

Protection of Children in the African Human Rights System: Framework and Institutions

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ABSTRACT

Safeguarding the rights of children remains a fundamental priority in every society. In Africa, a region experiencing the highest fertility rate globally – at 31,599 births per 1,000 people in 2023 – the responsibility to ensure the well-being of its young population is crucial. With approximately 60% of its inhabitants aged below 25 years, Africa's sizeable youth demographic underscores the pivotal role children play in shaping the continent's future and driving sustainable development. This chapter delves into the structure of the African human rights system and the organisations that serve as the cornerstone for upholding and advocating children's rights. It considers the diverse cultural, legal, and societal landscapes across the continent. Furthermore, the chapter examines the rationale underpinning legal mechanisms such as oversight committees designated to safeguard children's rights. Emphasis is placed on their significance in addressing several pressing challenges confronting children in Africa.

KEYWORDS

African Charter on the Rights and Welfare of the Child, Children's Rights, African Human Rights Mechanism, Youthful Demographics, Safeguarding Minors, Child Welfare

LIST OF ABBREVIATIONS:

ACRWC – African Charter on the Rights and Welfare of the Child

UN – United Nations

UNCRC – United Nations Convention on the Rights of the Child

OPAC – Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

OPSC – Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography

OPIC – Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure

ILO – International Labour Organization

ACHPR – African Charter on Human and Peoples' Rights

OAU – Organisation of African Unity

UDHR – Universal Declaration of Human Rights

ANPPCAN – African Network for the Prevention and Protection Against Child Abuse and Neglect

UNICEF – United Nations Children's Fund

ACERWC – African Committee of Experts on the Rights and Welfare of the Child

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CSO – Civil Society Organisations
 AU – African Union
 ACCP – African Children’s Charter Project
 SIDA – Swedish International Development Agency
 Art. – Article
 GFI – Girl-Friendliness Index
 FGM – Female Genital Mutilation
 ACDEG – African Charter on Democracy, Elections, and Governance
 ACPF – African Child Policy Forum

1. Introduction

Africa has one of the largest and fastest-growing youth populations in the world. Children’s rights are universal and inalienable; however, millions of children across the African continent continue to face numerous challenges that hinder their development and well-being. The African human rights system, comprising regional and sub-regional institutions and legal frameworks, seeks to address these challenges and protect children’s rights. This chapter presents an in-depth analysis of the framework and institutions within the African human rights system focusing on protecting children. With projections of continued growth over the coming decades, the continent’s share of children under the age of 15 years stands at an impressive 40%, above the global average of 25%. According to the report ‘Generation 2030 Africa 2.0: Prioritizing Investment in Children to Reap the Demographic Dividend’ released by UNICEF, which examines child demographics in Africa and their implications for the continent and the global landscape, it is projected that Africa’s population under the age of 18 years will witness an expansion of nearly 170 million by the year 2030. Furthermore, by 2050, Africa is anticipated to be home to 40% of the global population of children under 18 years, and this proportion is forecasted to rise to 50% by the year 2100.¹ This demographic fact brings challenges, particularly regarding children’s well-being and development.² In sub-Saharan Africa, the infant mortality rate is 72 per 1000 live births.³ Despite a consistent annual decline of 3.1%, the projected number of 54 deaths per 1,000 live births by 2030 falls significantly short of the United Nations’ objective of reducing it to less than 25 deaths. The gravity of this challenge is intensified by the pervasive issue of malnutrition – a major public health concern in Africa.⁴ Moreover, constrained access to quality education compounds the adversity faced by African children.⁵ In Sub-Saharan Africa, the number of children out of school is very high, with 98

1 UNICEF, 2017, p. 5.

2 El Habti, H. (2022), ‘Why Africa’s youth hold the key to its development potential’, *World Economic Forum*, 19 September 2022. [Online]. Available at: <https://www.weforum.org/agenda/2022/09/why-africa-youth-key-development-potential/> (Accessed: 9 June 2024).

3 WHO Africa, 2022.

4 Djoumessi, 2022.

5 Adebisi et al., 2022.

million lacking access to educational facilities.⁶ Notably, these current statistics reflect the realities faced by African children in the 1990s.⁷ The pursuit of a mechanism to safeguard children's rights was initiated at the Sixteenth Ordinary Session in Monrovia, Liberia, held from 17 to 20 July 1979, during the Assembly of Heads of State and Government. This assembly adopted the Declaration on the Rights and Welfare of African Children, laying the groundwork for the ensuing concrete convention. Subsequently, in July 1990, the African Charter on the Rights and Welfare of the Child (ACRWC) was established, which eventually came into force on 29 November 1999. This charter served as a vital instrument for addressing the pressing challenges faced by African children – driven by many reasons – in the 1990s. These reasons encompassed the following significant factors: 1. Pervasive child poverty: Approximately one in three children in Africa lived in poverty in the 1990s, deprived of necessities such as food, water, shelter, and healthcare. 2. Prevalence of child labour: An estimated 25% of African children are engaged in child labour, exposing them to hazardous and exploitative working conditions, low pay, and long working hours. 3. Prevalence of child abuse and neglect: Disturbingly, one in four African children has experienced various forms of abuse and neglect, including physical, sexual, and emotional maltreatment. 4. Impact of armed conflicts: The 1990s witnessed several conflicts across Africa, including the Rwandan genocide and the Sierra Leone Civil War, resulting in widespread child displacement and loss of life.

The formulation of the ACRWC in the 1990s marked a pivotal step towards tackling these multifaceted challenges. This landmark human rights instrument articulated and safeguarded children's rights throughout Africa. With all 54 African countries having ratified the ACRWC by 2023, its transformative impact has touched the lives of millions of children on the continent. The Charter has contributed to boosting awareness concerning children's rights and provided a comprehensive framework for governments and stakeholders to collaborate to improve the lives of African children. The ACRWC is a testament to Africa's commitment to upholding children's rights. An invaluable resource, the Charter serves as a guiding beacon for governments, civil society organisations, and individuals working to improve the well-being of African children. Against this background, in the subsequent sections, we focus on the following key aspects: 1. Universal and Regional Human Rights Instruments for the Protection of Children's Rights in Africa 2. Regional Monitoring Mechanism 3. Case Studies 4. National Institutions for Child Protection 5. Additional Legal Tools for Child Protection in Africa 6. Prospects: Agenda 2040.

6 UN News, 2022.

7 Fleshman, 2002.

2. Universal and Regional Human Rights Instruments for the Protection of Children's Rights in Africa

The international legal framework for protecting human rights is extensive and impressive, encompassing adults and specifically addressing the rights and needs of children. This protection is achieved through a combination of global and regional conventions dedicated to safeguarding children's welfare, development, and participation in society.

At the forefront is the United Nations Convention on the Rights of the Child (UNCRC), adopted in 1989, which is the most comprehensive global treaty on children's rights. It covers a wide range of rights – civil, political, economic, social, and cultural – and is based on core principles such as non-discrimination, the best interests of the child, the right to life and development, and the right for children to be heard on matters affecting them. Additionally, several key optional protocols complement the CRC: a) The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC), established in 2000, aims to protect children from being used in hostilities, raising the minimum age for military recruitment and prohibiting their participation in armed conflict.

b) The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (OPSC), also established in 2000, focuses on protecting children from sexual exploitation, including trafficking, prostitution, and pornography. c) The Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPIC), adopted in 2011, allows children or their representatives to report violations of their rights directly to the Committee on the Rights of the Child. d) The International Labour Organization (ILO) Convention No. 182 on the Worst Forms of Child Labour (1999) is another crucial instrument, targeting the elimination of the most severe forms of child labour, such as forced labour, trafficking, hazardous work, and other exploitative practices.

