Children's Forum indicates that each province is represented by two children,¹⁰³ but it is silent as to the gender dimension and inclusion of children from minority groups. At the hill and municipality levels, the forum is made up of seven members including three girls and three boys while the seventh member comes from social groups that are not often represented including children with disabilities and albino children.¹⁰⁴

The Forum meetings are regularly held during the summer holidays of July-September. Other meetings can be held during the Easter and/or Christmas holidays.¹⁰⁵

The National Children's Forum serves as a Child Parliament.¹⁰⁶ The Forum is under the supervision of the Ministry in charge of child rights¹⁰⁷ which is currently the Ministry of Human Rights, Social Affairs and Gender.¹⁰⁸ The National Children's Forum actively contributed to the development of the National Child Protection Policy (2020-2024).¹⁰⁹

Some CSOs accuse the National Children's Forum of being a political tool to silence criticism to the government. According to a child-rights activist, the politicisation of the National Children's Forum prevented it from having significant impact in terms of laws and policies affecting children.¹¹⁰

7 Court judgments

In Burundi, the ACRWC has a constitutional rank – the highest rank in the hierarchy of norms – by virtue of article 19 of the Constitution which reads: 'The rights and duties proclaimed and guaranteed by regularly

102 Décret 100/167 du 5 juin 2012, arts 6 & 7.

103 Décret 100/167 du 5 juin 2012, art 6.

104 Annex 1

105 As above.

106 A Nkurunziza 'The children's parliament, an impossible mission?' (Burundi) 27 September 2016 <https://www.yaga-burundi.com/2016/parlement-enfants-mission-impossible/> (accessed 20 August 2020). See also answers provided in Annex 1.

107 Décret 100/167 du 5 juin 2012, art 4.

108 Annex 1.

109 As above.

110 Facebook interview with an employee of a child rights CSO (anonymous) on 12 August 2020.

ratified international human rights treaties form an integral part of the Constitution’.

The Constitutional Court has assessed the conformity of domestic laws and decrees with international instruments many times.¹¹¹ The Constitutional Court has a clear human-rights jurisdiction. By virtue of article 234 of the Constitution, the Constitutional Court has jurisdiction to entertain human-rights cases.¹¹² Parties to a case can also petition the Constitutional Court for the purpose of invalidating legal provisions violating their rights (*exception d’inconstitutionnalité*). Courts deciding the merits of the case cannot apply a provision thus declared unconstitutional.¹¹³ Other courts do apply principles enshrined in international treaties mainly the best interests of the child.¹¹⁴ The application of ACRWC by ordinary courts depends on many factors including the background of judges and the personhood of the court’s president.¹¹⁵

In the situation of a conflict between the provisions of the ACRWC and those of domestic legislation, the ACRWC prevails as it has a constitutional status with authority above ordinary laws.

The acquisition of legal standing by children varies widely depending on the matter at stake and whether the concerned child has been granted legal authority to act as an adult (*émancipation*) or not. For instance, in family matters, a child acquires majority at 21 years of age.¹¹⁶ Children below 21 years of age can only institute a legal action through representation by parents or guardians. Emancipation can be granted to children who are at least 16 years of age.¹¹⁷ In practise, Courts usually allow 18-year-old children to institute legal actions and argue cases without representation.¹¹⁸

111 See for example RCCB 8 of 30 March 1993, RCCB 15 of 8 July 1994 and RCCB 294 of 20 October 2014.

112 A Manirakiza ‘Le principe d’égalité et de non-discrimination dans le droit familial burundais : état des lieux, défis de mis en œuvre et perspectives ’ PhD thesis, University of Antwerp, 2020 at 78-83.

113 As above.

114 White & Case LLP ‘Accès des enfants à la justice: Burundi’ (2014) 2 https://archive.crin.org/sites/default/files/burundi_access_to_justice_fr.pdf (accessed 8 August 2020).

115 Annex 3.

116 Code des personnes et de la famille (n 24) arts 335 & 336.

117 Second periodic report to the CRC Committee: Burundi, CRC (7 January 2010) UN Doc CRC/C/BDI/2 (2010) para 95.

118 White & Case LLP (n 115) 3.

With respect to remedies available to children, it is to be noted that in civil matters, courts can order any appropriate measure including monetary reparation. Courts can resort to an expedited procedure (*procédure de référé*),¹¹⁹ Criminal courts can order imprisonment of perpetrators of offences against children, restitution and monetary reparation to the victim.¹²⁰ Administrative Courts can invalidate an administrative measure.¹²¹ The Constitutional Court has an upstream jurisdiction to confirm the constitutionality of laws prior to their enactment.¹²² The Constitutional Court also has a downstream jurisdiction (after enactment) to invalidate provisions that are inconsistent with the Constitution.¹²³

Burundi does not have a comprehensive law on juvenile justice. Provisions protecting child offenders are included in the Penal Code and in the Penal Procedure Code. The Penal Code provides for diversion from the judicial system and alternatives to deprivation of liberty. Article 30 of the 2017 Penal Code points out that the measures of protection, education and surveillance which may be taken against a minor are: warning; call to law; handing the minor to parents, to a tutor, or to a confident person; educative assistance; and placement in an institution of social character, a school or another habilitated educative institution. In addition to a fine, the judge handling the case can decide to place the minor under an educative assistance or in a foster family or in another rehabilitative institution determined by the judge. At any stage of the penal procedure, the judge can, *ex officio*, upon the request of a prosecuting officer, parents or legal representatives, or upon a report of a social assistant, modify or end the measures of protection, surveillance or education applied to the minor. There are instances where alternatives to detention have been applied.¹²⁴ Burundi has also created two rehabilitation centres for children in conflict with the law.¹²⁵

119 Loi 1/010 du 13 mai 2004 portant code de procédure civile, arts 162-166 <http://www.droit-afrique.com/upload/doc/burundi/Burundi-Code-2004-procedure-civile.pdf> (accessed 27 August 2020).

120 Code pénal (n 25) arts 95 & 96.

121 Loi 1/18 du 17 mars 2005 portant code de l'organisation et la compétence judiciaires, art 61 https://www.assemblee.bi/IMG/pdf/loi%20n%C2%B01_08_du_17_mars_2005.pdf (accessed 27 August 2020).

122 Constitution art 202.

123 Constitution arts 234 & 237.

124 Child offenders accused of theft were handed to their parents in cases; A Child accused of rape was also handed to his parents (Annex 3).

125 Ordonnance ministérielle 550/663 du 17 avril 2015 établissant deux centres de réhabilitation pour mineurs en conflit avec la loi.

Burundi has instituted chambers for minors within the *Tribunaux de Grande Instance* and courts of appeal, but there is no particular specialisation of policemen, prosecutors or judges dealing with child offenders. The same judges serving in chambers for minors' seat in ordinary courts, which carries the risk of hindering their specialisation in child matters. Furthermore, the prison law applies to all prisoners regardless of their age. Children have a right to participate in cases involving them.

The existing mechanisms, institutions and procedures fall short of the provisions of the ACRWC. For instance, there are no provisions on free legal aid for children in conflict with the law. The Penal Procedure Code does not contain any indication as to the speed of the trial in cases involving children. Deprivation of liberty including arbitrary detention is the principle rather than a measure of last resort.¹²⁶ Burundi has only two rehabilitation centres.¹²⁷

The provisions of the ACRWC can be invoked before national courts. Judges have a professional duty to consider all arguments raised by parties including treaty provisions and general comments. Lawyers and judges indicated that the ACRWC and the Committee's general comments have not been raised before courts in Burundi. All persons interviewed could not provide a single case where the provisions of the ACRWC or the general comments issued by the Committee have been used as an interpretative source. To my knowledge and according to interviewees, no domestic court has found the government of Burundi in violation of a specific provision of the ACRWC.

As indicated above, the Constitutional Court has affirmed its jurisdiction to assess the conformity of domestic laws and regulations with international instruments.¹²⁸

8 Awareness and use by Civil Society Organisations

The ACRWC is widely unknown among grassroots civil society organisations as the Treaty has not yet been translated into Kirundi which is the local language spoken and understood by the overwhelming majority of the population. All interviewees concurred that the government has not made the ACRWC available to most citizens be it through media or via other means. For the time being, no institution has been designated with the responsibility of translating the ACRWC.

126 UNICEF (n 30).

127 Concluding Observations (n 45) 40.

128 Manirakiza (n 113) 74.

Children's rights NGOs mostly based in the economic capital Bujumbura have used the ACRWC in advocacy and training programmes.¹²⁹ One member of a civil society organisation indicated that most child associations only talk about child rights on International Children's Day.¹³⁰

CSOs are not meaningfully involved in the implementation of the ACRWC or the Committee's concluding observations. Out of approached organisations, only the Burundi Child Rights Coalition indicated they have programmes informed by the ACERWC.

The Committee received complementary reports from civil society organisations. There is no information supporting CSOs' meaningful involvement in monitoring the implementation of the ACRWC or the Committee's concluding observations.

The government consults the National Children's Forum in the implementation of the ACRWC. But there is no information supporting a meaningful consultation with other CSOs.

9 Awareness and use by lawyers and the judiciary

The government has organised human-rights training including on the provisions of the ACRWC.¹³¹

A senior official in the Ministry of Human Rights, Social Affairs and Gender indicated that the organisation of training workshops depends on the availability of resources.¹³² The training workshops are not organised on a regular basis because they are mainly funded by partners including Belgium and UNICEF.¹³³

Invitations for training are sent to various actors (ministries, courts, public prosecution, police, prison service, NGOs and bar associations)

129 Facebook interview with an employee of a child rights CSO (anonymous) on 12 August 2020.

130 Annex 7.

131 A prosecutor indicated that ACRWC is not covered in the training (Annex 2), while a lawyer indicated that the Ministry of Justice has organised training on the provisions of ACRWC (Annex 4). A Senior Government Official indicated that civil servants, the judiciary and CSOs participate in the trainings (Annex 1).

132 Annex 1.

133 This was the view expressed in Annex 3.

who then select participants.¹³⁴ Target participants are persons who are likely to generate change in their field of activity.¹³⁵

The Charter is widely unknown to Burundian lawyers and judges. A practicing lawyer indicated that the number of lawyers and judges who are familiar with the treaty is extremely low. He added that lawyers are more familiar with the Charter than judges because the spirit of openness and research is low among the latter.¹³⁶

All interviewed lawyers indicated that the two bars existing in the country have not organised training or sensitisation on the content of the Charter. The same interviewees have not cited the Charter in legal submissions. Likewise, interviewed judges have never used the Charter as an interpretative source. Both categories of interviewees could not provide a single court decision in which the Charter was cited.

10 Higher education and academic writing

There is no separate module on child rights in the curricula at university level. However, there are references to ACRWC in modules dealing with other subjects.¹³⁷ The publications of Burundian academics do not refer to ACERWC's general comments.¹³⁸

11 National Human Rights Institutions

The Independent National Human Rights Commission has not yet played a role in the implementation and monitoring of the ACRWC. Its 2020 report of activities does not have any reference to the ACRWC. The office of the Ombudsman does not have a child section nor does the Independent National Human Rights Commission. Burundi has no dedicated ministry for children's rights issues. However, many ministries have departments or units dealing with issues affecting children.¹³⁹

12 State reporting

As indicated above, Burundi has established a Department of Treaty Bodies, Special Procedures, Universal Periodic Review, and other UN

134 Annex 4.

135 Annex 1.

136 Annex 7.

137 Annex 5.

138 As above.

139 Initial Report of Burundi to the ACERWC (n 2) 10-11.

Mechanisms responsible for preparing initial and periodic reports.¹⁴⁰ Burundi submitted its initial report on 28 August 2017, that is 13 years after ratification. Burundi is due to submit its first periodic report in 2021.¹⁴¹

The reporting process has been inter-ministerial. For instance, a senior government official indicated that the Ministry of Human Rights, Social Affairs and Gender, the Ministry of Education, the Ministry of Justice, the Ministry of Health, and the Interior Ministry participated in the preparation of the initial report.¹⁴²

According to a chairperson of a Burundi-based NGO, there is a fourfold justification for the delay: less regard for human rights in general, and civil and political rights in particular; political motives, as the ACERWC was ratified by the transitional government and the government that came into power in 2005 did not consider it a priority; the fact that ratification of treaties is not only aimed at promoting human rights, but also at attracting donors and investments; and the absence of penalties for delaying the submission of reports.¹⁴³

The report was widely in conformity with the ACERWC's guidelines for initial reports, but failed to include a section on the responsibilities of the child. Only a small number of NGOs and CSOs were involved in the reporting process.¹⁴⁴ To my knowledge, the Independent National Human Rights Commission, the media and academia were not involved in the reporting process. The National Children's Forum and a few other civil society organisations were consulted and expressed children's views on the draft report prepared by the consultant. They had a meeting with the consultant to review the draft report and give their inputs.¹⁴⁵ The report was not made available to the citizens.

Issues covered by the initial report include penalties for late birth registration and the cost of obtaining a registration certificate, nationality by descent, child mortality, refugees, returnees and IDPs children, discrimination of Batwa children, food security, acute malnutrition, lack of access to clean water, juvenile justice, imprisonment of children with

140 Annex 1.

141 Concluding Observations (n 45) 53.

142 Annex 1.

143 Annex 7.

144 Facebook interview with an employee of a child rights CSO (anonymous) on 12 August 2020.

145 As above.

their mothers, child marriage, early pregnancy, the right to education, and right to inheritance for girls. According to a human-rights activist, information contradicting the official views was not incorporated into the initial report.¹⁴⁶

There were complementary reports submitted by civil society organisations. Complementary reports raised issues that did not appear in the state report such as the killing of 37 children during the 2015 unrest, the violation of the right to privacy in investigations related to some sexual abuse cases, informal fees imposed on parents which hinder access to education, discrimination against pregnant girls in access to education, the fact that pregnant girls are deprived of free birth delivery, poor support to Burundian refugees, lack of adequate investigation and prosecution of trafficking of children, high rate of drug abuses mainly by street children, and forced marriage.¹⁴⁷

The government delegation responsible for the presentation of the initial report was led by the Minister of Human Rights, Social Affairs and Gender, accompanied by two senior officials from the same ministry. The first concluding observations were adopted after the consideration of the initial report in 2018. The concluding observations have been published on the ACERWC's website.

Burundi indicated that the follow-up on the ACERWC's recommendations 'will be carried out by a Standing Committee for drafting initial and periodic reports with the coordination of the Department of Treaty Bodies'.¹⁴⁸ A senior government official indicated that the Department of Children and Families (within the Ministry of Human Rights, Social Affairs and Gender) will lead the implementation of concluding observations.¹⁴⁹ It should be highlighted that the Ministry of Human Rights, Social Affairs and Gender has been 'designated as a key ministry in the promotion and protection of children'.¹⁵⁰

146 As above.

147 The ACERWC does not share copies of complementary reports. A Senior Officer in the ACERWC referred the researcher to the Concluding Observations where the document reads 'the Committee has been informed, the committee received reports, etc'.

148 Initial Report of Burundi to ACERWC (n 2) 12.

149 Annex 1.

150 Initial Report of Burundi to ACERWC (n 2) 10.

The concluding observations have not been translated into Kirundi which is the national language¹⁵¹ for the overwhelming majority of Burundians. Swahili is spoken by a few people in main cities. The implementation of the concluding observations requires resources and political will. There is no specific plan to implement the ACERWC's concluding observations. Implementation will be carried out according to various plans of ministerial departments and units dealing with children's issues.

As the concluding observations have recently been published, it is too early to see what role CSOs will play in their implementation. Some CSOs indicated that they will disseminate the concluding observations and advocate for their implementation.¹⁵² Children have not yet been involved in the implementation of concluding observations issued by the ACERWC.

As Burundi is yet to submit its first periodic report, it is impossible to assess the progress made between reporting intervals. However, it is worth mentioning that in order to mark the 30th anniversary of the ACRWC, the government of Burundi has invited various stakeholders in the children's sector to take initiatives aimed at promoting the treaty. Target groups include civil servants, members of civil society and the judiciary.¹⁵³ Furthermore, the government is developing a National Child Protection Policy (2020-2024).¹⁵⁴

13 Communications

No communication has been submitted against Burundi. There are many factors discouraging the submission of communications including the lack of awareness of the existence of the Committee, the lack of capacity to prepare complaints, the requirements to exhaust local remedies, the non-binding nature of the ACERWC's recommendations, and fear of reprisals.¹⁵⁵

151 Constitution art 5.

152 Annex 5; Facebook interview with an employee of a child rights CSO (anonymous) on 12 August 2020.

153 Annex 1.

154 As above

155 As above.

14 Special mechanism: Promotional visits of the African Committee of Experts on the Rights and Welfare of the Child

The Committee has neither undertaken a promotional visit nor an investigative mission in Burundi.

15 Factors that may impede or enhance the impact of the Charter and the Committee

Burundi's sociological context presents conducive as well as impeding factors to the realisation of child rights. Conducive factors include family solidarity which considers a child as belonging to the community and the culture of preparing children to assume responsibilities at a young age, for example, rearing cattle, fetching wood and water, cooking food, ploughing land, and so on.

There are many factors impeding the impact of the Charter. For instance, sexuality is taboo among the youth and adults and no one talks about it at home.¹⁵⁶ Consequently, the majority of adolescents lack sufficient knowledge to make informed choices about their sexuality.¹⁵⁷ The introduction of a module on sexuality in schools will hopefully help eliminate the taboo.

Hindrances also include sexual exploitation of children which takes many forms in Burundi, including child prostitution, sex tourism and the trafficking or sale of children with the main causes being poverty, rural exodus, illiteracy, lack of sexual education, erosion of values and impunity. The perpetrators are mainly mine operators, businessmen, tourists and truck drivers.¹⁵⁸

Poverty is another impeding factor, which forces parents to incite their children to engage in labour so that they can contribute to the financial wellbeing of their families. It is estimated that one in five children aged

156 Bibliothèques sans Frontières 'Burundi: Breaking the taboo on sexuality' (12 March 2021) <https://www.bibliosansfrontieres.org/2021/03/12/burundi-briser-le-tabou-de-la-sexualite/> (accessed 11 June 2021).

157 UNFPA News 'In Burundi, sexual health education helps youth protect themselves, their futures' (18 January 2019) <https://www.unfpa.org/news/burundi-sexual-health-education-helps-youth-protect-themselves-their-futures> (accessed 11 June 2021).

158 Etat des lieux de la formation de la police et de la magistrature aux droits de l'enfant et à la justice pour mineurs au Burundi (2014) 21 <https://www.ibcr.org/wp-content/uploads/2016/06/%C3%89tat-des-lieux-Burundi-1.pdf> (accessed 11 June 2021).

five to 14 work while 31 per cent of children aged 12-14 work and half of them go to school at the same time.¹⁵⁹

Using corporal punishment to discipline children can also be detrimental to their rights. Corporal punishment is still used at home, but is prohibited in school. Corporal punishment does not help children to establish the link between the fault committed and the punishment inflicted on him or her,¹⁶⁰ let alone it can cause harm and trauma. What matters to the offender is the recognition of his or her wrongdoing.¹⁶¹

The phenomenon of street children is a persistent obstacle to the realisation of children's rights in Burundi. Their number was estimated at 5 000 in 2011.¹⁶² Street children are frequently involved in theft which leads to prosecution and imprisonment. Some return to their home for a while before returning to the streets which makes it difficult to draw statistics.¹⁶³

The realisation of children's rights can be hindered by a lack of participation in the decision-making process with respect to the percentage of the budget allocated to them. Thus, their needs are not properly conveyed and considered and there is no specific amount allocated for children in the general budget as illustrated by the annual budgets from 2016 to 2020.¹⁶⁴ But the latter are beneficiaries of the various programmes carried out within various ministries. For instance, children under the age of five enjoy free healthcare¹⁶⁵ and free basic education is guaranteed to all children.¹⁶⁶

159 Etat des lieux de la formation de la police et de la magistrature aux droits de l'enfant et à la justice pour mineurs au Burundi (n 159) 19.

160 E Nkurunziza 'Corporal punishment is not educational' (Burundi) 05 January 2018 <https://www.iwacu-burundi.org/la-punition-corporelle-nest-pas-educative/> (accessed 11 June 2021).

161 As above

162 P Bukuru 'The number of street children on the rise: Where is the flaw?' (Burundi) 22 November 2020 <https://www.jimbere.org/nombre-enfants-situation-rue-burundi/> (accessed 11 June 2021).

163 As above.

164 MFBPE 'Budget' http://finances.gov.bi/?q=budget_ (accessed 17 August 2020).

165 Republique du Burundi 'Politique nationale de santé, 2016-2025' (January 2016) 51 <https://www.prb.org/wp-content/uploads/2020/06/Burundi-Politique-Nationale-Sante-2016-2025.pdf> (accessed 2 September 2020); Dr J Kamana 'Gratuité sélective et financement basé sur la performance au Burundi: une opportunité d'améliorer l'offre de services, en particulier pour la santé de la reproduction' at 1 http://www.fbpsanteburundi.bi/cside/contents/docs/Note_sur_FBP_et_Gratitude_Burundi_version_finale.pdf (accessed 2 September 2020).

166 République du Burundi 'Plan sectoriel de développement de l'éducation et la

Discrimination against girls and children born out of wedlock with respect to the right to education and inheritance impedes the realisation of rights for them.¹⁶⁷ Inheritance is governed by customary law and most land or properties are acquired by inheritance. There are two types of inheritance: testamentary succession and *ab intestato* succession. *Ab intestato* succession is when the deceased dies without expressing his will on how his heirs will share his patrimony after death. In customary law, *ab intestato* succession is vested in the closest members of his family, generally the male members of the paternal line because the Burundian system is patrilineal.

Customary law ranks heirs in various orders. first in order is legitimate children and their male descendants: inheritance is allocated per capita when the heirs of the deceased are from a monogamous marriage. Second in order, is the father and mother of the deceased. Third in order is the brothers of the deceased and their male descendants. The paternal uncles of the deceased and their male descendants are fourth in the order. Daughters, sisters, paternal aunts, cousins, paternal nieces of the deceased or any other relative of the paternal line of the deceased are in the fifth and last order. It should be noted that since these are several orders of heirs, those second in order can only be called to succession in the absence of the heir first in the order, and so on. Considering their rank as heirs, Burundian girls and children born out of wedlock are practically excluded from access to property rights by inheritance.¹⁶⁸ Due to the sensitivity of the issue, the Bill on the Code of Inheritance, Matrimonial Property Regimes and Gifts adopted by the Parliament in 2004 was not passed into law.

COVID-19 is also having a negative impact on child rights. In many ways, the pandemic has slowed the momentum already gained on children's rights. Confinement, for example, has reduced or limited the full enjoyment of multiple rights such as the right to leisure and freedom of movement. COVID-19 exposes children to illness affecting them and/or their parents. The setbacks of COVID-19 on economic growth will affect the government's capacity to deliver free healthcare to children and will

formation, 2012-2020' (July 2012) 19 <https://www.globalpartnership.org/sites/default/files/2012-07-Burundi-Education-Plan-2012-2020.pdf> (accessed 11 September 2020).

167 Bureau International des Droits des Enfants and UNICEF 'Etat des lieux de la formation de la police et de la magistrature aux droits de l'enfant et à la justice pour mineurs au Burundi' (February 2014) 19. <https://www.ibcr.org/wp-content/uploads/2016/06/%C3%89tat-des-lieux-Burundi-1.pdf> (accessed 11 June 2021).

168 Shadow report submitted by ActionAid to the UN Human Rights Committee in 2014, 112e session at 1.

deteriorate living conditions.¹⁶⁹ The government lowered the cost of soap and raised awareness on increasing hygiene and avoiding unnecessary gatherings. However, it did not enact penalties for non-compliance.

The fact that Burundian litigants including their lawyers do not have a culture of citing human-rights treaties in legal submissions is a hindrance to the realisation of the provisions of the Charter. Likewise, Burundian judges rarely cite human-rights instruments in their decisions. The situation is compounded by the fact that the political discourse discourages recourse to international treaties to which Burundi is a party. A lawyer indicated that the President of the Republic in many of his speeches, and the Prime Minister in his speech on Labour Day 2021 said to workers that it is worthless to base their claims on international treaties.¹⁷⁰

Political instability that keeps many Burundians in refugee camps, the lack of awareness amongst the general populations, impunity, and lack of clear political commitment to disseminate the Charter were also said to be impediments to the potential impact of the Charter.¹⁷¹ The lack of dissemination of the Charter in Kirundi makes the Charter and the Committee unknown to the majority of Burundians.

16 Conclusion

Domestic laws and policies adopted after the ratification of ACRWC are more child-friendly. Burundi has particularly done well in providing free healthcare to children below five years of age¹⁷² and in immunisation against diphtheria, tetanus, whooping cough, tuberculosis and hepatitis B, with an immunisation rate of 98 per cent.¹⁷³ The main concerns about the rights of children remain poor quality of education, hunger and food insecurity. Overall, Burundi has made great strides in aligning its laws and policies with the Charter. But there many challenges to be overcome in order to ensure the country's full compliance.

The review of legislative measures revealed that though Burundi has not yet adopted a comprehensive Child Protection Act, there are various

169 UNDP Africa 'COVID-19 : Socio-economic impact in Africa' ('Evaluation des effets socio-économiques du COVID-19 au Burundi') (3 April 2020) 15 <https://www.africa.undp.org/content/rba/en/home/library/covid-19-briefs.html> (accessed 27 August 2020).

170 Annex 6.

171 Annex 7.

172 Ministère de la santé publique et de la lutte contre le SIDA (n 84) 20.

173 Y Irakoze (n 22).

provisions protecting children's rights scattered throughout various laws. Similarly, policies relating to children are spread out in various documents. A unique act will ease the reading and dissemination, so too a unique policy document. It is reasonable to assume that a unified legislation or policy will ease the work of various stakeholders to assess compliance with the Charter and would facilitate its reading and dissemination.

Identifying all lacunas in existing laws and policies is not feasible in the framework of this study. Notwithstanding, some gaps need to be highlighted and corresponding recommendations made in order to achieve greater protection of children's rights. Discrimination in the acquisition of nationality should be eliminated. Giving mothers the same rights to transmit nationality to their children would contribute to the eradication of statelessness.

The rights of children cannot be effectively protected unless freedom of association is assigned to them. As recommended by the Committee, Burundi should strike a balance between freedom of association of children and the legal requirement to attain majority to be a member of an association.

Regarding juvenile justice, the creation of special chambers within Burundi Courts is very commendable. The specialisation should also be expanded to all judicial actors involved in matters affecting children including the judicial police, prosecutors, judges and prison officials. Legal aid should be available to all children and the number of rehabilitation centres should be increased to have at least one rehabilitation centre per province and thus facilitate communication between the child offender with his/her parents.

The willingness to end child begging is laudable, but the means used are inappropriate and ineffective. Forcing begging children to return to their families has not curbed the phenomenon. As long as the underlying conditions remain, the efforts to end child begging will not lead to significant improvement. Rather than focussing on the consequences (begging), the country should tackle poverty and abuse forcing children to leave their families.

The right to education should be guaranteed to all children and in no circumstances should pregnant or nursing girls be banned from attending the school of their choice. The Ministry of Education should lift the instruction outlawing pregnant girls and boys who impregnate them from continuing mainstream education. Burundi should rather focus more on ending taboos surrounding sexuality through age-appropriate sexual

education and in addressing other driving factors such as poverty that compel some girls to have sex for material gains. The diminishing quality of education is a growing issue in Burundi. The pass rate from basic to secondary education was 38 per cent in 2020.¹⁷⁴ In 2019, the pass rate was 35 per cent.¹⁷⁵ There is an urgent need to identify the reasons for this poor performance and bring about solutions.

Child participation in decision-making is also important for a better realisation of child rights. The creation of a National Children's Forum as a platform for the participation of children is commendable. The government should dispel the accusation of politicising the platform in view of making it more inclusive and able to properly convey issues affecting all children to competent authorities. The study shows that the Charter is widely unknown in the country. In order to reach grassroots associations, the Charter should be translated and disseminated in Kirundi which is the local language spoken and understood by the overwhelming majority of the population. An appropriate means of dissemination would be oral as the majority of the population is illiterate. Using as radio or training local leaders to disseminate the Charter would contribute a great deal.

The study also revealed that the ACRWC provisions are known among government officials working in the departments and units dealing with children's issues. But there is little awareness among CSOs, judges, lawyers, academics and the Independent National Human Rights Commission. The ACRWC and general comments have not been translated into Kirundi and there is no institution responsible for the translation. The media has not popularised the ACRWC's general comments. CSOs, judges, lawyers and university lecturers rarely have recourse to the Charter in their work. It can be argued that including the Charter in university curricula would incite these actors to develop an inclination towards the use of the Charter in judgments, legal submissions and academic writings.

It is also submitted that having a timely, inclusive and participatory reporting process will raise awareness about the Charter and the Committee. Burundi submitted its initial report 13 years after the ratification of the Charter which in itself can deter actors from manifesting interest in the process. The reporting process has to some extent increased awareness with respect to children's rights among CSOs in Burundi. Burundi should

174 Ordonnance ministérielle 610/1277 du 12 août 2020 portant note minimale et modalités d'orientation à l'enseignement post-fondamental, art 1.

175 'Burundi: 35% soit une note de 70/200 pour accéder à l'enseignement secondaire post fondamental' 16 August 2019 <https://www.sosmediasburundi.org/2019/08/16/burundi-35-soit-une-note-de-70-200-pour-acceder-a-lenseignement-secondaire-post-fondamental/> (accessed 15 August 2020).

make the reporting process more inclusive and disseminate the Charter and concluding observations through the media and children's association. The AU should increase the Committee's resources for the latter to fully carry out its mandate, including conducting promotional visits in Burundi.

Awareness of the Charter is still very low in Burundi including among CSOs and legal practitioners. The Charter is also widely unknown while its provisions can be used to fight impeding factors to the realisation of child rights. The Charter provisions can be used to push the citizenry to reflect on the concept of human rights in general and child rights in particular. The Charter cannot make its way into the lives of lay people unless there is explanation of the relevancy of the Charter in the daily life of ordinary people.

Though many ministries have units dealing with children's issues arising in their areas of activities, there is a need to create a specific institution monitoring implementation of the Charter rights in Burundi and to establish a national plan of action for the monitoring and implementation of the provisions of the Treaty. Such institution would be, *inter alia*, in charge of popularising the Charter and concluding observations, and advising the government on making the reporting process more participatory and inclusive, advising relevant ministerial departments, and advising the government on allocating a specific budget to the realisation of child rights.

5



STUDY ON THE IMPLEMENTATION OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD IN CAMEROON

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1 Background

The politics of Cameroon takes place in a framework of a unitary presidential republic, whereby the President of Cameroon is both head of state and head of government, and of a multi-party system. Executive power is exercised by the President of the Republic elected by universal suffrage for a renewable seven-year term without limit. The National Assembly (180 deputies) and the Senate (100 Senators) exercise legislative power. Judicial power is exercised by the Supreme Court. As per article 3 of Law 2006/015 of 25 September 2006 on judicial organisation, the latter includes the Supreme Court, Courts of Appeal, lower courts in administrative litigation, lower audit courts, the military courts, the Courts of First Instance, and traditional law courts.

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The Constitution of 18 January 1996 also provides for a Constitutional Council. The country is divided into hierarchical administrative districts at three levels: Regions (10), Departments (58) and Arrondissements (360). The Arrondissements, basic administrative units, are organised into traditional command units or traditional chiefdoms. It should be noted here that customary regulations continue to have a very marked influence on the structure and functioning of society and consequently on the protection of children. Cameroon, having just embarked on the path of decentralisation, gives an opportunity to the Decentralised Territorial Collectivises to play a decisive role, regarding the protection of children, with the communities in collaboration with the civil society.¹

Cameroon operates a mixed legal system of English common law, French civil law and customary law.² As such, Cameroon is a bi-jural system with the English common law operating in the two Anglophone regions of the North West and South West and French civil law operating in the eight francophone regions of Adamaoua, Centre, East, Far North, Littoral, North, West and South. The legal system, like most in Africa, is a relic of the colonial era. However, it is unique in that it consists of two distinct and often conflicting legal systems, the English common law and the French civil law operating in some sort of tenuous coexistence. This makes Cameroon one of the few examples of this dual legal system in the world. According to the World Bank, Cameroon's GDP is 4.1 per cent (2018).³ Cameroon is also considered a low middle-income country.⁴

The HDI value for Cameroon is 0.563 (2018) which put the country in the medium human development category – positioning it at 150 out of 189 countries and territories.⁵ As per the Worldometer elaboration of the latest United Nation's data, the current population of Cameroon is 26 626 108 as of Tuesday, 18 August 2020.⁶ The population structure is thus: proportion of children below the age of 15 in 2010 was 40.6 per cent, 55.9

1 Draft National Policy Document for Child Protection (2017).

2 The CIA 'The World Factbook: Cameroon' <https://www.cia.gov/the-world-factbook/countries/cameroon/> (accessed 17 August 2020).

3 World Bank 'The World Bank in Cameroon' <https://www.worldbank.org/en/country/cameroon> (accessed 17 August 2020).

4 World Bank (n 3).

5 United Nations Development Program (UNDP) 'Human Development Report 2020: The next frontier: Human development and the Anthropocene – Briefing note for countries on the 2020 Human Development Report: Cameroon' (2019) http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/CMR.pdf (accessed 17 August 2020).

6 Wordometer 'Cameroon Population (Live)' <https://www.worldometers.info/world-population/cameroon-population/> (accessed 18 August 2020).

per cent were between 15 and 65 years of age, while 3.5 per cent were 65 years or older.⁷ Cameroon has a large youth population, this is a view shared by the Ministry of Social Affairs who puts Cameroon's population under the age of 18 at close to 50 per cent.⁸ In 2015, the male to female ratio for Cameroon was 99.86 males per 100 females. The male to female ratio of Cameroon increased from 97.64 males per 100 females in 1970 to 99.86 males per 100 females in 2015, growing at an average annual rate of 0.25 per cent.⁹

The Ministry of Social Affairs observes that as of July 2017, the risk for a child born alive to die on their first birthday is 50.09 deaths per 1000 live births. This risk is lower in urban areas than in rural areas. Some sources put the maternal mortality rate at 529 deaths per 100 000 live births (2017 est).¹⁰

According to research, the causes of maternal mortality rate are postpartum haemorrhage (29.2 per cent), unsafe abortions (25 per cent), ectopic pregnancy (12.5 per cent), hypertension in pregnancy and others. According to the UNICEF, the infant mortality rate for Cameroon is 54 deaths in every 1 000 live births.¹¹ The under-five mortality rate in Cameroon is 76 out of every 1 000 (2018).¹²

In Cameroon, the rate of mother-to-child transmission of HIV is 7.1 per cent.¹³ In 2019, children from 0-14 living with HIV were 31 000 (24 000-38 000).¹⁴ The Demographic Health Survey (DHS), conducted at a household level in 2018, reported an immunisation coverage (both from declaration and proof of vaccination) of 86.7, 71.5 and 65.3 per cent for BCG, DTP3 and measles respectively, with a zero-dose proportion of

7 As above.

8 Draft National Policy Document for Child Protection (n 1) ix.

9 Knoema 'Cameroon – Male to female ratio of the total population' <https://knoema.com/atlas/Cameroon/topics/Demographics/Population/Male-to-female-ratio#> (accessed 20 August 2020).

10 CIA World Factbook (n 2).

11 Wordometer (n 6).

12 World Bank (n 3).

13 VN Fondoh & NA Mom 'Mother-to-child transmission of HIV and its predictors among HIV-exposed infants at Bamenda Regional Hospital, Cameroon' (2017) 6 *African Journal of Laboratory Medicine* 589 [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5803518/#:~:text=1.61%E2%80%9334.72\).-,Discussion,infants%2C%20vaginal%20delivery%20or%20breastfeeding](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5803518/#:~:text=1.61%E2%80%9334.72).-,Discussion,infants%2C%20vaginal%20delivery%20or%20breastfeeding) (accessed 16 August 2020).

14 UNAIDS 'Cameroon' <https://www.unaids.org/en/regionscountries/countries/cameroon> (accessed 19 August 2020).

9.7 per cent.¹⁵ The age for sexual debut in Cameroon is 15.5.¹⁶ By age less than 16 years.¹⁷ Adolescent pregnancy constitutes a public health problem in Cameroon, the Cameroon Medical Council reports that 25 per cent of pregnancies occur in girls of school age, and 20 per cent of pregnant teens do not return to school.¹⁸ According to the World Bank, the contraceptive prevalence rate for young people in Cameroon is 23 per cent (2018).¹⁹ Despite constitutional provisions²⁰ on the obligations of the state to provide basic services to all citizens, including especially children because of their vulnerability, it has been difficult to match action with words. It is reported that thousands of people including children lack access or have reduced access to basic services such as healthcare and safe drinking water, and livelihoods have been destroyed.²¹

In Cameroon, almost a third of children (32 per cent) suffer from chronic malnutrition and 13 per cent suffer from it severely with children in rural areas more affected than those in urban areas with 38 per cent and 23 per cent respectively.²² The Preamble of the Constitution made primary education compulsory and guaranteed all children's right to education, which implicitly includes children with disabilities. The

- 15 World Health Organization 'WHO in Cameroon: Annual Report. 2016' <https://www.afro.who.int/sites/default/files/2017-08/CAMEROON%20WCO%20ANNUAL%20REPORT%202016.pdf> (accessed 14 August 2020).
- 16 EE Tarkang 'Age at sexual debut and associated factors among high school female learners in Limbe urban area of Cameroon' (July 2013) 2 *Global Advanced Research Journal of Social Science* 163 <http://garj.org/garjss/7/2013/2/7/age-at-sexual-debut-and-associated-factors-among-high-school-female-learners-in-limbe-urban-area-of-cameroon> (accessed 30 September 2021).
- 17 EE Tarkang et al 'Highly prevalent at-risk sexual behaviors among out-of-school youths in urban Cameroon'. (2018) 30 *Pan African Medical Journal* 254.
- 18 M Kindzeka 'Teen pregnancies create health challenges in Cameroon' *VOA News* 14 March 2017 <https://www.voanews.com/a/teen-pregnancies-creat-health-challenges-cameroon/3765840.html> (accessed 24 August 2020).
- 19 World Bank (n 3).
- 20 As per Law 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972 in its Preamble:
 'The State shall provide all its citizens with the conditions necessary for their development'; 'every person has a right to life, to physical and moral integrity and to humane treatment in all circumstances';
 'the Nation shall protect and promote the family which is the natural foundation of human society. It shall protect women, the young, the elderly and the disabled';
 'the State shall guarantee the child's right to education. Primary education shall be compulsory. The organization and supervision of education at all levels shall be the bounden duty of the State'; 'every person shall have a right to a healthy environment'.
- 21 UNICEF 'Cameroon' <https://www.unicef.org/topics/cameroon> (accessed 30 September 2021).
- 22 Draft National Policy Document for Child Protection (n 1) vi.

Constitution assigned the state responsibility for the organisation and supervision of education at all levels. In Cameroon, the 1983 Law on the Protection of People with Disabilities defined the rights of persons with disabilities and instituted an identity card, known as the disability card, which entitles its holder to social assistance and other benefits. Decree 90/1516 provided additional rights to persons with disabilities, including the right to education and professional training, and preferential treatment in public transportation and taxes. Article 1 of this Decree stated that the education of children with disabilities should be provided by the national government. The Education Framework Act 98/004, guarantees equal access to education without discrimination.

The Ministry of Social Affairs has the mandate to provide prevention, assistance and protection to socially vulnerable persons, including persons with disabilities. In that respect, it collaborates with the Ministries of Basic Education and Secondary Education.²³ In 2010, Law 2010/002 on the protection and advancement of people with disabilities was passed. Section 3 of Chapter 3 addresses special education for people with disabilities. This law states that children and adolescents with disabilities shall have access to education and states that children with disabilities and children of parents with disabilities should be exempted from school fees for government-run school programmes (Chapter 4.I). However, as of January 2015, this law lacked an implementation decree by the president.

Current research proves that, there are laws that aim to guarantee education for children with disabilities in Cameroon. However, these laws are not implemented, in part due to the delay in the implementation decree, and lack of monitoring and evaluation systems that hold organisations accountable.²⁴ There are no clear measures to prioritise pre-school education. As such, pre-school education coverage is low, and quality varies significantly. Only about 37.5 per cent of children of between ages three and five attend preschool; with most children going to private schools, 55 per cent; followed by public schools, 42 per cent; and only 2 per cent attending community-based preschools.²⁵ According to

23 PF Shey 'Inclusive education as a response to learners' diversity in school' (2014) 1 *Epasa Moto: A Multidisciplinary Journal of Arts, Letters and the Humanities of the University of Buea* 24.

24 L Cockburn et al 'Realizing the educational rights of children with disabilities: An overview of inclusive education in Cameroon' (2017) 8 *Journal of Education and Practice* 1.

25 The World Bank 'Cameroon education reform support project (P160926)' (2018) <http://documents1.worldbank.org/curated/en/839091517638153085/text/Project-Information-Document-Integrated-Safeguards-Data-Sheet.txt> (accessed 19 August 2020)

the Cameroon Constitution, primary education is free and compulsory.²⁶ As such, education is free in state schools and compulsory between ages six and 12. However, the reality is that although primary education is compulsory in the country, it is not yet available, accessible and adaptable, but is largely acceptable when it is available.²⁷ An analysis of the economic accessibility of education shows that children are bogged down by indirect fees such as books and uniform costs and other fees paid through parent associations. These fees amount to education costs which illustrate the lack of free primary education in the country.²⁸ Furthermore, the justiciability of the right to primary education is hindered by constitutional practices such as the lack of standing in court for private individuals, the lack of constitutional remedies in case of a violation of rights, and weak separation of powers, characterised by the pre-eminence of the executive.²⁹

According to UNICEF, the teacher/student ratio averages stand at 76 students for every teacher.³⁰ The enrolment rate in primary school in Cameroon is 103 per cent (2018).³¹ According to the World Bank, the enrolment rate in secondary school in Cameroon is 60 per cent (2018).³² While girls' enrolment in school is growing, too many children still enrol in school too late and drop out early. According to the World Bank, the completion rate at a primary school in Cameroon is 64 per cent (2018).³³ This is partly due to the security crisis and health problems faced by the country since 2013 when Islamic sect Boko Haram started its attacks in the Far-North.³⁴ In Cameroon, the lower secondary education completion rate rose from 53.2 per cent in 2015 to 80 per cent in 2018.³⁵ Law 2010/002 of 13 April 2010 on the protection and promotion of disabled people establishes full or partial coverage by the state of the costs of medical

26 Law 96-06 of 18 January 1996.

27 SAD Kamga 'Realising the right to primary education in Cameroon' (2011) 11 *African Human Rights Law Journal* 171.

28 Kamga (n 27) 192.

29 Kamga (n 27) 171.

30 UNICEF 'Cameroon' (n 21).

31 World Bank (n 3).

32 World Bank (n 3).

33 World Bank (n 3).

34 Business in Cameroon 'Cameroon: Lower secondary school completion rate rose from 53.2% to 80% in 2015-2018 (minister of economy)' [https://www.businessincameroon.com/education/2207-9363-cameroon-lower-secondary-school-completion-rate-rose-from-53-2-to-80-in-2015-2018-minister-of-economy#:~:text=Top%20100-,Cameroon%3A%20Lower%20secondary%20school%20completion%20rate%20rose%20from%2053.2%25%20to,%2D2018%20\(minister%20of%20economy](https://www.businessincameroon.com/education/2207-9363-cameroon-lower-secondary-school-completion-rate-rose-from-53-2-to-80-in-2015-2018-minister-of-economy#:~:text=Top%20100-,Cameroon%3A%20Lower%20secondary%20school%20completion%20rate%20rose%20from%2053.2%25%20to,%2D2018%20(minister%20of%20economy) (accessed 30 September 2021).

35 As above.

rehabilitation and functional rehabilitation. However, not only does this support not cover the field of special education but also the said law does not yet have an implementing text which makes it difficult for disabled people to access the benefits provided for therein.³⁶

The practice of inclusive education in Cameroon is backed by both national and international legal instruments. Nationally, the country has three important legislative and policy documents that deal with the right to inclusive education of persons with disabilities. Internationally, the country has ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and it is also working on the achievement of the Sustainable Development Goals, especially SDG4. Although the country has a solid legal and institutional framework to safeguard inclusive education, children with disabilities still experience a number of challenges when it comes to access to mainstream education. Most of the children lack self-esteem and have doubt in their own abilities, because of the stigma and the discrimination that they have experienced since their birth. Their parents, relatives and neighbours may not accept them as equal members of the community.³⁷ The Government's Report on the observations of the *African Committee of Experts on the Rights and Welfare of the Child* (ACERWC) in 2015, notes the implementation of inclusive education measures, such as the creation of a special and inclusive school at the National Centre for the Rehabilitation of Handicapped Persons Cardinal Paul Emile Leger (CNRPH), the development and adoption of a national inclusive education policy and the creation in certain establishments and specialised centres for disabled children.³⁸

While there is no legislation that addresses the issue of education of adolescents who fall pregnant, the practice is to send the child home to deliver and receive her back after delivery to continue studies. Some teachers are of the opinion that allowing a pregnant student in school will set a bad example to her peers.³⁹

36 Draft National Policy Document for Child Protection (n 1) 26-27.

37 Liliane Fonds 'Cameroon: Advocacy for inclusive education in Cameroon' <https://www.lilianefonds.org/uploads/media/5ae9db131af8c/inclusive-education-cameroon.pdf> (accessed 30 September 2021).

38 'Periodic report on the implementation of the African Charter on the Rights and Welfare of the Child (2011-2014)' (December 2014) https://reporting.acerwc.africa/uploads/1060274bc90076809718cff9566db8eaab1abfb5/statereport/Cameroon_Periodic_Report_Eng.pdf (accessed 01 August 2020).

39 Interview with Hilary Lamnyuy, Principal of Government High School, Foubot, Cameroon on 29 August 2020.

The implementation of comprehensive sex education has been a difficult process until the Joint Ministerial Decision 281/07 of 18 January 2007 introduced Family Life Education, Population Issues, and HIV in the programme of primary, secondary, and teachers' training schools in Cameroon using a trans-disciplinary approach. Despite these administrative efforts, its field of implementation remains inadequate.⁴⁰ The lack of emphasis on sexuality education in spite of it being present in the curriculum can be attributed to cultural and religious practices that makes talking about sex with minors a taboo in Cameroon and most of Africa. There is a need for a comprehensive sexuality education. Such could include teaching sexuality education adapted to suit the needs of the youth being taught and thus be of cultural relevance in tackling human rights violations and gender inequality.⁴¹ As such, in Cameroon sexuality education would no doubt address issues such as FGM,⁴² breast ironing,⁴³ use of virginity stones, teenage (adolescence) pregnancy,⁴⁴ abortion,⁴⁵ transactional sex,⁴⁶ rape and negotiation of bodily rights. It ought to involve safe sex lessons and create space in society for discourse on sexual repression, stereotypes and inequalities linked to sexuality and advocate via knowledge the need for freedom and the right of the abused. In Cameroon, discussions around the institutionalisation of sexuality education have been made only in reference to HIV/AIDS sensitisation via education. With the aid of UNESCO Cameroon, some 1 896 teachers were trained in HIV/AIDS curriculum.⁴⁷ More recently, the government

40 LN Nchia et al 'Teachers' conceptions and obstacles to sex education in primary and secondary schools in Cameroon' (2013) 6 *International Journal of Science and Research* 4.438.

41 KTM Eleanor 'Sexuality education in Cameroon: The necessity and possibilities' An essay submitted in partial fulfilment of the requirements for completion of the Gender, Education and Development Course, UCL Institute of Education, London 5 February 2015.

42 L Katzive 'Women's reproductive rights in Cameroon: A shadow report' The Center for Reproductive Law and Policy (1999) http://reproductiverights.org/sites/default/files/documents/sr_cam_1199_eng.pdf (accessed 05 August 2020).

43 R Tapscott 'Understanding breast "ironing": A study of the methods, motivations and outcomes of breast flattening practices in Cameroon' Feinstein International Center (2012).

44 Centre for Reproductive Rights 'Women of the World: Laws and policies affecting their reproductive lives – Cameroon' (2013) <http://reproductiverights.org/sites/default/files/documents/cameroon.pdf> (accessed 19 August 2020).

45 IK Engen 'Adolescent reproductive health in Cameroon: Prevention of adolescent pregnancies through access to sexual and reproductive health measures in Cameroon' thesis submitted for the Master's Degree in International Social Welfare and Health Policy, Oslo and Akershus University, 2013.

46 D Meekers & M Klein 'Determinants of condom use among young people in urban Cameroon' (2002) 33 *Studies in Family Planning* 335.

47 Nations Encyclopaedia 'Cameroon – Education' <https://www.nationsencyclopedia>.

commanded teachers to incorporate some HIV sensitisation into their lesson plans no matter what subject they may be teaching.⁴⁸

On the point of justiciability of human rights in Cameroon, the Preamble of the Cameroon Constitution which, according to article 65, is part and parcel of the Constitution, renders all the rights therein justiciable. In addition, article 45 of the Constitution, which indicates the monist approach to the domestication of international law, renders the rights in both the Preamble and duly ratified treaties self-executing and subject to immediate application. As such article 65 which makes the Preamble part and parcel of the Constitution read together with article 45 that makes duly ratified treaties override national law, makes human rights justiciable and justifiable within the national courts as the Constitution provides remedy for violation of any rights.

The Preamble insists on non-discrimination on all prohibited grounds and the need to protect all citizens and children are part of the citizenry. Article 18(3) expresses that the state shall ensure the elimination of every discrimination against women and ensure the protection of the right of the women and the child as stipulated in international declarations and conventions. According to article 25(2), mothers and children are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

2 Ratification of the African Charter on the Rights and Welfare of the Child

As per the Constitution of Cameroon, the President of the Republic shall negotiate and ratify treaties and international agreements. Treaties and international agreements falling within the area of competence of the legislative power as defined in article 26 above shall be submitted to Parliament for authorisation to ratify (article 43). Duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement (article 45).

Cameroon ratified the ACRWC on 05 June 1997 with no compatibility studies carried out before the ratification and without any reservations. The principles and provisions of the ACRWC are made widely known to adults and children through several platforms such as: the existence of a government gazette in which all legislative and regulatory acts are

com/Africa/Cameroon-EDUCATION.html (accessed 30 September 2021).

48 Eleanor (n 41).

published in English and in French; several FM stations – about 15 in Yaoundé alone – broadcast daily on issues of child rights to inform the relevant administrations and institutions that promote child rights issues; the country regularly organises seminars and workshops for magistrates, social sector workers, the police, prison officers, health workers and teachers as well as for civil society organisations on human rights, the rights of children, handicapped persons, the aged and women, as was done with the Universal Declaration on Human Rights published in 5 000 copies in simplified language; NGOs and other associations have offered to produce short national legal texts on the rights of the child in the local languages; awareness campaigns on the rights of the child; ceremonies of the Day of the African Child (16 June); national youth festivals (11 February) and several other events; ten children's parliament sessions; training junior members of parliament in the rights and duties of children; and distributing materials. This notwithstanding more concrete efforts are needed to bring the rights of the child to the doorsteps of adults and children.

3 Government focal point

In Cameroon, the national cross-sectorial coordinating mechanism responsible for the implementation of treaties, in general, and of the ACRWC in particular is Order 81/CAB/PM of 15 April 2011 to lay down an inter-ministerial committee for the monitoring and implementation of recommendations and/or decisions on international and regional human rights promotion and protection mechanisms. The coordination includes different levels of government and different departments, about 20 ministerial departments are involved in the issue of child protection. These are, amongst others, MINAS, MINJUSTICE, MINEDUB, MINESEC, MINEFOP, MINSANTE, MINJEC, MINSEP, MINPROFF, MINDEF, MINFI, MINESUP, MINTOUL, MINAC, MINDHU, MINATD, MINEE, MINTSS and DGSN. Of these 20 or so public institutions, child protection actions are carried out primarily by the Ministries of Social Affairs, Promotion of Women and the Family, Public Health, Basic Education, of Secondary Education and Justice.⁴⁹

4 Domestication or incorporation of the Charter

The various rights are found in the Preamble which, according to article 65, is part and parcel of the Constitution. This renders the rights justiciable. In addition, article 45 of the Constitution, which indicates the monist approach to the domestication of international law, renders the rights

49 Draft National Policy Document for Child Protection (n 1) 41.

found in international treaties self-executing and subject to immediate application. This should be read with article 45 that makes duly approved or ratified treaties and international agreements override national laws. In most Cameroonian cultures, children are defined not only by age, but also by their attitudes, behaviour and more generally their role and place within the family and the community. It sees itself, therefore, as a social construct.⁵⁰

In view of the socio-cultural realities of the country and the international commitments of Cameroon it has subscribed to the definition of the child as set forth in the CRC. To this end, the child is defined as 'any human being aged under 18'. Ongoing reform of legislation (Draft Code on Persons and the Family and Preliminary Draft Child Protection Code) is aimed at standardising the age of children for all aspects of life and has made a significant step in defining the child as 'any human being aged under 18'.⁵¹ Referring to the Penal Code of Cameroon, section 349(2) provides that 'any lunatic notorious or so found, and any spendthrift so found, shall be treated as a minor'. Section 80(4) provides that 'a person aged 18 years or over shall be responsible as an adult'. The implication of this provision is that a person less than 18 years of age in Cameroon is considered a minor or a child as far as criminal proceedings are concerned. Following from this, as per the Cameroon Penal Code (1997), a minor of ten years is not criminally responsible (article 80(1)); a minor aged ten to 14 years can be made criminally responsible and subjected to one of the special measures provided for in law (article 80(2)) and minors who are above 14 and under 18 can benefit from the mitigating excuse (article 80(3)). Those who are 18 years of age are fully responsible. The Cameroon Penal Code criminalises early marriage: planning the marriage of a girl or a boy under the age of 18, regardless of consent, is punishable by at least two years' imprisonment.⁵² The age of consent to sex in Cameroon is 16 years as per article 346 of the 2016 Penal Code. According to the Government of Cameroon, there is no law imposing parental authorisation for medical consultation for a child, hence we can conclude that parental authorisation is not required for medical consultation by a child in Cameroon. Corporal punishment is considered unlawful in schools under article 35 of the Law of Cameroon National Educational Guidelines 98/004 (1998), which prohibits all forms of violence. However, prohibition is still to be achieved

50 Draft National Policy Document for Child Protection (n 1) 7.

51 Cameroon 'Initial Report on the Implementation of the African Charter on the Rights and Welfare of the Child' 18 https://www.acerwc.africa/wp-content/uploads/2018/04/Cameroon_Initial_Report.pdf (accessed 30 September 2021)..

52 IWHC 'Is Cameroon finally taking on child marriage?' 28 November 2016 <https://iwhc.org/2016/11/cameroon-finally-taking-child-marriage/> (accessed 06 August 2020).

in the home, alternative care settings and day care and institutions accommodating children in conflict with law.

Cameroon signed the CRC on the 25 September 1990 and ratified it on the 11 January 1993, it has also ratified the Optional Protocol to the Convention of the Rights of the Child on the involvement of children in armed conflict in 2013 and signed the Optional Protocol to the Convention of the Rights of the Child on the sale of children, child prostitution and child pornography in 2002 and is yet to ratify it. As to the Optional Protocol to the Convention of the Rights of the Child on a Communications procedure, Cameroon signed it in 2014 with no ratification yet. Cameroon ratified the Convention on the Worst Forms of Child Labour, on 27 May 2002. A new Decree in 2011 introduced some changes to the 'ordonnance' of 1981. This led to the establishment of a Bureau National de l'État Civil, holding a promise of strengthened national management. Special centres (about 2 000) for civil registration have been turned into branch offices of the service's 360 main civil registration centres. At present the births of less than 6 in 10 children are registered within the legal timeframe. The CRC has called on Cameroon to improve this situation, with special attention for the most vulnerable children. Indeed, children living in rural areas and those born to poor parents are the least likely to be registered. One ministry-supported study puts the proportion of civil registers in good state in the main civil registration centres at less than 1 in 5, that is, even if a child has been registered the registration record might no longer be retrievable.⁵³

However, the state together with its development partners, are reported to have carried out the following actions with respect to birth registrations: Adoption of Law 2011-011 of 6 May 2011, to amend and supplement certain provisions of Ordinance 81/02 of 29 June 1981 on the Organization of the Civil Status, which extends the deadlines and revamps the institutional framework for establishing civil status documents; setting up of the National Civil Status Bureau (BUNEC) by Decree 2013/031 of 13 February 2013 of the Head of State and the Reorganization of Civil Status Centres, raising awareness among communities on the need for birth registration.⁵⁴ As per Law 1968-LF-3 of 11 June 1968 to set up the

53 J van Straaten 'Civil registration support in Cameroon: Evaluation of UNICEF-support 2002-2011' Yaoundé, The Hague, December 2011, Civil Registration Centre For Development at 5.

54 Concluding observations on the combined third to fifth periodic reports of Cameroon, CRC (6 July 2017) UN Doc CRC/C/CMR/3-5 (2017) https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCMR%2f3-5&Lang=en (accessed 27 August 2020).

Cameroon Nationality Code, children can access citizenship by descent, birth or naturalisation.

As to the juvenile justice system in Cameroon, it is not a separate law but a section of the Cameroon Penal Code (PC) that provides for diversion and alternatives to the justice system. After ratification of relevant conventions, Cameroon has effectively endorsed internationally adopted principles on children's rights through the Criminal Procedure Code (CPC), which to a greater degree satisfies the requirements of international standards on juvenile justice. This is seen in the protection by circumstantial exclusion of this category of offenders from criminal responsibility as well as by the procedural guarantees bestowed on them. Section 80(1) of the PC creates a dichotomy in the youth criminal justice system providing different treatment to minors depending on the range of ages and the CPC further establishes special measures for their protection. The interest of a young delinquent requires that he/she is not exposed to publicity during his/her criminal prosecution. It is for this reason that a special court is constituted to try young offenders. Although Cameroon does not have specially designated juvenile courts, section 713 of the CPC converts the court of first instance into a juvenile court with jurisdiction to try felonies, misdemeanors and simple offences committed by children and young persons. However, section 716 of the CPC permits the trial of a minor in the ordinary court in accordance with ordinary rules of criminal procedure where a minor is involved in the same offence as an adult. The African Children's Charter obliges states to set a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. Hence, the issue of criminal responsibility of minors in Cameroon is different whether they are below ten years of age, between 10-14 years or between 14-18 years. It is noteworthy that the law provides for diminished responsibility for the last category of ages. The first category of a young delinquent caught up in crime is *doli incapax*, who is completely absolved of criminal responsibility irrespective of whether there is evidence establishing the material elements of the offence and the relevant intention under section 74(2) of the PC. The second category of juvenile delinquents can be convicted for the commission of an offence but without sentence to a penalty.

5 Legislative reform and adoption

Without necessarily undertaking a comprehensive review of all relevant domestic legislation, several laws have been influenced by the ratification of the Charter such as the Civil Code which regulates the issue of parental responsibility in its article 1384; the Penal Code in which the protection of children's rights is evident, particularly in the provisions of articles

29, 39, 48, 80, 179 (custody of a minor), 340 (infanticide), 341 (attack on descendants), 342 (slavery and pawning), 198 paragraph 1(b) and (c) (banned publications) and 337 and following articles that deal with the child and family; the adoption of Law 2005/007 of 27 July 2005 on the Criminal Procedure Code, which has many favourable provisions for the child who commits or is a victim of an offence; the adoption of Law 2011/024 of 14 December 2011 on the fight against the traffic and trade of persons, repealing Law 2005/015 of 29/12/2005 on the fight against the traffic and trade of children; and Decree 2011/408 of 09 December 2011 on the organisation of government, establishing several departments in charge of the promotion and protection of children's rights, for example, the Ministry of Social Affairs (social protection of the child), the Ministry of Women's Empowerment and the Family (promotion of children's rights), the Ministry of Basic Education (teaching Nursery and General Primary), the Ministry of Secondary Education (technical and general education), the Ministry of Public Health (prevention and health care to the mother and child), the Ministry of Youth Affairs and Civic Education (promotion of leisure and post and extracurricular activities, etc); Adoption Perspective of the Law Code of Individuals and Families; Law 98/004 of 14 April 1998 on educational guidance which sets the age of compulsory schooling at 14 years; the Labour Code and regulatory acts relating to labour from which children are prohibited; Decree 90-524 of 23 March 1990 establishing a National Commission for Juvenile Delinquents, Abandoned Children or those in Moral Danger; Decree 2001/041 of 19 February 2001 on the organisation of government schools and establishing the powers of officials of the school administration, which in its article 47 institutes the exemption of annual contributions requested from pupils of government primary schools, to give effect to the gratuity of primary education as decided by the President of the Republic on 10 February 2000; and the development of two draft laws on the Child Protection Code and the of Persons and the Family respectively and many programmes for cooperation with international organisations of the United Nations working in the field of promotion and protection of children's rights, namely, UNICEF, UNESCO, ILO / BIT, and the Global Fund.

