

## **The Practice of Children's Rights Protection in Africa**

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### **ABSTRACT**

This chapter examines the issue of children's rights protection in Africa, focusing on the challenges hindering the effective implementation of these rights and the progress that has been made. It delves into the roles of key institutions such as the African Commission on Human and Peoples' Rights, the African Committee of Experts on the Rights and Welfare of the Child, and the African Court of Human and Peoples' Rights, emphasising their efforts to promote and safeguard children's rights across the continent. This chapter also highlights the ongoing issues of poverty, armed conflict, and harmful cultural practices that disproportionately affect African children. Importantly, it further shows that these challenges have not completely deterred African nations from taking significant strides towards legal reforms and educational advancements aimed at enhancing the protection and realisation of children's rights. This chapter advocates a deeper understanding and integration of African cultural values into the discourse on children's rights.

### **KEYWORDS**

Children's Rights, African Commission on Human and Peoples' Rights, African Children's Charter, Human Rights Protection, Child Advocacy, Legal Reform

## **1. Introduction**

Children and adolescents enjoy a comprehensive set of fundamental human rights on par with those of adults and specific rights that acknowledge their distinct needs. That is, these young individuals are not the possessions of their parents, but rather autonomous human beings vested with their own rights and have equal status as members of the global human family. Still, children must rely on adults for the nurturing and guidance required to progress towards independence, the ideal source of such nurturing being the family environment. Then, in instances where primary caregivers are unable to meet their children's needs, it becomes the responsibility of the state, as the primary duty bearer, to secure alternative arrangements that serve the best interests of the child.

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Virtually every facet of government policy, ranging from education to public health, exerts an impact on children, albeit to varying extents. Nearsighted policy-making that neglects the interests of children detrimentally affects the collective future of society. Specifically, the transformation of family structures, the forces of globalisation, climate change, digitalisation, mass migration, evolving employment patterns, and diminishing social welfare support in numerous nations all exert profound effects on children. These effects can be particularly devastating in circumstances characterised by armed conflict and other emergencies. Given the ongoing development processes to which children are exposed, they exhibit heightened vulnerability – surpassing that of adults – to adverse living conditions such as poverty, substandard healthcare, human trafficking, commercial sexual exploitation, child labour, harmful traditional practices (e.g. female genital mutilation), child marriage, malnutrition, access to safe water, adequate housing, and environmental pollution. Human rights protection ensures that children have access to their rights of survival, development, growth, and participation, and yet the consequences of disease, undernourishment, and poverty imperil not only the future of children but also the future of the societies within which they reside. These are all vulnerable situations that children encounter and that are omnipresent, albeit they vary in their specifics by region.

When focusing on children's rights in Africa, it is essential to recognise the multifaceted challenges they face and the various forms of abuse to which they are exposed, such as economic and sexual exploitation, gender-based discrimination in education and healthcare access, and involvement in armed conflicts. Other significant factors affecting African children include migration, early marriage, disparities between urban and rural environments, child-headed households, street children, and the pervasive issue of poverty. Of particular concern is the high prevalence of child labour in sub-Saharan Africa. The challenges specific to Africa require tailored practices, which is why we see it as crucial to explore the practice of children's rights protection in Africa within this book.

The African continent currently grapples with the highest rates of adolescent pregnancy globally. For example, the adolescent pregnancy rate is close to 200 per 1,000 adolescent girls in Mali, Mozambique, the Central African Republic, Equatorial Guinea, and South Sudan, whereas the global average is 40 per 1,000 girls.<sup>1</sup> The pandemic has further contributed to a surge in teenage pregnancy rates in several countries. Throughout Africa, tens of thousands of students are excluded from educational institutions owing to pregnancy or parenthood, and many African countries do not feature established policies to facilitate the re-entry of young mothers into schools or address the challenges of adolescent pregnancy within the educational system.

Another issue in Africa is the exclusion of children from education. Millions of children face financial, social, and discriminatory impediments, which are

1 United Nations Population Fund: World Population Dashboard [Online]. Available at: <https://www.unfpa.org/data/world-population-dashboard> (Accessed: 1 October 2023).

formidable obstacles that significantly increase the likelihood of their exclusion from high-quality education. This exclusion disproportionately affects certain groups, particularly girls, children with disabilities, those from low-income households, and those residing in regions affected by armed conflict. Sub-Saharan Africa has the highest rates of children out of school globally, along with the highest levels of exclusion. Approximately 31.2% of children in sub-Saharan Africa find themselves outside the educational system, and of the 59 million out-of-school children of primary school age worldwide, 32 million live in Sub-Saharan Africa.<sup>2</sup> The closure of schools due to the pandemic, coupled with the limited availability of offline and online learning resources, has further exacerbated the preexisting disparities in access to education.

In areas of military conflict, children are even more vulnerable to educational exclusion. This is because military groups often use schools as military facilities, and related soldiers damage schools and classrooms and confiscate educational resources. In fact, the repercussions of armed conflict on education have led to pressing humanitarian, developmental, and broader societal dilemmas. In Africa, many educational institutions, ranging from schools to universities, have suffered from bombings, shelling, and arson, while children, students, teachers, and academics have endured fatalities, injuries, abductions, and arbitrary detention. Furthermore, in the course of armed conflicts, educational facilities have sometimes been repurposed by various parties as bases, barracks, or detention centres, placing students and educational personnel in harm's way. This, in turn, often results in the deprivation of the right to education for numerous children and students, depriving communities of the foundational elements necessary for their future. In numerous countries, armed conflicts shatter not only the physical school infrastructure but also the aspirations and dreams of an entire generation of children. In Nigeria, schools and students have become targets of high-profile attacks and abductions by various armed groups, including insurgency organisations like Boko Haram.<sup>3</sup> Accordingly, the African Union should persist in its appeal to member states, urging them to guarantee the safety of children from attacks targeting education and curtail the utilisation of schools for military purposes. Furthermore, every nation within the African Union should officially support the Safe Schools Declaration, an intergovernmental commitment aimed at enhancing the prevention of and response to attacks on students, educators, educational institutions, and universities during times of conflict. Although 30 African countries have endorsed the Declaration, there are ongoing attacks on children, teachers, and educational institutions in Ethiopia, Nigeria, Burkina Faso, and the Democratic Republic of Congo. As aforementioned, these attacks on education encompass violence targeting

2 UNESCO Institute for Statistics: Fact Sheet no. 56, UIS/2019/ED/FS/56, New Methodology Shows that 258 Million Children, Adolescents and Youth Are Out of School [Online]. Available at: <https://uis.unesco.org/sites/default/files/documents/new-methodology-shows-258-million-children-adolescents-and-youth-are-out-school.pdf> (Accessed: 1 October 2023).