While other relevant conventions may not be explicitly mentioned, the collective aim of these legal measures is to provide a universal shield for children's rights, ensuring their protection and well-being, particularly in regions such as Africa, where vulnerabilities may be more pronounced. Within the African context, specific legal frameworks have been established to protect children in addition to the universal instruments that incorporate their monitoring mechanisms. These regional instruments are carefully crafted to address African children's distinctive challenges and requirements. They ensure that children's rights and well-being are effectively preserved within the continent's unique environment. These tools are predominantly aligned with African realities despite often being based on universal conventions. When asked about the need for regional legal instruments despite existing universal ones, the answer often hinges on cultural relativism nuances and geopolitical factors. For instance, many African regional conventions incorporate provisions that address the specific realities of the continent, such as efforts towards economic development

and the fight against discrimination and poverty. This reflects the broader debate concerning universalism and relativism in the field of human rights.⁸ Universalists maintain that human rights are fundamental, inherent, and applicable to all individuals, regardless of cultural or regional contexts.⁹ Meanwhile, relativists argue that human rights are not absolute but are shaped by cultural and societal norms, suggesting that cultural justifications and practices specific to each society determine the legitimacy of human rights.¹⁰ To fulfil these objectives, Africa adopted its initial international convention dedicated to upholding fundamental human rights on 27 June 1981, during the 18th Conference of the Organization of African Unity, held in Nairobi, Kenya. This convention took effect on 21 October 1986, following its ratification by 25 member states. The convention is also known as the Banjul Charter because the final draft was produced in Banjul, the capital of The Gambia.

2.1. African Charter on Human and Peoples' Rights¹¹

In the introduction to the book 'Human Rights in Africa: Legal Perspectives on their Protection and Promotion', edited by Anton Bösl and Joseph Diescho, Archbishop Emeritus Desmond Mpilo Tutu of Cape Town, South Africa, perceptively acknowledges the delayed recognition of human rights as a legal concept and the formalisation of human dignity within the African context.¹² He underscores that Africa's consideration of human rights must be seen in light of dynamic advancements in the United Nations system and international law. Tutu attributes the impetus for these advancements to the struggles African states faced during their colonial and post-independence periods. This observation aligns with the emergence of the African Charter on Human and Peoples' Rights (ACHPR) in the 1980s, a notable progression shaped by Africa's colonial history and the establishment of the Organisation of African Unity (OAU) in 1963.

In the 1960s, as numerous African nations achieved independence, they focused primarily on asserting national sovereignty and addressing immediate political challenges. However, during this era, the African human rights system concept was initially articulated at a gathering of African lawyers in Lagos in 1961. This assembly adopted the "Law of Lagos" declaration, which championed the establishment of an African Convention on Human and Peoples' Rights. This declaration laid the foundation for acknowledging the necessity of a region-specific human rights mechanism. The OAU played a pivotal role in supporting anti-colonial and anti-apartheid movements and progressively acknowledged the significance of promoting human rights within its agenda. A noteworthy example of this commitment is the 'Seminar on the Establishment of Regional Commissions on Human Rights with Special Reference to

8 Aidonojie et al., 2021, pp. 97 – 109.

9 See Donnelly, 2007, pp. 281 – 306.

10 See Renteln, 1990.

11 Nairobi, 1981 The African Charter on Human and Peoples' Rights., IEG. [Online]. Available at: <https://hhr-atlas.ieg-mainz.de/articles/plath-nairobi> (Accessed: 20 June 2024).

12 Bösl and Diescho, 2009.

Africa' held in Cairo in 1969. Additionally, internal struggles within Africa during the 1970s, such as the successful intervention by Tanzanian forces in Uganda leading to the ousting of Idi Amin from power, followed by human rights abuses by dictatorial regimes, prompted the OAU to prioritise human rights at its 16th Summit in Monrovia in 1979. This focus aimed to restore the organisation's international reputation. Along with the challenges encountered, the adoption of the ACHPR in the 1980s entailed complexities stemming from the intricate nature of post-independence African states. Nevertheless, the continental human rights instrument eventually emerged, reflecting Africa's growing awareness of safeguarding human rights within its distinct historical and cultural context. Participants at the Monrovia Summit resolved to draft the ACHPR to swiftly promote and protect human and people's rights. Ultimately, adopted in Banjul, The Gambia, the ACHPR, also known as the Banjul Charter, became Africa's primary regional human rights treaty. It outlines a comprehensive range of civil, political, economic, social, and cultural rights for individuals and peoples. The ACHPR and the Universal Declaration of Human Rights (UDHR) are two international instruments aimed at upholding and safeguarding the rights of individuals and collectives. They ensure fundamental rights such as the right to life, liberty, education, and freedom of expression. These instruments are binding on states that have ratified them and are overseen by monitoring bodies such as the African Commission on Human and Peoples' Rights and the United Nations Human Rights Committee. However, significant distinctions exist between these two instruments. The UDHR has universal applicability, whereas the ACHPR is rooted in the African regional context. The ACHPR addresses issues deeply connected to the progress of the African continent. For instance, Article 22 focuses on the right to development. Conversely, Article 16 outlines the right to a healthy environment, underlining states' collective responsibility to safeguard their populations' well-being. Other provisions, such as Article 17, highlighting the right to participate in cultural community life, and Article 20, explicitly mentioning the right to self-determination, further underscore the ACHPR's emphasis on African realities and the aspiration for development. This emphasis considers the needs of the population and the environmental considerations arising from resource exploitation. These distinct elements give the ACHPR a unique characteristic compared to the broader scope of the universal convention.

Therefore, Articles 16, 17, 20, and 22 of the ACHPR apply to adults and children, particularly Article 18, paragraphs 1, 2, and 3, which underline the primordial role of the family and the need to protect women and children by banishing all kinds of discrimination as stipulated in international conventions. Regarding the protection of children's rights, although the ACRWC is a legal instrument tailor-made to protect

children's rights, the ACHPR also contains several articles dealing with children's protection.¹³

2.2. The African Charter on the Rights and Welfare of the Child

The ACRWC, a significant human rights instrument imbued with African culture and tradition, marks a notable stride in protecting children's rights within a regional context. Adopted in 1990 and enacted in 1999, the ACRWC is a pivotal expression of commitment to advancing and safeguarding children's rights and well-being across Africa. This Charter outlines distinct provisions tailored to children's rights and the responsibilities of state parties in ensuring their welfare.

The inception of the Charter can be traced back to a seminal conference organised collaboratively by the African Network for the Prevention and Protection Against Child Abuse and Neglect (ANPPCAN) and the United Nations Children's Fund (UNICEF) in 1987. During this pivotal gathering, participants were informed of the ongoing drafting process of the UNCRC in Geneva. Notably, the conference underscored the importance of viewing children's rights from a regional vantage point, prompting the proposal to convene a dedicated meeting to examine the UNCRC draft from an African standpoint.

Subsequently, with indispensable support from UNICEF, ANPPCAN orchestrated an important assembly in 1988 to craft the ACRWC as a supplementary document to the UNCRC. This Charter was conceived to address specific challenges unique to the African continent. Its purpose was to complement the UNCRC and facilitate the eventual ratification and implementation of the UNCRC by African nations. The ACRWC defines a child as anyone under 18 years of age and provides several protections, including comprehensive coverage of child labour in Article 15 and protection from harmful social and cultural practices (e.g. child marriage and gender discrimination in Articles 21 and 22 and protection from sexual exploitation in Article 27). Furthermore, Article 29 addresses the prevention of the sale, trafficking, and abduction of children, whereas Article 16(2) requires state parties to establish monitoring bodies to prevent the abuse and exploitation of children. The Charter mandates that states

13 Article 4 recognises every human being's right to life. This includes children's right to be protected from domestic or military violence in theatres of war or anything that could take their lives or endanger them. Article 5 prohibits any form of discrimination; however, it would have been worthwhile if the legislator had prioritised gender equality. Generally, this article can be interpreted as meaning that children (boy or girl) are entitled to the same rights and freedoms as adults without discrimination. Article 16 can be interpreted as prohibiting the exploitation of children. This includes the exploitation of children in the labour force, the sex trade, and armed conflict. Article 17 recognises children's right to education and aligns with point 4: access to quality education of the UN 2030 agenda for sustainable development. This includes the right of children to access free and compulsory primary education and the right to receive an education appropriate to their needs and abilities. Article 18 acknowledges the family as the nucleus of society and calls for its protection by State institutions, which refers to the material assistance of social services and institutions in charge of the family. Article 24 protects the human right to a healthy environment, which could be interpreted as the child's right to a healthy and conducive environment for personal development.

provide comprehensive protection against child abuse, discrimination, neglect, and exploitation. Each state Party must submit reports detailing the measures they have taken to implement the provisions of this Charter and the progress made in protecting and promoting these rights.¹⁴ Despite these efforts, questions persist about the Charter's effectiveness three decades after its adoption and 22 years in force.

