

# 2040 Agenda

Fostering an Africa Fit for Children



Assessment of the first phase of  
implementation (2016-2020)

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## **MESSAGE FROM THE CHAIRPERSON OF THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD (ACERWC)**

The African Committee of Experts on the Rights and Welfare of the Child is delighted to present this study on the status of the implementation of Agenda 2040 at the occasion of the commemoration of the 30<sup>th</sup> anniversary of the African Charter on the Rights and Welfare of the Child. Agenda 2040 contains 10 aspirations that the Continent strives to achieve for its children by 2040, at the 50th Jubilee of the Charter. The study assesses the progress achieved by States in implementing the aspirations set forth in Agenda 2040. It is promising to note from the review that there is progress in the implementation of the Charter as well as Agenda 2040, and this gives impetus to the Committee to accelerate its efforts in engaging States and further devising norms and activities towards the promotion and protection of children's rights. Furthermore, the review assesses the steps taken by the Committee, and the African Union in implementing the aspirations. Once again, this assessment reveals that the Committee has come a long way in enhancing its efforts to implement the Charter and it documents that the quality and magnitude of the undertakings of the Committee has increased enormously.

The review is timely and can be utilized by various stakeholders. States, AU organs and institutions, policy makers, UN agencies, and international and national non-governmental organizations can make use of the study to inform their programs and priorities. It also serves as a resource material for the academia and researchers on the subject matter. Wide range of stakeholders can make use of the key findings and the recommendations to determine their engagement and undertakings in relation to children's rights.

I take this opportunity to encourage States and call on other actors working for children to take deliberate action towards the universal ratification of and reporting on the Charter as well as enhanced implementation of the aspirations of the Agenda. It is my hope that during the next review of the implementation of Agenda 2040, all States have ratified the Charter and States whose initial and periodic reports are due have accordingly submitted their reports. It is also my wish that we all collaborate together and complement each other's work with the view to see an Africa fit for children; a continent determined to create a better world for its children and achieve the aspirations within the prescribed timeframe in Agenda 2040.

Hon. Joseph Ndayisenga  
Chairperson of the ACERWC

## INTRODUCTION

Agenda 2040 was adopted by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) during the commemoration of the 25th Anniversary of the African Charter on the Rights and Welfare of the Child (ACRWC) in 2015, and it was later adopted by the Executive Council of the African Union (AU). The Agenda elaborates on the vision of Africa's Agenda 2063 for the Africa We Want, adopted by the AU in 2013, which recognises that Africa will promote the growth of the continent and secure its future by nurturing and nourishing its children, and requires that children should therefore be empowered through the full implementation of the ACRWC. In view of this, Agenda 2040 sets out ten aspirations, to be achieved By 2020 and identifies action steps, mostly to be taken by AU Member States, for the first period of the five-phased 25-year journey ahead.

The ten goals of Agenda 2040 are as follows:

**Aspiration 1:** The African Children's Charter, as supervised by the African Children's Committee, provides an effective continental framework for advancing children's rights

**Aspiration 2:** An effective child-friendly national legislative, policy and institutional framework is in place in all Member States

**Aspiration 3:** Every child's birth and other vital statistics are registered

**Aspiration 4:** Every child survives and has a healthy childhood

**Aspiration 5:** Every child grows up well-nourished and with access to the basic necessities of life

**Aspiration 6:** Every child benefits fully from quality education

**Aspiration 7:** Every child is protected against violence, exploitation, neglect and abuse

**Aspiration 8:** Children benefit from a child-sensitive criminal system

**Aspiration 9:** Every child is free from the impact of armed conflicts and other disasters or emergency situations

**Aspiration 10:** African children's views matter

The aims of this report are to:

- Identify progress achieved by Member States in implementing the aspirations of Agenda 2040 at domestic level;
- Identify challenges Member States are facing in the implementation of Agenda 2040;
- Determine priority areas that need intervention by Member States as well as other stakeholders that are widely and gravely affecting children in the continent;
- Expose contemporary and emerging challenges that children are facing in Africa;
- Guide future endeavours towards the protection and promotion of children's rights in Africa and
- Set a baseline for the next five year periodic review of Agenda 2040

# AGENDA 2040

Fostering an Africa Fit for Children



10 - Aspirations of AGENDA 2040

Africa's Agenda 2040 for Children includes an Action Plan for the first phase of their implementation (2016-2020). The Action Plan spells out steps that should be taken by Member States by this year (2020) to implement each aspiration in the first five years of the Agenda. This assessment has been undertaken in reference to the actions stipulated in the Action Plan, which have a bearing on actions by State Parties, the Committee itself, the African Union, the ACERWC, civil society, development partners, and national partners.

The Agenda 2040 provides that the AU Commission and the Committee should develop new indicators based on the findings of this study for the next five year period (2020 – 2025).

The indicators, targets and goals are numerous, covering both measurable and less quantifiable targets. All of the targets, narrow and more specific have been included directly in this Report in boxes shaded in green to steer the ensuing assessment of achievements and challenges. The main headings provided for in the original Agenda 2040 document are shaded in maroon. They have not been altered from the original.

The scope of the assessment is the five-year period 2016-2020 and it endeavours to cover all regions of the African Union. The study surveys literature from a wide range of sources. The research team took a systematic approach to the desk review, commencing with an assessment of the views of States Parties in relation to their own progress to meet the goals in Agenda 2040. To that end, reports of State Parties to the Committee and the UN CRC and corresponding Concluding Observations as well as reports submitted through the Universal Period Review process. National legislation was reviewed across all aspirations to better understand normative child protection and development frameworks. To the extent available, other publicly available Government-issued reports, documents, and other communiqués were reviewed.

The research team next reviewed documents and studies produced by the ACERWC, including those related to its Ordinary and Extra-Ordinary Sessions, among others. The research team further reviewed documentation of Days of General Discussion, Decisions, Declarations, and Resolutions of the AU Policy Organs as well as Decisions, Statements, Reports of relevant AU Organs and Mechanisms such as the Peace and Security Council, the African Commission on Human and Peoples' Rights, the Pan African Parliament, and African Peer Review Mechanism. Reports on various initiatives within the AU related to children's rights were reviewed including reports of Day of the African Child (DAC) celebrations, decisions on Communications submitted to the Committee, reports on Investigative Missions of the Committee, and national reports on implementation of child rights.

Literature and reports from other UN agencies including funds such as UNICEF, think tanks, NGOs, regional economic communities, and academic were also reviewed. The findings should be considered in light of a number of limitations:

1. Regional and national disparities in relation to the quality and extent of data available across all aspirations.
2. The majority of the findings have been greatly impacted by the onset of Covid-19.
3. Given the breadth of the study and its scope, challenges pertaining to completeness of information should be noted.
4. In some regions, the preponderance of available reports, studies, and the like are available only in French, Portuguese or Arabic.
5. Although interview schedules were developed and circulated to enlist the views of some key informant interviewees, time of only two months to complete the report, and the impact of COVID-19 over these months militated against a comprehensive consultative process.
6. The scope and breadth of the subject matter of Agenda 2040, covering matters as diverse as (for instance) social cash transfers, birth registration and access to early learning opportunities – each specialist areas, meant that the potential number of key informants was vast. Some interviews were conducted, but not as nearly as extensively as initially foreseen.

As a postscript (final chapter), this report has been supplemented with a chapter dealing with the ways in which COVID-19 has affected the realisation of the aspirations contained in Agenda 2040. It reviews the risks, challenges, good examples, and opportunities that have arisen to achieve the aspirations of Agenda 2040 during and in the aftermath of this pandemic and on future pandemics and emergencies.

In summation, a list of key recommendations for each individual aspiration, linked to the findings, is provided in an Annex. It remains here to detail the key overarching findings of the study, which can be stated as being six fold:

**Key finding 1.** Progress towards fulfilment of many Agenda 2040 goals is halting, uneven and sometimes slow or stagnant,<sup>1</sup> with many State parties failing to prioritise the implementation of children's rights and devote sufficient resources to their fulfilment.

**Key finding 2.** Lack of access to sufficient nutritious food and hunger threatens far too many of the continent's children's survival and development to the extent that no meaningful fulfilment of any other of their rights can take place. Programmes to alleviate extreme poverty and enhance food security must be the priority for government action in the next monitoring period to reverse the deteriorating situation.

**Key finding 3.** Violence against children, individually and collectively (eg in conflict situations) is endemic, and negates almost entirely children's claims to be rights holders. All stakeholders should intensify efforts dramatically to curb all forms of violence and to ensure that the pervasive culture of impunity is buried.

**Key finding 4.** Campaigns, declarations and rallying efforts around particular themes, eg under African Union leadership or the ACERWC, can and do have marked effects on State party practice, legislation and policy, and changing public attitudes in a short period of time, such as the five year review carried out here. Examples are evident in relation to harmful cultural practices such as child marriage, birth registration, and the position of children affected by armed conflict. Continued progress may however depend on a positive attitude towards the human rights organs within the African Union being evidenced by State parties.<sup>2</sup>

**Key finding 5.** The visibility of the girl child has improved markedly in the period under review, testimony to the international focus on this, the work of the African Union and its organs, the work of Civil Society organisations, and, possibly, the heightened role accorded the girl child in the African Children's Charter itself.

**Key finding 6:** The COVID-19 outbreak has and will continue to have an impact on children across the continent. Disruptions to families, friendships, education, daily routines and the wider community can have negative consequences on children's well-being, learning, development and protection and thus the achievement of the aspirations while at the same time presenting transformational opportunities, for instance in relation to children living in institutional care, reduction of children's deprivation of liberty, measures to support children's education, and steps to enhance the functioning of the social workforce.

Addis Ababa

October 2020

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<sup>1</sup> Progress on vaccination for instance has stagnated in the last decade, but strides have been made in addressing the gender gap in school enrolment.

<sup>2</sup> See Amnesty International's report in this regard <https://www.amnesty.org/en/latest/news/2020/10/africa-regional-human-rights-bodies-struggle-to-uphold-rights-amid-political-headwinds/>.

## ABBREVIATIONS

ACCP	African Children’s Charter Project
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Charter on Human and People’s Rights
ACPF	African Child Policy Forum
ACRWC	African Charter on the Rights and Welfare of the Child
ACS	African Centre for Statistics
AfDB	African Development Bank
AGA	African Governance Architecture
Aids	Acquired immunodeficiency syndrome
AMWCY	the African Movement of Working Children and Youth
APAI-CRVS	The Africa Programme on Accelerated Improvement of Civil Registration and Vital Statistics
APRM	African Peer Review Mechanism
ARV	antiretrovirals
AU	African Union
AUC	African Union Commission
CRC	Convention on the Rights of the Child
CRVS	Civil Registration Systems
CSO	Civil Society Organisations
DRC	The Democratic Republic of Congo
EAC	East African Community
ECA	Economic Commission for Africa
ECOWAS	Economic Community of West African States
EU	European Union
FGM	Female Genital Mutilation
HIV/	Human immunodeficiency virus
ILO	International Labour Organisation
ITNS	insecticide-treated bed nets
MTCT	mother to child transmission
NANHRI	Network of African National Human Rights Institutions
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institutions
PSC	Peace and Security Council
RECs	Regional Economic Communities
SADC	Southern African Development Community
SADC-PF	Southern African Development Community Parliamentary Forum
TB	Tuberculosis
the Maputo Protocol	Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa
UN	United Nations
UNFPA	United Nations Population Fund

UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
VAC	Violence Against Children
WHO	World Health Organisation

## Aspiration 01

The African Children's Charter, as supervised by the African Children's Committee, provides an effective continental framework for advancing children's rights



# By 2040

- The African Children's Charter is effectively domesticated and implemented across the continent.
- The African Children's Committee is well-known as a champion of children's rights and functions as the primary continental body for advancing children's rights.
- The African Children's Charter enjoys full continental acceptance, and there are no reservations to the Charter.
- All State parties regularly submit state reports to the African Children's Committee.
- The State reporting and communications procedures are effective tools for realising children's rights and for holding governments accountable to their obligations in respect of children.
- The African Children's Committee interprets the African Children's Charter as an autochthonous instrument, in the best interests of children.
- The principles and provisions of the African Children's Charter are made widely known to children and adults alike.

# ASPIRATION 1: THE AFRICAN CHILDREN'S CHARTER, AS SUPERVISED BY THE AFRICAN CHILDREN'S COMMITTEE, PROVIDES AN EFFECTIVE CONTINENTAL FRAMEWORK FOR ADVANCING CHILDREN'S RIGHTS

The African Charter on the Rights and Welfare of the Child (ACRWC/African Children's Charter) is the first and only regional treaty protecting and promoting the rights of children on the African continent. It is also the principal treaty for the advancement of children's rights within the AU human rights system. Africa is the only continent with a region-specific child rights instrument which makes the ACRWC a unique tool for advancing children's rights in Africa. The African Children's Charter challenges traditional African views that conflict with the rights of the child such as; child marriages, defining childhood, harmful traditional practices, adolescent teenage pregnancies, and parental rights and obligations towards their children.<sup>3</sup> It has also been known for championing and addressing specific issues relative to the African continent - such as the situation of children in apartheid, the specific disadvantages of the girl child, socio-economic conditions of African children, the role of extended families, and issues of child soldiers.<sup>4</sup> The implementation and monitoring of the ACRWC is the primary responsibility of the ACERWC. In view of Agenda 2040, this Chapter identifies the progress and challenges faced by Member States in domesticating and ratifying the African Children's Charter; submitting State Party reports, implementing recommendations from the ACERWC and ensuring that principles and provisions of the Charter are widely known to children and adults alike in their States. This Chapter reviews the implementation of Agenda 2040 in the first five years of its adoption i.e. from 2016 to 2020.