3 Ewang, 2021, More Schoolchildren Abducted in Nigeria, Human Rights Watch [Online]. Available at: <https://www.hrw.org/news/2021/02/17/more-schoolchildren-abducted-nigeria>. (Accessed: 1 October 2023).

educational facilities, students, and educators, with the resulting damage and threats having profound consequences for individuals and society. Apart from military conflicts, there are additional reasons why children are excluded from education, such as the absence of legal frameworks and policy and resource inadequacies. Examples of these other obstacles to primary and secondary education in Africa include instances of sexual and gender-based violence within educational settings in Senegal; the privatisation of education in Uganda; forced military training of secondary school students in Eritrea; child marriage in Malawi, South Sudan, Tanzania, and Zimbabwe; the discrimination against children with disabilities in South Africa, Mozambique, and Tanzania. Despite these barriers, it remains that the African Union should guarantee access to education for all African children while safeguarding them from any form of violence, exploitation, and discrimination.

Recent assessments conducted by the International Labour Organization and the United Nations International Children's Emergency Fund (also known as UNICEF) reveal that the number of children engaged in child labour has escalated over the past six years in sub-Saharan Africa. More specifically, factors such as population growth, recurring crises, severe poverty, and insufficient social protection measures have collectively resulted in an additional 16.6 million children being engaged in child labour.<sup>4</sup> This alarming surge marks an initial upturn in global child labour rates over the past two decades. The International Labour Organization has issued a cautionary statement regarding the global scenario, and projected that by the end of 2023, an additional nine million children would face the danger of being forced into child labour owing to the repercussions of the COVID-19 pandemic. Moreover, according to a simulation model, this estimation could surge to 46 million if these children did not have access to essential social protection.<sup>5</sup> The compounding economic shocks and protracted school closures resulting from the impact of COVID-19 also imply that children who were already engaged in child labour before the pandemic may find themselves working longer hours or experiencing deteriorating working conditions after the pandemic. Simultaneously, a growing number of children may be coerced into dire forms of child labour as a direct result of the job and income losses experienced by vulnerable families. In nations such as Uganda and Ghana, where financial aid programs for families during the pandemic have proven inadequate, numerous children have been forced to engage in exploitative and dangerous child labour to assist their families. Therefore, there is an immediate need to realign the efforts aimed at eradicating child labour with established global commitments and objectives.

Notwithstanding the professed commitment of African governments to safeguard and advance the rights and well-being of children within their respective domains,

4 International Labour Office and United Nations Children's Fund, *Child Labour: Global estimates 2020, trends and the road forward*, International Labour Organization and the United Nations International Children's Emergency Fund, New York, 2021. License: CC BY 4.0.

5 Ibid.

a significant proportion of children in Africa still find themselves marginalised in their pursuit of fundamental human rights and access to essential services (e.g. proper nutrition, suitable housing, quality education, and healthcare). One of the reasons for this dire circumstance is the lack of knowledge among key stakeholders regarding pertinent standards related to children's rights and the requisite processes and mechanisms for their enforcement. This informational void results in the ineffective execution of existing legal and policy frameworks at the domestic level, thereby engendering severe consequences for the quality of life of a substantial number of children on the African continent. More than 30 years have passed since the United Nations (UN) Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (hereinafter Children's Charter), and significant progress has been made towards adherence to these. For instance, numerous governments have done the following: enacted legal reforms, taken proactive measures to safeguard children against discrimination; various policy and governmental decisions have been made considering by the best interests of the children (e.g. focusing on their survival, development, and active participation in society); the number of children receiving full immunisation has increased, leading to a significant reduction in infant mortality rates across several countries. Despite these advancements, the situation persists, regrettably so, that not every child has the opportunity to experience a wholesome childhood; instead, millions remain exposed to and still endure violations of their rights as they are deprived of adequate healthcare, nutrition, education, and protection from violence. Childhoods are still being cut short when children are excluded from education, forced to engage in dangerous adult labour, marry prematurely, become involved in armed conflict, or find themselves incarcerated in adult prisons.

Importantly, there are three main institutions in Africa tasked with overseeing member states' adherence to human rights agreements, namely the African Commission on Human and Peoples' Rights (hereinafter just the Commission), the African Committee of Experts on the Rights and Welfare of the Child (hereinafter just the Committee), and the African Court of Human and Peoples' Rights (hereinafter just African Court). The effectiveness of any human rights system, be it operative at the domestic, regional, or international level, hinges on the robust development of three key components, namely the normative, institutional, and jurisprudential frameworks. The previous chapter was devoted to the normative framework, which constitutes the foundation for the shaping of the laws and regulations that guide the practical application of human rights principles. This chapter continues on with the exploration of the aforementioned three key components by addressing the practice of protecting children's rights, encompassing the institutional and jurisprudential elements – that is, the institutional framework. This framework revolves around the expertise and capabilities of the human resources tasked with translating theoretical principles into real-world solutions. The jurisprudential framework evolves naturally from the institutional one, as the institutional structure interacts with the normative provisions contained within human rights instruments. Over time, this

jurisprudential framework develops organically, contributing to a body of legal decisions and precedents.

## 2. The African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights is a quasi-judicial entity responsible for advancing and safeguarding human rights across Africa. Its mandate includes the interpretation of the African Charter on Human and Peoples' Rights (hereinafter the Banjul Charter) and the examination of individual complaints related to Charter violations. The Commission's functions encompass the investigation of human rights abuses, formulation and endorsement of action plans to promote human rights, and establishment of effective channels of communication with member states to gather firsthand information on human rights violations.