In addition to the above, the Criminal Procedure Code, Section 746(1) provides that '[a]ll previous provisions repugnant to this law are hereby repealed', in particular: the Decree of 30 November 1928 establishing special courts and the probation system for minors; the Decree of 30 October 1935 on the protection of children; Juveniles Courts Rules, Cap 32 of the 1958 Laws of the Federation of Nigeria; Decree 90/524 of 23 March 1990 establishing the National Commission to Protect Children at Risk, Juvenile Delinquents and Abandoned Children; Decree 92/052

of 27 March 1992 on the prison system in Cameroon; and Circular 0007/7128/DAJS of 27 January 1995 on pre-trial detention of minors.

In effect, in compliance with internationally recognised principles the Preamble of the Constitution provides: 'the State shall guarantee the child's right to education. Primary education shall be compulsory. The organization and supervision of education at all levels shall be the bounden duty of the State'. Law 97/12 of 10 January 1997 lays down the conditions of Entry, Stay and Exit for Aliens in Cameroon and its implementing Decree 2000/286 of 12 October 2000 requires parental authorisation for the issuance of travel documents to children. Sections 4 and 9 of Law 98/4 of 14 April 1998 lays down guidelines for education in Cameroon. Decree 2001/109/PM of 23 March 2001 lays down the organisation and functioning of public institutions for the supervision of juveniles and the rehabilitation of socially misfit minor. Decree 2001/110/PM of 20 March 2001 lays down the organisation and functioning of public institutions for early childhood education.⁵⁵ Ordinance 81/02 of 29 June 1981, on the organisation of civil status and various provisions relating to the status of natural persons, provides for the notification of a newborn child (article 38), paternal authority and custody of children born out of wedlock (article 47), and alimony for children left in the care of an abandoned wife (article 76).

Hence through the ratification of international treaties in general and the African Charter on the Rights and Welfare of the Child in particular, the repeal of formerly applicable laws on the administration of juvenile justice in Cameroon, the amendment of the penal code⁵⁶ and the coming into force of the Criminal Procedure Code,⁵⁷ Cameroon has overhauled its criminal justice system by harmonising the administration of criminal justice in general and extensively covered the administration of juvenile justice.⁵⁸

55 Ministry of Justice 'National plan of action for the promotion and protection of human rights in Cameroon (2015-2019)' (2015) 100-101.

56 The Cameroon criminal system has seen some of its substantial dispensations modified and extended by Law 2016/007 of 12 July 2016 relating to the Penal Code.

57 The Criminal procedure code entered into force on 1 January 2007 putting an end to the dual criminal procedural system operated in the country reflecting its bi-jural nature, a legacy of colonialism. This code is instituted by Law 2005/07 of 27 July 2005 and governs criminal procedure through the territory of Cameroon. According to its Sec 2: 'The Code shall be of general application except where there is provision to the contrary as provided in the code of Military Justice or in any special law'.

58 See Book IV, Part XV of the Criminal Procedure Code entitled *Prosecution and Trial of Juveniles*: Chap 1 deals with institution of prosecution; Chap 2 deals with temporary detention of juveniles; Chap 3 deals with composition of the court of first instance sitting in cases of juvenile delinquency; Chap 4 deals with competence; Chap 13 deals

The provisions of the ACRWC can be invoked before national courts and directly be applied by national authorities, for example, *Adeline Mangha Ndipisiri v Grace Manka Nkamamyang*⁵⁹ on child custody; *Advence Fuh (Applicant) v Miranda Ngiekem Azise*⁶⁰ on custody, divorce/separation and maintenance; and *Abong Emmanuel Fusi & Tangang Monica Akwano v The People of Cameroon & Tubah Council*⁶¹ on birth registration. Where there is a conflict between the provisions of the ACRWC and those of the domestic legislation the provisions of the ACRWC prevail. Cameroon has sensitively endorsed internationally adopted principles on children's rights through the Criminal Procedure Code, which to a greater degree satisfies the requirements of international standards than that prescribed by the ACRWC on juvenile justice. Hence, the protection by circumstantial exclusion of this category of offenders from criminal responsibility, the procedural guarantees bestowed on them, circumstantial exclusion of delinquent juveniles from criminal responsibility (section 80 (1))⁶² of the PC creates a dichotomy in the youth criminal justice system providing different treatments to minors depending on the range of ages and the CPC further establishes special measures for their protection. It has to be stressed that by virtue of article 7(1) of Decree 2001/09/PM of 20 March 2001, the court shall make an order of 'judicial placement' for a minor who has been found guilty of an offence and not sentenced to a term of imprisonment.⁶³

Besides, there are special measures provided by the Law on Juvenile Delinquency. A special court is constituted to try young offenders. Although Cameroon does not have specially designated juvenile courts, section 713 of the CPC converts the court of first instance into a juvenile court with jurisdiction to try felonies, misdemeanors and simple offences committed by children and young persons. However, section 716 of the CPC permits the trial of a minor in the ordinary court in accordance with

with the costs arising from measures for the protection of juveniles.

- 59 In The High Court of Mezam Division, Holden at Bamenda, Suit CMB/350M/2013 Cameroon-Case-High_Court-Adeline_Mangha_Ndipisiri-No_HCMB_350M_2013-2013-en (accessed 21 August 2020).
- 60 In the High Court of Mezam Division; Holden at Bamenda, Suit HCMB/06MC/2013 Cameroon-Case-High_Court-Advence_Fuh-No_HCB_06MC_2013-2014-en (accessed 21 August 2020).
- 61 In the High Court of Mezam Division; Holden at Bamenda, Suit HCB/152M/2011 Cameroon-Case-High_Court-Abong_Emmanuel_Fusi_&_Anor-No_HCB_152M_2011-2011-en (accessed 21 August 2020).
- 62 Sec 80 PC deals with infancy.
- 63 See S Tabe 'A critical appraisal of the juvenile justice system under Cameroon's 2005 Criminal Procedure Code: Emerging challenges' (2012) 15 *Potchestroom Electronic Law Journal* 168.

ordinary rules of criminal procedure where a minor is involved in the same offence as an adult. For example, in *The People v Donladi Amadou*,⁶⁴ a 14-year-old accused committed aggravated theft, an offence tried by the High Court. Due to his age, he was committed before the court of first instance in Nkambe after a preliminary inquiry by Justice Adamu Linus. The same judge, in *The People v Daladji Hamadou*,⁶⁵ committed the 16-year-old accused for trial before the court of first instance in Nkambe, for aggravated theft under section 320(1)(c) of the PC. In *The People v Nfor Theophile & Fonyuy Emmanuel Kongnyu*,⁶⁶ the second accused was committed for trial before the court of first instance in Nkambe after finding that he was above 18 years of age and the first accused was 16. Kongnyu was sentenced to 3 years and Theophile to 3 months taking into consideration the necessity to protect the juvenile delinquent.

The domestic legislation in Cameroon gives effective remedies to children for violations of their rights, as per the Penal Code of Cameroon the law is hard on *sui generis* crimes on minors and common offences have seen harsher punishment because the victim is a child. The said crimes can be classified into sexual offences on minors, offences on children and family and on children's liberty. Sexual offences on minors⁶⁷ such as rape, indecency with young people and immoral earnings are severely punished. For example, rape is punished under section 296 of the PC which provides that:

Whoever by force or moral ascendancy compels any female whether above or below the age of puberty to have sexual intercourse with him shall be punished with imprisonment for from five to ten years⁶⁸.

In *The People v Sakwe Stephen*,⁶⁹ the accused got 10 years for rape of a girl under 16 years of age.

As to the protection against offences on children and family, there are two predominant interests that the criminal law seeks to protect: the

64 High Court Donga-Mantung, Unreported, 28 June 2016.

65 High court Donga-Mantung, Unreported, 13 December 2016.

66 *The People v Nfor Theophile & Fonyuy Emmanuel Kongnyu*, Suit NM/249C/15 on 20 May 2016.

67 See C Anyangwe *Criminal law in Cameroon: Specific offences* (2011); at 499.

68 Nowadays, it is observed that even a male can suffer rape. This section of the Code must therefore be updated in order to take into consideration the possibility of rape committed on juvenile males particularly.

69 Suit N° HCF/9.c/87, Unreported. The accused successfully pleaded his status of orphan and merely got 10 years' imprisonment for rape of a girl under 16.

interest of the child and the interest of the family.⁷⁰ For example, for the protection of children and family, section 337 of the PC punishes the practice of abortion. A woman procuring or consenting to her own abortion shall be punished with imprisonment for 15 days to one year or with fine of from 5 000 to 200 000 francs or to both imprisonment and fine. Paragraph 2 of that section provides that

whoever procures the abortion of a woman, notwithstanding her consent, shall be punished with imprisonment for from one to five years and with fine of from one hundred thousand to two million francs.

Other protective measures in favour of the child include: assault on woman with child (section 338 of the PC); infanticide (section 340 of the PC); cloud on parentage (section 341 of the PC), corruption of youth (section 344 of the PC);⁷¹ youths and drinks (section 348 of the PC);⁷² and custody of a minor and failure to return a child (section 179 of the PC).

70 There is an impressive number of instruments bearing on the rights of the family and the rights and welfare of the child. For example, art 16 of the Universal Declaration of Human Rights (UDHR) of 10 December 1948; articles 23 and 24 of the International Covenant on Civil and Political Rights (ICCPR) of 1966; the Convention on the Rights of the Child (UN General Assembly Resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990) ratified by Cameroon on 11 January 1993. For more instruments duly ratified by Cameroon, see https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=30&Lang=EN (accessed 6 December 2021).

71 Which provides that (1) whoever, in order to satisfy the desires of another person, habitually excites, encourages or facilitates the debauch or corruption of any person aged sixteen, seventeen or eighteen years shall be punished with imprisonment for from one to five years and with fine of from twenty thousand to one million francs. (2) where the victim is a youth under the age of sixteen years, the imprisonment is from 2 to 10 years and a fine of from forty thousand to two million francs.

72 See Anyangwe (n 68) 555. Sec 348 of the PC punishes whoever, '(a) being licensed to sell intoxicating liquor for consumption on the premises admits to the said premises any person under sixteen years of age not accompanied by a person over twenty-one responsible for superintending him ; or (b) being licensed to sell beverages for consumption on the premises sells or offers, whether on the said premises or in any other public place, any intoxicating liquor to any person under eighteen years of age not accompanied by a person over twenty-one responsible for superintending him ; or (c) makes any person under twenty-one years of age drunk', with a fine of from five thousand to fifty thousand francs. Upon subsequent conviction within the meaning of section 88 of the PC, the punishment shall be imprisonment for from fifteen days to one month and fine of from ten thousand to one hundred thousand francs, unless the offender proves that he was misled as to the age of the minor or as to the age or authority of the person accompanying him. The effect of this provision reveals that sec 348 consists of three distinct offences. Two of them capable of being committed only by a person who is a licensed publican, and one by just anybody, including a publican. The first offence relates to the admission, by a publican, of an under-16 to his business premises. The second relates to the selling or offering, by a publican, of intoxicating liquor to an under-18. And the last offence punishes whoever makes an

Apart from severe criminal provisions against the sexual exploitation of children such as article 344 of the Penal Code (corrupting the youth); 345 (moral danger); 346 (defilement of a minor under 16 years); 347 (defilement of a minor aged between 16 and 21 years); 347(b), (homosexuality); 356 (forced marriage); and 296 (rape); the series of measures are reported to have been taken to implement policies on programmes to prevent sexual exploitation of children in Cameroon such as adoption and dissemination of the Global Codes of Ethics for Tourism, especially its provisions on prohibiting tourism for sexual purposes and specifically in the case of children; and organizing awareness and training workshops for Ministry of Tourism officers, peer educators, and private tour operators (hotels, tourism agencies and entertainment houses) on combating sex tourism involving children all over the country.

Cameroon does not have a close in age exemption. Close in age exemptions, commonly known as 'Romeo and Juliet laws' in the United States, are put in place to prevent the prosecution of individuals who engage in consensual sexual activity when both participants are significantly close to each other, and one or both partners are below the age of consent. Because there is no close-in-age exemption in Cameroon, it is possible for two individuals both under the age of 16 who willingly engage in intercourse to both be prosecuted for statutory rape, although this is rare. Similarly, no protections are reserved for sexual relations in which one participant is a 15-year-old and the second is a 16 or 17-year-old.⁷³ Article 7 on the ACRWC states the following on freedom of expression:

Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws.

This provision read with article 65 of the Cameroon Constitution supports the conclusion that article 7 of ACRWC is a legal basis for child participation in Cameroon. The series of laws on freedom of expression are silent on making an exception on the child for the enjoyment of these rights. These include Ordinance 62/18 of 12 March 1962 relating to the suppression of subversive activities, Law 66-LF-18 of 12 December 1966 on press activities, Law 65-LF-24 of 12 November 1965 and Law 67-LF-I of 12 June 1967, amongst others.

under-21 drunk.

73 'Age of consent in Cameroon' <https://www.ageofconsent.net/world/cameroon> (accessed 6 December 2021).

There is also Child Parliament in Cameroon that was established in 1998. Its meetings are convened on a regular basis on June 16 each year as part of the celebration of the Day of the African Child (DAC). Child participation is based on the principles of representation, inclusion and accountability and children with disability, indigenous children and children belonging to various minorities are well represented.⁷⁴

The Child Parliament in terms of laws and policies affecting children had several impacts such as promoting and popularising the rights of the child, introducing children to democratic practices and teaching children the culture of effort, tolerance and respect for others.

6 Policy reform and adoption

In addition to section 356 of the Cameroon Penal Code that prohibits child marriage, section 277(1) reads 'whoever mutilates the genital organ of a person, by any means whatsoever, shall be punished with the penalties provided for in Section 277 above'.⁷⁵ Section 277(2) on the prevention of growth of organs reads '[w]hoever, in any manner whatsoever, interferes with an organ in order to inhibit normal growth shall be punished with imprisonment'. Supplementary measures, policies or programmes by Cameroon that aim to address the issue of harmful practices include the signing, on 25 June 2013, of a platform for collaboration between the State (MINPROFF) and the Council of Imams and Muslim Dignitaries of Cameroon (CIDIMUC) for the fight against FGMs, forceful or early marriages and other forms of violence, accompanied by an implementation matrix, the setting up of a programme to fight against harmful cultural practices, intended for traditional, religious and community leaders, held on February 6 every year, the 'Zero Tolerance against Female Genital Mutilations' Day, organising two advocacy sessions targeting Parliament (Senate and the National Assembly) and religious and traditional rulers in the areas concerned, psycho-social and socio-economic care for adolescents who are victims of forced marriages (1151 cases received assistance in 2012), partnership with community radio stations for the broadcast of programmes on the rights of children in the fight against harmful cultural practices and FGMs, the implementation of the BIAAG (Because I Am A Girl) and LWF (Learn Without Fear) programmes to promote the enrolment of girls in schools and eradicate gender-based

74 The Children's Parliament' http://www.minas.gov.cm/index.php?option=com_content&view=article&id=154&Itemid=180&lang=en (accessed 30 August 2020)

75 Sec 277 refers to grievous harm and states that 'whoever permanently deprives another of the use of the whole or any part of any member, organ or sense shall be punished with imprisonment for from 10 (ten) to 20 (twenty) years'.

violence in school environments and others. The actions undertaken resulted in raising the collective awareness of communities concerned on the dangers of FGMs and the need to eradicate such practices.

Other policies relating to children's rights include the National Early Childhood Development Policy Document (December 2017) better known in French as 'Document De Politique Nationale De Developpement De La Petite Enfance'. In order to meet the needs observed, the government intends within the framework of this policy to carry out favourable actions around six axes of intervention: primarily 'Strengthening the fight against malnutrition in children aged 0 to 8'.⁷⁶ The monitoring and evaluation of the implementation of the national early childhood development policy will be carried out within the framework of an Executive Committee chaired by the Minister in charge of social affairs. At the operational level, a multi-sectoral programme for early childhood development is envisaged. Its implementation is ensured by a multidisciplinary team led by a National Programme Coordinator.⁷⁷

Laws and policies allow children's access to sexual and reproductive health services and commodities such as contraceptives, but none for abortion as it remains a crime. The Cameroon Penal Code, Chapter V, Children and the family, Section 337 states any woman procuring or consenting to her own abortion shall be punished with imprisonment from 15 days to one year or with fine from 5 000 to 200 000 francs or to imprisonment and a fine. There is no legal provision that prohibits children from seeking confidential sexual and reproductive health services hence in the absence of this one can conclude that children who seek confidential sexual and reproductive health services are able to access these without the requirement of parental consent. Reference documents related to child protection in Cameroon consist of policies, strategies, action plans, and other auxiliary documents. In terms of policies, the following can be cited: the National Family Policy (2012-2020); the National Policy for the Protection and Promotion of People with Disabilities; the National Gender Policy; and the National Youth Policy.⁷⁸ As to the legal framework for child protection, Cameroon has put in place a normative framework underpinned by its adherence to international and regional conventions and treaties relating to child protection, the adoption of internal laws and the adoption of regulatory texts favourable to the well-being of the child

76 Draft National Policy Document for Child Protection (n 1) vi.

77 Draft National Policy Document for Child Protection (n 1) vii.

78 Draft National Policy Document for Child Protection (n 1) 38-39.

and to its development. All these texts are initiated or taken indifferently by almost all of the ministries concerned with child protection.⁷⁹

Worthy of note is the National Child Protection Policy Document (2017-2026) and the National Early Childhood Development Policy Document (December 2017). The implementation of the National Child Protection Policy will be done through the following bodies: a National Child Protection Commission; a Permanent Secretariat; and Regional, Departmental and Communal branches.⁸⁰ The strategy is drafted in a child-friendly manner but not disseminated at all. There has been some increase in budgetary allocations for the target ministries, however, the increase is not necessarily directly related to children's interests and children are not involved in the decision-making process with respect to the percentage of the budget allocated to them.

7 Court judgments

In the case of *Advence Fuh v Miranda Ngiekem Azise* cited the UK case of *J v C* (1970) AC 688, where Lord MacDermott stated that the principle of paramount consideration of the child's welfare is a 'process whereby all the relevant facts, relationships, claim and wishes of parents, risks, choices and other circumstances are taken into consideration and weighed, the course to be followed will be that which is most in the interest of the child's welfare'.⁸¹

8 Awareness and use by Civil Society Organisations

The treaty provisions been used by NGOs in campaigns, workshops, advocacy, and other relevant materials. An example of this in recent years is Defence for Children International (DCI-Cameroon), which has carried out several projects such as a Capacity Building and Awareness-Raising Programmes in schools: Five sessions were organised in primary and secondary schools of Yaoundé. Children are taught about their rights, especially the contents of the ACRWC, 4 349 pupils participated in these training sessions. DCI-Cameroon developed an intervention programme for juveniles, consisting of awareness-raising and socio-legal monitoring of children in detention. One hundred and fourteen juveniles were participating in this programme and establishing a Consultative National Council of Children Against Violence Against Children: The Cameroonian Coalition of NGOs for the Rights of the Child (COCADE)

79 Draft National Policy Document for Child Protection (n 1) 40.

80 Draft National Policy Document for Child Protection (n 1) 79.

81 *Fuh* case (n 61) 34.

established the council, appointed its members, and organised its official statutes. The General Assembly needed to be organised and several different capacity building activities were launched by the Council.⁸²

Civil Society Organisations (CSOs) are meaningfully involved in the implementation of the ACRWC in Cameroon. They have also developed several programmes informed by the Treaty such as a project called 'Reform of juvenile justice: New alternatives to the detention, incarceration of people and reintegration of children in Bamenda' funded by the European Union and executed by the Centre for Human Rights and Peace Advocacy (CHRAPA), in partnership with Health Development Consultancy Services and the Bamenda Urban Council, which was launched in April 2015. This project aimed at the social reintegration of 500 juvenile delinquents, the creation of means and channels for the compensation of victims and awareness raising on children's rights.

Lasting two years, the aforementioned project aimed to offer better protection to children in conflict with the law in the locality of Bamenda before, during and after the trial and even during the period of imprisonment of the minor in conflict with the law in order to consider alternatives to detention. Thus, between April and December 2015, the project resulted in the acquittal of 40 children, the release on bail of 20 of them during the trial and the transfer of two to the Borstal Institute in Buea.⁸³ CSOs are involved in the monitoring of the implementation of the ACRWC as can be seen in the 2010 Alternative Report of Cameroon NGOs⁸⁴ on the accomplishment of the Children's Charter in Cameroon prepared by the Cameroonian Coalition of NGOs for the Rights of the Child (COCADE), with the technical and financial support of Plan Cameroon, Plan West African Regional Office WARO and Plan Sweden National Office. This saw the participation of 75 NGOs and associations – all members of COCADE and others working in the areas of child participation, child survival and development, promotion and protection of child rights as well as twelve children/youths. Unfortunately, the government only consults CSOs that side with it and dissenting voices are not accommodated.⁸⁵

82 Defence for Children International (DCI-Cameroon) <https://defenceforchildren.org/dci-cameroon/> (accessed 25 August 2020).

83 Draft National Policy Document for Child Protection (n 1) 28.

84 'Shadow report of NGOs on the implementation of the African Charter of the Rights and Welfare of the Child in Cameroon' (October 2010).

85 Written interview with PMA Nguin, Head, Comité Diocésain des Actions Socio Caritatives (CODASC) Diocese d'Ebolowa on 25 August 2020.

9 Awareness and use by lawyers and the judiciary

The provisions of the Treaty and general comments are known by the Children's Department of the Ministry of Social Affairs since they deal with children's rights daily. They are also known to a limited extent by the competent services of the ministries dealing in one way or the other with children's right such as the Ministry of Women's Empowerment and the Family (MINPROFF), Ministry of Basic Education (MINEDUB), Ministry of Secondary Education (MINESEC) and others. However, the specific provisions of the ACRWC and general comments are not known among government officials who do not work on children's matters. The government has not organised national training on the provisions of the Treaty for all relevant stakeholders, such as government officials, members of civil society and the judiciary, but has rather organised outreach activities such as the organisation of awareness campaigns during celebrations marking the Day of the African Child (16 June), National Youth Days (February 11) and various other national and local events; the organisation since 1998 of sessions of the Children's Parliament; training of junior parliamentarians on the rights of the child; the distribution of various information carriers and the production of 15 000 tapes on the CDE distributed to children in schools and other walks of life during the sensitisation campaigns; and the gradual integration of modules on the teaching of human and children's rights in school and university curricula.⁸⁶

10 Higher education and academic writing

Individual lecturers refer to the provisions of the Charter within the broader framework of vulnerable group in human rights. This is the case with the Human Rights course in the Faculty of Law at the Universities of Yaoundé, Douala and Bamenda. There is a Master's in Human Rights programme at the University of Dschang, as well as the Human Rights and Humanitarian Action Master's programme in the Catholic University of Central Africa Yaoundé. The Treaty has also been mentioned in several

86 Ministère des Affaires Sociales http://www.minas.gov.cm/index.php?option=com_content&view=article&id=166&Itemid=188&lang=en (accessed 28 August 2020).

academic writings such as, amongst others, those by Cockburn et al,⁸⁷ Ojong⁸⁸ and Tchoukou.⁸⁹

11 National Human Rights Institutions

The Cameroon National Commission for Human Rights and Freedoms (NCHRF) should play an advocacy, promotion and protection role, monitoring and reporting as per Law 2019/014 of 19 July 2019 relating to the establishment, organisation and functioning of the Cameroon Human Rights Commission. It should also engage with the ACERWC. With an almost asphyxiating budget for three years now, promotion, protection and monitoring activities are slow. However, at state level, it engages with the Ministry of Social Affairs during meetings on such issues. Also, it could send parallel reports to state reports, but this has rarely ever been done.⁹⁰ Independent national human rights institutions make use of the Treaty provisions in the discharge of their mandate to a very limited extent, much reference is made to the CRC.⁹¹ While there is no special section/Ombudsman of a national human rights institutions that deals specifically with children's rights the National Commission for Human Rights and Freedom (NCHRF) has the Working Group 3 of the rights of vulnerable groups, which addresses the issues of children's rights amongst others.⁹² This working group's role is to assist the Chairperson of the NCHRF in decision-making. It has an average of seven members and is headed by a chairperson, assisted by a rapporteur.⁹³ Also, there is no specific ministry dedicated to deal solely with children's issues.

87 Cockburn et al (n 24).

88 T Ojong 'The protection of juveniles under Cameroon criminal law and procedures through the lens of international standards' (October 2017) 7 *Juridical Tribune (Tribuna Juridica)* 200.

89 JA Tchoukou 'Introducing the practice of breast ironing as a human rights issue in Cameroon' (2014) 3 *Journal of Civil Legal Science* 121.

90 E-mail exchanges with an inside source of the NCHRF who sought anonymity.

91 E-mail with Mabel SHU Nyamboli, Personal Assistant to the President of the Cameroon National Commission for Human Rights and Freedom, Yaounde, Cameroon on 10 August 2020.

92 Others include: women's rights, rights of the elderly, rights of persons with disabilities, minority and indigenous rights, rights of people living with HIV/AIDS, rights of refugees and displaced persons, exploitation and trafficking of children, and genital mutilation.

93 It is currently composed of the following members: Ms Mpoung, Elise Pierrette (Chairperson), Ms Boubou, Born HAWÉ Hamman (Rapporteur), Ms Minlend Clémence, Prof Atangana, born Ngolouma Thérèse, Hon Zondol Hersesse, Mr Tezanou Paul, and Rev Nguete Philippe.

12 State reporting

Cameroon has so far submitted two reports to the ACERWC. The reports were submitted late. The Initial Report, due 29 November 2003, could only be submitted in 2009 and was considered at the 18th Ordinary Session (27 November to 01 December 2011). Meanwhile the Periodic Report, due 29 November 2006, was submitted in 2015.⁹⁴ According to the state party, late submission of the reports to the ACERWC as well as to other treaty monitoring bodies is caused by poor mastery of the drafting methodology of various periodic reports.⁹⁵ The Initial Report covered the general information on Cameroon, general implementation measures, definition of the child, general principles, civil rights and freedoms, family environment and foster care, basic health and welfare, education and other aspects. While the Periodic Report was structured around two areas, focusing generally on the progress made since the submission of the initial report on the country's situation in general, on the one hand, and on the implementation of the provisions of the Charter relating to the general implementation measures, definition of the child, general principles, civil rights and freedoms, economic, and social and cultural rights on the other.⁹⁶ The Report submitted was in conformity with the reporting guidelines of the Committee. As to the delegation that submitted the Report it was inter-ministerial led by the Magistrate Sub-Director of the International Cooperation, Ministry of Justice.⁹⁷

While the Report was also made in a process that involved NGOs, CSOs, NHRIs, the media and the academia, no complementary reports have been submitted by these entities and children have not been involved in the reporting process. The reporting process has been inter-ministerial under the impetus of the President of the Republic and the coordination of the Prime Minister's Office. State cooperation with treaty mechanisms primarily concerns MINJUSTICE, MINREX, MINAS, MINPROFF, and other ministries concerned, the NCHRF, NGOs and

94 ACERWC 'Initial and periodic reports table' <https://www.acerwc.africa/initial-and-periodic-reports/> (accessed 23 August 2020)

95 Ministry of Justice 'National Plan of Action' (n 56) 132.

96 Cameroon Periodic Report (n 38) 5.

97 Concluding Recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the Republic of Cameroon's Report on the Status of Implementation of the African Charter on the Rights and Welfare of the Child (January 2017) https://acerwc.africa/wp-content/uploads/2018/14/Concluding_%20observations_%20Cameroon_ACERWC-2016.pdf (accessed 6 August 2020).

other international partners.⁹⁸ The Ministry of Justice in particular plays the lead in the reporting process. Copies of the report have not been made available to the citizens due to lack of means. Nevertheless, Cameroon has made considerable progress in the realisation of children's rights between reporting intervals. Following the guidelines for state party reporting,⁹⁹ the state of Cameroon has generally made progress on the five areas of intervention which are legislation, institutional framework, budget allocation for the implementation of the Charter, cooperation with non-state stakeholders and dissemination.¹⁰⁰ For example, the Civil Code being drafted integrates, in a harmonised manner, the essential elements of the draft Child Protection Code and the Code on Persons and the Family.¹⁰¹ There has been a net progress in the consideration of adoption-related concerns in draft laws. More concretely, the Procedure Manual on Child Adoption Chain is testimony of the government's dynamism in terms of child adoption.¹⁰² Also be noted is the outright prohibition of FGM and child marriages.

The most recent concluding observations regarding the situation of children's rights in Cameroon were released by the African Committee of Experts on the Rights and Welfare of the Child in January 2017 after discussing the report during its 28th session held in Banjul, The Gambia, from 21 October to 01 November 2016. The Committee released several recommendations such as: that Cameroon should accelerate the development of the National Child Protection Policy and to ensure its effective implementation (paragraph 7); speed up measures to harmonise its domestic legislation fully with the Charter regarding the definition of the child and urged the state party to raise the legal age of marriage of girls to 18 years so as to be equal with that of boys (paragraph 8); strengthen efforts to end all discriminatory practices against children and ensure respect for the rights of all children in the state party, including indigenous and refugee children, children living in poor rural areas and children with disabilities (paragraph 10); provide and make accessible to all children free education, healthcare systems including psycho-social support where necessary to vulnerable children (paragraph 10); take all appropriate

98 Ministry of Justice 'National Plan of Action' (n 56) 132.

99 ACERWC 'Guidelines for Initial Reports of States Parties (Prepared By The African Committee of Experts on the Rights and Welfare of the Child Pursuant to the Provision of article 43 of the African Charter on the Rights and Welfare of the Child) Cmttee/ACRWC/2 II. Rev2 <https://www.acerwc.africa/wp-content/uploads/2018/04/ACERWC-Guidelines-on-Initial-State-reports-English.pdf> (accessed 24 August 2020).

100 Cameroon Periodic Report (n 38).

101 Cameroon Periodic Report (n 38) 8.

102 Cameroon Periodic Report (n 38) 29.

measures to ensure that the principle of the best interests of the child is fully adopted in all legal provisions and implemented in practice in judicial and administrative decisions along with programmes and health services which have an impact on children (paragraph 12); and many others. In Cameroon an inter-ministerial committee is in charge with monitoring and implementation of recommendations and/or decisions on international and regional human rights promotion and protection mechanisms,¹⁰³ the implementation of these concluding observations requires both political will and resources but more of political will because if the will is there that sector can be given priority.

As to the role of CSO's in the implementation of the concluding observations. There has been a lack of dissemination of the concluding observations in the media.¹⁰⁴ At the same time, the concluding observations have not been translated into any native languages because of lack of means.¹⁰⁵ Unfortunately, children have not been involved in the implementation process.

13 Communications

So far, two communications have been submitted to the ACERWC. Firstly, a communication submitted by the *Institute for Human Rights and Development in Africa and Finders Group Initiative on behalf of TFA (a minor) v The Government of Republic of Cameroon* in Communication 006/Com/002/2015 received 16 November 2015¹⁰⁶ and secondly *Etoungou Nko'o on behalf of Mr and Mrs. Elogo Menye and Rev Daniel Ezo'o Ayo v. the Government of Cameroon* 010/Com/003/2016 received 22 April 2016. The first case was declared admissible and finalised.¹⁰⁷ the case concerned the rape of a minor aged ten. The second communication, was declared inadmissible. Unfortunately, the government has never paid the victim the 50 million damages for the first case.

103 Order 81/CAB/PM of 15 April 2011 to lay down an inter-ministerial committee for the monitoring and implementation of recommendations and/or decisions on international and regional human rights promotion and protection mechanisms.

104 Written interview with Tinto Isaac, Head of Children Services, Ministry of Social Affairs, Yaounde on 24 August 2020.

105 As above.

106 ACERWC *Decision on the communication submitted by the Institute for Human Rights and Development in Africa And Finders Group Initiative on behalf of (a minor) against the Government of the Republic of Cameroon* Communication 006/Com/002/2015 Decision 001/2018 <https://acerwc.africa/wp-content/uploads/2018/13/Cameron%20Rape%20Case.pdf> (accessed 24 August 2020).

107 Decision on the Communication (n 107).

14 Special mechanism: Promotional visits of the African Committee of Experts on the Rights and Welfare of the Child

The Committee has not undertaken any promotional visit in Cameroon and it has also not undertaken any investigative mission. However, the Committee issued a statement expressing their grave concern about the killing of children in the village of Ngarbuh on 14 of February as reported by the Office of the Spokesperson of the United Nations Secretary General. The Committee called on the Government of Cameroon, as a signatory to the African Charter on the Rights and Welfare of the Child, to fully implement its legal obligation of protecting children and expeditiously conducting an independent, impartial and comprehensive investigation to bring the perpetrators of rights abuses to account. It also called on the government to initiate an investigation into the reported killings and subsequently share with the Committee, the findings of the investigation, including the process followed.¹⁰⁸

15 Factors that may impede or enhance the impact of the Charter and the Committee

In spite of the issuance of seven general comments,¹⁰⁹ the level of awareness among government officials, civil society, NGOs, and NHRIs are very limited. Emerging issues pose a challenge or opportunity for children's rights in the country including the anglophone problem also known as the Ambazonia War, or the Cameroonian Civil War, which is a conflict in the Southern Cameroons. In September 2017, separatists in the Anglophone territories of Northwest Region and Southwest Region (collectively known

108 ACERWC & CAEDBE 'Statement of the African Committee of Experts on the Rights and Welfare of the Child on the reported killing of children in Cameroon' Addis Ababa, 27 February 2020 https://www.acerwc.africa/wp-content/uploads/2020/02/Statement-ACERWC_on-Cameroon_24Feb2020_Ngarbuh_killings_English.pdf (accessed 25 August 2020).

109 ACERWC General Comment on article 22 of the African Charter on the Rights and Welfare of the Child: 'Children In Armed Conflict'; General Comment 1 (article 30 of the African Charter on the Rights and Welfare of the Child) on 'Children of Incarcerated and Imprisoned Parents and Primary Caregivers' (2013); General Comment On article 6 of the African Charter on the Rights and Welfare of the Child: 'Right to Birth Registration, Name And Nationality'; General Comment on article 31 of the African Charter on the Rights and Welfare of the Child: 'The Responsibilities of the Child' (2017); Joint General Comment of the ACHPR and the ACERWC on Ending Child Marriage; General Comment 5: 'State Party Obligations Under the African Charter on the Rights and Welfare of the Child (article 1) and Systems Strengthening for Child Protection' https://www.acerwc.africa/wp-content/uploads/2018/04/General-Comment_Art6_ACRWC_English.pdf (accessed 26 August 2020).

as Southern Cameroons) declared the independence of Ambazonia and began fighting against the Government of Cameroon. Starting as a low-scale insurgency, the conflict spread to most parts of the Anglophone regions within a year. By the summer of 2019, the government controlled the major cities and parts of the countryside, while the separatists held parts of the countryside and regularly appeared in the major cities. In effect, what initially started as peaceful protests of Anglophone lawyers and teachers ultimately degenerated into an armed insurgency.¹¹⁰ Since 2013, the populations of the Far North of Cameroon have suffered from the horrors of the Islamist sect Boko Haram. Repeated incursions by Boko Haram in the border strip of northeast Cameroon with Nigeria, Chad and villages along Lake Chad are frequent. These recorded abuses range from the burning of villages and fields, kidnappings of children and women, intimidation of the civilian population to bloodshed in inhuman conditions or suicide bombing operations. Combined with the fact that the community's victims of these cruelties were already living in untenable and unbearable living conditions, the fear generated by the Boko Haram massacres imposes on them a double struggle for survival. It is a difficult enough context to sell the dream and foster the development of the full potential of the smallest children.¹¹¹

Further challenges persist such as: lukewarm application of many laws governing children's rights in Cameroon; lack of understanding on the need for a specific legal instrument for the child and/or family;¹¹² lack of coordination of sectoral childcare policies; the economic recession, coupled with a slowdown in the state's activities and its harmful effect on budgets allocated to social services, especially for children; traditions and customs that deter the realisation of the rights and welfare of children; the worsening HIV/AIDS pandemic, which increases mortality of parents and the number of orphans and vulnerable children;¹¹³ the worsening COVID-19 pandemic, which increases mortality of parents and the number of orphans and vulnerable children; the absence of courts and judges for children;¹¹⁴ and the difficulties in implementing alternative penalties to the deprivation of freedoms (the imprisonment of minors in conflict with the

110 M Gebremichael (ed) Peace & security report: Cameroon conflict insights (March 2020) 1 Institute for Peace and Security Studies, Addis Ababa University <https://media.africaportal.org/documents/Cameroon-Conflict-Insights-vol-1.pdf> (accessed 26 August 2020).

111 Draft National Policy Document for Child Protection (n 1) 8.

112 Cameroon Periodic Report (n 38) 29.

113 Cameroon's Initial Report (n 51 above) 18-19.

114 Draft National Policy Document for Child Protection (n 1) 28.

law to the detriment of their placement in a rehabilitation institution).¹¹⁵ The COVID-19 pandemic has raised several challenges for the rights of children such as the disruption of routine childhood vaccination: Because of COVID 19, Cameroon's medical authorities say over 200 000 children have not received routine vaccinations on schedule since March, when the country had its first case of COVID-19. Parents are refusing to take their kids to hospitals because they fear they may be infected with the virus, which has spread to nearly 17 000 people and caused nearly 400 deaths. Doctors are warning that without the vaccinations, children in Cameroon risk preventable diseases such as diphtheria, measles and tetanus.¹¹⁶

16 Conclusion

The Government of Cameroon has made efforts to safeguard the rights of children by ratifying regional and international instruments protecting the rights of children. Steps have also been taken by the government to domesticate these instruments thereby making them available to children in Cameroon along with adopted measures to implement recommendations from treaty bodies with the creation of an inter-ministerial committee under the office of the Prime Minister.¹¹⁷ In several areas, Cameroon has amended its legislation to comply with the Charter. For example, on the definition of a child, Cameroon prepared a draft Code on Child Protection and the draft code on Persons and Family, which defines a child as a person below the age of 18 years and establishes the minimum legal age for marriage of boys and girls at the age of 18 years respectively.¹¹⁸ On non-discrimination, Cameroon has taken measures to facilitate the access to school and retention of children especially the girl child.¹¹⁹ On survival and development Cameroon has made efforts to ensure the full and harmonious development of the child in key areas such as education and health.¹²⁰ On name, nationality, identity and registration of birth, Cameroon has improved in the area of birth registration manifested in an increase in registration.¹²¹

115 As above.

116 ME Kindzeka 'Fear of COVID-19 stopping childhood vaccinations in Cameroon' *VOA News* 20 July 2020 <https://www.voanews.com/africa/fear-covid-19-stopping-childhood-vaccinations-cameroon> (accessed 26 August 2020).

117 ACRWC Concluding Recommendations (n 98) para 3.

118 ACRWC Concluding Recommendations (n 98) para 8.

119 ACRWC Concluding Recommendations (n 98) para 9.

120 ACRWC Concluding Recommendations (n 98) para 13.

121 ACRWC Concluding Recommendations (n 98) para 14.

On protection against abuse and torture Cameroon has made efforts to fight against torture, inhumane or degrading treatment and sexual violence against children.¹²² Freedom of expression to children in Cameroon is guaranteed by the establishment of the Children's Parliament and Youth Municipal Councils and student governments and children are given the right to be heard through the use of magazines and other avenues. On the right to education, Cameroon has made efforts to improve the supply and access to quality education creating new schools and programmes in schools for both primary and secondary schools.¹²³ On children with disabilities, Cameroon has taken measures to safeguard and protect the rights of disabled children, notably the establishment of platforms such as the Inclusive Society for Persons with Disabilities.¹²⁴ On Child Labour Cameroon has taken measures to tackle child labour, including the setting up, in 2014, of a National Committee on the fight against the worst forms of child labour, the organisation of several multisector campaigns and workshops on issues related to child trafficking as well as the adoption of the National Policy on the Comprehensive Development of the Young Child.¹²⁵ On the protection against harmful social and cultural practices, Cameroon created a platform for collaboration between the state (MINPROFF) and the Council of Imams and Muslim Dignitaries of Cameroon (CIDIMUC) to eliminate FGM. Which has finally culminated in it being criminalised.¹²⁶ On sexual exploitation, Cameroon has made efforts to ensure child protection against all forms of violence, more specifically sexual abuse by recognising and implementing the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.¹²⁷

Areas of grave concern about the rights of the children include, the slow implementation of the Committee's recommendation and by extension other treaty bodies having been slow;¹²⁸ lack of translation of the Charter into local languages to ensure its effective dissemination and understanding and effective application by both government departments and CSOs;¹²⁹ the delay in the completion by government of the National

122 ACRWC Concluding Recommendations (n 98) para 16.

123 ACRWC Concluding Recommendations (n 98) para 20.

124 ACRWC Concluding Recommendations (n 98) para 22.

125 ACRWC Concluding Recommendations (n 98) para 23.

126 ACRWC Concluding Recommendations (n 98) para 25.

127 ACRWC Concluding Recommendations (n 98) para 27.

128 ACRWC Concluding Recommendations (n 98) para 3.

129 ACRWC Concluding Recommendations (n 98) para 5.

Child Protection Policy;¹³⁰ the operationalisation of inclusive education which is still being affected by the lack of qualified employees and adequate infrastructure;¹³¹ girls, indigenous children, children with disabilities, refugee children, children from poor rural areas, and children in street situations suffer particular disadvantages with regard to education, access to health and social services;¹³² and limited consideration of the rights of the children in the formulation of the municipal development plan (PCD).¹³³

130 ACRWC Concluding Recommendations (n 98) para 7.

131 ACRWC Concluding Recommendations (n 98) para 10.

132 ACRWC Concluding Recommendations (n 98) para 11.

133 ACRWC Concluding Recommendations (n 98) para 12.

6



STUDY ON THE IMPLEMENTATION OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD IN ETHIOPIA

*Rediet Yaschalew**

1 Background

Ethiopia, with the conventional long form Federal Democratic Republic of Ethiopia (FDRE), has a federal parliamentary type of government¹ consisting of ten ethnically based regional states and two self-governing city administrations.² The country is categorised as a civil law legal system where many legal documents including the 1960 Civil Code are adopted from French law. Ethiopia is currently one of the fastest growing economies in East Africa with a growth rate of 3.02 per cent per year aiming to reach lower-middle income status by 2025. Between 1999/2000 and 2016/2017, the country's GDP per capita increased from US\$129 to US\$863. Despite the increase, the rate of economic growth has slowed slightly in recent years (10.2 per cent in 2017, projected at 9.7 per cent for 2019 and 9.9 per cent for 2020). In 2020, Ethiopia's gross domestic product (hereafter GDP) amounted to around 253.62 billion US dollars. However, the status

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1 Federal Democratic Republic of Ethiopia Constitution Proclamation 1/1995.

2 Addis Ababa, Afar, Amara (Amhara), Benishangul Gumuz, Dire Dawa, Gambela Hizboch (Gambela Peoples), Hareri Oromiya (Oromia), Somali, Tigray, Southern Nations, Nationalities and Peoples and the recently formed Sidama region despite not included in the Constitution.

of the country is still low with a per capita income of \$850.³ The country has implemented its second Growth and Transformation Plan (GTP II) which has run up to end of 2020, targeting an average of 11 per cent GDP growth annually.⁴

Ethiopia is the second most populated country in Africa after Nigeria with 114 963 588, with a total fertility rate (TFR) of 2.1.⁵ The country shares boundaries with Sudan and South Sudan to the west, Somalia and Djibouti to the east, Eritrea to the north and northwest and Kenya to the south. It is land locked and was limited to using Djibouti's main port for the past two decades, until the recent peace agreement with Eritrea, which provides Ethiopia with access to the Eritrean ports of Assab and Massawa for its international trade relations. There are more than 80 ethnic groups in the country with more than 80 languages spoken. The largest are the Oromo (34.5 per cent of the population), Amhara (26.9 per cent), Somali (6.2 per cent), Tigray (6.1 per cent) and Sidama (4.0 per cent).

The human development index of the country in 2020 was 0.485 with life expectancy at birth of 66.6 years.⁶ A little less than half of its population, or about 49.5 million, are children, with 15.2 million children under five years of age.⁷ The most recent demographic data on ethnic, linguistic and faith groups come from the 2007 Census which is not disaggregated by age or sex. The number of children who belong to these groups is therefore unknown.⁸ Lacking recent datum on maternal mortality rate, the maternal mortality rate for 2017 was 401.00 per 100 live births, a 4.98 per cent decline from 2016. In fact, the maternity mortality is notably high amongst sub-Saharan Africa where Ethiopia is no exception.

Recently, Ethiopia has made a significant improvement in overall child survival and health. With a reduction in the under-five mortality rate, from 123 per 1 000 live births in 2005 to 55 per 1 000 live births in 2019.

3 World Bank 'The World Bank in Ethiopia: Overview' <https://www.worldbank.org/en/country/ethiopia/overview> (accessed 17 October 2020)

4 Green Policy Forum 'Ethiopia Growth and Transformation Plan II (GTP II)' (May 2016) <https://www.greengrowthknowledge.org/national-documents/ethiopia-growth-and-transformation-plan-ii-gtp-ii> (accessed 14 July 2021).

5 Worldometer 'Ethiopia demographics' <https://www.worldometers.info/demographics/ethiopia-demographics/> (accessed 29 October 2020).

6 UNDP 'Human Development Reports: Ethiopia' <http://hdr.undp.org/en/countries/profiles/ETH> (accessed 14 July 2021).

7 US Census Bureau 'Least developed countries: Ethiopia' <https://www.census.gov/data-tools/demo/idb/metadata.php?R=Least%20Developed%20Countries&C=Ethiopia> (accessed 17 October 2020).

8 As above.

Similar reduction has occurred in the infant mortality rate, from 77 per 1 000 in 2005 to 43 per 1 000 in 2019. Both infant and under-five mortality have declined since 2016, the neonatal mortality rate has also reduced from 39 per 1000 to 29 in 2019.⁹ However, maternal mortality is still high at 412 per 100 000 live births according to the 2016 Ethiopia Demographic Health Survey (EDHS) which demands improved quality of high-impact maternal health interventions, particularly during the postnatal period.¹⁰

The major causes of maternal mortality in Ethiopia include obstetric complications such as haemorrhage, obstructed labour, ruptured uterus, pregnancy-induced hypertension, puerperal sepsis and unsafe abortion.¹¹ Haemorrhage has been the leading cause of maternal mortality in recent years followed by hypertensive disorders of pregnancy and sepsis, while the contributions of obstructed labour and abortion have decreased over the period.¹²

Ethiopia has also made good progress in reducing the rate of mother-to-child transmission of HIV. However, the rate of reduction is slow, and it is unlikely the elimination of mother-to-child transmission of HIV goal by 2020 will be achieved; recent data show almost one in every ten HIV-exposed infant becomes HIV positive due to mother-to-child HIV transmission.¹³

Evidence shows that the current age of sexual debut is approximately 15.51, that is the mean age of first sexual intercourse is 15.51 (SD \pm 0.058) years.¹⁴ Among adolescents who had early sexual intercourse, the majority (66.08 per cent) had their first sexual intercourse between the ages of 15 and 17.¹⁵ In relation to this, recent findings reveal that women aged

9 Federal Democratic Republic of Ethiopia Ministry of Women, Youth and Children 'Draft implementation report 2020' (Internal Document).

10 Ethiopian Public Health Institute & Federal Ministry of Health 'Mini demographic and health survey' (2019) <https://dhsprogram.com/pubs/pdf/PR120/PR120.pdf> (accessed 15 October 2020).

11 W Mekonnen & A Gebremariam 'Causes of maternal death in Ethiopia between 1990 and 2016: Systematic review with meta-analysis' (2018) 32 *Ethiopian Journal of Health Development* <https://www.ajol.info/index.php/ejhd/article/view/182583> (accessed 14 October 2020).

12 As above.

13 GM Kassa 'Mother to child transmission of HIV infection and its associated factors in Ethiopia: A systematic review and meta-Analysis' (2018) 18 *BMC Infectious Diseases* 216.

14 E Turi et al 'Why too soon? early initiation of sexual intercourse among adolescent females in Ethiopia: Evidence from 2016 Ethiopian Demographic and Health Survey' (2020) 12 *International Journal of Women's Health* 269.

15 As above.

20-24 years in Ethiopia experience pregnancy during their adolescent age.¹⁶ Latest statistics from the EDHS, further indicate that teen pregnancies are more common in rural than in urban areas (15 per cent and 5 per cent, respectively), and among women in the Afar (23 per cent) and Somali regions (19 per cent); compared to the capital, Addis Ababa (3 per cent).¹⁷ Teen pregnancy is highest among those without an education (28 per cent); with teen pregnancy rates at primary and secondary educational levels at 12 per cent and 3 per cent, respectively.¹⁸ In 2018, 690 000 people were living with HIV/AIDS in Ethiopia. No available data on rate of infection for young people was found.¹⁹ Ethiopia has made remarkable strides in controlling the HIV/AIDS epidemic over the past decade. However, the prevalence remains relatively high in urban areas, where estimates indicate a 3 per cent prevalence rate compared to under 1 per cent nationally.²⁰ Current data suggests that Ethiopia is close to controlling the HIV epidemic. Remaining areas that need focus to achieve epidemic control include preventing the spread among key populations.

According to the 2019 UNICEF's situational analysis of children and women in Ethiopia, children in present-day Ethiopia bear a greater poverty burden than adults. In the same report, UNICEF claimed that 32.4 per cent of children under 18 compared with 29.6 per cent of adults were indigent in 2011.²¹ Further, 88 per cent of children live in multi-dimensional poverty, experiencing deprivations in domains such as health, nutrition, housing, education and/or water, sanitation, and hygiene.²²

The Government of Ethiopia (GoE) has taken various steps in providing children with access to basic services including primary healthcare, water and sanitation, and adequate nutrition. However, there are quite number of challenges in ensuring access to the necessary healthcare, nutrition, education, and housing for children throughout the country.²³

16 BE Birhanu et al 'Predictors of teenage pregnancy in Ethiopia: A multilevel analysis' (2019) 19 *BMC Health* 601.

17 CSA-Central Statistical Agency and The DHS Program: ICF 'Ethiopia: Demographic and health survey' (2016).

18 As above.

19 UN AIDS 'Ethiopia' <https://www.unaids.org/en/regionscountries/countries/ethiopia> (accessed 20 October 2020).

20 USAID 'Ethiopia fact sheet: HIV/AIDS' https://www.usaid.gov/sites/default/files/documents/Ethiopia-Fact-Sheet_HIV-AIDS_Oct-2020.pdf (accessed 14 July 2021).

21 UNICEF 'Ethiopia: National situation analysis of children and women in Ethiopia 2019' <https://www.unicef.org/ethiopia/reports/national-situation-analysis-children-and-women-ethiopia> (accessed 18 October 2020).

22 As above.

23 UNICEF 'Progress for children and women in Ethiopia, with continuing challenges

The Ministry of Health (MoH) developed a National Strategy for New-born and Child Survival 2015/16-2019/20, covering a wide range of issues surrounding child survival and development.²⁴ The MoH in its strategies also acknowledges that the neonatal mortality rate is disproportionately high, accounting for 44 per cent of under-five deaths.²⁵ In addition, the neonatal and under-five mortality rates vary across income, gender and geographical areas. Cognisant of this, the country has proposed to end all preventable new-born and child deaths by 2035. To this effect, in 2012 Ethiopia led the development of the 'Promise Renewed Child survival Roadmap' with a commitment to end preventable child death and a goal of dropping under-five mortality rate to less than 20 per 1 000 live births by 2035.²⁶

The National Health Policy is also an overarching policy document that gives emphasis to the fulfilment of the needs of the less privileged rural population which constitutes about 78.3 per cent of the total population of Ethiopia in 2020.²⁷ Most importantly, child health is one of the priority areas of the Policy which states that special attention shall be given to the health needs of children.

The country has implemented the Health Sector Development Programme from 2010-2015 which proposes long term goals for the health sector.²⁸ The development programme proposed targeted interventions against poverty-related diseases, particularly the improvement of maternal and new-born health, reducing child mortality, and combating HIV/AIDs, malaria, and tuberculosis.

in human capital development: Joint press release' (21 October 2019) <https://www.unicef.org/ethiopia/press-releases/progress-children-and-women-ethiopia-continuing-challenges-human-capital-development> (accessed 13 July 2021).

24 Maternal and Child Health Directorate: Federal Ministry of Health 'National strategy for new-born and child survival in Ethiopia 2015/16-2019/20' (June 2015) <https://www.healthynewbornnetwork.org/hnn-content/uploads/nationalstrategy-for-newborn-and-child-survival-in-ethiopia-201516-201920.pdf> (accessed 14 July 2021).

25 As above.

26 As above

27 The World Bank 'Rural population – Ethiopia' <https://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?locations=ET> (accessed 13 July 2021).

28 Canadian Association for Global Health 'Health sector development program' <https://www.ccgahr.ca/wp-content/uploads/2013/11/healthsectordevelopmentprogram.pdf> (accessed 13 July 2021).

2 Ratification of the African Charter on the Rights and Welfare of the Child

Since there are no stipulations on how states should implement human-rights standards at an international level, the implementation of international human-rights treaties is dependent on domestic law and entirely left to states to decide on how obligations will be implemented. Domestic legal systems must therefore provide favourable legislative and administrative frameworks if treaty-based guarantees are to be translated into reality for domestic recipients. The method of incorporation of international human-right treaties in Ethiopia shows that Ethiopia does not strictly adhere to one method. This can be understood from articles 9 and 13 of the FDRE Constitution. The supremacy clause of the Constitution, namely article 9(4), declares that ‘all international agreements ratified by Ethiopia are integral parts of the law of the land’. This implies that the provisions of these international instruments are part of the law of Ethiopia. For this reason, relevant domestic laws of the country are amended or repealed to comply with international agreements and so are their ratification proclamations. Pursuant to article 55 of the FDRE Constitution, international agreements are signed by the state’s executive which must subsequently be submitted for ratification to the highest legislative organ of the country, the House of People Representative (HoPR), which shall ratify international agreements concluded by the Executive. The domestication of international human rights instruments is additionally reinforced by article 13(2) of the Constitution, which provides that the fundamental rights and freedoms shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights (Universal Declaration), international covenants on human rights and international instruments adopted by Ethiopia. In addition, article 2(2) and (3) of the proclamation of *Federal Negarit Gazette* requires that all laws of the Federal Government shall be published and all Federal and Regional legislative, executive and judicial organs should take judicial notice of the laws published under the Gazette. Once these instruments are ratified by the HoPR, and promulgated under the Gazette, all international agreements, become an integral part of the law of the land and need to be immediately implemented at the domestic level by virtue of article 9(4) Constitution.

Ethiopia ratified many of the important international human-rights instruments including the International Covenant on Civil and Political Rights (ICCPR) and International Covenant for Economic, Social and

Cultural Rights (CESCR).²⁹ With a view to ensure the rights of children in the domestic setting, Ethiopia ratified various children's rights documents. It ratified the Convention on the Rights of the Child in 1981 with no reservation.³⁰ It also signed the Optional Protocol on the Involvement of the Child in Armed Conflict, yet no signature or ratification has been recorded on the Optional Protocol on Child Sale, Prostitution and Pornography and the Optional Protocol to the CRC on a Communications Procedure. Regionally, Ethiopia ratified the African Charter on Human and People's Rights (ACHPR) in 1998³¹ and the African Charter on the Rights and Welfare of the Child (ACRWC) in 2002 with no reservation made to the Charter's provisions.³²

3 Government focal point

Currently, the Ministry of Women, Children and Youth (MoWCY) – the former Ministry of Women (MoW) – is the core executive body which is dedicated to children's issues. The Ministry has a Child Rights Directorate and is mandated to ensure the implementation of children's rights enshrined under the global and regional child rights frameworks including the ACRWC across the country and follow up on the implementation of concluding recommendations of treaty bodies. It is also the primary organ which deals with policy formulation and strengthening the effectiveness and efficiency of child-rights institutions, it oversees the child friendliness of various national laws and coordinates national efforts to promote child rights inclusion and participation. The country has also established Child Rights Bureaus in the ten national regional states which discharge similar functions at the regional level. HE Filsan Abdulahi was appointed to lead the Ministry of Women, Children and Youth since March 2020, under the new cabinet formed under Abiy Ahmed's administration.³³ Currently, Yihene Abebe is serving as a focal point for implementation of children's right under the Ministry.

29 IJRC 'Ethiopia' <https://ijrcenter.org/wp-content/uploads/2017/11/Ethiopia.pdf> (accessed 14 July 2021).

30 UNHRC OHCHR 'Committee on the Rights of the Child' <https://www.ohchr.org/en/hrbodies/crc/pages/crcindex.aspx> (accessed 13 October 2020).

31 ACHPR 'State parties to the African Charter' <https://www.achpr.org/statepartiestotheafricancharter> (accessed 14 July 2021).

32 ACEWRC 'Ratification table' <https://www.acerwc.africa/ratifications-table/> (accessed 13 October 2020).

33 'Ethiopian parliament approves youngest minister, Filsan Abdi' *Somaliland* 12 March 2020 <https://www.somaliland.com/news/featured-news/ethiopian-parliament-approves-youngest-minister-filsan-abdi/> (accessed 14 July 2021).

4 Legislative reform and adoption

International and regional human-rights instruments make up an important part of the national laws through the effort of the GoE to harmonise national legislation with the international human rights adopted by Ethiopia. The old 1960 Civil Code of Ethiopia is still one of the prominent laws regulating civil matters which has several provisions that are relevant to children. With an intention to harmonise its laws with the CRC and ACRWC, the GoE has promulgated the RFC in 2000, the Criminal Code of Ethiopia replacing the 1957 Penal Code and other national policies/strategies such as the Growth and Transformation I and II.

Following the adoption of key human-rights instruments including the ACRWC, Ethiopia has undertaken a comprehensive review of its national laws to their harmonisation with these global standards. More specifically, Ethiopia has been taking various measures to ensure the realisation and observance of the rights of children as enshrined under the CRC and ACRWC. These measures range from constitutional recognition of the rights of children to various steps to be taken with a view to give the provisions of the ACRWC.³⁴ After the review of laws in line with the CRC, which includes revising the Civil Code family law provisions with a comprehensive family law in 2000, there has not been a clear amendment of national laws in order to give effect to the provisions of the ACRWC. Rather, there has been a full repeal of laws for instance, the 1957 Penal Code which imposes corporal punishment on children has been repealed by the 2004 Criminal Code and development of a National Child Policy in April 2017, incorporating the basic principles and safeguards under the ACRWC.

Similar to the legal status of international or regional human-rights ratified by Ethiopia, the ACRWC is considered as an integral part of the law of the land, that is the FDRE Constitution. The Constitution, article 9(4), also stipulates, among others, that any law which contravenes the Constitution is of no effect. This can be construed as: fundamental rights and freedoms of children must conform with the ACRWC principles. As a result, any domestic law governing issues of children must anchor the ACRWC principles and safeguards. In other words, in cases where domestic laws lack clarity for instance, when there is a conflict between

34 ACRWC Ratification Proclamation 283/2002.

the provisions of the ACRWC and those of domestic legislation, priority will be given to the ACRWC provisions.³⁵

Considering this, the provisions can be invoked before domestic courts and local remedies emanating from the Charter can be secured. In other words, national authorities can directly apply the Charter to domestic child-rights issues in the country.