## Progress by Member States

### *Ratification of the ACRWC*

By 2020 the Central African Republic, Democratic Republic of the Congo, Sahrawi Arab Democratic Republic, Somalia, São Tome and Principe, South Sudan and Tunisia have become State parties to the African Children's Charter

By 2020 the ACERWC should have engaged Central African Republic, Democratic Republic of Congo, Sahrawi Arab Democratic Republic, Somalia, São Tome and Principe, South Sudan and Tunisia to become State parties to the Children's Charter, based on their signature of the African Children's Charter and ratification of the CRC

As of 2020, the African Children's Charter has been ratified by 50 of the 55 AU member States. The latest ratifications were made by the Central African Republic, Sao Tome and Principe and Democratic Republic of Congo in 2016 and 2020 respectively. Five of the 55 AU countries that are yet to ratify the Charter are: Morocco, Sahrawi Arab Democratic Republic, Somalia, South Sudan and Tunisia. Of these, Somalia<sup>5</sup>, Tunisia<sup>6</sup> and Saharawi Arab Republic<sup>7</sup> have expressed their intent to comply with the Charter by signing it. This expression of intent on its own is however not binding on these States. Interestingly, the ACERWC has noted that all these 6 countries are State Parties to the CRC.

Apart from Morocco, which was readmitted to the AU in 2017, the ACERWC has managed to engage with State Parties that have not yet ratified the Charter by conducting advocacy missions to all 5

3 Save the Children 'Advancing Children's Rights: A civil society guide on how to engage with the African Committee of Experts on the Rights and Welfare of the Child' 2019, 3ed, p 39.

4 Ibid.

5 Signed on 01/06/1991.

6 Signed on 16/06/1995.

7 Signed on 23/10/1992.

countries. The Committee undertook missions advocating for ratification of the Charter to Tunisia in (2013), Saharawi Republic (2014) and (2019), South Sudan (2014), DRC (2015) and Somalia (2018).<sup>8</sup> Additionally, the Secretariat of the African Committee also sends *note verbales* to States regularly as a reminder for ratification.<sup>9</sup> During the advocacy mission to Saharawi Arab Republic in 2019, the government promised to ratify the Charter before September 2019 and CSOs undertook to work with the government and provide it with technical and financial support to ensure ratification.<sup>10</sup>

The ACERWC also held an Experience Sharing Forum on the ACRWC in Mauritius 2017, aimed at inspiring States to ratify, report on, and implement the Charter. At this forum the government of South Sudan pledged to speed up the ratification of the African Children's Charter and to work together with developmental partners and UN agencies for financial and technical support.<sup>11</sup> The representative from South Sudan submitted that the relevant documents for ratification of the Charter are with the Council of Ministers since 2016, and that there is no clarity from the government as to why it is taking so long to ratify the Charter.<sup>12</sup> Similarly the government of Tunisia pledged to accelerate the ratification process of the Charter and raise awareness on the Charter.<sup>13</sup> The government of Somalia also promised to invite the ACERWC for an advocacy mission to create awareness among the Cabinet and parliamentarians on the importance of ratification of the Charter.<sup>14</sup> The mission to Somalia was conducted in 2018. Thus, to date, the five countries to which advocacy missions were undertaken have not yet fulfilled their commitment to ratify the Charter. Thus, during the reporting period, the Committee has engaged extensively with the six countries that are yet to ratify the Charter.

A country is considered to be a State Party once it submits/ deposits its ratification instrument with the African Union Commission (AUC). One of the challenges identified by the ACERWC is that some States profess to have ratified the Charter, but their ratification instruments have not been received by the AUC.<sup>15</sup> One such State is the Democratic Republic of Congo. At the 35<sup>th</sup> session of the Committee (held in September 2020), a delegation from DRC informed the Committee that DRC has ratified the Charter at domestic level and that the ratification document will be deposited at the Office of the Legal Counsel of the African Union Commission in a few weeks' time.<sup>16</sup> Lack of deposition of ratification instruments could be linked to the changes in government – creating information gaps between existing and new incoming governments. The Committee is consistently prioritising the universal ratification of the ACRWC through its Strategic Plan 2015–2019 and Agenda for Children 2040. To further enhance full ratification, the Committee can engage the Permanent Representatives Council of the AU. This can be done through the AU Liaison Office which can hold meetings and briefings with Permanent Representatives Council members whose countries are yet to ratify the ACRWC. Additionally, a technical support function could be undertaken with the ACERWC Secretariat for this and related legislative actions.

The question still remains - why it was a challenge for Somalia and South Sudan, the two countries that ratified the CRC more recently, to undertake a parallel ratification process for the African Children's Rights Charter?<sup>17</sup> and why Tunisia, whose government announced in 2013 that it will ratify all AU human rights instruments, is taking too long to ratify the Charter?<sup>18</sup>

8 Mezmur B 'Happy 18th birthday to the African Children's Rights Charter: not counting its days but making its days count' (2017) 1 African Human Rights Yearbook p130.

9 Ibid.

10 Report of the African Committee of Experts on the Mission for the ratification of the African Charter on the Rights and Welfare of the Child, April 30 - May 04, 2019, Elaayoune, Arab Republic Democratic Arab, p8.

11 Report of the Experience Sharing Forum on the Implementation of the African Charter on the Rights and Welfare of the Child held in Mauritius on 27-28th September 2017, para 14.2 (hereafter Experience Sharing Report)..

12 Report of Workshop on Popularization of Agenda 2040 and Cross Border Issues affecting Children in the East African Community 2018, para 3.2 (d).

13 Experience Sharing Report, 2017, para 14.2.

14 Experience Sharing Report, 2017, para 14.2.

15 Experience Sharing Report, 2017, para 6.

16 35th Virtual Ordinary Session of the African Committee of Experts on the Rights & Welfare of the Child (ACERWC), 2020, para 9.

17 Mezmur (2017) p131.

18 Mezmur (2017) p131.

# Reservations to the ACRWC

By 2020 Botswana, Egypt, Mauritania and Sudan should have withdrawn their reservations under the African Children's Charter

By 2020 the ACERWC should have used the State reporting process to urge Botswana, Egypt, Mauritania and Sudan to withdraw their reservations under the African Children's Charter

The ACRWC has no express provision which allows State Parties to make reservations. However, under international law, this is in theory allowed, provided that such a reservation is not incompatible with the object and purpose of the treaty.<sup>19</sup> As of 2020, four State parties have made reservations on the application of some of the provisions of the Charter. These are Botswana, Egypt, Mauritania and Sudan. While the number of reservations entered by the four State parties is relatively small, the majority of the reservations can be considered to be far reaching, as they appear to be against the object and purpose of the Charter, thereby placing serious limitations on the enjoyment of rights under the Charter.<sup>20</sup> State Party reservations are shown in the box below.

	STATE PARTY	RESERVATION
1	Botswana	Article 2 - Definition of a Child
2	Mauritania	Article 9 - Right to freedom of thought, conscience and religion
		Article 10 - Right to privacy
		Article 11 (6) - Right to education of girls who fall pregnant before completing their education
3	Sudan	Article 21 (2) - Prohibition of child marriages
		Article 24 – Adoption*
		Article 30 (a- e) - Rights of children of imprisoned mothers
		Article 44 – Mandate of the ACERWC to receive communications
4	<b>Egypt</b>	Article 45 (1) – Mandate of the ACERWC to conduct investigations in Member States

\*Egypt's reservation on Article 24 is under review and a similar reservation to the CRC has already been removed

At the Experience Sharing Forum in 2017, the government of Botswana pledged to withdraw its reservation on article 2 on the definition of the child by 31 December 2017.<sup>21</sup> Additionally, Botswana submitted to the CRC Committee in 2017, that since it enacted the Children's Act that brings its definition of a child in line with that of the CRC, the government is now working towards lifting its reservation to Article 1 (CRC definition of a child) because there remains no legal impediment for this step.<sup>22</sup> The ACERWC has opined that the provision of the Charter that defines a child (article 2) is an

<sup>19</sup> Save the Children 'Advancing Children's Rights: A civil society guide on how to engage with the African Committee of Experts on the Rights and Welfare of the Child' 2019, 3ed, p29.

<sup>20</sup> Mezmur (2017) p 143.

<sup>21</sup> Experience Sharing Report, 2017, para 14.2.

<sup>22</sup> Combined second and third reports submitted by Botswana under article 44 of the Convention, due in 2017, submitted 21 November 2017, CRC/C/BWA/2-3, para 20.

indispensable provision without which other rights enshrined in the Charter cannot operate.<sup>23</sup> Hence, it is the Committee's view that entering a reservation on a provision dealing with the definition of child as with Botswana goes against the foundation on which the whole child rights system is established.<sup>24</sup>

The government of Sudan also pledged to form a committee to study the possibility of withdrawing reservations and to finalize the withdrawal of its reservations before 2019.<sup>25</sup> The ACERWC has held that reservations on Article 44 and 45 by Egypt are contrary to Article 19 (c) of the Vienna Convention on the Law of Treaties, mainly because the provisions subjected to reservation were among the core rationale for the creation of the Charter.<sup>26</sup> The Committee explained that placing a reservation on procedural matters of a human rights treaty is generally incompatible with the purpose and objective of the treaty under international human rights law.<sup>27</sup> As of 2020, reservations entered by these 4 countries have not yet been withdrawn. Initially Egypt had made a reservation on article 21(2) of the Charter, which was withdrawn in 2015.

## ***Ratification of the Maputo Protocol***

By 2020, Algeria, Botswana, Burundi, Central African Republic, Chad, Eritrea, Ethiopia, Madagascar, Mauritius, Niger, Sahrawi Arab Democratic Republic, Somalia, São Tome and Príncipe, Sierra Leone, South Sudan, Sudan and Tunisia should have become State parties to the Maputo Protocol

The Maputo Protocol is a binding legal framework that holds African governments to account for the continued gross violations of the rights of women and girls in Africa. The Protocol is lauded as one of the most progressive instruments on the rights of women and girls in the world, pushing boundaries with clauses on reproductive health rights, ending violence against women, ending harmful traditional practices such as female genital mutilation, political participation and economic empowerment. The Protocol has one of the highest number of ratifications for an instrument in the African Union. To date, out of the 55 AU Member States, 49 have signed and 40 have ratified the Protocol. Three countries namely, Botswana, Egypt, and Morocco have neither signed nor ratified the Protocol. Burundi, Central African Republic, Chad, Eritrea, Madagascar, Niger, Saharawi Arab Republic, Somalia, and Sudan have signed but are yet to ratify the Protocol. Six countries have ratified the Protocol with reservations. These are: Cameroon, Kenya, Mauritius, Namibia, South Africa and Uganda. During the reporting period, 2016 - 2020, 5 countries ratified the Protocol, of the 17 countries that had been targeted to have ratified the Protocol by 2020. The five are Algeria, Ethiopia, Mauritius, Sao Tome and Príncipe and Tunisia. The African Union Commission's Women, Gender and Development Directorate (WGDD) is planning to conduct in-country advocacy missions to the countries that are yet to ratify the Maputo Protocol as part of the broader campaign towards universal ratification of the Protocol.

On 29 June, 2017, a meeting on the "ratification, domestication and implementation of the Maputo Protocol" was held on the margins of the 4th High Level Panel, attended by the Special Rapporteur on the Rights of Women in Africa of the African Commission on Human and People's Rights (ACHPR), some Member States and members of civil society, to consult on the advocacy missions and strategic ways to secure additional ratifications of the Protocol.<sup>28</sup> Subsequently, country profiles were

23 Experience Sharing Forum on the African Charter on the Rights and Welfare of the Child 27 years in 2017, Ratify and Report, 2017, p10.

24 Ibid.

25 Ibid.

26 Communication No. 008 /Com/002/2016/Decision on Admissibility No.001/2017, para 2.

27 Ibid.

28 Briefing Note on the Advocacy Missions for the ratification, implementation and domestication of the Maputo Protocol at [https://au.int/sites/default/files/newsevents/workingdocuments/33442-wd-briefing\\_note\\_on\\_the\\_ratification\\_domestication\\_and\\_implementation\\_of\\_the\\_maputo\\_protocol.pdf](https://au.int/sites/default/files/newsevents/workingdocuments/33442-wd-briefing_note_on_the_ratification_domestication_and_implementation_of_the_maputo_protocol.pdf)

developed of the Member States who are yet to ratify the Maputo Protocol, which identifies, among others, challenges and opportunities towards ratification and suggests country-specific advocacy strategies.<sup>29</sup> This is in line with the recommendations from the Treaty Promotions workshop held on the margins of the STC on Justice and Legal Affairs on 15 November 2017, to, among others, promote stronger implementation and follow up on OAU/AU instruments and to conduct a study with a view to understanding the challenges hindering ratification of OAU/AU instruments.<sup>30</sup>

In 2019, the African Union Commission (AUC) undertook a High-Level Solidarity Mission to the Republic of Sudan, following which an in Country Advocacy Mission for the Ratification of the Maputo Protocol and Capacity Building Workshop on Human Rights and Women, Peace and Security was held. The solidarity mission was aimed at supporting the women of Sudan in their endeavours for a democratic, peaceful and inclusive Sudan, which incorporates women in decision-making at all levels. Among the key requests to the AUC, was support to strengthen the country's human rights protection institutions and reform laws to comply with international and continental women's rights standards, including ratification of the Maputo Protocol on Women's Rights. As a follow up to the Solidarity Mission, the women of Sudan attended and addressed the Open Session of the African Union Peace and Security Council on 17 October, 2019 at the AUC Headquarters in Addis Ababa, Ethiopia and participated in a one-day sensitization workshop on the Maputo Protocol on Women's Rights and the Women, Peace and Security Agenda.<sup>31</sup> The outcome of the workshop was a reiterated request for a more extensive capacity building training for women leaders to strengthen their capacity to advocate and campaign for the ratification of Maputo Protocol and for inclusion in peace and security processes.<sup>32</sup>

## *Implementation of Decisions on Communications*

By 2020 Kenya should have implemented the African Children's Committee's recommendations in the Children on Nubian Descent case; Uganda should have implemented the Children's Committee's recommendations in the Northern Ugandan Children case; and Senegal should have implemented the Committee's recommendations in the Senegalese Talibés case.