The African Union, originally established under the name Organisation of African Unity (also known as OAU, which then legally became the African Union in 2001), was conceived and established in 1963 in Addis Ababa, Ethiopia, with 32 signatory governments.<sup>6</sup> This occurred during a time when state sovereignty held paramount importance and the heads of states were particularly focused on safeguarding the hard-won independence of their nations. Accordingly, the Organisation of African Unity Charter made only passing references to human rights. Then, 18 years later, and in response to widely condemned violations of fundamental liberties in various member states of the Organisation, its governing body endorsed the Banjul Charter.<sup>7</sup> Then, in late 1987, the African Commission on Human and Peoples' Rights, established by the Banjul Charter, commenced its operations. The Banjul Charter draws considerable influence from prior international human rights documents, particularly the Universal Declaration of Human Rights<sup>8</sup> and two International Covenants, namely the Covenant on Civil and Political Rights<sup>9</sup> and the Covenant on Economic, Social, and Cultural Rights.<sup>10</sup> However, the drafters of the Banjul Charter, led by distinguished Senegalese

6 Organisation of African Unity, Charter of the Organization of African Unity, 25 May 1963 [Online]. Available at: <https://www.refworld.org/docid/3ae6b36024.html> (Accessed: 1 October 2023).

7 Organisation of African Unity, African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) [Online]. Available at: <https://www.refworld.org/docid/3ae6b3630.html> (Accessed: 30 October 2023).

8 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III) [Online]. Available at: <https://www.refworld.org/docid/3ae6b3712c.html> (Accessed: 30 October 2023).

9 UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 [Online]. Available at: <https://www.refworld.org/docid/3ae6b3aa0.html> (Accessed: 30 October 2023).

10 UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3 [Online]. Available at: <https://www.refworld.org/docid/3ae6b36c0.html> (Accessed: 30 October 2023).

jurist Keba Mbaye, aimed to imbue the document with a distinct African character.<sup>11</sup> Thus, while the Charter's 29 articles detailing the rights and freedoms largely pertain to individuals, a significant number involve people's collective rights. The Banjul Charter commences with the assertion of non-discrimination, explicitly prohibiting differentiation based on factors such as 'race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status'.<sup>12</sup> It proceeds to enumerate a range of civil and political rights, and subsequently addresses economic, social, and cultural rights. The Charter also breaks new ground by including the rights of people (from Arts. 19 to 24) and outlining duties (from Arts. 25 to 29) applicable to both state parties and individuals.

A problem of the Banjul Charter is that the mechanisms for safeguarding human rights at the domestic level in most African states and regionally under the Charter are considerably less robust than those found in European nations. This makes the existence of the aforementioned Commission in Africa a surprising phenomenon, and gives way for the expectation of it facing substantial constraints to its efficacy. Indeed, given the unique circumstances in Africa, including the enduring impact of colonialism, inadequately established and often unstable governmental institutions, limited state capacities, and precarious economic conditions, the Commission began its operations with several inherent challenges. The Commission's capacities are also restricted by its original mandate, which was primarily focused on promoting rather than protecting human rights. Consequently, the Commission primarily formulates recommendations that are then forwarded through the relevant institutional hierarchy to the Assembly of Heads of State and Government of the African Union (hereinafter just Assembly of Heads of States and Government), which then takes appropriate actions. This entails that despite its status as a regional government institution, the Commission still needs more factual authority and enforcement powers.

The initial members of the Commission were elected during the 23rd Assembly of Heads of State and Government of the Organisation of African Unity, which took place in June 1987. The Commission was formally inaugurated on 2 November of the same year, and subsequently operated for two years by the Organisation of African Unity's Secretariat in Addis Ababa, Ethiopia. The Secretariat was eventually relocated to Banjul, Gambia, in November 1989, and has convened biannually (typically in March, April, October, and November) ever since. One of these meetings generally takes place in Banjul, while the other can occur in any African state, with each session typically spanning eight to ten days. Importantly, there is a legitimate concern regarding whether this period is adequate for a thorough consideration of the matters brought before the Commission. Additionally, the Charter lacks provisions

11 Kannyo, *The Banjul Charter on Human and Peoples' Rights: Genesis and Political Background*. In: *Human Rights and Development in Africa*, Albany: State University of New York Press, 1984, p. 128.

12 African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) [Online]. Available at: <https://www.refworld.org/docid/3ae6b3630.html> (Accessed: 30 October 2023).

for the Commission to adopt emergency procedures, such as the ability to convene the meeting on a shorter notice in case of urgent situations.

The Commission features 11 members elected through secret balloting at the Assembly of Heads of State and Government. Based on Art. 31 of the Charter, these members, each serving six-year terms that can be renewed, are selected from among individuals of the highest reputation in Africa for their exceptional moral character, integrity, impartiality, and competence in human and people's rights matters, with a particular emphasis on individuals with legal expertise.<sup>13</sup> The Charter establishes a level of impartiality regarding the provisions concerning the election of Commission members and their security of tenure, with the sole method for the removal of a Commission member being outlined in Art. 39 (2). Specifically, it can only occur if, in the unanimous judgment of the Commission, the member in question has ceased to fulfil one's duties for any reason other than temporary absence. According to Art. 31 of the Charter, members are expected to act independently in carrying out their responsibilities and serve in a personal capacity (i.e. without representing their respective home states).<sup>14</sup> However, it is stipulated that each member state can have up to one of its nationals on the Commission. The members elect a chairperson and a vice chairperson from within their ranks, each of whom serves a renewable two-year term. Additionally, Art. 43 ensures that the Commission operates with the required autonomy and is free from external interference, granting Commission members diplomatic privileges and serving as a safeguard to protect Commission members from the potential actions of state parties that may obstruct the execution of their duties. Considering these measures, the Commission can be regarded as an independent entity capable of impartially conducting its functions without constraints.

Nonetheless, certain deficiencies exist in the provisions related to the Commission that could significantly undermine its independence. The first provision is Art. 33, which stipulates the appointment of Commission members by the parties to the Charter. An inherent concern is that the prevailing attitudes and recurring infringements regarding human rights in Africa may result in the selection of members who share a similar perspective on human rights with the nominating state party. Thus, it would have been beneficial to allocate certain seats on the Commission to entities such as bar associations, national human rights organisations, and other non-governmental groups. This approach bolstered the impartiality of the commission.

13 'The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience'. Art. 31, African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 1982. Available at: <https://www.refworld.org/docid/3ae6b3630.html> (Accessed: 30 October 2023).

14 'The members of the Commission shall serve in their personal capacity'. Art. 31, African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) [Online]. Available at: <https://www.refworld.org/docid/3ae6b3630.html> (Accessed: 30 October 2023).