Article 36 the FDRE Constitution³⁶ recognises the rights of all children to life, to a name and nationality, to know and be cared by their parents, and to be protected from exploitative practices. Beyond recognition, the Constitution prohibits the infliction of corporal punishment or cruel and inhumane treatment of children by schools and other institutions entrusted with the care of children, as well as the treatment of children in conflict with the law. It also gives special protection to orphans. Moreover, article 36(2) articulates the principle of the best interests of the child as the primary consideration in all matters affecting children. Accordingly, it can be noted that the FDRE Constitution has guaranteed protection to the rights of children explicitly, recognising their vulnerability. Though the Constitution points out these rights for children, the most controversial issue here is whether or how international instruments such as the ACRWC can be directly applied or incorporated in the Ethiopian legal system, especially in courts. In fact, domestication of human-rights instruments within the Ethiopian law is controversial in the sense that is signing of the instruments alone adequate to implement these instruments in local authorities or is publication in the Ethiopian *Federal Negarit Gazeta* – that is an official magazine by which the government publishes its laws and declarations required. The below section deals with the process of ratification of international or regional human-rights instruments focusing on the ACRWC. Following the legislative and policy reforms that were undertaken by the GoE, it can be said that Ethiopia has adopted better safeguards for children. To mention a few: the minimum age of a child, age of criminal responsibility, age of sexual consent, and birth registration are harmonised with the ACRWC.

Ethiopian legislation uses the term ‘minor’ to define a person of either sex who has not attained the full age of 18 years.³⁷ The Civil Code of 1960 defines the word child as a ‘minor’ of either sex who has not attained the full age of 18 years. In a similar vein, the Revised Family Code (hereafter

35 TS Bulto ‘The monist-dualist divide and the supremacy clause: The status of human rights treaties in Ethiopia’ (2009) 23 *Journal of Ethiopian Law* 132.

36 N 1.

37 Art 215 of the FDRE Revised Family Code Proclamation 213/2000.

RFC) defines a child as a minor being a person of either sex who has not attained the full age of 18 years.³⁸

The minimum age of criminal responsibility is nine years where article 52 of the Criminal Code provides that infants who have not attained the age of nine years shall not be deemed to be criminally responsible and special measures are applicable to young persons who violate the criminal law of the country.³⁹

In principle, the minimum age required to enter into marriage in Ethiopia is 18 years according to article 7 of the RFC. However, the Minister of Justice may, on the application of the future spouses, or the parents or guardian of one of them for serious cause, grant dispensation of not more than two years.⁴⁰ Non-observance of this prerequisite has the effect of annulling the marriage and amounts to criminal activity punishable by rigorous imprisonment.⁴¹ Ethiopian laws do not in fact clearly stipulate a minimum age below which children are said to be incapable of giving valid consent to sexual activity. However, article 626(1) of the Criminal Code provides that performance of sexual intercourse with a child who is between the age ranges of 13 and 18 amounts to an offence of sexual outrage regardless of consent on the part of the victim. Therefore, it can be deduced that the age of sexual consent in Ethiopia is 18 for both boys and girls.

Notwithstanding the absence of a clear stipulation of the age of consent to medical treatment in Ethiopian legislation, article 20(3) of the Ethiopian Civil Code grants the guardian of a minor authority to submit him or her to an examination or treatment beneficial to the health of the minor. In the same way, article 257(1) of the RFC provides that the guardian shall watch over the health of the minor.

Ethiopia has been condemned for the absence of an adequate legal framework and institutional structures for birth registration. The country has, however, recently enacted a law which requires registration of children at birth.⁴² The legislation also specifically creates an obligation to register abandoned children.⁴³

38 As above.

39 Arts 157-162 FDRE Criminal Code (2004).

40 Art 7(2) of the Revised Family Code.

41 Art 648 of the FDRE Criminal Code, 2004; Art 7 of RFC.

42 Art 24 of Registration of Vital Events and National Identity Card (Proclamation, 760/2012).

43 As above.

Article 33(1) of the FDRE Constitution assures of rights of nationality. The right of a child to acquire to name and nationality of his/her birth is Constitutionally guaranteed with no discrimination.⁴⁴ In addition to this Constitutional provision, the Ethiopian Nationality Proclamation stipulates that a person shall be an Ethiopian national by descent where both or either of their parents is Ethiopian.⁴⁵ The proclamation also asserts that an infant who is found abandoned in Ethiopia shall be deemed to have been born to an Ethiopian parent and shall acquire Ethiopian nationality unless he or she is proved to have a foreign nationality.⁴⁶

Article 36(1)(d) of the Constitution provides that children may not be subjected to exploitative practices or be required or permitted to perform work which may be hazardous or harmful to his or her education, health, or wellbeing. Moreover, articles 561-570 of the Criminal Code of Ethiopia deals with 'Crimes committed against the life, person and health through harmful traditional practices. Under these provisions, performance of female genital mutilation including infibulation of the female genitalia, abduction of a child and other harmful practices endangering children's bodies are forbidden. The Criminal Code under its article 648 stipulates whoever concludes a marriage with a minor apart from circumstances permitted by relevant Family Code can be punished for up to 13 years of rigorous imprisonment.

In addition, children are also protected from exposure to corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children. Article 18 of the Constitution guarantees the right of everyone not to be subjected to cruel, inhuman, or degrading treatment or punishment including corporal punishment whereas article 36(1)(a) and (e), specifically guarantee the right of children to live and to be protected from cruel and inhuman punishment being inflicted upon them in schools or child-welfare institutions. Likewise, article 576 of the Criminal Law indicates that if the person having custody or charge of a child ill-treats, neglects, overtasks or beats the child, for any reason or in any manner, said person shall be subject to simple imprisonment not exceeding three months and this may extend to one year if the beating causes grave injury to the health, wellbeing, education or physical or psychological development of the child. This provision also imposes obligations on parents and other persons having similar responsibilities to take reasonable disciplinary measures for the purpose of proper upbringing, but this may not contravene the law.

44 Art 36(1)(b).

45 Art 3(1) Ethiopian Nationality Proclamation (Proclamation 378/2003).

46 As above.

Exposure to sexual exploitation and child pornography, and trafficking in children are also criminalised under the Criminal Code articles 626 and 627. These provisions deal with sexual outrages on minors between the ages of 13 and 18 years respectively, which are punishable with rigorous imprisonment from three to 15 years and on infants is punishable with rigorous imprisonment from 13 to 25 years. The law has also made engaging children in sexual activities by procuring them or otherwise inducing them to engage in prostitution, even with their consent, punishable with rigorous imprisonment not exceeding five years, and a fine not exceeding 10 000 Ethiopian Birr. Article 597 of the Criminal Law further prohibits exploitation for the purpose of forced labour which is punishable with rigorous imprisonment from five to 20 years.

Children have the right to access justice which primarily includes the right to be informed about their rights when they are in conflict with the law and to be consulted and heard in proceedings involving or affecting them. Technically speaking, this requires giving due weight to their views, bearing in mind their age and maturity, and providing the required assistance to them in the communication of their views, including children with communication difficulties.⁴⁷ Children should be viewed as right's holders and should be entitled to exercise all their rights in a manner that considers their capacity to form their own views. Article 17 of the ACRWC outlines several rights for children who come in conflict with the law including the right to be presumed innocent, the right to have legal counsel, the right to remain silent, the right to be informed of the particulars of the charge brought against them in a language they understand, the right to be heard, the right to speedy trial, separation of children from adults in their place of detention or imprisonment (segregation) and prohibition of public trial.

The FDRE Constitution under its article 36(2) dictates public and private welfare institutions, courts of law, administrative authorities, or legislative bodies give primary consideration to the best interests of the child in all actions concerning children. In addition, article 36(3) has included guarantees for children that confront the justice system with emphasis on separation of children who become in conflict with the law from adults in corrective or rehabilitative institutions. In fact, it should be noted that the rights of the arrested and accused persons under articles 19 and 20 of the Constitution similarly apply to children who are arrested or accused. Following the legislative reforms after the ratification of ACRWC, the Criminal Code of Ethiopia goes on to state that where a crime is committed by a young person between the ages of nine and 15,

47 The African Child Policy Forum 'Spotlighting the invisible: The status of child justice in Africa' (2018).

he/she shall not be subject to ordinary penalties applicable for adults, special measures and penalties specified under articles 157-168 of the Criminal Code will be imposed. These measures include admission to a curative institution, supervised education, reprimand, censure, school or home arrest, or admission to corrective institution established for children. On the other hand, article 56(1) of the Criminal Code stipulates that 'if at the time of the commission of the crime, the criminal was over fifteen but under eighteen years of age, he shall be tried under the ordinary provisions of the Code'. Article 56(2) goes on to provide that the court may consider the circumstances of the case including the age of the criminal, his incorrigible or dangerous disposition and the likelihood of his reform in assessing the applicable sentence. As noted by the Committee in its follow up mission in 2018 the criminal procedure code is under revision to include diversion programmes for children in conflict with the law. As of October 2018, there are more than 70 child-friendly courts across the country. The special measures and penalties as well as the institutional mechanisms are in line with the ACERWC especially in terms of protecting the best interests of the child and ensuring child-friendly justice. Free legal-aid services and psychological counselling is provided to children in conflict with the law through the child-justice office of the supreme court and its regional divisions. However, there is still one rehabilitation centre in the country for children in conflict with the law and no progress has been observed with regards to the establishment of centres in other regions despite the legal and policy reforms that were put in place.

The ACERWC in Ethiopia's National Report, commended the GoE for a resilient children's parliament.⁴⁸ The Committee called on Ethiopia to develop an action plan for participation to involve the children's parliaments in decision making and policy devising and ensure that all children participate in different forums apart from those in the children's parliament. In view of this, the GoE has been making various strides to ensure children's voices are reflected in the formulation of policies and strategies through strengthening youth associations and representatives. There is no clear legal framework that safeguards the right of children to participate in national decisions, however, the MoWCY has developed a Child Parliament's Guideline to create a platform where child views are heard on national issues and decisions. In the light of the Guideline 8 428 children parliaments in the country and 55 511 children clubs were established.⁴⁹ These model children parliaments have inspired regional states to establish their own children parliaments and student councils in

48 ACERWC 'Ethiopia mission report' <https://www.acerwc.africa/wp-content/uploads/2020/01/Ethiopia-mission-report-with-NV.pdf> (accessed 18 October 2020).

49 As above.

schools. The model children parliaments have proved to be instrumental in the prevention of maladministration and violations of the rights of children. They have also served as a platform for the participation of children in matters concerning them. Taking cognisance of the need to improve the level of child participation in the country, the MoWCY has organised various awareness creation platforms for children to familiarise themselves with their rights and influence the government and other enforcement agencies to ensure the participation of children in decisions that affect them.

Being cognisant of the importance to ensure the respect of children's rights to participation, the Ethiopian Ombudsman Office also joined forces with Save the Children to establish the Children's Parliament.⁵⁰ However, due to the absence of a clear legal and structural framework to implement children's participation, the status of child participation in the country varies from urban to rural, from boys to girls, and between age groups where children in rural areas, girls and children with special needs have low participation record.⁵¹

5 Court judgments

A unique feature of the Ethiopian legal system is that, although it is primarily dependent on a written law, judicial decisions also have the force of law with a precedence effect. By virtue of Proclamation 454/2005, the decisions of the Cassation Division of the Federal Supreme Court carry the force of law. It can therefore generally be noted that human rights justiciable before domestic courts by virtue of article 37 of the Constitution, which enshrined the right to access to justice, is as one of the fundamental rights. By virtue of this stipulation, everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.

The application of child-rights treaties, including the ACRWC, by Ethiopian courts has taken on new impetus due to the visible move by the Cassation Bench of the Federal Supreme Court to employ treaty provisions in its decisions. Although no cases exclusively decided relying on the ACRWC were found, the ACRWC has similar status to the CRC and its provisions can be invoked before domestic tribunals. *Tsedale Demissie v Kifle Demissie* for the first time referred to the relevant provisions of the CRC and the FDRE Constitution concerning the principle of the

50 UNICEF 'Child protection systems: Mapping and assessing Eastern and Southern Africa – Ethiopia (2011) 30.

51 As above.

best interests of the child. It involved a dispute over the custody of a child, which was initiated before a Woreda Court in the Bonga Area of Kafa Zone of the Southern, Nations, Nationalities and Peoples' Regional State (SNNPRS). This case synergised the principle of the best interests of the child with the right to guardianship and cited the ACRWC to hold that views of the child shall be heard in a matter which affects him/her and the views shall be given appropriate weight taking into account the child's age and evolving capacity.⁵²

6 Awareness and use by Civil Society Organisations

CSOs have a strong role to play in holding state governments accountable. Even though CSOs operating in the field of children's rights in Ethiopia have been making various efforts to advocate for the implementation of ACRWC provisions, the application of the previous Charities and Societies Law is believed to have caused various organisational and operational limitations against CSO's work in the country. The law has especially affected CSOs working on the broader human-rights and governance spectrum and those which advocate for right-based development in the country.⁵³ The level of awareness about the ACRWC among CSOs working on enforcement of human rights is high. There are many instances where the Charter's provisions are used by the prominent child rights NGOs operating in the country which include Save the Children, Plan International, ACPF in their workshop, advocacy and relevant materials. Annual reports by NGOs also use the Charter's provisions when preparing their knowledge products and other relevant materials.⁵⁴ In policy conferences like the international policy conference on the African Child, provisions of the ACRWC are also widely used. In this sense, these CSOs support/facilitate different national consultative workshops aimed at reviewing and improving the national policies and continue engaging with the government through their child-rights governance advocacy and campaign work to ensure the government allocates sufficient funding for the implementation of the treaty provisions. For instance, ACPF has developed programmes to undertake various initiatives to ensure the implementation of the Charter in Ethiopia putting children first on the public agenda. Relying on the principles under the Charter, it is contributing to improved knowledge on children in the country, monitoring and reporting the progress, identifying policy

52 *Tsedale Demissie v Kifle Demissie* Federal Supreme Court Cassation Division File No 23632 (April 2000).

53 SA Yeshanew 'CSO law in Ethiopia: Considering its constraints and consequences' (2012) 8 *Journal of Civil Society* 369.

54 World Vision International: Ethiopia 'Synthesis Report: Child protection assessment, design, analysis and planning tool' (2017).

options, providing a platform for constructive dialogues in collaboration with the government and other CSO actors in the development of child-friendly policies and programmes to make the voices of children heard.⁵⁵ The following are some of the more extensive contributions of CSOs in the implementation of the ACRWC in Ethiopia, showing the level of their awareness on the Charter:

- The establishment of the Children's Legal Protection Centre (CLPC) of the ACPF in Addis Ababa and eight regional towns has availed provision of legal aid services to children, namely, legal advice, counselling and psychological counselling from social workers. This has contributed to meeting the specific needs of children in the justice system.
- The Ethiopian Women's Lawyers Association's (EWLA) contribution to the revision of the family law and making important progress in removing aspects of the law that discriminated against children has been significant. The association undertakes studies on legal and enforcement gaps in protecting girls from sexual violence, domestic abuse etc. EWLA in collaboration with UN Women and MARIE STOPES Ethiopia has also recently launched a Gender Based Violence (GBV) Hotline Service to support girls who are victims of sexual violence and any other related outrage. It also provides legal counselling services to victims of GBV in different parts of the country.
- Save the Children Ethiopia is actively taking part in various dimensions to implement the Charter in the country. This includes, health, nutrition, education, child protection, child-friendly systems and structures, access to adequate basic services especially water, sanitation and hygiene (WASH) and humanitarian-relief services.⁵⁶
- Plan International Ethiopia also works on promoting the rights of children as envisaged under the Charter through providing education for children especially in, amongst others, ensuring girls' education, protecting children from violence, improving early childhood care and⁵⁷ currently supporting children and their families during the COVID-19 crisis.⁵⁸
- The establishment of children's participation structures in the community (outside the schools) such as networks of child-rights clubs, children's councils and children's parliaments has been initiated and supported

55 ACPF 'Identity' (25 August 2009) <https://www.africanchildforum.org/index.php/en/about-us/identity-mission-and-vision> (accessed 15 October 2020).

56 Save the Children Ethiopia 'What we do' <https://ethiopia.savethechildren.net/what-we-do> (accessed 21 October 2020).

57 Plan International: Ethiopia <https://plan-international.org/ethiopia> (accessed 21 October 2020).

58 As above.

from the early stages by child focused NGOs including ANPPCAN-Ethiopia and Mary Joy.⁵⁹

These child-focused organisations and others have developed various programmes based on the basic principles of the Charter, the principle of non-discrimination, the principle of the best interests of the child, the right to life and maximum survival and development.⁶⁰

In addition, CSOs and NGOs working on children's rights have a good level of awareness of the General Comments of the Committee. They develop their programmes in accordance with the Charter provisions and the interpretation of the provisions by the Committee.

7 Awareness and use by lawyers and the judiciary

As mentioned in the previous sections, in Ethiopia, treaty provisions including the ACRWC provisions, are applicable to domestic courts which involve child-rights issues by virtue of the status of international and regional treaties under the Ethiopian law and due to the visible move of the Cassation Bench of the Federal Supreme Court to employ treaty provisions in its decisions. For this reason, lawyers and judicial organs employ ACRWC provisions in entertaining child-rights cases using Charter provisions as an interpretative and obligatory source of law as it can be understood from *Tsedale Demissie v Kifle*. Although it is tempting to argue that the awareness and use of the ACRWC by lawyers and the judiciary could be better, there is no clear data with regards to the extent of this in the country.

8 Higher education and academic writing

In Ethiopia, provisions of the Charter are included in national university curricula of the country mainly in the human-rights course. The provisions of the Charter as well as its monitoring body are incorporated as a key regional human-rights instrument and monitoring mechanism governing children's rights across Africa. Still, the curriculum is only designed for law schools where it is hardly possible to make the wider learners in other areas aware of the treaty provisions. In the same manner, academic writings in the country also address the Charter's provisions.⁶¹ Although

59 D Rahmato, A Bantirgu & Y Endeshaw 'CSOs/NGOs in Ethiopia partners in development and good governance' (2008) A report prepared for the ad hoc CSO/NGO task force.

60 Arts 3-5 of the ACRWC.

61 ST Abegaz 'The influence of human rights instruments on children's rights

the General Comments are not published by media outlets, they are often referred to in the academic writings of the country.⁶²

9 National Human Rights Institutions

Similarly, NHRIs are widely seen using treaty provisions.⁶³ Since 2007/08 the EHRC has also been organising annual consultative forums with the aim of sharing experience among key stakeholders to end violence against women and children. Participants of the forum were drawn from federal and regional courts, the justice bureau, women and children affairs, women and youth associations, as well as NGOs. Each year, the participants identify the gaps and challenges faced in preventing and responding to violence against women and children and share best practices with the view of scaling up child-rights initiatives.⁶⁴

During the reporting period, the Ombudsman for Children has conducted 37 training workshops, over a two-year period (2009-2011) each lasting for 3 days, for members of the Children's Parliament on the ACERWC, CRC, constitutional and other rights of children and the concept of good governance.⁶⁵ In addition, NHRIs also have a high level of awareness on the General Comments of the Committee as they mostly use these in their consultation and recommendations to the government.

On the other hand, compared to the Charter's provisions the level of knowledge of the General Comments of the ACERWC amongst government officials is limited due to the high number of government sectors at both federal and regional level. Also, the accessibility of the General Comments is believed to be limited in lower districts and Woredas due to various causes which require a separate assessment especially for government officials.

jurisprudence: An appraisal of the Ethiopian Cassation Court' (2016) 30 *International Journal of Law, Policy and the Family* 197; A Tesfaye 'Child rights protection in Ethiopia: Critical analysis of the statutory rape provisions of the Criminal Code and their application' (2017) 08 *Beijing Law Review* 499.

62 T Gemechu 'Implementation of birth registration laws in Addis Ababa: Implication for the realization of the rights of the child' (2017); G Alemu & Y Birmeta 'Handbook on the Rights of the Child in Ethiopia' (2012).

63 Ethiopian Human Rights Commission <https://humanrightsconnected.org/organizations/ethiopian-human-rights-commission-ehrc/> (accessed 17 October 2020)

64 ACERWC 'Initial and Periodic Reports' <https://www.acerwc.africa/initial-and-periodic-reports/> (accessed 20 October 2020).

65 As above.

10 State reporting

Ethiopia submitted the Initial, Second and Third Periodic Report to the ACERWC in 2013 which was considered during the First Extra-Ordinary Session of the Committee.⁶⁶ While article 43 of the ACRWC requires state parties to submit Country Reports to the ACERWC within two years of entry into force of the Charter (which is 2002 for Ethiopia) and submit Periodic Reports every three years, Ethiopia's report submission in 2013 amounts to a late submission of the Initial Report and non-submission of Periodic Reports.

The national report has covered wide ranging child-rights issues including general measures of implementation in particular adoption of international standards, policy frameworks and institutional arrangements to protect and promote the rights and welfare of children. The report has further indicated measures the government of Ethiopia has taken to make the ACRWC provisions widely known among the public, to create child-friendly budget allocation and budget trends and access to health, education and special child-welfare measures implemented in Ethiopia. The report was in line with the reporting guideline of the ACERWC in terms of content and depth. The thematic issues were also addressed in conformity with the provisions of the Charter and contain sufficient information on the implementation of the present Charter to provide the Committee with comprehensive understanding of the implementation of the Charter in the country. There are, however, some gaps observed in indicating factors and difficulties which affect the fulfilment of the state obligations in the Charter. Since state reporting requires implementation of treaty provisions, as a result, executive organs which include respective ministries are responsible for preparing and organising national reports to be submitted to treaty bodies.

The government delegation of Ethiopia during the reporting was led by HE Zenebu Tadesse Zewde, of the Ministry of Women, Children and Youth. Most importantly, the government has also involved children in the reporting process where the delegation also constituted of the President of the Addis Ababa Child Model Parliament, Nadir Aman (a 15-year-old boy) who has presented on the establishment and role of the child Parliament in creating a suitable environment for Ethiopian children. Other members of the delegation are, however, not disclosed in the state report. During preparation of the report, a task force was established to document the implementation of the treaty provisions and relevant ministries at national

66 As above.

level were consulted during report preparation. The final copy of the national report is available online, however, it is not disseminated in local languages and is not made available to citizens.

Due to the restrictive law governing civil societies in the reporting period, CSOs had a limited role in the preparation of the report and in the reporting process which was one of the concerns of the Committee. In general, there is no documented evidence as to the involvement of CSOs, NHRIs, media and the academia in preparation of the submitted report of Ethiopia to the ACERWC and no complementary/alternative report was recorded as received from local or international CSOs.

The ACERWC under article 42(3) mandates the ACEWRC to cooperate with African, international, and regional institutions including NGOs concerned with the promotion and protection of the rights and welfare of the child. Sections 34, 37, 81 and 82 the Committee's Rules of Procedure also outline the framework on how the committee works with NGOs. In view of this, CSOs in Ethiopia oversee implementation of the Charter and follow up the implementation of concluding observations.

During preparation of this country report, alternative reports submitted to the ACERWC from CSOs in Ethiopia have not been found. Based on the concluding observations of the ACERWC and taking into account that CSOs are critical to the fulfilment obligations under the ACERWC, the GoE has revised its Charities and Society Law of proclamation 621/2009 with 1113/2019 and is expected to create an enabling environment for civil society engagement on child rights among others.

The most recent concluding observation by the ACERWC on Ethiopia was during the First Extraordinary Session of the ACERWC held in October 2014. The concluding observations are only translated in the national language, which is Amharic. The ACERWC follow up mission report on the implementation of its concluding observations on the initial report of Ethiopia indicates that the concluding observations and recommendations of the Committee are translated and disseminated among stakeholders and partners.⁶⁷ Nevertheless, non-governmental stakeholders were not allowed to publish and disseminate the concluding observations and recommendations in the translated versions, and these are barely disseminated to the public.⁶⁸

67 ACERWC 'Ethiopia mission report' (n 48).

68 Informal interviews with relevant staff of the Ministry of Women, Children and Youth (2020).

This being the case, the implementation of the concluding observations requires both resources and political will from the GoE. Various organs of the government follow the implementation of concluding observations given by treaty bodies where government bodies at all levels, NHRIs, and civil society organisations are particularly accountable for the full implementation of the concluding observations. At the government level, however, the key government organ responsible for the implementation of the concluding observations is the MoWCY. Yet, other ministries including the Ministry of Labour and Social Affairs (MOLSA), Ministry of Education (MoE), Ministry of Health (MoH) and the Federal Attorney General also collaborate with the MoWCY in the implementation process.

NHRIs, in particular the EHRC through its Children's rights desk/department, ensure that human rights – including the human rights of children and freedoms provided under the Constitution – are respected by all citizens, organs of state, political organisations and other associations as well as by their respective officials. They also ensure that laws, regulations and directives as well as government decisions and orders do not contravene the human rights of citizens guaranteed by the Constitution; in doing so they make recommendations for the revision of existing laws, enactment of new laws and formulation of policies to be child friendly; undertake investigations, upon complaint or their own initiation in respect of human-rights violations; forward their opinion on human rights reports to be submitted to international organs including the ACERWC; and in general perform such other activities as may be necessary to attain their objective.⁶⁹ Likewise, the institution of the Ombudsman, is also mandated to follow up on the implementation of concluding observations by virtue of its establishment proclamation 211/2000. Article 6 of the proclamation mandates the institution to make recommendations for the revision of existing laws, practices, or directives and for the enactment of new laws and formulation of policies with a view to ensure among others, a child-friendly governance system, and mandates it to ensure that administrative directives issued, and decisions given by executive organs and the practices thereof do not contravene the constitutional rights of citizens and the law as well.

Ethiopia has made substantive progress in the realisation of children's rights after its consolidated reporting in 2013. For instance, it has endorsed a comprehensive National Children's Policy in 2017, it has also endorsed the new Registration of Vital Events and National Identity Card Proclamation 760/2012 which gives effect to birth registration as an

69 Art 6 Human Rights Commission Establishment (Proclamation 210/2000).

important first step to prevent discrimination against children and which is useful for national planning for children.

11 Communications

Like other international and regional human-rights mechanisms, the ACERWC includes a complaints mechanism for children to bring a communication to the ACERWC alleging a violation of their Charter rights by virtue of article 44 of the Charter. However, domestic remedies must first have been exhausted. Before bringing allegations to the Committee. The Charter stipulates that communication can be presented by individuals, including the child which has been a victim of a human-rights violation or his/her parents or legal representatives, by witnesses, a group of individuals or by an NGO recognised by the African Union, a member state of the African Union (AU), or by any institution of the United Nations' System. A communication must be in writing and cannot be submitted anonymously. Since its ratification date, no communication has been submitted to the ACERWC on violation of the provisions of the Charter.⁷⁰ Reasons for non-submission of communications from Ethiopia can be attributed to the principle of exhaustion of domestic remedies, lack of resources to and technical expertise of the communications procedure.

Factors that discourage the submission of communications in Ethiopia requires an in-depth study. However, it can be argued that the principle of exhaustion of domestic remedies, the operational difficulties faced by CSOs in Ethiopia due to the limited civil space in the past years, the limited resources available for NGOs, financial and technical incapacity of children who are victims of human-rights violations and their parents to file individual complaints to the committee can be factors that have discouraged submission of communications from Ethiopia.

12 Special mechanism: Promotional visits of the African Committee of Experts on the Rights and Welfare of the Child

The Committee conducted a follow-up mission, to assess the progress Ethiopia has made in implementing its execution of concluding observations, on 16-17 October 2018 in Addis Ababa.⁷¹ The Committee held bilateral conversations with various Ministries of the GoE with

70 ACERWC 'Table of communications' <https://www.acerwc.africa/table-of-communications/> (accessed 18 October 2020).

71 ACERWC 'Follow up mission in Ethiopia' <https://www.acerwc.africa/%20News/acerwc-follow-up-mission-in-ethiopia/> (accessed 20 October 2020).

regards to measures undertaken to implement the recommendations of the ACERWC, assessed specific issues of children's rights and followed up on the improvements made, and secured detailed information on the matter. MOWCY, MoLSA, MoE, MoH, and the Federal Attorney General were part of the constructive dialogue. Additionally, UN agencies such as UNICEF and other CSOs including Save the Children, Plan International, African Child Policy Forum and other CSOs working on children's rights were part of the dialogue.⁷² The Committee has, however, not undertaken any investigative mission to Ethiopia.

The ACERWC report on the follow up mission on the implementation of its concluding observations on the initial report of Ethiopia, assessed the overall implementation of the concluding observations and recommendations of the Committee and the progress made. During its mission, the Committee had a discussion with the GoE and other relevant stakeholders on wide ranging issues including the general principles of the ACRWC, civil rights and freedoms of children, family environment, health and welfare, education and leisure, special measures of children protection.⁷³ The Committee recognised the progress made and positive measures taken by the country to implement the concluding recommendations and outlined areas/action which still require government attention and further engagement of all stakeholders.⁷⁴

13 Factors that may impede or enhance the impact of the Charter and the Committee

It is difficult to say there is a clear legal framework which calls for coordinating treaty obligations in Ethiopia. However, the two Growth and Transformation Plans can be considered as a national cross-sectorial coordinating mechanism responsible for the implementation of treaties. More specifically, the plan targets ensuring children and youth participation among other things.

The annual progress report for the fiscal year 2011/12 showed that, the main targets were to: ensure women, children and youth participation in the on-going social, economic, and political affairs and organise them to benefit from the economic growth; follow-up on adequate care and support provided to orphans and children at risk; protect children from harmful traditional practices and ensure that their safety and rights are respected. In this regard, targets set to be achieved during the budget

72 As above.

73 'Ethiopia follow up mission report' (n 71).

74 As above.

year included that the GoE place strong emphasis on the participation of women and children in political, economic, and social matters and that they benefit from the economic growth. To accomplish this objective, targets were set to mainstream 35 per cent women's and children's affairs in federal and regional sectoral offices and development programmes.⁷⁵ In the budget year, the design and implementation of a child policy – that takes international child conventions into consideration which included the ACRWC, and led to the formulation National Children's Policy in 2017 embarking on the basic child-rights principles as envisaged under the ACRWC and the Committee – was also planned.

The HoPR, the Social Affairs Standing Committee of the House and Regional State Councils are currently mandated to exercise independent monitoring and supervision of ministries and executive organs.⁷⁶ The Standing Committee for Women's mandate has been expanded to include issues of children and youth. The Committee's oversight implementation efforts of sectoral agencies regarding guaranteeing children's rights including follow up with suitability of laws to children thereby acting as the pertinent organ to ensure proper consideration of child rights in the law-making process.⁷⁷ This oversight function is believed to contribute to the effective implementation of the Charter and ACRWEC concluding observations on Ethiopia.

It is easier to say the strategies driving a coordinated implementation of the ACRWC, are scattered. Nonetheless, the 2017 National Children's Policy which is the first of its kind in the country has a clear target aligned with basic principles of the ACRWC which is realistic, achievable, measurable, attainable.⁷⁸ Although the policy is drafted in a child-friendly format it is not well disseminated to the wider public which shows the existence of a knowledge gap on key national policy frameworks on children. It can, however, be concluded that the adoption of the policy has positively impacted the Charter implementation in Ethiopia.

In Ethiopia, there is a clearly allocated budget for children to participate in decision making processes on said budget through their locally established children parliaments and elected children or youth representatives. The Committee in its follow up mission report, acknowledged the increased budgetary allocation to all sectors working on

75 FDRE Ministry of Finance and Economic Development 'Annual progress report (2013) for F.Y. 2011/12: Growth and transformation plan' (March 2013).

76 Initial and periodic reports (n 64).

77 As above.

78 National Children's Policy of Ethiopia (2017).

children's rights. However, it has noted that during the follow up period, there was no indication on how child sensitive the budget increase was. To address this challenge, the government has developed child focused budget monitoring and evaluation framework which can be noted as a measure that have enhanced the impact of the Charter and Committee in the country.

The role of CSOs in implementing concluding observations is critical in many aspects. Despite the operational difficulties CSOs in Ethiopia faced in the past with the restrictive regulatory environment, following the reforms which took place in 2018 – the enactment of a new CSO law enabled the active engagement of CSOs on human rights including children's rights. CSOs are currently engaged in facilitating different national consultative workshops aimed at ensuring child friendly policy making. They undertake dialogues with government to consider timely issues during policy developments, capacity building, in child responsive budgeting, accountability mechanisms and others. CSOs are also playing a key role in child rights governance advocacy and in disseminating the policy document to both national and regional levels in the country. The recent Charities and Societies Law is believed to have created a formal collaboration between the GoE and CSOs, private sector entities and other development partners and ensures the meaningful representation of children's interests and their participation in national issues and advocates for formal collaboration between state and non-state actors (CSOs, private-sector entities and development partners).

As noted in the preceding sections, children parliaments established at both federal and regional levels also vindicate children who are the primary beneficiaries of the child-rights pool and ensure their involvement in the process of implementation of the Charter. In addition to this, the initiatives undertaken by various child-rights' CSOs operating in Ethiopia support the implementation of the ACERWC concluding observations through monitoring and observatory roles, advocacy and follow ups.

Despite the absence of a clear timeline to conduct national training workshops, the MoWCY in collaboration with regional bureaus organised various workshops on child rights with specific reference to the CRC and ACRWC, for different government officials and public representatives such as staff of judicial organs, school directors, social workers, health sector workers, religious leaders, security personnel, members of the CSOs and other community based organisations.⁷⁹ Such national interventions have

79 Initial and periodic reports (n 64).

also continued after the reporting period to ensure the realisation of the full rights of children as envisaged under the ACRWC.⁸⁰

The ACRWC has been translated into the Amharic language, which is the official language of the country.⁸¹ No translation in other languages has been made causing limited treaty awareness in the country. Likewise, there is no available data with regards to the translation of the general comments of the Committee in local languages and if they are made available to the citizenry, which can be raised as an impeding factor for a wider understanding of ACRWC provisions and ACRWEC's concluding remarks and general comments.

One of the key achievements of the government of Ethiopia with regards to independent monitoring of the implementation of international and regional instruments is the establishment of National Human Rights Institutions (NHRIs). The Ethiopian Human Rights Commission (EHRC) was set up by Proclamation 210/2000 and Proclamation 210/2000 was enacted in July 2000 establishing the institution of the Ombudsman. These human rights institutions are fully operational with a viable progress due to the ongoing national reforms which started in 2018. These bodies are one of the pillar institutions in monitoring the proper implementation principles of child rights in Ethiopia. They both have their own child rights desk, or department monitoring, which oversees the implementation of children's rights in the country with national experts and strategic advisor on child rights. The EHRC and the Institute of Ombudsman conduct periodic follow ups on the implementation of human rights conventions and treaties including the ACRWC and submit observations, share concerns and proposals to the relevant authorities. Moreover, the EHRC also coordinates and cooperates with other human rights bodies, receives complaints about alleged violations of human rights and refers them to the relevant authorities.⁸² Both institutions also have desks dedicated to handling the affairs specific to children.

The Human Rights Commission in addition has the duty to translate and disseminate treaties adopted by the country in collaboration with the Ombudsman and other governmental and non-governmental actors.⁸³ In the national report to the ACERWC, it was noted that this collaboration has resulted in developing different programmes and projects for the benefit of children. For instance, one collaboration resulted in a review

80 'Ethiopia mission report' (n 48).

81 Initial and periodic reports (n 64).

82 N 69.

83 As above.

conducted by EHRC on the achievements of the first cycle education policy where gaps and 17 future strategies were recommended.⁸⁴

The GoE has carried out various activities which are aimed at promotion and dissemination of the principles and provisions of the ACRWC in collaboration with UN agencies, CSOs and the media.⁸⁵ The government organised a number of sensitisation workshops for government offices such as judicial personnel, law enforcement officials, child care personnel, social workers, medical personnel, and the university community.⁸⁶ There is also media coverage on the Charter's provisions where the MoWCY disseminates monthly news-letters and biannual publications. The daily Amharic paper *Addis Zemen* provides one full page in its Sunday issue to popularise the Charter and the CRC and addresses other issues related to children and mothers. A bi-weekly 30-minute television programme for children is screened in Amharic. The show covers topics addressed in the ACRWC and CRC such as child health, early marriage, exploitation, and disability. Dramas and plays for children are screened occasionally at present, but the television enterprise plans to publicise each article of child rights instruments through drama and dialogue in the future. Television programmes on family issues such as upbringing of children and maintenance is also transmitted.

Moreover, NHRIs (mainly the EHRC) are mandated to promote public awareness on children's rights using the mass media and other media and other means, with a view to enhancing its tradition of respect for and demand for enforcement of rights, upon acquiring sufficient awareness regarding human rights including child rights, it conducts various workshops to increase the awareness of key stakeholders within the child-rights scheme. The functions of both the EHRC and the Ombudsman can thus be noted as key pillars in observance of child –rights' commitments of Ethiopia under the ACRWC.

The Impact of COVID-19 Pandemic is multi-faceted when it comes to children. Children are amongst the primary victims of pandemics. As per UNICEF's recent assessment, the impact of COVID-19 is multi-dimensional because due to limited access to water, sanitation and hygiene services (WASH) children may be exposed to Covid-19, and emergency containment measures may impact access to WASH services. Adolescent girls are particularly vulnerable, as many menstrual health and hygiene services (including sanitary materials and psychosocial

84 Initial and periodic reports (n 64).

85 As above.

86 As above.

support) are delivered through schools. With the advent of COVID-19, UNICEF's annual report on Ethiopia claims that children's rights are at high risk in both urban and rural areas of the country contributing to the poor availability of food and health mainly contributing to higher infant mortality rate in the pandemic period.⁸⁷ The report further noted that children in Ethiopia might be subject to violent behaviour, including sexual and psychological abuse, from different actors due to their high vulnerability status during outbreaks.⁸⁸ In Ethiopia schools have been closed since 16 March 2020 following the declaration of a state of emergency despite the recent opening. Children are highly vulnerable to the indirect secondary effects of the pandemic. This is due to household financial shocks and the disruption of social services and care networks, educational progress and essential health services. UNICEF's assessment on Ethiopia shows two in three children in Ethiopia, and almost one in four children in Addis Ababa, lacked access to essential goods and services before the pandemic.⁸⁹

In general, taking the into account the fact that children are disproportionately impacted by COVID-19 in different ways, the implementation of fundamental rights of children remains at stake impeding the positive gains achieved so far under the purview of the ACRWC.

14 Conclusion

Since ratification in 2002, the ACRWC has been instrumental in changing the lives of many children in Ethiopia through interventions made from GoE and other non-state actors. The implementation of the Charter is promising when compared to Conventions that were ratified before it. Nonetheless, Ethiopia still has much to do to ensure the full protection of children's rights as envisaged in the ACRWC. Several factors including lack of resources, poor commitment from government sectors to enforce Charter provisions and entitlements, and limited civic space are often raised as challenges in implementing the Charter domestically. In this regard, latest concluding observations given by the ACERWC are far-fetched and require both resource and political will from the GoE. For instance, one of the recommendations was to develop a social protection

87 UNICEF Ethiopia 'Annual Report 2020' <https://www.unicef.org/ethiopia/media/3941/file/Annual%20Report%202020.pdf> (accessed 13 July 2021).

88 As above.

89 UNICEF 'The impact of COVID-19 on children in Addis Ababa, Ethiopia' (December 2020) <https://www.unicef.org/ethiopia/media/4296/file/TheImpactofCOVID-19onChildreninAddisAbaba,Ethiopia.pdf> (accessed 14 July 2021).

policy for children who are abandoned or cannot be supported by parents in order to ensure that children who are not under parental or family support receive assistance from the state.⁹⁰ The other is the review of the previous Charities and Societies Law,⁹¹ which primarily required political will from the GoE to open or expand the democratic space.

The recommendation given on the revision of the old CSO law, also requires political will from the government. Whereas recommendations to ensure accessibility of well-equipped care and education services for children in the rural areas⁹² require resources beyond political will. Likewise, the Committee has also urged the government to take necessary measures to combat harmful traditional practices that are prevalent in some parts of the country⁹³ which primarily requires political will of the federal and regional governments.

With a view to implement the Concluding Observations, the MOWCY has currently drafted a ten-year development perspective plan which includes key priorities for children. Key objectives of the development plan include enhancing the overall development of children, child protection with a particular focus on vulnerable groups of children including children with disabilities, child participation, and capacity building of government institutions working on children's rights.⁹⁴

The prevalence of political tensions in most parts of the country,⁹⁵ foreign threats converging with the filling of the Great Ethiopian Renaissance Dam (GERD) coupled with COVID-19 multi-faceted burdens on children can adversely impact the ACRWC and the implementation of ACRWEC's Concluding Observations in Ethiopia. Therefore, considering the graveness of the country's situation for children, policy responses and financing measures are critical to protect children from the impacts of the political tensions and the COVID-19 pandemic in the short- and long-term.

90 Concluding Observations on Ethiopia, ACERWC (2013) 'General measures of implementation' para 7.

91 As above.

92 Concluding Observations on Ethiopia (n 90) para 13.

93 Concluding Observations on Ethiopia (n 90) para 38.

94 Ministry of Women, Youth and Children Affairs 'Draft ten-year development plan' (2020).

95 Human Rights Watch 'Ethiopia: Events of 2020' <https://www.hrw.org/world-report/2021/country-chapters/ethiopia> (accessed 15 July 2021).

In view of this, it is necessary for all relevant actors including CSOs, NHRIS, academia, the media and international development partners to come together and support the implementation of the ten-year development plan of MoWCY and other efforts that are being undertaken by the GoE towards the effective implementation of the Charter and Concluding Observations of the ACRWEC and ensure rights of children are implemented as envisaged by the ACRWC during this critical time.

7



STUDY ON THE IMPLEMENTATION OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD IN GHANA

*Michael Nyarko**

1 Background

Ghana is a constitutional democracy, having returned to democratic rule after many incidents of military dictatorship between 1966 when Ghana's first President, Kwame Nkrumah was overthrown with the assistance of the Central Intelligence Agency (CIA) and 1993 when the 1992 Constitution ushered into being the Fourth Republic.¹ The 1992 Constitution establishes a multi-party unitary presidential system of government premised on universal adult suffrage and a decentralised local government. The Constitution reiterates the supremacy of the Constitution as a fundamental value of the state and establishes 'a Supreme Court empowered to interpret the Constitution and strike down acts and omissions of the other branches of government which are inconsistent with the provisions of the Constitution'.² The Constitution also guarantees quite a comprehensive

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1 K Quashigah 'The 1992 Constitution of Ghana' (2013) ; see also MG Nyarko 'The impact of the African Charter and Maputo Protocol in Ghana' in VO Ayeni (ed) *The impact of the African Charter and Maputo Protocol in selected African states* (2016) 95.

2 Nyarko (n 1); art 2 of the 1992 Constitution.

list of civil and political rights and a limited number of socio-economic rights,³ which are supplemented in the directive principles of state policy. While the directive principles of state policy were initially thought to be unenforceable, judicial pronouncements from the Supreme Court have clarified that all provisions of the Constitution (including the directive principles) are enforceable, unless there is a specific internal qualification concerning the non-enforceability of the provision.⁴ The legal system is modelled on the common-law tradition inherited from the British colonial administration.

Ghana became a lower middle-income country in 2010 on the back of a growing GDP and a rebasing of the economy.⁵ Ghana's economy grew by 7.1 per cent in 2019,⁶ with a GDP per capita of \$2022.1.⁷ Ghana is currently placed in the medium human development category on the human development index (HDI), ranking 142 out of 189 countries in 2018, an estimated 31.1 per cent increase from 1990.⁸ While Ghana's HDI increase is above the average for sub-Saharan African countries it falls short of the global average.⁹ The HDI falls even lower (by 28 per cent) when discounted for inequality in the HDI dimensions,¹⁰ which suggests that while improvements have been made, inequality still poses a challenge.

The population structure of Ghana is quite young, with an estimated 57 per cent of the population below the age of 25 and at least 37 per cent of the population below the age of 15 (50.3 per cent male and 49.7 per cent female).¹¹ Infant mortality stood at 37 per 1 000 live births, a 50 per cent decline since 1988 and under-5 mortality stood at 59 per 1

3 Chap 5 of the 1992 Constitution.

4 *Ghana Lotto Operators Association v National Lottery Authority* (2007-2008) SCGLR 1088.

5 T Moss & S Majerowicz 'No longer poor: Ghana's new income status and implications for graduation from IDA' (2012) https://www.files.ethz.ch/isn/153738/1426321_file_Moss_Majerowicz_Ghana_FINAL.pdf (accessed 7 October 2020).

6 African Development Bank 'Ghana economic outlook' <https://www.afdb.org/en/countries/west-africa/ghana/ghana-economic-outlook> (accessed 7 October 2020).

7 World Bank 'GDP per capita (current US\$) – Ghana' <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=GH> (accessed 7 October 2020).

8 United Nations Development Programme (UNDP) 'Human development report 2019: Ghana' http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/GHA.pdf (accessed 7 October 2020).

9 As above.

10 As above.

11 Central Intelligence Agency 'World Fact Book: Ghana' https://www.cia.gov/library/publications/the-world-factbook/geos/print_gh.html (accessed 7 October 2020).

000 live births, amounting to a threefold reduction for the same period.¹² Maternal mortality for the same period stood at 310 deaths per 100 000 live births.¹³ Mother to child transmission of HIV was 20 per cent in 2018.¹⁴ Immunisation rates are around 95 per cent for most vaccine-preventable diseases.¹⁵

The median age of sexual debut is 18.3 years even though the minimum age of sexual consent is 16 years.¹⁶ The rate of teenage pregnancy among girls and young women between the ages of 15 and 19 years is 14 per cent,¹⁷ even though the rates for children between 15-17 years stands at 7.5 per cent.¹⁸ There are, however, variations between rural and urban settings with urban settings recording average teenage pregnancy rates of 11 per cent and rural settings at 18 per cent.¹⁹ Knowledge of contraceptive methods is quite high among teenage girls and women between 15-19 years of age at about 99 per cent,²⁰ the rates of actual use of contraceptives is quite low – 27.6 per cent and 35.6 per cent for currently married women between 15-19 years and sexually active unmarried women between 15-19 years respectively.²¹ The HIV prevalence rate among children 14 years and younger is quite low at 0.08 per cent. There is, however, a disparity in HIV prevalence rates among young men and women, with young women having a 1 per cent prevalence rate as against 0.3 per cent for young men.²²

12 Ghana Statistical Service (GSS), Ghana Health Service (GHS) & ICF 'Ghana Maternal Health Survey 2017: Key Findings' (2018) 10.

13 As above.

14 UNAIDS 'Country progress report – Ghana' (2019) 17 https://www.unaids.org/sites/default/files/country/documents/GHA_2019_countryreport.pdf (accessed 7 October 2020).

15 World Health Organisation 'WHO vaccine-preventable diseases: Monitoring system, 2020 global summary – Ghana' https://apps.who.int/immunization_monitoring/globalsummary/countries?countrycriteria%5Bcountry%5D%5B%5D=GHA (accessed 7 October 2020).

16 Ministry of Gender, Children and Social Protection 'Position paper on harmonising the age of sexual consent and the age of marriage in Ghana' (2018) 9 <https://www.unicef.org/ghana/media/2766/file/Harmonizing%20the%20Age%20of%20Sexual%20Consent%20and%20Marriage%20in%20Ghana%20.pdf> (access 7 October 2020).

17 Ghana Maternal Health Survey 2017 (n 12) 40.

18 Ghana Maternal Health Survey 2017 (n 12) 48.

19 As above.

20 As above.

21 Ghana Maternal Health Survey 2017 (n 12) 51.

22 UNAIDS 'Country factsheets: Ghana 2019' <https://www.unaids.org/en/regionscountries/countries/ghana> (accessed 7 October 2020).

UNICEF reports that 3.65 children in Ghana live in poverty with at least 1.2 million living in extreme poverty with limited access to food.²³ As a result 1 in every 5 children in Ghana experiences stunted growth in the first 3 years of their lives.²⁴ Malnutrition is one of the key causes of high child mortality rates in Ghana. The effects of malnutrition persists into adolescence and early adulthood with at least 50 per cent of girls between 15-19 years reported to be anaemic.²⁵ Government's response to child poverty and its impacts include the Livelihood Empowerment Against Poverty (LEAP) programme, a cash transfer programme that supports poor households including those consisting of orphaned and vulnerable children and infants under 12 months old.²⁶ Others include the school feeding programme which provides at least one hot meal to children in basic education institutions across the country.

Child marriage has declined over the last few decades but is still quite prevalent in Ghana with over 2 million child brides and at least 1 in 5 being married or in a union before they turn 18.²⁷ Out of these, at least 600 000 girls were married before the age of 15.²⁸ Child marriage has a debilitating impact on girls particularly with regards to health and education, with an estimate of nine out of ten married girls not attending school and having no economic prospects.²⁹ Some form of sexual and reproductive education has always been part of the school curriculum since the 1960s, initially focusing on the biological aspects such as human reproduction.³⁰ This was followed by a second phase with the inclusion of population issues, in response to concerns over population growth

23 UNICEF 'Social policy and protection' <https://www.unicef.org/ghana/social-policy-and-protection> (accessed 7 October 2020).

24 UNICEF 'Early childhood development' <https://www.unicef.org/ghana/early-childhood-development> (accessed 7 October 2020).

25 UNICEF 'Social policy and protection' (n 23).

26 As above.

27 UNICEF 'Ending child marriage: A profile of progress in Ghana' (2020) <https://www.unicef.org/ghana/media/3346/file/Ending%20Child%20Marriage%20-%20Progress%20in%20Ghana.pdf> (accessed 7 October 2020).

28 As above.

29 As above.

30 C Panchaud SC et al 'Towards comprehensive sexuality education: A comparative analysis of the policy environment surrounding school-based sexuality education in Ghana, Peru, Kenya and Guatemala' (2019) 19 *Sex Education* 277. See also K Awusabo-Asare et al 'From paper to practice: Sexuality education policies and their implementation in Ghana' (2017) https://www.guttmacher.org/sites/default/files/report_pdf/sexuality-education-ghana-report.pdf (accessed 31 October 2020); IPPF 'Promoting comprehensive sexuality education in Ghana' (15 July 2018) <https://www.ippfar.org/blogs/promoting-comprehensive-sexuality-education-ghana> (accessed 31 October 2020).

in the 1970s.³¹ The third phase which emerged in the 1990s involved a move towards a more comprehensive approach towards reproductive health which placed emphasis on the social aspects of sex and sexuality education, particularly in response to the HIV and AIDS epidemic.³² At this phase comprehensive sexuality education had emerged as part of the school curriculum. A fourth phase of sexuality education was introduced in the 2000s, which ‘focus[es] on human rights, including child rights, gender and sexual rights, and the right to education – issues at the forefront of the Millennium Development Goals and the Sustainable Development Goals’.³³ In 2013, the National HIV and AIDS STI Policy advocated for the inclusion of ‘age-appropriate, sound adolescent sexual and reproductive health education’ in the school curricula.³⁴ The Adolescent Health Policy of 2015³⁵ provided further policy basis for the inclusion of sexual and reproductive rights in the curricula of junior and senior high schools.³⁶ Even though sexuality education has always formed part of the school curriculum, attempts by government to introduce a new curriculum on comprehensive sexuality education in 2019³⁷ was not well received by the public over concerns that it had explicit LGBTI content.³⁸ Similarly, while the compulsory curricula exposes learners to basic and age appropriate information on sexual and reproductive rights, including modules on gender relations, one study suggests that ‘there is a strong emphasis on negative and irresponsible behaviours of adolescents, as well as a focus on the benefits of abstinence’.³⁹ The same study reports the more comprehensive treatment of sexual and reproductive rights in the curricula covering topics related to abortion, family planning, STIs and decision-making is not offered as a compulsory course but rather as part

31 As above.

32 As above.

33 As above.

34 National HIV and AIDS STI Policy (2013) para 6.2.1.

35 Ghana Health Service ‘Adolescent health service and policy strategy (2016-2020)’ <https://www.afro.who.int/sites/default/files/2017-10/ADOLESCENT%20HEALTH%20SERVICE%20POLICY%20%20AND%20STRATEGY.pdf> (accessed 31 October 2020).

36 Awusabo-Asare et al (n 30) 20.

37 Government of Ghana ‘Guidelines on comprehensive sexuality education’ (2019) <https://www.scribd.com/document/428167168/GUIDELINES-FOR-COMPRESIVE-SEXUAL-EDUCATION-IN-GHANA> (accessed 31 October 2020).

38 ‘Here’s why Ghana’s sex education program is controversial’ *Africanews* 03 October 2019 <https://www.africanews.com/2019/10/03/here-s-why-ghana-s-sex-education-program-is-controversial/> (accessed 31 October 2020); S Appiah ‘Understanding the outcry against comprehensive sexuality education in Ghana’ (01 October 2019) <https://medium.com/@Appiah/understanding-the-outcry-against-comprehensive-sexual-education-in-ghana-1dfd77b4baf2> (accessed 31 October 2020).

39 Awusabo-Asare et al (n 30) 18-20.

of an elective course in high school, which is taken by a small minority of students.⁴⁰ Again, the study reports that sexual and reproductive rights information is usually presented from a negative or reactive (fear-based) perspective rather than providing learners with fair and balanced information to enable them make informed choices on health sexual behaviour.⁴¹

Ghana first developed a policy on early childhood care and development,⁴² which set out to among others make pre-primary education part of the free compulsory primary education, a first of its kind in sub-Saharan Africa. Consequently, in 2007 two years of pre-primary education (known locally as kindergarten) was made part of the free and compulsory universal basic education system in Ghana,⁴³ which caters for children between the ages of four and five. Pre-primary enrolment rates have increased significantly since then, with government reporting net enrolment rates of around 75 per cent in 2016.⁴⁴ Reports, however, suggest that 'educational quality and learning outcomes are low'.⁴⁵ Some studies also suggest that there is significant public prejudice against pre-primary education as many do not see its significance.⁴⁶ Flowing from this, the lack of parental commitment to early childhood education also constitutes a major challenge as many parents perceive it as a place to have their children taken care of while they are at work rather than as an important part of the educational system.⁴⁷ Other challenges include lack of teaching staff and infrastructure which results in large class sizes and high learner to teacher ratios.⁴⁸ These challenges are, however, not evenly

40 As above.

41 Awusabo-Asare et al (n 30) 20.

42 Ministry of Women and Children's Affairs 'Early childhood care and development policy' (2004) <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88527/101252/F878960202/GHA88527.pdf> (accessed 31 October 2020).

43 S Wolf et al 'Experimental impacts of the "quality preschool for Ghana" interventions on teacher professional well-being, classroom quality, and children's school readiness' (2019) 12 *Journal of Research on Educational Effectiveness* 10 at 11; see also D C McCoy & S Wolf 'Changes in classroom quality predict Ghanaian preschoolers' gains in academic and social-emotional skills' <https://www.poverty-action.org/sites/default/files/publications/McCoy%20and%20Wolf%20classroom%20quality.pdf> (accessed 31 October 2020).

44 As above.

45 As above.

46 A Abdulai 'Challenges facing early childhood education in Ghana. What do stakeholders say?' (2014) 1 *Advances in Social Science Research Journal* 11.

47 As above.

48 As above.

spread throughout the country as other studies suggest more encouraging perceptions and outcomes of pre-primary education.⁴⁹

The 1992 Constitution guarantees everyone the right to free and compulsory basic education.⁵⁰ In fulfilment of this obligation, the government of Ghana introduced a free compulsory universal basic education (FCUBE) in Ghana in 1996, with the aim of achieving universal basic education by 2005.⁵¹ The implementation of the FCUBE policy, however, included cost-sharing arrangements where parents/guardians were still expected to cover some non-tuition related fees.⁵² While government's official policy is to provide free and compulsory basic education, reports suggests that households still spend considerable amounts of funds on basic education due to many indirect fees that are charged by schools, which hinders the right to education for many children.⁵³ Free education has recently been extended to cover secondary (high) school education. The average pupil/teacher ratio in primary schools as at 2018 was 29.6/1.⁵⁴ Enrolment rates for primary schools as at 2018 stood at 106 for boys and 106.3 for girls while completion rates are estimated at an average of 101.9-102.7 for boys and 101.1 for girls.⁵⁵ At the junior high school level, the average pupil teacher ratio stands at 15/1, enrolment rates stood at 86.6 per cent for boys and 83.5 per cent for girls, while the average completion rate is 73.7-76.5 per cent for boys and 71 per cent for girls.⁵⁶ However, completion rates vary depending on household income and the region of residence, with those from

49 K Bidwell, K Parry & L Watine 'Exploring early education programs in peri-urban settings in Africa' (2014) https://www.poverty-action.org/sites/default/files/publications/accra_ecd_report_full.pdf (accessed 31 October 2020).

50 Art 25(1) of the 1992 Constitution.

51 K Acheampong 'Revisiting free compulsory universal basic education (FCUBE) in Ghana' (2009) 45 *Comparative Education* 175; OS Ekundayo 'The right to free compulsory primary education in Ghana: Lessons for other African countries' (2018) 69 *Journal of Law, Policy and Globalisation* 105 <https://iiste.org/Journals/index.php/JLPG/article/viewFile/40848/42004> (accessed 31 October 2020).

52 UNICEF 'Achieving universal primary education in Ghana by 2015: A reality or a dream?' (2007) 3 https://www.unicef.org/spanish/files/Achieving_Universal_Primary_Education_in_Ghana_by_2015.pdf (accessed 31 October 2020).

53 Action Aid 'Financing education in Ghana: How progressive taxation can increase government's spending on public basic schools and reverse education privations' (2019) <https://ghana.actionaid.org/sites/ghana/files/publications/EDUCATION%20FINANCING%20REPORT%2C%202019%20-%20custom%20revised.pdf> (accessed 31 October 2020).

54 Action Aid (n 53) 38.

55 Action Aid (n 53) 38-39.

56 Action Aid (n 53) 43-45.

high income households more likely to complete.⁵⁷ The enrolment and completion rates reduce quite substantially at the senior high school level, which gross enrolment rate reaching 50 per cent⁵⁸ and a net enrolment rate of 26.5 per cent in 2017.⁵⁹ The quality of high school education is also reported to have declined since 2012.⁶⁰ Ghana currently has no formal policy on the re-entry of girls who become pregnant into schools, apart from a circular encouraging school principals to retain pregnant girls in school.⁶¹ This coupled with socio-economic and cultural barriers prevent many girls who fall pregnant from re-entry to school upon delivery.⁶²

Ghana adopted an Inclusive Education Policy in 2015 aimed at among others, responding ‘to the diverse needs of all learners within the framework of Universal Design for Learning and Child Friendly School Concept’.⁶³ However, research shows that at all levels of pre-tertiary education, children with disabilities have lower enrolment rates, compared to children without disabilities.⁶⁴ An estimated 80 per cent of children with disabilities are currently not enrolled in school as a result of among others prejudice from parents and inadequacy of teachers with skills in education of children with disabilities.⁶⁵ Thus, even though children with disability make up 1.6 per cent of children at basic school age, they make up less than 0.5 per cent of enrolment.⁶⁶ While special schools exist, the general education system is not accessible to many children with disabilities. The majority of schools have inadequate facilities to accommodate children with disabilities, ‘with almost no regular basic schools having handrails, and only 8% equipped with ramps’.⁶⁷ Anecdotal evidence also suggests that children with disabilities face stigma.⁶⁸ Inclusive and special education

57 Ministry of Education, Ghana ‘Education sector analysis 2018’ (2018) xvi <https://sapghana.com/data/documents/Ghana-Education-Sector-Analysis-2018.pdf> (accessed 31 October 2020).

58 As above.

59 Education sector analysis 2018 (n 57) 46.

60 Education sector analysis 2018 (n 57) 50-51.

61 AO Britwum et al ‘Case study on girls who have dropped out of schools due to pregnancy and factors facilitating and/or preventing their re-entry to school after delivery’ (2017) 37.