Decisions on Communications on the Nubian Case, the Northern Uganda Case and the Senegalese case have all benefited from *in situ* investigation or implementation follow-up by the ACERWC.<sup>33</sup> The cases against Kenya and Senegal were moreover made a subject of implementation hearings with government representatives during the Committee's 29th Ordinary Session in 2017.<sup>34</sup> All these three cases evidence the argument that the individual complaints mechanism under the African Children's Rights Charter holds a very strong potential to protect children in Africa. Progressive implementation of the decision of the Committee has been made by Kenya, while there has been no implementation in Uganda. **Some issues that** persist in Kenya include the practice of "vetting," burdensome document requests, and backlogs in the civil registration process and applications for national ID cards in general. In order to fully implement the Committee's decision, Kenya must address the discretion exercised by registration authorities in processing identity documents and end the "vetting" process.<sup>35</sup> Senegal has implemented a few of the recommendations and has been continually urged by the Committee to ensure full implementation of the decision.

### **Nubian Descent case**

The ACERWC in its first communication decided on merits in *Institute for Human Rights and*

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29 Ibid.

30 Ibid.

31 Ibid.

32 Ibid.

33 Mezmur (2017) p 144.

34 Ibid.

35 Children of Nubian Descent in Kenya v. Kenya <https://www.justiceinitiative.org/litigation/children-nubian-descent-kenya-v-kenya>

*Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of Children of Nubian descent in Kenya v Kenya*, dealt with the question of the right of the child to acquire a nationality and not be discriminated against in accessing services on the basis of nationality.<sup>36</sup> The Committee found the Government of Kenya in violation Articles 6 (2), (3) and (4) (the right to have a birth registration, and to acquire a nationality at birth), Article 3 (prohibition on unlawful/unfair discrimination); Article 11(3) (equal access to education) and Article 14 (2) (b), (c) and (g) (equal access to health care) of the ACRWC.

At the 29<sup>th</sup> ordinary session of the ACERWC in 2017, the delegation from the Government of Kenya presented the country's position on the progress it has achieved in implementing the decision of the ACERWC on the communication regarding children of Nubian descents in Kenya.<sup>37</sup> The measures taken by the government included that the government had made descendants of migrants and stateless persons eligible for registration for citizenship according to the 2010 Constitution, opening an 8 year window of registration of children up to 29 August 2019 and that the government had put in place a monitoring plan in health facilities to ensure that every birth is registered at any maternal health outlets and conducted accelerated mobile registration.<sup>38</sup> Additionally, the government established a guideline on orphan and vulnerable children; reengineered the education management information system; sensitized religious leaders on birth registration; distributed registration guidelines to registration agents and ensured that all births are registered as soon as they occur irrespective of any circumstance.<sup>39</sup> Further, the government also subsidized secondary school education; increased capitation in 2014/15 academic year, including fruits and vegetables in school feeding programs; initiated health facilities development; commenced free child delivery services, including HIV/AIDS education in the school curriculum and made the principle of non-discrimination central to issues of health and education. The delegation also expressed that legislative, administrative and other measures have been taken to comply with the decision of the Committee on the communication.<sup>40</sup> The government of Kenya further explained that it has put in place a long-term vision up to 2030 that will address the issues of various vulnerable groups within its social pillar.<sup>41</sup>

The government of Kenya in its second and third State Party report to the ACERWC submitted that birth registration is not tied to citizenship and therefore children of Nubian descent born in Kenya are accorded birth registration in terms of Articles 14, 15 and 16 (the right to nationality in Kenya by birth or registration and dual citizenship) and Article 53 (the right to a name and nationality from birth) of the Constitution.<sup>42</sup> The State also submitted that children of Nubian descent born in Kenya are accorded citizenship in terms of the Kenya Citizenship and Immigration Act No. 12 of 2011 if they meet the required measures set out. The Act makes provision for citizenship by birth, dual citizenship, and citizenship by presumption for foundlings who are or appear to be less than eight years old, citizenship by marriage, stateless persons, migrants and descendants of stateless persons and migrants. Additionally, the State Party implemented the Integrated Population Registration System which will be a database of all the details of an individual including information on birth and death, marriage and citizenship status. In March 2015, the system had recorded information for 16 million Kenyans and 200,000 refugees.<sup>43</sup>

## **Northern Ugandan Children case**

*Hansungule and others (on behalf of children in northern Uganda) v The Government of Uganda concerned the obligation of the Ugandan government to protect children in armed conflict, and in*

36 Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of children of Nubian descent in Kenya v. the Government of Kenya. Decision: No 002/Com/002/2009.

37 Report of the 29th Session of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) 2nd – 9th of May 2017 Maseru, Lesotho, ACERWC/RPT (XXIX).

38 Ibid, para 57.

39 Ibid.

40 Ibid.

41 Ibid, para 59.

42 The second and third State Party Periodic Report 2012- 2017 on the African Charter on the Rights and Welfare of the Child presented to the African Union November, 2018 p 23.

43 Ibid.

particular, not to recruit or use persons below the age of 18 in armed conflict, in line with article 22 of the Charter.<sup>44</sup> While there were reports that some of these recruitments were consensual on the part of the children, the ACERWC reiterated that the African Children's Charter does not leave room for the voluntary recruitment of children in armed conflict as every State Party to the Charter has the obligation to undertake all necessary legislative, administrative and other measures to prevent and address such a situation in Article 1 of the Charter. The Committee therefore found the State Party in violation of Article 22 of the Charter.

Before deciding on the communication, the ACERWC undertook a field mission to Uganda in February 2013. The government of Uganda has not yet reported on the progress of implementation of the communication to the Committee<sup>45</sup> and there is no evidence of the implementation of the recommendations of the Committee.

## Senegalese Case

In the *Centre for Human Rights (University of Pretoria) and La Recontre Africaine sur la Defense des Droits de l'Homme (Senegal) v Senegal case*, the ACERWC found the Senegalese government in violation of the obligation to protect children (talibes), in particular against enforced begging by religious teachers (Marabouts).<sup>46</sup> The Committee found multiple violations of the ACRWC which include Article 4 (best interests of the Child), Article 5 (survival and development); Article 11 (the right to education); Article 14 (health and health services); Article 15 (child labour); Article 29 (sale, trafficking and abduction); Article 16 (protection against child abuse and torture); and Article 21 (protection against harmful social and cultural practices).<sup>47</sup>

At the 29<sup>th</sup> session of the ACERWC, the delegation from the Government of Senegal presented the country's position on the progress it has achieved in implementing the decision of the ACERWC on the communication regarding *talibés* children who are forced to beg on the streets of Senegal.<sup>48</sup> The delegation submitted that measures that were taken include the following: the allocation of budget for the implementation of the recommendations (one hundred million CFA); supporting *Daaras* (Koranic schools) with nutrition; collaborating and signing of bilateral agreements with border countries for the return of children to their homes; accelerating the adoption of a child rights code; creation of 3 new children's courts in areas that do not have any; construction of 74 *Daaras* in the Northern part of the region; drafting of curriculum for *Daaras* that includes learning of Quran, Arabic and French subjects; setting up of norms, standards and time schedules for *Daaras* and strengthening access to medical coverage for *talibé* children with initiative for universal health coverage for children.<sup>49</sup>

The delegation further elaborated that based on the measures taken, certain positive results have been seen – which include an increase in the rate of children in school; better quality of education; the withdrawal of 1147 children from the street and enrolment of 2344 *talibé* children in health units.<sup>50</sup> It was also submitted that one of the major challenges holding back the implementation of the recommendations is the deeply rooted harmful traditional values of the society. The delegation expressed the strong desire of the Government of Senegal to ensure the full implementation of the recommendation and to create a Senegal where no child has to beg. Furthermore, the delegation expressed that the government is currently working with all relevant stakeholders, including religious leaders, members of the community, CSOs, the private sector and neighbouring countries.<sup>51</sup>

However, concerns were expressed on the rate of implementation of the recommendations, and suggestions were made to have a concrete timeline for the various efforts being undertaken towards

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44 No. 2/Com/002/2009.

45 See Mezmur BD 'Taking measures without taking measurements? An insider's reflections on monitoring the implementation of the African Children's Charter in a changing context of armed conflict' International Review of the Red Cross (2019), p645.

46 No. 3/Com/001/2012.

47 No. 3/Com/001/2012, para 82.

48 Report of the 29th Session of the ACERWC, para 61.

49 Report of the 29th Session of the ACERWC, para 62.

50 Report of the 29th Session of the ACERWC, para 63.

51 Report of the 29th Session of the ACERWC, para 63.

full implementation of the recommendations of the Committee. The Committee also suggested that a clear roadmap be developed by the Government in consultation with all stakeholders to address the matter in the foreseeable future. Members of the Committee also suggested that the Government should continue undertaking awareness raising activities and should implement the relevant laws regarding the *marabouts*.<sup>52</sup>

In considering the first periodic report of Senegal in 2019, the ACERWC noted a number of improvements made by the State Party such as the development of the Programme on *Daara* Reform and Regulation (2013), but was of the view that there is no full implementation of the decision of the Committee on the communication.<sup>53</sup> The Committee noted that the government of Senegal had still not passed the draft law establishing the legal status and regulations for *Daaras* or Koranic schools in order to stop the exploitation of children.<sup>54</sup> They recommended the passing of this law. The Committee also expressed concern that attitudes and practices against certain groups of children are still persisting in the country, particularly against girls, children in street situations and *talibés* children....<sup>55</sup> In this regard the Committee recommended that the government should launch an all-inclusive campaign to ensure that all groups of children in vulnerable and marginalized situations, such as girls, children in street situations and *talibés*, children with disabilities, and children living in rural areas, are not discriminated against, particularly undertake measures to prevent obstacles in accessing primary education and lower secondary education, health care, child-focused services and mechanisms for children to seek help, support and care and to report violent incidences, and birth registration services.<sup>56</sup> The Committee also remained concerned that children in Senegal continue to engage in child labour in agriculture and in the worst forms of child labour in forced begging.<sup>57</sup> While arrests and prosecutions of Quranic teachers for child abuse, exploitation, and forced child begging had increased slightly in recent years, the Committee also noted with concern that the justice institutions, such as the police, and prosecutorial offices, often still fail to investigate and prosecute allegations of child abuse, exploitation, and forced child begging, and charges and prosecutions against *Marabouts* continued to be dropped or sentences mitigated by the judiciary. Further, while welcoming the State Party's several projects to improve the lives of children attending the Koranic schools, the Committee was still concerned about the slow progress in finalising and adopting the law establishing legal status and regulations for *Daaras* or Koranic schools.<sup>58</sup> The Committee, while appreciating the State Party program to remove children from the streets, remained concerned that many of these children were later returned to the same Quranic teachers who had forced them to beg.<sup>59</sup>

## Follow-up System on Communication findings and Concluding Observations

By 2020 the ACERWC should have in place an effective system for the follow-up of recommendations in findings on communications and in Concluding Observations, including follow-up visits to States; the Committee should in particular have followed up on the implementation by Kenya, Uganda and Senegal in the Children on Nubian Descent case, the Children in Northern Uganda case and the Senegalese Talibés case.

The Committee has established guidelines in accordance with its mandate in article 44 of the

52 Report of the 29th Session of the ACERWC, para 64.

53 Concluding Observations and Recommendations by the African Committee of Experts on the Rights and Welfare of the Child on the Republic of Senegal Periodic Report on the status of implementation of the African Charter on the Rights and Welfare of the Child, 2019, para 4(d).

54 Ibid, para 8.

55 Ibid, para 14.

56 Ibid, para 14 (b).

57 Para 41.

58 Para 42.

59 Para 43.

Charter, which regulate the procedure to be followed for the implementation of decisions on Communications.<sup>60</sup> To ensure that there is effective follow – up, the Committee established the practice of implementation hearings which include an oral presentation and adoption of guiding recommendations to enable the respondent State to fully implement the decision of the Committee.<sup>61</sup> Additionally the guidelines also empower the Committee to appoint a rapporteur from amongst its members to follow up on the implementation of decision. The Committee conducted implementation hearings for the Nubian descent case and the *Talibés* case at its 29<sup>th</sup> ordinary session in 2017, the outcome of which has been discussed above.<sup>62</sup> The Committee has also had implementation hearing for the Minority Rights Group International and SOS-Esclaves on behalf of Said Ould Salem and Yarg Ould Salem V. The Republic of Mauritania during its 34<sup>th</sup> Ordinary Session in 2019.

## ***Follow up Missions on implementation of Concluding Observations***

To give effect to its mandate under Article 45 of the Charter, the Committee developed comprehensive guidelines on the contents and procedure of investigation missions, guiding principles of Investigation missions, preparation of mission reports and the following up on missions.<sup>63</sup> During the reporting period, the Committee has conducted 5 follow – up missions to monitor the level of implementation of the concluding observations and recommendations issued to governments after consideration of their State Party reports. These missions were conducted in Liberia (2019), Guinea (2019), Mozambique (2018), Ethiopia (2018), Zimbabwe (2019), Rwanda (2017), Madagascar (2018) and Mali.