While the intentions behind the ACRWC are commendable, there has been a troubling rise in child labour, particularly in sub-Saharan Africa.¹⁵ A recent UNICEF and ILO report reveals that 16.6 million children in this region have been involved in child labour in the last four years.¹⁶ The global estimate of child labour masks significant regional differences. In sub-Saharan Africa, the prevalence rate is as high as 24%, which is three times higher than in Northern Africa and Western Asia, the region with the second-highest rate. Notably, the nearly 87 million children engaged in child labour in sub-Saharan Africa outnumber those in the rest of the world combined.¹⁷ The challenges faced by African children have been compounded by issues such as child marriage, teenage pregnancy, child trafficking, and the COVID-19 pandemic. The Charter included a committee of experts in its monitoring tools to ensure its implementation and work closely with African governments to improve the situation of children. However, this situation remains a significant challenge three decades later, with extreme poverty and a lack of social protection forcing many children into exploitative situations. Additionally, the expansion of informal settlements without proper planning leads to overcrowding and exposes children to exploitation and harsh living conditions.

Among the legal instruments available to protect children, the UN Convention on the Rights of the Child (UNCRC) and the ACRWC are two important international human rights instruments dedicated to protecting and promoting children's rights worldwide and in Africa.

Common Point: The ACRWC and the UNCRC share a central objective of safeguarding and promoting the rights and welfare of children. They recognise that children, as vulnerable members of society, are entitled to special care, protection, and opportunities for their well-being and development. The treaties emphasise that children should be granted the right to survival, education, health, and protection from all forms of exploitation, abuse, and discrimination. Moreover, both instruments underscore the importance of considering the child's best interests as the primary consideration for all actions concerning them.

14 ACRWC Article 43- REPORTING PROCEDURE.

15 International Labour Office and United Nations Children's Fund, 2021.

16 Ibid.

17 Ibid.

Differences:

Geographical Scope

The fundamental distinction between the ACRWC and the UNCRC is their geographical extent. The ACRWC is a regional human rights treaty designed exclusively for Africa. Endorsed by the Organization of African Unity (now known as the African Union) in 1990, it was enforced in 1999. Conversely, the UNCRC is a universal treaty ratified by the United Nations General Assembly in 1989 and enacted in 1990. The UNCRC applies to all nations globally, whereas the ACRWC confines its scope solely to the African region.

Specific Regional Concerns

The ACRWC addresses various concerns and challenges unique to Africa. Lloyd (2002) noted that the ACRWC is a substantial human rights instrument that conscientiously upholds African values.¹⁸ This characteristic is pivotal, ensuring that the treaty remains pertinent to African children's distinct needs and realities. For instance, within the ACRWC, there are provisions on child labour (Article 15), harmful traditional practices (Articles 21 and 22), sexual exploitation (Article 27), and trafficking (Article 29). These provisions reflect issues specific to the region, highlighting the challenges African children face.

Focusing on the significance of education for African children, Chitsamatanga and Rembe (2020) emphasised its critical role.¹⁹ Another pressing concern is the health of internally displaced children in sub-Saharan Africa, as detailed by Salami et al. (2020).²⁰ Displacement often exposes many children to malnutrition, malaria, and respiratory infections, marking a humanitarian crisis that requires immediate attention.

The collective evidence provided by these studies further justifies the support that Diallo (2018) extended to the ACRWC.²¹ Moreover, Abdullah et al. (2022) aptly explained that addressing the complex issues arising from social norms and specific challenges faced by African children necessitates multifaceted strategies.²²

Enforcement Mechanisms:

Another difference between the two instruments pertains to their enforcement mechanisms. The ACRWC institutes the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), tasked with overseeing its execution and presenting reports to the African Union. Conversely, the UNCRC establishes the Committee on the Rights of the Child, an assembly of impartial experts accountable for supervising its implementation among state parties and evaluating their advancements.

¹⁸ Lloyd, 2002, p. 12.

¹⁹ Chitsamatanga and Rembe, 2020, p. 66.

²⁰ Salami et al., 2020, p. 4.

²¹ Diallo, 2018, p. 176.

²² Abdullah et al., 2022, p. 12.

The ACRWC and UNCRC are important instruments for protecting children's rights. They have different strengths and weaknesses and complement each other in many ways. Together, they provide a robust framework for ensuring that all children, regardless of where they live, can enjoy their rights to a safe, healthy, and happy childhood. In addition to the differences mentioned above, the ACRWC is more explicit than the UNCRC in its recognition of the rights of children to participate in decision-making processes that affect their lives. The ACRWC also emphasises the importance of family life and the role of parents in raising children.

Comparison of the ACRWC and UNCRC: Strengths, Weaknesses, Key Provisions, Future Prospects, and Cases:

Convention/Charter	The African Charter on the Rights and Welfare of the Child	The United Nations Convention on the Rights of the Child
Strengths	Specific Regional Focus	Universal
	Implementation Mechanism (Committee)	Holistic Protection
	Right to Education (Article 11)	Committee on the Rights of the Child
	Comprehensive Protection from Abuse	Comprehensive Protection from all forms of abuse and neglect
	Prohibition of Harmful Practices (e.g. Child Marriage, Female Genital Mutilation)	Protection from Violence Article 19 Right to Education (Article 28)
	Monitoring through the Committee of Experts	Monitored by the UN Committee on the Rights of the Child.
Weaknesses	Limited Ratification (continental level)	Dependency on States' Willingness and Resources
	Enforcement Challenges	Reservations and Limitations
	Regional Variations in Implementation	Lack of Enforcement Mechanism
		Lack of Monitoring Mechanism
Key provisions	Article 15 (Child Labour)	Article 19 (Protection from Violence)
	Article 21 (Harmful Traditional Practices)	Article 28 (Right to Education)
	Article 22 (Child Marriage)	Article 32 (Child Labour)
	Article 27 (Protection from Sexual Exploitation)	Article 34 (Protection from Sexual Exploitation)
		Article 37 (Detention and Imprisonment)
	Article 29 (Trafficking and Abduction)	Article 31 (Rest, Play, Recreation, and Culture)
	Article 30 (Protection of Minority or Indigenous Children)	Article 36 (Protection from Other Forms of Exploitation)
		Article 39 (Rehabilitation and Social Reintegration)
Future Prospects	Strengthening Implementation Mechanisms	Enhanced Monitoring and Reporting Mechanisms
	Addressing Regional Variations	Increased Global Cooperation on Children's Rights
	Promoting Awareness and Advocacy	Effective Measures to Tackle New Challenges (e.g.
	Online Child Exploitation)	
	Incorporating Emerging Child Rights	Strengthening Protection for Children in Conflict Zones
	Issues (e.g., Digital Rights)	Addressing Climate Change's Impact on Children
	Strengthening Child Participation	Limited Child Participation

Convention/Charter	The African Charter on the Rights and Welfare of the Child	The United Nations Convention on the Rights of the Child
Overview of Cases	Hadijatou Mani Koraou vs. Niger (slavery, trafficking, early marriage, child marriage) ²³	Olga Tellis vs. Bombay Municipal Corporation (Protection of street children and right to livelihood) ²⁴
	African Commission on Human and Peoples' Rights vs. Kenya (2012): allegations of violations of children's rights in Kenya, including issues related to child labour, early and forced marriage, and access to education.	Ms. X vs. Argentina ²⁵