62 As above.

63 Ministry of Education *Inclusive Education Policy* (2015) para 2 https://planipolis.iiep.unesco.org/sites/planipolis/files/ressources/ghana_final_education_policy_cd.pdf (accessed 2 November 2020).

64 Education sector analysis 2018 (n 57) xviii.

65 Action Aid (n 53) 30.

66 Guidelines on comprehensive sexuality education (n 37).

67 Guidelines on comprehensive sexuality education (n 37) xviii.

68 As above.

is also severely underfunded – only 0.6 per cent of the education budget for 2015 was spent on inclusive and special education,⁶⁹ even though government spending on education exceeds UNESCO's (6 per cent of GDP) and Global Partnership for Education's (20 per cent of government budget) recommended funding benchmarks.⁷⁰ Additionally, current social intervention programmes do not cover special schools.⁷¹

2 Ratification of the African Charter on the Rights and Welfare of the Child

The President, as the head of the executive branch of government is vested with the power to execute treaties on behalf of Ghana.⁷² The President may exercise this power in person or delegate it to another member of his cabinet. The execution of treaties by the President must subsequently be ratified by parliament through a resolution passed by the majority of members of parliament or through legislation.⁷³ Thus, the process of ratification of treaties is a function of the legislative branch of government even though like other forms of legislation, the executive branch usually initiates it.⁷⁴ Ghana ratified the ACRWC on 10 June 2005 without reservations.⁷⁵ No information was found on whether a compatibility study was carried out before ratifying the treaty. There is little evidence to suggest that the principles in the African Children's Charter are widely known among adults and children beyond CSOs that work in the child-rights sector in Ghana. No evidence of a local language translation of the ACRWC was found.

3 Government focal point

The Department of Children, within the Ministry of Gender, Children and Social Protection is the national entity responsible for implementing programmes concerning the rights of children in Ghana.⁷⁶ There is no

69 As above.

70 Guidelines on comprehensive sexuality education (n 37) 11.

71 Guidelines on comprehensive sexuality education (n 37) 67.

72 Art 75(1) of the 1992 Constitution.

73 Article 75(2) of the 1992 Constitution.

74 Nyarko (n 1) 98.

75 African Union 'List of countries which have signed, ratified/acceded to the African Charter on the Rights and Welfare of the Child' <https://au.int/sites/default/files/treaties/36804-sl-AFRICAN%20CHARTER%20ON%20THE%20RIGHTS%20AND%20WELFARE%20OF%20THE%20CHILD.pdf> (accessed 31 October 2020).

76 Ministry of Gender, Children and Social Protection 'Departments' <https://www.mogcsp.gov.gh/about/departments/> (accessed 2 November 2020).

single national policy that specifically and comprehensively deals with the implementation of the Treaty. However, there are many policies that have implications for the implementation of the ACRWC which are discussed throughout this report. The Commission on Human Rights and Administrative Justice which functions as the national human rights institution has a Department of Women and Children which engages in research, advocacy and litigation of childrens-rights issues.⁷⁷

4 Domestication or incorporation of the Charter

Both the Constitution and national legislation define a child as any person below the age of 18. The Criminal Code sets the age of criminal responsibility at 12 years⁷⁸ and that of sexual consent at 16,⁷⁹ while the Children's Act specifies 18 as the minimum age of marriage.⁸⁰ There is currently no specific legal provision on the age at which a child may consent to medical treatment without parental approval, even though both the Constitution and Children's Act provide that a child shall not be denied access to medical treatment on the basis of religion or other belief.⁸¹ While Ghana's Report to the Committee indicates that children may receive medical treatment and counselling apart from surgery without parental consent,⁸² The Patients' Charter suggests that the right to consent will be exercised by parents or guardian on behalf of a child.⁸³ The Adolescent Policy,⁸⁴ which seeks to improve healthcare services for adolescents is also silent on whether these services can be provided without parental consent. The National HIV and AIDS Policy, indicates that children between 16 and 18 may obtain information and counselling related to reproductive health and medical practitioners may dispense with the consent of the

77 A Namanan 'The impact of the Maputo Protocol in Ghana' (2020), on file with author.

78 Sec 26 of the Criminal and Other Offences Act, 1960 (Act 29).

79 Sec 14.

80 Sec 14 of Children's Act, 1998 (Act 560).

81 Art 28(4) of the 1992 Constitution and sec 8(2) of Children's Act.

82 Republic of Ghana's initial, first and second consolidated report to the African Committee of Experts on the Rights and Welfare of the Child (2005-2013) 8.

83 Ghana Health Service 'The patients' charter' <https://ghanahealthservice.org/ghs-subcategory.php?cid=2&scid=46> (accessed 9 November 2020).

84 Ghana Health Service 'Adolescent health service and policy strategy' (2019) <https://www.afro.who.int/sites/default/files/2017-10/ADOLESCENT%20HEALTH%20SERVICE%20POLICY%20%20AND%20STRATEGY.pdf> (accessed 8 November 2020).

parents of children in the same age group and offer necessary services if it is in the best interests of the Child.⁸⁵

While corporal punishment in schools has been abolished by a directive of the Ghana Education Service,⁸⁶ the practice is still condoned in law. For instance, section 13(2) allows reasonable and justified corporal punishment for a child depending on age and maturity, while ‘[s]ection 41 of the Criminal Offences Act allows the use of a “blow or other force” against a child under the age of 16 years by a parent, guardian, or their delegate, master, and the master of an apprentice, for misconduct or disobedience, so long as the force is reasonable in kind and degree’.⁸⁷ Section 31 of the Criminal and Other Offences Act provides that the use of force or harm may be justified if used ‘to correct a child, servant, or other similar person, for misconduct’. These provisions provide a legal basis for the continued prevalence of corporal punishment against children in Ghana.

Ghana has ratified the Convention on the Rights of the Child and its Optional Protocol on the Involvement of Children in Armed Conflict but has not ratified the other two protocols.⁸⁸ The right to birth registration is guaranteed in the Children’s Act⁸⁹ and implemented through the Registration of Births and Deaths Act, 1965 (Act 301), which requires the registration of all children born in Ghana. Ghana has recently enacted a new Births and Deaths Registration Act, 2020, which requires parents and guardians to register the birth of a child.⁹⁰ Under the new Act, registration is free if done within the first 12 months.⁹¹ Late registration will attract a fee to be prescribed.⁹² Citizenship is, however, acquired through decent,

85 Ghana Aids Commission ‘National HIV and AIDS Policy’ (2019) 37 <https://ghanaid.gov.gh/mcadmin/Uploads/nationalHIVandAIDSPolicy.pdf> (accessed 9 November 2020).

86 S Kuwornu ‘GES, the law and the ban on corporal punishment’ <https://ghanalawhub.com/ges-the-law-and-the-ban-%E2%80%8Bcorporal-punishment/> (accessed 8 November 2020).

87 Ministry of Gender, Children and Social Protection ‘Position paper on corporal punishment in Ghana’ (2018) 8 <https://www.unicef.org/ghana/media/1956/file/Corporal%20Punishment%20in%20Ghana.pdf> (accessed 8 November 2020).

88 UN Treaty Body Database https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=67&Lang=EN (accessed 8 November 2020).

89 Sec 6(4).

90 Births and Deaths Registration Act, 2020 <https://www.parliament.gh/epanel/docs/bills/REGISTRATION%20OF%20BIRTHS%20AND%20DEATHS%20BILL,%202020.pdf#viewer.action=download> (accessed 10 November 2020).

91 Sec 13(3) of the Births and Deaths Registration Act, 2020.

92 Sec 13(6).

which must be traced to either of the parents or a grandparent being Ghanaian⁹³ rather than the mere fact that the child was born in the country and thus registration does not guaranteed citizenship. Nonetheless a child of not more than seven years of age who is found within the jurisdiction and whose parents are unknown is presumed to be a citizen.⁹⁴

Ghana is a dualist country and therefore domestication is done through the enactment of legislation or policy to give effect to the provisions the Treaty.⁹⁵ The Constitution of Ghana is silent on the relationship between international law and domestic law,⁹⁶ it does also not expressly recognise international law as one of the sources of law in Ghana.⁹⁷ Article 2(1) of the Constitution, however, expressly provides that the Constitution is the supreme law of the Ghana and therefore all other laws including international treaties are subordinate to the Constitution. Consequently, where there is a conflict between the provision of the Constitution and that of the ACRWC, the constitutional provisions will take precedence. It must, however, be clarified that article 33(5) of the Constitution recognises that the human rights provisions of the Constitution are not exhaustive and may include other rights that are recognised in a democracy⁹⁸ – including the provisions of international human rights treaties⁹⁹ such as the ACRWC. In this regard, provisions of the ACRWC enumerating rights, which are not directly in conflict with provisions of the Constitution of Ghana, could be argued to be implicitly included as part of the rights protected in the Constitution and therefore have equivalent status to the Constitution of Ghana. In such instances, it is submitted that provisions of the ACRWC may be directly invoked before national courts. On other hand, where the ACRWC is domesticated through legislation, its provisions will have the equivalent status of national legislation,¹⁰⁰ subordinate to the Constitution. It must also be highlighted that, the failure to domesticate the ACRWC

93 Arts 6-10 of the 1992 Constitution.

94 Art 6(3) of the 1992 Constitution.

95 GEK Dzah 'Transcending dualism: Deconstructing colonial vestiges in Ghana's treaty law and practice' in M Addaney, MG Nyarko & E Boshoff (eds) *Governance, human rights and political transformation in Ghana* (2020) 117.

96 EK Quansah 'An examination of the use of international law as in interpretative tool in human rights litigation in Ghana and Botswana' in M Killander (ed) *International law and domestic human rights litigation in Africa* (2010) 37 at 39; Quashigah (n 1); Nyarko (n 1) 99.

97 As above.

98 Art 33(5) of the 1992 Constitution.

99 *Ghana Lotto Operators Association* case (n 4); *Adjei-Ampofo v Attorney-General* [2003-2004] 1 SCGLR 411; *NPP v Attorney-General* [1996-97] SCGLR 729 at 761.

100 CN Okeke 'The use of international law in the domestic courts of Ghana and Nigeria' (2015) 32 *Arizona Journal of International & Comparative Law* 372 at 396.

after ratification, does not *per se* render its provisions inapplicable in Ghana.¹⁰¹

5 Legislative reform and adoption

Many laws have been adopted since the ratification of the Charter which protect some of the rights guaranteed in the Charter. These include the Domestic Violence Act, 2007 (Act 732), the Human Trafficking Act 2005 (Act 694), the Criminal Code (Amendment) Act, 2007 (741), the Persons with Disability Act, 2006 (Act 715), the Education Act, 2008 (Act 778), and the Births and Deaths Registration Act, 2020.

Human rights are generally enforceable under article 33 of the 1992 Constitution which allows any person whose rights are violated to apply to the High Court for redress. It is, however, not clear if children may enforce these rights on their own. The High Court Civil Procedure Rules 2004,¹⁰² which was enacted to give effect to article 33 also employs similar terminology without specifying if children may enforce these rights on their own or through a parent or guardian.¹⁰³ In addition to the general human rights protections in the Constitution which applies to everyone, including children, there are specific human rights provisions in the Constitution which are for the benefit of children. These include the right to education and¹⁰⁴ the prohibition of harmful practices.¹⁰⁵ Article 28 specifically makes provision for children's rights by mandating parliament to make laws that ensure that children have the right to special care and assistance, reasonable provision from the estate of a deceased parent (whether born in or out of wedlock), special protection against physical and moral hazards, protection from hazardous work, cruel and inhuman treatment or punishment and not to be denied medical treatment, education or other social or economic benefits on account of religion. These rights are further guaranteed in the Children's Act and other legislation. The Children's Act for instance prohibits child marriage and the Criminal and Other Offences Act criminalises harmful practices such as female genital mutilation and cultural servitude (trokosi). Amendments to the Criminal

101 *NPP v Inspector General of Police* [1993-94] 2 GLR 459 466; see also RF Oppong 'Re-imagining international law: An examination of recent trends in the reception of international law into national legal systems in Africa' (2006) 30 *Fordham International Law Journal* 296 at 313-317.

102 Available at <https://www.wipo.int/edocs/lexdocs/laws/en/gh/gh032en.pdf> (accessed 10 November 2020).

103 See Rule 67.

104 Art 25.

105 Art 26(2).

and Other Offences Act in 2012¹⁰⁶ introduced criminal sanctions for sexual exploitation.

Section 101 of the Criminal and Other Offences Act criminalises sexual intercourse with a child below the age of 16 years with or without consent. This means that children below the age of 16 years are unable to consent to sex even with their peers and would be criminally liable.¹⁰⁷ Criminal liability would, however, usually fall on boys¹⁰⁸ as Ghana's criminal law is quite outdated and still defines sexual offences with reference to penetration.¹⁰⁹

Abortion is generally criminalised in Ghana except where the pregnancy results from rape, defilement or incest; or where 'continuance of the pregnancy would involve risk to the life of the pregnant woman or injury to her physical or mental health'; or 'there is substantial risk that if the child were born, it may suffer from, or later develop, a serious physical abnormality or disease'.¹¹⁰ In all instances, abortion must be performed by a qualified medical practitioner in an approved facility.¹¹¹ Consequently, abortion is not generally available on demand. The Guidelines of the Ministry of Health indicate that children who qualify for abortion do not require parental consent, even though this is encouraged.¹¹² The Adolescent Health Service Policy and Strategy which seeks to increase contraceptive use among adolescents is silent on the requirement of parental consent. The age of criminal responsibility is set at 12 years under the Criminal Code.¹¹³ The Children's Act (1998) and Juvenile Justice Act (2003) make comprehensive provisions on the treatment of children in conflict with the

106 Criminal and Other Offences (Amendment) Act, 2012 (Act 849).

107 Ministry of Gender, Children and Social Protection (n 16).

108 As above.

109 See art 99 of the Criminal and Other Offences Act which provides that: 'Whenever, upon the trial of any person for an offence punishable under this Code, it is necessary to prove carnal knowledge or unnatural carnal knowledge, the carnal knowledge or unnatural carnal knowledge shall be deemed complete upon proof of the least degree of penetration'.

110 Sec 58 of Criminal and Other Offences Act, 1960 (Act 29).

111 As above.

112 Ministry of Health 'Prevention and management of unsafe abortion: Comprehensive abortion care services standards and protocols' (2012) para d <https://abortion-policies.srhr.org/documents/countries/02-Ghana-Comprehensive-Abortion-Care-Services-Standards-and-Protocols-Ghana-Health-Service-2012.pdf> (accessed 10 November 2020); W Chavkin, P Baffoe & K Awoonor-Williams 'Implementing safe abortion in Ghana: "We must tell our story and tell it well"' (2018) 143 *International Journal of Gynecology & Obstetrics* 25 <https://doi.org/10.1002/ijgo.12674> (accessed 10 November 2020).

113 Sec 26 of the Criminal and Other Offences Act.

law. The Children's Act for instance, established Child Panels mandated to mediate in minor criminal offences involving children.¹¹⁴ The Child Panels are mandated to facilitate reconciliation between the child and the person offended by the child's actions and may propose an apology or restitution as a remedial order. In other instances, a Child Panel may impose a community guidance order which would place the child under the guidance and supervision of a responsible adult in the community for a period of up to six months for the purpose of reformation.¹¹⁵

On its part, the Juvenile Justice Act, 2003 (Act 653) provides that a child in conflict with the law shall be dealt with differently from adults unless special circumstances exist justifying otherwise,¹¹⁶ and emphasises that the best interests of the child shall be the primary consideration by any person or institution involved with a juvenile offender.¹¹⁷ It emphasises the privacy rights of a juvenile offender, a violation of which is a criminal offence subject to up to 12 months' imprisonment or a fine.¹¹⁸ It contains elaborate provisions concerning the manner in which a juvenile may be arrested¹¹⁹ and searched¹²⁰ and specifies that the arresting officer shall inform a parent, guardian or close relative of the arrest. In their absence, the arresting officer shall inform the probation officer in charge of the district who shall be responsible for tracing the parents, guardian or close relative of the juvenile.¹²¹ It allows a police officer to caution with or without a condition rather than arrest a juvenile, if it is in the best interests of the juvenile¹²² and prohibits the questioning or interviewing of a juvenile in the absence of the parent(s), guardian, lawyer or close relative and where they cannot be located the presence of a probation officer is mandatory.¹²³

Juveniles in detention must be held separately from adults, cannot be held together with other juveniles of the opposite sex and have the right to adequate food, medical treatment, visits by parent(s), guardians, lawyers or close relatives and other conditions necessary for the welfare

114 Sec 32.

115 As above.

116 Sec 1.

117 Sec 2.

118 Sec 3.

119 Secs 4-9.

120 Sec 10.

121 Sec 11.

122 Sec 12.

123 Sec 13.

of the juvenile.¹²⁴ Juveniles are to be tried in private by juvenile courts, allowing access to only court staff, parties, lawyers and parents/guardians; proceedings are required to be informal and police officers are not allowed to wear uniform.¹²⁵

A juvenile offender may only be tried by a court other than a juvenile court if the offence was committed jointly with an adult or the offence would have been subject to the death penalty if convicted by an adult.¹²⁶ Even in such instances, the court must remit the juvenile offender for sentencing if a guilty verdict is pronounced.¹²⁷ The juvenile court is allowed to order the juvenile to be kept in pre-trial remand detention, rather than commit the juvenile to the care of the parents, guardian or other responsible adult in the community.¹²⁸ While undergoing trial, a juvenile offender has the right to remain silent; have a parent, guardian or probation officer present; and has the right to legal representation and legal aid.¹²⁹ A juvenile is also guaranteed the right to an expeditious hearing, which should be completed within six months failing which 'the juvenile shall be discharged and is not liable for any further proceedings in respect of the same offence'.¹³⁰

A juvenile court is required to order a social enquiry report to be prepared where a juvenile is charged with a criminal offence with the aim of ascertaining the circumstances of the child, circumstances under which the offence was committed and the recommended sentence. Copies of the report are to be furnished to the juvenile or their legal representative.¹³¹ Upon consideration of the report, a judge may order the diversion of the juvenile from the criminal justice system unless it involves a serious offence.¹³² A judge may subject a juvenile to a limited number of punishments including probation, committal to the custody of parent(s), guardian, relative or a fit adult in the community, a fine (to be paid by the juvenile or the parent(s), guardian or relative of the juvenile) or send the juvenile to a correctional centre.¹³³ Courts are proscribed from imposing imprisonment and the

124 Sec 15.

125 Sec 16

126 Sec 17.

127 Sec 18.

128 Sec 23(1)(a).

129 Sec 22.

130 Sec 33.

131 Sec 24.

132 Secs 25-28.

133 Secs 29-31.

death sentence on juvenile offenders.¹³⁴ The maximum sentence that may be imposed on a juvenile offender is three years in a correctional centre.¹³⁵ The Act mandates the Minister responsible for social welfare to establish correctional centres for the purpose of holding juvenile offenders, where necessary.¹³⁶

These provisions are substantially in line with the provisions of the ACRWC. However, there are still many challenges in implementation, such as the failure of government to establish Child Panels in all the districts, a limited number of correctional centres and limited sentencing options which make diversion difficult to achieve. Low birth registration rates also affect the delivery of juvenile justice as it makes it difficult to ascertain the age of an offender.¹³⁷ As to Budget allocation for children, it is made to the relevant ministries, departments and agencies of government such as the Ministries of Education, Health, Gender, Children and Social Welfare.¹³⁸ However, there is no specifically designated visible budget for children per se, even though one can deduce this from government spending on child rights related programmes and activities such as education and healthcare. There is no evidence that children participate in the decision making concerning the budget allocation to them.

6 Policy reform and adoption

Several policies have been adopted by Ghana pursuant to its ratification of the Charter, these include the Child and Family Welfare Policy, the National School Feeding Policy 2015, the Justice for Children Policy 2015, and National Gender Policy 2015. This indicates that the ACRWC is one of the legal obligations that underpins the policy.¹³⁹

134 Sec 32.

135 Sec 46.

136 Sec 39.

137 MA Nyantekyi 'Rethinking juvenile justice in Ghana: proposing practical measures through child rights based approach' (2013).

138 Ghana NGOs Coalition on the Rights of the Child 'Convention on the Rights of Children (CRC) report to UN Committee on the Rights of the Child' (2014) 50 https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/GHA/INT_CRC_NGO_GHA_17939_E.pdf (accessed 7 November 2020). See *The budget statement and economic policy of the government of Ghana for the financial year 2020* https://mofep.gov.gh/sites/default/files/budget-statements/2020-Budget-Statement-and-Economic-Policy_v3.pdf (accessed 7 November 2020).

139 These policies are available at <https://www.mogcsp.gov.gh/policies/#> (accessed 2 November 2020).

Child participation is entrenched in both legislation and policy frameworks concerning the rights of the child. For instance, the Children's Act provides that

No person shall deprive a child capable of forming views the right to express an opinion, to be listened to and to participate in decisions which affect his well-being, the opinion of the child being given due weight in accordance with the age and maturity of the child.¹⁴⁰

Similarly, the Children's Act requires the Child Panels established at the district level to mediate civil and criminal matters concerning children,¹⁴¹ to 'permit a child to express his opinion and participate in any decision which affects the child's wellbeing commensurate with the level of understanding of the child concerned'.¹⁴² Further, the Act guarantees that 'a child shall have a right to give an account and express an opinion at a family Tribunal',¹⁴³ which is established to adjudicate on 'matters concerning parentage, custody, access and maintenance of children'.¹⁴⁴

The Child and Family Welfare Policy of 2014 also recognises the importance of child participation including 'children's right to freedom to express opinions and to have a say in matters affecting their social, economic, religious, cultural and political life', which is seen as essential in the realisation of children's rights and preparing them for an active role in society.¹⁴⁵ To this end, '[t]he Policy recognises children and young people as agents of change in their own capacity' and encourages active engagement of children in addressing child protection issues.¹⁴⁶ In particular, the policy encourages:

- (a) Efforts that make it possible for children to feel safe to discuss issues of violence and abuse;
- (b) Children's associations and support groups, including for vulnerable groups such as children living on the street, survivors of child abuse, and children with disability;

140 Sec 11 of Children's Act, 1998 (Act 560).

141 Secs 27 & 28.

142 Sec 30(5).

143 Sec 38(2).

144 Sec 35.

145 Child and Family Welfare Policy 2014, para 2.3.4 <https://bettercarenetwork.org/sites/default/files/Child%20and%20Family%20Welfare%20Policy%20-%20Ghana.pdf> (accessed 2 November 2020).

146 Child and Family Welfare Policy 2014, para 3.1.

- (c) Children's participation in decision making processes at family and community level; and
- (d) Inclusion of children's voices in research, monitoring and assessments of child protection issues.¹⁴⁷

During the 30th anniversary celebration of the Convention on the Rights of the Child, 80 children from across all 16 regions of Ghana participated in what was designated as Ghana's first official children's parliament.¹⁴⁸ Less formalised versions of children's parliaments existed prior to this official inauguration,¹⁴⁹ in some instances organised and facilitated by civil society organisations.¹⁵⁰ Civil society organisations such as Curious Minds provide a platform for youth and child participation on issues concerning children's rights, adolescent and youth reproductive health and rights, and children and youth development, using radio and other media.¹⁵¹ These platforms are, however, not available in underserved communities.¹⁵² Consequently, '[d]espite efforts to recognise and support child participation, the actual level of child participation remains uncertain across the country, thus emphasising the need for continued efforts to engage children and youth'.¹⁵³ There is currently no publicly available

147 As above.

148 Ministry of Gender, Children and Social Protection 'Commemoration of the 30th anniversary of the Convention on the Rights of the Child and the launch of the Children's Parliament' <https://www.mogcsp.gov.gh/commemoration-of-the-30th-anniversary-of-the-convention-on-the-rights-of-the-child-and-the-launch-of-the-childrens-parliament/> (accessed 2 November 2020).

149 F Adebayo 'Children and youth advocacy in Africa: Context, approaches and lessons' (2017) 5 *Intellectual Property Rights* 192 <https://www.longdom.org/open-access/children-and-youth-advocacy-in-africa-context-approaches-and-lessons-2375-4516-1000192.pdf> (accessed 2 November 2020).

150 See for instance 'Nine year old Akosua Adoma is right honourable speaker of Diaso child parliament' *World Vision Ghana* 08 August 2019 <https://www.wvi.org/stories/ghana/nine-year-old-akosua-adoma-right-honorable-speaker-diaso-child-parliament> (accessed 2 November 2020), the Diaso children's parliament was formed by World Vision Ghana; 'Children parliament calls for menstrual hygiene education' *Ghana Business News* 17 August 2020 <https://www.ghanabusinessnews.com/2020/08/17/children-parliament-calls-for-menstrual-hygiene-education/> (accessed 2 November 2020), the Upper West Regional Children's Parliament is an initiative of Pollie Kids, a local youth civil society organisation.

151 <https://cmghana.org/our-focus/> (accessed 4 November 2020).

152 ACERWC 'Concluding Recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the Republic of Ghana's Initial Report on the Status of Implementation of the African Charter on the Rights and Welfare of the Child' (December 2016) para 17 https://acerwc.africa/wp-content/uploads/2018/14/Concluding_observation%20Ghana.pdf (accessed 4 November 2020).

153 EPCAT International *Global monitoring status of action against commercial sexual exploitation of children: Ghana* (2014) 46 <https://www.ecpat.org/wp-content/>

information on the modalities for the establishment, composition and mandate of the children's parliament. At the school level, child rights clubs exist in most schools throughout the country and children are allowed encouraged to participate in the child rights clubs, even though in some instances children complain that their parents/guardians 'were not thrilled about their participatory involvement from the start, claiming they would get spoiled or stubborn'.¹⁵⁴ Child participation is also perceived as alien to Ghanaian culture and adults perceive a well-behaved child as one that does not ask questions.¹⁵⁵ Thus, the culture of 'age hierarchy and the tradition of punishing children' coupled with the general dislike for or lack of understanding of child rights by adults as well as the state's general failure to properly institutionalise child participation pose significant impediments to the realisation of child participation.¹⁵⁶ While the Children's Act is silent on the right to assembly, association and access to information, these are rights generally guaranteed in the Constitution for everyone, including children.

7 Court judgments

No evidence was found of the ACRWC or the general comments having been cited in any judicial decision.

8 Awareness and use by Civil Society Organisations

There is awareness of the ACRWC among CSOs that work on the child rights sector, especially members of the Ghana NGO Coalition on the Rights of the Child, who usually participate in the sessions and other activities of the ACERWC,¹⁵⁷ and therefore use the provisions of the Charter in their campaigns, advocacy and sensitisation. However, awareness of international human rights treaties among the general public

uploads/2016/04/A4A2011_AF_GHANA_FINAL2.pdf (accessed 2 November 2020).

- 154 P Björnsdóttir & J Einarsdóttir 'Child participation in Ghana: Responsibilities and rights' in E Oinas, H Onodera, and L Suurpää (eds) *What politics? Youth and political engagement in Africa* (2017) 285.
- 155 E Manful & SE Manful 'Child welfare in Ghana: the relevance of children's rights in practice' (2014) 14 *Journal of Social Work* 313 at 324.
- 156 Manful & Manful (n 155); see also E Cudjoe, A Abdullah & AA Chua 'Children's participation in child protection practice in Ghana: Practitioners' recommendations for practice' (2020) 46 *Journal of Social Service Research* 462; J Adu-Gyamfi 'Barriers to children and young people's participation in policy making in Ghana' (2015) 11 *Journal of Social Sciences* 363.
- 157 The author has on a number of occasions interacted with members of the Coalition at various sessions of the ACERWC and at different fora where discussions revolved around the implementation of the ACRWC.

is quite low and even lower when it comes to African Union human rights treaties.¹⁵⁸ A recent study revealed that there is limited awareness of the ACRWC among children and their teachers even though human rights is part of the school curricula.¹⁵⁹

Civil society organisations working on children's rights especially members of the Ghana NGO Coalition on the Rights of the Child utilised the provisions of the Charter in their programming and usually involved in the activities of the Committee. CSOs are involved in the implementation of the Charter through advocacy, contributing to policy formulation and the provision of direct services to children.¹⁶⁰ No evidence of civil society alternative reports to the Committee was found.

9 Awareness and use by lawyers and the judiciary

The government with the assistance of UNICEF and other partners are organising training for judicial officers and other law enforcement officials on various child rights issues including gender-based violence. There is nationwide training of staff of the judicial service based on the manual which is currently being supported by UNICEF.¹⁶¹ The training manual lists the ACRWC among the timeline of legal instruments which Ghana has ratified and which informs the contents of the training manual.¹⁶²

In December 2018, the Judicial Service inaugurated the first child friendly gender-based violence court.¹⁶³ This was followed with the Operational Guidelines¹⁶⁴ in 2019. The Operational Guidelines

158 AO Atiemo *Religion and the inculturation of human rights in Ghana* (2013).

159 MM Afenyo 'Knowledge of child rights in Ghana: Implementing article 42 of the United Nations Convention on the Rights of the Child' 2019, Master's dissertation, University of Ghana, <http://ugspace.ug.edu.gh/bitstream/handle/123456789/33218/Knowledge%20of%20Child%20Rights%20%20in%20Ghana-%20Implementation%20of%20Article%2042%20of%20the%20United%20Nations%20Convention%20on%20the%20Rights%20of%20the%20Child.pdf?sequence=1&isAllowed=y> (accessed 10 November 2020).

160 MA Afenyo (n 159) 70.

161 As above.

162 Judicial Service of Ghana 'Gender based violence training manual' (2019) 47 <https://www.unicef.org/ghana/media/3301/file/Module%201%20-%20Gender%20Sensitivity.pdf> (accessed 7 November 2020).

163 UNICEF Ghana 'A new child-friendly court established in Accra' <https://www.unicef.org/ghana/press-releases/new-child-friendly-court-established-accra> (accessed 7 November 2020).

164 Judicial Service of Ghana 'Operational guidelines: Child-friendly gender based violence courts in Ghana' (2019) <https://www.unicef.org/ghana/media/2781/file/Operational%20Guidelines%20for%20Child-Friendly%20Gender-Based%20>

specifically indicate that the establishment of the child-friendly, gender-based violence courts is in line with Ghana's international human rights obligations, including the ACRWC.¹⁶⁵ No evidence was found of the general comments having been translated into local languages, being popularised by the media or referenced in academic publications. While civil society organisations working in the child rights sector are aware of the General Comments of the Committee, there is no evidence that there is such awareness among government officials.

10 Higher education and academic writing

Legal education in Ghana is provided by the University of Ghana School of Law, Kwame Nkrumah University of Science and Technology, Ghana Institute of Management and Public Administration, University of Cape Coast and a host of other private universities. In all the law faculties in public universities listed above, international human rights law is taught as an elective subject. One can reasonably conclude that there is limited focus on international human rights law generally and consequently the provisions of the Treaty are not well known among both law students and legal academics. The Treaty is occasionally mentioned in academic writing, especially when highlighting the international obligations Ghana has signed up to relating to children's rights.¹⁶⁶ However, there is no evidence of extensive research focusing on the provisions of the Charter.

11 National Human Rights Institutions

The Commission on Human Rights and Administrative Justice, which is the national human rights institution, has a Department of Women and Children which uses the provisions of the Charter in the discharge of its duties.

12 State reporting

Ghana submitted its initial report under the ACRWC in September 2014 covering the years 2005-2013 which was considered at the 28 sessions of the ACERWC in 2015.¹⁶⁷ The report covers a general overview of the

Violence%20Courts%20.pdf (accessed 7 November 2020).

165 Judicial Service of Ghana (n 164) 2.

166 See MA Nyantakyi 'Rethinking juvenile justice in Ghana: Proposing practical measures through a child rights based approach' 2013, Master's dissertation, Institute for Social Studies, Netherlands; RK Ame, DL Agbényiga & NA Apt (eds) *Children's rights in Ghana: Reality or rhetoric?* (2011); Manful & Manful (n 155) 313.

167 African Committee of Experts on the Rights and Welfare of the Child 'Initial and periodic reports table' <https://www.acerwc.africa/initial-and-periodic-reports/>

legislative and policy measures adopted by the state party to implement the provisions of the Charter as well as the challenges that the state party faces in the implementation of its obligations. The report also indicates that it was prepared with the input of non-governmental organisations. The contents of the report are generally in line with the reporting guidelines of the Committee. There have been no subsequent periodic reports submitted to the ACERWC. No alternative report from civil society organisations was found, after a diligent search. The report was presented by Mrs Della Sowah, Deputy Minister of Gender, Children and Social Protection, who led the government delegation.¹⁶⁸ There is no indication as to whether children were involved in the preparation and presentation of the report to the Committee. The most recent concluding observations were handed down by the ACERWC in December 2016,¹⁶⁹ which are summarised below:

12.1 General measures of implementation

While the ACERWC commended the government for some of the gains that have been made in the implementation of the ACRWC through the adoption of legislation, policies and programmes,¹⁷⁰ it raised a number of concerns and made recommendations to the government. The Committee while acknowledging that there is a dedicated Department of Children within the Ministry of Gender, Children and Social Protection, charged with the coordination and monitoring of all child related projects in the country, it raised issue with the widening mandate of the Ministry which could result in diminished prioritisation of children's rights.¹⁷¹ It also raised concern about the fact that the Department of Children is not decentralised at the district level and recommended that Department of Children be decentralised to reach the district level to facilitate the effective implementation of children's rights.¹⁷²

(accessed 2 November 2020).

168 28th Session of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) 21 October-1 November 2016 Banjul, The Gambia, Draft Report https://www.acerwc.africa/wp-content/uploads/2018/07/28th-ACERWC-_Report-English.pdf (accessed 7 November 2020).

169 Concluding recommendations (n 152).

170 Concluding recommendations (n 152) para 3.

171 Concluding recommendations (n 152) paras 4-5.

172 Concluding recommendations (n 152) para 6.

12.2 Definition of a child

The Committee raised concern with the fact that even though the law rightly defines a child as anyone below the age of 18 and has other provisions regarding the age of sexual consent, minimum age of criminal responsibility and prohibition of child marriage,¹⁷³ several issues still remain. It therefore recommended that the state develops a system to regulate children's access to alcoholic beverages; undertakes sensitisation on ending child marriage which currently hovers around 21 per cent; and ensures the Juvenile Justice Act apply to all children and consider raising the minimum age of criminal responsibility from the age of 12, taking into account the emotional, mental and intellectual maturity of children at this age.¹⁷⁴

12.3 Non-discrimination

While recognising that the Constitution and national law prohibits discrimination the Committee raised concern about the vulnerable groups of children, including children with disabilities, the girl child and children from rural areas who are still victims of discrimination.¹⁷⁵ It also decried the lower retention rate of girls beyond basic education due to economic constraints, inadequate menstrual facilities and teenage pregnancy.¹⁷⁶ It is therefore recommended that inclusive education be expanded and adequate funding provided for special schools; 'the Livelihood against Poverty (LEAP) programme focus on assisting girls from poor households, raise parental awareness on the importance of keeping girls in schools, and introduce age appropriate sexual and reproductive education, including the importance of contraception, in school curriculums'; and provide assistance and encouragement to enable girls to return to school after delivery.¹⁷⁷

12.4 Best interests of the child

The Committee took issue with the long waiting time for child custody cases, the delay in the adoption of the Spousal Property Bill, and the high number of child abuse cases and recommended that the government address these.¹⁷⁸

173 Concluding recommendations (n 152) para 7.

174 Concluding recommendations (n 152) para 8.

175 Concluding recommendations (n 152) para 9.

176 Concluding recommendations (n 152) para 10.

177 Concluding recommendations (n 152) para 11.

178 Concluding recommendations (n 152) para 12.

12.5 Development and survival

The Committee also took issue with the fact that the law criminalises abortion which exposes girls to risking their lives through illegal abortions.¹⁷⁹

12.6 Name, nationality, identity and registration of birth

The Committee commended the government for improving birth registration from 17 per cent in 2002 to 66 per cent in 2013, but was concerned that a high number of births still go unregistered. It also raised concern over the fact that article 6(2) of the 1992 Constitution and section 7 of the Citizenship Act of 2000 are contrary to article 6 of the ACRWC which exposes some children to statelessness. It recommended increased funding to the Births and Death Registry, conducting an assessment on statelessness to ascertain the number of children who are stateless or at risk and addressing this issue, as well as amending citizenship laws to bring them into conformity with the provisions of the Charter.¹⁸⁰

12.7 Protection against abuse and torture

The Committee commended the state for efforts made to address abuse and torture against children through various laws, but raised concern that some children continue to suffer the worst forms of abuse, including migrant children who are sometimes engaged in labour in busy markets, exposing them to exploitation and some resorting to prostitution. It recommended that the state adopt comprehensive measures to address this issue including training labour inspectors and providing shelter for children until they are reunited with their families, providing assistance to children from migrant households and enforcing laws prohibiting corporal punishment.¹⁸¹

12.8 Freedom of expression

The Committee was concerned that despite the guarantee of freedom of expression in the Constitution, legislation and policy ‘socially, the opinions of children are rarely considered and children’s clubs’ are not generally available in underserved communities. It therefore recommended the

179 Concluding recommendations (n 152) para 13.

180 Concluding recommendations (n 152) paras 14-15.

181 Concluding recommendations (n 152) para 16.

involvement of children in policy making should be done meaningfully and views of child taking into consideration.¹⁸²

12.9 Protection of privacy

While commending the state party for anonymising child victims of sexual violence, the Committee expressed concern about other privacy violations including the frequent media reporting on children accused of witchcraft which impacts on the dignity and privacy of children and recommended media laws be strictly applied to protect the identity of children in the media as well as expand privacy protection to cover all forms of abuse against children and ensuring that health facilities maintain the privacy of children.¹⁸³

12.10 Family environment and alternative care

The Committee raised concern about the inadequate monitoring mechanism on inter-country adoption and recommended that the ratification of the 1993 Hague Convention on Inter-Country Adoption be expedited and proper monitoring mechanisms be put in place.¹⁸⁴ It also raised concern over 'the continuing high rate of maternal mortality attributable to the limited availability of contraception which results in high pregnancy and unsafe abortion rates among adolescents', and the acute malnutrition among the children. It recommended among others that barriers which hinder access to healthcare services be removed and contraception be provided to children to prevent unwanted pregnancies and sexually transmitted diseases.¹⁸⁵

12.11 Education, leisure and cultural activities

The Committee commended the state for implementing free compulsory basic education, along with free uniforms, textbooks and one free school meal per day but raised concern over hidden charges in education which hinder access. It also raised concern over the low quality of public schools, infrastructural deficits resulting in children studying under trees, inadequate monitoring of private schools and dropout rate of girls who fall pregnant. It recommended that hidden costs in education be removed and education be made progressively free at all levels, ensuring proper training for teachers, monitoring schools to improve standards, addressing

182 Concluding recommendations (n 152) para 17.

183 Concluding recommendations (n 152) para 18.

184 Concluding recommendations (n 152) paras 19-21.

185 Concluding recommendations (n 152) paras 22-23.

factors that hinder girls from remaining in school, and implementing the manual on positive forms of discipline for teachers with the aim of enacting legislation prohibiting corporal punishment in schools.¹⁸⁶

On leisure, recreation and culture, the Committee expressed concern over the limited recreational spaces for children, content aired by media houses at certain times is not being properly regulated and the only television station dedicated to children being scrapped and recommended that these challenges be addressed.¹⁸⁷

12.12 Children with disabilities

The Committee expressed concern that despite favourable legislative framework, children with disabilities are still not enjoying the right to education and inclusive education has not yielded results. It also expressed concern that specialised healthcare services are not available for children with disabilities who are sometimes left in adult psychiatric hospitals and prayer camps and the fact that children with disabilities are sometimes used by their parents as objects of begging as well as the inadequate funding of disability rights issues. It recommended that facilities be adapted in line with the Disability Act of 2006 and funding increased for disability rights issues, including inclusive education.¹⁸⁸

12.13 Child labour

The Committee raised concern over the fact that an estimated 1.9 million children are engaged in child labour and there is a surge of commercial sex exploitation of children along the coastal regions, and recommended a comprehensive programme to rescue, rehabilitate and reintegrate children involved in child labour, invest in the prevention of child labour and address the commercial sex exploitation of children along the coastal regions.¹⁸⁹

12.14 Juvenile justice

The Committee expressed concern that notwithstanding favourable legislative framework, children in conflict with the law are tried in the regular courts and detained with adults. Concerns were also raised over the undue delays in juvenile courts, absence of legal aid and the limited

186 Concluding recommendations (n 152) paras 24-26.

187 Concluding recommendations (n 152) paras 27-28.

188 Concluding recommendations (n 152) paras 29-30.

189 Concluding recommendations (n 152) para 31.

number of correctional facilities (two in the whole country) which means that children who are sent to such facilities outside their regions of residence lose contact with their families. It recommended that detention be used as a measure of last resort and that children should not be detained with adults; government must develop alternatives to custodial sentences and specify in legislation that children cannot be sentenced to life sentences.

12.15 Protection against harmful social and cultural practices

The Committee raised concern over the continued prevalence of harmful practices such as betrothal of girls, female genital mutilation, child marriage, children labelled as witches among others, despite legal prohibition. It also raised concern over the practice of tribal marks which stigmatises children and reduces their self confidence in addition to violating their right to bodily integrity and exposing them to health risks. It recommended strict enforcement of laws prohibiting harmful practices and entering into agreements with neighbouring states to prevent cross-border practice of FGM.¹⁹⁰

12.16 Sexual exploitation

The Committee expressed concern over the fact there is no specific legislation to address sexual exploitation of children who engage in sex work and the absence of measures to address sexual exploitation online and recommended measures be adopted to address this phenomenon including prosecution of perpetrators and support for victims, including financial assistance to families.¹⁹¹

12.17 Sale and trafficking

The Committee recommended adequate budgeting be allocated to government agencies dealing with trafficking, including the training of law enforcement and social workers on identifying and dealing with child trafficking, the extension of the LEAP programme to cover victims of trafficking and provision of psychosocial support to victims.¹⁹²

12.18 Children of imprisoned mothers

The Committee encouraged the state party to expand current pilot programmes aimed at ensuring that children are not imprisoned with their

190 Concluding recommendations (n 152) para 34.

191 Concluding recommendations (n 152) paras 35-37.

192 Concluding recommendations (n 152) para 38.

mothers and developed guidelines in line with the Committees General Comment 1.¹⁹³

12.19 Responsibilities of the child

The state party was urged to educate children about their responsibilities to enable them to develop the spirit of accountability.¹⁹⁴ The Department of Children within the Ministry of Gender, Children and Social Protection is responsible for the monitoring and implementation of children's rights and therefore would naturally be responsible for implementing the recommendations of the Committee. Many of the recommendations require resource allocation. No evidence was found of an official plan by government to implement the recommendations, neither was evidence found of the concluding observations having been translated into any local language nor been disseminated in the media.

Even without a formal government plan on implementation, there is anecdotal evidence that some of recent policies and programmes of government coincided with the concluding observations, including the implementation of free education at the secondary school level. Civil society organisations play the watchdog role of following up on implementation through advocacy and in some instances providing direct services to children.

13 Communications

There has not been any communication submitted against the government of Ghana before the ACERWC. There is generally limited litigation of human rights in Ghana,¹⁹⁵ including on issues relating to children's rights. Additionally, meaningful child participation is quite low and there is limited understanding of children rights even among parents. Awareness of international human rights treaties among the general public is quite low and even lower when it comes to African Union human rights treaties.¹⁹⁶

193 Concluding recommendations (n 152) para 39.

194 Concluding recommendations (n 152) para 40.

195 See Nyarko (n 1) 85.

196 Atiemo (n 158).

14 Special mechanism: Promotional visits of the African Committee of Experts on the Rights and Welfare of the Child

The Committee has not undertaken any promotional visits or investigative missions to Ghana.

15 Factors that may impede or enhance the impact of the Charter and the Committee

Several legislation and policies have been adopted which mirror provisions of the African Children's Charter. One cannot draw a causal link in many instances, especially with regards to legislation such as the Children's Act (1998) and the Juvenile Justice Act (2003), which were adopted before the ratification of the Charter. However, there are also policies which have been adopted subsequent to the ratification of the Charter which mirror the provisions of the Charter and in some instances, specifically indicate the Charter as one of the instruments influencing their adoption. The Department of Children within the Ministry of Gender, Children and Social Protection is in charge of the realisation of children's rights generally and the implementation of Ghana's obligations related to children's rights. There is no publicly available national action plan adopted by government for the monitoring and implementation of the provisions of the ACRWC. UNICEF reports that training on child-friendly policing has been conducted through various police training schools which could reasonably include provisions of the ACRWC.¹⁹⁷ The Judicial Service has also developed a Gender-Based Violence Training Manual,¹⁹⁸ which has been developed as part of a broader plan to strengthen the capacity of the Judicial Service in addressing sexual and gender-based violence and following the establishment of child-friendly gender-based violence courts to increase access to justice for women and children in line with international standards.¹⁹⁹

The pandemic has had a devastating impact on children, disrupting access to vital services including access to education and healthcare. Schools were shut down for many months and are only now gradually

197 UNICEF Ghana 'Justice for children' <https://www.unicef.org/ghana/justice-children> (accessed 5 November 2020).

198 Gender based violence training manual.

199 UNICEF Ghana 'Gender based violence training manual for law enforcement' <https://www.unicef.org/ghana/reports/gender-based-violence-training-manual-law-enforcement> (accessed 7 November 2020).

returning to normalcy in a phased in manner. The Ministry of Education responded to the closure of schools through the use of distance learning, utilising radio, television and online sources to teach students pending return to the regular school calendar. While this is a useful response, it essentially means that children from poor homes without radio or television and children from rural areas without electricity will be disadvantaged from accessing education.

The girl child has been particularly impacted by the pandemic as lockdowns, movement restrictions and closure of schools means girls spending more time with men and boys than they would if they were in school, which exposes them to increased risky sexual behaviour, sexual exploitation and sexual violence, resulting in an increase in teenage pregnancies. The economic hardships resulting from the pandemic also makes girls from poor backgrounds vulnerable to sexual exploitation. One study found a nine-fold increase in teenage pregnancies in one locality during the course of the pandemic.

The decline in employment and economic opportunities for parents exposes children from poor homes to hunger, dropping out of school and child labour. This also puts children at risk of trafficking as parents are more susceptible to financial motivations from child traffickers. The abrupt disruption of children's engagement with friends and peers through the closure of schools and lockdown/stay at home measures also means that children have limited access to leisure which has the potential of causing children to gain weight, develop depression and other behavioural changes.

16 Conclusion

Ghana has done quite well when it comes to the right to education and healthcare of children, notably having free and compulsory education up to the senior high school level and a national health insurance scheme that covers children's treatment. These are commendable achievements despite the many challenges. However, there is still significant concern in many areas, including violence against children both at home and in school, child labour, child poverty and hunger and harmful practices such as child marriage and female genital mutilation.

Even with the improvements that have been made in the education system and the recent introduction of free secondary education has further increased access, attention needs to be paid to the quality of education especially within the public education sector and the significant disparities

that exist between urban and rural settings.²⁰⁰ The low enrolment rate of children with disabilities in the educational system is an indication of ‘significant barriers to entry for these children’.²⁰¹ This coupled with the fact that ‘almost no basic schools [have] hand-rails and only 8% are equipped with ramps’, ‘children with disabilities are not progressing through the education system and a large proportion of those enrolled are over-age’,²⁰² are worrying trends that require immediate attention, in particular improvement in infrastructure and dedicated funding for inclusive and special education.

The government also needs to clearly indicate the age at which children can consent to medical treatment including sexual and reproductive health without parental consent in law and policy to enhance children’s access. Government needs to pay more attention to raising awareness about and institutionalise child participation with the aim of taking children’s views into consideration in policy making and decisions concerning the child.

The government must take steps to prohibit corporal punishment both at school and at home through the amendment of legislation that condones the practice – section 13(2) of Children’s Act and sections 31 and 41 of Criminal Code. Government needs to consider adopting ‘[a] robust gender sensitive national policy on pregnancy, parenthood and schooling with some context specific provisions where necessary’,²⁰³ to ensure that girls who fall pregnant are able to return to school to complete their education. Gender sensitive sexual and reproductive health education²⁰⁴ also needs to be prioritised to ensure that children are able to develop healthy sexual and reproductive behaviours informed by evidence and science, rather than fear and shame.

200 Ministry of Education (n 63) 77-78.

201 Ministry of Education (n 63) 78.

202 As above.

203 AO Britwum et al ‘Case study on girls who have dropped out of schools due to pregnancy and factors facilitating and/or preventing their re-entry to school after delivery’ (2017) v.

204 As above.

8



STUDY ON THE IMPLEMENTATION OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD IN MOZAMBIQUE

*M Nhapulo**

1 Background

The Republic of Mozambique is a former Portuguese colony which attained independence in 1975.¹ Mozambique has gone through several wars over the years, which severely impacted the human-rights situation in the country, particularly, children's rights. Although Mozambique is still facing challenges in protecting and promoting children rights, some improvements have been made. The political party FRELIMO helped in the fight for independence and rose to power. In 1975 the Mozambican government adopted the first Constitution of the Republic,² and began the process of nationalisation of health and education, to improve children rights and fight against illiteracy, poverty, mother and child mortality and basic need services.³

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1 KE Sheldon 'Mozambique' Britannica <https://www.britannica.com/place/Mozambique> (accessed 15 June 2021).

2 Mozambican Constitution, 1975.

3 TM da Cruz e Silva 'Mozambique profile' <https://www.ces.uc.pt/emancipa/gen/mozambique.html> (accessed 15 June 2021).

Mozambique's government adopts a multi-party system. Executive power lies with the President who appoints and dismisses the Prime Minister and who exercises executive power directly or through the Council of Ministers. The Constitution of Mozambique stipulates that the President of the Republic functions as the head of state, head of government and appoints the Prime Minister.⁴ The Prime Minister's functions include convening and chairing the Council of Ministers (Cabinet), advising the President and assisting the President in governing the country. The Legislative branch consists of both the government and the Assembly of the Republic⁵ and the Judicial branch comprises the Supreme Court, provincial, district, and municipal courts.⁶

Mozambique follows a civil-law system where the Constitution is the supreme law of the land. The formal justice system is divided into a civil and criminal system under auspices of the Ministry of Justice and a military justice system under the joint supervision of the Ministries of Defence and Justice.⁷ In Mozambique, the courts are independent and sovereign bodies that administer justice on behalf of the people. According to the Constitution, the court structure is: The Supreme Court, Administrative Court and Judicial Court.⁸ The Gross Domestic Product of Mozambique was about 14.02 billion US dollars in 2020.⁹ Mozambique is a low-income country.¹⁰ The HDI stands at 0.446.¹¹ Despite this, Mozambique has recorded significant progress in relation to key indicators of human and social development, with a substantial reduction in maternal and child mortality rates and an increase in school enrolment rates.¹²

Mozambique's population is estimated at 32 138 273 people (1950-2020).¹³ The median age in Mozambique is 17.6 years with 71.9 per cent

4 Art 146 of the 2004 Constitution.

5 Art 223 of the Constitution.

6 As above.

7 Nations Encyclopedia 'Mozambique – Judicial system' <https://www.nationsencyclopedia.com/Africa/Mozambique-JUDICIAL-SYSTEM.html> (accessed 15 August 2021).

8 Art 223 of the Constitution.

9 Trading Economics 'Mozambique GDP' <https://tradingeconomics.com/mozambique/gdp> (accessed 22 August 2021).

10 National statistical institute <http://www.ine.gov.mz/> (accessed 10 September 2020).

11 As above.

12 As above.

13 Worldmeter 'Mozambique population: Live' (2020) <https://www.worldometers.info/world-population/mozambique-population/> (accessed 15 June 2021).

of the population being younger than 18.¹⁴ According to the Mozambican Initial Report submitted to the Committee of Experts on the Rights and Welfare of the Child approximately 30 per cent of deaths of children under 5 years occur in the neonatal period, as a result strategies to increase coverage of institutional deliveries were defined.¹⁵ One of the strategies included the institutionalisation of the Perinatal and Maternal Mortality Review Committee (PMMRC). The state of the sanitary facilities and drinking water supply was improved and measures were taken to combat diseases such as malaria, thus, significantly contributing to the improvement of children's survival.¹⁶ The maternal mortality rate in Mozambique stands at 73.3 deaths per 1 000 live births (2018-2019). The major causes of maternal mortality are uterine rupture, post-partum haemorrhage, severe pre-eclampsia/eclampsia, HIV/AIDS and puerperal sepsis.¹⁷ The infant mortality rate is 54 deaths per 1 000 live births while the mortality rate of children under five years of age is 73 deaths per 1 000 live births.¹⁸

The rate of mother-to-child transmission of HIV is 6 per cent¹⁹ and the immunisation rate of vaccine-preventable diseases is 85 per cent.²⁰ In Mozambique 22 per cent of girls and 17 per cent of boys aged 15-19 are involved in sexual activities before the age of 15.²¹ Despite governmental efforts, Mozambique has one of the highest rates of teenage pregnancy in the world, with 40 per cent of girls pregnant by the age of 18 as of 2011.²² Teen pregnancies are linked to issues of premature unions that affect girls under the age of 15.²³

14 As above.

15 National statistical institute (n 10).

16 Mozambique Initial Report on the Implementation of the African Charter on the Rights and Welfare of the Child (2000-2012).

17 UNICEF 'Country profiles: Mozambique – Key demographic indicators' (2019) <https://data.unicef.org/country/moz/> (accessed 11 September 2020).

18 As above.

19 UNAIDS 'Country fact sheet' https://www.unaids.org/sites/default/files/media/documents/UNAIDS_Globalplan_Countryfactsheet_mozambique_en.pdf. (accessed 11 September 2020).

20 World Health Organisation 'Immunisation schedule' https://apps.who.int/immunization_monitoring/globalsummary/countries?countrycriteria%5Bcountry%5D%5B%5D=MOZ (accessed 15 August 2021).

21 UNICEF 'Adolescent & social norms situation in Mozambique' <https://www.unicef.org/mozambique/en/adolescent-social-norms> (accessed 11 September 2020).

22 J Abrahams 'Mozambique's teenage pregnancy challenge' <https://devex.shorthandstories.com/mozambique-teenage-pregnancy-challenge/index.html> (accessed 15 August 2021).

23 UNFPA 'Teenage pregnancy – Mozambique's challenges and answers' (2013)

HIV infection rates are high, it is estimated that 15 per cent of pregnant women aged 15-49 are infected with the virus.²⁴ New HIV infections among young women aged 15-24 were slightly more when compared to young men; 39 000 new infections among young women, compared to 20 000 among young men. HIV treatment was higher among women than men, however, with 64 per cent of adult women living with HIV on treatment, compared to 42 per cent of adult men.²⁵ The contraceptive prevalence rate is 27 per cent for women aged 15-19, 5.9 per cent for women aged? and 11.4 per cent for women aged 20-24.²⁶

Since independence, the government has viewed education as a fundamental right of all citizens. The Education Strategic Plan (2012-2016) prioritises education.²⁷ It guarantees the provision of a seven-year primary education for all children, giving them the opportunity to enrol in and complete seven years of quality primary education. Primary education should guarantee that all children acquire basic skills in reading, writing, mathematics, natural and social sciences, as well as in physical, aesthetic and cultural education, preparing them to pursue their studies at the next level. In Mozambique the primary education is free and compulsory, however, less than 50 per cent of school-age children attend classes, mostly because of financial and other constraints²⁸ such as purchasing school supplies, lack of accessibility to schools, lack of schools in some areas and guidance. It is estimated, for example, that it takes US\$116 to provide a teacher with two-day training in low-cost materials' development, including transportation, full board, classes and all materials.²⁹ The latest value from 2018 is 55.27 students per teacher.³⁰ It

https://mozambique.unfpa.org/sites/default/files/pub-pdf/SWOP_Suplemento_PAGINACAOFINAL0312134.pdf (accessed 15 June 2021).

- 24 DEUTSCHE WELLE 'HIV-AIDS in Mozambique' <https://www.dw.com/pt-002/hiv-sida-em-mo%C3%A7ambique/t-17422644> (accessed 15 June 2021).
- 25 UNAIDS 'Mozambique' <https://www.unaids.org/en/regionscountries/countries/mozambique> (accessed 15 June 2021).
- 26 The World Bank 'Contraceptive prevalence, any methods (% of women ages 15-49) – Mozambique' <https://data.worldbank.org/indicator/SP.DYN.CONU.ZS?locations=MZ> (accessed 15 June 2021).
- 27 Republic of Mozambique Ministry of Education 'Education Strategic Plan (2012-2016)' <https://www.globalpartnership.org/sites/default/files/2012-Mozambique-Education-Strategic-Plan%202012> (accessed 15 August 2021).
- 28 'Mozambique: Pre-primary and primary education' <https://education.stateuniversity.com/pages/1029/Mozambique-PREPRIMARY-PRIMARY-EDUCATION.html> (accessed 13 August 2021).
- 29 UNICEF Mozambique 'Education – Situation of the education sector in Mozambique' <https://www.unicef.org/mozambique/educa%C3%A7%C3%A3o> (accessed 15 June 2021).
- 30 The Global Economy 'Mozambique: Student teacher ratio, primary school' <https://>

is difficult to have a highly qualified teacher in the public system due to the existing constraints. Mozambique has a total of 7 355 000 pupils enrolled in primary and secondary education (2018); of these pupils about 6 139 000 (83 per cent) are enrolled in primary education.³¹

For secondary school it is also highlighted that approximately 12 per cent of young people do not have formal education and 48 per cent of young people have at most incomplete elementary education, that is, 59 per cent of 15-24 year olds in total.³² The primary net enrolment rate is 88 per cent and the primary completion rate is 46 per cent.³³ Both of these indicators provide a sense of the significant progress in the access to education in the country going after the Sustainable Development.³⁴

The education is inclusive as children with learning, mental and physical disabilities or other conditions are given the necessary support to complete primary and secondary school. In 1998 the Ministry of Education launched the 'Inclusive Schools' project, with UNESCO's support, to combat exclusion and promote schooling for all children.³⁵ Learners who became pregnant are allowed to continue to go to school, but in many cases regarding these situations they started a family and left school voluntarily.³⁶ Although a national policy was introduced to retain girls within education in such cases.³⁷ Sexuality is taught in primary and secondary schools in Mozambique as a cross-curricular theme in a culturally relevant and age-appropriate way. From fifth grade the functions of the human reproductive organs are approached and later on a more in-depth and consolidated approach is adopted. They also address situations that affect self-esteem, initiation rites, and respect for diversity and values.

www.theglobaleconomy.com/Mozambique/student_teacher_ratio_primary_school/ (accessed 13 August 2021).

31 EPDC 'Mozambique: National education profile 2018 update' https://www.epdc.org/sites/default/files/documents/EPDC_NEP_2018_Mozambique.pdf (accessed 13 August 2021).

32 As above.

33 Education Strategic Plan (n 27).

34 Republic of Mozambique 'Report: Voluntary national review of agenda 2030 for sustainable development' https://sustainabledevelopment.un.org/content/documents/26314VNR_2020_Mozambique_Report.pdf (accessed 16 August 2021).

35 EENET 'Inclusive schools in Mozambique – From policy to strategy' <https://www.eenet.org.uk/enabling-education-review/enabling-education-6/newsletter-6/6-4/> (accessed 13 August 2021).

36 Education Strategic plan (n 27).

37 As above.

Sexuality and Reproductive Health Education in addition to addressing information about anatomy and physiology of genitals and the reproductive system, also addresses issues related to sexually transmitted infections (STIs) and AIDS prevention and demands a deep and serious reflection about values, beliefs, attitudes and behaviours regarding sexuality.³⁸

2 Government focal point

The Mozambican government is committed to ensure basic services such as healthcare, water, sanitation, adequate nutrition, shelter, housing and more through international organisations and civil society organisations.³⁹ Some government action plans and NGO programmes including UNICEF, WFP, USAID work on these issues and many of these services have improved; unfortunately they do not reach most of the children who live in rural areas, for example.⁴⁰ Mozambique is one of the most disaster-prone countries in the world. It is highly vulnerable to extreme climatic conditions which destroy infrastructure and restrict economic growth, hindering efforts to achieve environmental sustainability and to eradicate extreme poverty and hunger. The country is prone to drought, cyclones, storms and flash floods frequently occur along the ocean-based provinces such as Cabo Delgado, Solafa, Nampula and Inhambane.