Noting that in all these missions, there is no full implementation of the Concluding Observations, the Committee reemphasized and urged the government of Liberia to harmonize its customary and statutory marriage laws with the Charter; ban corporal punishment in all settings and undertake awareness creation activities to introduce positive disciplining and explicitly ban FGM.<sup>64</sup> The Committee encouraged the government of Guinea to speed up the process of adopting the Children’s Code and the promulgation / dissemination of the Civil Code and continue the fight against FGM-C and child marriages.<sup>65</sup> It was noted that Madagascar still faces challenges on areas related to sexual tourism, access to clean water, birth registration and early child pregnancy. It was also noted that there is a lack of coordination between all the bodies which safeguard the rights of the child.<sup>66</sup>

The outcome of the mission to Ethiopia revealed some notable positive changes including, the increase in access to education, the drop in the number of child marriages as well as the establishment of the Children’s Legal Protection Centre and increase in number of child-friendly courtrooms around the country.<sup>67</sup> While there were a number of positive changes noted, some challenges were also identified in Ethiopia. it was found that there was still a lack of coordination between the stakeholders and their efforts in the field of children’s rights. The ongoing conflict and drought had also increased the number of internally displaced persons, child marriage is also still an issue and the dropout rates for girls are still staggering.<sup>68</sup> Furthermore, issues of low birth registration, children in street

60 ACERWC Guidelines for Implementation of Decisions on Communications, p4 available at: [https://www.acerwc.africa/wpcontent/uploads/2019/09/Implementation\\_Hearing\\_Guidelines\\_English.pdf](https://www.acerwc.africa/wpcontent/uploads/2019/09/Implementation_Hearing_Guidelines_English.pdf)

61 Ibid.

62 See details of the hearings and their outcomes under ‘Implementation of communications’ above.

63 Available at: [https://www.acerwc.africa/wpcontent/uploads/2018/07/ACERWC\\_Guidelines\\_on\\_Investigation.pdf](https://www.acerwc.africa/wpcontent/uploads/2018/07/ACERWC_Guidelines_on_Investigation.pdf)

64 Report of the ACERWC on the follow-Up mission conducted to monitor the implementation of its concluding observations and recommendations to the Republic of Liberia, 2020, p2.

65 CAEDBE Mission Report on the monitoring of the implementation of its final observations and recommendations addressed to Government of the Republic of Guinea on the initial report from Guinea, 2019, p11.

66 Report of the 32nd session of the Committee, 2018, para 118.

67 Report of the ACERWC on the follow-up mission conducted to monitor the implementation of its concluding observations and recommendations to the government of Ethiopia, 2018, para 120, 121

68 Report of the ACERWC on the follow-up mission conducted to monitor the implementation of its concluding observations and recommendations to the government of Ethiopia, 2018, para 120, 121

situations, the low level of quality education and high rates of child labour and trafficking are also alarming. Finally, the detention of children with adults and age of criminal responsibility set at nine years were also a cause for concern.<sup>69</sup> The Committee recommended to the government of Ethiopia to fast-track the process of the adoption of a child rights law; revise the age of criminal responsibility to make it consistent with international law and identify cases where girls' drop out from school and devise strategies to retain them in schools.<sup>70</sup>

The Committee observed that its recommendation on the adoption of the General Amendment Bill was implemented as it was adopted in 2017 by the government of Zimbabwe.<sup>71</sup> However, the Committee's recommendation for the State Party to amend or finalise amendments of various legislations including the Children's Act, the Marriage Act, Birth and Death Registration Act, Education Act, and Inheritance Act had not been done.<sup>72</sup> The Committee encouraged the government to prioritize laws that affect children in the process of harmonization of laws with the Constitution given the large number of laws being considered for alignment.<sup>73</sup> It also encouraged the government to consider establishing a separate Ministry to deal with protection and promotion of children's rights including the mandate to coordinate the work among other ministries and organs of the Government in relation to children's rights issues; sensitize communities about the negative impact of corporal punishment and introduce various modes of positive discipline in schools and at home.<sup>74</sup>

## ***Submission of State Party Reports***

By 2020 all States that have not yet done so (Benin, Botswana, Burundi, Cape Verde, Djibouti, Equatorial Guinea, The Gambia, Guinea-Bissau, Seychelles, Swaziland and Zambia) should have submitted their initial reports; all other State parties should continue to submit periodic reports about the implementation of the African Children's Charter;

By 2020, the ACERWC should have targeted Benin, Botswana, Burundi, Cape Verde, Djibouti, Equatorial Guinea, The Gambia, Guinea-Bissau, the Seychelles, Swaziland and Zambia to submit their reports; these State parties have, by 2016, never submitted a State report to the African Children's Committee; at the same time they have all submitted at least their initial reports to the UN CRC Committee; in the absence of a report, the African Children's Committee should have proceeded to examine the human rights situations in these countries, based on available information, including civil society reports

Ratification and reporting on the Charter is a reaffirmation and confirmation of States' commitment to protect children's rights. Reporting brings various relevant opportunities to State Parties, among others, to evaluate how far States have gone in domesticating the charter; to assess how far they have aligned their laws & policies to the Charter, to examine measures taken to respect, protect & fulfil children's rights, to challenges in the implementation of the Charter, and to get insights and recommendations from the ACERWC on measures to reinforce implementation of the Charter.<sup>75</sup>

Lack of State Reporting is one of the challenges the Committee is facing. The ACERWC has highlighted that as a matter of priority States should allocate budget to the process of reporting to the Committee.

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<sup>69</sup> Report of the ACERWC on the follow-up mission conducted to monitor the implementation of its concluding observations and recommendations to the government of Ethiopia, 2018, para 120, 121.

<sup>70</sup> Report of the ACERWC on the follow-up mission conducted to monitor the implementation of its concluding observations and recommendations to the government of Ethiopia, 2018, para 120, 121.

<sup>71</sup> Report of the ACERWC on the follow-up mission conducted to monitor the implementation of its concluding observations and recommendations to the Republic of Zimbabwe 12-15 June, 2019, p5.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid, p12.

<sup>74</sup> Ibid.

<sup>75</sup> Report of the Experience Sharing Forum on the Implementation of the African Charter on the Rights and Welfare of the Child held in Mauritius on 27-28th September 2017, para 8.

State Parties can also receive support for reporting from UNICEF and other organizations. Of the 50 States which have ratified the Charter, Forty one have submitted at least their initial report to the ACERWC.<sup>76</sup> Of these Kenya, Rwanda, Burkina Faso, Tanzania, South Africa, Niger, Nigeria, Ethiopia, Guinea and Senegal have submitted their periodic reports. Additionally, Burkina Faso, Rwanda, and Kenya have submitted their 2nd periodic reports. Between 2016 and 2020 the Committee received initial State Party reports from Benin, Burundi, Guinea Bissau, Swaziland, Seychelles and Zambia. By 2020 countries which still have not submitted any report to the ACERWC are: Botswana, Cape Verde, Central African Republic, Djibouti, Equatorial Guinea, Gambia, Libya, Mauritius, and Sao Tome and Principe (Initial report yet to be due).

While the Rules of Procedures of the Committee make provision for the consideration of the situation of children's rights in a State party in the absence of a State party report, the Committee seems to have preferred not to invoke such a rule but rather engage and support State parties to report.<sup>77</sup> Such an approach is reflected in the most recent AU Executive Council report, in which it asked the Committee to continue to support the efforts of State parties that have not reported to enable them to report.<sup>78</sup>

## **OUTCOMES OF EXPERIENCE SHARING ON STATE REPORTING AND PLEDGES**

### **Is there a responsible organ to prepare State Party reports?**

There is responsible coordination mechanisms/councils or offices such as ministries of foreign affairs or social development or women or justice or in the office of the Prime Minister in many countries. Burkina Faso, South Africa, and Tanzania are examples with specific coordination mechanisms. In many countries there are drafting teams who prepare the report and submit to the responsible ministry for stakeholder engagement and input. In some other countries like South Africa and Sudan, there are treaty body reporting organs tasked with the preparation of State Party reports.

### **Is there sufficient and necessary budget allocated to the process of the preparation of State Party reports?**

In terms of budget allocation, States allocate some sort of budget to the reporting process, but the budget is not sufficient. Hence, most of the budget to the process comes from donors such as UNICEF. However, in some countries like South Africa, the government fully funds the preparation of the reports.

### **How is information and data for the report gathered?**

Information is gathered through consultations with various sectoral ministries and departments. However, there are challenges in getting national representative data. Countries like the Gambia with no children's or social ministries use civil society for data gathering. Often there is reliance on individual consultants or focal points/individuals within ministries, which threatens sustainability and has budget implication. Consultations are undertaken with civil society including children's and youth organizations, e.g. children's parliaments. However, most of the consultation is adult-driven with children with disabilities and other marginalized ones largely left out. There is also a challenge in identifying and reaching consensus on the objectives of consultations among children and various stakeholders

76 Thirty-Sixth Ordinary Session of the AU Executive Council 'Activity Report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC)' 06 - 07 February 2020, Addis Ababa, Ethiopia, p2.

77 Mezmur (2017), p143.

78 Ibid.

### **Is there deliberate coordination amongst organs?**

While pointing out that coordination among the various ministries is paramount, it was indicated that most ministries do not understand their role in relation to children's rights which makes coordination difficult. Moreover, there is no clear understanding among ministries on which ministry is responsible to organize the coordination as it raises an authority issue. It was recommended that MOU's should exist among the various ministries to clear the misunderstandings regarding coordination.

### **What are the challenges in preparing State Reports?**

In most countries, there are challenges of capacity, budget and weak collaboration among the various sectoral actors. Many countries rely on UNICEF for most of their reporting needs both budget-wise and for capacity building. Countries such as Nigeria where there is federalism experience delays in terms of getting nation-wide consensus since each state must domesticate a treaty and agree on the report. In addition, there is a challenge in obtaining information from various ministries as child rights issues are not mainstreamed in their plans and work. Lack of political will to establish an organ which develops reports, workload, lack of up-to-date data, and socio-economic crisis were also flagged as challenges during the presentations.

### **Pledges**

The Government of the Gambia pledged to submit its combined initial and periodic report before the end of December 2017.

The Government of Mauritius vowed to submit its initial report before the end of 2017. Moreover, it assured to mobilize resources to translate the Charter to local languages and widely disseminate it, and to engage the National Children's Council in matters affecting children.

The Government of Swaziland pledged to submit its combined initial and periodic report by the end of December 2017. In relation to implementation of the Charter, it was promised that the Government will undertake committed interventions and collaborate with other stakeholders.

The Government of Seychelles pledged to finalize the compilation of its combined initial and periodic State Party report and submit to the Committee by 2018.

The Government of Niger pledged to continue the submission of reports and in one year's time to start engaging the Children's Parliament and the National Council of Youth in the preparation of reports.

The Government of Burundi pledged to regularly submit its periodic reports.

The Government of Cameroon promised to continue to respect its obligation regarding submission of reports and to take into consideration ACERWC's Concluding Observations in national works of child protection.

The Government of Equatorial Guinea promised to regularly submit its reports starting from 2018.

## *Implementation of Recommendations on Concluding Observations*

By 2020 States should have given full effect to the Concluding Observations issued after the examination of their reports

The effectiveness of the reporting procedure for holding governments accountable to their obligations under the ACRWC is seen in the implementation of the ACERWC's recommendations after examining State reports. CSOs and RECs play a significant role in the implementation of concluding observations and recommendations. CSOs analyse State reports and in consultations with the national coalitions, try to pick the hot issues in the region. They further encourage States to report and to implement the recommendations of the ACERWC.<sup>79</sup> CSOs who are members of the national coalitions speak to State parties to comply with their reporting obligations and support them in the preparation of the reports.<sup>80</sup> The Children's Rights Network of Southern Africa (CRNSA) developed a child rights barometer assessment to solicit the domestication of the charter and the implementation of concluding observations and recommendations of the ACERWC. The mechanism encourages states to report and implement on time by creating experience sharing forums. Such forums incentivise commitment and political will.<sup>81</sup>

Several State parties have implemented the recommendations of the Committee in their States. However, the Committee has identified some reasons which contribute to non-compliance in the implementation of the Committee's recommendations including: lack of (Inadequate) legislative and institutional frameworks that can facilitate the implementation of the decisions of ACERWC and sometimes lack of capacity to implement; lack of political will from some States to implement the decisions of ACERWC; lack of budgetary allocation to implement the decisions and recommendations of ACERWC and lack of collaboration among government organs and other stakeholders.<sup>82</sup> Decisions and recommendations require an "owner" entrusted to implement them at national level. When State parties receive ACERWC recommendations and decisions they seldom communicate the recommendations to the organ responsible for implementing them or assign an organ for their implementation. This generates a situation where no national organ is accountable for their implementation.<sup>83</sup> The Committee further notes that there is a perceived lack of finality in the decisions and recommendations of the ACERWC as states do not consider them as being legally binding despite the obligations of Member States articulated in Article 1 of the Children's Charter. In this regard, the Committee reiterates that there is an ongoing discussion on the possibility of amending article 5 of the Protocol on the establishment of the African Court with a view to include the ACERWC as an AU Organ which can directly access the Court.<sup>84</sup>

The ACERWC in its first concluding observation to Rwanda recommended that the State Party should engage in legislative reform in order to harmonize and define a single age for children, to be 18 years, in line with the ACRWC.<sup>85</sup> In response, Rwanda stated that it was drafting a Family and Persons Law that would incorporate the recommendation of the ACERWC.<sup>86</sup> In 2016, Rwanda adopted the law setting the age of majority at 18 years and the minimum age for marriage at 21

79 Report of the Experience Sharing Forum on the Implementation of the African Charter on the Rights and Welfare of the Child held in Mauritius on 27-28th September 2017, para 10.

80 Ibid.

81 Ibid.

82 Thirty-Sixth Ordinary Session of the AU Executive Council 'Activity Report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC)' 06 - 07 February 2020, Addis Ababa, Ethiopia, para 35.

83 Ibid.

84 Ibid, para 36.

85 Concluding recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) to the Republic of Rwanda on the initial report of the implementation of the African Charter on the Rights and Welfare of the Child, 2010, p3.