The ACRWC, which was designed to curb child abuse and provide protection while considering the unique circumstances of Africa, focuses on the various challenges experienced by African children. This distinct approach distinguishes it from the UNCRC, which has a more expansive scope. Recognising Africa's different requirements, the ACRWC was tailored to encompass specific regional needs. This has resulted in the enshrinement of the Charter of the concept of comprehensive protection against abuse and demonstrates a solid commitment to protecting children against all forms of abuse and exploitation across the continent.²⁶ However, according to Ndimurwimo and Vundamina (2021), vulnerable groups, especially refugee children, are often marginalised. Additionally, forced marriage and genital mutilation²⁷ prevail in Africa and negatively affect the lives of many young girls across all regions.²⁸ Therefore, it is necessary to develop proposals based on cultural and traditional aspects. By referring to specific articles devoted to different aspects of abuse, such as child marriage, sexual exploitation, and harmful practices, the ACRWC ensures that the protection of children is holistic and considers the different challenges African children face or may face according to their countries and traditions. The ACRWC's focus on child abuse throughout the Charter demonstrates the legislator's commitment at all costs to protecting children, who represent the continent's future and its guarantee of economic development. Thus, the Charter arises as a guarantor and defender of the dignity and well-being of children across the African

23 Hadijatou Mani Koraou vs. La Republic de Niger, Arrêt No. ECW/CCJ/JUD/06/08, para. 11 (ECOWAS Cour de Justice Oct. 27, 2008). [Online]. Available at <http://www.unhcr.org/refworld/docid/491168d42.html> (Accessed: 28 May 2023). The explanation of the case in English is available at https://www.law.cornell.edu/women-and-justice/resource/hadijatou_mani_koraou_v_republic_of_niger (Accessed: 28 June 2024).

24 Olga Tellis & Ors vs. Bombay Municipal Council [1985] 2 Supp SCR 51. [Online]. Available at: <https://www.escri-net.org/caselaw/2006/olga-tellis-ors-v-bombay-municipal-council-1985-2-supp-scr-51> (Accessed: 28 June 2024).

25 Case 10.506, Report No. 38/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 50 (1997). [Online]. Available at: <http://hrlibrary.umn.edu/cases/1996/argentina38-96.htm> (Accessed 30 June 2024).

26 Murungi, Nkatha, 2021, p. 2.

27 Wikholm, K., Mishori, R., Ottenheimer, D., et al., 2020, p. 676.

28 Yirga et al., 2012, p. 50.

continent and human rights in general through the following provisions: 1. Protection from Exploitation (Article 16): It emphasises the duty of state parties to protect children from all forms of exploitation, economic exploitation, and hazardous work that may be harmful to their health, education, or development. 2. Protection against Harmful Social and Cultural Practices (Article 21): Some of the Harmful Social and Cultural Practices referred to in Article 21 of the ACRWC may include the following:

- a) Female Genital Mutilation (FGM): This practice involves the partial or total removal of external female genitalia for non-medical reasons. It is considered a grave violation of girls' and women's rights and can lead to severe physical and psychological consequences.
- b) Child Marriage: Child marriage refers to the marriage of children, especially girls, before the age of 18 years. Early marriage deprives children of their right to education, exposes them to health risks, and perpetuates the cycle of poverty.
- c) Forced Marriages: Forced marriages occur when children are coerced or compelled into marriage against their will without their consent.
- d) Harmful Rituals and Initiation Practices: Certain initiation rituals or practices in some cultures can cause physical harm or psychological trauma to children, particularly during their transition from childhood to adulthood.
- e) Witchcraft Accusations: In some communities, children are accused of witchcraft, leading to stigmatisation, abandonment, and even violence against them.
- f) Breast Ironing/Flattening: This practice involves using heated objects to flatten or suppress girls' breast development, mistakenly believed to delay their sexual maturity and protect them from sexual harassment.
- g) Violence in the Name of Tradition: Some cultural practices may involve violent actions against children, such as physical punishment or corporal discipline justified by tradition.
- h) Harmful Cultural Beliefs: Certain cultural beliefs may hinder children's access to education, healthcare, or equal opportunities based on their gender or social status.
- i) Protection from Child Marriage (Article 22): Article 22 addresses child marriage and highlights the need to take legislative and other measures to prohibit and eliminate child marriage.
- j) Protection from Sexual Exploitation (Article 27): This article specifically addresses the protection of children from sexual exploitation and calls for measures to prevent and punish perpetrators.
- k) Protection from Trafficking and Abduction (Article 29): It emphasises the need to prevent child trafficking and abduction and take appropriate measures to protect and assist victims.
- l) Protection of Refugee and Internally Displaced Children (Article 30): This article highlights the need to protect refugee and internally displaced children, including protecting them from abuse and exploitation.

- m) **Right to Rest, Leisure, Play, and Cultural Activities (Article 31):** While not explicitly mentioning abuse, Article 31 emphasises the right of the child to rest, leisure, and play, which indirectly contributes to their protection from abusive practices.
- n) **Wide Range of Protections:** The ACRWC (Article 16) covers a broad spectrum of abuse children may face, including physical, emotional, and sexual abuse, as well as neglect and exploitation. By addressing various forms of abuse comprehensively, the Charter aims to provide holistic protection to children.
- o) **Prohibition of Harmful Practices:** The ACRWC (Article 21) explicitly addresses harmful practices affecting children such as child marriage, FGM, and other traditional practices that may be detrimental to their physical and mental well-being.
- p) **Age-Appropriate Measures:** Article 4 of the ACRWC deals with the protection of children's rights, stating that governments shall take legislative and other measures to ensure that the rights and welfare of children are recognised and protected. These measures must consider the child's age and evolving capacities.
- q) **Focus on Vulnerable Groups:** Article 2 of the ACRWC emphasises that a child's rights and welfare should be guaranteed without any discrimination. It specifically mentions that special protective measures should be taken in favour of the most vulnerable or marginalised children.
- r) **Commitment to Education and Awareness:** Article 11 of the ACRWC addresses children's right to education. It emphasises that states should take measures to promote and protect the child's right to education, including eliminating illiteracy and ensuring that the child has access to appropriate and quality education.
- s) **Establishment of a Monitoring Mechanism:** Article 45 of the ACRWC establishes the ACERWC. This committee is responsible for monitoring the implementation and application of the Charter's provisions. It also receives and considers reports from state parties on their efforts to protect and promote children's rights.
- t) **Empowerment of Children:** The ACRWC recognises the right of children to participate in decisions affecting their lives (Article 5). This encourages children's participation in matters concerning their protection, enabling them to express their views and have their voices heard.
- u) **Regional Context and Customary Law:** The Charter acknowledges the regional context of Africa and considers the diversity of cultures and customary law. This allows for developing child protection measures that respect local traditions while ensuring that the child's best interests are upheld.

2.3. Additional Legal Tools for Child Protection in Africa

The African Charter on Democracy, Elections, and Governance (ACDEG) indirectly protects children in Africa by promoting democratic governance, the rule of law, and respect for human rights and freedoms. By establishing a conducive environment for safeguarding children's rights through good governance, the ACDEG enables a stable and democratic society to address child protection issues more effectively. The emphasis on human rights in the ACDEG also reinforces children's rights to education, health, protection against violence, and participation in decision-making processes (ACDEG, Articles 2, 3, and 4).

The Protocol to the ACHPR on the Rights of Persons with Disabilities in Africa demonstrates Africa's commitment to protecting and promoting the rights of children with disabilities. By recognising their right to access education, healthcare, and other services equally, the Charter aims to prevent discrimination and ensure equal participation and inclusion opportunities (Articles 4, 5, 6, 9, and 11).