The second provision that diminishes the authority of the Commission is Art. 50, which permits the Commission to address human rights violations solely after all domestic remedies have been pursued. One of its major issues is that it overlooks the practical impossibility of exhausting local remedies in many non-democratic African nations. It is also the situation that both the Commission and Charter have yet to provide a legal definition of what qualifies as the exhaustion of local remedies within the scope of the Charter. As a result, the interpretation of this requirement may need to rely on domestic laws or the perspectives of the courts in states that are party to the Charter. Given the uncertainty surrounding this provision, the drafters of the Charter could have considered the provisions of the Inter-American Human Rights Convention, which include an escape clause under Art. 46. This clause allows individuals to petition the American Commission if they can demonstrate that domestic remedies, as prescribed by local laws, are nonexistent.<sup>15</sup>

Another issue that poses a threat, now a structural one, to the independence of the Commission is the confidential nature of its proceedings. Art. 59 of the Charter specifies that 'All measures taken within the provisions of the present Chapter shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide'.<sup>16</sup> In addition, the Rules of Procedure of the Commission, especially regarding closed-door sessions, are overly restrictive, which in practice reflects on the Commission tending not to disclose the names of the states that are the subjects of complaints. Consequently, the Commission is deprived of a potent tool that could tarnish a state's reputation, subject it to significant international pressure, and prompt a shift in its stance on human rights. Therefore, as mentioned above, the Commission needs more authority to conduct independent investigations into alleged human rights violations, as its powers are currently restricted to bringing instances of human rights abuse to the attention of the Assembly. After this process, it is then the Assembly of Heads of State and Government that may request the Commission to compile a report containing its findings and recommendations. Furthermore, the Commission lacks enforcement power, and all decisions based on its recommendations are implemented by state parties.

Regarding other aspects of the activities of the Commission, it employs various specialised mechanisms, including special rapporteurs, working groups, and committees, to examine and provide reports on specific human rights concerns. These concerns encompass topics such as freedom of expression, women's rights, the rights of indigenous populations, and the prevention of torture. Each of the aforementioned mechanisms compiles and delivers a report on its undertakings to the Commission during the Commission's regular sessions.

<sup>15</sup> Brownlie, 1981, p. 505.

<sup>16</sup> Art. 59, African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) [Online]. Available at: <https://www.refworld.org/docid/3ae6b3630.html> (Accessed: 30 October 2023).

Therefore, the Commission is officially tasked with the following three primary functions (and may be assigned any other responsibilities by the Assembly of Heads of State and Government): the promotion of human and people's rights, the protection of human and people's rights, and the interpretation of the Banjul Charter. The Commission's mandate is outlined in Art. 45 of the Charter, as follows:

The functions of the Commission shall be: 1. To promote Human and Peoples' Rights and in particular: (a) to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments. (b) to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations. (c) co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights. 2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter. 3. Interpret all the provisions of the present Charter at the request of a State party, an institution of the OAU or an African Organization recognized by the OAU. 4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.<sup>17</sup>

Another facet of the Commission's limited authority is its inability to declare that the domestic laws of state parties are incompatible with the fundamental human rights outlined in the Charter. If the Commission possessed the authority to scrutinise the legitimacy of legislation or decrees enacted by the governments of state parties and then potentially label objectionable legislation as incongruent with the principles and provisions of the Charter, it would significantly enhance its capability to protect, or at least serve as a more assertive advocate for, human rights.

What can be concluded from the above analysis is that the wording of the Charter is very limiting and does not allow the Commission to effectively fulfil its purposes. The rigorous language used in the Banjul Charter is then even further softened by the Commission's Rules of Procedure and actual practice. Specifically, the Rules of Procedure of the African Commission on Human and Peoples' Rights, adopted on 13 February 1988, delineates the operational structure of the Commission in accordance with the Charter. Importantly, following their election during the July 1987 Organisation of African Unity Assembly meeting, the 11 initial Commissioners promptly embarked on the task of refining their roles, which led to notable modifications.

17 Art. 45, African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) [Online]. Available at: <https://www.refworld.org/docid/3ae6b3630.html> (Accessed: 30 October 2023).

These concerned particularly the confidentiality of proceedings and reports, the recognition of the roles of non-governmental organisations and legal experts, and the emphasis placed on the consideration of petitions.

Regarding the Commission's human rights monitoring procedures, they are the state-reporting procedure, the inter-state complaints procedure, and the individual complaints procedure. First, regarding the state-reporting procedure, state parties are obligated to provide a report to the Commission every two years outlining their progress in adhering to the Banjul Charter. Non-governmental organisations can also submit their own reports (shadow reports) and obtain an observer status with the Commission.

Second, regarding the interstate complaints procedure, it allows for disputes to be resolved in two ways; in the first option, if a state believes that another state has violated the provisions of the Charter, it can inform the other party through written communication. This communication is also forwarded to the Secretary-General of the African Union and the Chairman of the Commission. The accused state then has the opportunity to provide a written explanation for the inquiring state, and if no resolution is achieved within three months of the initial complaint, both parties have the right to refer the matter to the Commission. The second option allows a state to directly lodge a complaint with the Commission regarding an alleged Charter violation, and if an amicable solution cannot be reached, the state prepares a report detailing the facts, findings, conclusions, and recommendations. This report is then sent to the concerned states and the Assembly of Heads of State and Government. Importantly, this procedure has been seldomly utilised.

Third, regarding the individual complaints procedure, states, individuals, or organisations acting on behalf of an individual may submit a complaint to the Commission, specifically the Commission's Secretariat, which registers them on receipt. Subsequently, the complaint is forwarded to the Commission for examination, which must then decide by a simple majority (at least six members) whether to consider the complaint. This decision hinges on whether the complaint alleges a *prima facie* violation of the Charter, and whether it conforms to the provisions of Art. 56.<sup>18</sup> If the Commission elects to consider the complaint, it must assess its admissibility. Thereafter, to warrant further consideration, communication must be part of a systematic pattern of gross human rights violations. If the Commission chooses to proceed with the case,

18 'Communications relating to human and peoples' rights referred to in Article 55 received by the Commission, shall be considered if they: I. Indicate their authors, even if the latter request anonymity, II. Are compatible with the Charter of the Organisation of African Unity or with the present Charter, III. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organisation of African Unity, IV. Are not based exclusively on news discriminated through the mass media, V. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged, VI. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter, VII. Do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organisation of African Unity or the provisions of the present Charter'.

the Assembly of Heads of State and Government is notified. They may then request the Commission to conduct an in-depth study and present a factual report accompanied by its findings and conclusions. The ultimate decision of the Commission, referred to as a recommendation, is not legally binding to the state parties. The entire procedure is kept confidential and the final decision is made public by the Commission only if it gains the approval of the Assembly of Heads of State and Government. Decisions based on individual complaints available to the public are appended to the Commission's Annual Activity Reports.