86 Rwanda Second and third periodic reports on the implementation of the African Charter on the Rights and Welfare of the Child: Period 2006-2013 (February 2014).

years.<sup>87</sup>

In 2010, the Committee requested the government of Uganda to redouble its efforts in the fight against harmful traditional practices and to take urgent measures to prohibit these harmful practices and for the Committee to adopt a family code to standardize marriage practices, applicable to all Ugandans, which also takes into account the rights and welfare of the child.<sup>88</sup> In 2016, Uganda enacted an amendment to its Children's Act to penalise any harmful cultural or customary practises with a term of imprisonment up to 7 years or a fine or both.<sup>89</sup>

In 2015, the Committee urged Zimbabwe to raise the minimum of age of criminal responsibility to the international standard of the age of 12 years and to legally guarantee that children are not sentenced to life. Further, the Committee recommended the State Party to establish juvenile courts throughout the country and introduce diversion programs in the criminal justice system and to establish rehabilitation centres for children in conflict with the law.<sup>90</sup> Following the recommendations by the Committee, Zimbabwe initiated the drafting of a Child Justice Act (still ongoing) which covers all aspects of criminal justice relating to children including the minimum age of criminal capacity of children (proposed to be 12 years), establishment of child justice courts, sentencing for child offenders, their detention and assessment, circumstances under which matters may be diverted away from the formal criminal justice system and the entrenchment of the concept of restorative justice for child offenders as well as measures to prevent child delinquency.<sup>91</sup>

The ACERWC recommended that Kenya should educate children on their responsibility towards the family and national community and empower them to contribute to building solidarity.<sup>92</sup> In response, in its second report to the ACERWC, Kenya stated that through platforms including child rights clubs, the celebration of the Day of the African Child and targeted assemblies, children are sensitized to responsibilities towards family, community and the nation.<sup>93</sup>

The ACERWC also recommended that South Africa should eliminate barriers (legal and non-legal) to their access to social services.<sup>94</sup> In response, South Africa adopted a National Action Plan for Children (2019–2024) which has an action area on the development and implementation of a protocol to streamline delivery of services in a timely manner to refugees, asylum-seekers and migrant children.

## ***States' Co – operation with the ACERWC's mandate***

By 2020 States should have co-operated fully with the African Children's Committee in the exercise of its promotional and protective mandate

<sup>87</sup> Rwanda, Law No 32/2016 Governing Persons and Family (2016), para. 24.

<sup>88</sup> Recommendations and observations sent to the government of the Republic of Uganda by the African Committee of Experts on the Rights and Welfare of the Child on the Initial Implementation Report of the African Charter of the Rights and Welfare of the Child, 2010.

<sup>89</sup> Section 7 (3) of Uganda Children's Amendment Act, 2016.

<sup>90</sup> Concluding Observations and Recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the Republic of Zimbabwe Report on the Status of implementation of the African Charter on the Rights and Welfare of the Child, 2015.

<sup>91</sup> Inter-Ministerial Task-Force on the Alignment of Legislation (IMT) Technical Committee Ministry of Justice, Legal And Parliamentary Affairs Draft Discussion Paper on the Development of the Child Justice Bill available at <http://www.justice.gov.zw/imt/wp-content/uploads/2017/10/child-justice-bill-imt-discussion-paper-ministry-of-justice-legal-and-parliamentary-affairs-17-oct-2017.pdf>

<sup>92</sup> Concluding recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the Kenya first periodic report on the status of implementation of the African Charter on the Rights and Welfare of the Child, para. 54.

<sup>93</sup> Kenya second and third State Party periodic report 2012-2017 on the African Charter on the Rights and Welfare of the Child (November 2018) p 72.

<sup>94</sup> Concluding observations and recommendations of the African Committee of Experts on the Rights and Welfare of the Child to the government of the Republic of South Africa on its first periodic report on the implementation of the African Charter on the Rights and Welfare of the Child (2019), para 14.

The ACERWC has an extensive mandate to ensure that State Parties comply with their treaty obligations under the Charter. The Committee performs its promotional and protective mandate through receiving and examining State Reports and giving recommendations, receiving individual communications on alleged violations of children’s rights, conducting ad hoc missions and on-site visits, establishing principles for protecting children’s rights and interpreting provisions of the ACRWC through general comments.<sup>95</sup> State Parties can fully co-operate with the mandate of the ACERWC by ensuring that they implement recommendations given by the ACERWC after examining State Reports, aligning their domestic laws with the African Charter, allowing the Committee to conduct missions in their State Parties unhindered, and report regularly to the ACERWC. State Parties can also show co-operation by regularly reporting and allowing the Committee to conduct missions in their countries.

Since 2016 several African countries have developed and amended their laws and policies to align with the African Children’s Charter and co-operate with the protective mandate of the ACERWC. In 2017, Burundi submitted to the AECRWC that it has developed a Child Protection Code in order to strengthen the protection and promotion of the rights of the child.<sup>96</sup> Uganda, in its 2016 Children’s Amendment Act included a comprehensive list of children’s rights which were not present in its 1997 principal Act.<sup>97</sup> In 2017, Somalia launched a Child Rights Bill drafting process.<sup>98</sup> Senegal also drafted a Children’s Code which is yet to be adopted.<sup>99</sup> Additional reforms include Seychelles’ amendment of its Children’s Act in 2016,<sup>100</sup> Ghana’s amendment of its Children’s Act in 2019<sup>101</sup> and Rwanda’s amendment of its Children’s Act in 2016 to penalise any harmful customary or customary practises with a term of imprisonment not exceeding 7 years or a fine.<sup>102</sup>

There has been a downward trend in the number of State Reports being submitted by State Parties to the ACERWC since 2016. This lack reporting could be attributed to lack of periodic engagement with State Parties by the Committee and CSOs and in some instances reporting fatigue. Although State Parties are required to submit reports every three years, the ACERWC has tried to reduce this reporting fatigue by indicating in its guidelines for reporting that States that have submitted a report to the CRC Committee, can use the elements of the same report and submit to the African Committee by highlighting the specificities of the African Children’s Rights Charter.<sup>103</sup>

The Table below shows the downward trajectory.

Between 2016 and 2019- the ACERWC considered 22 Reports	
28 <sup>th</sup> Ordinary Session (Oct – Nov 2016)	Cameroon, Eritrea, Ghana
29 <sup>th</sup> Ordinary Session (May 2017)	Chad, Comoros, Cote d’Ivoire, Tanzania
30 <sup>th</sup> Ordinary Session (Dec 2017)	Angola, Sierra Leone
31 <sup>st</sup> Ordinary Session (April – May 2018)	Burkina Faso, Burundi, Malawi, Niger
32 <sup>nd</sup> Ordinary Session (Nov 2018)	South Africa, Zambia
33 <sup>rd</sup> Ordinary Session (March 2019)	Benin, Eswatini, Rwanda, Nigeria, Senegal
34 <sup>th</sup> Ordinary Session (Nov – Dec 2019)	Mauritania
35 <sup>th</sup> Ordinary Session (August – September 2020)	Kenya

95 See <https://www.acerwc.africa/mandate/>

96 Initial Implementation Report African Charter on the Rights and Welfare of the Child of the Republic of Burundi 2017, para 10.

97 Section 4 of Uganda’s Children’s Amendment Act, 2016.

98 Initial report submitted by Somalia under article 44 of the Convention on the Rights of the Child, due in 2017, CRC/C/SOM/1, 2019, para 34.

99 Concluding observations and recommendations of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the initial report of the Republic of Senegal on the status of the implementation of the African Charter on the Rights and Welfare of the Child, 2019, para 5.

100 Seychelles Children (Amendment) Act, 2016.

101 Ghana Children’s Act 560 of 1998 (as amended, 2019).

102 Section 7 (3) of Uganda’s Children’s Amendment Act, 2016.

103 Mezmur 2017.

A closed session discussion with invited partner organisations, namely, UNICEF, Save the Children, Plan International and ACPF on enhancing States' compliance in submitting State Party Reports was held at the 34<sup>th</sup> session of the Committee in 2019. To address the declining rate in submission of State party reports it was noted that there is a need to have sensitization and advocacy programs that aim to initiate State parties to comply with their reporting obligation to the Committee.<sup>104</sup> It was also noted that it would be important to organise workshops that bring together countries that have never reported and countries whose periodic report has been due for more than five years. During the discussion, the representatives of the above-mentioned organisations, pleaded to work closely with the Committee to enhance the submission of State party Reports. Proposals were also made for the partner organisations to consider aligning their programs and support in line with the main mandate of the Committee, establish dedicated funds around the State party reporting procedure and create a network of organisations which will be working with Governments and the ACERWC to support the State Party reporting procedure.<sup>105</sup> Additionally, the Committee can further engage with national human rights institutions around reporting and follow up on implementation of concluding observations conducted by the Committee.<sup>106</sup>

The cooperation of States in allowing the Committee to undertake country visits has increases as the Committee was able to visit many countries than ever during the reporting period in following-up the implementation of its recommendations and decisions, as well as undertaking advocacy and fact finding visits. However, more needs to be done in terms of swift response as well as receiving the Committee and its special mechanisms for various types of visits including investigative missions.

While the engagement of States in implementing the recommendations of the Committee has improved, there is gap in the implementation of the decisions of the Committee as well as its urgent appeals forwarded to Member States. The same concern was flagged by the Chairperson of the Committee in his key note speech during the 35<sup>th</sup> Ordinary Session of the Committee.

## *Activities to Popularise the ACRWC*

By 2020 States should have undertaken and supported activities to make the Children's Charter better known and understood at the domestic level, for example, by supporting activities related to the annual Day of the African Child, with the full and effective participation of children.

Several State parties to the ACRWC have undertaken activities to disseminate the Charter through diverse activities. In Malawi, the Charter is disseminated in simplified versions to schools and community based structures among other platforms and child rights trainings given to police officers, healthcare workers, magistrates, community development officers.<sup>107</sup> Kenya has also partnered with various child focused organizations to develop compendiums of children's laws that include the Charter, which has been disseminated to many schools in the country. The State party has also partnered with media outlets to create awareness and promotion of children rights as stipulated in the Charter.<sup>108</sup> The Committee appreciated the translation of certain provisions of the African Children's Charter into Wolof (native Senegalese language) by the Association of Senegalese Jurists.<sup>109</sup>

104 34th Session of the Committee, para 143.

105 Ibid.

106 Mezmur (2017), p143.

107 Concluding observations and recommendations of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the initial report of the Government of Malawi on the status of the implementation of the African Charter on the Rights and Welfare of the Child, 2018, para 7.

108 Kenya Second and third State Party periodic report 2012-2017 on the African Charter on the Rights and Welfare of the Child (November 2018) p13.

109 Concluding Observations and Recommendations by the African Committee of Experts on the Rights and Welfare of the Child on the Republic of Senegal Periodic Report on the status of implementation of the African Charter on the Rights and Welfare of the Child, 2019, para 7.

In May 2016, the Ministry of Justice of Burundi organised a 3-week training course on Children's Rights and Juvenile Justice for magistrates prosecuting or dealing with cases involving juveniles in conflict with the law. The training was aimed to: popularise the rights of the child; ensure a thorough understanding of the principles and content of the various child rights instruments and develop the implementing domestic instruments; allow training beneficiaries to integrate the content of these child rights instruments into professional activities and practices; and build capacity to promote behavioural change.<sup>110</sup> Additionally, legal texts and training manuals are also translated to Kirundi (the national language of Burundi) in order to reinforce the programmes of popularisation of the rights of the child.<sup>111</sup>

## **Day of the African Child (DAC)**

The ACERWC recognizes the importance of the Day of the African Child (DAC) as an advocacy tool for enhancing the visibility of the Charter as well as promoting children's rights and welfare issues. In the reporting period, the Committee celebrated DAC each year including by taking the continental celebration to various countries. The 2016 continental commemoration of the DAC was hosted by the Government of Ethiopia in the city of Gambella, which is host to more than 273,000 refugees, the majority of whom are children, most of whom have fled conflict in South Sudan. The commemoration was comprised of three child-focused events: a two-day training workshop for children; a mini-marathon for peace in the city of Gambella and the official DAC commemoration in Jewish Refugee Camp.<sup>112</sup> The DAC was celebrated in Mauritania, Sierra Leone, Namibia, Mozambique, Kenya and Chad among other regional and international coverage of the DAC.

In 2019, 1652 adults and 1373 children participated in the commemoration of the DAC.<sup>113</sup> The feedback from the 2019 DAC survey highlighted the following issues; that there is need for early preparation for better implementation, enhanced government ownership and improved coordination among various stakeholders, improved child participation, improved inclusive community and partner engagement, institution of the DAC communication strategy, and enhanced reporting on the themes.<sup>114</sup>

The 2020 celebrations of the DAC took place in several regions and was limited mostly to online platforms. In Mauritania, the African Movement of Working Children and Youth (AMWCY – a child led CSO) of Mauritania celebrated the DAC in Covid-19 mode. The AMWCY organized a debate related to the theme: "Access to justice adapted to children in Africa" in the WhatsApp group of AMWCY in Mauritania. To magnify the day, the AMWCY chose one of the first animators of the AMWCY of Nouakchott who works directly with people in conflict with the law and particularly children. The debate sparked a lot of exchanges and sharing while the discussions focused on the following points: definition of the terminology of juvenile justice in Mauritania, its causes and consequences, the question of reintegration of children in trouble with the law in their family and within the community, and the role of AMWCY on the issue of 'children in trouble with the law.'<sup>115</sup>

AMWCY / Uganda known as Working Children and Youth Movement Uganda (WCYMU), organized a regional meeting to mark the DAC and share experiences on access to child-friendly systems in East, Central and Southern Africa. Among the countries that participated in this regional meeting were Uganda, Tanzania, Zimbabwe and DR Congo. Discussions focused on defining child-friendly justice systems, national as well as international commitments. One of the main results of the meeting was that, while most national laws recognized the rights of the child and that laws exist, the real situation on the ground remained different. It has been observed that the perpetrators of crimes against children continue to escape prosecution and punishment, that investigations, prosecutions and judgments are slow due to ineffective methods of treatment, among others. Efforts have included the use of child-friendly courts, the use of child protection committees, children's ongoing

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110 Initial Implementation Report African Charter on the Rights and Welfare of the Child of the Republic of Burundi 2017, para 19.