The Protocol to the ACHPR on the Rights of Women in Africa (Maputo Protocol- 2003), while not directly focused on children, plays a crucial role in protecting women's rights, who are often primary caregivers for children. By promoting gender equality, eliminating discrimination against women, and ensuring their rights to education, health, and economic empowerment, the protocol indirectly contributes to children's well-being (Articles 3, 4, 6, 9, 11, and 12).

The African Court on Human and Peoples' Rights, established in 2004, is a regional human rights court that hears cases of human rights violations in Africa. The court generally hears matters related to human rights violations, and children's rights may be addressed as part of broader cases involving human rights issues. It can issue binding decisions, allowing individuals and organisations to seek redress for human rights violations, including those that affect children. The ACHPR's decisions and advisory opinions have helped raise awareness of the challenges of children's rights in Africa and the need for greater protection. Additionally, its work has contributed to developing national laws and policies for protecting and promoting children's rights.

The African Commission on Human and Peoples' Rights was established on 2 November 1987 in Addis Ababa, Ethiopia, with its operational headquarters located in Banjul, The Gambia. In conjunction with responsibilities assigned by the Assembly of Heads of State and Government, the Commission has been officially designated three primary functions: ensuring the protection of human and peoples' rights, advocating for the rights of humans and peoples, and offering interpretations of the ACHPR.

The Commission, founded even before the African Court on Human and Peoples' Rights, is pivotal in overseeing the implementation of the ACHPR, assuming a critical responsibility in advancing children's rights and promoting child protection throughout the continent. Although it lacks the authority to issue legally binding decisions, the Commission can provide governments with recommendations to safeguard human rights. Notably, its impactful cases have significantly contributed to preserving children's rights in Africa. Several noteworthy examples include the following:

Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v. Guinea (2008): In this case, the ACHPR addressed the rights of refugee children in Guinea, ensuring their protection and access to basic services. The decision highlighted the need to safeguard the rights of vulnerable children, including those affected by conflict and displacement.

Institute for Human Rights and Development in Africa v. Angola (2000): This case dealt with the forcible eviction of families, including children, from their homes in Angola. The ACHPR's decision underscored the importance of protecting children's rights in situations of displacement and the obligation of states to ensure adequate housing and protection from arbitrary eviction.

Amnesty International v. Sudan (2000): In this case, the ACHPR addressed the issue of child soldiers in Sudan. The decision emphasised the need to protect children from recruitment into armed forces and groups, highlighting the importance of preventing child recruitment and ensuring rehabilitation and reintegration for former child soldiers.

The Malawi African Association and Others v. Mauritania (2000): This case focused on the issue of slavery in Mauritania, which affects many children. The ACHPR's decision condemned slavery and emphasised the need to protect children from all forms of exploitation and forced labour.

Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya (2003): This case has positively impacted the protection of African children, particularly indigenous children. It reinforces their rights to cultural preservation, education, land, and resources and promotes non-discrimination and meaningful participation.

Overall, these conventions, protocols, decisions, and recommendations are powerful tools in Africa's legal arsenal for child protection. They reflect the continent's commitment to democratic governance, human rights, gender equality, and inclusion, paving the way for a more just and equitable society for children by 2040 and beyond.

3. Monitoring Mechanism

The ACERWC²⁹ plays a vital role in implementing and monitoring the ACRWC. The committee is established under Part II, Chapters 2 and 3, Articles 32–46 of the ACRWC. The articles describe the establishment, organisation, mandate, procedure, activities, composition, and roles, among other key aspects. The Committee seeks to ensure that children's rights are respected, protected, and fulfilled across the continent and is responsible for monitoring the implementation of the ACRWC and safeguarding the rights of children in Africa. The Committee conducts two ordinary

29 ACERWC (2023) The African Committee of Experts on the Rights and Welfare of the Child. [Online]. Available at: <https://www.acerwc.africa/en> (Accessed: 7 July 2024).

sessions annually, engaging with various stakeholders to fulfil its promotion and protection mandate. The main functions of the Committee, as specified in Article 42 of the Charter, include promoting and protecting children's rights, monitoring the Charter's implementation, interpreting its provisions, and conducting tasks entrusted by the AU's Assembly of Heads of State and Government and other AU organs. To achieve its mandates through its sessions, the ACERWC conducts several activities according to the provisions of the Charter. These activities, outlined in Articles 42–45 of the Charter and the Committee's Rules of Procedures, include the following: examination of State Party Reports on the status of Charter implementation; consideration of communications/complaints about alleged violations of children's rights by State Parties submitted by civil society organisations (CSOs); investigations or country visits to assess Charter implementation; developing norms and standards through General Comments and Guidelines on matters covered by the Charter; research and studies on child rights issues in Africa; leading the celebration of the Day of the African Child; issuing resolutions, declarations, statements, and letters of urgent appeals; monitoring the implementation of Agenda 2040.

As for its composition, the ACERWC comprises eleven members renowned for their high moral character, integrity, impartiality, and expertise in matters concerning children's rights and welfare. These members are chosen through a secret ballot from a list of nominees proposed by State Parties to the Charter. Each State Party can nominate up to two candidates, who must be citizens of the African Union (AU) member states and signatories to the Charter. The election process prioritises gender balance and regional representation to ensure diversity. Members serve in their capacities and not as representatives of specific states. They hold a five-year term, with the possibility of being re-elected once. The Bureau supervises and coordinates the Committee's activities, which is composed of the Chairperson, Vice-Chairperson, and Rapporteur. Their tenure lasts two years, and the Chairperson is ineligible for re-election. The Secretariat, led by the Secretary, facilitates the Committee's effective functioning, which offers technical and logistical support.

State Parties adhering to the Charter must submit reports to the ACERWC detailing the status of Charter implementation within their respective countries. Initial reports are due two years after Charter ratification and subsequently every three years. These reports encompass general information about the state, its legal and institutional frameworks for child protection, and the measures taken to actualise children's rights enshrined in the Charter. Periodic reports focus on implementing previous concluding observations and recommendations issued by the Committee, in addition to outlining the efforts undertaken to enforce the Charter's provisions.

4. Cases

The ACERWC provides advisory opinions and recommendations on child rights issues in Africa. Although these opinions lack legal binding, they have a significant influence, and member states bound by the ACRWC are expected to consider them when formulating child rights laws and policies. To further support its mission and promote children's rights within AU bodies and mechanisms, the ACERWC participates in the "African Children's Charter Project (ACCP)" along with a consortium of regional and international non-governmental organisations, with support from the Swedish International Development Agency (SIDA). Owing to its partners, the ACERWC has access to an invaluable resource known as The African Child Rights Case Law Database.³⁰ This database contains a comprehensive collection of judgements from domestic courts across diverse African countries focusing specifically on cases related to children's rights and welfare. The availability of such a database equips the committee with a wealth of legal precedents and insights into how child rights issues have been addressed and adjudicated in various jurisdictions. With access to this vast case law repository, the ACERWC gains a powerful tool to bolster its efforts in protecting children's rights in Africa. This database enables the committee to make well-informed decisions, provide authoritative recommendations, and issue advisory opinions that draw on legal insights from different contexts. This, in turn, strengthens the committee's mandate to safeguard and promote children's rights throughout Africa, enhancing its effectiveness and impact on child protection efforts.

The cases handled by the Committee are referred to as "communications" about alleged violations of the Charter by a state party. The process is governed by Article 44 of the ACRWC, which allows communications from any individual, group, non-governmental organisation, member state, or the United Nations concerning matters covered by the Charter. The committee has established the 'Guidelines for Consideration of Communications and Monitoring Implementation of Decisions'³¹ to outline the procedures and rules for dealing with communications, ensuring fairness and adherence to established criteria. Once a communication is received, the committee conducts a preliminary review to ascertain its form and content compliance, as specified in the guidelines. If deemed admissible, the ACERWC evaluates the merits of the case and examines the alleged child rights violations. If the committee finds violations, it may call for appropriate remedies from the concerned state party. Subsequently, the state party must report the measures taken to implement the committee's decisions. The committee engages in various follow-up activities to ensure the effective implementation of its decisions. These include country visits, implementation

30 ACERWC (2023) ACERWC Case Law Database. [Online]. Available at: <https://www.acerwc.africa/en/resources/case-law-database> (Accessed: 15 July 2024).