In response to the challenges above, the government has recognised food and nutrition security as key priorities within its Five-Year Plan, which emphasises the importance of improved access to food, living conditions and the development of human capital.⁴¹ Additionally the government

38 For more details see: T Vilaça, J Nota & C Mabote 'The curricula of sexuality education in Mozambican and Portuguese schools: What are the challenges for teachers and international partnerships?'. http://repositorium.sdum.uminho.pt/bitstream/1822/24795/1/Vilac%CC%A7a%20T.%2C%20Nota%20J.%2C%20Mabote%20C.%20%282013%29_atee_2012_proceedings.pdf (accessed 1 September 2021).

39 'Implementation of the Convention on the Rights of the Child in Mozambique: Civil Society Organisation's comprehensive supplementary report on the status of implementation of the Convention on the Rights of the Child in Mozambique' (2018) https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/MOZ/INT_CRC_NGO_MOZ_33250_E.pdf (accessed 15 June 2021).

40 UNICEF 'Water, sanitation and hygiene situation in Mozambique' <https://www.unicef.org/mozambique/%C3%A1gua-saneamento-e-higiene>; Republic of Mozambique 'Multisectorial plan for chronic malnutrition reduction in Mozambique 2011-2014 (2020)' (2010) https://www.who.int/nutrition/landscape_analysis/MozambiqueNationalstrategyreductionstunting_Portuguese.pdf?ua=1 (accessed 11 September 2020).

41 World Food Programme 'Mozambique' <https://www.wfp.org/countries/mozambique> (accessed 1 September 2021).

has introduced the Multisector Plan for Chronic Malnutrition Reduction in Mozambique 2011-2014 (2020). The plan was created to address the problem of chronic malnutrition and measures for its prevention.⁴² This is all done in accordance with the article 47 of the Mozambican Constitution that discusses children rights and guarantees that ‘all children have the right to protection and basic care to their wellbeing’. The National Basic Social Security Strategy (ENSSB) 2016-2024 seeks to achieve the Government’s Five-Year-Plan for 2015-2019, through implementing actions that contribute to reducing poverty and vulnerability, ensuring that the results of the growth of the Mozambican economy benefit all citizens, specifically those living in situations of poverty and vulnerability.⁴³

3 Ratification of the African Charter on the Rights and Welfare of the Child (this must be para 2)

Mozambique ratified the ACRWC on 15 July 1998.⁴⁴ The ACRWC was ratified without reservations by the Council of Ministers, through Mozambican Resolution 20/98 of 26 May. No information is available regarding a compatibility study conducted prior to the ratification.

The Mozambican Constitution adopts a monist system that provides for conditioned reception of international treaties and agreements⁴⁵ and the automatic receipt of other sources of international law.⁴⁶ It requires the intervention of the three political sovereign bodies provided for in the Constitution. This is directed by the government, through the Council of Ministers, which is assigned the task of preparing international treaties for signature. This is done in accordance with article 18 in the Constitution ‘International law in the Mozambican legal order’ that describes how the process of ratification works.⁴⁷ The signed treaties are published for the general population. However, some remote communities are affected by the lack of dissemination of information.⁴⁸

42 Multisectorial plan for chronic malnutrition reduction in Mozambique (n 40).

43 Republic of Mozambique ‘National basic social security strategy (2016-2024)’ (2016)[https://www.unicef.org/mozambique/media/1286/file/Mozambique%20National%20Basic%20Social%20Security%20Strategy%20\(ENSSB\)%202016-2024.pdf](https://www.unicef.org/mozambique/media/1286/file/Mozambique%20National%20Basic%20Social%20Security%20Strategy%20(ENSSB)%202016-2024.pdf) (accessed 15 August 2021).

44 ACERWC ‘Ratification table’ <https://www.acerwc.africa/ratifications-table/> (accessed 20 August 2020).

45 Art 18(1) of the Constitution.

46 Art 18(2) of the Constitution.

47 FP Coutinho ‘International law in the Mozambican legal order’https://www.academia.edu/32686813/O_direito_internacional_na_ordem_jur%C3%ADdica_mo%C3%A7ambicana (accessed 15 June 2021).

48 *Fórum da Sociedade Civil para os Direitos da Criança* ‘Implementation of Convention

4 Domestication or incorporation of the Charter This para/info should be under 5 Legislative reform

The Convention on the Rights of the Mozambican Child, Resolution 19/90 of 23 October 1990 provides a definition of a child, it reads: 'For the purposes of this Convention, it is considered a child is every human being under eighteen years, except if, under the applicable law, the majority is reached earlier'.⁴⁹ The Penal Code of 2014 establishes the age of 16 for the criminal responsibility for both women and men.⁵⁰ For other crimes, the Code establishes impunity for children under 16 and children who suffer from mental illness without lucid intervals.⁵¹

Concerning marriage, the Family Law Act adopted in 2004 establishes the minimum age required for women and men which is 18.⁵² However, there is a legal permission to marry at age 16 with a parental consent.⁵³ For many years Mozambique has faced challenges regarding early marriages due to poverty, lack of information, education and lack of legislation. The approval of the Law to Prevent and Combat Premature Unions⁵⁴ reduced the rate of this violation and brought awareness on this situation.

The age of consent to sex is 18 years. Thus, the Penal Code prescribes that sex with a girl or boy under 18 is punished with the penalty of two to eight years' imprisonment.⁵⁵ In Mozambique, the age for medical treatment is not established in law, however, in practise patients with any illnesses are submitted to counselling for treatment where they can consent (written or oral) with or without their parents or guardians.⁵⁶ The Constitution

on the Rights of Child in Mozambique: An analysis of progress and challenges 2010-2016'. <http://www.rosc.org.mz/index.php/documentos/policy-brief/3-analise-da-implementacao-da-cdc-2010-2016/file> (accessed 10 September 2020).

49 Art 1. The resolution can be founded here: http://salcaldeira.com/index.php/en/component/docman/doc_download/92-resolucao-n-19-90-convencao-sobre-os-direitos-da-crianca (accessed 10 September 2020).

50 Art 45 of the Penal Code.

51 See art 45 and the following of the Penal Code.

52 Art 32 of the Family Law Act.

53 As above.

54 Law on Prevention and Fight against Premature Unions 19/2019 of 22 October.

55 Art 220 of the Penal Code.

56 Republic of Mozambique 'Guidance on differential models of service in Mozambique' 2018. <https://differentiatedservicedelivery.org/Portals/0/adam/Content/mk4zWJijDE6PguKQUWXCsQ/File/Gui%C3%A3o%20dos%20Modelos%20Diferenciados%20de%20Servi%C3%A7os.pdf> (accessed 10 September 2020).

declares that ‘every citizen has the right to life, physical integrity, and cannot be subject to torture, cruel and inhumane treatment’,⁵⁷ which can be interpreted to include corporal punishment. However, the Law for the Protection of the Rights of the Child of 2008 provides for the concept of ‘justifiable discipline’, which in the absence of explicit prohibition of all corporal punishment provides a legal defence for the use of physical punishment in childrearing. Currently, Mozambique is committed to reforming its laws to prohibit corporal punishment in all settings.⁵⁸

5 Legislative reform and adoption This para/info should be under 4 Domestication

The Constitution provides that Mozambique accept, observe and apply the principles of the United Nations Charter as well as the African Union Charter.⁵⁹ Mozambique ratified the Convention on the Rights of the Child (CRC) on 26 April 1994, it has also ratified the two Optional Protocols of the CRC (Optional Protocol to the CRC on the Involvement of Children in Armed Conflict in 2004 and the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography in 2002). Mozambique also ratified the Worst forms of Child Labour Convention.⁶⁰ The Constitution and the Family Law Act of 2004 provides for the right of registration, especially for children. The state adopted the Civil Registration Code of 2018⁶¹ to regulate and promote the system of civil registration. Birth registration is an ‘obligatory act of declaring the birth before the civil authorities to ensure recognition of rights’.⁶²

The Constitution provides for the principle of territoriality and consanguinity where citizens can have their nationality originating or acquired.⁶³ The legal system does not exclusively mention the nationality at birth, but there is an effective and accessible provision in the Constitution.⁶⁴ The Mozambican Initial Report shows that in the legal reform context, the country remains in a broader process of review of important legal instruments, such as the Constitution of the Republic, the Civil Code,

57 Art 40 of the Penal Code.

58 Mozambique Law on the Promotion and Protection of the Rights of the Child, 5/2008 of 9 July 2008.

59 Art 17(2) of the Constitution.

60 The Worst Forms of Child Labour was ratified in June 2003.

61 Law 12/2004 of December 8.

62 Art 1(1)(a) and 4(1) of the Civil Registration Code, 2004.

63 Art 23, 26-27 of the Constitution.

64 Art 23 of the Constitution.

the Penal Code, the Code of Criminal Procedure, and the Code of Civil Procedure.⁶⁵

The protection of children in Mozambique is based on the Constitution of the Republic which provides provisions that establish a solid basis for the formulation, within national legislation, of concrete measures to ensure the protection of children.⁶⁶ A process of legal reform has begun, taking into account the CRC, ACRWC and other international treaties on children rights signed and ratified by Mozambique. The process involves the protection of child rights, the socio-economic situation of the country, the need to ensure the discriminatory aspects in the legislation, as well as to establish the (principal) response to higher interest child.⁶⁷

The Assembly of the Republic through the deputies are responsible for the ratification of treaties⁶⁸ and their implementation.⁶⁹ The ACRWC is also monitored by the Assembly of the Republic and the Ministry of Foreign Affairs and Cooperation.⁷⁰ The Technical Secretariat of the Poverty Observatory provides a forum for participation, which includes the government, civil society and development partners, with the vocation to follow up on the performance of the actions undertaken by public and private bodies. The Poverty Observatory is a consultative forum in order to deepen the interaction between the government and its national and international partners, in the Monitoring and Evaluation of the implementation of policies and plans adopted in favour of poverty reduction, with emphasis on the PARP.⁷¹

In Mozambique there is no information on a rights-based national strategy driving the implementation of the treaty. There is no information available about the regular review, monitoring and reporting to parliament on progress and challenges regarding the national strategy.

6 Policy reform and adoption

The country implemented the first National Plan of Action for Children (PNAC) (2006-2010) which defined strategic actions to be implemented by all stakeholders in promoting the welfare of children. Government

65 Mozambique Initial Report (n 16).

66 Art 47 of the Constitution.

67 As above n 64.

68 Art 179 of the Constitution.

69 As above.

70 See Presidential Decree 12/95, of 29 December.

71 Mozambican Initial Report (n 16).

entities, both national and international NGO's, and the private sector are also actors of the national plan.

The PNAC advocated for the principle of partnership with civil society, private sector and other living forces of society. The Report on the Implementation of African Charter on the Rights and Welfare of the Child is incorporated in the agendas, strategies and plans of the central, provincial and district government, as well as local governments.

After the ratification of the ACRWC, the Constitution tried to incorporate and implement the provisions of the ACRWC by strengthening the prior provisions concerning rights of the child entered into force. Other laws were influenced by the ACRWC and other agreements. According to the Constitution, international law rules have the same internal legal order value assumed by the infra-constitutional normative acts emanating from the Assembly of the Republic and government, depending on their respective form of reception.⁷² Therefore, provisions of the ACRWC and other signed agreements can be invoked before national courts and national authorities. The provisions of the Constitution are constantly being adapted due to continued efforts for the protection of children and harmonisation of rules of domestic law to international commitments made by the government in promoting and protecting children's rights. Besides that, the foregoing provisions demonstrate the determination of the country to comply with its obligations prescribed in the Convention, in the ACRWC and other international instruments. The provisions of the Convention can be directly invoked before the courts and applied by national authorities and incorporation itself does not avoid the need to ensure relevant domestic law is brought into the compliance with the Convention.⁷³

Regarding childhood, article 121 of the Constitution contains clear provisions about the protection of children in their integral development as well as protection against any form of discrimination, ill-treatment and abuse of authority.⁷⁴ The Law on the Promotion and Protection of Children's Rights defines the duties of parents which set the responsibility to support, guide and educate their minor children, respect and enforce judicial decisions. It also sets the obligation to bear the costs regarding safety, health, nutrition and child development.⁷⁵ Also, the Law on

72 Art 18 of the Constitution.

73 General comment 5: General measures of implementation of the Convention on the Rights of the Child, CRC (27 November 2003) UN Doc CRC/GC/2003/5 (2003).

74 Art 121 of the Constitution.

75 Art 32 of the Law on the Promotion and Protection of Children's Rights.

Prevention of threat or violation of rights of 2019 states that ‘All citizens and institutions in general have a duty to prevent the threat or violation of the rights of the child from occurring’.⁷⁶

Human rights are justifiable before domestic courts.⁷⁷ However, while the country is a signatory to the Protocol to the African Charter on Human and People’s Rights on the Establishment of an African Court on Human and Peoples’ Rights, the government did not recognise the court’s competence to accept cases from NGOs and individuals.⁷⁸ Children’s rights in Mozambique are protected and promoted by the Constitution. The Constitution describes that all ‘children have the right to protection and care necessary for their well-being’.⁷⁹ Additionally other policies and programmes seek to protect children from violence, especially from harmful practices. In this regard, Mozambique adopted the Law to Prevent and Combat Premature Unions;⁸⁰ and a National Action Programme for the Elimination of Female Mutilation Genital;⁸¹ the Law to Prevent and Combat Trafficking in Persons, particularly women and children;⁸² and a national Law for the Promotion and Protection of the Rights of the Child.⁸³ Non-governmental and civil society organisations work effectively to enforce these laws.

The Constitution provides a general protection to the life of children,⁸⁴ the Penal Code protects children from exposure to sexual exploitation and child pornography.⁸⁵ Sexual crimes committed against minors (under 16

76 Art 48 of the Law on the Promotion and Protection of Children’s Rights.

77 Art 42 & 43 of the Constitution.

78 US Embassy in Mozambique ‘Mozambique 2018 human rights report’ <https://mz.usembassy.gov/mozambique-2018-human-rights-report-2/> (accessed 12 September 2020).

79 Art 47(1) of the Constitution.

80 UNICEF Mozambique ‘Law on the prevention and fight against premature unions in Mozambique’ <https://www.unicef.org/mozambique/relatorios/lei-de-preven%C3%A7%C3%A3o-e-combate-uni%C3%B5es-prematuras-em-mo%C3%A7ambique> (accessed 11 September 2020).

81 Comissão para a Cidadania e Igualdade de Género ‘III Action program for the prevention and elimination of female genital mutilation (2014-2017)’ Interim Execution Report (2016) <https://www.cig.gov.pt/wp-content/uploads/2017/07/Relat%C3%B3rio-Intercalar-de-Execu%C3%A7%C3%A3o-do-III-PAPEMGF-2016.pdf> (accessed 12 September 2020).

82 Law promoting the rights of the child http://www.cndh.org.mz/images/legislacao/nacional/Lei_de_Promocao_dos_Dtos_da_Crianca.pdf (accessed 11 September 2020)

83 Law 5/2008 of 9 July 2008.

84 Art 40 & 47 of the Constitution.

85 Art 218-226 and following of the Penal Code.

years old) with or without their consent are punishable under the law.⁸⁶ Corporal punishment is not covered in the Penal Code and not expressly prohibited by the Law for the Protection of the Rights of the Child.⁸⁷ However, an important provision is enshrined by the Penal Code, which criminalises sexual offences with or without the consent of children under 16.⁸⁸ Children's laws in Mozambique allow access in the national Sexual and Reproductive Health Policy.⁸⁹ Confidential sexual and reproductive health services are accessible without the requirement of parental consent. There are programmes (such as *Serviços Amigos dos Adolescentes e Jovens* – SAAJ) that provide consultations on adolescent friendly health services.⁹⁰

7 Court judgments

According to the 'Implementation of the Convention on the Rights of Child in Mozambique' access to justice for minors who are victims of violence remains a challenge. Domestic court decisions in the country and the provisions of the ACRWC or general comments issued by the Committee have been used as an interpretative source for issues related to child abuse and torture, adoption, health and welfare. The Constitution confers the right to access to justice⁹¹ providing access to courts, the right to legal defence and the right to legal assistance.⁹² The defendant has the right to freely choose his defender to assist him in all acts of the process, if the defendant cannot afford a lawyer, he/she must be assured adequate legal assistance and judicial sponsorship. The children's right to access justice was given special attention in the Law on the Promotion and Protection of the Rights of the Child,⁹³ which guarantees 'access of every child in the Public Ministry and Courts under the Law'.⁹⁴

Domestic courts continue their efforts in promoting and protecting children's rights upon the provisions of the ACRWC. A visible budget for children exists to support the system from international cooperation partners who have contributed a lot to the state budget, funding about 50

86 Art 220 of the Penal Code.

87 As above n 80.

88 Art 220 of the Penal Code.

89 Law promoting the rights of the child (n 82).

90 Comissão para a Cidadania e Igualdade de Género (n 81).

91 Art 62 & 70 of the Constitution.

92 As above.

93 Art 95 of the Law on the Promotion and Protection of the Rights of the Child.

94 As above.

per cent of the needs of the country.⁹⁵ Children participate in the decision-making process with respect to the percentage of the budget allocated to them, but there is no data available about the increasing of the allocated budget.

A Children Parliament is located in Maputo city. The Parliament was created in 2000 to promote child participation and access to information. The parliamentary sessions are extended to the entire national territory, covering 60 districts in 11 provinces of the country, they set an annual work plan, which is implemented with the support of civil society organisations. Child participation in the Parliament is based on the principles of representation, inclusion and accountability, for example, the Child Friendly Schools Initiative in Mozambique encourages an integrated approach to education, which includes water and hygiene, health, social protection and participation and, urgently, needs to be expanded.⁹⁶

Children with disability, indigenous children and children belonging to various minorities are well represented. PNAD II⁹⁷ (National Plan for the Area of Disability 2012-2019) aims to 'promote full participation, equality and empowerment of people with disabilities and minorities'.

Girls and boys are equally represented. The impact of the Child Parliament in terms of laws and policies affecting children is positive as the laws and policies are created to address the actual issues or children's violations in the country. At a school level, child participation and leadership are cultivated and children involved in school management, on a low scale, for example in advisory student/learner councils.⁹⁸ Some teachers encourage everyone's participation and boys and girls participate equally. Regarding the involvement in school management, children can be taught how to manage, but it is not an everyday practice.⁹⁹ Legal protection is in place regarding children's rights to assemble, organise and access information and to express themselves freely are the general

95 Mozambique Initial Report (n 16).

96 Republic of Mozambique 'Deputies from Palmo e Meio prepare the children's parliament in Maputo' <http://www.mgcas.gov.mz/st/Site/FrontOffice/default.aspx?module=article/article&id=17047&idseccao=25> (accessed 15 June 2020).

97 As above.

98 'Implementation of the Convention on the Rights of the Child in Mozambique: An analysis of progress and challenges 2010-2016' <http://www.ros.org.mz/index.php/documentos/policy-brief/3-analise-da-implementacao-da-cdc-2010-2016/file> (accessed 2 September 2021).

99 Some reports/evidence are available here: G Silva 'Education and gender in Mozambique' (2007) https://www.africanos.eu/images/publicacoes/livros_electronicos/EB003.pdf (accessed 2 September 2021).

principles.¹⁰⁰ Also, children have the right to be consulted and heard in proceedings involving or affecting them.

The Parliament emerged primarily to allow children's participation and to create a space where they can be heard by the government, civil society, etc.¹⁰¹ The process for selecting members of the Child Parliament is done through elections by the children themselves. Members of Parliament are subsequently elected among members of parliament at the level of districts and provinces. Thus, among the selected members are children in primary and secondary schools, children from shelters to children in difficult circumstances and from various organisations involving children.¹⁰²

There is a holistic juvenile justice system in place with a comprehensive law on juvenile justice with provisions for diversion and efficient alternatives to the justice system. The non-observance of laws is due to the lack of knowledge on this matter, the lack of coordination and cooperation in the scope of the execution of the procedures aimed at the protection of the targeted minors, and the lack of access to juvenile justice. The mechanisms, institutions and procedures are in line with the provisions of the ACRWC. Mozambican Law 7/2008 regulates the promotion and protection of the rights of the child with special regard to the civil and the criminal aspects of juvenile justice.

An issue that must be mentioned is related to the situations where children are considered in conflict with the law. In past years, the numbers of children being arrested¹⁰³ were substantial and there were no mechanisms to deal with this issue.¹⁰⁴ In order to end this, the United Nations Interregional Crime And Justice Research Institute created a Centre to recreate the rules for the implementation of juvenile justice in Mozambique starting in 2009.¹⁰⁵ In the case of *DM* of 31 July 2014 in a crime of corporal offences, a 14-year-old minor was sentenced to do community services for 45 days.¹⁰⁶ The Court for Minors considered

100 As above.

101 As above.

102 Republic of Mozambique 'Deputies from Palmo e Meio prepare the Children's Parliament in Maputo' <http://www.mgcas.gov.mz/st/Site/FrontOffice/default.aspx?module=article/article&id=17047&idseccao=25> (accessed 15 June 2020).

103 Public Ministry 'Children with conflict with the law in Mozambique – Searching for a protection strategy' (1st ed) 2015 <https://acjr.org.za/resource-centre/criancas-em-conflito-pdf-2.pdf> (accessed 24 August 2021).

104 As above.

105 Republic of Mozambique (n 102).

106 As above.

his mental and physical aspects to find appropriate community service activities.

8 Awareness and use by Civil Society Organisations

Civil society is involved in the implementation of statistical data in the country and efforts are made to collect information and conducting consultations in all regions around the country.¹⁰⁷ The CSOs develop programmes informed by the Treaty to prevent and eliminate disparities and negative attitudes resulting from ignorance, prejudice and traditional or religious practices that promote discrimination against children. CSOs are also involved in the monitoring of the implementation of the treaty. In general, CSOs have played an important role in promoting debate on public policies based on the results of monitoring and evaluating provisions concerning the implementation of the ACRWC at central and provincial levels.¹⁰⁸ The government consults CSOs on the implementation of the Treaty. The report was drafted by a multi-sectorial team led by the Ministry of Women and Social Action and they conducted several consultations in all regions of the country, at the level of government representatives, UN, bilateral and multilateral donors, Non-Governmental Organisations, and civil society.¹⁰⁹

There is no information that local/international CSOs prepared and submitted complementary reports to the ACERWC. The government delegation responsible for the presentation of the report in Mozambique is the Ministry of Women and Social Action.¹¹⁰ Children in Mozambique have been involved in the reporting process, by collecting information and conducting consultations in all regions of the country. The Ministry of Women and Social Action also help in the reporting process.

9 Awareness and use by lawyers and the judiciary

The provisions of the Charter are known among government representatives and members of the judiciary. Judges and lawyers are guided by the principle of the best interests of the child. Governmental officials are trained in the provisions of the Charter. This training is mostly organised by CSOs and National Human Rights Institutions.

107 As above.

108 As above.

109 As above.

110 Mozambique Initial Report (n 16).

The provisions are made available to citizens by the Institute of Social Communication, responsible for public education and mobilisation of communities and radio stations. There is also a television program called *Canal Zero* and a designated children's newspaper *Voz da Criança*.¹¹¹ Provisions of the treaty are also used in campaigns, workshops and advocacy training. Most of the principles are used for protecting children from issues concerning early marriage, harmful practices and gender-based violence.¹¹²

10 Higher education and academic writing

The provisions of the treaty are incorporated in curricula at university level, but mostly taught in specific courses such as Law and International Relations. Regarding academic writings, the use of the provision is more frequent in dissertations, articles and theses. Unfortunately, the Treaty was not translated into Portuguese and local languages.

11 National Human Rights Institutions

Besides promoting and protecting the rights of citizens, the national independent human rights institutions (NHRIs) play an important role in the implementation and monitoring of the ACRWC. They also conduct investigations into violations of ACRWC provisions and they promote speeches educating the community.¹¹³ In the Republic, the NHRIs composition does not have a section concerning only children's rights.¹¹⁴ Regarding children's rights issues, Mozambique has the Ministry of Gender, Child and Social Action. NHRIs also make use of the Treaty provisions in the discharge of their mandate. The Treaty provisions in their mandates include access to information, to justice and full participation of children.¹¹⁵ Despite not having a special section on the rights of the child, NHRIs do incorporate the most important provisions into their mandates, as mentioned above.

111 UNICEF 'The parliament and the Mozambican child'<https://www.unicef.org/esa/sites/unicef.org.esa/files/2019-05/UNICEF-Mozambique-2018-The-Parliament-and-Children.pdf> (accessed 18 August 2021).

112 *Fórum da Sociedade Civil para os Direitos da Criança* (n 48).

113 Statute of the National Human Rights Commission, 2014.

114 *Fórum da Sociedade Civil para os Direitos da Criança* (n 48).

115 As above.

12 State reporting

Mozambique submitted one report to the ACERWC (the Initial Report) in 2014.¹¹⁶ Their submission was late and no reason was given for this.¹¹⁷ There is no information available on whether local/international CSOs prepared and submitted complementary reports to the ACERWC. Children in Mozambique have been involved in the reporting process, by collecting information and conducting consultations in all regions of the country. The Ministry of Women and Social Action also assists in the reporting process.¹¹⁸

Preparing the report, several consultations in all regions of the country were made at the level of government representatives. The consultants included representatives of the government, UN, bilateral and multilateral donors, NGOs, civil society and children. The report was drafted by a multi-sectorial team led by the Ministry of Women and Social Action. As a reference in order to obtain an update on the reality of Mozambican children, stakeholders were taken in account in the reporting process.¹¹⁹

There is no information about copies of the report being made available to citizens, comments allowed and reflected in the final version of the report. Also, there is no data on the language the final report was written in and whether it was made available for comments and understood by the citizens. The child law stands for the principle of the best interests of the child, and is set '[i]n favour of the children's well-being and best interest'.¹²⁰ This principle is also incorporated in the Charter. Besides challenges that the country is still facing regarding children's issues, Mozambique has made some progress regarding child marriage issues. A law was adopted to protect and condemn early marriages or unions.¹²¹

13 Communications

Regarding communications, none have been made in Mozambique. Although, any individual or group of natural or legal persons including children or any intergovernmental or non-governmental organisation

116 ACERWC 'Initial and Periodic Reports table' <https://www.acerwc.africa/initial-and-periodic-reports/> (accessed 26 August 2020).

117 As above.

118 Mozambique's Initial Report (n 16).

119 As above.

120 Art 27 of the Constitution.

121 Mozambican Law 19/2019 of 22 October.

legally recognised may submit.¹²² The government has thus far not provided any remedy and there is no information about why communications were not submitted to the Committee. There are also no factors discouraging the submission of communications in the country.

14 Special mechanism: Promotional visits of the African Committee of Experts on the Rights and Welfare of the Child

To date, there is no information available regarding a promotional visit to the country or any investigative mission.

15 Factors that may impede or enhance the impact of the Charter and the Committee

The state reporting mechanism and the concluding observations issued by the Committee elevated the level of awareness with respect to the children's rights. However, it has been a few years since the state reporting and concluding observations were made.

16 Conclusion

Over the years Mozambique has made some progress regarding protecting and promotion of children's rights, focusing on the right to education and early marriage. Issues such as gender-based violence still need special care. The COVID-19 pandemic brought about issues on the right to education given the closing of schools and increased rate of GBV. The access to health services and the economic insecurity also remains a challenge at these times. The country created measures for children to continue studying during the pandemic. The challenges created by the pandemic are further compounded by the fact that Mozambique is a poor country.¹²³

Conflict in Mozambique caused by insurgents in the North (Cabo Delgado) is very concerning. The instability has led to large numbers of people leaving their homes and as a result child are not studying and don't

122 ACERWC 'State party reports' <https://reporting.acerwc.africa/Countries/MZ> (accessed 16 August 2021).

123 UNICEF Mozambique 'The Impacts of COVID-19 on children in Mozambique: COVID-19 policy note' (June 2020) <https://www.unicef.org/mozambique/media/2531/file/The%20Impacts%20of%20COVID-19%20on%20Children%20in%20Mozambique%20.pdf>; see the presidential decree state of emergency Mozambique https://reformar.co.mz/documentos-diversos/br_874_i_serie_suplemento_2020-decreto-26_2020-de-8-de-maio-medidas-para-prevencao-de-covid-19.pdf (accessed 25 October 2020).

have access to adequate health services. Furthermore, tragically children are being kidnapped or beheaded.¹²⁴

The issues of early marriage were a huge concern in the country. Many rights were being violated in this scenario. To protect affected rights the government created and approved a law regarding early marriage in 2019.¹²⁵ However, in the north of Mozambique, concretely Cabo Delgado there has been some warning about violations of children's rights due to insurgencies.¹²⁶ The concerned rights are: the right to life, education, health, the right to freedom and freedom from torture.

- 124 UNHCR 'Fresh violence in northern Mozambique forces thousands to flee' 7 February 2020 <https://www.unhcr.org/news/briefing/2020/2/5e3d2d8f4/fresh-violence-northern-mozambique-forces-thousands-flee.html> (accessed 25 October 2020); Human Rights Watch 'Mozambique: Armed groups burn villages 39 dead, more than 1 000 displaced in recent attacks' 19 June 2018 <https://www.hrw.org/news/2018/06/19/mozambique-armed-groups-burn-villages> (accessed 25 October 2020).
- 125 Law 19/2019 of 22 October <https://www.unicef.org/mozambique/media/1991/file/Lei%20de%20Preven%C3%A7%C3%A3o%20e%20Combate%20as%20Uni%C3%B5es%20Prematuras%20em%20Mo%C3%A7ambique.pdf> (accessed 25 October 2020).
- 126 Save the Children 'Mozambique: Number of lone children fleeing conflict in Cabo Delgado jumps 40% in one month' <https://www.savethechildren.net/news/mozambique-number-lone-children-fleeing-conflict-cabo-delgado-jumps-40-one-month-%E2%80%93-save> (accessed 4 September 2021).

9



THE IMPACT OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD IN NAMIBIA

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1 Introduction

Namibia became an independent sovereign state on 21 March 1990, after years of German and apartheid South African colonial rule.¹ It is a constitutional democracy founded on a Constitution, the supreme law,² and a Bill of Rights predicated on constitutionalism, the rule of law and promotion of human rights.³ The Bill of Rights provides for and protects fundamental human rights and freedoms, which include children's rights.⁴ Generally, Namibia's socio-economic status is a mixed one, signalling progress in certain areas while in others there are clear signs of regress. This is particularly true of basic services such as primary healthcare, water and sanitation, adequate nutrition, shelter and basic housing for

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1 See generally on Namibian colonial history, PH Katjavivi *A history of resistance in Namibia* (1988). Namibia is situated in the southwestern part of Africa, bordered by Angola to the North, Zambia and Zimbabwe to the North East, Botswana to the East and South Africa to the South. It occupies a land area of 823 144 square kilometers, with about 1 300 of coastline and is occupied by about 2.5 million people.

2 The Constitution of the Republic of Namibia, 1990 (Namibian Constitution), art 1(6).

3 Namibian Constitution, art 1(1)(2).

4 Namibian Constitution, art 15.

children. For starters, Namibia's Multidimensional Poverty Index (MPI) is estimated to be 0.187, with close to 40 per cent of its population in multidimensional poverty. The poverty dimensions of the country, which negatively affect the realisation of children's rights, are deeply rooted and traceable to the political history of inequality premised on a racist apartheid system that left a vast majority of its black population excluded from the formal economy.

With a population of roughly 2.4 million people (at the time of the national census 2.1 million), close to 37 per cent of the Namibian population is below 15 years of age.⁵ Of this aggregation, 14 per cent of the Namibian population is under the age of 5 years, 23 per cent between the ages of 5-15 years and 7 per cent above the age of 60.⁶ This clearly indicates that the country has a relatively high juvenile population. Given this reality, it is no surprise that the rights of children are a constitutional construct entrenched in article 15 of the Namibian Constitution.⁷

Given its (Roman-Dutch) common-law heritage the country's legal system remains extremely adversarial. The common-law legal systems have had significant implications on the rights of children across the board. The hybridity of the legal system, which recognises amongst others, customary and common law, has had the effect that most of the lives

5 National Statistics Agency 'Namibia 2011: Population and housing census basic report' (2011) 8 [https://www.npc.gov.na/downloads/Policies%20\(By%20institutions%20or%20sector\)/NPC/Census%20Report%202011%20FINAL.pdf](https://www.npc.gov.na/downloads/Policies%20(By%20institutions%20or%20sector)/NPC/Census%20Report%202011%20FINAL.pdf) (accessed 6 September 2020).

6 As above.

7 Art 15 provides:

(1) Children shall have the right from birth to a name, the right to acquire a nationality and, subject to legislation enacted in the best interests of children, as far as possible the right to know and be cared for by their parents.

(2) Children are entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or physical, mental, spiritual, moral, or social development. For the purposes of this Sub-Article children shall be under the age of sixteen (16) years.

(3) No children under the age of fourteen (14) years shall be employed to work in any factory or mine, save under conditions and circumstances regulated by Act of Parliament. Nothing in this Sub Article shall be construed as derogating in any way from Sub-Article (2).

(4) Any arrangement or scheme employed on any farm or other undertaking, the object or effect of which is to compel the minor children of an employee to work for or in the interest of the employer of such employee, shall for the purposes of Article 9 be deemed to constitute an arrangement or scheme to compel the performance of forced labour.

(5) No law authorising preventive detention shall permit children under the age of sixteen (16) years to be detained.

of children in Namibia are regulated by customary laws and practices. Moreover, the rights protection of children remains governed by common-law principles which for the most part relegates children within the family unit under the subordination of their parents. Therefore, the country context and legal system of Namibia depicts predominantly conservative approaches to the protection and realisation of children's rights, owing largely to the customary and common law context in which the lives of children are governed. Notwithstanding this, and as this article illustrates, Namibia has made strides in the promotion and protection of the rights of children, beginning with the ratification, and subsequent domestication and implementation of children's rights instruments, most notably the African Charter on the Rights and Welfare of the Child (ACRWC). This article is an assessment of the degree of compliance with the provisions of the ACRWC by the Namibian State.

2 Ratification of the African Charter on the Rights and Welfare of the Child

The ratification of international instruments in Namibia is regulated by the Namibian Constitution. As far as process is concerned, the executive and legislature are both responsible for the instrument's ratification. Once the government manifests its intent to ratify an international instrument, the Cabinet Secretary must present the instrument and a memorandum to the Cabinet, approved and scrutinised by the Attorney-General, especially in as far as the constitutional implications, if any, of such an instrument on the Constitution or any other laws of Namibia are concerned.

Once approved by Cabinet, the Cabinet Secretary must furnish the Treaty and the memorandum setting out the rationale and objective of the instrument to the Speaker of the National Assembly for discussion and approval. In terms of article 63(2)(e), the National Assembly has the power and function to 'agree to the ratification of or accession to international agreements', the approval of which empowers the President to sign the instrument on behalf of the country. Upon signature or ratification, the international instrument automatically forms part of Namibian law without the further requirement of domestic incorporation. This process of ratification has allowed for the characterisation of Namibia as a typical monist state.⁸

8 O Tshosa 'The status of international law in Namibian national law: A critical appraisal of the constitutional strategy' (2010) 2 *Namibia Law Journal* 3.

Namibia signed the ACRWC on 13 July 1999 and subsequently ratified the instrument five years later on 23 July 2004.⁹ Although not preceded by a compatibility study, Namibia has not made any reservations to the ACRWC to date. In the same disposition the country has also ratified parallel UN instruments pertaining to the rights of children such as the Convention on the Rights of the Child (CRC),¹⁰ the Optional Protocol to the CRC on the involvement of children in armed conflict,¹¹ the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography;¹² Convention 138 on minimum age; and the ILO Convention on the Worst Forms of Child Labour.¹³

3 Governmental focal point

The governmental coordination of children's rights and issues has generally been an informal process dealt with on a case-by-case basis. Primarily, and from a governance perspective, the Ministry of Gender Equality and Child Welfare serves as a focal custodian on issues pertaining to children. However, the Ministry of Foreign Affairs (now International Relations and Cooperation), as the custodian of all foreign relations, had in the past coordinated the process of the state's ratification, domestication and implementation of international instruments, including international human rights instruments. However, the uncoordinated nature of this process and the insufficient staff capacity to provide the required technical assistance has left the government to delegate treaty implementation processes to the relevant line ministries, depending on the thematic area and general nature of an international treaty to which Namibia has acceded or ratified.

The delegation of this task began in early 1995, with the establishment of an Inter-Ministerial Technical Committee on Human Rights and International Humanitarian Law (Inter-Ministerial Committee).¹⁴ It is housed and coordinated by the Ministry of Justice and consists of

9 See generally ratification status of Namibia, 'African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force 29 November 1999, ratification information' <http://hrlibrary.umn.edu/instree/afchilratifications.html> (accessed 12 September 2020).

10 Ratified on 30 September 1990, with no reservations.

11 Ratified on 16 April 2002, with no reservations.

12 Ratified on 6 November 2007, with no reservations.

13 Ratified on 15 November, with no reservations.

14 See generally, ICRC 'National committees and similar bodies on international humanitarian law: Guidelines for success' (2019) 33 <https://www.icrc.org/en/document/national-committees-and-similar-entities-international-humanitarian-law-guidelines-success> (accessed 1 September 2020).

26 members,¹⁵ who are predominantly state representatives from a variety of line ministries and agencies. An essential mandate of the Inter-Ministerial Committee is the drafting and submission of periodic state reports to the relevant treaty bodies, including reporting in terms of article 43 of the ACRWC and monitoring and implementing treaty obligations. Other functions range from advising and providing support to the government on all issues relating to participation in human rights and international humanitarian law treaties, to incorporation of their provisions into national law, and to dissemination of their rules; to advise the government on measures to be adopted in order to implement, apply, and disseminate human rights and international humanitarian law at the national level; to review and propose to the authorities legislative and administrative measures ensuring the practical implementation of international humanitarian law; and to coordinate and stimulate activities of the government and other organisations to strengthen and disseminate human rights and humanitarian law. International treaties pertaining to children's rights, such as the CRC and the ACRWC form part of the instruments that fall within the mandate of the Inter-Ministerial Committee. Given this broad mandate, the Inter-Ministerial Committee deals with implementation on an ad hoc basis. This has been the case with the implementation of the ACRWC since Namibia ratified this instrument in 2004.

With no formal national implementation plan on concluding observations and recommendations in place, in practice the implementation of the ACRWC is delegated to the Ministry of Gender Equality and Child Welfare, especially its Directorate of Child Welfare. Charged amongst others 'to monitor and ensure adherence to national and international standards and guidelines defined for the provision of child care and protection services',¹⁶ the Directorate of Child Welfare monitors the implementation of not only the provisions of the ACRWC, but also the concluding observations made by the ACERWC. Given this mandate and by necessary implication, the directorate also acts as an important stakeholder during the process of drafting of state reports in terms of article 43 of the ACRWC. The Directorate of Child Welfare as part of its monitoring and implementation mandate incorporates the concluding observations and recommendations by the Committee of Experts on the

15 Some of the permanent members of this Committee include, the Ministries of: Foreign Affairs (now International Relations and Cooperation); Defence; Justice; Home Affairs and Immigration; Land Reform and Agriculture; Health; Gender Equality and Child Welfare; Office of the Prime Minister; Safety and Security; University of Namibia, Legal Assistance Centre; Ombudsman and the Namibia Red Cross.

16 MGEWCW 'Core functions of the Directorate of Child Welfare' (2019) 1 <http://www.mgecw.gov.na/directorate-of-child-welfare> (accessed 1 September 2020).

Rights and Welfare of the Child in its Strategic Plan, which usually runs for a five-year period.¹⁷

The implementation of the ACRWC is therefore a compromise between the Inter-Ministerial Committee and the Directorate of Child Welfare in the Ministry of Gender Equality and Child Welfare. With the recent adoption of the Child Care and Protection Act of 2015, it is anticipated that the implementation of the ACRWC will either fall squarely within the mandate of the National Advisory Council on Children or be conducted in conjunction with other stakeholders such as the Children's Advocate, and the Directorate of Child Welfare under the coordination of the Inter-Ministerial Committee. This is because in terms of section 12(g) of the Child Care and Protection Act of 2015, the National Advisory Council on Children is mandated *inter alia* to study, investigate and monitor the implementation of the Act.

A notable development, which may possibly in future have implications on governmental coordination of children's rights is the recent creation of the Children's Advocate within the Office of the Ombudsman. Crafted in terms of section 25 of the Child Care and Protection Act of 2015, the Children's Advocate seeks to assist the Ombudsman in the performance of its functions relating to children.¹⁸ A central function of the Children's Advocate is the "monitoring of the implementation of the United Nations Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and any other international instruments relating to child protection which are binding on Namibia".¹⁹ Taking this provision into account, the implementation of the ACRWC together with other children's rights instruments will primarily fall within the scope of the Children's Advocate with technical support and assistance by relevant stakeholders such as the Inter-Ministerial Committee and the Directorate of Child Welfare.

17 See generally, Ministry of Gender Equality and Child Welfare 'Strategic plan 2017-22' (2017) <http://www.mgecw.gov.na/documents/560522/565828/Strategic+Plan+2017-22.pdf/4852fda3-445d-41f7-97ce-e5bf7efcd8d0> (accessed 1 September 2020).

18 The Office of the Ombudsman is established in terms of art 89 of the Constitution and regulated by the Ombudsman Act 7 of 1990.

19 Section 25(b) of the Child Care and Protection Act 3 of 2015. Other functions of this Office include receiving and investigating complaints, including from children, settling issues pertaining to children through alternative dispute resolution approaches and mechanisms and raising awareness about the rights of children.

4 Domestication or incorporation of the Charter

Article 144 of the Namibian Constitution recognises international law as a source of law in the Namibian legal system. In particular, this provision explicitly embraces the general rules of public international law and international agreements as binding on Namibia. Thus, as a consequence any duly ratified international convention is directly applicable and enforceable in the Namibian legal system. This is also the case with the ACRWC. The effect of Namibia's ratification of the ACRWC is that all general principles, widely recognised and forming the common core of most legal systems, such as the principles of non-discrimination, best interests of the child, and the like, automatically form part of Namibian legal practice. Consequently, these principles can be invoked in any court of law or be used as a source of law in both juridical and non-juridical processes.

The most notable domestication or rather incorporation of the ACRWC can be traced to the Namibian Constitution. As alluded to before, article 15 of the Namibian Constitution, which is the nucleus of the children's rights in Namibia, provides a legal basis for the applicability of these rights as well as the development of relevant legal instruments and policies. The provisions broadly incorporate the value orientation of the ACRWC and thus the two reinforce one another. Besides the Constitution, the provisions of the ACRWC can be traced to several legislative instruments, including the Child Care and Protection Act of 2015, Education Act of 2020, Combating of Trafficking in Persons Act of 2018, Combating of Rape Act of 2000, Married Persons Equality Act 1996 and the Births, Marriages and Deaths Act of 1963, amongst others. In the premise, there has been, what may be termed, a fair and widespread, domestication of the ACRWC.

5 Legislative reform and adoption

As indicated before, a vast majority of Namibian legislation contains provisions and measures that are prescribed in the ACRWC. The degree to which incorporation and domestication occurs differs substantially, but it may be worth highlighting some key legislative reforms that have taken place since Namibia's ratification of the ACRWC. One of the major legislative reforms pertaining to children's rights in Namibia is the Child Care and Protection Act 3 of 2015.²⁰ In fact, the ACRWA is attached to

20 The Act repeals and condense an array of Namibian legislation that deals with children's rights, such as the Children's Act, 1960; Children's Status Act, 2006; and the Age of

the Act as an addendum, serving as a guide in areas where the Act may not be comprehensive enough. As its primary object the Act seeks to give effect to Namibia's obligations concerning the well-being, development and protection of children in terms of the United Nations Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and other international agreements binding on Namibia.²¹

To this end, substantively the Act domesticates and reflects a vast majority of the norms and general principles enunciated in the ACRWC (and by extension the CRC). These include, inter alia, the principle of the best interests of the child;²² child participation;²³ respect for children's inherent dignity;²⁴ treatment of children fairly and equitably;²⁵ protection from direct and indirect forms of discrimination;²⁶ the need to respond to any special needs that a child may have as a result of a disability or chronic illness;²⁷ in any matter concerning a child, adopting an approach which is conducive to conciliation and problem solving;²⁸ and children's rights to basic conditions of living.²⁹ It further sets the age of majority at 18 years, in line with the ACRWC.³⁰

To give effect to the rights of children and generally to the provisions of the Act, three institutions were created. First, is the National Advisory Council on Children, established in terms of section 11 of the Act, which serves as a statutory body mandated to inter alia 'design and recommend programmes of prevention, protection or care, in the best interests of children';³¹ and to study, investigate and monitor the implementation of the Act and other laws related to it for the purpose of making

Majority Act, 1957; to amend the Combating of Domestic Violence Act, 2003; the Combating of Immoral Practices Act, 1980; the Liquor Act, 1998; the Administration of Estates Act, 1965; the Marriage Act, 1961; and the Criminal Procedure Act, 1977 (as amended).

21 See sec 2(c) of the Child Care and Protection Act.

22 Sec 3 of the Act.

23 Sec 4 of the Act.

24 Sec 5(2)(b) of the Act.

25 Sec 5(2)(c) of the Act.

26 Sec 5(2)(d) of the Act.

27 Sec 5(2)(f) of the Act.

28 Sec 5(4)(a) of the Act.

29 Sec 6(1)-(2) of the Act.

30 Sec 10(1) of the Act.

31 Sec 12(f) of the Act.

recommendations for improvement to the government, as the [NACC] Council considers to be in the best interests of children.³²

Second, is the Children's Advocate in the Office of the Ombudsman. Serving as a specialised office and functionary of the Ombudsman, its primary duty is to assist the Ombudsman in his or her duties in terms of article 89 of the Constitution and the Ombudsman Act 7 of 1990. Part of the assistance to be rendered includes "receiving and investigating complaints, from any source, including a child, concerning children who receive services under this Act or any other law or relating to services provided to children under the Act or any other law or concerning any violation of the rights of children under the Namibian Constitution or any law, and where appropriate, attempting to resolve such matters through negotiation, conciliation, mediation or other non-adversarial approaches".³³

Moreover, the Children's Advocate is further mandated in addition to the Act and any other law pertaining to children to monitor the implementation of the United Nations Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and any other international instruments relating to child protection which are binding on Namibia.³⁴

The third administrative measure introduced in terms of this Act, is the Children's Courts in all magisterial districts. These courts are seized with all judicial petitions relating to children. These courts, as is apparent from within the phraseology and intent of the Act, are meant to address the shortcomings that the rigidity and adversarial character of the 'mainstream courts' may pose for children. To this end, the Act predicates Children's Courts as child-friendly courts;³⁵ private in nature;³⁶ protecting vulnerable witnesses;³⁷ prohibiting publications and disclosure of children's identity in special circumstances;³⁸ as well as safeguarding the confidentiality of the court's proceedings.³⁹

32 Sec 12(g) of the Act.

33 Sec 25(1)(a) of the Act.

34 Sec 25(1)(b) and (c) of the Act.

35 Sec 54 of the Act.

36 Sec 55 of the Act.

37 Sec 56 of the Act.

38 Sec 61 of the Act.

39 Sec 62 of the Act.

One of the fundamental challenges pertaining to child justice is the issue of *locus standi* which has proved to be a major challenge in Namibia. Conservatively following the (Roman-Dutch) common-law position that any party to a proceeding needs to establish a direct and/or substantial interest before a court can be seized with such a matter, the Act seeks to slightly remedy the procedurally stringent and substantively rigid requirements of *locus standi* by providing that a child who is affected by or involved in a matter to be adjudicated can approach a children's court on their own accord.⁴⁰ Another important and innovative intervention brought about in terms of the Act, is the establishment of a specialised fund, the Children's Fund, which is aimed at funding not only the offices of the NACC and the Children's Advocate, but also programmes, interventions and activities relating to the protection and promotion of children's rights.⁴¹

A peculiar section of the Act, which resonates and domesticates the ACRWC, is the element of 'duties'. This is reflected in the Act by reference to provisions dealing with parental responsibilities and rights, and children's rights and duties. The Act has also been specific on issues relating to proof of parentage; rights in respect of children born outside marriage and children of divorced parents; and to provide for custody and guardianship of children on the death of the person having custody or guardianship. The Act has also been considerate of international aspects, especially issues that may raise a conflict of laws, such as domestic adoption and inter-country adoption of children and combating trafficking of children.

In addition to the Act, several other laws also compliment the provisions of the ACRWC. This includes amongst others, the Basic Education Act 3 of 2020; the Married Persons Equality Act 1 of 1996; and the Births, Marriages and Deaths Act 81 of 1963. Although the right to basic education is entrenched in article 16 of the Namibian Constitution, the Basic Education Act 3 of 2020 further cements the children's right to education. This Act aims to promote and regulate free and compulsory basic education.⁴² In addition, this Act makes provision for equitable inclusive quality education and lifelong learning;⁴³ to promote and protect the right of learners to education;⁴⁴ to provide for the establishment, accreditation, registration, governance and management of state and private schools and

40 Sec 52(1)(a) of the Act.

41 See generally sec 27 of the Act.

42 Sec 6 of the Basic Education Act 3 of 2020.

43 Secs 29-31 of the Basic Education Act.

44 Sec 6 of the Basic Education Act.

hostels;⁴⁵ and to provide for the establishment of the National Advisory Council on Education.⁴⁶ To ensure quality education there is currently in place a provision in the Basic Education Act that provides for integrated early childhood development, requiring preparation of all children above the age of three for formal education.

The Basic Education Act also makes provision for the protection of the rights of children living with disabilities, and other vulnerable children. Generally, the Act makes provision for the inclusion of children with disabilities and special needs in the education system.⁴⁷ In terms of this Act, the government, more specifically the Ministry of Basic Education, Arts and Culture, is required to 'provide a separate vote for the funding of education for learners with disabilities to cater for inclusive education and resource schools in accordance with the decentralisation policy' and where it is reasonably possible, establish specialised centres of resources which support schools in the implementation of the policy on inclusive education addressing the specific needs of learners with disabilities and special needs in education.⁴⁸

More in line with article 6 of the ACRWC, under the Married Persons Equality Act 1 of 1996, which amends the 1961 Marriage Act, the minimum legal age of marriage in Namibia is set at 18 years. However, under section 24 of the same Act, girls and boys under 18 years can marry with written permission of a minister or any staff member in the Public Service authorised by the Minister. Furthermore, in terms of section 10 of the Child Care and Protection Act a person who is under the age of 21 years requires the consent of his or her parents or guardian to enter into a marriage, unless that person has been previously married or emancipated by an order of court. As per the Constitution, the right of the child to a name, to acquire a nationality and the right to know and be cared for by their parents is guaranteed.⁴⁹ This position is further affirmed by the Births, Marriages and Deaths Act 81 of 1963.⁵⁰

The above extracts from several Namibian laws indicate that the legislative incorporation of the ACRWC is not centralised, but rather canvassed through several legislative instruments.

45 Secs 19-87 of the Basic Education Act.

46 Secs 94-95 of the Basic Education Act.

47 See sec 12 of the Basic Education Act.

48 As above.

49 Art 15(1) of the Namibian Constitution.

50 See generally secs 9 and 19 of the Births, Marriages and Deaths Act 81 of 1963.

6 Policy reform and adoption

The provisions of the ACRWC have had considerable influence as far as policy reform and development pertaining to children are concerned. The most notable traces of the ACRWC can be found in the Namibia National Agenda for Children (NAC). The National Agenda for Children covers the period 2018-2022. It is a multi-sectoral five-year strategy focusing on child protection programming in Namibia. It is well aligned with key national strategies such as the Ministry of Gender Equality and Child Welfare strategic plan, the Fifth National Development Plan and the National Strategic Framework for HIV and AIDS, which run parallel for more or less the same period. The main objective of this strategy, which is to ensure that the rights of the children are protected, is within the framework of higher-level strategies such as the Harambee Prosperity Plan and Vision 2030. The National agenda priorities are child protection and social protection; child education; child and adolescent health; child disability; and child participation.⁵¹

Besides the NAC there have also been several other policy frameworks adopted which focus widely on children in Namibia. These policies are generally informed by international instruments such as the CRC and the ACRWC. Notable policies include the National Agenda for Children (2012-2016); the Community Based Health Care Policy (2007); the National Policy on Infant and Child Feeding (2003); the National Policy on Orphans and Vulnerable Children (2006-2010); the Education Sector Policy for Orphans and Vulnerable Children (2003); and the Namibia Students Financial Assistance Fund Policy (2005). As is evident, these policies are sector specific and do not necessarily comprehensively deal with all issues pertaining to children in Namibia.

While there are no centralised or expressed policies on children, generally, the Namibian government has adopted certain policy positions to certain issues either expressly or through practice. This is evident from several key developments pertaining to children. It may be worth highlighting a few of these policy positions or interventions adopted through practice.

Corporal punishment in all public institutions, including in schools and traditional settings has been outlawed. The introduction of free and compulsory primary and secondary education in all state schools, coupled with the removal of School Development Funds (SDF) and establishment

51 As above.

of feeding programmes in state schools has contributed positively to the meaningful realisation of the right to education. Furthermore, the government's policy position allowing pregnant girls an option of re-admission to schools after giving birth has eased the plight of the girl child in being denied education. With the assistance of NGO's, such as UNICEF, birth registration has been drastically improved through the enhancement of the civic registration system, which now includes onsite registration in all state hospitals, together with mobile registration measures to reach health facilities in rural and remote spaces. Mother to child HIV/AIDS transmission rates in Namibia are currently low as a result of the wide accessibility of antiretroviral medication to infected mothers. The social security schemes for children have also drastically improved the lives of children with at least three forms of social grants made available for children's benefit.

The institutional framework on children has also improved over the years. Two childcare and protection related institutions have been established. These are the Children's Advocate in the office of the Ombudsman, and the National Advisory Council on Children. This is in addition to a direct line ministry, in the name of Gender Equality, Poverty Eradication and Social Welfare in place to support children. Although no direct and explicit representation of children is traceable that ensures the inclusion of children themselves in processes affecting them, processes such as the Children's Parliament, which has been running since early 2007, are aimed at providing a proxy between central government and children. The Women and Child Protection Units in the various regions of Namibia provide the much-needed psycho-social support to children (and women) who are victims of abuse, and both the Ministries of Gender Equality, Poverty Eradication and Social Welfare and Health and Social Services make budgetary allocations in their care and protection services programme and the social protection services programme, respectively.

It is also worth noting that there are visible budgetary allocations made for the realisation of children's rights in Namibia.⁵² There are also visible

52 Of the total amount of N\$5 255 121 262 (Five Billion, Two Hundred and Fifty-Five Million One Hundred and Twenty-One Thousand Two Hundred and Sixty-Two Namibia Dollars) allocated to the Ministry of Gender Equality, Poverty Eradication and Social Welfare for the 2020/21 Financial Year, a total amount of N\$22 053 073 (Twenty-Two Million Fifty-Three Thousand and Seventy-Three Namibia Dollars) is apportioned to child care and protection services. See generally, Republic of Namibia 'Financial Year 2020/2021 budget motivation speech: Vote 36' presented by Honourable Doreen Sioka, MP Minister of Gender Equality, Poverty Eradication and Social Welfare (12 June 2020) 9-10 <http://www.mgecw.gov.na/documents/560522/784752/MGEPESW+National+Budget+Motivation+2020-2021.pdf/aa9faf31-0ef4-4bd7-931a-d3558b293f22> (accessed 1 September 2020). This budget allocation

improvements as far as sexual and reproductive health rights of children are concerned. This is because healthcare services such as testing and contraceptive services are freely accessible in all public health facilities. Abortion is allowed only in recognised circumstances in terms of section 3 of the Abortion and Sterilisation Act 2 of 1975.⁵³

As per the Constitution, the right of the child to a name, to acquire nationality and the right to know and be cared for by their parents is guaranteed.⁵⁴ This position is further affirmed by the Births, Marriages and Deaths Act 81 of 1963.⁵⁵ Namibia has traditionally had a relatively developed civil registration system, with a well-functioning national identity (ID) system that has been in place for years. The Ministry of Home Affairs and Immigration, with UNICEF's support, is increasing access to birth registration through mobile campaigns in remote areas and through hospital-based registration.⁵⁶ Given that the vast majority of babies are born in health facilities, a hospital-based registration system was piloted with UNICEF's support and subsequently expanded to other facilities.⁵⁷ So far, registration is available in 22 hospitals with high numbers of births. This has led to a rapid increase in registration of children under the age of one.

Under section 13(3) of the Basic Education Act, a learner may not be denied the right to admission or re-admission to a state school or private school after such a learner has given birth. Moreover, upon learning of a learner's pregnancy, the Minister of Basic Education, Arts and Culture (or his or her proxy) may report such a pregnancy to law enforcement if the learner is under the age of 16, or where a staff member is involved in such a pregnancy direct same for disciplinary charges in terms of the Public Service Act 13 of 1995 or any other law.

According to section 13(1) of the Basic Education Act, the Minister of Basic Education, Arts and Culture with a view to strengthening the principle of access to inclusive quality education to all children in

represents the merged functions of gender equality, poverty eradication and social welfare, which includes disability affairs and marginalised communities.

53 These circumstances include: where the continued pregnancy endangers the life of the woman concerned; serious risk that the child to be born will suffer from a physical or mental defect; and or where the fetus is alleged to have been conceived in consequence of unlawful carnal intercourse (ie, rape).

54 Art 15(1) of the Namibian Constitution.

55 See generally secs 9 and 19 of the Births, Marriages and Deaths Act 81 of 1963.

56 UNICEF 'CRVS-Birth, Marriages and Death Registration in Namibia-UNICEF DATA' <https://data.unicef.org/crvs/namibia/> (accessed 5 September 2020).

57 As above.

Namibia, is required to develop a learner pregnancy policy focusing on the prevention and management of learner pregnancies in schools. Such a policy must provide for the teaching of comprehensive sexuality education to all learners from grade four or at an appropriate age.⁵⁸

In all state schools provision is made for a compulsory subject on Life Skills which provides for learner education on a variety of social issues such as gender, sexuality, gender-based violence and culture. However, the late integration of this subject in schools remains a major hindrance as far as the manner in which these topics are taught in the formal school curriculum. It was only in 2015 that the Ministry of Education introduced Life Skills formally in the school's curricula.⁵⁹ The rather late incorporation of life skills in schools makes it an extremely charged task to comprehensively assess the experience of these socio-economic topics especially in school settings as its rather new to the system. The assumption therefore is that schools, and by extension teachers and learners, are in an 'adaptive phase' as far as the conversations and discussions on social matters are concerned in the formal education curriculum or formal setting.

Although primary education has been free since 1990, with the adoption of the Basic Education Act, both primary and secondary education is free, and all state schools are subsidised by government.⁶⁰ The *average value* for Namibia during the period 1992 to 2018 is at 30.38 students per teacher with a minimum of 25.09 students per teacher in 2018.⁶¹ To ensure quality education there is currently in place a provision in the Basic Education Act that provides for integrated early childhood development, requiring all preparation of children above the age of three years for formal education.⁶² The average value for primary school enrolment is at 124.25 per cent in 2018 compared to the world average in 2018 based on 86 countries which is at 103.71 per cent.⁶³ The average primary school completion value is 94.09 per cent in 2018, comparably

58 See sec 13(e) of the Basic Education Act.

59 Although now adopted, the policy has only been phased in or rather implemented in the senior primary phase (grades 4-7) in 2016, in the junior secondary phase (grades 8-10) in 2017, and in the senior secondary phase (grades 10-12) in 2019.

60 See sec 9 of the Basic Education Act.

61 Global Economy 'Namibia: Student teacher ratio, primary education' https://www.theglobaleconomy.com/Namibia/Student_teacher_ratio_primary_school/ (accessed 5 September 2020).