111 Initial Implementation Report African Charter on the Rights and Welfare of the Child of the Republic of Burundi 2017, para 20.

112 28th Session of the ACERWC, para 33.

113 34th Session of the ACERWC.

114 34th Session of the ACERWC, para 131.

115 See CALAO EXPRESS 196 (July 2020) Electronic bulletin of the African Movement of Working Children and Youth (AMWCY).

awareness of the justice system, creating synergies with responsible bodies such as the police to ensure that offenders are prosecuted, among other measures.<sup>116</sup>

The AMWCY of Benin devoted the day of June 16 to reflect on as many alternative suggestions as possible to protect the children and youth who work in the marketplaces, motor parking stations and learning centers. In addition, through the apprentices of the training center called 'Victims in Actors' the AMWCY/Benin made more than 1000 mufflers (scarfs) which it distributed to vulnerable working children and youth from towns and villages in each department of Benin. This muffler distribution campaign lasted throughout June under the supervision of the national coordination of the AMWCY in Benin.<sup>117</sup>

With the easing of containment measures, the AMWCY/ DRC commemorated the DAC at the children's department in the central prison of Bukavu in the Democratic Republic of Congo. The goal was to show these children that COVID-19 is a reality, since some of them are unaware of its extent. The WCY did not only proceed with the distribution of mufflers and hydro-alcoholic gel but also with the sensitization of the children on the respect of the barrier gestures. All this was done in a friendly atmosphere alongside the judicial authorities of the central prison of Bukavu.<sup>118</sup>

## ***Engagement with the ACERWC***

By 2020 States should have appointed a senior and well-respected official as a focal person between the government and the African Children's Committee

State parties engage with the ACERWC based on previous engagements within the Ministries responsible for children's rights in their States. The Committee mainly interacts with States through the national office or Ministry established to deal with child rights issues. The Committee has established a good working relationship with the relevant organs at State Party level in most State Parties. In many countries the ACERWC has officers that they liaise with. For example, Cameroon has an inter-ministerial committee housed in the Prime Minister's office which engages with the Committee and coordinates the different actions in support of children in the country. The inter-ministerial committee also follows up the implementation of the recommendations/decisions of treaty monitoring bodies.<sup>119</sup> South Africa has the National Children's Rights Intersectoral Coordination Committee which coordinates and monitors compliance with policies and legislation aimed at the realisation of children's rights across all sectors. The Committee holds meetings quarterly and different departments share, deliberate on achievements, challenges on implementation of policies and legislation on the realisation of children's rights, and further ensure that periodic treaty obligation reports to the ACERWC are compiled with.<sup>120</sup> However, the Committee struggles to get response from some countries despite sending Note Verbal and reaching out through other mechanism.

## ***Providing Resources to the ACERWC***

By 2020 States should have provided adequate resources to strengthen the operational capacity of the African Children's Committee.

State parties to the African Union, through the AU, allocate funding to strengthen the capacity of the Committee. The AU is showing an encouraging trend in allocating more resources to the Committee, though not sufficient. The Table below shows the trend in the allocation of funding by the AU in the past five years.

116 Ibid.

117 Ibid.

118 Ibid.

119 Cameroon Periodic Report on the Implementation of the African Charter on the Rights and Welfare of the Child, 2011-2014, p9.

120 Second State Party Report to the African Union's Committee of Experts on the Rights and Welfare of the Child, 2013 – 2016, para 11.

Budget Year	2016	2017	2018	2019	2020
Approved budget (USD)	739.178	827.556	883.509	881.102	1 947.598 <sup>121</sup>

## Implementation of Decisions on Communications

### Progress by the ACERWC

#### *Inception workshops for new Committee members*

By 2020 the ACERWC should have continued organizing inception workshops for new Committee members

The Committee has an induction program for new Members, which also includes existing members (a kind of refresher course). This has been presented to every incoming Committee since 2009. This has continued over the course of the mid-term implementation period of the Agenda.

#### *Training Programs for CSOs and State Officials*

By 2020 the ACERWC should, in collaboration with the relevant AU organs, have developed training programmes to improve the technical capacities of key State officials and members of civil society to undertake the reform of children-related laws and policies and to prepare accurate and effective State reports under the African Children's Charter

On July 2020, the ACERWC in collaboration with UNHCR launched a regional e-learning course on the eradication of statelessness among children in East Africa and in the Horn of Africa.<sup>122</sup> The course is shaped to suit the African context and has been designed mainly for participants from NHRI's and Civil Society Actors (NGO) working in countries of East and Horn of Africa.<sup>123</sup> The Committee in collaboration with ACPF is currently undertaking a study on harmonization of laws in Africa. Based on the outcome of the study, the Committee intends to conduct forums and trainings. The ACERWC also organised a "ratify and report" forum in 2017 to encourage the ratification of, reporting on, and implementation of the Charter.

Taking into consideration the significant role that Regional Economic Forums (RECs) can play in advancing children's rights in general and the aspirations of Agenda 2040 in particular, the ACERWC in its 30th Ordinary Session decided to engage RECs in the dissemination and implementation of the Agenda. The ACERWC has also been engaging with RECs for the past few years in order to enhance child rights protection frameworks at sub-regional level. The Committee has developed a collaborative plan of action with RECs and engages them in various activities. Between 2018 and 2019, the Committee organized meetings at REC level on various child rights issues including cross border issues affecting children. Such meetings were organized with East African Community

<sup>121</sup> The budget for the Committee increased because in 2019, the Executive Council decided to fund the programme budget of ACERWC from Member States contributions starting from the 2020 budget year, in accordance with Decision Assembly/AU/Dec.561(XXVI) of January 2015.

<sup>122</sup> See UNHCR- ACERWC Learning Course on Eradication of Statelessness among children in East and Horn of Africa Regions at <https://www.acerwc.africa/Latest%20News/unhcr-acerwc-learning-course-on-eradication-of-statelessness-among-children-in-east-and-horn-of-africa-regions/>

<sup>123</sup> Ibid.

(EAC), Economic Community of West African States (ECOWAS), Southern African Development Community (SADC), Economic Community of Central African States (ECCAS), the Arab Maghreb Union (AMU), and the Intergovernmental Authority on Development (IGAD). During the meetings with RECs, the Committee observed that the child protection system at each RECs level has different structures and is at a varying stage.<sup>124</sup>

The ACERWC undertook popularization workshops on Agenda 2040 in the East and North and Horn of Africa Region in 2019, in the East African Community in 2018 and ECOWAS in 2018. The popularization workshops were supplemented by discussions on the Charter as well as the main mandates of the Committee and discussions on cross-border issues affecting children in the regions. The Committee also engaged technical representatives from States who are tasked with child rights issues.

At the ECOWAS workshop the idea of an annual child rights forum was raised and welcomed and the need to ensure effective representation of children at the forum was stressed. It was also stressed that there is a need to invest in education to ensure the realization of Agenda 2040 as education is the pillar for many aspects of development. Moreover, concerns were raised regarding the reporting obligation under Agenda 2040. It was stated that as there is a reporting obligation on the Charter, hence there should be a different way to ensure implementation of the Agenda instead of adding a reporting obligation. The Committee however explained that Agenda 2040 is aimed at implementing Agenda2063, it is not to elaborate or remind Member States of their obligation under the Charter, thus a separate report on it is important.<sup>125</sup>

The workshop expressed the need to create more awareness about the Agenda to various stakeholders so that they can come on board to help implement the aspirations. The need to also bring the Agenda to the Country level was highlighted. The Committee was encouraged to share reports of country visits not just with the government but with other stakeholders so that they can help to follow up that action is taken. The ACERWC agreed to do this going forward. The ACERWC highlighted that it will be developing a communication strategy on how to create more awareness on the Agenda and requested that participants promote it in their work and create awareness.<sup>126</sup>

At the conclusion of the EAC workshop, the ACERWC recommended to have an annual forum where they bring the relevant Ministries and the Ministers and engage them in discussions around policy change to advocate for better protection at country level. The Committee also suggested to include Ministers relevant to Finance and budgeting as well so that agreements made are supported with resources. It was also recommended that the AU assign a special technical committee on children's rights. At the EAC workshop it was also proposed that children rights forums at the regional level should bring all stakeholders together including decision makers to advocate for better protection of children's rights. Such stakeholders should lobby for more visibility of children's rights at domestic level which should result in more investment in services and policy and legislation change for children at the national levels.<sup>127</sup>

It was further recommended that there is need to proactively use the media at all the events. For example, there was need for more media presence at the EAC workshop to popularize what was done and share the key messages. Lessons for engaging media reporting could be learnt from the African Court which has trained reporters on issues specific to justice. The AU and the ACERWC were encouraged to think about how children can participate throughout the year so that it is not just based on one event for example the DAC.<sup>128</sup>

During the reporting period, the Committee also had workshops on the popularization of Agenda

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124 Thirty-Sixth Ordinary Session of the AU Executive Council 'Activity Report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC)' 06 - 07 February 2020, Addis Ababa, Ethiopia, para 2.

125 Workshop on the popularization of Agenda 2040 and cross border issues affecting children by the African Committee of Experts on the rights and welfare of the Child in the Economic Community of West African States, 2018.

126 Ibid.

127 Report of Workshop on Popularization of Agenda 2040 and Cross Border Issues affecting Children in the East African Community, 2018.

128 Ibid.

2040 and findings of the study on children on the move in ECAAC region on 5-6 September 2019 and North and Horn of Africa Regions on 31 October-01 November. Following the ACERWC's engagement with the various RECs, it was indicated that not all RECs are at the same level of child protection in terms of normative, institutional and structural mechanisms. Therefore, the Committee is of the view that there is a need to have a harmonized child rights mechanism in all RECs in:

- » Creating a platform for intra and inter RECs dialogue and collaboration,
- » Playing a coordinating role for harmonized regional child protection systems,
- » Supporting progress tracking by RECs on AU agenda 2063, Agenda 2040 and The SDGs for integrated implementation of the three agendas,
- » Organizing annual experience sharing workshop where all RECs and partner states come together,
- » Knowledge sharing and provision of technical support to ensure that there is a focal person in each RECs that works with the ACERWC,
- » Documentation and scaling up best practices in RECs; and
- » Strengthening advocacy and accountability mechanisms of RECs.<sup>129</sup>

## ***Sharing of Good State Practice on Harmonisation of Laws***

By 2020 the ACERWC should have co-ordinated efforts to facilitate the sharing of good State practice on harmonising national law, policy and practice with the African Children's Charter

In 2018, the ACERWC in collaboration with ACPF commissioned a Continental Study on the status of Harmonization of Laws on Children in Africa. The study seeks to provide an up-to-date documentation of the status of harmonisation of laws on children in Africa. The study also further looks into the jurisprudence and resources from the African Commission on Human and Peoples' Rights and highlights best practices. It also highlights case practices of what triggers harmonization as well as those that hinder harmonisation.<sup>130</sup>

The ACERWC also organised an experience sharing Forum on the Implementation of the ACRWC which was held in Mauritius on 27-29 September 2017. One of the objectives of the forum was to identify good practices and challenges in the ratification and reporting process to the ACERWC and other issues. In regard to the preparation and compilation of State reports the main good practice and recommendation was for the ministries directly dealing with child rights issues to lead the report preparation - otherwise the process could be legalistic.<sup>131</sup> South Africa's experience was highlighted as a good practice in that it has an institutionalised body and a standing coordination committee with a dedicated budget.<sup>132</sup> It was stressed that South Africa's experience should be taken as a

<sup>129</sup> Thirty-Sixth Ordinary Session of the AU Executive Council 'Activity Report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC)' 06 - 07 February 2020, Addis Ababa, Ethiopia, para 22.

<sup>130</sup> Report of the 33rd Session of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) 18 – 28 March 2019, Addis Ababa, Ethiopia, para 181.

<sup>131</sup> Experience Sharing Report, 2017.

<sup>132</sup> Experience Sharing Report, 2017.

lesson by other States since institutionalised State Party reporting makes the preparation of State Party reports a day-to-day routine work as opposed to an event.<sup>133</sup> Sudan also has a treaty reporting council and budget. Burkina Faso shared its experience, pointing out that timely reporting has been due to having an Inter-ministerial Committee on Human Rights with 14 organs which is well funded and supported by the Cabinet. Each organ gets funded as per need.<sup>134</sup>

The Forum also held thematic sessions which considered good practices and challenges with respect to three sets of issues: access to basic social services, violence against children and conflict and crisis as they affect children's rights and wellbeing. Mauritius state practice was cited a good practice as provision of free immunisation and health care is based on a clear government budget allocation and education is free and compulsory for all children.<sup>135</sup>

### **Access to Education - Mauritius State Practice**

Mauritius has a National Gender Policy Framework which has components of equity in access to education, relevance and achievement. Equality of men and women is enshrined in the constitution as well as in budgeting for education.

Education is free and compulsory for all children until the age of 16. Transport to all children going to school is also free. Education facilities are available; the national curriculum has been revised to enhance relevance and to remove gender sensitive stereotypes from the education system; and all data is analysed gender wise.

In relation to pre-education, Mauritius has an Early Childhood Care and Education Authority where a per capita grant is provided for all pre-school children enrolled. Pre-primary education is being included in all public primary schools. In addition, there are 30 schools for disadvantaged children.

In terms of secondary education, the curriculum has been reviewed to enhance relevance and introduce new subjects. All subjects are available to all children (no gender bias), and secondary school examination fees are fully paid to all children irrespective of status but depending on attendance. The government encourages students coming from low income families through cash rewards and social security grants and such support has reduced the rate of dropouts and increased the enrolment rate. Moreover, there is a student tracking system to ensure compulsory education until the age of 16 as well as national education counselling sessions provided by social workers. Scholarships are also offered for tertiary education.