31 ACERWC (2023) Guidelines for Consideration of Communications and Monitoring Implementation of Decisions [Online]. Available at: <https://www.acerwc.africa/en/page/guidelines-consideration-communications-and-monitoring-implementation-decisions> (Accessed: 15 July 2024).

hearings, and reports to the Executive Council of the African Union, among others. The ACERWC has also established a Working Group on the Implementation of Decisions, which focuses on effectively monitoring the implementation of the committee's decisions.

As of August 2023, the Committee has issued significant advisory opinions and recommendations on various issues related to child rights in Africa. Some cases are pending; others are declared inadmissible, amicably settled, or finalised.

Communication Nº.	Respondent state	Alleged facts	Status
0023/Com/005/2022	Nigeria	The plaintiffs, all non-governmental organisations (NGOs) working on child rights in Nigeria, argue that the Nigerian government has failed to protect children adequately from violence, exploitation, and abuse.	Pending
0018/Com/002/2021	Cameroon	The complainants have filed a Communication with the Committee, reporting cases of child marriage in Cameroon involving Fadimatou Mohamadou and nine others.	Declared inadmissible: the plaintiffs' not having exhausted local remedies.
0012/Com/001/2019	TANZANIA	The Complainants allege that in Tanzania, primary and secondary school girls are forced to undergo pregnancy testing and are expelled from schools if they are found pregnant or married.	Finalised: The Committee has found Tanzania guilty of violating its obligations under multiple Articles (1, 3, 4, 10, 11, 14, 16, 21) of the African Charter on the Rights and Welfare of the Child.
004/Com/001/2014	Malawi	Incompatibility of the Constitution of Malawi Article 23(5) with Article 2 of the ACRWC and violation of Articles 1 and 3 of the ACRWC.	Amicably settled

5. Prospects: Agenda 2040³²

In 2015, the Committee formulated a strategic roadmap known as Africa's Agenda for Children 2040 (Agenda 2040) to shape an Africa suitable for its young population. This initiative was inspired by a conference commemorating the 25th anniversary of the African Children's Charter, which involved an assessment of children's conditions in Africa over the preceding quarter century. The development of Agenda 2040 was a natural progression of the broader AU Agenda 2063, primarily focusing on empowering African children by ensuring the comprehensive implementation of the African Children's Charter. This initiative gained official endorsement from

32 Cilliers, 2021, p. 33.

the African Union's Executive Council through decision n° EX. CL/Dec.997(XXXI).³³ Outlined within Agenda 2040 are ten aspirational objectives to be accomplished by 2040, informed by insights gleaned from the past 25 years. At its core, the initiative aims to safeguard Africa's children's rights and prioritise the objectives outlined in the Agenda. The aspirations include the following: ensuring an effective continental framework to advance children's rights under the supervision of the African Children's Committee; establishing child-friendly national legislative and institutional structures in all Member States; registering every child's birth and vital statistics; ensuring every child's survival and healthy childhood; providing proper nutrition and access to necessities; offering quality education for all children; protecting them against violence, exploitation, neglect, and abuse; implementing a child-sensitive criminal system; safeguarding them from the impact of armed conflicts and disasters; recognising and valuing the voices and views of African children.

Overall, Agenda 2040 sets forth a comprehensive vision for the future, and its successful implementation relies on collective efforts, commitment, and collaboration between African countries and stakeholders to create a thriving and secure environment for the continent's children. By achieving these aspirations, Africa can pave the way for a brighter future where every child's rights are upheld, leading to sustainable development and progress across the continent.

6. National Institutions for Child Protection

To effectively implement children's rights, it is essential to have dedicated institutions at the national level that implement international, regional, and national laws. International conventions, treaties, and agreements are incorporated into the local laws of countries that have ratified them based on the legal principles of "monism" or "dualism", depending on each country's legal system. Regardless of the approach taken, Article 27 of the Vienna Convention on the Law of Treaties (1969) emphasises that states must fulfil their treaty obligations and cannot use domestic law as a defence for non-compliance.³⁴ When it comes to conventions addressing the protection of children, states adhere to the international treaties to which they are parties and integrate the standards of these texts into their national laws. In national laws, provisions from various regional and international treaties play a crucial role:

33 African Union. (2017, January 25). EX.CL/Dec.997(XXXI). EXECUTIVE COUNCIL Thirtieth Ordinary Session 25 – 27 January 2017 Addis Ababa, ETHIOPIA DECISIONS. [Online]. Available at: https://au.int/sites/default/files/decisions/32521-sc19552_e_-ex_cl_decisions_939-964-xxx.pdf (Accessed: 31 July 2024).

34 Vienna Convention on the Law of Treaties 1969, adopted and opened to signature in Vienna on 23 May 1969. Entered into force on 27 January 1980. United Nations, Treaty Series, vol. 1155, p. 331. [Online]. Available at: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (Accessed: 20 July 2024).

Agreement no. 138 of the ILO on the minimum working age; Agreement no. 182 on the worst forms of child labour; The ACRWC; UNCRC.

These standards are transposed into local legislation to ensure compliance with international law. Below is a non-exhaustive list of a few countries and their respective regulations concerning the protection of children.

Country	Legislation ³⁵	Key Provisions
Kenya	The Children Act 2022	Provides for the following measures for the protection of children: <ul style="list-style-type: none"> • Education; Healthcare. • Protection from exploitation and all forms of violence against children, including physical, sexual, and emotional abuse and violence.
	The Constitution of Kenya Amendment Bill 2020	This Bill proposes amendments to the Constitution of Kenya to strengthen the protection of rights. The protection of children is enshrined in Article 53 and includes: ³⁶ <ul style="list-style-type: none"> • The right of children to be free from all forms of violence, abuse, and exploitation. • The right of children to participate in decisions that affect their lives. • The right of children to access quality education and healthcare. • The right of children to be protected from harmful traditional practices. • Article 54 of the constitution addresses the protection of persons with disabilities. While this provision does not explicitly focus on children, it can be interpreted as a crucial tool to safeguard the rights of disabled children, ensuring their access to education and active participation in society.
Mauritius	The Children's Act 2020	<ul style="list-style-type: none"> • Prohibition of all forms of violence against children (Art. 13), including physical,³⁷ sexual and emotional abuse. • Establishment of a National Child Protection Agency to oversee the implementation of the law. • Creation of specialised child protection courts to hear cases involving children. • Provision of support services for children affected by violence or abuse. • Guarantee children's right to education, healthcare, and social security. • Increased focus on prevention of child abuse and neglect.

35 ACPF (2023) CHILD LAW RESOURCES. [Online]. Available at: <http://clr.africanchildforum.org/home> (Accessed: 20 July 2024).

36 Kenya Law Reform Commission (KLRC) The Constitution of Kenya (2020) [Online]. Available at: <https://www.klrc.go.ke/index.php/constitution-of-kenya/113-chapter-four-the-bill-of-rights/part-3-specific-application-of-rights/219-53-children> (Accessed: 20 July 2024).

37 cf. End Corporal Punishment (2022). [Online]. Available at: <https://endcorporalpunishment.org/mauritius-prohibits-all-corporalpunishment/#~:text=The%20Children's%20Act%202020%20aims,the%20Juvenile%20Offenders%20Act%201935> (Accessed: 25 July 2024).