62 Sec 14(c) of the Basic Education Act.

63 Global Economy (n 61).

higher than the world average in 2018 based on 76 countries, which is at 91.14 per cent.⁶⁴

The stern constitutional basis for the right to education,⁶⁵ has also been an important determinant in the improved situation of children as far as education is concerned. The country boasts an education infrastructure system of at least 1 703 schools countrywide, 93 per cent of which are state schools, which are covering 92 per cent of the registered school population.⁶⁶ To enhance inclusive education, there are nine special schools country wide,⁶⁷ but these are concentrated in Windhoek, the capital City, excluding the disabled children dispersed in the 14 regions country wide. The teaching system is amalgamated on four systemic phases: lower primary (Grades 1-4), upper primary (Grades 5-7), junior secondary (Grades 8-10), and senior secondary (Grades 11-12). Compulsory education, both at the elementary and secondary levels is guaranteed,⁶⁸ and the payment of school development funds have been completely eradicated in all state schools.⁶⁹

Given the acute situation of children in the country, the government has used social security schemes, in the form of social grants as a social protection measure.⁷⁰ The Ministry of Gender Equality, Poverty Eradication and Child Welfare maintains several social security schemes to assist children, especially those from marginalised groups.⁷¹

64 Global Economy (n 61).

65 See art 20 of the Namibian Constitution.

66 UNICEF (n 56) 81.

67 UNICEF (n 56) 93.

68 See sec 9 of the Basic Education Act.

69 See sec 67 read with sec 69 of the Basic Education Act.

70 State maintenance grants constitute financial assistance that is given to a parent with a child/children that are under the age of 18 whose spouse has died. This financial support of N\$250 is for the care of the child/children. It targets a biological parent who earns less than N\$1000 per month and supports a child under the age of 18, where the other parent has died; the other parent receives an old-age pension or a disability grant, or is unemployed, or the other parent is in prison for six months or longer. The special maintenance grants for children living with disabilities constitute financial support that is designed specially to assist Namibian children under the age of 16 with disabilities, with a benefit of N\$250. In contrast, foster care grants are financial support that is given to someone who cares for a child or children who is not their biological child who undertakes the temporary care of any child found to be in need of care and placed in their custody in terms of the Child Care and Protection. It includes a benefit of N\$200 per child for the care of child or children.

71 These social welfare schemes are legally founded and based on the provisions of chap 16 of the Child Care and Protection Act. Three main social security schemes are identified in terms of this chapter of the Act. These are: state maintenance grants; child disability grants; and foster parent care grants. See generally section 240 of the

As far as sanitation and access to water are concerned, Namibia has made improvements in this area. Estimates have it that the sanitation rate remains relatively low, with roughly only 34 percent of the country's population having access to improved sanitation facilities.⁷² Moreover, over 70 per cent of the population, including children, still practice open defecation.⁷³

While there are no formal juvenile justice institutions in place, especially in the context of criminal justice, the sweeping reforms brought about by the Child Care and Protection Act seek to remedy the status quo. One of the most notable reforms made in terms of this instrument is the introduction of Children's Courts,⁷⁴ modelled on a child-friendly and conducive court environment.⁷⁵ Despite this progress, major shortcomings remain. Of pressing concern is the fact that only one prison facility in the entire country accommodates juvenile offenders. Moreover, even at this facility, there is still no separate detention of children and juvenile offenders from other adult offenders, contrary to the provisions of the ACRWC, given the overcrowding in the country's prison system. Equally of note is the fact that criminal responsibility remains at 7 years of age in Namibia contrary to acceptable international standards which prescribe such responsibility at the age of 12. These developments are clearly not aligned with the provisions of the ACRWC.

The participation of children in the country is done on a proxy basis; that is through their representatives. The political representation of children rests with the Ministry of Gender Equality, Poverty Eradication and Social Welfare. However, since 2007 a Children's Parliament has been established to coordinate the inclusion of children in law-making process, including in governance structures.⁷⁶ The aim of the Children's Parliament is

to lobby or advise government and its agencies responsible for law-making and their implementing machinery to fast track policies that would improve

Child Care and Protection Act.

72 K Kishaba 'Facts about sanitation in Namibia' <https://borgenproject.org/sanitation-in-namibia/> (accessed 1 October 2020).

73 As above.

74 See sec 38 of the Child Care and Protection Act.

75 See generally secs 54-56 of the Child Care and Protection Act.

76 The Children's Parliament consists of 98 members (7 from each of the 14 regions). All members are below the age of 18 years. Children living with disabilities and from marginalised groups (i.e. San communities) are included in the Children's Parliament, but they are representation is limited.

the rights and welfare of children and young persons in accordance with national legal instruments and the international convention's provisions.⁷⁷

The discussions of the Children's Parliament include tabling motions and resolutions on various issues. The status of these motions and resolutions is not settled, but in practice they are archived by the Office of the Speaker of the National Assembly. Although the Children's Parliament adopts resolutions and passes motions, these are once tabled in the Children's Parliament, compiled in a report and forwarded to the Ministry of Basic Education, Arts and Culture for consideration. The Children's Parliament however, has a limited role because the session only sits for one week annually. It does not carry out any activities beyond the one-week session, usually scheduled in the middle of the year.

Notwithstanding the progressive realisation of children's rights through the above stated measures and others not highlighted here, the challenges pertaining to the effective implementation and realisation of children's rights, especially as contemplated under the ACRWC, remains weighty. For starters, Namibia's engagements with the African human-rights system in comparison with example the UN system, remains limited. This is true of the mechanisms put in place by the ACERWC to support African states in their pursuit of realising children's rights. Namibia, for example has to date only submitted its initial state report (which was also unduly prolonged), with at least three periodic reports still outstanding. Children's *direct* participation and representation in processes (namely, budgetary allocations and law making process) and institutions affecting their rights remains extremely limited. Rather, their participation is through indirect representation through the relevant line minister and children's institutions affiliated to government.

Children are also hard hit by the HIV/AIDS pandemic. According to the UN AIDS, the HIV prevalence rate for adults aged 15-49 is 11.5 per cent.⁷⁸ From a total of 210 0000 adults and children living with HIV, around 10 000 are children aged 0-14.⁷⁹ It is reported that teenage pregnancy has been on the rise in the past decade with close to a fifth (19 per cent) of young women between the ages of 15-19 giving birth.⁸⁰ Yet, sexual and

77 Parliament of Namibia 'Children's Parliament' (2020) 1. <https://www.parliament.na/parliamentary-events/childrens-parliaments/> (accessed 5 September 2020).

78 UNAIDS 'Namibia: Country facts' <https://www.unaids.org/en/regionscountries/countries/namibia> (accessed 5 September 2020).

79 As above.

80 UNICEF 'Adolescent development and participation' <https://www.unicef.org/adolescence> (accessed 6 September 2020).

reproductive healthcare is not readily accessible to teenagers, and life skills teaching in schools is of a poor quality.⁸¹ Sexual and reproductive health services in practice require parental assistance. Distribution of condoms is generally free in most state buildings, especially clinics and hospitals, but all other services pertaining to sexual and reproductive health either require parental assistance or approval for children. There is to date no law that expressly provides for free access to sexual and reproductive health services for children. Teenage pregnancy remains high, leading to more than 2 000 drop outs annually.⁸²

7 Court judgments

The Ratification of the ACRWC has not translated into consistent use by the courts in Namibia. The Namibian courts have often relied on international treaties and the general principles of international law in their decisions. In this regard, the Namibian Constitution has been regarded as ‘international law positive’.⁸³ Despite its decorum as an international law positive jurisdiction, the use and application of international instruments, especially in the context of children’s rights, remains extremely limited. Even worse, compared to the CRC, which has on several occasions been invoked by the Namibian courts,⁸⁴ to date there is no traceable case that has either referenced, or, directly invoked the provisions of the ACRWC or its general comments. However, this does not mean that the non-exclusive reference to the ACRWC eliminates the invocation of its provisions in Namibian law. On the contrary, the Namibian courts have delivered a considerable number of decisions that resonate and reinforce many of the provisions captured in the ACRWC.

Beginning with the liberating first decision on children’s rights in Namibia in the case of *Ex parte: Attorney-General In Re: Corporal Punishment by Organs of State*,⁸⁵ the Namibian courts have demonstrated their commitment to the rights of children in Namibia. In this decision, the Attorney-General submitted a petition to the Chief Justice in terms of section 15(2) of the Supreme Court Act 15 of 1990, in which he sought

81 As above.

82 S Iileka, K Mogotsi & M Hamutenya “Teenage pregnancy SOS” *The Namibian* 1 November 2019. <https://www.namibian.com.na/194926/archive-read/Teenage-pregnancy-SOS> (accessed 5 September 2020). Girls not brides ‘Child marriage in Namibia’ <https://www.girlsnotbrides.org/child-marriage/namibia/> (accessed on 5 September 2020).

83 Tshosa (n 8) 1.

84 See for instance the decision in *JT v AE* 2013 (1) NR 1 (SC).

85 (SA 1990/40) [1991] NASC 2 (05 April 1991) <https://namibii.org/na/judgment/supreme-court/1991/2> (accessed 2 September 2020).

the consent of the Chief Justice (or such other judge designated for that purpose by the Chief Justice) for the Supreme Court to exercise its jurisdiction to act as a court of first instance, in hearing and determining a constitutional question which the Attorney-General sought to refer to the Supreme Court under the powers vested in him by article 87(c) read with article 79(2) of the Namibian Constitution. The question before the court was whether the imposition and infliction of corporal punishment by or on the authority of any organ of state is in conflict with any of the provisions of chapter 3 of the Constitution of the Republic of Namibia and more in particular article 8 thereof, which deals with the right to dignity. By an extensive reference to comparable court decisions in common law jurisdictions, the court came to the conclusion that the infliction of corporal punishment by organs of state, especially on children, violated the right to dignity as contemplated in article 8 of the Constitution and was therefore unlawful and unconstitutional. Whilst the decision precedes the ACRWC, its ethos can be traced to articles 16 and 21 of the ACRWC.

The courts jurisprudence on children, however, did not end with this decision. Time and again the courts have delivered positive decisions pertaining to various aspects on the rights of children. For example, in *Detmold and Another v Minister of Health and Social Services and Others*,⁸⁶ the High Court found section 71(2)(f) of the then applicable Children's Act 33 of 1960, which completely banned the adoption of Namibian children by foreigners, to be unconstitutional. In *Frans v Paschke & Others*,⁸⁷ the court implicitly extended the applicability of section 16 on the inheritance rights of children born outside marriage, through section 26(2), by finding the common-law rule that children born outside marriage may not inherit intestate from their fathers unconstitutional with effect from 21 March 1990. In addition, in a substantial number of decisions pertaining to child custody, the courts have been guided by the principle of the best interests of the child enunciated in article 4 of the ACRWC.⁸⁸ Other notable decisions aligned to the ACRWC include *S v Van der Bergh*,⁸⁹ where it was held that a youthful offender is a child in need of care as defined by the Children's Act of 1960; and *JS & Another v Chairperson of the Internal Disciplinary Panel of the Windhoek International School & Others*,⁹⁰ which considered a child's right to legal representation in a school disciplinary hearing. While the Namibian courts have had a positive contribution to the advancement of

86 2004 NR 174 (HC).

87 (unknown-2005/1548) [2007] NAHC 49 (11 July 2007) 2004 NR 174 (HC) <https://namiblii.org/na/judgment/high-court/2007/49> (accessed on 2 September 2020).

88 One of the leading decisions to this effect is *EH v D* 2012 (2) NR 451 (HC).

89 2003 NR 69 (HC).

90 2015 (2) NR 352 (SC).

children's rights, there is still to date no trace of Namibian jurisprudence that has directly invoked provisions of the ACRWC.

The question that remains to be answered is what could explain the Namibian courts' limited application of the ACRWC, despite its ratification of the instrument? Whilst it is extremely challenging to come up with any explanations it should be noted that the relatively sufficient domestic legislative and policy framework on children's rights generally narrows the scope of use and application of international instruments such as the ACRWA.

8 Awareness and use by civil society organisations

Generally, Namibian civil society engagement with the African human rights system has been limited. This is also true of the use of the ACRWC and subsequent engagement, if any, with the African Committee of Experts on the Rights and Welfare of the Child (ACERWC). It is therefore not surprising, that this study did not find any Namibian civil society organisations which enjoy observer status before the African ACERWC.

Even though civil society awareness and use of the ACRWC remains limited, there has been an attempt by some civil society organisations. These efforts, however, do not guarantee awareness on the provisions of the ACRWC since the instrument is not translated in indigenous languages, nor widely publicised in the media.

As part of its knowledge dissemination and awareness interventions, the Ministry of Justice periodically prints compendiums of the international instruments Namibia has ratified, including state reports and concluding observations made on these international instruments by the various treaty bodies. While this has also been the case with the ACRWC, there is currently no formal publication, whether on print or broadcasting explicitly on the ACRWC.

Several CSOs and Non-Governmental Organisations (NGOs) are directly involved in the monitoring and implementation of children's rights, generally including the provisions of the ACRWC. For example, following the initiation of the Children's Status Bill and the Child Care and Protection Act, the Ministry of Gender Equality, Poverty Eradication and Social Welfare appointed a Task Force of persons with expertise on children's issues to propose refinements to the two draft bills on the basis of the recommendations made at these workshops.⁹¹

91 Legal Assistance Centre 'Gender research and advocacy/Children' <http://www.>

9 Awareness and use by lawyers and the judiciary

As is the situation with the civil society in Namibia, the use and engagement of international instruments, such as the ACRWC, by both state and private lawyers remains limited. The ACRWC and even more so the African Charter on Human and Peoples' Rights, are not particularly popular amongst lawyers. It is rather safe to argue that only a few lawyers trained in the area of human rights law or exposed to the work of the African human rights system can allege exposure and awareness of the ACRWC.

The majority of lawyers and the judiciary rely heavily on instruments from the UN system compared to instruments from the African Union, including the ACRWC. To elaborate, since its inception, the Namibian Supreme Court has to date not engaged any jurisprudence from the African Committee on the Rights and Welfare of the Child (ACRWC) or the African Court on Human and Peoples' Rights. It has, however, in the past relied on sources with origins from the Banjul based African Commission on Human and Peoples' Rights.⁹² In contrast, the European Court of Human Rights jurisprudence has received considerable engagement from the Supreme Court.⁹³ Moreover, unlike the High Court of Namibia,⁹⁴ the Supreme Court has also not relied on any jurisprudence from international courts and tribunals generally, though of late it approved a dicta from the Permanent Court of International Justice (PCIJ) in *S v Munuma & Others*.⁹⁵

The limited use by Namibian lawyers and judiciary of foreign sources from African countries may raise questions about the value systems to which the Supreme Court ascribes. The courts limited use of African court decisions should not be misinterpreted as an evasion and undermining of

lac.org.na/index.php/projects/gender-research-advocacy-grap/children/ (accessed 7 September 2020).

92 The Supreme Court has referred to the ACHPR's decisions in *Constitutional Rights Project, Civil Liberties Organisation & Media Rights Agenda v Nigeria* Communication 140/94 (1999); and *Zimbabwe Human Rights NGO Forum v Zimbabwe* Communication 245/02 (2002).

93 From the 31 reported cases references in the Namibian Law Reports, 23 (74 per cent) citations are made by the Supreme Court.

94 For example, the High Court has engaged at least two decisions from the International Court of Justice. See the decisions in *Nottembohm* case (*Liechtenstein v Guatemala*) [1995] ICJ 4 applied in *Tlhoru v Minister of Home Affairs* 2008 (1) NR 97 (HC); and the *Permanent Court of International Justice concerning certain German interests in Polish Upper Silesia* (1926) PCIJ Series A, No 7 referenced in *Kessl v Ministry of Lands and Resettlement & Others and Two Similar Cases* 2008 (1) NR 167 (HC).

95 2016 (4) NR 954 (SC).

African legal systems as some may want to argue. This is because the courts reliance and dependence on foreign sources is reliant on a number of factors. One of them being the reliance lawyers make of these sources and how they engage the bench. Judges are often bound by the papers before the court and the sources referred and relied upon in those sources. Hence, the courts use of comparative foreign cases should not be divorced from the overall role other key stakeholders, such as legal practitioners play in the use of such sources.

10 Higher education and academic writing

Higher education in Namibia is predominantly limited to the three main Universities in the country.⁹⁶ Of these three, the University of Namibia is the most advanced and one with a law school. The law school does not conduct training on human rights, including on children's rights. However, in its curriculum it offers in the second year a module on human rights law. Being a semester module, this course falls short of covering all aspects on human rights, and as such aspects pertaining to the (African) regional system(s) are excluded from the curriculum.

The (then) Human Rights and Documentation Centre occasionally conducted human rights workshops. One of these dealt with children's rights, including elements pertaining to the ACRWC. An output of one of these workshops was the publication of a comprehensive textbook titled *Children's Rights in Namibia*.⁹⁷ The array of essays covered in this treatise makes extensive reference to the provisions of the ACRWC. By far this is the only legal text that either directly or comprehensively dealt with children's rights, and by consequence the ACRWC. However, there are some scholarly writings on the rise focusing on children's rights.⁹⁸ Given the lack of an appreciation of the African regional human rights system the academy has been robust in covering research pertaining to human rights, especially with reference to the instruments of the AU, such as the ACRWC.

11 National human rights institutions

In contrast to many African states, Namibia does not have a national human rights institution with a human rights function. Instead, the human

96 These are the Namibia University of Science and Technology (NUST); International University of Management (IUM) and University of Namibia (UNAM).

97 OC Ruppel *Children's rights in Namibia* (2008).

98 See for instance, IC Feris *An evaluation of the child justice systems dealing with children in conflict* (2013).

rights function is centralised in the Office of the Ombudsman. The Office of the Ombudsman is a constitutional construct created in terms of article 89(1). The primary functions of this Office include, *inter alia*:

the duty to investigate complaints concerning alleged or apparent instances of violations of fundamental rights and freedoms, abuse of power, unfair, harsh, insensitive or discourteous treatment of an inhabitant of Namibia by an official in the employ of any organ of Government (whether central or local), manifest injustice, or corruption or conduct by such official which would properly be regarded as unlawful, oppressive or unfair in a democratic society.⁹⁹

The Office of the Ombudsman, which derives its creation and mandate from the Constitution, in 2013 created a position of the Children's Advocate in the division of the Human Rights and Legal Services. It assists the Office of the Ombudsman in the performance of its children's rights and well-being related functions by receiving and investigating complaints and resolving such complaints. Furthermore, at the ministerial level, the Ministry of Gender Equality and Child Welfare works closely with various international agencies such as the United Nations International Children's Emergency Fund (UNICEF), the Global Fund and the United States Agency for International Development (USAID) in monitoring children's rights violation¹⁰⁰

The Children's Parliament and the National Advisory Council on Children may also be considered as two key institutions that may contribute to the realisation of children's rights, especially their inclusion in processes of decision making. In the premise, one would conclude that in the near future it is anticipated this office would play a crucial role in the monitoring and enforcement of children's rights, including the monitoring and implementation of international instruments relating to children such as ACRWC.

12 State reporting

Namibia's ratification of the ACRWC has given rise to an ancillary obligation to report on the interventions, if any, adopted which give effect to the provisions of the ACRWC in terms of article 43. An initial state report was submitted to the Secretariat of the African Committee of Experts on the Rights of the Child (ACERWC) in August 2014.¹⁰¹

99 Art 90(1) of the Constitution.

100 As above.

101 Namibia's Initial State Party Report to the African Committee on the Rights and

It should be noted that Namibia has not complied with the prescribed timeframes for the submission of state reports. With the initial report being overdue for close to a decade, it has to date not submitted any subsequent periodic reports. The late, and subsequent lack of submission of reports by the state, has not been officially corroborated with an explanation. However, it has been a common practice, though not officially confirmed, that Namibia has used its state reports to the UN treaty mechanisms as a basis for complementing its reports to the African human rights mechanisms. Put differently, in practice Namibia first submits its reports to the UN treaty monitoring bodies and amends and adopts these to the African context for submission to the African regional human rights mechanism. Clashes in timelines and deadlines for report submissions is therefore not uncommon or unexpected since the state uses this miscalculated timeline and approach for its submission of reports.

The Initial State Report, which is Namibia's only report to the ACERWC, is substantively divided into nine parts covering issues pertaining to general measure of implementation;¹⁰² definition of the child and measures taken to ensure compliance thereof;¹⁰³ interventions pertaining to the state's intervention concerning the general principles of the ACRWC;¹⁰⁴ civil rights and freedoms;¹⁰⁵ family environment and alternative care;¹⁰⁶ health and welfare;¹⁰⁷ education, leisure and cultural activities;¹⁰⁸ special protection measures;¹⁰⁹ and responsibilities of the child.¹¹⁰

Although the state should be commended for having submitted a periodic report, there are several challenges still remaining as far as state reporting is concerned other than its non-compliance with the reporting cycle before the African Committee on the Rights and Welfare of the Child (African Children's Committee). These include, non-compliance with the state reporting guidelines issued by the African Children's Committee; and no direct involvement or consultation of children in the

Welfare of the Child (2014) <https://acerwc.africa/wp-content/uploads/2018/04/Nambia-Initial-Report-Eng.pdf> (accessed on 1 November 2020).

102 Initial State Report (n 101) 3-16.

103 Initial State Report (n 101) 17-18.

104 Initial State Report (n 101) 19-26.

105 Initial State Report (n 101) 27- 33.

106 Initial State Report (n 101) 43-48.

107 Initial State Report (n 101) 49-68.

108 Initial State Report (n 101) 69-79.

109 Initial State Report (n 101) 81-88.

110 Initial State Report (n 101) 89-90.

reporting process. Furthermore, although the periodic state reports and concluding observations made thereunder by treaty monitoring bodies and mechanisms, including those by the ACERWC are published periodically in a compendium for distribution to members of the public, NGO's civil society and institutions of higher learning, the compendium reaches only a limited audience. This is because its print is limited, not published in the media or Government Gazette, nor is it translated into any of the 13 local languages, other than English. This of course is a shortcoming that needs to be addressed to ensure public access to important information of this nature. Another concern relates to the fact that there is currently no specific implementation plan of action in place to implement the concluding observations and suggestions made by the ACERWC, except that the line Ministry, currently the Ministry of Gender Equality, Poverty Eradication and Social Welfare, under its directorate of Child Care and Protection Services, is mandated to mainstream the concluding observations into its strategic plans in subsequent financial years and monitor the implementation of progress made on the recommendations made in the concluding observations, as well as the overall domestication and implementation of the of the ACRWC.

The ACERWC considered Namibia's Initial State Report during its 25th Ordinary Session, held at its seat in Addis Ababa, Ethiopia between 20-24 April 2015.¹¹¹ Following the consideration of this report, the ACERWC adopted concluding observations and recommendations to Namibia's state report, appraising progress made as well as key areas of concern pertaining to the implementation of the ACRWC.¹¹² Although singling the progress interventions made to advance the rights of children in Namibia, especially on a legislative and policy level, the ACERWC has also raised several shortcomings, predominantly arising out of a lack of implementation. These include, inter alia, unduly long process of applying for children's grants;¹¹³ lack of comprehensive data collection system and disaggregated statistics data on children generally;¹¹⁴ existence of discrimination in intestate succession under customary law;¹¹⁵ need to establish and cement child-friendly courts and procedures for child victims

111 Concluding Observations and Recommendations by the African Committee of Experts on the Rights and Welfare of the Child on the Republic of Namibia Report on the Status of Implementation of the African Charter on the Rights and Welfare of the Child, ACERWC (2015) https://reporting.acerwc.africa/uploads/3feda0153eee1380b496298450dc5a74324eb8c1/statereport/Namibia_CO_with_NV.pdf (accessed 2 September 2020).

112 Concluding Observations and Recommendations (n 111) 1-12.

113 Concluding Observations and Recommendations (n 111) 2.

114 Concluding Observations and Recommendations (n 111) 3.

115 Concluding Observations and Recommendations (n 111) 4.

and witnesses as well as confidential reporting mechanisms for children who are victims of abuse and violence;¹¹⁶ continued existence of school development funds which affects free (primary) education;¹¹⁷ prevention of statelessness for refugee and asylum seeking children;¹¹⁸ low minimum age of criminal responsibility;¹¹⁹ and increased sale, trafficking and abduction of children in Namibia.¹²⁰

The implementation of the concluding observations made to Namibia's state report requires both political will and resources to materialise. While resources may not always be adequate given the economic downturn, the country has been facing in recent years, there are strong indications of political commitment in realising children's rights generally. In the context of the above highlighted challenges for instance, the government has passed several laws to circumvent some of these challenges. For instance, more recently in 2020, the Basic Education Act was promulgated to promote and regulate free and compulsory basic education,¹²¹ eliminating payment of any fees to school development funds. Equally of note, with the adoption of the Child Care and Protection Act, a reformed system for the payment of grants is introduced which address the current unduly prolonged process of children's grant applications.¹²² The Act also aims to address other concerns raised by the ACERWC such as the increase in child trafficking¹²³ and the provision of a confidential and child friendly juvenile justice system and process.¹²⁴ The concrete implementation of these relatively progressive laws has the potential of enhancing the status and rights of children in Namibia and should therefore be given priority both from a political and economic standpoint.

13 Communications

The African Committee of Experts on the Rights and Welfare of the Child has to date not received communications pertaining to violations by the Namibian state of the provisions of the ACRWC. This, however, does not mean that there are no violations pertaining to children in Namibia. There

116 Concluding Observations and Recommendations (n 111) 6.

117 Concluding Observations and Recommendations (n 111) 10.

118 As above.

119 As above

120 Concluding Observations and Recommendations (n 111) 11.

121 See sec 67 of the Basic Education Act 3 of 2020 <http://www.lac.org.na/laws/2020/7257.pdf> (accessed on 2 September 2020).

122 See section 240-248 of the Child Care and Protection Act 23 of 2015.

123 See sec 202 of the Child Care and Protection Act.

124 See secs 38-62 of the Child Care and Protection Act.

remain major challenges in key areas such as climate change, refugees, sexual orientation and the increasing impacts of COVID-19 on children.

Following the global outbreak of the COVID-19 pandemic, different orientations have been negatively affected. This includes economies, governance and political systems, and socio-economic stratifications. Although the pandemic affects all, women, children and the elderly are amongst the most vulnerable and affected. According to a recent study by the UNICEF, the ongoing crisis could increase the number of children living in monetary poor households by up to 117 million by the end of the year 2020, including exacerbating the learning crisis and posing high risks to child survival, health, nourishment, violence, exploitation and abuse, mortality, early childhood development and nutrition.¹²⁵ Gradually these effects are impacting children in Namibia following the adoption of COVID-19 Regulations: Proclamation 9 of 2020.¹²⁶ For instance, in terms of Regulation 4 of the Proclamation, schools and institutions of higher learning are suspended save from employing other alternative forms of learning that do not involve the physical presence of learners or students at schools or institutions of higher learning.¹²⁷ The digital marginalisation of a vast majority of children, especially those in rural areas surely has a negative impact on the realisation of their right to education. However, efforts are being made to mitigate the impacts of the pandemic on children.

Under the authorisation of the President and the Attorney-General, the Minister of Gender Equality, Poverty Eradication and Social Welfare has mandated to make directives relating to child protection response during COVID-19. To this end, Directives Relating to Child Protection Response during COVID-19,¹²⁸ in terms of COVID-19 Regulations: Proclamation 9 of 2020 were gazetted in May 2020 (Directives). The aim of these Directives is threefold: First, to provide a general framework on how to deal with children in an emergency situation, taking into account their physical and psychological vulnerabilities and associated risks; Second, address challenges and provide guidance on how to respond to child related cases of Covid-19; and third to ensure effective and efficient coordination and management of child protection services during the Covid-19 state of emergency. The Directives provide for an interim

125 UNICEF 'COVID-19 and children' (March 2020).

126 Published in Government Gazette 7159 on 28 March 2020 <https://namiblii.org/akn/na/act/p/2020/9> (accessed on 2 September 2020).

127 As above.

128 See generally, COVID-19 Regulations: Proclamation 9 of 2020: Directives Relating to Child Protection Response during COVID-19, Government Notice 120 of 2020 Published in Government Gazette no 7214 on 15 May 2020 <https://namiblii.org/akn/na/act/gn/2020/120> (accessed 2 September 2020).

response plan to mitigate the effects of the pandemic on children. It includes a 'complementary parallel response streams for child protection',¹²⁹ in terms of which children in acute situations, that is children whose parents have been removed for isolation purposes or who have passed away due to COVID-19, can be assisted by social workers either at the national or regional level. The Directives have also maintained the payment of grants to children provided that case management processes and applicable Standard Operating Procedures in terms of the COVID-Regulations are complied with.

In addition to the challenges posed by the COVID-19 pandemic, another area of concern is the increasing actual and potential impact of climate change on children. Namibia, being amongst the driest countries in Sub-Saharan Africa, remains highly vulnerable to climate change.¹³⁰ Its geographic position on the continent and sub-continent renders it prone to erratic, variable and unreliable rainfall patterns. Amongst its most immediate impacts includes agricultural deficits, and flooding, especially in Northern Namibia, leaving many households without natural harvests and displacement. Children are affected in that many are left internally displaced, malnourished as a result of food shortage, which has negative implications on their health and early development. It also has the potential to impact children's right to education, health, food security, basic water and sanitation. Yet, the National Policy for Disaster Risk Management (2010) and National Climate Change Policy (2010) falls short of adequately mitigating the negative effects of climate change on children. There remains therefore a need to strengthen these policy frameworks so as to ensure the protection of children and other vulnerable groups.

The plight of LGBTI children, and the lack of health services for their needs such as hormonal changes, and the implications that LGBTI parenting may have on children (namely, adoption and citizenship) is another area that may in the near future raise serious concerns on the rights and welfare of children. This is true given Namibia's stringent position on sexual minority rights. The UN and its agencies in Namibia have been repeatedly calling for law reform on sexual minority rights in Namibia.¹³¹

129 Regulation 3(2).

130 H Reid et al "Climate change impacts on Namibia's natural resources and economy" (2008) 8 *Journal of Climate Policy* 452.

131 'UN wants homosexuality legalized in Namibia' *New Era* 18 August 2016 <https://neweralive.na/posts/homosexuality-legalised-namibia> (accessed 7 September 2020).

Although Namibia has ratified the OAU Refugee Convention, there has not been any serious attempt to protect refugee children in Namibia. For example, under Namibia's legal framework unaccompanied and undocumented children are excluded the governments foster care and alternate home care programmes.

14 Special mechanisms-promotional visits of the African Committee of Experts on the Rights and Welfare of the Child

The Committee has not undertaken any promotional visit to Namibia so far. However, in its concluding observations to Namibia's Initial State Report, the ACERWC has indicated its intention to 'undertake a follow up mission to ascertain the implementation of its recommendations in the foreseeable future'.¹³² This has, however, still not materialised.

15 Factors that may impede or enhance the impact of the Charter and the Committee

Namibia faces several challenges in its efforts to implement the provisions of the ACRWC. These challenges are catalysed by several factors. The first of these is a general lack of a national action plan or monitoring mechanism of the States progress in as far as the ACRWC is concerned. The lack of such a monitoring system undermines the gains made and results in inconsistent progress. For example, while there has been a specialised court system introduced in the form of the Children's courts, this remains heavily affected by the lack of juvenile systems such as juvenile prisons, which can in the long-term lead to recidivism for children found in conflict with the law. Currently there is only one juvenile prison in the entire country. State schools are widely accessible for children, but the lack of special schools for children living with disabilities needs redress. Other concerns that may not be of immediate concern, but may in the near future pose challenges, include as indicated before, the impact of climate change on children, children of diverse sexual orientations and their protection needs given Namibia's conservative stance on sexual minority rights and the plight of refugee children, especially unaccompanied and undocumented children, who for instance are currently excluded from foster care and alternative home care programmes of the government.

Culture and tradition, which is deeply engrained in the Namibian society is another factor impeding progress. With specific focus on the ACRWC, it is evident that there are still a number of negative cultural

132 Concluding Observations and Recommendations (n 111) 8.

practices that continue to violate children's rights and thus impede the full realisation of their rights. Practices such as early marriages and preference for the boy-child still need addressing in order to enhance the impact of the ACRWC.

The domestic influence of the ACRWC in Namibia is to a large extent negated by the lack of vibrant local or international human rights NGOs. The deficiency of human-right lawyers and lawyers' associations that engage pertinent human-rights issues, more so as they affect children also has the potential of derailing the gains made so far on the rights protection of children.

State reporting remains a major challenge. Namibia's state reports before the ACERWC remain due for close to a decade. This is corroborated even more by a weak civil society that can hold the state accountable. As indicated in this study, the role of civil society is critical in the African human rights system. One such avenue is the process of state party reporting, which can potentially be a promising field of engagement for the Namibian civil societies. One of the main reasons for low participation in the ACRWC reporting system is limited knowledge on the requirements to participate in the ACERWC systems. There is therefore need to capacitate and expand civil society engagement with the African human-rights systems, especially with the work of the ACERWC.

16 Conclusion

Namibia's status as far as the implementation, and by extension impact, of the ACRWC can at best be said as appreciable with both indications of progressive and regressive developments. To a greater extent, Namibia has heeded the provisions of the ACRWC. Firstly, and following the ratification of the ACRWC in terms of Namibia's domestication of international instruments, the government of Namibia has taken a broad range of interventions in the realm of legislation and policy frameworks,¹³³

133 These include, inter alia, Child Care and Protection Act 3 of 2012; Basic Education Act 3 of 2020; Combating of Rape Act of 2000; Combating of Domestic Violence Act, 2003; National Strategic Plan for Nutrition (2010); National Guidelines in Infant and Young Child Feeding; Establishment of a National Alliance for Improved Nutrition (2010); Cabinet Resolution: Report on Malnutrition in Namibia –The Time to Act is Now (2011); Nutrition Management for People Living with HIV/AIDS Guidelines (2007); Ministry of Health and Social Services Guidelines for the Prevention of Mother to Child Transmission of HIV (2008); Nutrition Assessment Counselling and Support Guidelines (2010); Maternity protection provisions in the Labour Act 11 of 2007; Water Supply and Sanitation Policy (2008) and Water and Sanitation Programme; National Policy for Reproductive Health (2001); National Policy on HIV and AIDS (2007); National Plan of Action 2006-2010 for Orphans and Vulnerable Children

including a unique provision on children's rights and the right to education in the Constitution.¹³⁴ These Constitutional, legislative and policy instruments are informed by relevant government policies embodied in policy documents which are aimed at effectuating the provisions of the ACRWC. Clearly, domestication of the ACRWC has therefore been considerably modest.

Beyond domestication, several progressive interventions, whether directly or indirectly, are traceable that evidence the implementation of the provisions of the ACRWC. These are enormous, but some examples are worth highlighting here, for ease of reference. Corporal punishment in all public institutions, including in schools and traditional settings has been outlawed. The introduction of free and compulsory primary and secondary education in all state schools, coupled with the removal of School Development Funds (SDF) and establishment of feeding programmes in state schools has contributed positively to the meaningful realisation of the right to education. Furthermore, the government's policy position allowing pregnant girls an option of re-admission into schools after giving birth has eased the plight of the girl child in being denied education. With the assistance of NGO's, such as UNICEF, birth registration has drastically improved through the enhancement of the civic registration system which now includes onsite registration in all state hospitals, including mobile registration measures to reach health facilities in rural and remote spaces. Mother to child HIV/AIDS transmission rates in Namibia are currently low as a result of the wide accessibility of antiretroviral medication to infected mothers. The social security schemes for children have also drastically improved the lives of children with at least three forms of social grants made available for children's benefit. The institutional framework on children has also improved over the years. As indicated in this article a line ministry is in place, with supporting institutions focusing on children's rights, such as the Children's Advocate, Children's Parliament and the National Advisory Council on Children.

Notwithstanding the progressive realisation of children's rights through the above stated measures, challenges remain. As indicated in this article, there remains pressing issues in areas such as health and education.

in Namibia (2006); National Sanitation Strategy (2009); National Health Policy Framework: Take Control of Your Health (2010); National Community Home-Based Care Standards (2010); National Policy for School Health (2008); National School Feeding Programme; National Agenda for Children 2012-2016 (2012); and Fourth National Development Plan (NDP4) (2012) – National Planning Commission.

134 See arts 15 and 20 of the Namibian Constitution.

It is therefore need for state intervention, in leveraging the odds against the gains made, as far the rights of the Namibian child are concerned.

10



STUDY ON THE IMPLEMENTATION OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD IN SUDAN

*Mai Aman**

1 Background

As of September 2020, Sudan is going through a three-year transitional period that started in 2019. According to the Sudanese Transitional Constitutional Charter of 2019 (STCC), Sudan follows a decentralised system of government which consists of three levels of government: the federal level, regional or provincial level, and the local level. Each level enjoys exclusive powers as well as shared ones.¹ The government consists of three bodies:² firstly, the Sovereignty Council which serves as the head of the state and symbolises its sovereignty and unity. It enjoys several competencies such as appointing the prime minister, confirming members of cabinet, the heads of regions or governors of provinces, members of the Transitional Legislative Council, the formation of the Supreme Judicial Council, the prosecutor-general and the appointment of the Judge President, judges of the Supreme Court, and the president and members

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1 The Sudanese Transitional Constitutional Charter (STCC) (2019) art 8 <http://constitutionnet.org/sites/default/files/201908/Sudan%20Constitutional%20Declaration%20%28English%29.pdf> (accessed 10 September 2020).

2 The STCC, art 9.

of the Constitutional Court.³ Secondly, the Cabinet which is the executive authority, is mandated primarily to execute the transitional period tasks as well as to expedite draft laws, the state budget and international, bilateral and multilateral agreements.⁴ Finally, the Legislative Council which is the body in authority to legislate, oversee the executive's performance, approve the general budget and ratify bilateral, regional and international treaties, as well as having the power to withdraw the confidence from the prime minister, amongst others.⁵

Sudan follows a hybrid legal system, partially common law which was inherited from the British, and Sharia law, which formed a source of law based on the Interim Constitution of 2005 which was repealed in 2019. Despite the fact that the STCC does not state that Sharia is a source of law in Sudan, elements of Sharia law can still be found in several laws such as the Muslim Personal Law Act 1991 and the Criminal Act of 1991. Jurisdiction in Sudan is entrusted to the judicial authority.⁶ To guarantee the independence of the judiciary, the STCC provides that it shall be independent from the Sovereignty Council, the Transitional Legislative Council and the Cabinet.⁷ The judiciary is headed by the president of the judicial authority who is the head of the National Supreme Court.⁸ The Constitutional Court is a completely separate and independent institution from the judiciary, it is mandated to observe the constitutionality of laws and to protect rights and freedoms as well as deciding on constitutional disputes.⁹

Sudan is classified as a low-income country as at July 2020.¹⁰ With a GDP of \$18.903 billion in 2019.¹¹ Furthermore, the HDI of Sudan was 0.507 in 2018 which ranked Sudan 168 out of 189 countries.¹²

3 The STCC, art 10.

4 The STCC, art 14.

5 The STCC, art 24.

6 The STCC, art 29(1).

7 The STCC, art 29(2).

8 The STCC, art 29(4).

9 The STCC, art 30(1).

10 U Serajuddin & N Hamadeh 'New World Bank country classifications by income level: 2020-2021' *World Bank Blogs* 01 July 2020 <https://blogs.worldbank.org/opendata/new-world-bank-country-classifications-income-level-2020-2021> (accessed 25 August 2020).

11 The World Bank, 'Data: Sudan' <https://data.worldbank.org/country/SD> (accessed 25 August 2020).

12 The United Nations Development Programme 'Human development report 2020 – The next frontier: Human development and the Anthropocene briefing note for countries on the 2020 Human Development Report: Sudan' at 2. <http://hdr.undp.org/>

Prior to the secession of South Sudan, the fifth and last official census estimated the population of Northern Sudan to be 30.9 million persons, making 79 per cent of the total population before secession.¹³ Forty-three per cent of the population is below 15 years of age. The male to female sex ratio is estimated at 1.05.¹⁴ A national Household Health Survey that was conducted in 2010 has shown that the national maternal mortality ratio is 216 per 100 000 live births.¹⁵ In 2017, the numbers have slightly changed to reach an estimate of 295 deaths per 100 000 live births.¹⁶ While the numbers differ from one region to another, it is noticeably higher in poor, rural and nomad communities.¹⁷ Various factors play a role in maternal mortality in Sudan, these factors include socio-cultural, economic, geographical, and organisational aspects of which rural women are the most disadvantaged because of the inequalities in education, economy and health.¹⁸ The direct causes of maternal death in Sudan are haemorrhage which accounts for 24 per cent, pregnancy-induced hypertension which accounts for 11 per cent, anaemia which accounts for 7 per cent, hepatitis which is responsible for 15 per cent of the deaths, while sepsis accounts for 11 per cent. Other direct factors such as obstructed labour, infection and complications of unsafe abortion account for 8 per cent while other indirect factors such as malaria contribute to 24 per cent.¹⁹

Sudan's infant mortality rate with the probability of death between birth and the first birthday is estimated to be 52 per 1 000 live births, while the under-five mortality rate stood at 68 per 1 000 live births.²⁰ In 2014, mother to child transmission of HIV was estimated to be 34.2 per

sites/all/themes/hdr_theme/country-notes/SDN.pdf (accessed 25 August 2020).

- 13 Fanack 'Population of Sudan' <https://fanack.com/sudan/population/> (accessed 25 August 2020).
- 14 Central Bureau of Statistics 'Fifth Sudan Population and Housing Census – 2008' (2009).
- 15 United Nations Population Fund 'Population dynamics of Sudan' https://web.archive.org/web/20150714061855/http://countryoffice.unfpa.org:80/filemanager/files/sudan/facts/population_fact_sheet_final1.pdf (accessed 19 August 2020).
- 16 Knoema – World Data Atlas 'Sudan - Maternal mortality ratio' <https://knoema.com/atlas/Sudan/Maternal-mortality-ratio> (accessed 19 August 2020).
- 17 Population and Housing Census (n 14).
- 18 SA Sidahmed 'Factors contributing to maternal mortality in Sudan' (2013) 27.
- 19 Saving the lives of mothers and children: Rising to the challenge 'Sudan' https://applications.emro.who.int/docs/High_Level_Exp_Meet_Rep_2013_EN_14800.pdf?ua=1 (accessed 7 September 2020).
- 20 Central Bureau of Statistics, UNCF 'Sudan: Multiple indicator cluster survey' (2014).

cent.²¹ Recommended vaccination rates of children between the age 12-23 months in the national immunisation are about 42.8 per cent.²²

Generally, in Sudan sexual acts are criminalised, religiously forbidden and culturally considered as a taboo unless carried on within wedlock, as a result there is no data available regarding sexual activity of unmarried adolescents.²³ However, the median age of first marriage is estimated to be 20.5 years.²⁴

Sudan's adolescent birth rate for women age 15-19 years stood at 87 per 1 000.²⁵ A 2007 antenatal-care survey revealed that the average prevalence of HIV infection among 15-19 and 20-24 years ANC attendees was 0.27 per cent and 0.33 per cent respectively.²⁶ On the other hand, the percentage of women between 15-49 years of age who are married and using or their partner is using a contraceptive method is 12.2 per 1 000.²⁷

Children's access to primary healthcare is guaranteed both by the STCC,²⁸ and the Child Act 2010, which provides that every child has the right to access primary healthcare at governmental hospitals and centres free of charge.²⁹ In furtherance of children's health, the law also criminalises and prohibits adding of substances that are inconsistent with specifications to children's food, such as artificial colours and preservatives,³⁰ and provides that those who are found guilty of this crime

21 Federal Ministry of Health 'Global AIDS response progress reporting 2012-2013: Sudan National AIDS and STI control program' (2014) 15 https://www.unaids.org/sites/default/files/country/documents/SDN_narrative_report_2014.pdf (accessed 15 August 2020).

22 Population and Housing Census (n 14).

23 Track20 'Assessing opportunities for family planning programming among adolescents and youth in Sudan' <http://www.track20.org/download/pdf/Youth%20Briefs/Sudan%20Youth%20Opportunity%20Brief.pdf> (accessed 7 September 2020).

24 As above.

25 Population and Housing Census (n 14).

26 Federal Ministry of Health 'United Nations General Assembly Special Session on HIV/AIDS (UNGASS) Report 2008-2009' (2010) 11 https://www.unaids.org/sites/default/files/country/documents/sudan_2010_country_progress_report_en.pdf (accessed 15 August 2020).

27 Country classifications by income level (n 10).

28 The STCC, art 64.

29 The Child Act 2010, art 14 http://www.nccw.gov.sd/ver_contenten.php?ver=25 (accessed 6 September 2020).

30 The Child Act 2010, art 13.

shall be imprisoned for a period of not less than six months, or fined or both.³¹

Despite the constitutional guarantees of health, acute malnutrition and stunting remain a public health concern in Sudan. The frequency of acute malnutrition on the national level ‘too thin for height’ is 14.1 per cent, about 522 000 children suffer from acute malnutrition while 2.7 million suffer from wasting on a yearly basis. It is estimated that one out of three children in Sudan is malnourished and do not grow to reach their full potentials, intellectually and physically.³² Several aspects contributed to this situation whether directly or indirectly such as low health status and comprehensive health services coverage, lack of availability of clean water, food insecurity that manifests in – but is not limited to – low production rate and fluctuating food prices which have equally played a significant role.³³

Sudan has made several international and regional commitments to improve and monitor the condition of children in the country, these commitments include: the UN Millennium Declaration and the Millennium Development Goals, adopted in 2000; the UN Plan of Action of A World Fit For Children (WFFC) adopted at United Nations Special Session on Children in May 2002; The Arab World Fit for Children; the Arab Charter for Child Rights; the Second Arab Childhood Strategy and Plan Of Action; and the Programme of Action adopted in 2004 at the International Conference on Population and Development.³⁴ As a result, several Sudanese ministries have developed strategies and policies addressing the issue of food and nutrition such as the Federal Ministry of Agriculture and Irrigation, the Federal Ministry of Education, the Federal Ministry of Water Resources and the Federal ministry of health (FMOH).³⁵

In 2008 the FMOH published the National Nutrition Policy and key strategies for the years 2008-2012, a National Nutrition Strategic Plan (NNSP) was also adopted for the years 2013-2016 with the aim of easing operational planning and resource mobilisation to achieve Sudan’s

31 The Child Act 2010, art 86(1-a).

32 United Nations World Food Programme (UNWFP) ‘Sudan’ <https://www.wfp.org/countries/sudan> (accessed 8 September 2020).

33 FAO & WHO Second International Conference on Nutrition ‘National nutrition strategy paper: Sudan’ http://scalingupnutrition.org/wp-content/uploads/2016/08/3.-Sudan-Nutrition-strategic-apaer-ICN_2.pdf (accessed 9 September 2020).

34 As above.

35 As above.

commitment of reducing people suffering from hunger by 50 per cent in the year 2015. Also, nutrition was one of the main programmes addressed by the National Maternal and Child Health Acceleration Plan 2013-2015.³⁶ Lastly, another National Nutrition Strategic Plan was adopted by the Ministry of Health in 2014 for the years 2014-2025.³⁷ Multiple partners are involved in supporting Sudan in implementing and coordinating its response to the nutrition issue, such as UNICEF, WHO, WFP, and FAO.

In 2017, UNICEF with other partners provided services to fight acute malnutrition to 202 000 children in Sudan.³⁸ Save the Children has donated cash grants as well as seeds and farming aid in South Kodrufan and vouchers in Darfur and Kodrufan. It has also supported more than 100 nutrition centres across the country.³⁹

Further protection is provided to children in the Child Act 2010, which obligates every employer to ensure every working child has a social insurance fund.⁴⁰ The law also provides that a child with a disability has the right to free social care.⁴¹ This position is further affirmed by the rights, privileges and exemptions guaranteed for the disabled under the National Persons with Disabilities Act 2017, which provides that the disabled must be included under the umbrella of social insurance.⁴² During the year 2016, a total of 17 826 persons with disabilities were included in the coverage, as at October 2017 a further 54 555 persons with disabilities were included. Beneficiaries within families are not included in these figures.⁴³

36 As above.

37 Federal Ministry of Health 'National Nutrition Strategic Plan 2014-2025' (August 2014) https://scalingupnutrition.org/wp-content/uploads/2016/08/4.-Sudan-National_nutrition_strategic_Plan.pdf (accessed 10 September 2020).

38 T Fusco 'Fighting food insecurity with UNICEF and partners in Sudan' *UNICEF USA* 31 May 2018 <https://www.unicefusa.org/stories/fighting-food-insecurity-unicef-and-partners-sudan/34417> (accessed 8 September 2020).

39 Reliefweb 'Number of Sudanese children facing extreme hunger doubles to 1.1 million due to impact of COVID-19' (08 July 2020) <https://reliefweb.int/report/sudan/number-sudanese-children-facing-extreme-hunger-doubles-11-million-due-impact-covid-19> (accessed 8 September 2020).

40 The Child Act 2010, art 41(2).

41 The Child Act 2010, art 48(2).

42 The National Persons with Disability Act 2017, art 4(m) https://www.apminebanconvention.org/fileadmin/APMBC/Victim_Assistance_Docs/Sudan_Disability_Law_Translated_2017.pdf (accessed 10 September 2020).

43 List of issues in relation to the Initial Report of the Sudan, CRPD Committee (6 December 2017) UN Doc CRPD/C/SDN/Q/1/Add.1 (2017) para 53 <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsshFWwYHBqp81ht8%2F0NCH4mTt14CE6mOmIWHh3RvewBVEBdyccjuVygMNU0o%2Bw%2BzsHxxLv9dMGXSq9GpV%2BH4bftL12YODU%2Fgumtkg>

The educational system in Sudan is composed of pre-primary education, primary, secondary, university and higher education. Pre-primary education is directed at children from the age of 2 years old, and is not compulsory.⁴⁴ According to the STCC only primary school is compulsory. However, the law obligates every employer who has more than 100 employees to establish a nursery.⁴⁵

Article 61 of the STCC provides that 'education at the general level shall be compulsory, and the state shall provide it free of charge'. Also, the Child Act 2010 stated that every child has the right to general education,⁴⁶ to be provided by the state as compulsory and free of charge.⁴⁷ Nonetheless, fees are repeatedly imposed by parent-teachers' associations in order to supplement the government's low funding for education. Also, the fact that parents have to pay for non-tuition fees such as uniforms, notebooks and other stationary makes it more difficult for poor families to enrol their children in schools.⁴⁸ With the help of UNICEF all 18 states of Sudan have drafted education strategies to advance the capacities of state's ministries of education.⁴⁹

As at 2013, the pupil/teacher ratio in Sudan was 25.3 students per teacher.⁵⁰ While the enrolment rate in primary school stood at 76.82 per cent in 2017, the value of female enrolment for the same year was 74.41 per cent compared to 79.16 per cent for males.⁵¹ As for secondary school the total gross enrolment ratio was 46.62 for the year 2017, females' enrolment was 46.96 per cent and male enrolment constituted 46.29 per cent.⁵² In 2016, the survival rate to the last grade of primary school was

rWWvpwBNxqvSV61vKfFgFHBovIrlg%3D%3D (accessed 10 September 2020).

44 Study Country 'Education in Sudan' <https://www.studycountry.com/guide/SD-education.htm#:~:text=Education%20in%20Sudan&text=The%20educational%20structure%20of%20the,children%2C%20and%20is%20not%20compulsory> (accessed 9 September 2020).

45 The Child Act 2010, art 21.

46 The Child Act 2010, art 28(1).

47 The Child Act 2010, art 28(2).

48 UNICEF Sudan 'Education program' [https://www.unicef.org/infobycountry/files/Unicef_Sudan_EDUCATION_PROGRAMME_FINAL_\(032016\).pdf](https://www.unicef.org/infobycountry/files/Unicef_Sudan_EDUCATION_PROGRAMME_FINAL_(032016).pdf) (accessed 10 September 2020).

49 As above.

50 Knoema World Data Atlas 'Sudan: Pupil-teacher ratio in primary education' <https://knoema.com/atlas/Sudan/Pupil-teacher-ratio-in-primary-education> (accessed 19 August 2020).

51 UNESCO 'Participation in education' <http://uis.unesco.org/en/country/sd> (accessed 19 August 2020).

52 As above.

75.19 per cent and the transition rate from primary to secondary school was 91.99 per cent.⁵³

The 2008 National Sudan Census Survey has revealed that the estimated prevalence of disability nationwide is 4.8 per cent, of which Sudanese children under the age of 18 constitute about 720 000.⁵⁴ As such, The Child Act 2010 provides that children with special needs shall be included and accommodated in all levels of education,⁵⁵ it also provides for the establishment of schools and vocational rehabilitation institutions for teaching children with special needs.⁵⁶ Upon completion of the rehabilitation or training programme every child is to be granted a certificate that set forth the vocation to which he has been qualified.⁵⁷ Necessary facilitation and assisting means such as transport for children with special needs is exempted from all types of custom fees.⁵⁸ The National Persons with Disability Act 2017, further provides that people with disabilities shall be exempted from school fees for all levels, primary, secondary and university.⁵⁹ It also provides that special educational curricula for people with dual disabilities shall be developed with the provision of translators,⁶⁰ as well as facilitating the teaching of Braille and sign languages, alternative writing methods, technical aids and all the necessary educational aids.⁶¹ The Act also states that persons with disabilities are to be integrated with their peers at all levels and in all kinds of education.⁶²

In 2013, the Federal Ministry of Education launched a 3-year National Strategy Plan for the education of children with disabilities which comprehensively discussed a different set of obstacles facing children with disabilities in the Sudanese schooling system, such as the most prevalent issue of physical access, the strategy also offered a wide array of responses to these challenges.⁶³ Furthermore, the Ministry of

53 Track20 (n 23).

54 Reliefweb 'Sudan unveils national education strategy for children with disabilities' <https://reliefweb.int/report/sudan/sudan-unveils-national-education-strategy-children-disabilities> (accessed 19 August 2020).

55 The Child Act 2010, art 49(1).

56 The Child Act 2010, art 49(3).

57 The Child Act 2010, art 50.

58 The Child Act 2010, art 53.

59 The National Persons with Disabilities Act 2017, art 4(a).

60 The National Persons with Disabilities Act 2017, art 4(b).

61 The National Persons with Disabilities Act 2017, art 4(c).

62 The National Persons with Disabilities Act 2017, art 4(d).

63 UNICEF 'UNICEF welcomes Sudan's national strategy for education of children

Education has upgraded the special education department from a small basic-education section to a public department, staff have been allocated to guide implementation of the inclusive education policy,⁶⁴ and the Ministry of Education has adopted a guide regarding the education of persons who are deaf that was prepared by the special education department.⁶⁵

Both the STCC and the Child Act 2010 provide for the right to education for all without discrimination on any grounds. However, there is no policy in place that deals specifically with the education of pregnant girls. Various socio-economic and cultural barriers stand in the way of girls who fall pregnant from continuing their education.

The issue of sexual education in Sudan is a very sensitive topic due to cultural and religious concerns. Despite its coverage of several aspects such as relationships, values, attitudes and skill, culture, society, human rights, human development, sexual behaviour, and sexual and reproductive health,⁶⁶ many people in Sudan misunderstand it as covering sexual practise solely.

In the formal education system of Sudan, sexual education is not covered as a separate subject. However, elements of sexual education are incorporated to subjects such as Islamic studies and biology, both in primary and secondary education, covering only general aspects such as puberty and the reproductive organs of both sexes.

2 Ratification of the African Charter on the Rights and Welfare of the Child

Sudan ratified the ACRWC on 30 July 2005.⁶⁷ It has made a reservation to article 10 on the protection of privacy, article 11(6) concerning the education of children who become pregnant before completing their education and article 21(2) on child marriage.⁶⁸ No information is

with disabilities' https://www.unicef.org/media/media_70994.html (accessed 19 August 2020).

64 Education in Sudan (n 44) para 43.

65 Education in Sudan (n 44) para 44.

66 UNESCO 'International technical guidance on sexuality education: An evidence-informed approach for schools, teachers and health educators' (2009).

67 ACERWC 'Ratifications table' <https://www.acerwc.africa/ratifications-table/> (accessed 26 August 2020).

68 ACERWC 'Reservations' <https://www.acerwc.africa/reservations/> (accessed 26 August 2020).

available on whether a compatibility study was conducted before ratifying the treaty.

Despite the promotional efforts employed by the NCCW and CSOs, the principles and provisions of the ACRWC are not known amongst adults and children to a large extent. Furthermore, there is no evidence that the ACRWC has been translated into any local language.

3 Government focal point

The National Council for Child Welfare (NCCW) is the main body responsible for the implementation of international and regional treaties pertaining to children that are ratified by Sudan in coordination with other levels of governance.⁶⁹

Children are represented and their views are taken into account through consultative workshops and children parliaments which are established in all 18 states of Sudan as well as at the federal level which represents the national mechanism to discuss the provisions of the Convention on the Rights of the Child in accordance with the Child Act 2010 that guarantees the right of participation to all children.⁷⁰

As children's issues overlap, interrelate and intersect across different ministries and government institutions that provide a particular service to children such as health and education, the NCCW has adopted an integrated approach in dealing with children matters, it does not limit itself to a particular sector or service.⁷¹

Article 6 of the National Council for Childhood Welfare Act of 2008 cites the functions and powers of the Council, which are mainly to develop policies, plans and programmes relating to childhood within the framework of the general policy of the state, coordinate with the other levels of government in the field of child welfare, form technical and advisory committees to assist it in performing its duties, create statistical database on the situations of children, represent Sudan in international conferences in coordination with the competent authorities, attract support and assistance and internal and external financing to support and develop

69 The National Council for Child Welfare Act 2008, art 6(g).

70 NCC 'The National Council stands on the elections for the President of the Children's Parliament' http://www.nccw.gov.sd/news.php?action=show&news_id=106 (accessed 10 September 2020).

71 The National Council for Child Welfare 'Roles and responsibilities' <http://www.nccw.gov.sd/pageen.php?page=86> (accessed 29 August 2020).

the child welfare plans and programmes, oversee the implementation of regional and international child conventions ratified by Sudan in coordination with the other levels of government, develop the Council's annual budget and submitting it to the competent authorities, propose the necessary legislation for the protection and welfare of children and working for the development thereof, raise awareness of children's issues and improvise ways and means to carry out them, and issue the internal regulations governing the council's meetings and duties.

4 Domestication or incorporation of the Charter

According to article 41(2) of the STCC, no domestication is required for international treaties as all the rights and freedoms contained therein become an integral part of the Charter upon ratification by Sudan. However, to give effect to the rights provided for by the international instrument, the state must establish legislation to organise the rights and freedoms contained in the Charter without confiscating or reducing them.⁷²

According to article 4 the Child Act of 2010 'a child means every human being below the age of eighteen years'.⁷³ The same article continues to provide several meanings of children in certain circumstances, it defines a child soldier as 'a child below eighteen years of age who is appointed, accepted or forced to join a military or paramilitary, regular or irregular force'. Child labourer is defined as 'a child, between fourteen and eighteen, who is doing labour'. A homeless child means 'a child who is subjected to danger because of his presence in the street to the extent that endangers his moral, psychological, physical or educational integrity'. A delinquent child is 'a child who has completed twelve years but below eighteen who committed an act contravening the law'. Likely to be a delinquent child means 'a child has completed seven years of age but below twelve who has been found in an environment that endangers his moral, psychological, physical or educational integrity'.

The age of criminal responsibility is 12 years.⁷⁴ Article (8) of the Criminal Act 1991 defines the responsible child as a major sane natural person. Major means a person who shows signs of puberty and who has completed 15 years of age. A person who has completed 18 years of age is considered major even if no signs of puberty appear. Article 9 of the same code stipulates that

72 The STCC, art 41(3).

73 The Child Act 2010, art 4.

74 The Child Act, art 5(1).

a minor who has completed seven years of age who commits an act contravening the law may not be considered committing an offence, but he may be subjected to procedures of reform and care as stipulated herein.