For special education needs, the budget has doubled in the past three years, and inclusive education is gradually being provided. All new secondary schools have ramps and adjusted toilets to enhance disability inclusion. Teachers are assigned to blind and deaf students to assist them in normal schooling as well as during examinations. Students with disabilities are also benefitting from a new scholarship scheme.

## ***Alignment of the ACERWC Reporting Process with the CRC***

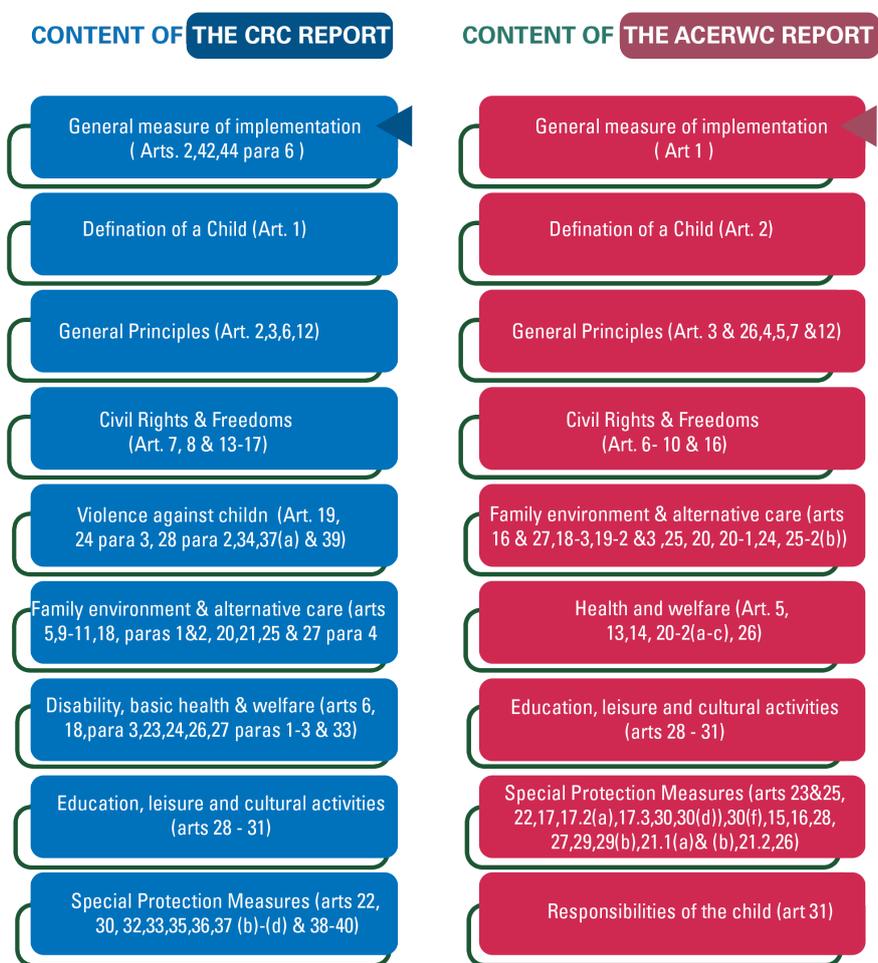
By 2020 the ACERWC should have aligned the State reporting process under the African Children's Charter with that under the UN CRC, highlighting the specific thematic areas contained in the African Children's Charter

<sup>133</sup> Pursuant to article 49(1) of the African Children's Charter, State Parties are expected to submit their initial reports to the Committee on 2017. The ratification of the Charter and their periodic reports every three years thereafter. Under article 44 of the CRC, submission of an initial State Party report is required

within two years of the entry into force of the Convention for the State party, and periodic reports are due every five years thereafter. Calls have been made for the ACERWC to align the spacing of submission of periodic reports from every three years to every five years.<sup>136</sup> Alignment for State reporting might require amendment of the Charter.

The cycle or process for State reporting under the ACERWC is similar to that of the CRC.<sup>137</sup> Under the ACERWC, the State Party submits its report to the Committee, which then appoints a rapporteur from amongst its Committee members. Thereafter Civil Societies can submit their reports as complementary or alternative reports to the State Party reports. The Committee then holds a Pre-Session Working Group where it identifies issues for discussion with the State Party and highlights areas where information is lacking. Thereafter a plenary session is held by the Committee where it discusses the report with the State party. After the session, the Committee produces concluding observations and recommendations which should be implemented by the State party. Implementation of the Concluding Recommendations should be followed up by civil society and be the point of departure for the next State report when the process re-commences.<sup>138</sup>

The content of a State report under the ACRWC is aligned to the specific thematic areas contained in the African Children’s Charter as is in the CRC State Report. The graphs show the themes in the CRC and the ACRWC State Report.



## Process of adopting Concluding Observations

136 Mezmur (2017), p143.

137 See for the CRC reporting process Child Rights Connect ‘The Reporting Cycle of the Committee on the Rights of the Child: A guide for NGOs and NHRI’s.’ See also Sloth –Nielsen J ‘Monitoring and Implementation of Children’s Rights’ Springer 2018.

138 Save the Children ‘Advancing Children’s Rights: A civil society guide on how to engage with the African Committee of Experts on the Rights and Welfare of the Child’ 2019, 3ed, p 57.

By 2020 the ACERWC should have streamlined the process of examining and adopting Concluding Observations in response to State reports, in anticipation of an increased number of submitted reports

It is unclear that progress has been made in relation to streamlining the reporting cycles of the ACRWC and the CRC. In any event, the CRC process is changing with the introduction of the simplified reporting process commencing with a List of Issue Prior to Reporting, which eliminates one step in the process.<sup>139</sup> Changes to the reporting system, particularly the cycle of reporting, under the African Children's Charter might actually require amendments to the Charter itself as it is the Charter that provides that periodic report is supposed to be submitted every 3 years as opposed to 5 years in the CRC.

### *Targeted, Precise and Measurable Recommendations*

By 2020 the ACERWC should have consistently adopted targeted, precise and measurable recommendations to States.

Between 2016 and 2020, the Committee has been issuing targeted, precise and measurable recommendations to State Parties. Below shows some examples of targeted recommendations given to State Parties on their latest reports.

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139 See in general J Sloth-Nielsen "Monitoring and Enforcement of Children's Rights" in U Kilkelly and T Liefwaard The international Human Rights of Children (Springer publishers, 2018).

## SENEGAL

The Committee recommended that the government of Senegal should:

- Review all legislations that are not consistent with Article 2 of the African Children's Charter on the definition of the child, and to take all necessary measures to eliminate child marriages and other cultural practices which are contrary to the provisions of the African Children's Charter;
- Finalise and pass the draft law establishing legal status and regulations for *Daaras* or Koranic schools in order to prohibit and punish the participation of Marabouts in child abuse and exploitation such as child begging
- Increase enforcement of existing legislation that criminalizes child trafficking, forced begging and abuse, and investigate and hold accountable those who transgress these laws

## RWANDA

The Committee recommended that the government of Rwanda should:

- Ensure that corporal punishment is explicitly prohibited in all settings including residential care facilities, correction centers and other facilities;
- Sensitize adolescent girls on contraception options including emergency contraception pills and prevention of sexually transmitted diseases including HIV;
- Employ a continued effort to ensure that children with disabilities are not excluded from health services such as immunizations and nutrition supplements;
- Increase the budget allocated for the education sector proportionally with the increase of the total budget of the Country.

## NIGER

The Committee recommended that the government of Niger should

- adopt a family code which would settle the question of marriage, that is to say 18 years of age to ensure better protection of the child.
- provide school fees for children through free schooling for girls and in terms of basic training; develop a strong partnership with the agencies of the United Nations system working in the field of education in order to significantly reduce the disparity that exists in the rate of school enrolment in urban and rural areas
- create a youth parliament in rural areas
- Extend the expanded vaccination program (EPI) further to rural areas in order to reduce the disparity in immunization coverage and better care for HIV-positive women and of the child victim of HIV is insured.

## BENIN

The Committee recommended that the government of Benin should

- Provide clear provisions to set the minimum age of marriage at 18 with no exceptions whatsoever;
- Provide food supplements to children, and train families and farmers on how to use supplements in producing food to overcome under-nutrition and ensure that foods have the necessary micro-nutrients that are needed for children's development;
- Increase the coverage of immunization, such as measles, by decentralizing immunization centers;
- Conduct an assessment on the prevalence of sexual exploitation of children in all settings, and train law enforcement and the judiciary on child friendly procedures for reporting cases of sexual exploitation and establish child friendly courts for victims in all parts of the Country

## Visibility of the ACERWC

By 2020, the ACERWC should be widely published and visible in its activities; a complete and updated record of its activities, including State reports, Concluding Observations, mission reports and its annual reports, should be easily accessible on its website and other formats

Some of the activities of the Committee are widely published and visible on its website [www.acerwc.africa](http://www.acerwc.africa), with only a few documents missing or wrongly named.<sup>140</sup> Available records include State reports, Concluding Observations and mission reports. Annual reports of the Committee are however, not available on the Committee's site.

The website contains details of (amongst others):

- The Charter (the full text of the Charter, Ratifications and Reservations);
- The Committee (the Mandate, Experts, The Secretariat, Former Members, and Working Documents)
- The Work of the Committee (Sessions, Missions/Country Visits, The Day of the African Child, General Comments, Studies/research, partnerships and CSO Engagements, The Agenda 2040 and Applications for Observer Status).
- State Reports (includes Initial and Periodic Reports, Concluding Observations, Follow – up missions on concluding observations and reporting guidelines)
- Communications
- Special Mechanisms and
- Resources

The Committee is also relocating to the Kingdom of Lesotho from the Headquarters of the African Union Commission in order to increase its visibility. At the 34<sup>th</sup> session the Committee presented that it is working to improve its online presence by upgrading its website. The Committee is also in the process of developing a database on the state party reporting mechanism with the help of Plan International, to enhance transparency, for easy access to timely state reports and improve follow up on implementation of its recommendations, among other things.<sup>141</sup> The Committee in its 35<sup>th</sup> virtual session also adopted as amended the following Working Documents: Revised Rules of Procedures; State Party Reporting Guidelines; Complementary Report Guidelines; Guidelines on Observer Status of Non-Governmental Organizations and Associations; Guidelines on Conduct of Investigations; and Revised Guidelines on Communications.<sup>142</sup> These will ensure consistency, transparency and effectiveness of the Committee's work.

## Advocacy tools on the Rights of Children in Africa

By 2020 the ACERWC should, in collaboration with its partners, have developed and widely disseminated evidence-based communication and advocacy tools on the rights of children in Africa

In 2019, the ACERWC collaborated with Save the Children and Plan International to develop a CSO Guide on how Civil Societies can engage with the ACERWC. The third version of the CSO Guide is intended to be a resource for Civil Society Organisations in Africa with an interest in engaging with the ACERWC. It explores the multi-dimensional and variety of ways in which the Committee engages with advancing children's rights in Africa. It is intended to support civil society organisations with knowledge, capacity to engage in advocacy, ability to undertake research, and to participate in

140 E.g. incomplete records of Communications, Unavailable Initial Report for Zambia and first periodic reports for South Africa and Nigeria.

141 See <https://reporting.acerwc.africa>

142 35th Virtual Ordinary Session of the African Committee of Experts on the Rights & Welfare of the Child (ACERWC), 2020, para 12.

reporting and other processes of the committee, and the AU more broadly.

The Committee has developed various advocacy tools like its publication 'ACERWC in Brief.' In 2019 the Committee also collaborated with GIZ to publish child rights stories which illustrates the African Children Charter's story on child marriages (available on the website). The Committee has also collaborated with the Centre for Human Rights at the University of Pretoria to take part in the African Human Rights Yearbook which is dedicated to the human rights organs of the AU.

## *Finalising Communications*

By 2020, the ACERWC should have significantly reduced delays in finalising submitted communications

During the reporting period, the Committee received 8 communications from 6 State Parties. In 2016, the Committee declared inadmissible two communications against the government of Egypt<sup>143</sup> and one communication against the government of Cameroon.<sup>144</sup> Two other communications were received against the government of Sudan in 2018<sup>145</sup> and 2020.<sup>146</sup> The Committee also received a communication against the government of Tanzania in 2019<sup>147</sup>, against the government of Mali<sup>148</sup> in 2019 and South Africa<sup>149</sup> in 2020. The Committee joined the two communications against Sudan, declared the communication against Tanzania admissible and postponed the communications against Mali and South Africa at its 35<sup>th</sup> Session.<sup>150</sup> Due to the confidential nature of communications processes prior to the Committee's decision, these cannot be discussed at this point. Moreover, the Committee gave decisions on the merits of African Centre of Justice and Peace Studies (ACJPS) and People's Legal Aid Centre (PLACE) V. the Government of Republic of Sudan, The Institute for Human Right and Development in Africa and Finders Group Initiative on behalf of TFA (a minor) V. The Government of Republic of Cameroon, and Minority Rights Group International and SOS-Esclaves on behalf of Said Ould Salem and Yarg Ould Salem V. The Republic of Mauritania. It also made a decision to set Project Expedite Justice et al against the Republic of the Sudan amicably after getting the agreement of both parties. The table below summarizes the status of communications before the Committee.