Therefore, despite the formal language used in the Charter, the Programme of Action, and the Guidelines for National Periodic Reports, the current status of the Commission is less than satisfactory, and several factors contribute to the Commission's weaknesses. First, most states have not taken seriously the requirement to submit comprehensive reports. While the reporting obligation may seem straightforward, governments appear hesitant to invest the effort required to meet the Commission's mandates. For instance, it took several years after the entry into force of the Banjul Charter in 1986 for the first reports compliant with Art. 62 of the Charter to be presented and reviewed. These initial reports, originating from Rwanda, Tunisia, and Libya, were assessed during the ninth ordinary session held in Lagos in April 1991. The outcomes proved disappointing to both the commissioners and external observers, as the reports were notably brief, merely alluding to laws, constitutional provisions, or similar elements, and did not provide specific texts. The inadequate advance access to the reports, the lack of translations, and the mere 90 minutes allocated for each review further hindered the process. Furthermore because the Commission intended to use these initial reports to establish a detailed baseline for subsequent examinations, the countries' reports lacking substantial information undermined the potential effectiveness of the Commission.

Second, as stated in a 1989 workshop organised by the African Association of International Law and several Nordic human rights institutions, the Commission has 'suffered from insufficient equipment, resources, and support to make it fully operational'.<sup>19</sup> In particular, the financial challenges faced by the parent organisation, the Organisation of African Unity, also affected the Commission, and only special assistance from the European Community and the UN Voluntary Fund for Advisory Services enabled the Commission's Secretariat to function. As mentioned above, its headquarters were established in Banjul, where the Gambian government allocated three out of the four floors in a building for its use.

Third, the most significant challenge faced by the Commission is one that lies beyond its control. It is the situation that human rights non-governmental organisations have not yet taken root in many parts of Africa. This fledgling state of affairs becomes evident in a recently-compiled directory by Human Rights Internet,<sup>20</sup>

19 Benedek, 1990, p. 250.

20 Wiseberg and Reiner, 1990, Africa: Human Rights Directory and Bibliography-Special Issue of Human Rights Reporter Vol. 12, No. 4. African Studies Review. 33, p. 185.

wherein no openly active human rights or social justice organisations could be identified across 20 member states, and there were just one or two of such institutions with somewhat tangential objectives in another dozen of the member states. The exception is South Africa, which accounts for over one-third of the organisations described in the directory and boasts a wealth of human rights groups. The consequence of the scarcity of non-governmental organisations is that the Commission lacks independent Africa-based sources of information regarding human rights abuses and advocacy groups to support its endeavours.

Importantly, the Charter and the Commission were based on the European model of human rights protection. This model, in which the Commission originally had only limited competencies and was complemented by a court, was reflective of the European context, in which democracy and human rights evolved in tandem with a deep respect for individualism. However, it is debatable whether this framework, which was also significantly reformed in Europe following Protocol 11 – which in turn resulted in a merger of the commission and the court in Europe into a single, more potent judicial body – is still suitable for Africa. The European shift towards a more consolidated and empowered model underlines a critical evolution in human rights governance that suggests a need for similar advancements in African human rights mechanisms. Given this evolution, one must consider whether adhering to the original model is advantageous or whether moving towards a “post-Protocol 11” system could foster a more robust mechanism for the protection of children’s rights in Africa. In general, what appears is that it is not possible to apply the European human rights protection model to other regions without due contextual changes. This is because, as described earlier in this paragraph, democracy and human rights in Europe evolved in tandem with a deep respect for individualism, with non-governmental organisations acting as advocacy groups to safeguard the interests of their members, firmly establishing themselves, and serving as a counterbalance to governmental authority. Meanwhile, the communal nature of African society significantly influences the landscape of regional political activities.

In April 1991, the Commission had already granted observer status to 37 human rights non-governmental organisations, including well-known organisations (e.g. Amnesty International, the International Commission of Jurists, and Human Rights Watch) and lesser-known ones (e.g. Senegalaise d’Etudes et de Recherches Juridiques). At the time of writing this chapter, 570 non-governmental organisations had been granted observer status.<sup>21</sup> However, the Commission’s ability to access independent information and exert political pressure will remain fundamentally constrained until a significant number of human rights organisations are established in Sub-Saharan Africa. While the well-known non-governmental organisations mentioned above have made commendable efforts to document human rights abuses, they cannot fully address the fundamental reality, which is that the effective protection of

21 The African Commission on Human and Peoples’ Rights Website, Non-governmental organisations [Online]. Available at: <https://achpr.au.int/en/network/ngos> (Accessed: 30 October 2023).

human rights must be first firmly rooted in African societies. Only locally based non-governmental organisations can establish vital connections between the population, their governments, the Commission, and other relevant entities.

The Commission may create subsidiary mechanisms such as special rapporteurs, committees, and working groups. The creation and membership of such subsidiary mechanisms may be determined by consensus, but if this fails, the decision shall be taken by voting. At the time of writing this chapter, there was no special rapporteur, committee, or working group for children, configuring a shortcoming of the Commission. The Commission has been aware that the lack of special mechanisms protecting children is an issue, and while some special procedures partially cover children (e.g. the Special Mechanism on the Rights of Women in Africa), they do not provide comprehensive protection. In 2009, at the 45th Ordinary Session of the Commission held in Banjul, a resolution was adopted to cover this void by enhancing cooperation between the Commission and the Committee,<sup>22</sup> the latter to which cases of violations of children's rights are typically reported. Indeed, the Committee (explored in the following subchapter) is authorised to receive complaints regarding breaches of the Children's Charter. The case *Doebbler vs. Sudan*<sup>23</sup> pertains to violations of the rights of a group of students in Sudan, and has been adjudicated by the Commission. However, there is no available information regarding the ages of the students involved. On 13 June 1999, a group of female students associated with the Nubia Association at Ahlia University organised a picnic along the banks of the river in Buri, Khartoum. They were subsequently sentenced to receive 25–40 lashes for public order offences, contravening Art. 152 of the Criminal Law of 1991. The punishment was imposed because their attire was not considered proper and their engagement in activities deemed immoral, including dancing and interacting with boys. A complaint was filed with the Commission, asserting that this penalty constituted a violation of Art. 5 of the Banjul Charter, which prohibits inhuman or degrading treatment. The Commission found the communication admissible and requested the government of Sudan to do the following: promptly revise the Criminal Law of 1991 to align with its obligations under the Banjul Charter and other pertinent international human rights agreements; eliminate the practice of corporal punishment (lashes); implement suitable measures to ensure victims' compensation.