On the other hand, the minimum age for legal marriage is ten years old according to the Muslim Personal Status Act 1991 which provides that a judge can authorise the marriage of a distinctive child if the judge sees a preponderant interest in her marriage.⁷⁵ The same law provides that distinctiveness is measured by reaching the age of ten.⁷⁶

Generally, consent is not valid unless coming from a mature person.⁷⁷ A mature person is someone who reached 15 years of age and developed signs of puberty or 18 years old without such signs.⁷⁸ However, the Sudanese Criminal Act does not criminalise sex with children below 18 years of age providing that it is within marriage as the minimum age for legal marriage is ten- years old based on the Sudanese Muslim Personal Status Act.⁷⁹ While there is no legal provision on the age at which a child may consent to medical treatment without parental approval, the age of consent to medical treatment as practised by medical practitioners is 18 years old. This gap in the law may result in children lacking access to the medical treatment they are in need of due to the absence of their parents or guardians.

The Criminal Act 1991 provides that the court can order the discipline of a child who has reached the age of ten and has been charged with committing an offence with the punishment of whipping provided that it does not exceed 20 lashes.⁸⁰ The Criminal Procedure Act 1991 provides further information on how the punishment of whipping should be carried out, namely, that a medium-sized whip shall be used to administrate the lashes in moderate strokes which should not break the skin or the bone and should be directed away from the face, head or other vital areas of the body.⁸¹

Corporal punishment or flogging is used as a disciplinary measure in Sudan. However, when discussing the use of flogging in the educational

75 The Muslim Personal Status Act 1991, art 40(3) <http://www.nccw.gov.sd/files/148.pdf> (accessed 10 September 2020).

76 The Muslim Personal Status Act, art 40(2).

77 The Criminal Act 1991, art (3).

78 As above.

79 The Child Act, art 4.

80 The Criminal Act 1991, art 47(b).

81 The Criminal Procedure Act 1991, art 197.

system, the Child Act 2010 prohibits the use of cruel punishment against children in schools.⁸² Nevertheless, it does not define the parameters of what is meant by ‘harsh’ and whether it includes corporal punishment or not. Article 29(2) of the Child Act calls for the Ministry of Instruction and General Education to specify the sanctions, but as of February 2017 this call had not yet been fulfilled.⁸³ A 2010 decree by the Office of the Minister at the Ministry of Education provided that corporal punishment shall be prohibited in primary schools, but shall remain in secondary schools to be administered by the school principal and should not exceed 3 lashes.⁸⁴ The Child Act 2010 does not refer to other types of corporal punishment such as amputation which can be imposed in ‘hudud’ offences under the Criminal Act 1991. While the Child Act provides that in cases of inconformity it shall prevail to all other law, it is unclear if this also applies to ‘hudud’ cases.⁸⁵

The Committee on the Rights of the Child has recommended that Sudan explicitly prohibits corporal punishment by law in all settings, ensures effective implementation of the law and prosecutes offenders.⁸⁶ However, this has yet to be done. As a result, corporal punishment is still practised to a great extent in homes, courts and in prisons.

5 Legislative reform and adoption

Sudan ratified the Convention on the Rights of the Child (CRC) on 3 August 1990,⁸⁷ it also ratified the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography on 2 November 2004.⁸⁸ The Optional Protocol to the CRC on the involvement of children

82 The Child Act 2010, art 29(A).

83 Global Initiative to End All Corporal Punishment of Children ‘Corporal punishment’ (2018).

84 The Ministry of Education ‘Decree number 10’ (29 June 2010) <http://moekh.gov.sd/wp-content/uploads/2018/02/%D9%82%D8%B1%D8%A7%D8%B1-%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D9%88%D8%B2%D9%8A%D8%B1-%D8%B1%D9%82%D9%85-10-%D9%84%D8%B3%D9%86%D8%A9-2010%D9%85-%D9%85%D9%86%D8%B9-%D8%B9%D9%82%D9%88%D8%A8%D8%A9-%D8%A7%D9%84%D8%AC%D9%84%D8%AF.pdf> (accessed 20 August 2020).

85 The Criminal Procedures Act 1991, art 197.

86 Concluding Observations by the UN Committee on the Rights of the Child: Sudan, Committee on the Rights of the Child (22 October 2010) UN Doc CRC/C/SDN/CO/3-4 (2010) para 3.

87 United Nations treaty collection https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11&chapter=4&clang=_en (accessed 23 August 2020).

88 As above.

in armed conflict was ratified by Sudan on 26 July 2005.⁸⁹ However, Sudan is yet to ratify the Third Optional Protocol to the CRC on communications procedure. Furthermore, Sudan ratified the Worst Forms of Child Labour Convention on 7 March 2003.⁹⁰

Sudan has adopted the Civil Registry Act of 2001. Articles 28, 29 and 30 of the Act discuss the procedures of registration, persons tasked with reporting birth incidents and reporting child birth in certain circumstances such as having birth on board a Sudanese ship or plane. According to the Nationality Act 1994, as amended in 2005, the Minister of Interior Affairs has issued the Sudanese Nationality Certificate Regulation 2005 in which article 5 provides that, in order for someone to acquire the Sudanese nationality by birth, first, they or their father must be born in Sudan provided that the condition of their settlement or the settlement of their father's origin in Sudan dates back to or prior to 1 January 1956. The same applies to someone who is Sudanese and their father was born outside Sudan. Thirdly, a blood connection to a mother who is Sudanese by birth must be established. Fourthly, a blood connection to the parents who acquired the Sudanese nationality prior to the child's birth, and lastly, if the child is a minor, the parents' ignorance must be proven in order to acquire Sudanese nationality.

The STCC provides international or regional human-rights treaties ratified by Sudan are domesticated and given effect to by enacting legislation that organises the rights and freedoms contained in them.⁹¹ It also provides that these treaties constitute an integral part of the STCC once ratified. According to Sudan's Initial Report, procedures have been taken at several stages to guarantee compatibility between national legislation, practices and the principles and provisions of the Charter.⁹²

The Child Protection Act 2004 has been revised. A draft for the Child Act in 2006 has also been issued. The Armed Forces Act 2007 contains several provisions for the protection of children in areas affected by armed conflicts. It has also restricted recruitment only to those who are above 18 years of age, the Act further contains provisions dealing with the offences committed by fighters during military operations. As a result of these

89 As above.

90 International Labour Organisation 'Ratifications for Sudan' https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103176 (accessed 23 August 2020).

91 N 1.

92 Sudan's Initial Report on the Implementation of the African Charter on the Rights and Welfare of the Child (2010) 6.

amendments, the Armed Forces Act is now in line with international standards on the protection of the child and the African Charter on the Protection and Welfare of the Child.⁹³

6 Policy reform and adoption

The STCC provides that ‘the state shall protect the right of the child as set forth in international and regional agreements ratified by Sudan’.⁹⁴

Article 44 of the Charter deals with citizenship and nationality, it stipulates that they shall be conferred on an equal basis for all Sudanese and that children born to Sudanese mothers or fathers have an inalienable right to attain Sudanese nationality and citizenship. Article 53 restricts the death penalty and prohibits its imposition on anyone who did not reach 18 years of age at the time of committing the crime. Furthermore, article 61 provides for the right to education and places an obligation on the state to guarantee access to education without discrimination on any ground and that general education is compulsory and free of charge to all.

The Child Act 2010 contains 87 articles dealing with all aspects of life of the child in accordance with the provisions of the STCC, the African Charter on the Rights and Welfare of the Child and all other international instruments on the child, including the UNCRC and its two optional protocols. The Act has 12 chapters that deal with the right of the child to protection, alternative care, health, education and legal and judicial institutions. The Act has also provided for the principle of the best interests of the child and they should always have precedence over any other considerations regarding all decisions and procedures pertinent to childhood, family or environment, regardless of who issued these decisions or procedures.

7 Court judgments

According to the STCC: ‘All rights and freedoms contained in international human rights agreements, pacts, and charters ratified by the Republic of Sudan shall be considered an integral part of this charter’, and these rights shall be regulated by legislation. As such we can conclude that human rights are justiciable before domestic courts. The ACRWC is considered to form part of the Bill of Rights contained in the STCC given effect through the enactment of the Child Act 2010.

93 As above.

94 The STCC, art 49.

In accordance with article 41(1) of the STCC, the provisions of the ACRWC can be invoked before national courts as they form an integral part of the Charter. However, the application is done through the enforcement of the Child Act which is the Act organising the treaty. In cases of conflict, the provisions of the ACRWC shall prevail as article 41 of the STCC provides that:

Legislation shall organize the rights and freedoms contained in this document but shall not confiscate them or reduce them, and it shall only restrict such freedoms as needed by democratic society.

The rules governing children's trial procedure provides that no child shall be prosecuted without the presence of a representative from the Social Services Office, as well as a parent if possible,⁹⁵ it also provides that no child shall be prosecuted without a defence lawyer representing him/her and the court may allow the presence of any other person as a friend.⁹⁶

The Child Act provides that the Court may exempt the delinquent child or witness from attending the trial if it is in their best interests.⁹⁷ If the courts are of the view that for health purposes the child is in need of an examination before determining the suit, it shall transfer the child to competent medical provider and shall postpone the case until the examination is done and the report is received.⁹⁸ The Act further provides that in case the child is involved in an offence with adults, the child shall be tried separately and shall not be brought before the criminal court.⁹⁹

The STCC provides that 'the state shall protect the right of the child as set forth in international and regional agreements ratified by Sudan'.¹⁰⁰ However, the inconsistency in defining a child between the Child Act 2010 and the Sudanese Criminal Act 1991 often leads to confusion and contradicting judgments.

In the case of the government of *Sudan v A.S.KH* 2011, the National Supreme Court concluded that article 4 of the Child Act 2010 which defines a child as 'every person who has not exceeded 18 years of age' does not go in line with the provisions of the Sudanese Criminal Act 1991 and as such it is in conflict with the Sudanese Interim Constitution 2005.

95 The Child Act 2010, art 65(3).

96 The Child Act 2010, art 56(4).

97 The Child Act 2010, art 65(5).

98 The Child Act 2010, art 65(7).

99 The Child Act 2010, art 65(8).

100 The STCC (n 94).

Also, it decided that the victim in this case, who was 17 years old, is not a child based on the Sudanese Criminal Act 1991 which was derived from the Islamic Sharia. In this matter, a criminal case was filed against the accused alleging he had raped the victim, and according to the Child Act 2010, everyone who is less than 18 years old is considered a child. Also, the consent of the child is not valid. Based on that, the accused was sentenced to life imprisonment and a fine. In the appeal that was submitted to the Supreme National Court for support, the court decided that the victim is not a child according to the Sudanese criminal law, which defines an adult person as someone who has reached 15 years of age and has developed signs of puberty or who has reached the age of 18.¹⁰¹ Accordingly, the victim is considered an adult by exceeding the age of 15 and the fact of pregnancy. Likewise, the Criminal Act recognises the consent of a sane adult, thus the crime of rape was denied in the face of the accused. In addition to that, the Criminal Act is based on Islamic law, which is the main source of national legislation, including the Child Act 2010. The victim in this case was a child below 18 years of age. According to the Child Act 2010 she is to be considered a child and her consent is not valid. However, in this case, the court decided to abandon the constitutional provisions regarding international human-rights treaties and the Child Act 2010 which is the domestication law of the African Children Rights Charter, to follow the Criminal Act provisions instead. Thus, the court did not give effect to the ACRWC provisions.

On 22 April 2020, an amendment was made to article 141 of the Criminal Act 1991 criminalising Female Genital Mutilation (FGM) and punishing those who commit this offence with 3 years' imprisonment as well as a fine to be decided by the judge.¹⁰² Moreover, a national plan to combat violence against children was adopted in 2010 as well as a national strategy to eradicate FGM 2008-2018.¹⁰³

Article 45 of the Child Act 2010 prohibits the exploitation of children in prostitution, pornographic materials, forced labour and use of children in prostitution and pornographic materials. Article 86 of the same act provides for the penalties to these crimes against children, the penalties range between the death penalty, imprisonment for 20 years, to 15 years' imprisonment with fine depending on the crime committed. The court

101 Art 3 of the Sudanese Criminal Act 1991.

102 UNICEF 'Sudan enters new era for girl rights with criminalisation of FGM' <https://www.unicef.org/mena/press-releases/sudan-enters-new-era-girl-rights-criminalization-fgm> (accessed 27 August 2020).

103 The National Council for Child Welfare 'The national strategy to abolish FGM in Sudan 2008-2018' <http://www.nccw.gov.sd/files/352.pdf> (accessed 25 August 2020).

may also order the confiscation of property that was used or eased the occurrence of the crime.

The law does not explicitly protect children from corporal punishment in all settings, they are only protected in primary schools.¹⁰⁴ As sexual practises outside of wedlock are criminalised whether consensual or not, only children who commit sexual offences and are above the age of 12 are criminalised by law.¹⁰⁵

According to the situational analysis of the FMOH on adolescents' health in 2010, the main health-related issues that face adolescents in Sudan are sexual and reproductive health related. However, as at 2014, no specific law was established to address this issue.¹⁰⁶ Generally, abortion is criminalised and it is only provided for in very specific situations such as in the case of rape or if it was necessary to save the mothers' life upon the recommendation of the doctor.¹⁰⁷

As to the juvenile-justice institutions in Sudan there is a holistic juvenile-justice system with a comprehensive law on juvenile justice and provisions for diversion and efficient alternatives to the justice system. The Sudanese juvenile system is in accordance with the provisions of the ACRWC especially provision 17 on juvenile justice.

The age of criminal liability in Sudan is 12 years old, children who commit offences are governed by the Child Act 2010 which provides for the juvenile-justice system and institutions.

Article 54 provides for the establishment of a specialised police force to deal with children named 'the family and child protection unit' which is mandated to conduct investigations with children and those who committed offences against children, search for lost children as well as to coordinate with competent institutions in providing support services for children.¹⁰⁸ The same Act continues to regulate children in detention and detention institutions.¹⁰⁹

104 UNESCO (n 51).

105 The Child Act 2010, art 5(2).

106 OM Hanafi 'Adolescents sexual and reproductive health and rights in Sudan' https://bibalex.org/baifa/Attachment/Documents/PFLqWShBVi_20161026102018971.pdf (accessed 10 September 2020).

107 The Sudanese Criminal Act, art 135.

108 The Child Act 2010, art 55.

109 The Child Act 2010, arts 58-59.

Article 60 of the Child Act provides for the establishment of a separate child prosecutor to be mandated with the authority of conducting investigations with children, the Act further provides for the establishment of child courts,¹¹⁰ which are mandated to hear child cases and other cases transferred from criminal courts. Child court judges must undertake special training in sociology and psychology science, methods of dealing with children, and laws and international conventions related to children.

Correction measures for a delinquent child are provided for by article 69 of the Child Act. Children who are sentenced to correctional measures are kept in correctional institutions.¹¹¹

Child participation is guaranteed by law, The NCCW has established the Sudanese Child Parliament.¹¹² However, there is no information on the level of gender balance within the child parliament nor there is information on the frequency of its sitting.

Article 5 of the Child Act 2010 guarantees to every child the right to express their opinions and desires with every freedom, and to actually take part in the special judicial, administrative, social or instructional procedure, in accordance with the age of the child and degree of their maturity. Article 5 further provides that all children shall have the right to freedom of expression, it also provides that the child who belongs to an ethnic, religious or linguistic minority has the right to enjoy, with the rest of the group, his culture, or profess his religion and practice his rituals or the use of his language.

According to Sudan's Initial Report, school regulations have emphasised the importance of cultural and sport association and guaranteed the same are put in place in schools.¹¹³

The STCC provides for the freedom of expression to all citizens,¹¹⁴ it also provides for the right of freedom of assembly and organisation.¹¹⁵ Also, school regulations provide for the same rights.

110 The Child Act 2020, art 62.

111 The Child Act 2020, art 71.

112 The National Council on Child Welfare 'The National Council stands on the elections for the President of the Children's Parliament' http://www.nccw.gov.sd/news.php?action=show&news_id=106 (accessed 28 August 2020).

113 Initial Report (n 92) 27.

114 The STCC, art 56.

115 The STCC, art 57.

8 Awareness and use by Civil Society Organisations

The provisions of the African Children's Charter are well known to CSOs and have been used by them in Sudan to a large extent in different child-related activities, provisions related to children nationality have been used in advocacy campaigns by organisations such as AL-Manar. Mutawinat benevolent company has used the provision of the Charter in 32 training workshops related to the juvenile-justice system as well as the issuance of pamphlets providing for the African Children's Charter and another one comparing it with the CRC.

According to Sudan's Initial Report, the government has organised national training advocating for the African Children Charter focusing on the governmental and civil society role in its implementation, it has also conducted a workshop on revising the protection laws and comparing it to the African Children Charter and other regional and international instruments, this workshop targeted members of the government, justice institutions and legislative bodies.¹¹⁶

Civil society organisations are involved in the monitoring of the implementation of the ACRWC, for example, ACJPS and PLACE have submitted a communication to the Committee against Sudan on the basis that the amendments of the Nationality Act 1994 have violated the right to Nationality under the Charter.

9 Awareness and use by lawyers and the judiciary

The provisions of the treaty are known amongst the governmental officials working in areas related to Children, such as the NCCW and judges at children courts as they were targeted for trainings and workshops. The government has made the provisions of the ACRWC available to the citizens through publication in the NCCW– general secretariat website.¹¹⁷

10 Higher education and academic writing

International human rights law is taught as a compulsory subject in various law faculties in different Sudanese universities. However, little to no focus is given to the African human-rights system. As such, we can conclude that the provisions of the treaty are not well known to law students. This

¹¹⁶ Initial Report (n 92) 11.

¹¹⁷ The National Council for Child Welfare 'International treaties' http://www.nccw.gov.sd/ver_content.php?ver=24 (accessed 25 August 2020).

is aggravated by the fact there is no evidence of academic research that is focused on the ACRWC.

11 National Human Rights Institutions

The National Human Rights Commission is primarily mandated with the task to protect and publicise human rights, and monitor the implementation of the rights and freedoms contained in the rights and freedoms charter,¹¹⁸ this includes the ACRWC.

While there is no section at the National Human Rights Commission that deals specifically with children's rights and there is no dedicated ministry for children's affairs, children issues fall within the scope of the National Human Rights Commission and the Ministry of Social Security and Development.

Due to their interaction with children's rights issues on daily basis, some institutions, including the National Human Rights Commission, CSOs and the judiciary working in the field of children's rights are aware of the treaty provisions as well as the general comments. However, there is no evidence that they were translated into any local language. Also, media interaction in this matter is very scarce.

12 State reporting

Sudan has submitted one report to the ACERWC. The initial report's due date was 18 July 2010, but Sudan submitted in October 2010.¹¹⁹ As to the periodic report it was also due to be submitted on 18 July 2013 but to date it has not been submitted.¹²⁰ No information was found on the reasons for this delay.

The report comprised two parts. Part one which dealt with Northern Sudan covering progress made on the implementation of articles of the Charter, namely the definition of the child, general principles, civil rights and liberties, family environment and alternative care, health, education, culture, leisure time, special protection procedures and responsibilities of the child. Part two dealt with Southern Sudan, covering five chapters dealing with civil rights and liberties, family environment and alternative care, health, welfare, education, leisure time, cultural activities and special

118 The National Commission for Human Rights Act 2009, art 9(1).

119 ACERWC 'Initial and periodic reports table' <https://www.acerwc.africa/initial-and-periodic-reports/> (accessed 5 August 2020).

120 As above.

protection procedures.¹²¹ The Report has been prepared in conformity with the reporting guidelines set by the ACERWC with respect to the issues covered by the report as well as the layout of the chapters as presented in the reporting guidelines.¹²²

The Secretary General of the NCCW issued a decree, on 29 March 2010, forming a technical committee for the preparation of an Initial Report on the implementation of the African Charter on the Rights and Welfare of the Child. The committee comprised various governmental and voluntary agencies working in the field of child rights headed by the NCCW, it included the Ministries of Health, Education, Foreign Relations and Defence in addition to the Family and Child Protection within the Police, the Advisory Council for Human Rights, the Commission of Refugees, the National Centre for Artificial Limbs, DDR Commission, Child Rights Institute, Save the Children Sweden, UNICEF and Plan Sudan. The committee held a number of meetings to deliberate on how to prepare the report. Certain information was collected from stakeholders. The report relied mainly on information and statistics contained in official surveys and studies covering various issues of the child.¹²³

A consultative workshop was organised for all government and NGOs stakeholders during the period 23-24 June 2010, where draft zero was presented by the NCCW. Taking part in the workshop were representatives from the Government of Southern Sudan in addition to the governments of four states from Northern Sudan (Khartoum, Blue Nile, North Darfur and Red Sea).¹²⁴ Unfortunately, no information on the submission of complementary report was found.

The delegation representing the report was led by Madam Amal Abdula Mahamoud, Secretary General of the NCCW. Children have been involved in the reporting process as their views were taken into account when drafting the report through two workshops in the state of Khartoum on 22 June 2020 and the state of White Nile on 28 June 2020.¹²⁵

As the responsibility for the reporting process was invested in the NCCW. The report was prepared following a decree issued by the secretary general of the NCCW for the formulation of a technical committee for the

121 Initial Report (n 92) 4.

122 ACERWC 'State parties reporting guidelines under the African Children's Charter' (2015).

123 Initial report (n 92) 3.

124 As above.

125 As above.

preparation of an Initial Report on the implementation of the African Charter on the Rights and Welfare of the Child on 29 March 2010.¹²⁶ The reporting process was conducted by the NCCW, however, various ministries, departments and agencies that deal with children matters have been involved in the reporting process such as the Ministries of Health, Education and Foreign Relations.¹²⁷ The preparation process of the report was designed in a way that allowed inclusion of the views of different stakeholders from the government, NGOs and voluntary agencies working in the field of children. Comments have been included through a consultative workshop with government and NGO stakeholders where the first draft was presented by the NCCW.

While there is a lack in publication of the report, a soft copy of the report is available online on the NCCW website.¹²⁸ The report was written in Arabic which is the first official language of Sudan. However, the version submitted to the committee was prepared in English.

Despite the confusion on whether international human rights treaties that are ratified by Sudan are self-executing and will automatically become part of national laws as they would form an integral part of the charter upon ratification,¹²⁹ or are non-self-executing needing enabling legislation to be invoked before national courts as the STCC obligates Sudan to organise the rights and freedoms in the charter by legislation without confiscating or reducing them,¹³⁰ the enactment of the Child Act of 2010 casts away any doubts regarding the enforceability of the African Children's Charter before national courts through the Child Act.

Since the submission of the Initial Report progress has been made in the realisation of children's right by establishing and amending laws such as the Nationality Act and the Criminal Act 1991 by criminalising FGM. On the general principle's aspect, Sudan has made considerable achievements to ensure the compatibility of the national laws to these principles.

126 As above.

127 As above.

128 The National Council for Child Welfare 'International reports' http://www.nccw.gov.sd/ver_content.php?ver=27 (accessed 25 August 2020).

129 The STCC, art 41(2).

130 The STCC, art 41(3).

13 Communications

A communication was submitted to the ACERWC by the African Centre of Justice and Peace Studies (ACJPS) and People's Legal Aid Centre (PLACE) against the government of the Republic of Sudan in communication 005/COM/001/2015 on behalf of Miss Iman Hassan Benjamin.

Following the succession of South Sudan from Sudan on 9 July 2011, the Sudanese National Assembly adopted amendments to the Nationality Act of 1994 which prohibited dual nationality with South Sudan and provided for the automatic revocation of Sudanese nationality if the person acquires *de jure* or *de facto* South Sudanese nationality.¹³¹ Also, a person will lose their Sudanese nationality if the nationality of the responsible father is revoked.¹³²

As a result of this, Miss Iman Hassan Benjamin who was born to a Sudanese mother and a South Sudanese father failed to acquire Sudanese nationality and as a result was not able to pursue her university education as well as being subjected to the state of statelessness.

The communication was then submitted by the African Centre of Justice and Peace Studies (ACJPS) and People's Legal Aid Centre (PLACE). In their submission, they contended that Sudan has violated several rights protected under the African Children's Charter, namely the right not to be discriminated against,¹³³ the protection of the best interests of the child,¹³⁴ the right to acquire a nationality and the obligation to prevent statelessness.¹³⁵

The ACERWC gave a decision in 2018 that Sudan was indeed in violation of its obligations under articles 3, 6(3), 4 and 11 of the African Children's Charter. The ACERWC made several recommendations most important amongst them was to urgently grant nationality to Miss Iman, which was fulfilled by Sudan. It also recommended that Sudan, revise the Nationality Act with a view that children born to Sudanese mothers have

131 The Nationality Act 1994, amended in 2011, art 10(2).

132 The Nationality Act, amended in 2011, art 10(3).

133 The African Children's Charter, art 3.

134 The African Children's Charter, art 4.

135 The African Children's Charter, art 6 (3) -(4).

the same right to nationality as to children born to Sudanese fathers,¹³⁶ the Nationality Act 1994 was later amended to that effect in 2018.

There is no visible budget allocated for children. While addressing the coordination meeting to discuss allocating a budget for children in case of emergency, Covid-19 as a model, the representative of the Ministry of Finance stated that the ministry does not have a separate budget for children and that it deals in spending with authorities, indicating that there is a budget allocated to the Child Welfare Council.¹³⁷

14 Special mechanism-promotional visits of the African Committee of Experts on the Rights and Welfare of the Child

As at the time of writing this study, no promotional visit or investigative mission has been undertaken in Sudan by the committee in Sudan.

15 Factors that may impede or enhance the impact of the Charter and the Committee

Lack of awareness of the ACRWC ranks first among the factors that negatively impede the impact of the Charter and the Committee, inadequate political commitment, shortcomings of the law, poverty and ignorance are also major contributors to weakening the impact of the Charter.

Now, more than ever, the Government of Sudan can prove its political willingness to further improve children's rights, particularly after the recent change of the previously authoritative regime to a more human-rights observant one. While the efforts put in place by Sudan after the ratification of the ACRWC are commendable, such as adopting the Child Act 2010, amending the Nationality Act 1994 and the Criminal Act 1991 and several strategies such as the National Strategies for the Elimination of FGM 2008-2018, the National Plan to Combat Violence Against Children 2010 and the National Strategy to develop the Civil Registry Act 2015;¹³⁸ the reservations made by Sudan to the Charter continue to constitute a

136 *African Centre of Justice and Peace Studies (ACJPS) and People's Legal Aid Centre (PLACE) v the Government of the Republic of Sudan* Communication 005/COM/001/2015, ACERWC at 33.

137 'Media professionals for children call for allocating a budget for children to deal with emergencies' *AwalAlnahar* 21 July 2020 <https://www.awalalnahar.com/?p=7641> (accessed 20 August 2020).

138 The National Council for Child Welfare 'Policies and strategies' http://www.nccw.gov.sd/ver_content.php?ver=26 (accessed 29 August 2020).

major impediment to the full realisation of children's rights in accordance with the Charter.

The role of the media in enhancing the impact of the Charter is not fully utilised. Currently, the media's presence in conversations relating to the Charter is quite limited, while it does cover activities held by CSOs and government institutions from time to time. However, it is rarely focused or linked to the Charter. As a result, lack of awareness and ignorance of the Charter and Children rights continues amongst the public and state officials. The shortcomings of an existing law or its absence continue to constitute a real obstacle to the full enjoyment of children's rights as provided for in the Charter. For example, the Criminal Act's definition of a child contradicts the Charter and the Child Act 2010. Also, the lack of a provision addressing the issue of children's consent to medical treatment undermines their right to health.

To add to these challenges, cultural and customary beliefs and practices that contravene the Charter still continue to exist in several parts of Sudan, such as child marriage which is still not legal by law, and FGM which is now criminalised, but continues to exist due to lack of awareness.

Children are deprived of their right to education as schools are closed. According to Vince Edwards, Director of World Vision's Country Programme in Sudan:

Too many children, especially those most vulnerable, face extremely difficult situations, such as heightened food insecurity and malnutrition, as their families are coping with loss of livelihood, reduced income and follow-on financial struggles due to the effects of COVID-19.¹³⁹

According to Save the Children: '1.1 million children in Sudan are going hungry as the country faces its worst food crisis in recent years' and this is aggravated due to Covid-19.¹⁴⁰

139 World Vision International 'Understanding how COVID-19 has adversely affected children in Sudan' <https://www.wvi.org/stories/sudan/understanding-how-covid-19-has-adversely-affected-children-sudan> (accessed 29 August 2020).

140 Save the Children 'Number of Sudanese children facing extreme hunger doubles to 1.1 million due to impact of Covid-19' <https://www.savethechildren.org/us/about-us/media-and-news/2020-press-releases/sudanese-children-facing-extreme-hunger-due-to-covid-19> (accessed 29 August 2020).

16 Conclusion

The efforts put in place by Sudan to advance children's rights are commendable, particularly, the right to education and access to healthcare. However, much more needs to be done.

While Sudan has done quite well with regard to advancing the rights of children in detention and court procedures in general, with the establishment of the juvenile-justice system that consists of the family and children protection unit, the child prosecutor, and the child court; the government should take an extra step in unifying the definition of a child and the age of criminal responsibility. This contradiction in the definition of the child between the Child Act 2010 and the Criminal Act has been a long-lasting issue of concern both to the ACERWC and the committee to the CRC which appeared in several concluding observations, as a result of this conflict children's rights are adversely affected as different judgments are given.

The government further needs to withdraw its reservations to the ACRWC and work for the full implementation of the Charter. Moreover, it needs to provide for the age at which children can consent to medical treatment as well as sexual and reproductive health.

Lastly, the government should place more attention on the importance of spreading awareness on children rights through the use of different media platforms as well as paying more attention to children's views and work to facilitate their meaningful participation.

11



STUDY ON THE IMPLEMENTATION OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD IN TANZANIA

*Alphonse Paul Mbuya**

1 Background

When Tanganyika attained its political independence from the British, it became a dominion state by virtue of the Independence Constitution.¹ The formal head of the state was the Governor General who was also the Queen of England's representative.² The head of the executive was the Prime Minister who was elected from the party with majority seats in parliament. However, in 1962 Tanganyika adopted the Republican Constitution,³ which had the effect of converting the state to a republic one with an elected president as the head of the state and also part of parliament. Moreover, in 1964 the system of government was changed

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1 The concept 'dominion status' was commonly used during the era of British colonialism. British colonies were given an opportunity to form their own 'independent' government. The autonomy granted was, however, conditional in that the government still had to owe allegiance to the British Crown. Under this arrangement, such states were called dominion states.

2 The Governor was Sir Richard Gordon Turnbull (1958-1961).

3 In 1962 the government prepared a white paper (Proposals of Tanganyika for a Republic) which was published and later discussed and adopted by the National Assembly.

following the Union between the Republic of Tanganyika and the Republic of Zanzibar which led to the birth of the United Republic of Tanzania, a union which has been described as constitutionally unique due to its structure.⁴ The Union has two parts, Mainland Tanzania and Tanzania Zanzibar.

The United Republic of Tanzania, is a Union of two independent states, namely Tanganyika and Zanzibar. The Union was forged on 26 April 1964 by the signing of the Articles of Union by Julius Kambarage Nyerere and Abeid Aman Karume, then presidents of Tanganyika and Zanzibar, respectively.⁵ The Articles of Union, among other things, provide for Union Matters which are areas of cooperation and therefore under the jurisdiction of the Union Government. The Union has two parts; Mainland Tanzania and Tanzania Zanzibar. Zanzibar is a semi-autonomous part of the Union in that all non-union matters are under the exclusive jurisdiction of the Revolutionary Government of Zanzibar which has its own Constitution, Executive, Judiciary and House of Representatives. Therefore, within the Union there are two executives, two judiciaries and two parliaments.⁶ Under this arrangement, Zanzibar has the authority to make its own laws and policies over non-union Matters.⁷ As far as implementation of international human-rights treaties is concerned, each part of the Union has its own system of laws for domestication purposes. In this regard, this report only concerns the implementation of the African Charter on the Rights and Welfare of the Child (ACRWC) in Mainland Tanzania.

Tanzania follows the common law system which was introduced in Tanzania (then known as Tanganyika) during the British colonial period. Upon independence in 1961, Tanzania retained the system which hitherto prevails in the administration of civil and criminal justice. The common-law system is applicable in Tanzania by virtue of the Judicature and Application of Laws Act (JALA)⁸ which provides that the jurisdiction of the High Court shall be exercised in conformity with the written laws of Tanzania and the substance of the common law, the doctrines of equity and the statutes of general application in force in England on 22 July

4 See IG Shivji et al *Constitutional and legal system of Tanzania: A civics sourcebook* (2004) part two.

5 Nyerere (1962-1985), Karume (1964-1972). After the Union, Nyerere became the President of the United Republic of Tanzania, while Karume remained President of Tanzania Zanzibar.

6 For more on this constitutional set up see the Constitution of the United Republic of Tanzania, 2005, arts 1,2, & 4; and the Constitution of Zanzibar, 2006, arts 1-5.

7 Art 64(2) of the Constitution of the United Republic of Tanzania.

8 Chap 358 of the Laws of Tanzania, revised edition of 2019.

1920.⁹ However, the application of the said common law, doctrines of equity and statutes of general application in Tanzania is subject to some conditions. JALA provides:¹⁰

Provided always that, the said common law, doctrines of equity and statutes of general application shall be in force in Tanzania only so far as the circumstances of Tanzania and its inhabitants permit, and subject to such qualifications as local circumstances may render necessary.

With regards to socio-economic development, during the fourth quarter of 2020, the value of Quarter GDP in absolute terms at current prices increased to TZS 41.4 trillion from TZS 38.9 trillion in the similar quarter of 2019. Further, the value of Quarter GDP at constant prices increased to TZS 35.2 trillion in the fourth quarter of 2020 from TZS 33.5 trillion in the corresponding quarter of the year 2019 equivalent to a growth of 4.9 per cent.¹¹ Moreover, Tanzania became a lower-middle income country on 1 July 2020.¹² Tanzania had set a goal to become a middle-income country by 2025 in its 2025 National Development Vision. This status was therefore attained five years ahead of schedule. Regarding human development, Tanzania's HDI value for 2019 was 0.529 – which puts the country in the low human development category – positioning it at 163 out of 189 countries and territories.¹³

Demographically, Tanzania's population was 44 928 923 in 2012 (43 625 354 in Tanzania Mainland and 1 303 569 in Tanzania Zanzibar). Out of the total population, 21 869 990 were male while 23 058 933 were female.¹⁴ Population projections indicate that the population rose to 46 356 279 in 2013 and will reach 89 204 781 in 2035.¹⁵ Specific data on children

9 Sec 2(3), Laws of Tanzania (n 9).

10 Proviso, section 2(3), Laws of Tanzania (n 9).

11 Tanzania National Bureau of Statistics 'Highlights on the Fourth Quarter GDP (October – December) 2020' <https://www.nbs.go.tz/index.php/en/census-surveys/national-accounts-statistics/na-publications/639-highlights-on-the-fourth-quarter-gdp-october-december-2020> (accessed July 2021).

12 The World Bank 'Country and lending groups – Country classification' <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups> (accessed August 2020).

13 UNDP 'Human development report 2020: The next frontier – Human development and the Anthropocene' (2020) <http://hdr.undp.org/sites/default/files/hdr2020.pdf> (accessed July 2021).

14 Tanzania Bureau of Statistics & Office of the Chief Government Statistician '2012 Population and housing census: Population distribution by administrative areas' (March 2013).

15 United Republic of Tanzania 'Population projection report, 2013-2035' (2018). <http://www.nbs.go.tz/nbs/takwimu/census2012/Projection-Report-20132035.pdf> (accessed

was not obtained. In fact, in its Concluding Observations on Tanzania in 2017, the ACERWC advised Tanzania to collect disaggregated data on the number and status of children in Tanzania.¹⁶

Healthwise, Tanzania has made notable progress in key areas. A 2019 government report indicates that the maternal mortality rate (in facilities) was 191 deaths per 100 000 live births in 2017.¹⁷ The main direct causes of maternal death are haemorrhages, infections, unsafe abortions, hypertensive disorders and obstructed labours. The presence of these causes is exacerbated by HIV and malaria. The fact that more than half of births in Tanzania occur at home also contributes to the elevated maternal mortality rate. Only 46 per cent of pregnant women are assisted during childbirth by a doctor, clinical officer, nurse, midwife or maternal and child-health aide.¹⁸ In 2020, infant mortality rate stood at 9 deaths per 1 000 live births while under-five-mortality rate is 11 deaths per 1 000 live births.¹⁹ Moreover, the mother-to-child transmission rate, including during breastfeeding, stands at 8 per cent.²⁰ By March 2020 the immunisation rate stood at 99 per cent for children below one year.²¹

Regarding sexual and reproductive-health matters, the mean age of sexual debut has been indicated to be 15.5 years.²² Teenage pregnancy has increased by four per cent in Tanzania since 2010. By

October 2020).

- 16 Concluding Observations and Recommendations of the ACERWC to the Government of the United Republic of Tanzania on its Combined Second, Third, and Fourth Periodic Reports on the Implementation of the ACRWC, ACERWC (2019) 4 <https://acerwc.africa/wp-content/uploads/2019/07/Tanzania%20CO.pdf> (accessed October 2020).
- 17 United Republic of Tanzania 'Report on the review and progress made in implementation of the Beijing Declaration and Platform for Action: Beijing +25' (2019) at 51 https://www.uneca.org/sites/default/files/uploaded-documents/Beijing25/tanzania-beijing25_report.pdf (accessed October 2020).
- 18 WHO 'Tanzania: Trends' <https://www.who.int/pmnch/activities/countries/tanzania/en/index1.html> (accessed October 2020).
- 19 Ministry of Health, Community Development, Elderly and Children 'Budget Speech for 2020/2021' at 16-17 file:///C:/Users/Lenovo/Downloads/HOTUBA%20YA%20WIZARA%20YA%20AFYA%20MAENDELEO%20YA%20JAMII%20JINSIA%20WAZEE%20NA%20WATOTO%202020-21%201.pdf (accessed October 2020).
- 20 UNAIDS 'Global Country Factsheet: Tanzania' (2016) https://www.unaids.org/sites/default/files/media/documents/UNAIDS_GlobalplanCountryfactsheet_tanzania_en.pdf (accessed October 2020).
- 21 Ministry of Health Budget Speech (n 20) 21.
- 22 CM Masatu et al 'Predictors of risky sexual behaviour among adolescents in Tanzania' (2009) 13 *AIDS and Behavior* 94.

2016 one in four adolescents aged 15-19 had begun childbearing.²³ HIV prevalence among young people (ages 15-24) stands at one per cent, with young women around four times more likely than young men to be living with HIV (two per cent prevalence among young women, compared to 0.6 per cent prevalence among young men). Prevalence among children (ages 0-14) is 0.3 per cent.²⁴ Contraceptive prevalence in Tanzania among women (ages 15-49) was reported at 38.4 per cent in 2016.²⁵ Abortion is illegal in Tanzania.²⁶ Children can access contraceptives in pharmacies and in public facilities.²⁷ Moreover, children can access confidential sexual and reproductive-health services without the requirement of parental consent. However, the health facilities that can offer this service are limited.²⁸

Educationally, the government recognises pre-primary education is a vital preparation stage in the education cycle. It has been formalised and integrated into the formal education system.²⁹ The National Education and Training Policy of 2014 provides that early childhood education shall be mandatory and provided to children of three to five years in not less than one year depending on the needs of each student.³⁰ The Policy also provides that identification of children's talents should be done during early and primary education and such talents should be nurtured.³¹ In terms of institutional arrangements, the Policy provides that local government authorities shall be responsible for supervising the establishment and management of pre-schools and that there shall be an education officer responsible for pre-school matters.³² Moreover, there is a national curriculum on early education issued by the Ministry of

23 UNFPA Tanzania 'Fact sheet: Teenage pregnancy' (2014) tanzania.unfpa.org/sites/default/files/pubpdf/factsheet_teenage%20pregnancy_UNFPA_14oct.pdf (accessed October 2020).

24 Avert 'HIV and AIDS in Tanzania: Tanzania (2019)' <https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/tanzania> (accessed October 2020).

25 Trading Economics 'Tanzania - Contraceptive Prevalence (% Of Women Ages 15-49)' <https://tradingeconomics.com/tanzania/contraceptive-prevalence-percent-of-women-ages-15-49-wb-data.html> (accessed October 2020).

26 Secs 150, 151 and 152, the Penal Code.

27 K Tull 'Evidence on family planning use in young people of Tanzania' (2019) https://assets.publishing.service.gov.uk/media/5cdc17d9e5274a17950bfca7/578_Family_Planning_in_Young_People_of_Tanzania.pdf (accessed October 2020).

28 As above.

29 United Republic of Tanzania 'Pre – Primary Education' <https://www.tanzania.go.tz/home/pages/1215> (accessed October 2020).

30 The National Education and Training Policy (2014) 24.

31 The National Education and Training Policy (n 31) 9.

32 The National Education and Training Policy (n 31) 65.

Education, Science and Technology.³³ As of July 2020 there were 13 227 pre-school teachers in government and private schools across the country.³⁴ According to UNICEF, the teacher-pupil ratio at primary schools in Tanzania remains high at 1:43, higher than the sub-Saharan average and the number commonly referred to as the international standard of 1:40.³⁵ Government data shows a shortage of 47 151 teachers in primary schools across the country, with 66 per cent of schools surpassing the 1:40 pupil teacher ratio.³⁶

The Education and Training Policy commits the government to ensuring primary education is mandatory and free for public schools.³⁷ The Education Act also makes it compulsory for every child who has reached the required age to be enrolled for primary education.³⁸ In 2015 the government introduced free-fee primary and secondary education. By February 2020 the number of primary schools was 17 771 (16 155 public and 1 616 private). The enrolment rate rose from 10 201 972 in 2016 to 12 034 599 in February 2020 in government and private schools. According to the government, the increase in enrolment rate is a result of the government's free-fee programme. This programme's implementation began in December 2015.³⁹ In 2018 the primary school completion rate was 68.7 per cent⁴⁰ and 29.57 per cent for ordinary level secondary education.⁴¹ However, according to a 2019 government report, the primary

33 Available at <https://tie.go.tz/uploads/files/Mtaala%20na%20Muhtasari%20wa%20Elimu%20ya%20Awali%2029.1.2019.pdf> (accessed October 2020).

34 See 'Number of teachers in pre-primary schools' (2020) <https://www.tamisemi.go.tz/storage/app/media/uploaded-files/pre-primary-teachers-2020.pdf> (accessed October 2020).

35 UNICEF, Tanzania 'Education Budget Brief 2018: Key messages and recommendations'. <https://www.unicef.org/tanzania/media/1236/file/UNICEF-Tanzania-2018-Education-Budget-Brief.pdf> (accessed October 2020).

36 'Teacher-student ration still a concern' *The Citizen* 15 May 2018 <https://www.thecitizen.co.tz/news/1840340-4562922-5wab5gz/index.html> (accessed October 2020).

37 The National Education and Training Policy (n 31) 24.

38 Sec 35 of the Act.

39 Ministry of Local Government and Regional Administration 'Budget Speech for 2020/2021' 75 <https://www.tamisemi.go.tz/storage/app/media/uploaded-files/HOTUBA%20YA%20WAZIRI%20WA%20NCHI%20FINAL%20PRINT%20TODAY%208TH%20APRIL%202020.pdf> (accessed October 2020).

40 The Global Economy 'Tanzania: Primary school completion rate' https://www.theglobaleconomy.com/Tanzania/Primary_school_completion_rate/ (accessed October 2020).

41 Trading Economics 'Tanzania - lower secondary completion rate, total' <https://tradingeconomics.com/tanzania/lower-secondary-completion-rate-total-percent-of-relevant-age-group-wb-data.html> (accessed October 2020).

level completion rate was 78.83 per cent for boys and 83.83 per cent for girls, the overall rate being 81.06 per cent. At the secondary level, the completion rate was 72.18 per cent for boys and 75.72 per cent, the total rate being 74 per cent.⁴²

Regarding inclusiveness of the education system, the government adopted the National Strategy for Inclusive Education (2018-2021).⁴³ According to this Strategy, inclusive education is an approach which transforms the education system, including its structure, policies, practices and human resources, to accommodate all learners in mainstream education by addressing and responding to learners' diverse needs. The main objective of the Strategy is:

To strengthen the education system to provide, in an equitable manner, learning opportunities for all children, adolescents (girls and boys) and youth, including vulnerable groups, and enable them to acquire the necessary knowledge and skills.

In actuality, the implementation of inclusive education in Tanzania has not fully allowed all needy learners to access educational opportunities. In its Consolidated Report to the ACERWC Tanzania reported that it had increased the number of inclusive-education schools.⁴⁴ However, studies indicate much more still needs to be done. A 2017 study⁴⁵ in Morogoro Municipality arrived at the following main findings:

- (1) Only 45 per cent of the enrolled students with special needs were able to complete 7 years of primary education in Morogoro municipality;
- (2) Teachers who handle students with needs had a huge workload at a ratio of 1:12;
- (3) Inadequate teaching materials for students with special needs prevent most learners from acquiring the expected skills and knowledge;
- (4) About 85 per cent of the required teaching and learning materials were unavailable;

42 United Republic of Tanzania 'Education sector performance report (2018/2019)' 19 and 28 https://www.globalpartnership.org/sites/default/files/document/file/2020-05-Tanzania%20Mainland-ESP-IR_0.pdf (accessed October 2020).

43 This strategy replaced the National Strategy on Inclusive Education 2009-2017.

44 Consolidated 2nd, 3rd and 4th Reports on the Implementation of the African Charter on the Rights and Welfare of the Child, Government of the United Republic of Tanzania (2015) 15.

45 Z Saidi 'The implementation of the national inclusive education strategy in primary schools in Morogoro Municipality, Tanzania' Master's dissertation, Open University of Tanzania, 2017 at 67-68 <http://repository.out.ac.tz/2136/1/Zaituni%20Saidi%20Mmbuji%20corrected.pdf> (accessed October 2020).

- (5) Inadequate number of teachers qualified to teach students with special needs; and
- (6) Limited financial resources for training special education teachers and putting in place the necessary infrastructures.

The above findings are supported by another study which assessed special and inclusive education in Tanzania.⁴⁶ A situation analysis of one school revealed a number of challenges namely, poor and inadequate infrastructure, shortage of qualified teachers, nurses and matrons and limited in-service training, poor security infrastructures in school compounds, and negative cultural attitudes against students with disabilities in the community and school settings. For all the schools that were involved in the study, lack of special facilities and teaching and learning materials were identified as the main challenges.

Schoolgirls who become pregnant are expelled from school under education regulations which provide that the expulsion of a pupil from school may be ordered where a pupil has committed an offence against morality or entered into wedlock. Although the regulations do not define what constitute and offence against morality, pregnancy has often been interpreted to be one of them. On the other side of the coin, there are official government statements and regulations which support the idea of allowing and supporting pregnant schoolgirls to continue with their education. In 2009 The Ministry of Education prepared specific guidelines titled 'Guidelines on how to enable pregnant school girls to continue with their studies'.⁴⁷ No information was obtained on whether these Regulations have been implemented. Moreover, according to the Government's Report on the Review and Progress Made in Implementation of The Beijing Declaration and Platform for Action – Beijing +25, one of the measures taken in the last five years to improve education outcomes and skills for women and girls, is to enable adolescent girls to continue their education in the case of pregnancy and/or motherhood. In such circumstances, Tanzania's position on this issue remains unclear and contradictory. In June 2019, the Legal and Human Rights Centre (LHRC) and the Centre

46 MK Possi & JR Milinga 'Special and inclusive education in Tanzania: Reminiscing the past, building the future' (2017) 6 *Educational Process International Journal* 55 https://www.researchgate.net/publication/323281904_Special_and_Inclusive_Education_in_Tanzania_Reminiscing_the_Past_Building_the_Future (accessed October 2020).

47 Ministry of Education and Vocational Training, Cross Cutting Issues Technical Working Group 'Guidelines on how to enable pregnant school girls to continue with their studies' (April 2009) http://www.tzdpd.or.tz/fileadmin/documents/dpg_internal/dpg_working_groups_clusters/cluster_2/education/Guidelines_Enabling_Pregnant_Girls_to_re-enter_school-FINAL_March_2010.pdf (accessed October 2020).

for Reproductive Rights filed a complaint challenging the expulsion and exclusion of pregnant schoolgirls from schools in Tanzania. The Complaint was filed before the ACERWC on behalf of female students in Tanzania. It alleges violations of the ACRWC and other international and regional human-rights instruments ratified by Tanzania. According to LHRC, the matter is still under consideration by the Committee.⁴⁸ Regarding sexuality education, according to a 2019 Government Report, the education curricular has been reviewed to include human-rights issues, ethics, and reproductive health rights.⁴⁹ Information on the scope of this education was not obtained.

2 Ratification of the African Charter on the Rights and Welfare of the Child

Tanzania ratified the ACRWC on 16 March 2003⁵⁰ without any reservations.⁵¹ The Constitution of the URT vests the power to ratify treaties in the National Assembly. Article 63(3)(e) provides:

For the purposes of performing its functions, the National Assembly may ... deliberate upon and ratify all treaties and agreements to which the United Republic is a party and the provisions of which require ratification.

After a treaty is signed by the Executive, the Ministry responsible for that treaty (in this case Ministry of Health, Community Development, Children and Elderly) will prepare a resolution for ratification of the treaty which will be introduced and presented in the National Assembly. The resolution will contain the government's explanation on the overall content of the treaty and reasons as to why it should be ratified. After the Minister's presentation, the relevant Parliamentary Standing Committee (in this case Social Services and Community Development Committee) will present its views. Thereafter, the Official Opposition Camp will also present its observations. The Speaker will then give individual Members of Parliament an opportunity to make their contributions. After the three presentations, from which issues for clarification may arise, the Minister introducing the resolution will respond to the comments made or issues raised by the Standing Committee, the Official Opposition Camp and

48 Legal and Human Rights Centre 'Human rights report' (2019) 210.

49 Beijing +25 Report (n 18) 70.

50 African Union 'List of countries which have signed, ratified/acceded to the African Charter on the Rights and Welfare of the Child' (2019) <https://au.int/sites/default/files/treaties/36804-sl-african%20charter%20on%20the%20rights%20and%20welfare%20of%20the%20child.pdf> (accessed August 2020).

51 ACERWC 'Reservations' <https://www.acerwc.africa/reservations/> (accessed August 2020).

individual Members of Parliament. The Speaker will then ask Members of Parliament if they agree with the resolution to ratify the treaty. If there are more 'YES' votes than 'NO' votes, the treaty is ratified. The National Assembly will thereafter produce a brief resolution for ratification which will contain background information to the treaty, its objects, the benefits of ratification and any reservations agreed upon by Members of Parliament.⁵²

An important pre-ratification issue is the compatibility study which is a form of research conducted by a country prior to ratification of or accession to a treaty with a view to comparing the treaty norms with relevant domestic laws and policies. It can lead to amendment of legislation, entering of reservations and any other change prior to ratification or accession. The primary aim of the study is to align and harmonise domestic laws and policies with relevant treaty norms.⁵³ No information was found on whether Tanzania conducted a compatibility study before ratifying the ACRWC. Generally, the National Human Rights Action Plan 2013-2017⁵⁴ indicates that the government should conduct reviews and assessments (which in our view are similar to compatibility studies) in relation to the overall implementation and ratification of international human-rights treaties. Specifically, the Plan provides that the Ministry of Foreign Affairs and International Cooperation (MoFAIC),⁵⁵ the Attorney General's Chambers (AGC), the Commission for Human Rights and Good Governance (CHRAGG) and other relevant stakeholders shall inter alia:

Compile a list of human rights obligations emanating from international treaties, and shall review the list against domestic legislation, both in force

52 The procedure for ratification of treaties is not specifically stated in any law; the URT Constitution and the Standing Orders of the Parliament (2016) are silent on this matter. The procedure described has been discerned from Parliament Proceedings on treaty ratification. For ratification proceedings see for example Parliament Proceedings of 3 April 2018 <http://parliament.go.tz/polis/uploads/documents/1523461271-3%20APRIL1%202018.pdf> (accessed October 2020). For sample ratification resolutions visit <http://www.parliament.go.tz/resolutions-list> (accessed October 2020).

53 F Viljoen *International human rights in Africa* (2012) 9.

54 Although the implementation time of this Plan has already passed, it contains important information on the government's position in virtually all human-rights matters.

55 If the position provided in this Plan is still relevant, the relevant ministry is currently that of Constitutional and Legal Affairs under which the Human Rights Division is now established.

and in draft, to identify gaps in human rights protections

and 'propose new laws or amendments to existing laws to further implement international human rights obligations and to address gaps in human rights protections.

Moreover, the Action Plan provides that the MoFAIC, AGC, CHRAGG and other relevant state actors are supposed to 'develop a strategy for ratifying outstanding human rights treaties'.⁵⁶ In our view, it is likely that this strategy (if in place) contains or should contain (if it will be developed in the future) compatibility analysis. Moreover, two of the functions of the Human Rights Division in the Ministry of Constitutional and Legal Affairs are to facilitate ratification of international and regional human-rights instruments, and to carry out review of domestic laws to ensure compliance with existing international and regional instruments on human rights. Although not explicitly stated this may include conducting compatibility studies.

3 Government focal point

Within the Ministry of Constitutional and Legal Affairs there is a Human Rights Division with two sections namely Human Rights Reporting and the Implementation Observatory Section. The functions of the Reporting Sections are to: disseminate concluding observations from human rights treaty bodies; prepare national reports for presentation before human-rights bodies; facilitate the ratification of international and regional instruments on human rights; liaise with the Office of the Attorney General and Solicitor General on matters relating to advice and human-rights cases; and prepare country reports on human rights in accordance with Regional and International agreements and advise accordingly. The Implementation and Observatory Section is responsible for: overseeing the development of a human-rights regime; establishing and developing a comprehensive policy framework for human-rights implementation; liaising with the Office of the Attorney General and Solicitor General on matters relating to advice and human-rights matters; carrying out review of domestic laws to ensure compliance with existing international and regional instruments on human rights; sensitising public officials on human-rights matters.

Moreover, the Ministry of Health, Community Development, Elderly and Children has the overall mandate over child matters including

56 United Republic of Tanzania 'National Human Rights Action Plan 2013-2017' Ministry of Constitutional and Legal Affairs (December 2013) 52.

their rights and welfare. The Ministry is responsible for, among others, preparation of policies, programmes and bills on child matters. Moreover, the Department of Social Welfare within the Ministry is more directly involved in overseeing child matters including adoption, maintenance, custody and juvenile justice.

4 Domestication or incorporation of the Charter

The Constitution of Tanzania does not explicitly state the status of international treaties in the national legal order. However, in practice Tanzania follows the dualist system and hence, for a ratified treaty to be part of domestic law, it must be domesticated by an Act of Parliament. Two domestication approaches have been used in Tanzania. First, a specific legislation can be passed to domesticate a particular treaty or some of its provisions (norms). For example, the long title of the Law of the Child Act provides that the purpose of the Act is to, among other things, domesticate regional and international standards on child rights. Although it does not specifically mention the source of these standards, it may be said these are the CRC (international) and ACRWC (regional) since these are the standards that have been ratified by Tanzania. The Law of the Child Act does not wholly domesticate the CRC or the ACRWC; only some aspects of the two treaties are included in the Act. The second approach is including treaty provisions in different laws depending on the subject matter in question. For example, issues of juvenile justice may be incorporated in criminal laws and those on child marriages in laws governing marriage and family matters. However, unless it is expressly stated, it is usually difficult to establish whether provisions in domestic laws – which conform to international treaties – were enacted specifically to meet treaty obligations. Tanzania's domestication approach is summarised in its Initial Report to the ACERWC as follows:⁵⁷

Tanzania is a common law country, and international and regional treaties have to be specifically adopted into domestic legislation before they become binding within the State. This is usually done by enacting a piece of 'stand alone' legislation or, more commonly, amending existing legislation through 'consequential amendments.'

Treaty provisions cannot be directly invoked by courts and authorities. Courts have made reference to treaties in two situations; first when stressing on the international/regional human rights obligations of the

57 Initial Tanzania Report to the African Committee of Experts on the African Charter on the Rights and Welfare of the Child, United Republic of Tanzania (2009) 3.

country⁵⁸ with respect to a particular matter (for example, the provision of education) and second as an interpretative guide.⁵⁹ Given the fact that Tanzania follows the dualist system, only treaty provisions that have been domesticated can be invoked by courts. In this sense, where there is a conflict between treaty provisions and domestic legislation, the latter would still prevail. However, treaty provisions can be used as the basis for challenging the validity of domestic legislation in the courts. In *Rebeca Gyumi's case* (High Court and Court of Appeal) for example, the ACRWC and other international human-rights instruments were used to challenge sections 13 and 17 of the Law of Marriage Act, which allows a girl below 18 years to get married under prescribed circumstances.

Most of the main principles of the ACRWC can be found in the Law of the Child Act which is the main legislation on children. Some of these principles can also be found in other laws such as the Penal Code, the Law of Marriage Act, and education legislation. However, with regards to the other laws, it cannot be precisely established if the principles were drawn from the ACRWC.

Given the fact that Tanzania follows the dualist system, only treaty provisions that have been domesticated can be invoked by courts. In this sense, where there is a conflict between treaty provisions and domestic legislation, the latter will still prevail. However, treaty provisions can be used as the basis for challenging the validity of domestic legislation in the courts, see, for example, *Rebeca Gyumi's case* (High Court and Court of Appeal).

5 Legislative reform and adoption

The Constitution of Tanzania contains a Bill of Rights,⁶⁰ which contains both rights and duties. The rights are justiciable before the courts of law by virtue of article 30(3) of the Constitution and the Basic Rights and Duties Enforcement Act.⁶¹ The Constitution of the United Republic of Tanzania does not make any reference to children. It is important to note that during the constitutional review process which began in 2011 and ended with the adoption of the Draft Constitution of 2014, a number of children's rights were included in the Bill of Rights. However, the

58 See for example, *Judith Patrick Kyamba v Tunsumbe & Others* (Probate & Administration Cause No 50 of 2016) [2020] TZHC 1364 (28 May 2020).

59 See for example, *Attorney General v Rebeca Z Gyumi* Civil Appeal No 204 of 2017 and *Rebeca G Gyumi v Attorney General* Miscellaneous Civil Cause No 5 of 2016.

60 Incorporated in the Constitution in 1984.

61 Chap 3, Revised Edition of 2002.

review process was not finalised because the last step of validating the Constitution (national referendum) was not implemented. Nonetheless, the progress made was remarkable and it is expected that it will inform future constitutional reform. In fact, in its periodic report to the ACERWC Tanzania has indicated that the gap in the Constitution on children's rights will be addressed through constitutional review.⁶²

The enactment of the Law of the Child Act in 2009 was meant to consolidate and reform the laws governing child matters by domesticating international children's rights standards. The long title of the Act provides:

An Act to provide for reform and consolidation of laws relating to children, to stipulate rights of the child and to promote, protect and maintain the welfare of a child with a view to giving effect to international and regional conventions on the rights of the child; to provide for affiliation, foster care, adoption and custody of the child; to further regulate employment and apprenticeship; to make provisions with respect to a child in conflict with law and to provide for related matters.

The Law of the Child Act repealed several laws namely: the Affiliation Act, Chap 278; the Adoption of Children Act, Chap 335; the Day Care Centers Act, Chap 180; the Children and Young Persons Act, Chap 13; and the Children's Homes (Regulation) Act, Chap 61.⁶³ The Act also made consequential amendments to other laws namely: the Law of Marriage Act, the Employment and Labour Relations Act, the Penal Code, and the Criminal Procedure Act.⁶⁴ Moreover, a number of regulations governing child matters have been made under the Law of the Child Act in order to facilitate the implementation of the Act; these are:

- (1) The Law of the Child (Foster Care Placement) Regulations (2012);
- (2) The Law of the Child (Apprenticeship) Regulations (2012);
- (3) The Law of the Child (Children's Homes) Regulations (2012);
- (4) The Law of the Child (Children's Homes – Amendment) Regulations (2015);
- (5) The Law of the Child (Adoption) Regulations (2015);
- (6) The Law of the Child (Retention Homes) (2012);
- (7) The Law of the Child (Child Employment) Regulations (2012);
- (8) The Law of the Child (Juvenile Court Procedure) Rules (2014);
- (9) The Law of the Child (Child Protection) Regulations (2015); and

62 See Tanzania's Consolidated Report to the ACERWC (n 45) 7.

63 See sec 160 of the Law of the Child Act.

64 See Part XIII of the Law of the Child Act.

(10) The Law of the Child (Day Care Centres and Crèches) Regulations (2014).