Country	Legislation	Key Provisions
Rwanda	Law No. 71/2018 relating to the protection of the child	Determines specific crimes against children and their penalties and determines special rights of the child, subject to other rights provided for him/her by other laws, and also provides modalities for the protection of the child and offenses and penalties. ³⁸
Benin	Law 2015-08 code de l'enfant en République du Bénin (Children's Code of Benin)	<ul style="list-style-type: none"> • Extension of the time limit for the declaration of births (Art. 34, Art. 40) to 21 days accompanied by penalties instead of 10 days provided for by the personal and family code. • The obligation for the State to assist destitute families lacking the necessities to provide for the well-being of their child (Arts. 42, 121). • Enables the creation of institutions for the social protection of children. • Establishment of duties of the child. The child, therefore, has responsibilities towards himself, his parents, his family, society, the State, and the international community.
	Law N° 2002 – 07 - Code des Personnes et de la Famille (Benin Code of Persons and Family) enacted in 2004 ³⁹	<ul style="list-style-type: none"> • Advancing women's rights to land and natural resources. Fighting against child labour and prohibition of children from engaging in hazardous or exploitative work. • Promotion of children's right to education and healthy development. • Regulation of the process of adoption in Benin, outlining the requirements and procedures to ensure the best interests of the child. • Children's inheritance rights, ensuring that they are protected and receive fair treatment in matters of inheritance, provisions regarding child support and maintenance, aiming to provide children's financial well-being and support, etc.

38 U.N.CRC/C/RWA/RQ/5-6 (2020). Replies of Rwanda to the list of issues in relation to its combined fifth and sixth periodic reports. [Online]. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhslkWNXMHf9fu6FCGs-Ju8rdp03QA9YikCYuGEB7FYsyYSub%2Bx8XZLYEuBKQ15dx%2FucVxmKB2R0%2FAJoSP-tIE2k1T%2F8hzOwxxQwY%2BpCh7s9BTDU#:~:text=Law%20N%C2%B071%2F2018,and%20give%20his%2Fher%20opinion> (Accessed: 25 July 2024).

39 U.N. (2005). Concluding comments of the Committee on the Elimination of Discrimination against Women: Benin. [Online]. Available at: https://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/CONCLUDING_COMMENTS/Benin/Benin-CO-1-3.pdf (Accessed: 25 July 2024).

Country	Legislation	Key Provisions
Tunisia	Organic Law n° 2016-61 on the prevention and fight against trafficking in persons, 2016 ⁴⁰	Prevention of any exploitation that individuals, particularly women and children, might face; combat trafficking; hold those responsible accountable; and provide protection and support to the victims.
	Constitution (2014)	Article 47 of the 2014 Constitution of Tunisia guarantees: the rights to dignity, health, care, and education. The state must provide all types of protection to all children without discrimination and in their best interest.
	Code of Child Protection, Law n° 95-92 (1995) ⁴¹	<ul style="list-style-type: none"> • Recognises the rights of the child to life, survival, and development; education; healthcare; protection from violence, abuse, and exploitation; and participate in decisions that affect their lives. • Imposes responsibilities on parents to provide for their children's care, education, and protection. • Establishes a system of child protection services to help children who need protection. • Implements punishments for child abuse and neglect
Botswana ⁴²	Deserted Wives and Children Protection Act, 1978	Protection of deserted wives and children.
	Children's Act, 2009	<ul style="list-style-type: none"> • Guarantees Education, Healthcare, and Protection from violence. • Prohibits all forms of human trafficking in Botswana.
	Anti-human Trafficking Act, 2014	Assistance to the victims of human trafficking, including medical care, psychological counselling, and legal aid. Reintegration of the victims of human trafficking into society.
South Africa	Children's Act (2005)	Promotes and protects children's rights and covers parental responsibilities, child protection, foster care, and adoption matters.
	Children's Amendment Act (2022) ⁴³	<ul style="list-style-type: none"> • Establishes the National Child Protection Register. • Establishes the National Child Protection Register. • Improves access to justice. • Increases protection from violence, etc.

40 ICRC ; IHL (2018). Loi organique n° 2016-61 du 3 août 2016, relative à la prévention et la lutte contre la traite des personnes. [Online]. Available at: <https://ihl-databases.icrc.org/en/national-practice/organic-law-prevention-and-fight-against-trafficking-persons-2016> (Accessed: 30 July 2024).

41 ICRC ; IHL (2018). Loi n° 95-92 du 9 novembre 1995, relative à la publication du code de la protection de l'enfant. [Online]. Available at: <https://ihl-databases.icrc.org/en/national-practice/code-child-protection> (Accessed: 30 July 2024).

42 ACPF (2023). CHILD LAW RESOURCES in Botswana. [Online]. Available at: <http://clr.african-childforum.org/country/13> (Accessed: 30 July 2024).

43 This Act amends the Children's Act of 2005 and strengthens the protection of children's rights in a number of areas. cf. Government Gazette, REPUBLIC OF SOUTH AFRICA, Act No. 17 of 2022: Children's Amendment Act, 2022. [Online]. Available at: https://www.gov.za/sites/default/files/gcis_document/202301/47828gen1543_0.pdf (Accessed: 30 July 2024).

Country	Legislation	Key Provisions
Nigeria	Child Rights Act (2003) ⁴⁴	Establishes the rights of the child and prohibits violence against children, ⁴⁵ child marriage, child labour, and child trafficking.
	Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003	Provides for the rehabilitation and reintegration of child victims.
Angola	Law for the Protection and Development of the Child (1990)	Ensures the protection, development, and welfare of children.
	National Action Plan of 2013–2020	Empowerment of women and girls, fight against poverty, ⁴⁶ protection from violence, participation in decisions related to their well-being, gender equality, etc.
	Angola 2025 Roadmap	Long-term strategy to ameliorate and augment social services and holistic programmes to combat rural poverty.
Egypt	The Arab Republic of Egypt, Law No. 12 of 1996 promulgates the Child Law amended by Law No. 126 of 2008.	Protects the rights and welfare of children by ensuring: Protection from Exploitation, Education, Prohibition of Child Marriage, and improvement of the Juvenile Justice System.

Despite adopting legal protection instruments and states' efforts, child protection organisations are raising concerns about the actual situation of children in most African countries. For example, the African Child Policy Forum (ACPF)⁴⁷ has published a series of reports known as the African Report on Child Wellbeing. These reports assess African governments' commitment to children and analyse the strengths and weaknesses of implementing child-sensitive laws and policies. The report "How Friendly are African Governments towards Girls" (2008) states that while some progress has been made, there is a pressing need for more significant investment in girls' education, health, protection from violence, and active involvement in decision-making. Regarding the report "How Child-Friendly are African Governments?" (2008), the findings were more alarming, as they revealed that African governments,

44 Federal Government of Nigeria, Country Report on Violence Against Children by the Federal Ministry of Women Affairs, Abuja, submitted to: The UN Secretary General's Independent Expert on The Study on Violence Against Children, July/August 2004. [Online]. Available at: <https://youthaction.ng/dosomething/document/report-on-child-abuse/> (Accessed: 30 July 2024).

45 cf. National Population Commission of Nigeria, UNICEF Nigeria, and the U.S. Centers for Disease Control and Prevention. Violence Against Children in Nigeria: Findings from a National Survey, 2014. Abuja, Nigeria: UNICEF, 2016.

46 cf. De Neubourg, C. Safojan, R. Dangeot, A. (2018). Childhood in Angola - A Multidimensional Analysis of Child Poverty. [Online]. Available at: <https://www.unicef.org/esa/sites/unicef.org/esa/files/2019-01/UNICEF-Angola-2018-A-Multidimensional-Analysis-of-Child-Poverty.pdf> (Accessed: 30 July 2024).