This decision was made during the 33rd Ordinary Session of the Commission in Niamey, Niger, from 15 to 29 May 2003. Despite this decisive ruling, the effectiveness of its implementation remains a topic of concern. Available reports and follow-ups indicate sporadic compliance, with significant delays in legislative reforms and persistent reports of corporal punishment practices continuing in various regions. The absence of a systematic monitoring mechanism and inadequate enforcement

22 Resolution on Cooperation between the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child in Africa - ACHPR/Res.144(XXXXV)09.

23 Sudan: Communication 236/2000 - Curtis Francis Doebbler vs. Sudan.

capabilities within the country often undermine the full realisation of the Commission's directives.

### **3. The African Committee of Experts on the Rights and Welfare of the Child**

The Children's Charter was adopted by the Organisation of African Unity in 1990. Similar to the CRC, the Children's Charter serves as a comprehensive instrument outlining the rights of children and establishing universal principles and norms for their wellbeing. These two treaties represent the sole international and regional human rights agreements that cover the entire spectrum of civil, political, economic, social, and cultural rights for children. Both treaties encompass numerous similar provisions and share common overarching principles such as non-discrimination, participation, upholding the best interests of the child, and ensuring their survival and development. In the Children's Charter, African states advocated for several additional issues to be addressed, including the following: children facing the challenges of apartheid; harmful practices targeting girls, such as female genital mutilation; dealing with internal conflicts and the displacement of children; providing a clear definition of a child; safeguarding the rights of children with imprisoned mothers; rectifying poor and unsanitary living conditions; acknowledging the African perspective on the responsibilities and duties of communities; fortifying enforcement and monitoring mechanisms for children's rights; delineating the family's role in adoption and fostering; elucidating the obligations and responsibilities of the child towards the family and community.

The Children's Charter acknowledges the unique status of children in African society, underscoring their need for protection and special care, as well as recognises that children are entitled to exercise various freedoms, including the freedom of expression, association, peaceful assembly, thought, religion, and conscience. The Charter's objectives encompass safeguarding a child's private life and protection against all forms of economic exploitation, harmful labour, interference with education, and actions that jeopardise the child's well-being, whether physical, social, mental, spiritual, or moral. It also emphasises the prevention of abuse, maltreatment, detrimental social and cultural customs, exploitation, sexual abuse (including commercial sexual exploitation), and illicit drug use. Additionally, it aims to prevent child trafficking, sale, abduction, and begging.

The Children's Charter was born out of African nations' belief that the CRC did not adequately address critical sociocultural and economic aspects specific to Africa, and in so doing, it underscores the importance of incorporating African cultural values and experiences into the discourse on children's rights. Specifically, the Charter deals with issues specific to Africa through the actions described in the following list: challenging traditional African beliefs that may clash with children's rights, such

as child marriage, parental rights and responsibilities, and the status of children born out of wedlock; prohibiting the exploitation of children as beggars; promoting affirmative actions to enhance girls' access to education; ensuring that girls have the right to return to school after pregnancy; safeguarding expectant mothers and mothers of infants and young children who are incarcerated; explicitly stating that the Children's Charter takes precedence over any custom, tradition, cultural practice, or religious belief that contradicts the rights, duties, and obligations outlined in the Charter; offering a clearer definition of a child as an individual under 18 years old; outright prohibiting the recruitment of children (those under 18 years old) for armed conflicts and addressing child conscription into armed forces; prohibiting child marriage; protecting internally displaced and refugee children; emphasising the role of extended families in the care of the child; ensuring the protection of children with disabilities.

The key principles guiding the implementation of these rights in the Children's Charter are those of non-discrimination, the best interests of the child, the right to life, survival, and development, and child participation. Of the 55 member states of the African Union, 50 have ratified the Children's Charter, with the Democratic Republic of Congo having become the 50th state to ratify the Charter in December 2020. This is important because, as aforementioned, the Children's Charter contextualises children's rights, both legally and culturally, to Africa. Accordingly, to truly have an impact and positively transform the lives of children in Africa, it is imperative that individuals and governments collectively acknowledge and embrace children's rights as legally binding principles with corresponding obligations. Regardless of them turning legally binding or not, it remains that the Children's Charter is a vital source of inspiration for African member states, representing a collective commitment to the rights and well-being of African children while providing a legal framework for their safeguarding.

The Children's Charter calls for the establishment of an African Committee of Experts on the Rights and Welfare of the Child. The Committee is tasked with promoting and safeguarding the rights delineated in the Charter, actively applying these rights, and interpreting the provisions as required by state parties, African Union institutions, or any other organisation recognised by the African Union or a member state. The Committee was established in July 2001, approximately one year and a half after the Children's Charter became effective, but commenced its operations only in 2003. This Committee derives its authority from Arts. 32 and 46 of the Children's Charter,<sup>24</sup> and comprises 11 members elected by the Assembly of Heads of State and Government, who in turn serve in their individual capacities. The selection process involves a secret ballot, with the candidates being nominated by state parties to the

24 Organisation of African Unity, African Charter on the Rights and Welfare of the Child, CAB/LEG/24.9/49, (1990), 11 July 1990 [Online]. Available at: <https://www.refworld.org/docid/3ae6b38c18.html> (Accessed: 31 October 2023).



Charter.<sup>25</sup> In the past, members were usually elected by the Executive Council and appointed by the Assembly of Heads of State and Government. However, in February 2020, the Assembly of Heads of State and Government decided to delegate this authority to the Executive Council. Candidates are required to possess high moral standing, impartiality, and competence in matters concerning children's rights and welfare.