According to the Law of the Child Act, a child is any person below the age of 18 years.⁶⁵ A child below ten years of age cannot be held criminally liable for any act or omission. However, a child below 12 years of age can be held criminally responsible where at the time of the alleged offence he or she had the capacity to know that he/she ought not do the act or make the omission.⁶⁶ In relation to sexual offences, a male child under the age of 12 is presumed to be incapable of having sexual intercourse.⁶⁷ The Law of the Child Act provides that a child below 12 years of age who commits an unlawful act [offence] under the Penal Code shall be dealt with under the Law of the Child Act.⁶⁸

The Law of Marriage Act⁶⁹ generally provides for 18 and 15 years as the minimum age of marriage for males and females respectively.⁷⁰ However, the court has, on application, discretionary powers to give leave for a marriage to take place where the parties are, or either of them is, below the ages prescribed (18 for males and 15 for females) provided that, each of the parties is at least 14 years old and the court is satisfied that there are special circumstances which make the proposed marriage desirable.⁷¹ This means, if leave of the court is not obtained in the prescribed circumstances, males below 18 years of age and females below 15 years of age will be considered to be below the minimum age for marriage.⁷² There is an additional requirement with respect to consent. The law provides that consent freely and voluntarily given is essential to a valid marriage.⁷³ For marriages that involve a female who is below 18 years of age and at least 15 years of age, the consent of her father or mother (if the father is dead), or guardian must be obtained. If all are dead, such requirement will be dispensed with.⁷⁴ If the consent cannot be practically obtained or is being unreasonably withheld, the court, on application, can grant it and

65 Sec 4(1), Law of the Child Act, Chap 13, Revised Edition of 2019.

66 The Penal Code, sec 15(1)-(2).

67 Sec 15(3) of the Penal Code, Chap 16, Revised Edition of 2019.

68 Sec 174 of the Law of the Child Act.

69 Chap 29, Revised Edition of 2019.

70 Sec 13(1), Law of Marriage Act.

71 Sec 13(2), Law of Marriage Act.

72 Sec 13(3), Law of Marriage Act.

73 Sec 16(1), Law of Marriage Act.

74 Sec 17(1), Law of Marriage Act.

this shall have the same effect as if it had been given by the prescribed persons.⁷⁵

The provisions of the Law of Marriage Act which allow a girl below 18 years of age to get married were successfully challenged in the High Court of Tanzania in 2016 and upheld by the Court of Appeal in 2019. Miss Rebecca Gyumi, the founder and director of a local charity (Msichana Initiative) promoting girls' rights, brought an action before the High Court of Tanzania challenging the constitutionality of sections 13 and 17 of the Law of Marriage Act of Tanzania. The High Court of Tanzania held that sections 13 and 17 of the Law of Marriage Act were unconstitutional because they breached Articles 12(1) and 13(1)-(2) of the Constitution of Tanzania, which guarantee equality before the law and protect girls against gender discrimination. The Court held that the differential treatment of girls and boys, which permitted the girl-child to marry underage with the consent of a third party, but permitted males to marry upon reaching age 18, was discriminatory and infringed the right to equality. In deciding the case, the Court reasoned, in part, that a 14-year-old girl is vulnerable and may not be able to understand the social, physical, psychological, financial, and other challenges of early marriage. The Court also noted that the Law of Marriage Act was outdated and that since its enactment there has been considerable legislation to protect girls' dignity and integrity. In its decision the Court ordered the government to review the law. The High Court declared sections 13 and 17 unconstitutional and ordered the government to amend the law to make 18 years as the minimum age of marriage for boys and girls.

Following this decision, the government (through the Attorney General) appealed to the Court of Appeal. The main ground of appeal was that, the disparity in the minimum age of marriage is a compromise which accommodates customary, traditional and religious practices which allow girls below 18 years of age to get married. In a landmark decision (*Attorney General v Rebeca Z Gyumi*)⁷⁶ in October 2019, the Court of Appeal of Tanzania upheld the decision of the High Court of Tanzania. The Court firmly declared the minimum age of marriage to be 18 years and that persons who are not of full age should not be allowed to get married. The decision in this case is an important step, but certainly not an end in itself. The government has not yet amended the law as required by the Court of Appeal and even if the law is amended, much more work is

75 Sec 17(2), Law of Marriage Act.

76 Civil Appeal No 204 of 2017.

needed to change mindsets and cultural and religious practices which favour child marriages. According to Rebeca Gyumi:⁷⁷

Having the law changed is only the first step towards ending child marriage. 614 Now that child marriage has been outlawed, there is a need to change community behaviour at the grassroots level, thus need to focus on community-engagement and implement the law in the smallest unit of the society: family.

According to the Penal Code, the age of consent to sex is 18 for girls.⁷⁸ Any person who has sexual intercourse with a girl who is below 18 years of age commits rape.⁷⁹ This minimum age of consent to sex is subject to the exception of marriage laws which allow a girl below 15 (but at least 14) and a boy below 18 (but at least 14) to get married. In such a situation, once the parties are married, consent to sexual intercourse is presumed to be in place. This exception is covered under the Penal Code.⁸⁰ However, the same Penal Code contains another provision which prohibits sexual intercourse between a husband and a wife who is under the age of 18 years and that sexual intercourse may take place after the wife attains 18 years of age.⁸¹ This can be said to be a conflict of provisions and therefore not the correct legal position because the main law on marriage (Law of Marriage Act) does not contain such a prohibition in its section on minimum age.⁸² The creation of the offence of statutory rape under the Penal Code (in 1998) is rendered meaningless by provisions in the Law of Marriage Act which allow girls below 18 years to get married. This was the observation of the High Court in the landmark case of *Rebeca G Gyumi v Attorney General*⁸³ when it remarked:

Close reading of the SOSPA [Sexual Offences Special Provisions Act, enacted in 1998 and introduced the offence of statutory rape] provisions make us wonder how after its enactment a court could be moved under section 13(2) or 17(2) of the Act [Law of Marriage Act] and grant leave for a girl under 18 to enter into marriage while such prayer if granted by the Court will constitute the newly created offence of statutory rape.

There is no specific law which expressly prescribes the age of consent to medical treatment. However, the Law of the Child Act recognises and

77 Legal and Human Rights Centre (n 48) 207.

78 Sec 130(2)(e), Penal Code

79 As above.

80 As above.

81 Sec 138(1).

82 Sec 13.

83 N 61 at 24

protects a child's right to personal opinion. It requires people to give children who are capable of forming an opinion a chance to express it in that a child should be listened to and allowed to participate in decisions which affect their wellbeing.⁸⁴ This can be construed to include matters relating to medical treatment. With regards to HIV testing, the age of consent was recently changed from 18 to 15 years of age.

Corporal punishment is not criminalised, it is generally lawful in home and school settings. Although the Penal Code and other laws, including the Constitution, contain provisions against violence and abuse, such provisions have not been construed to prohibit corporal punishment especially in relation to childrearing. The Law of the Child Act requires parents to protect their children from all forms of violence including beatings which cause harm to a child.⁸⁵ The Act also prohibits 'torture, or other cruel, inhuman punishment or degrading treatment'.⁸⁶ However, the Act allows 'justifiable' correction unless such correction is unreasonable. The Act provides:⁸⁷

No correction of a child is justifiable which is unreasonable in kind or in degree according to the age, physical and mental condition of the child and no correction is justifiable if the child is by reason of tender age or otherwise incapable of understanding the purpose of the correction.

From the provision above it can be said that some forms of corporal punishment are allowed and some are not allowed. In other words, corporal punishment is not expressly prohibited by the law. In the school setting, corporal punishment is governed by the Education Act⁸⁸ and the National Corporal Punishment Regulations. The Law of the Child Act does not repeal these regulations or prohibit corporal punishment in schools. In 2000 the government introduced new guidelines which reduced the number of strokes from six to four and stated that only the heads of schools are allowed to administer the punishment. Concerning efforts to abolish corporal punishment in schools, a 2019 government directive banning teachers in the lower grades of primary school (pre-primary to third grade) from entering classrooms with canes, was a promising sign towards ending violence in the school setting. According to Human

84 Sec 11, Law of the Child Act.

85 See sec 2 on definition of 'child abuse' and sec 9 of the Law of the Child Act.

86 Sec 13.

87 Sec 13(2).

88 Chap 353, Revised Edition of 2002. Section 61(o) empowers the Minister responsible for education to make regulations on administration of corporal punishment in schools.

Rights Watch, it was ‘an important decision to change the government’s mentality that children learn best when corporal punishment is permitted in classrooms’.⁸⁹

Corporal punishment is also a lawful sentence under the criminal laws of Mainland Tanzania including the Corporal Punishment Act,⁹⁰ the Penal Code⁹¹ and the Criminal Procedure Act.⁹² The Law of the Child Act provides for criminal charges against children to be heard by a juvenile court.⁹³ The Act prohibits ‘torture, or other cruel, inhuman punishment or degrading treatment’ but does not explicitly provide for corporal punishment as a sentence for children, neither does it prohibit judicial corporal punishment for child offenders nor repeal the laws which authorise such punishment. Moreover, corporal punishment is lawful in alternative-care settings. In mainland Tanzania, the Law of the Child Act does not explicitly prohibit corporal punishment in care settings; it is considered lawful under the provisions for ‘justifiable’ correction under section 13 of the Act.

In its Concluding Observations on Tanzania’s second report in 2006⁹⁴ and on the Initial Report in 2001,⁹⁵ the UN Committee on the Rights of the Child has twice advised Tanzania to prohibit corporal punishment in the home, schools, institutions and other settings. Moreover, in its Concluding Observations on Tanzania’s fourth report in 2009, the UN Human Rights Committee recommended prohibition of corporal punishment as a sentence of the courts and in schools.⁹⁶ The Committee made the same

89 E Martínez ‘Tanzania: Ending violence in schools begins with banning canes in all classrooms’ Human Rights Watch (2019) <https://www.hrw.org/news/2019/09/03/tanzania-ending-violence-schools-begins-banning-canes-all-classrooms> (accessed October 2020). See also, Global Initiative to End all Corporal Punishment of Children ‘Progress towards prohibiting all corporal punishment in East and Southern Africa’ (June 2020) <http://endcorporalpunishment.org/wp-content/uploads/legality-tables/East-and-Southern-Africa-progress-table-commitment.pdf> (accessed October 2020).

90 Chapter 17, Revised Edition of 2002. Section 6 provides that ‘a juvenile convicted of an offence under the Penal Code, other than an offence punishable with death, or of any offence punishable under any other law with imprisonment shall be liable to corporal punishment in lieu of any other punishment to which he may be liable for the offence’. For juveniles, corporal punishment may not exceed 12 strokes. See sec 8(2).

91 Chap 16, sec 25.

92 Chap 20, see sec 170 and the First Schedule.

93 Sec 98.

94 Concluding Observations: United Republic of Tanzania, UN Committee on the Rights of the Child (21 June 2006) UN Doc CRC/C/TZA/CO/2 (2006) paras 34 and 70.

95 Concluding Observations: United Republic of Tanzania, UN Committee on the Rights of the Child (9 July 2001) UN Doc CRC/C/15/Add.156 (2001) paras 39 and 67.

96 Concluding Observations: United Republic of Tanzania, UN Human Rights

recommendation during the examination of the third report in 1998.⁹⁷ The ACERWC has also urged Tanzania to abolish corporal punishment in all settings.⁹⁸

Birth registration is governed by the Births and Deaths Registration Act.⁹⁹ The Act requires registration of a child within three months after birth and makes it compulsory.¹⁰⁰ Recently, the Registration Insolvency and Trusteeship Agency (RITA), the agency responsible for birth registration, announced their plan to register children at birth.¹⁰¹ Moreover, the Law of the Child Act obligates every parent or guardian to ensure he/she registers the birth of their child with relevant authorities.¹⁰² The ACERWC has urged Tanzania ensure 'availability of all the requisite measures and equipment to facilitate compulsory birth registration, as provided under Article 6 of the ACRWC'.¹⁰³ In 2017 the same Committee commended Tanzania for making progress in ensuring decentralisation of birth registration and provision of free birth registration and certification.¹⁰⁴ Citizenship in the United Republic of Tanzania is a Union matter and therefore there is a common citizenship law which applies to Mainland Tanzania and Tanzania Zanzibar, namely the Tanzania Citizenship Act.¹⁰⁵ According to this Act, any person born in the United Republic of Tanzania automatically becomes a citizen of the United Republic of

Committee (6 August 2009) UN Doc CCPR/C/TZA/CO/4 (2009) para 16.

97 Concluding Observations: United Republic of Tanzania, UN Human Rights Committee (18 August 1998) UN Doc CCPR/C/79/Add.97 (1998) para. 16. See also Briefing prepared by the Global Initiative to End All Corporal Punishment of Children (March 2011) www.endcorporalpunishment.org (accessed August 2020).

98 Concluding Recommendations by the African Committee of Experts on the Rights and Welfare of the Child on the Republic of Tanzania Report on the Status of Implementation of the African Charter on the Rights and Welfare of the Child, ACERWC (2017) 7 https://acerwc.africa/wp-content/uploads/2018/14/CO_Tanzania_eng.pdf (accessed October 2020).

99 Chap 108, Revised Edition of 2002.

100 Sec 11.

101 'Mpango wa Usajili vyeti vya kuzaliwa watoto chini ya miaka 5 wa itangaza Tanzania Kimataifa' *Mteza Media* 20 August 2020 <https://mtezamedia.wordpress.com/2020/08/20/mpango-wa-usajili-vyeti-vya-kuzaliwa-watoto-chini-ya-miaka-5-wa-itangaza-tanzania-kimataifa/> (accessed August 2020).

102 Sec 6(3), Law of the Child Act.

103 Concluding Recommendations (n 100) 9.

104 Concluding Observations and Recommendations (n 17) 2.

105 Chap 357, Revised Edition of 2002.

Tanzania.¹⁰⁶ Besides, the Law of the Child Act provides that every child has the right to nationality.¹⁰⁷

Regarding legal standing, there are situations where a child is treated as a dependent person and others as independent. For example, in cases involving sexual abuse of a child, the evidence of a child can be used to convict an accused person if the court is satisfied that such evidence serves the purpose. In other offences the court may also rely on the sole evidence of a child to convict an accused person after satisfying itself that the child is telling the truth.¹⁰⁸ Moreover, the procedure in juvenile courts is subject to certain conditions including: proceedings must be held in camera, proceedings are supposed to be informal without exposing a child to adversarial procedures, a social welfare officer must be present, a parent, guardian or next of kin has the right to be present, the child can be resented by an advocate, the right to appeal should be clearly explained to the child, and the child shall be given the right to express his/her opinion.

On protection from violence, the Law of Child Act protects children from torture and degrading treatment under section 13(1) which provides:

A person shall not subject a child to torture, or other cruel, inhuman punishment or degrading treatment including any cultural practice which dehumanizes or is injurious to the physical and mental well-being of a child.

Degrading treatment is defined to mean any 'an act done to a child with the intention of humiliating or lowering his [or her] dignity'.¹⁰⁹ Under the Penal Code and the Law of the Child Act,¹¹⁰ any person who performs Female Genital Mutilation (FGM) to a child commits an offence. In the Penal Code, FGM falls under the general offence of cruelty to children. Specifically, the Code provides:¹¹¹

Any person who, having the custody, charge or care of any person under eighteen years of age, ill-treats, neglects or abandons that person or causes female genital mutilation or carries or causes to be carried out female genital mutilation or procures that person to be assaulted. ill-treated, neglected or abandoned in a manner likely to cause him suffering or injury to health, including injury to, or loss of, sight or hearing, or limb or organ of the body or

106 Secs 4 and 5.

107 Sec 6(1).

108 Secs 155(2) and (3), Law of the Child Act.

109 Sec 13(3), Law of the Child Act.

110 Section 158A(1).

111 Section 169A(1), the Penal Code.

any mental derangement, commits the offence of cruelty to children.

The government has also implemented various policies and strategies aimed at eliminating FGM including: the Child Development Policy of 2008; the National Integrated Communication and Outreach Strategy to End Violence Against Women and Children and Outreach toolkit of 2017/18-2021/22; and the National Anti-Female Genital Mutilation (FGM) Strategy and Implementation Plan (in 2019 the government reported that was being finalised).¹¹² According to government reports, FGM cases have dropped from 18 per cent to 10 per cent as a result of different efforts by the government to address it.¹¹³

Previous initiatives by the government to address FGM include: the National Plan of Action for Prevention and Eradication of Violence against Women and Children (2001-2015); the National Plan of Action for Prevention and Eradication of Female Genital Mutilation 2001-2015; the National Community Sensitisation Strategy to Prevent and Respond to Gender-Based Violence; the National Multi-sectoral Committee to Prevent and Respond to Violence Against Women and Children; the National Plan of Action on Preventing and Responding to Violence against Children the MCDGC Strategic Plan (2011-2016); the National Strategy for Gender Development (2005); the National Plan of Action to Accelerate the Eradication of FGM and Other Harmful Traditional Practices; and the National Human Rights Action Plan (2013-2017).

On the question of child marriage, the Education Act¹¹⁴ was amended¹¹⁵ in 2015 to prohibit marriage involving a primary or secondary school pupil. The law makes it an offence for any person to marry a primary or secondary school girl or boy. Commitment of this offence attracts a punishment of 30 years' imprisonment. It is also an offence for any person to aid, abate or solicit a primary or secondary school boy or girl to get married.¹¹⁶ However, the law does not mention the specific age, it simply makes reference to 'primary/secondary school girl/boy'. It should also be noted that the Law of Marriage Act stills allows a girl of at least 14 years of age (with the court's permission) or at least 15 years of age (with parental consent) to get married. Under certain circumstances

112 Beijing report (n 18) 69.

113 Beijing report (n 18) 92.

114 Chap 353, Revised Edition of 2002.

115 See sec 22 of the Written Laws (Miscellaneous Amendment) Act 2 of 2016 <https://www.fiu.go.tz/WrittenLawsMiscellaneousAmendmentsNo.2Bill2016.pdf> (accessed October 2020).

116 Sec 60A of the Education Act.

a boy of at least 15 years of age can also get married. There is therefore a need to harmonise all the laws on this issue to ensure child marriages are completely ended.

Child pornography is prohibited by the Law of the Child Act.¹¹⁷ Sexual exploitation of a child is also prohibited under the same Act. It is not allowed to engage a child in any work trade that exposes the child to activities of sexual nature, whether paid for or not.¹¹⁸ Furthermore, the Act prohibits the following acts:¹¹⁹

- (1) Inducing or coercing a child to engage in any sexual activity;
- (2) using children in prostitution or other unlawful sexual practices; and
- (3) using children in pornographic performances or materials.

Moreover, as a measure to further protect children from sexual exploitation, the Law of the Child Act prohibits the employment of any person in a day-care centre or crèche who has been previously convicted of any offence against children or of a sexual nature.¹²⁰ The Penal Code also contains a wide-ranging provision on sexual exploitation of children. It prohibits child sexual abuse, sexual intercourse through force or undue influence, and other forms of sexual activity in different circumstances.¹²¹

The law on sexual offences is rather intricate. Sexual offences are covered under Chapter XV of the Penal Code which is on offenses against morality. According to the law, a man can be convicted for raping a woman or a girl.¹²² The law does not recognise the raping of a male person by a woman or another male; it only covers what is described as ‘indecent assault of boys under eighteen’. Section 156 provides that ‘any person who unlawfully and indecently assaults a boy under the age of eighteen years is guilty of an offence and is liable to imprisonment for life’. If the offence is committed to a boy under the age of 15, the fact that the boy consented to the indecent assault shall not be entertained as a defence.¹²³ The rationale behind this exception is not clear and it is also not clear whether indecent assault includes situations where a boy is ‘raped’ by either a man or a woman. Be it as it may, from this legal position, a male person under the age of 18 can be convicted of raping a girl who is below 18 because

117 Sec 158(1)(b).

118 Sec 83(1).

119 Sec 83(2).

120 Secs 147(7) and 148(1), Law of the Child Act.

121 Sec 138B.

122 Sec 130, the Penal Code.

123 Section 156(2).

according to the law, sexual intercourse with a girl under 18 years of age amounts to statutory rape; the question of consent is immaterial.¹²⁴ However, the Penal Code also provides that a boy under the age of 12 years is presumed to be incapable of having sexual intercourse. This means if the assumption is rebutted, the boy can still face criminal sanction. Moreover, any child under 10 years old cannot be held criminally liable for any act or omission.¹²⁵ At the same time, a person under the age of 12 years cannot be held criminally liable unless it is proved that at the time of committing the offence, he/she understood he/she was doing something he/she ought not to do.¹²⁶ This means, a boy of 11 years of age can be held liable for a sexual offence (rape) if he has sexual intercourse with a girl below 18 years of age under the circumstances described above. In summary, there are situations where consensual sexual intercourse between children (below 18 years of age) can lead to criminal liability. This includes situations of rape as defined by law or indecent assault which may cover sexual acts. This can also happen under other categories of offences against morality namely, acts of gross indecency between persons, grave sexual abuse and sexual harassment, unnatural offences, indecent practices between males, and prostitution. On the question of punishment for offences against morality, the Penal Code contains an exception with regards to children. Section 160B provides as follows:

For promotion and protection of the right of the child, nothing in chapter XV of this Code shall prevent the court from exercising –

- (a) reversionary powers to satisfy that, cruel sentences are not imposed to persons of or below the age of eighteen years; or
- (b) discretionary powers in imposing sentences to persons of or below the age of eighteen years.

The effect of the above provision is that, children can be held criminally liable and punished, but the Court is given powers to decide on the nature of the punishment taking into account the rights of children. The protection envisaged in this provision is, in our view, too general and weak. A survey of available case law did not find a case on this subject.

6 Policy reform and adoption

The government has implemented the National Nutrition Strategy (July 2011/12-June 2015/16)¹²⁷ which outlines measures to address nutrition

124 Section 130(2)(e).

125 Section 15(1).

126 Section 15(2).

127 Ministry of Health and Social Welfare 'National Nutrition Strategy July 2011/12-

challenges including those facing children in difficult circumstances and most vulnerable children. It also addresses issues of household food security and child malnutrition. Recently the government adopted the National Multisectoral Nutrition Action Plan (NMNAP) for the period 2016/17-2020/2021,¹²⁸ which is a logical continuation of the Nutrition Strategy. The two documents drawn their basis from the National Food and Nutrition Policy of 2016. All these instruments aim to address nutrition challenges especially those facing children. In its Concluding Observations on Tanzania in 2017, the ACERWC observed that child malnutrition, anemia, stunted growth, underweight in children were still challenges standing in the way of child survival and development.¹²⁹ The government has also been facilitating provision of vitamin A and deworming medication to children below 5 years of age. In this exercise the government has managed to reach 95 per cent of children.¹³⁰

On social security, the relevant documents are the National Social Security Policy of 2003 and the National Social Protection Framework of 2008. The former lays down a framework for ensuring the protection of orphans, vulnerable children, children with disabilities and other special groups. The goal of the Framework is:

To provide guidance to all State and non-State actors involved in the funding, planning and/or provision of social protection programmes in Tanzania. It aims to enhance the coordination of social protection interventions to enhance the implementation and sustainability of those initiatives.

The government has been making significant progress in ensuring access to basic services by all citizens. However, much more still needs to be done. In their Concluding Observations on Tanzania in 2017, the ACERWC observed that child malnutrition, anaemia, stunted growth, underweight in children were still challenges standing in the way of child survival and development.¹³¹ The government has implemented the National Nutrition Strategy (July 2011/12-June 2015/16)¹³² which outlines measures to

June 2015/16 (2011) https://www.tfnc.go.tz/uploads/publications/sw1538745120-NNS%20FINAL_Sept%202011.pdf (accessed October 2020).

128 United Republic of Tanzania Prime Minister's Office 'National Multisectoral Nutrition Action Plan (NMNAP): From evidence to policy to action – June 2016-June 2021' (October 2016) <https://www.tfnc.go.tz/uploads/publications/sw1556116940-NMNAP%202016%20-%202021.pdf> (accessed October 2020).

129 Concluding Recommendations (n 100) 5.

130 Ministry of Health Budget Speech (n 20) 21.

131 Concluding Recommendations (n 100) 5.

132 National Nutrition Strategy (n 129).

address nutrition challenges including those facing children in difficult circumstances and most vulnerable children. Moreover, the government adopted the National Multisectoral Nutrition Action Plan (NMNAP) for the period 2016/17-2020/2021¹³³ which is a logical continuation of the Nutrition Strategy. The two documents draw their basis from the National Food and Nutrition Policy of 2016. All these instruments aim at addressing nutrition challenges especially those facing children. The government has also been facilitating provision of vitamin A and deworming medication to children below 5 years of age. In this exercise the government has managed to reach 95 per cent of the children.¹³⁴

7 Court judgments

Treaty provisions cannot be directly invoked by courts and authorities. Courts have made reference to treaties in two situations; first when stressing the international/regional human rights obligations of the country¹³⁵ with respect to a particular matter (for example, provision of education) and second as an interpretative guide.¹³⁶ A survey of High Court and Court of Appeal decisions available on the Tanzania Legal Information Institute (TANZLII) website¹³⁷ shows the Charter has been seldom used as an *interpretative source*. In the landmark case of *Rebeca G Gyumi v Attorney General*,¹³⁸ while determining a petition which challenged the provisions of the Law of Marriage Act allowing girls below 18 years of age to get married, the High Court of Tanzania drew inspiration from the ACRWC. Specifically, the Court made reference to article 21 on protection of children against harmful social and cultural practices. The Court used the Charter as a one of the bases against customary and Islamic rules which allow girls below 18 years to get married. The Court remarked:¹³⁹

On this stance we have sought inspiration from some of the International and Regional Instruments which Tanzania has ratified, particularly the African Charter on the Rights and Welfare of the Child.

In this case the provisions of the Law Marriage Act which allow a girl below 18 years of age to get married were declared unconstitutional. The

133 As above.

134 Ministry of Health Budget Speech (n 20) 21.

135 See for example, *Judith Patrick Kyamba* (n 60).

136 See for example, *Attorney General v Rebeca Z Gyumi* and *Rebeca G Gyumi v. Attorney General* (n 61).

137 <https://tanzlii.org/> (accessed October 2020).

138 N 61.

139 At 21 of the judgment.

High Court ordered the government to amend the law with a period of one year. Following the decision of the High Court in the case above, the government appealed to the Court of Appeal maintaining that the provisions which were declared unconstitutional are constitutional. The Court of Appeal made reference to various international human rights law instruments including the ACRWC in assessing the validity of the provisions (sections 13 and 17) which allow a girl under 18 years to get married. The Court's remarks were as follows:¹⁴⁰

We are mindful of the fact that LMA [Law of Marriage Act] was enacted in 1971 and that the impugned provisions were incorporated to serve the purpose at such particular era and perhaps to date. However, it is our respectful view that, Tanzania is not an isolated island. It has from time to time been indebted to legal jurisprudence from other jurisdictions by ratifying and domesticating international, regional and sub regional instruments or enacting laws as a means of acknowledging the outcry of the international community and taking action against the violation of human rights which includes the right of a girl child. By ratifying and domesticating these instruments, the Government of Tanzania has demonstrated commitment to enforce them and assure smooth realization of human and peoples' rights. Thus, the impugned provisions cannot be interpreted in isolation rather in comparison to the said instruments which have laid pro-founding principles on rights to marry and finding a family. It is through them, we can possibly ascertain as to whether sections 13 and 17 of LMA are discriminatory or not. Before we proceed further, we have taken deliberate effort to revisit some of the provisions envisaged in selected instruments under which Tanzania is a member.

After a survey of international instruments including the Universal Declaration of Human Rights, the UN Convention on the Rights of the Child, the ACRWC and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the Court arrived at a conclusion that 'only men and women of full age have the right to marry' and therefore 'by necessary implication a person who has not attained the age of 18 years and above lacks the capacity to enjoy the right to marry'.¹⁴¹ In addition, the Court found that the aforesaid provisions (sections 13 and 17) of the Law of Marriage Act violate international instruments which Tanzania has committed to honour. In other words, the Court found Tanzania in violation of the ACRWC and the other said instruments. The Court held: ¹⁴²

140 At 29 of the judgment.

141 At 31 of the judgment.

142 At 32 of the judgment.

The existence of sections 13 and 17 of LMA [Law of Marriage Act] do not only violate the international law with which Tanzania is a member and has signed and ratified, but also it offends the salutary principles of law of contract which call for competency of the parties who enter into the contract, particularly, in a marriage as a contract.

8 Awareness and use by Civil Society Organisations

The general awareness of the public on international human-rights treaties is very low, even among educated adults and government officials. The people who are more likely to know the provisions of the ACRWC are government officials responsible for child matters, students who study human-rights law, law of the child, teachers and academics who teach relevant child matters, and civil society organisations (CSOs) that work on child matters. It can therefore be said that the awareness of the principles is very limited especially among children. On the overall, the principles are not widely known. The National Human Rights Action Plan mentions lack of awareness on children's rights as one of the problems in protecting children's rights.¹⁴³ The Plan also contains many provisions on the need to raise people's awareness on human-rights matters. All this shows awareness on general human-rights matters is low among the citizens.

Although the National Human Rights Action Plan does not specifically state the role of CSOs in monitoring the implementation of the treaty, there are indications that they may play a role in the process directly or indirectly. The Plan provides that its implementation involves key local actors namely central government ministries, local government authorities, independent government departments and agencies, CSOs and villages. Moreover, the Plan acknowledges the critical role of CSOs in supporting the country to implement and monitor human rights through:

Building local capacity and empowering communities, participating in monitoring and evaluation at national and community level, mobilizing and enhancing community participation, and mobilizing community resources towards achieving the objectives of the Plan.¹⁴⁴

In our view, the Plan provides a basis for CSOs to participate in monitoring implementation of the treaty. However, information on what happens in practice was not obtained.

143 National Human Rights Action Plan at39.

144 National Human Rights Action Plan at54.

Most of the programmes developed by CSOs working on human-rights issues are around advocacy, education and training, human-rights monitoring and research. The treaty is mostly used by CSOs as the basis for emphasising the need to protect children's rights and for pushing the government to strengthen its mechanisms for safeguarding children's rights. The treaty largely features in the work of most human-rights NGOs including the Legal and Human Rights Centre (LHRC), ActionAid Tanzania, Tanzania Gender Networking Programme (TGNP) and Action for Justice in Society (AJISO). The treaty has featured in the work of NGOs especially research, campaigns, workshops, advocacy, training materials and other publications such as press releases.

Information on whether CSOs based in Tanzania have submitted reports to the ACERWC could not be found. However, Tanzanian CSOs have submitted alternative reports to the United Nations Committee on the Rights of the Child¹⁴⁵ and this shows the same can happen with the ACERWC. With regards to international NGOs, in May 2017 Human Rights Watch submitted a letter¹⁴⁶ (which in substance looks similar to an alternative report) to the ACERWC with respect to Tanzania's periodic report to the Committee which was considered in 2019. In its letter, Human Rights Watch highlighted some of the challenges which hamper the realisation of children's rights under the ACRWC and called on the Committee to consider them while examining Tanzania's report. The issues included limited educational opportunities for children who fail primary education completion examinations, corporal punishment in schools, widespread child sexual abuse, child labour, and child marriages.

9 Awareness and use by lawyers and the judiciary

In a few cases judges have taken the provisions of the treaty into account. The most important cases in relation to children are, in our view, the decisions of the High Court and the Court of Appeal in *Rebeca Gyumi's case*. More information about the case is presented under the sections on age of consent to marriage and court decisions of this report.

145 See for example, Tanzania CSO's Alternative Report to the 3rd, 4th and 5th Consolidated Report on Tanzania's Implementation of the Convention on the Rights of the Child (2007-2012) https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/TZA/INT_CRC_NGO_TZA_18029_E.pdf (accessed October 2020).

146 HRW letter to Prof BW Mezmur, Chairperson of ACERWC, 2 May 2017 https://www.hrw.org/sites/default/files/supporting_resources/hrw_letter_acerwc_tanzania_may_2017_0.pdf (accessed October 2020).

In another case the Charter is just mentioned to indicate Tanzania's international obligations on specific child-rights matters.¹⁴⁷ With regards to general comments, our survey did not find any case in which general comments have been used or referred to.

10 Higher education and academic writing

Most bachelor of laws programmes contain a human-rights course in which the treaty features predominantly. The curricula of certificate and diploma law programmes at various universities also include human rights and or law of the child and the treaty is used.¹⁴⁸ The curriculum of the Law School of Tanzania also includes a human-rights law course.¹⁴⁹ The treaty is mentioned in academic writings especially books,¹⁵⁰ dissertations¹⁵¹ and journal articles.

11 National Human Rights Institutions

The Commission for Human Rights and Good Governance (CHRAGG) is Tanzania's human rights institution. Its overall function is to promote, protect and preserve human rights and uphold principles of good governance in the country. It discharges these functions through its promotional, protective, advisory and mediatory/conciliatory role. Moreover, the Commission's advisory role makes it the principal advisor to the government on matters of human rights and good governance. It can also receive complaints on human-rights violations and maladministration. The other functions of the Commission include commenting on laws, monitoring the human-rights situation of the country, monitoring and advising compliance with international human rights and standards. This means the CHRAGG has an important role to play in monitoring the implementation of the ACRWC. Moreover, the CHRAGG is one of the organs charged with the responsibility of monitoring implementation of human-rights instruments.¹⁵² Going through the organisational structure of the CHRAGG, there is no specific department or section which deals

147 *Judith Patrick Kyamba* (n 60).

148 Examples: Mwenge Catholic University, University of Dar es Salaam, Moshi Co-operative University and Mzumbe University.

149 The Law School of Tanzania (Curriculum) By-Laws, 2011 at 103. file:///C:/Users/Lenovo/Downloads/Curriculum%20By-Laws%202011.pdf (accessed October 2020).

150 For example: AMA Urrio & JFA Urrio *Human rights in Tanzania: Law of the child and child abuse* (2014).

151 For example: J Mashamba 'A Study of Tanzania's non-compliance with its obligation to domesticate international juvenile justice standards in comparison with South Africa' PhD thesis, Open University of Tanzania, 2013.

152 National Human Rights Action Plan at 51.

with children. However, the Commission has a system of placing its staff under different thematic areas, one of which deals with gender and children.¹⁵³ Generally, the Commission has made use of the treaty in its advisory and human-rights monitoring works.

12 State reporting

Tanzania has submitted two reports to the ACERWC in line with the reporting guidelines of the ACERWC. Preparation of state reports is coordinated by the Human Rights Division in the Ministry of Constitutional and Legal Affairs. The Division has two sections namely Human Rights Reporting and Implementation Observatory. One of the functions of the former is to prepare national reports for presentation before human-rights bodies. No information was obtained on whether consultants have been used in preparing the reports. However, the National Human Rights Action Plan directs that human-rights experts should be consulted in preparing the reports. This shows that consultants may be engaged, but will work with the government team responsible for preparing the reports.

The Initial Report, due in September 2005, was submitted in December 2006. The Periodic Report was due in September 2008, but was submitted in October 2015 as a consolidation of the 2nd, 3rd and 4th periodic reports. It was considered at the 14th Ordinary Session of the Committee (16-19 Nov 2009). The reasons for late submission could not be found. The main issues covered in the reports are the measures being taken by the country to realise children's rights, challenges facing children and the national efforts to ensure their rights and wellbeing, and what the government plans to do to improve the human-rights situation of children.

The National Human Rights Action Plan provides that in preparing reports to treaty bodies, CSOs and human-rights experts should be consulted. The Consolidated 2nd, 3rd and 4th Periodic Report to the ACERWC shows that its preparation was consultative and inclusive and that a number of state and non-state actors were consulted through workshops, seminars and meetings.¹⁵⁴ Moreover, the initial report to the ACERWC shows the following CSOs were consulted: Legal and Human Rights Centre (LHRC), National Organisation for Legal Assistance (NOLA), Tanzania Women Lawyers Association (TAWLA), Tanzania Media Women Association (TAMWA), Amani ECD, Kuleana, Haki Elimu, UMATI, Marie Stopes, Red Cross of Tanzania, African

153 Commission for Human Rights and Good Governance '2015/2016 Annual Report' at 23.

154 Tanzania's Initial Report to the ACERWC (n 59) 5.

Network for the Prevention and Protection of Child Abuse and Neglect (ANPPCAN), Tanzania Early Childhood Development Network, Africare, National Network of Organisations Working with Children (NNOC), Plan Tanzania, Save the Children (UK), and KIWOHEDE.¹⁵⁵ Information on whether local/international civil society organisations prepared and submitted complementary reports was not found.

The government delegation responsible for the presentation of the report delegation is usually headed by an official from the Ministry responsible for children (namely, the Permanent Secretary or Minister or Deputy Minister), and other officials from the same ministry and other relevant ministries. The ACERWC has commended the Tanzania's delegation for its 'high-level inter-ministerial composition'.¹⁵⁶

The preparation of state reports has been inter-ministerial. For example, in preparing Tanzania's Initial Report to the ACERWC (2006), the following government departments and statutory bodies were involved: Ministry of Labour, Youth, Employment, Women and Children Development (Zanzibar); Ministry of Health and Social Welfare; Ministry of Education and Vocational Training; Ministry of Labour, Employment and Youth Development (Mainland Tanzania), Ministry of Justice and Constitutional Affairs, Prison Department, Refugees Department, Administrator Generals Office; Ministry of Public Safety and Security; the Judiciary; Ministry of Defence and National Service; Ministry of Foreign and International Cooperation; The Law Reform Commission; the Human Rights and Good Governance Commission; Tanzania Food and Nutrition Centre; Tanzania Commission for Aids (TACAIDS); and the Inter-ministerial Anti-Drugs Commission.¹⁵⁷ The drafting of the Consolidated 2nd, 3rd and 4th Periodic Report to the ACERWC (2015) also involved a number of state actors from different ministries.¹⁵⁸

Tanzania's Initial Report to the ACERWC shows that children's views were taken 'through their established forums'.¹⁵⁹ According to the Report, the government convened a three-day Child Forum in Morogoro Region during which 34 children aged between 10-17 years participated. The children were drawn from diverse backgrounds and included most vulnerable children.¹⁶⁰ The Consolidated 2nd, 3rd and 4th Periodic

155 At 76 of the Report.

156 Concluding Recommendations on Tanzania's Initial Report (n 100) 2.

157 At 76 of the Report.

158 At 5 of the Report.

159 At 1 of the Report.

160 Annex 2 of the Report at 86.

Report to the ACERWC also indicates that children were involved in the consultation process.¹⁶¹

Based on the reports that have so far been submitted to the ACERWC, there is limited information to establish the extent to which stakeholders' views (particularly CSOs) have been taken into account in the reporting process.¹⁶² However, what is more noticeable is the acknowledgement by the government of the important role played by CSOs in realising children's rights especially with regards to implementation of programmes, campaigns, advocacy activities and provision of education.¹⁶³

Regarding publicity and accessibility of the reports, the National Human Rights Action Plan requires the Ministry of Foreign Affairs and International Cooperation and the Attorney General's Chambers to make the reports available to the public.¹⁶⁴ However, following the recent transfer of the 'human rights division' from the AGC to the Ministry of Constitutional and Legal Affairs, the responsibility to make the reports public, although not expressly stated, lies with the Ministry.

The Periodic Report to the ACERWC indicates that reports are circulated among various stakeholders.¹⁶⁵ The reports are prepared in English which is not widely spoken and understood by citizens. In 2017 the ACERWC advised Tanzania to prepare child-friendly versions of the main laws and policies to make children understand their rights and obligations.¹⁶⁶ This can also be done with state reports and concluding observations.

The Periodic Report to the Committee shows Tanzania has made substantial progress in realising children's rights. Of particular importance are legislative measures which include enactment of the Law of the Child Act in 2009 and a number of regulations to regulate various child matters. The Act was enacted to, *inter alia*, domesticate international child-rights standards including those in the ACRWC. The overall positive steps include: inclusion of children's rights in the Draft Constitution of 2014, reduction of under-five mortality rate, reform of the juvenile justice

161 At 5 and Annex 1 of the Report.

162 See for example, Tanzania Initial Report (n 59) 13, 23, 38, 47 and 73. See also Tanzania's Periodic Report (n 45) 18, 53, 54 and 64.

163 See for example Tanzania's Initial Report (n 59) 9.

164 National Human Rights Action Plan at 52.

165 Tanzania's Periodic Report (n 46) 14.

166 Concluding Observations and Recommendations on Tanzania's Periodic Report (n 17) 4.

system, establishment of Junior Councils in most parts of the country, improvements in birth registration, and provision of fee-free primary and secondary education, increasing the budget allocated for child matters, dissemination of the ACRWRC, allowing pregnant girls to re-enter school, improving child participation framework and birth registration, adoption of laws and policies to address violence and sexual abuse, child labour and harmful traditional practices.

The recent concluding observations are those of July 2017 on the combined 2nd, 3rd and 4th Periodic Report of Tanzania.¹⁶⁷ In these Concluding Observations, the ACERWC commended Tanzania's efforts to realise children's rights, but also highlighted areas of concern on the basis of which the Committee made a number of recommendations for improving the human-rights situation of children in Tanzania. The positive steps recognised by the Committee included: inclusion of children's rights in the Draft Constitution of 2014, enactment of the Law of the Child Act, reduction of under-five mortality rate, reform of the juvenile justice system, establishment of Junior Councils in most parts of the country, improvements in birth registration, and provision of fee-free primary and secondary education. The main areas of concern were: uncoordinated structures in Mainland Tanzania and Tanzania Zanzibar on implementation of children's rights, existence of conflicting laws on the definition of the child especially in the context of marriage, existence of laws which allow corporal punishment, attacks on children with albinism, limited attention to children with disabilities especially at the early stages, imprisonment of children with their incarcerated caregivers, widespread child sexual abuse, prevalence of child labour and harmful traditional practices including FGM. The Committee made a number of recommendations for addressing the aforementioned areas including: adoption of the Draft Constitution of 2014, legal prohibition of child marriages, increasing the budget allocated for child matters, harmonising laws on the definition of a child, providing financial support to Children's Councils, improving access to health services especially in rural areas, improving school infrastructures, and enhancing efforts to combat child sexual abuse and harmful traditional practices.

The responsibility to follow up implementation of concluding observations is implied in the functions of the Human Rights Division in the Ministry of Constitutional and Legal Affairs. The Division has two sections namely Human Rights Reporting and Implementation Observatory. The functions of the former include ensuring state compliance with human-

167 <https://acerwc.africa/wp-content/uploads/2019/07/Tanzania%20CO.pdf> (accessed September 2020).

rights obligations, and establishing and developing a comprehensive policy framework for human-rights implementation. Moreover, one of the functions of the Reporting Section is to disseminate concluding observations from human-rights treaty bodies.¹⁶⁸

Besides, according to the National Human Rights Action Plan,¹⁶⁹ implementation of international human-rights treaties at national level requires, *inter alia*, the Ministry of Foreign Affairs and International Cooperation,¹⁷⁰ the Attorney General's Chambers, the CHRAGG and other relevant state actors to cooperate in ensuring implementation of 'recommendations made by UN Treaty monitoring bodies and accepted by the Government of United Republic of Tanzania'.¹⁷¹ It is assumed that this also covers recommendations by the African Union human-rights treaty monitoring bodies namely the African Commission on Human and Peoples' Rights and the ACERWC.

Although the National Human Rights Action Plan does not specifically state the role of CSOs in implementing concluding observations, there are indications that CSOs may play a role in the process directly or indirectly. The Plan provides that its implementation involves key local actors namely central government ministries, local government authorities, independent government departments and agencies, CSOs and villages. Moreover, the Plan acknowledges the critical role of CSOs in supporting the country to implement and monitor human rights through:

Building local capacity and empowering communities, participating in monitoring and evaluation at national and community level, mobilizing and enhancing community participation, and mobilizing community resources towards achieving the objectives of the Plan.¹⁷²

It is our observation that the Plan provides a basis for CSOs to participate in the implementation of concluding observations. However, information on the actual practice was not found.

168 Ministry of Constitutional and Legal Affairs, Human Rights Division. <https://www.sheria.go.tz/pages/human-rights> (accessed July 2021).

169 At vii.

170 Given that the Human Rights Division is now in the Ministry of Constitutional and Legal Affairs, the Ministry of Foreign Affairs is no longer relevant in this case.

171 National Human Rights Action Plan at 52.

172 National Human Rights Action Plan at 54.

13 Communications

No communication has been submitted against Tanzania to the ACERWC.¹⁷³ The reason for this was not found. However, it could be partly due to limited engagement by Tanzanian NGOs with the ACERWC. Currently there is only one NGO (Legal and Human Rights Centre) with observer status.¹⁷⁴

14 Special mechanism-promotional visits of the African Committee of Experts on the Rights and Welfare of the Child

The ACERWC conducted an Investigation Mission in Tanzania, following an application to investigate on alleged violations of the rights of children with albinism. The application was introduced on November 2013 by a NGO, Under The Same Sun (UTSS), drawing the Committee's attention to the alarming conditions children with albinism are subjected to and violations of their rights in Tanzania.¹⁷⁵ Following this mission, the Committee prepared a report which highlighted the plight of persons with albinism in Tanzania and made a number of recommendations on what should be done by the government and other stakeholders to address the situation and ensure the rights of persons and children with albinism are respected and protected in line with the principles of the ACRWC. The recommended measures were immediate, mid-term and long-term.¹⁷⁶

15 Factors that may impede or enhance the impact of the Charter and the Committee

Tanzania has significantly domesticated the principles and norms enshrined in the ACRWC particularly through the enactment of the Law of Act and its various regulations. This provides a strong basis for protecting and realising children's rights in the country. To enhance the impact of the Charter and the Committee, more efforts are needed to ensure the Concluding Observations of the Committee are implemented through

173 ACERWC 'Table of communications', <https://www.acerwc.africa/table-of-communications/> (accessed October 2020).

174 ACERWC 'CSO engagements' <https://www.acerwc.africa/cso-engagements/> (accessed October 2020).

175 ACERWC 'Missions: Country visits' <https://www.acerwc.africa/missions-country-visits/> (accessed September 2020).

176 ACERWC 'Investigative mission on the situation of children with albinism' https://www.acerwc.africa/wp-content/uploads/2018/07/Investigative_Mission_on_the_Situation_of_Children_with_Albinism_A4.pdf (accessed September 2020).

the involvement of all key stakeholders. Besides, state reports should be submitted timely as they provide a strategic opportunity for introspection and constructive dialogue on how the human-rights situation of children can be improved. Furthermore, there is a need to enhance the awareness of key stakeholders about the treaty and the work of the Committee. This can be achieved through several ways including translation and dissemination of the treaty and concluding observations. CSOs are also advised to participate in preparation of shadow and complementary reports to the Committee in order to enhance the impact of state reporting.

16 Conclusion

The passing of the Law of the Child Act and its regulations was an important milestone in protecting children's rights in the country. The Act has formed the basis for meaningful activism, advocacy, and research and has also elevated the children's rights agenda at national level to a significant degree. Although the government has taken commendable legislative, policy and other measures to realise children's rights, much more is left to be desired. A survey of media reports, reports by CSOs and the government shows children are still facing many challenges including: child labour, teen pregnancies, sexual assault of boys and girls and physical and psychological abuse. The 2019 report by the LHRC documents incidents of violence and sexual abuse against children at an alarming rate.¹⁷⁷ Given this situation, more work is needed to ensure the rights on paper become a tangible reality for all children. This will require meaningful participation of all stakeholders, allocation of necessary resources, effective participation in supranational avenues for enhancing realisation of children's rights and increasing overall awareness on children's rights and their implementation. Moreover, scientific studies on the impact of the treaty should be conducted to establish progress, identify challenges and propose strategic and practical ways of enhancing the impact of the Charter and the ACERWC in the country.

177 LHRC (n 48) 257-268.

ANNEXURE A – GUIDING QUESTIONS

In conducting the study, the researchers were provided the questions listed below to guide their findings in respect of the selected country. For the purpose of this study, the researchers were expected to use the most recent available source and mechanisms at the National level.

A. Country context

- (1) What is the system of government?
- (2) What system of law does the country follow (common, civil, other)?
- (3) What is the country's GDP? Is it a low, middle or high-income country?
- (4) What is the human development index (HDI)? What is the economic status of the country?
- (5) From the data of the most recent census, what is the population structure like? What percentage of the population are under 18 years old? What percentage are girls/boys?
- (6) What is the maternal mortality rate? What are the major causes?
- (7) What is the infant mortality rate? What is the under-five mortality rate?
- (8) What is the rate of mother-to-child transmission of HIV? What are the immunisation rates of vaccine-preventable diseases such as diphtheria, tetanus, whooping cough, measles, polio and tuberculosis?
- (9) What is the age of sexual debut?
- (10) What is the rate of teen pregnancies?
- (11) What is the rate of HIV infection for young people?

- (12) What is the contraceptive prevalence rate for young people?
- (13) Do children have access to basic services such as primary health care, water and sanitation, adequate nutrition, shelter and basic housing?
- (14) What measures are there to ensure that no child experiences hunger or food insecurity, and that no child is underweight or stunted?
- (15) Are their social security schemes aimed at most vulnerable children in society such as children who head households, and children with disabilities?
- (16) Are there measures to prioritise pre-school education?
- (17) Is primary education free and compulsory? What is the teacher/student ratio? What is the enrolment rate in primary/secondary school?
- (18) What is the completion rate at a primary/secondary level?
- (19) Are children with learning, mental and physical impairments included and given the necessary support to complete primary and secondary school? Is education inclusive?
- (20) Are learners who become pregnant able to continue their education?
- (21) Is comprehensive sexuality education taught in primary and secondary schools? Is this age-appropriate, informed and evidence-based to enable boys and girls to make informed sexual and reproductive choice? Does this include themes such as consent to sex, gender violence, discrimination, abuse and harmful practices?

B. Ratification of the African Charter on the Rights and Welfare of the Child

- (1) What is the process of ratification of international or regional human rights treaties?
- (2) On what date was the ACRWC ratified by the selected country?
- (3) Was any compatibility study carried out before ratifying the treaty?
- (4) Were any reservations made by the respective country?
- (5) Are the principles and provisions of the ACRWC made widely known to adults and children?

C. Domestication (laws and policies)

- (1) How is the child defined in national legislation?
- (2) What is the age of criminal responsibility?
- (3) What is the minimum age required for marriage?
- (4) What is the age of consent to sex?
- (5) What is the age of consent to medical treatment?
- (6) Is corporal punishment criminalized in all settings or not at all?
- (7) Has the country ratified the CRC and its three Optional Protocols? Has the country ratified the Worst forms of Child Labour Convention?

- (8) Has the state adopted necessary legislation for the registration of children at birth?
- (9) Does the legal system contain an effective and accessible provision ensuring that a child acquires the nationality of the country of his or her birth?
- (10) What is the process of domestication of international or regional human rights treaties?
- (11) Has the selected country undertaken a comprehensive review of all relevant domestic legislation?
- (12) Has the review been followed by amendments of national laws in order to give legal effect to the provisions of the ACRWC?
- (13) Does any new legislation/policy incorporate the principles of the ACRWC? What is the legal status of the ACRWC under national law?
- (14) Can the provisions of the ACRWC be invoked before national courts and directly be applied by national authorities?
- (15) Where there is a conflict between the provisions of the ACRWC and those of the domestic legislation, which one prevails?
- (16) Do the rules on legal standing take cognizance of the dependant status of children, and do they make arrangements for effective and child-sensitive procedures for children and their representatives?
- (17) Does domestic legislation give effective remedies to children for the violations of their rights?
- (18) Are human rights, in general, justiciable before domestic courts?
- (19) Are children's rights recognized and protected by the national Constitution? If yes, cite the specific provision.
- (20) Are there laws, policies or programs that: prevent and protect children from any form of violence both in the private and public sphere, prevent and protect children from harmful practices such as breast ironing, female genital mutilation, or cutting and child marriage?
- (21) Are children protected from exposure to sexual exploitation and child pornography?
- (22) Are children protected from corporal punishment?
- (23) Does the law on sexual offences criminalise children who have consensual sexual conduct with other children?
- (24) Are children prosecuted for being involved in consensual sexual conduct with other children?
- (25) Do laws and policies allow children's access to sexual and reproductive health services and commodities such as contraceptives and abortion care?

- (26) Are children who seek confidential sexual and reproductive health services able to access these without the requirement of parental consent?

D. National coordinating mechanism on treaty implementation

- (1) Is there a national cross-sectorial coordinating mechanism responsible for the implementation of treaties, in general, and of the ACRWC in particular? Are children meaningfully represented?
- (2) Does the coordination include different levels of government and different departments?
- (3) Is there a unifying, comprehensive, right-based national strategy driving the implementation of the treaty?
- (4) Does this national strategy provide for all children and for all rights and are there realistic, achievable, measurable and attainable targets provided for in the national strategy?
- (5) Is this strategy well disseminated and drafted in a child-friendly format?
- (6) Does it provide for regular review, monitoring and reporting to parliament on progress and challenges?
- (7) What role do national independent human rights institutions (NHRIs) play in the implementation and monitoring of the ACRWC?
- (8) Is there a special section/ Ombudsman of national human rights institutions that deals specifically with children's rights? If yes, is this a separate, self-standing body?
- (9) Is there a dedicated ministry for the children's rights issues?

E. State reporting

- (1) How many reports has the country submitted to the ACERWC? Have the reports been submitted within the timeframe provided for by the treaty or they have been submitted late? If they have been submitted late or not at all, what was the reason for late submission or non-submission?
- (2) What issues have been covered by the report?
- (3) Was the report in conformity with the reporting guidelines of the Committee?
- (4) Have the NGOs, CSOs, NHRIs, the media, the academia been involved in the reporting process?
- (5) Have local/international civil society organizations prepared and submitted complementary reports?
- (6) Were the issues raised in the complementary reports different than those contained in the state party reports?
- (7) Who constituted the government delegation responsible for the presentation of the report?

- (8) Have children been involved in the reporting process? If yes, to what extent and in what form? Which government department is responsible for the reporting process?
- (9) Has the respective department made use of a consultant in preparing the report?
- (10) Has the reporting process been inter-ministerial?
- (11) Have the stakeholders' views been taken into account in the reporting process?
- (12) Have copies of the report been made available to the citizens?
- (13) Have comments been allowed and reflected in the final version of the report? Was the language in which the final report was made available for comments widely spoken/understood by the citizens?
- (14) Can the provisions of the treaty be invoked before national courts?
- (15) Has the selected country made any progress in the realization of children's rights between reporting intervals? Using the guidelines for state party reporting, in which areas has the state party made progress?

F. Concluding observations

- (1) What were the most recent concluding observations for the country in question?
- (2) Who is responsible at the government level to follow-up with the implementation of the concluding observations?
- (3) Have the concluding observations been widely disseminated by the media? Have they been translated into the national/native/minority languages of the country in question?
- (4) Does the implementation of the concluding observations require resources or rather political will?
- (5) What plan has the government put in place for the implementation of the concluding observations?
- (6) What is the role of civil society organizations in the implementation of the concluding observations?
- (7) Have children been involved in the process of implementation?

G. Communications

- (1) If a communication has been submitted to ACERWC, who was responsible for the submission?
- (2) What were the particulars of the case?
- (3) Has the government provided any remedy?
- (4) If no communication has been submitted to the Committee, what is the reason for that?

- (5) What are the factors that discourage the submission of communications in the country under consideration?

H. Extent of treaty awareness

- (1) Are the provisions of the treaty known among government representatives? Has the government made available the ACRWC to the citizens? If yes, in which form? Was there any media coverage on the treaty provisions?
- (2) Have the treaty provisions been used by NGOs in campaigns, workshops, advocacy, relevant materials?
- (3) Do independent national human rights institutions make use of the treaty provisions in the discharge of their mandate?
- (4) Have the provisions of the treaty been incorporated in curricula at university level?
- (5) Has the treaty been mentioned in academic writings?

I. Translations of the treaty in local languages

- (1) Has the treaty been translated and made available in local languages apart from the official language of the country?
- (2) Who has been responsible for the translation process?
- (3) How accessible are the translations for the citizens?

J. Training programmes

- (1) Has the government organized national trainings on the provisions of the treaty of all relevant actors such as government officials, members of the civil society and the judiciary?
- (2) How often are these trainings organized? What does the selection process entail?

K. Court decisions

- (1) Has there been any domestic court decision in the country under consideration where the provisions of the ACRWC or the general comments issued by the Committee have been used as an interpretative source? If yes, what was the impact of the treaty or the general comments on the court judgement?
- (2) Has any domestic court has found the government in violation of a specific provision of the ACRWC?

L. Resource allocation

- (1) Is there a visible budget for children?

- (2) To what extent do children participate in the decision-making process with respect to the percentage of the budget allocated to them?

M. Role of civil society

- (1) Are civil society organisations meaningfully involved in the implementation of the ACRWC?
- (2) Have civil society organizations developed programmes informed by the treaty?
- (3) Have the civil society organizations submitted alternative reports to the Committee?
- (4) Are civil society organizations involved in the monitoring of the implementation of the ACRWC?
- (5) Does the government consult civil society organizations in the implementation of the treaty?

N. Role of the treaty body (the Committee) in the country

- (1) Has the Committee undertaken any promotional visit in the country? If yes, on what date? What was the outcome of that visit?
- (2) Has the Committee undertaken any investigative mission in the country under consideration? If yes, on what date? What was the purpose of the mission? What was the outcome?

O. General comments

- (1) What is the level of awareness of the General comments of the Committee among government officials, civil society, NGOs, independent national human rights institutions?
- (2) Were the general comments made available to the citizenry?
- (3) Were they translated in local languages? Who was responsible for the translation?
- (4) Has the media popularized the general comments? Have there been references to the general in academic publications in the country in question?

P. Juvenile justice institutions

- (1) Is there a holistic juvenile justice system in place with a comprehensive law on juvenile justice with provisions for diversion and efficient alternatives to the justice system?

- (2) Are these mechanisms, institutions and procedures in line with the provisions of the ACRWC?

Q. Child participation

- (1) Is there a legal or policy basis for child participation in the country? What does the relevant provision say?
- (2) Is there a Child Parliament in the respective country? If yes, when was it established? Are the meetings of the Child Parliament convened on a regular basis?
- (3) Considering the composition of the Child Parliament, what is the percentage of children compared to the percentage of youth?
- (4) Is child participation based on the principles of representation, inclusion and accountability?
- (5) Are children with disability, indigenous children and children belonging to various minorities well represented?
- (6) Are girls represented in the same measure as boys? What was the impact so far of the Child Parliament in terms of laws and policies affecting children?
- (7) At school level, is child participation and leadership cultivated by involving children in school management, for example in advisory student/learner councils?
- (8) Is the legal protection in place affirming of children's right to assemble, organise and access information and to express themselves freely?
- (9) Do children have the right to be consulted and heard in proceedings involving or affecting them?

R. Outcomes/impact of the treaty

- (1) Has there been a tangible change in legislation and policies affecting children's rights and wellbeing as a result of the treaty ratification?
- (2) Has a national plan of action for the monitoring and implementation of the provisions of the treaty been established?
- (3) Is there a specific national institution in charge of the realization of children's rights in the country?
- (4) Have the state reporting mechanism and the concluding observations issued by the Committee elevated the level of awareness with respect to the children's rights and wellbeing?
- (5) Has the treaty been used as a basis for organizing training programmes for key actors dealing with children?
- (6) Are judges taking into account the provisions of the treaty and the general comments when deciding on a matter related to children?
- (7) Has the budget allocated for children been increased?

- (8) Are the treaty provisions on the civil society organisations' agenda?

T. Emerging issues

- (1) What challenges has the COVID-19 pandemic raised about the rights of children?
- (2) How is the country managing and addressing these challenges?
- (3) What other emerging issues pose a challenge or opportunity for children's rights in the country?

S. Overall

- (1) In what area or areas has the country done particularly well in relation to advancing the rights of children?
- (2) What have been the areas of most concern about the rights of children?