47 African Child Policy Forum (ACPF) (2020). African Report on Child Wellbeing. [Online]. Available at: <https://geo.fyi/2020/11/30/child-friendliness-of-african-governments/> (Accessed: 30 July 2024).

on the whole, are failing to prioritise child welfare adequately. Emphasising a rights-based approach, equitable access to basic services, and robust protection against violence is imperative for creating a genuinely child-friendly environment across the continent. The report “Budgeting for Children” (2011) also raised the alarm about the insufficient allocation of resources for promoting child well-being. This emphasises the urgency of increased investment in education, health, and social protection, placing children at the forefront of budgetary considerations. The following report, “Towards Greater Accountability to Africa’s Children” (2013), exposed a significant accountability deficit by African governments towards children. Involving children in decision-making processes and respecting their rights is vital to bridge this gap and ensure effective governance for children. In 2016, the report “Getting it Right: Bridging the Gap between Policy and Practice” highlighted the critical need to align policy intentions with practical implementation for child well-being. The report suggests that governments must effectively execute policies, diligently monitor progress, and learn from past experiences to address prevailing challenges. The 2018 report “Progress in the Child-Friendliness of African Governments” acknowledged commendable progress but urged continued investment in child wellbeing by ensuring access to basic services and protection from violence. The African Report on Child Well-Being 2020 revealed that African girls face numerous challenges, including a higher likelihood of being victims of trafficking, sexual abuse, and labour exploitation. They are also more prone to early marriage, FGM, and discrimination based on marriage and inheritance laws. Additionally, girls are more likely than boys to be economically disadvantaged, face higher risks of mental health problems, lack access to healthcare and quality education, and have higher school dropout rates. Moreover, the Girl-Friendliness Index (GFI), developed by the ACPF, is unique and indicates that while some African governments prioritise girls’ rights and well-being, many fall short. Mauritius has emerged as the most girl-friendly country in Africa, followed by Tunisia, South Africa, Seychelles, Algeria, Cabo Verde, and Namibia. Conversely, South Sudan ranks at the bottom of the table, with Chad, Eritrea, the Democratic Republic of Congo, Niger, the Central African Republic, and Comoros rated as the least child-friendly countries.⁴⁸

7. Conclusions

Africa’s journey towards ensuring the protection and well-being of its children has seen significant strides and transformative achievements. With one of the world’s largest and fastest-growing youth populations, the continent’s commitment to safeguarding children’s rights remains unwavering. Over the years, Africa has developed a comprehensive framework of universal and regional human rights instruments led by the ACRWC. Adopted in 1990, the ACRWC emerged in response to the pressing

48 Ibid.

challenges faced by African children in the 1990s, including pervasive child poverty, child labour, abuse, and the devastating impact of armed conflicts. The Charter has been instrumental in articulating and safeguarding children's rights across Africa. It enshrines fundamental principles such as the child's best interests, non-discrimination, the right to life, survival, and development, and children's right to express their views on matters affecting them.

As of 2023, all 54 African countries have ratified the ACRWC, and its transformative impact has touched the lives of millions of children on the continent. Governments, civil society organisations, and individuals have embraced the Charter as a guiding beacon, working tirelessly to improve the well-being of Africa's children. Moreover, Africa has established regional mechanisms to monitor and enforce children's rights. The ACERWC plays a vital role in overseeing the implementation of the ACRWC. It issues advisory opinions and recommendations on various child rights issues in Africa, guiding state parties in developing and implementing child rights laws and policies. Its work has been complemented by the African Child Rights Case Law Database, which enables access to judgements from domestic courts across African countries, enriching the legal landscape for child protection.

To build on the foundation laid by the ACRWC, Africa developed Agenda 2040, a long-term strategic plan to realise the rights and well-being of children across the continent. The integration of Agenda 2040 into national regulations is organised into distinct phases, each spanning five years, to assess the progress made by member states in achieving the aspirations outlined in the Agenda at the domestic level. Each member state must formulate a national implementation plan for each phase, with timelines set for completion in 2020, 2025, 2030, 2035, and 2040. The first phase of implementation, covering the years 2016–2020, has been completed, and the ACERWC has published an assessment report presenting evaluations of the progress made by various countries.

While Agenda 2040 has influenced national regulations somewhat, the degree to which its goals are reflected in domestic laws and policies varies widely across the continent. Implementation has been inconsistent, with notable disparities between regions. Some states have been slow or stagnant in prioritising children's rights, leading to an uneven realisation of the objectives of Agenda 2040. The report underscores the need for ongoing advocacy, capacity building, and resource allocation to ensure that the aspirations of Agenda 2040 are fully achieved by 2040.

One of the most pressing concerns highlighted in the Agenda 2040 report is nutrition and food security. Regions affected by drought, climate change, and food insecurity face significant challenges in providing access to nutritious food for children's survival and development. Additionally, violence against children, particularly in conflict zones such as the Democratic Republic of Congo and Sudan, remains a widespread issue that undermines efforts to protect children's rights. However, there has been progress in increasing the visibility and focus on the rights of the girl child, especially during the review period. The COVID-19 pandemic has also profoundly

impacted children's well-being, disrupting education, health, and protection systems while presenting opportunities for transformative change.

Therefore, not all member states have successfully established child-friendly legislative frameworks. Issues such as corporal punishment, child marriage, and anti-trafficking laws have not been fully addressed in many countries. The quality of education and access to early childhood education continue to be significant challenges in many regions. Despite these challenges, some countries have made notable legislative achievements, demonstrating progress towards realising the aspirations of Agenda 2040, particularly in the areas of corporal punishment, child marriage, and anti-trafficking laws. Regarding corporal punishment, Seychelles took a significant step forward when the National Assembly adopted the Children (Amendment) Act 2020 on 12 May 2020, explicitly prohibiting corporal punishment and repealing the defence of reasonable chastisement. Similarly, Benin had already declared corporal punishment unlawful in the home in 2015. The 2015 Children's Code (Loi No. 2015-08) in Benin ensures that discipline is enforced with humanity and respect for children's dignity, reflecting a broader commitment to protecting children from physical harm.

Regarding child marriage, eleven African countries – Botswana, the Democratic Republic of Congo, Egypt, Kenya, Ghana, Malawi, Mauritania, Nigeria, South Sudan, Uganda, and Zimbabwe – have established 18 years as the minimum age of marriage, with no exceptions. This legislative consistency across multiple nations marks a critical move towards safeguarding young girls from early and forced marriages. Moreover, Burundi has enacted legislation aimed at preventing and responding to gender-based violence, reinforcing the protective legal environment for women and girls. Guinea's revised draft of its Children's Code removes provisions that previously allowed minors to marry with parental consent. In Seychelles, the legal minimum age for marriage is now set at 18 for all, eliminating the former requirement for paternal consent. Similarly, Madagascar has amended its laws, raising the minimum marriage age to 18 for both genders, up from the previous thresholds of 14 for girls and 17 for boys. Regarding anti-trafficking laws, Ethiopia issued Proclamation No. 1178/2020 to prevent and suppress the trafficking of persons, demonstrating a firm stance against human trafficking. Similarly, the Congo enacted child-friendly anti-trafficking legislation in 2019, and Tunisia passed Organic Law No. 2016-61 in 2016, focusing on preventing and combatting human trafficking. Namibia joined these efforts by introducing Law 1 of 2018 to combat human trafficking. Nigeria also took significant steps by amending its Trafficking in Persons Law Enforcement and Administration Act in 2015, with Niger and Malawi following suit by adopting their respective anti-trafficking legislations.

These legislative achievements represent critical advancements in protecting the rights and well-being of children across the continent, reflecting a growing commitment to the aspirations outlined in Agenda 2040.

These examples highlight the progress made by countries in aligning their national laws with the aspirations of Agenda 2040. Nevertheless, the varying pace of

implementation across the continent suggests the need for continued efforts to ensure that all children in Africa benefit from the protections, hope, and opportunities envisioned in Agenda 2040.

Overall, the aspirations of Agenda 2040 are ambitious, with ten aspirations to be achieved by 2040 based on lessons learned from the past 25 years. By fostering a culture of accountability, enhancing resource allocation, and leveraging regional and international partnerships, Africa can make significant progress in improving the lives of its children. The successful implementation of Agenda 2040 represents a critical blueprint for the future of African children. It builds on the foundation of the ACRWC and aligns with global commitments such as the SDGs. The success of Agenda 2040 will depend on the collective efforts of all stakeholders to ensure that every child in Africa grows up in an environment that supports their rights, nurtures their potential, and prepares them to contribute to the continent's progress.

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