Importantly, according to the Charter, the terms of office are for five years, and Art 37 of the Children's Charter initially prohibited members from being reelected. However, in January 2015, the Assembly of Heads of State and Government adopted an amendment to Art. 37(1) that allows members to be re-elected once for a five-year term.<sup>26</sup> This reelection amendment raises several important considerations. On the one hand, allowing reelection could benefit the continuity and stability of the Committee's work, providing experienced members with the opportunity to continue contributing to the evolving jurisprudence and advocacy for children's rights. Experienced members are likely to gain deeper understanding of the complexities involved in enforcing and promoting children's rights across the diverse African jurisdictions. On the other hand, the possibility of reelection could pose risks to the impartiality and dynamism of the Committee. Long tenures may lead to stagnation or bias, and may affect the Committee's ability to adapt to new challenges or innovate in response to evolving rights issues. Furthermore, the political dynamics involved in the reelection process could influence members' decisions, affecting their impartiality and commitment to upholding the highest standards of child rights protection. The Committee convenes two regular sessions annually, each lasting no more than a fortnight, with the inaugural session having been conducted in July 2001. In addition, the chairperson has the authority to call extraordinary sessions in response to a request from the Committee or any state party to the Charter.

In general, the Committee is entrusted with safeguarding human rights across Africa and interpreting the provisions of the Children's Charter. Until December 2020, its headquarters was located in Addis Ababa, Ethiopia, but it was relocated to Lesotho following an agreement with the African Union. The Committee's activities encompass the following: gathering information, issuing general comments, and offering guidance and interpretation pertaining to the Children's Charter; monitoring the Charter's implementation; reviewing reports submitted by states and civil society organisations concerning the Charter's implementation by state parties; issues recommendations, known as "concluding observations", based on the review of these reports; provides recommendations to governments in collaboration with children's rights organisations; investigates the measures taken by states to execute the Charter through missions, data collection, and state interrogations (as defined in Art. 45 of the charter); handles communications, such as complaints alleging violations of the

25 Art. 34, African Charter on the Rights and Welfare of the Child, CAB/LEG/24.9/49 (1990), 11 July 1990 [Online]. Available at: <https://www.refworld.org/docid/3ae6b38c18.html> (Accessed: 31 October 2023).

26 Assembly/AU/Dec.548(XXIV).

Children's Charter by state parties; conducts fact-finding and promotional missions to address systematic child rights violations in state parties; establishes standards and guidelines to assist state parties in fulfilling their obligations. The Committee is also tasked with selecting the theme for the annual Day of the African Child, occurring every 16 of June, to commemorate those who perished in the Soweto uprisings in South Africa. While the Committee lacks the authority to bring cases before the Court, it is empowered to seek advice from the Court on legal matters pertaining to human rights instruments. The Committee is the only treaty body addressing child rights issues that features a unique complaints procedure, which allows even non-party states to the Children's Charter to submit communications to the Committee on behalf of a child from a state that has ratified the Children's Charter. However, this is contingent on the complaint's ability to demonstrate that it is in the child's best interest.

The African Committee's mandate is more specifically defined than that of the UN's Committee on the Rights of the Child. Art. 42 of the Children's Charter emphasises the Committee's role in promoting and protecting these rights, with its responsibilities being characterised by various actions, as described herein: the collection and documentation of information; the initiation of interdisciplinary assessments of children's rights issues in Africa; the organisation of meetings; the support of national and local institutions dedicated to child rights and well-being; the provision of opinions and recommendations to governments as needed. Many of these powers are not granted to CRC, implying that the African Children's Charter established a progressive, action-oriented enforcement mechanism. The Committee is also tasked with overseeing the Charter's implementation and ensuring the protection of the rights it enshrines. In contrast, the CRC primarily focuses on assessing the progress made by state parties in CRC implementation. In principle, the Children's Charter represents a more robust instrument than its parent charter, and holds the potential to strengthen children's rights in Africa by establishing effective monitoring and enforcement mechanisms.<sup>27</sup> Nevertheless, there are challenges related to enforcement mechanisms as mentioned above, and the Committee's impact on promoting and safeguarding children's rights appears to be evolving slowly.

#### **4. The African Court of Human and Peoples' Rights**

The African Court of Human and Peoples' Rights is an international judicial body established by member states of the African Union to implement the provisions outlined in the Banjul Charter. Situated in Arusha, Tanzania, the Court serves as the judicial branch of the African Union and is one of the three regional human rights tribunals alongside the European Court of Human Rights and the Inter-American Court of Human Rights.

<sup>27</sup> Heyns and Viljoen, 1999, p. 421.

The establishment of the Court represents a crucial milestone in the development of a coherent and effective human rights protection system across the African continent. This progressive initiative not only reinforced but also complemented the existing framework outlined in the Banjul Charter, as well as the primary oversight body responsible for upholding the rights guaranteed by the Charter and the Commission. In recognition of the institutional limitations, resource constraints, non-binding nature of decisions, and challenges in implementing these decisions by states, which led to the perceived inefficacy of the Commission in safeguarding human rights, there emerged a strong urge to formulate a Protocol to the African Charter for the establishment of an African Court. The African Court's inception can be traced back to a Protocol associated with the Banjul Charter, which was adopted in 1998 in Burkina Faso under the Organisation of African Unity. The Protocol was scheduled to take effect 30 days after the deposition of the 15th instrument of ratification by an African state, as specified in Art. 34 of the Protocol. This milestone was reached on 25 January 2004, exactly 30 days after the Union of Comoros ratifying the Protocol on 26 December 2003. In 2006, the Court elected its initial group of judges, and it issued its inaugural judgment in 2009.<sup>28</sup> The primary mandate of the Court is to complement and strengthen the functions of the Commission.<sup>29</sup> The Court's jurisdiction encompasses all cases and disputes related to the interpretation and application of the Banjul Charter, the protocol associated with the Charter, and any other relevant human rights instruments. It holds the authority to issue advisory opinions on legal matters and adjudicate contentious cases.

The Court comprises 11 judges, nominated by African Union member states and elected by the Assembly of Heads of State and Government. These judges serve six-year terms and are eligible for reelection only once. The Court's president resides and works full-time in Arusha, while the remaining ten judges perform their duties on a part-time basis. The administrative, managerial, and registry functions are managed by a registrar. At the time of writing this chapter (i.e. October 2023), the African Court had delivered 375 decisions, comprising 217 judgments and 158 orders, and had 141 pending cases.<sup>30</sup>

The Court possesses authority over all cases and disputes brought before it concerning the interpretation and application of the Charter and any other pertinent human rights instruments ratified by the involved states, and it exercises both adjudicatory and advisory jurisdiction. Regarding its adjudicatory jurisdiction, complaints may be initiated by the Commission, states, individuals, or non-governmental organisations. Additionally, the Court may permit relevant non-governmental organisations with observer status before the Commission and individuals to directly file cases before it, given that the state against which the application is lodged has declared its acceptance

28 Rodríguez and Álvarez, 2020.

29 Stone, 2012, African Court of Human and People's Rights. Advocates for International Development. Legal Guide.

30 African Court Cases, Statistics [Online]. Available at: [www.african-court.org](http://www.african-court.org) (Accessed: 31 October 2023).

of the Court's competence to receive such communications. The Court's judgments are legally binding, the respective states are obligated to comply with and ensure the execution of these judgments, and the African Union's Council of Ministers oversees judgment enforcement. Regarding the Court's advisory jurisdiction, the Court itself, at the request of a member state of the African Union, the African Union itself, or any African organisation recognised by the African Union, can provide legal opinions on matters related to the Charter or any other relevant human rights instrument. This is permissible if the subject matter of the opinion is not concurrently under examination by the Commission.

On 11 May 2018, the Court issued its judgment in a case involving the Association Pour le Progrès et la Défense des Droits des Femmes Maliennes (also known as APDF) and the Institute for Human Rights and Development in Africa (also known as IHRDA) against Mali.<sup>31</sup> This marked the Court's first ruling addressing the rights of women and children in Africa. Through this decision, the Court established stringent obligations on states to uphold international human rights standards, particularly in the realm of family law, even if doing so necessitates the disregard of religious and customary laws. Specifically, the case was brought forward by two Malian human rights non-governmental organisations, the aforementioned association known as APDF and institute known as IHRDA. The applicants argued that the Malian Family Code, adopted in 2011, contravened several international human rights treaties ratified by Mali, including the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol), the Children's Charter, and the Convention on the Elimination of All Forms of Discrimination Against Women (also known as CEDAW). Notably, a significant portion of Mali's population is Muslim, and the 2011 Family Code resulted from a compromise between the National Assembly and various Islamic organisations within the country. These organisations vehemently opposed a prior attempt by the Malian Parliament to codify family rights in 2009, which aimed to align family matters more closely with human rights treaty standards.

The applicants contended that the 2011 Family Code, which set the minimum age for females to marry at 16 (as opposed to 18 years for males) years and provided an exception allowing girls to marry at 15 years with their fathers' consent, contravened Art. 6(b) of the Maputo Protocol and Art. 2 of the Children's Charter, which established 18 years as the minimum age for female marriage. The applicants also asserted that the 2011 Family Code failed to require religious ministers to obtain both parties' consent before marriage, or to ensure the presence of both parties at the ceremony, thus infringing upon the right to consent to marriage as outlined in Art. 6(a) of the Maputo Protocol and Arts. 16(a) and (b) of the Convention on the Elimination of All Forms of Discrimination Against Women. Moreover, the applicants argued that the

31 Application 046/2016, Association pour le Progrès et la Défense des Droits des Femmes Maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) vs. Republic of Mali. Judgment, 11 May 2018.

2011 Family Code mandated the application of Mali's Islamic law on matters of inheritance, which granted women half of what men received. This violated the right to equitable inheritance established in Art. 21(2) of the Maputo Protocol, which granted both men and women the right to inherit their parents' property in equal shares. Finally, the applicants contended that by adopting the 2011 Family Code, Mali had not fulfilled its positive obligation to eliminate traditions and customs that harm women and children, which is enshrined in Art. 2(2) of the Maputo Protocol, Art. 5(a) of the Convention on the Elimination of All Forms of Discrimination Against Women, and Art. 1(3) of the Children's Charter.

In its ruling, the court fully endorsed the arguments presented by the applicants, concluding that Mali had violated each of the aforementioned treaty provisions by enacting the 2011 Family Code. The Court rejected Mali's contention concerning the flexibility of the Code, emphasising that the Family Code in Mali enforces religious and customary law as the prevailing regime in the absence of an alternative legal framework. The judgment stated that by adopting the 2011 Family Code and maintaining discriminatory practices that undermine the rights of women and children, Mali has violated its international obligations. Consequently, the Court ordered Mali to amend its 2011 Family Code to align it with international human rights standards, and educate its population about these rights and obligations.

## 5. Conclusions

The practice of protecting children's rights in Africa is a complex and multifaceted issue requiring scholarly attention. Children's rights, as enshrined in various international and regional human rights instruments, are meant to protect and promote their well-being, dignity, and development. In the African context, the African Children's Charter and other global treaties (e.g. the CRC) serve as crucial framework for ensuring children's rights. This chapter explores the practice of children's rights in Africa, focusing on the institutional framework, challenges, and progress in this critical area.

It is justifiable to assert that a comprehensive culture of children's rights is lacking in Africa, primarily because of the early stages of development of the Children's Charter. For some Africans, the concept of children possessing rights can be perceived as threatening, leading to widespread misconceptions about the essence of children's rights. However, there is concomitantly a genuine eagerness to support the satisfaction of children's needs. It is imperative to enhance people's comprehension of how children are viewed in society and the notion that children possess rights should no longer be considered incompatible with African values. This is especially so as there seems to be, unfortunately, insufficient awareness of the Children's Charter and a noticeable absence of scholarly discourse on the subject in Africa. A more profound comprehension of what children's rights signify within the diverse tapestry of African cultures holds the potential to equip invested stakeholders with the necessary tools

to effectively implement children's rights instruments and, ultimately, to oversee the impact of policy and program interventions.

The practice of protecting children's rights in Africa is a dynamic and evolving field within which there are both challenges and progress. Despite the persistent obstacles related to poverty, armed conflicts, and harmful practices, African nations are taking significant steps to protect and promote children's rights. Their legislative, educational, health, and child protection initiatives demonstrate the commitment to ensuring a better future for African children, and since African societies continue to recognise the significance of children's rights, the region is poised to make further advancements in this critical area.

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