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- 143 Dalia Lofty on behalf of Ahmed Bassiouny v Egypt, No. 008/Com/001/2016 and in Dalia Lofty on behalf of Emad v Egypt No. 009/Com/002/2016.
- 144 Etoungou Nko'o on behalf of Mr and Mrs. Elogo Menye and Rev Daniel Ezo'o Ayo V. the Government of Cameroon No. 010/Com/003/2016.
- 145 Project Expedite Justice et al against the Republic of the Sudan No:0011/Com/001/2018.
- 146 African Centre for Justice and Peace Studies (ACJPS) on behalf of Ms. Umjumah Osman Mohamed against the Republic of the Sudan, No: 0016/Com/004/2020.
- 147 Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) against the United Republic of Tanzania, No: 0012/Com/001/2019.
- 148 APDF and IHRDA on behalf of AS a minor against the Republic of Mali, No: 0013/Com/001/2020.
- 149 Ramphele Attorneys on behalf of Tholodi Tloubatla and Thibedi Tloubatla against the Republic of South Africa, No: 0014/Com/002/2020.
- 150 35th Virtual Ordinary Session of the African Committee of Experts on the Rights & Welfare of the Child (ACERWC), 2020, para 10 and 11.

## COMMUNICATIONS SUBMITTED BEFORE THE ACERWC

SN	Parties to the Comm.	Date Received	Comm. No.	Status/Year of finalization
1	Michelo Hunsungule and others (on behalf of children in northern Uganda) v. The government of Uganda	2005	No. 001/Com/001/2005	Finalised (2013)
2	Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of children of Nubian descent in Kenya v. The Government of Kenya	20 April 2009	No 002/Com/002/2009	Finalised (2011)
3	The Centre for Human Rights (University of Pretoria) and La Rencontre Africaine pour la Defense Des Droits de l'homme (Senegal) V. The Government of Senegal	27 July 2012	No 003/Com/001/2012	Finalised (2014)
4	Institute for Human Right and Development in Africa V. The Government of Malawi	29 October 2014	No. 004/Com/001/2014	Pending amicable Settlement
5	African Centre of Justice and Peace Studies (ACJPS) and People's Legal Aid Centre (PLACE) V. the Government of Republic of Sudan	19 August 2015	No. 005/Com/001/2015	Finalised (2018)
6	The Institute for Human Right and Development in Africa and Finders Group Initiative on behalf of TFA (a minor) V. The Government of Republic of Cameroon	16 November 2015	No. 006/Com/002/2015	Finalised (2018)

7	Minority Rights Group International and SOS-Esclaves on behalf of Said Ould Salem and Yarg Ould Salem V. The Republic of Mauritania	15 December 2015	No. 007/Com/003/2015	Finalised (2017)
8	Dalia Lotfy on behalf of Sohaib Emad V. The Government of the Arab Republic of Egypt	31 March 2016	No. 008/Com/001/2016	Declared inadmissible (2017)
9	Dalia Lotfy on behalf of Ahmed Bassiouny V. The Government of the Arab Republic of Egypt	31 March 2016	No. 009/Com/002/2016	Declared inadmissible (2017)
10	Etoungou Nko'o on behalf of Mr and Mrs. Elogo Menye and Rev Daniel Ezo'o Ayo V. the Government of Cameroon.	22 April 2016	No. 010/Com/003/2016	Declared inadmissible (2018)
11	Project Expedite Justice et al against the Republic of the Sudan.	26 August 2018	No:0011/Com/001/2018	Pending amicable settlement
12	Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) against the United Republic of Tanzania	17 June 2019	No: 0012/Com/001/2019	Pending on the merit
13	APDF and IHRDA on behalf of AS a minor against the Republic of Mali	13 January 2020	Communication No: 0013/Com/001/2020	Pending on admissibility
14	Ramphele Attorneys on behalf of Tholodi Tloubatla and Thibedi Tloubatla against the Republic of South Africa	14 January 2020	Communication No: 0014/Com/002/2020	Pending on admissibility
15.	Taha Fadul, Nisreen Mustafa, Somia Shampaty and Nawras Elfathih on behalf of Abbas Mohamed Al-Nour Musa Al-Emam, Modathir Alrayah Mohamed Badawi and Fadoul Almoula Aliaili Nourallah, Taha Fadoul et al against the Republic of the Sudan	24 February 2020	Communication No: 0015/Com/003/2020	Pending on admissibility

16	African Centre for Justice and Peace Studies (ACJPS) on behalf of Ms. Umjumah Osman Mohamed against the Republic of the Sudan	25 June 2020	Communication No: 0016/Com/004/2020	Pending on admissibility
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## *Interpreting the African Children’s Charter as an autochthonous instrument*

By 2020, The African Children’s Committee interprets the African Children’s Charter as an autochthonous instrument, in its jurisprudence, Concluding Observations and interpretive elaborations

The history of the development of the ACRWC highlights its uniqueness from the international treaty of children, the CRC. As previously stated the ACRWC is a ‘home – grown’ instrument, with provisions which directly address peculiar issues that affect children in the African context - such as child marriages, involvement of children in armed conflict and harmful cultural practices, among others. As such, the interpretative body of the ACRWC, the ACERWC, has interpreted the Charter in a like manner, revealing the uniqueness of the Charter.

The ACERWC has used General Comments<sup>151</sup> to interpret provisions of the ACRWC relating to child marriages<sup>152</sup>; birth registration; children of imprisoned parents;<sup>153</sup> the responsibilities of the child<sup>154</sup> and the implementation obligations of State Parties.<sup>155</sup> The Committee is finalising in 2020 a General Comment on children affected by armed conflict. A General Comment on sexual exploitation has been prepared and awaits finalisation. Hence, several General Comments - four - saw the light of day during the current reporting period of Agenda 2040.

## *Collaboration with the African Commission on Human and Peoples’ Rights*

By 2020 the ACERWC should be collaborating with the African Commission through regularly-held meetings between them, in order to identify synergies, gaps, complementarities and to exchange experiences, lessons and knowledge (including jurisprudence) and to avoid the unnecessary duplication of efforts

The Committee and the African Commission have begun to co-operate together during the last

151 See <https://www.acerwc.africa/general-comments/>

152 Joint General Comment of the ACERWC and the African Commission on Human and Peoples’ Rights on ending child marriages, 2017. The Joint General Comment is based on the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) Article 6(b) and the African Children’s Charter Article 21(2).

153 General Comment on Article 30 on Children of incarcerated and imprisoned parents and primary caregivers

154 General Comment on Article 31 of the African Children’s Charter on the Responsibilities of the child.

155 General Comment no 5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and systems strengthening for child protection.

5 years, assisted by the African Children’s Charter Project (ACCP) project.<sup>156</sup> A commissioner has attended almost all recent meetings of the ACERWC, and ACERWC members have been assisted to attend commission meetings in Banjul, accompanied by members of the secretariat. A product of this enhanced collaboration is the adoption of a joint General Comment on Child Marriages, which commenced under the auspices of the Commission’s Special Rapporteur on Women in Africa, in a process which the ACERWC later joined.<sup>157</sup> In October 2016, the ACERWC had a historic joint meeting with the commission in Banjul as evidence of growing collaboration between the two organs. In 2019 the two organs jointly issued letter of urgent appeal to the Government of Tanzania concerning the rights of pregnant girls.

## *ACERWC Engagement with the APRM*

By 2020 the ACERWC should have engaged the African Peer Review Mechanism (APRM) with a view to closer collaboration between the APRM process and State reporting under the African Children’s Charter

The African Peer Review Mechanism (APRM) is a specialised agency of the African Union (AU) established in the framework of the implementation of the New Partnership for Africa’s Development (NEPAD).<sup>158</sup> The APRM process is a tool for sharing experiences, reinforcing best practices, identifying deficiencies, and assessing capacity-building needs to foster policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration.<sup>159</sup> Member countries within the APRM undertake self-monitoring in all aspects of their governance and socio-economic development. AU stakeholders participate in the self-assessment of all branches of government – executive, legislative and judicial – as well as the private sector, civil society and the media. The APRM Review Process gives member states a space for national dialogue on governance and socio-economic indicators and an opportunity to build consensus on the way forward.<sup>160</sup> The ACERWC has an ongoing an initiative through the AGA Secretariat to collaborate with the APRM process with State reporting under the African Children’s Charter.

## *Engagement with AU Organs*

By 2020 the ACERWC should, within the framework of the African Governance Architecture (AGA), consistently be engaging relevant AU organs on matters of joint concern, such as the Peace and Security Council, the Pan-African Parliament, and the AU’s Economic, Social and Cultural Council

There is robust engagement between the ACERWC and the Peace and Security Council (PSC), premised on the PSC decision PSC/PR/BR. (DXCVII), to have a session on Children affected by Armed Conflict (CAAC) each year around May and further produce regular reports to the PSC. There is therefore a framework of engagement with the PSC. At the request of the PSC, the ACERWC

156 Save the Children ‘Advancing Children’s Rights: A civil society guide on how to engage with the African Committee of Experts on the Rights and Welfare of the Child’ 2019, 3ed, p98. The African Children’s Charter Project (ACCP) was conceived in 2009 by Plan Sweden as a strategic initiative to improve the lives of children in Africa through the enhanced implementation of the African Charter on the Rights and Welfare of the Child (ACRWC) throughout the institutional, political and public spheres of the African Union (AU).

157 Ibid.

158 See <https://au.int/en/organs/aprm>

159 Ibid.

160 Ibid.

commissioned a continental study on children and armed conflict which was presented to the PSC in 2017.

Engagement with the Pan – Africa Parliament (PAP) and the Economic, Social and Cultural Council (ECOSOC) is still to be improved. However, members of the ACERWC have had interactions with the PAP to identify areas of common interest and members of PAP have attended ACERWC sessions.<sup>161</sup> Compared to the previous years, the Committee’s participation in the AGA meetings is more meaningful. The Committee, for the first time in its history of having a relationship with the AGA Secretariat, has participated in delivering child protection training to human rights observers who are being deployed to countries in conflict situations and also participated in the first Technical Meeting and Planning Retreat of the AGA Platform.<sup>162</sup>

## Progress by AU Organs

### *Support to the ACERWC*

By 2020 AU’s political organs should have ensured the required resources to strengthen the human resource and institutional capacity of the African Children’s Committee, allowing it to appoint on a permanent basis at least two legal officers and to undertake at least six missions per year

The AU has significantly improved its support to the ACERWC. The AU started approving a budget for the Committee in 2013 (which is separate and autonomous from that of the Department of Social Affairs (within which its secretariat is located)) and for much of its programme work (such as investigations and mini conferences), the committee has to seek donor funding). The AU has exponentially increased the budget of the Committee since then.<sup>163</sup> At its 34<sup>th</sup> Ordinary Session in 2019, the Executive Council, however, decided to fund the programme budget of ACERWC from Member States contributions starting from the 2020 budget year, in accordance with Decision Assembly/AU/Dec.561(XXVI) of January 2015.<sup>164</sup> One of the basis for increased funding is the move to Maseru. To date the Committee has been able to undertake four missions per year. The Committee however still needs more support from the AU for it to grow as an independent and effective mechanism for monitoring and advocating for children’s rights in Africa. In the same vein, it also needs to prove itself to be indispensable to the AU so that its inclusion is assured. It needs to work hard to be even more visible and to link more systematically to other AU structures and offices.<sup>165</sup>

The efforts of the Committee to effectively discharge its mandate have been hampered by serious lack of human, financial and material resources. One important constraint is the limited number of personnel employed to support it in terms of providing administration and legal advice. The Committee does not have a Permanent Seat; thus, its Secretariat is located within the Department of Social Affairs of the African Union Commission. The Chairperson of the African Union Commission appoints the Secretary of the Committee and is expected to provide the necessary staff and resources needed for the effective discharge of the mandate of the Committee. The Committee is supported by a Secretariat headed by a Secretary and at time of writing includes 2 additional regular and 3 short term staff, and 3 seconded staff.<sup>166</sup>

<sup>161</sup> Save the Children ‘Advancing Children’s Rights: A civil society guide on how to engage with the African Committee of Experts on the Rights and Welfare of the Child’ 2019, 3ed , p107.

<sup>162</sup> ACERWC Secretariat.

<sup>163</sup> See budget table on p22.

<sup>164</sup> EX.CL/Dec.1043 (XXXIV).

<sup>165</sup> Save the Children ‘Advancing Children’s Rights: A civil society guide on how to engage with the African Committee of Experts on the Rights and Welfare of the Child’ 2019, 3ed, p52.

<sup>166</sup> Thirty-Sixth Ordinary Session of the AU Executive Council ‘Activity Report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC)’ 06 - 07 February 2020, Addis Ababa, Ethiopia, para 31.

For the Committee to effectively deliver on its mandate, it requires a professional, effective, capacitated, well-staffed and competent Secretariat. Due to the increasing visibility of the Committee, the ACERWC is now receiving more State Party Reports and Communications (Complaints), the need for strengthening the Secretariat, in terms of financial, human and material resource, is very critical.<sup>167</sup> It would be impossible for the ACERWC to effectively discharge its functions and deliver on its mandate with the very limited number of staff that the Secretariat currently has. Indeed, the Committee has been trying to mobilise resources to have more seconded staff with a view to slightly mitigating the challenge.<sup>168</sup>

At the 36<sup>th</sup> Session of the Executive Council, the Council adopted a new structure for the Committee's Secretariat with 46 staff, which is yet to be implemented. The table below gives an indication of the proposed staff.

Proposed ACERWC Secretariat Staff

<b>PORFESSIONAL STAFF</b>	<b>GRADE</b>	<b>No. OF STAFF</b>
Executive Secretary	P6	1
Deputy Secretary	P5	1
Principal Child Rights Promotion Officer	P4	1
Senior Child Rights Promotion Officer	P3	2
Child Rights Promotion Officer	P2	2
Principal Child Rights Protection Officer	P4	1
Senior Child Rights Protection officer	P3	2
Child Rights Protection officer	P3	2
Senior Legal Officer	P3	1
Senior Program Officer	P3	1
Legal Researcher	P2	6
Senior Liaison Officer	P3	1
Senior Communications Officer	P3	1
Communications Officer	P2	1
Senior Social Work Officer	P3	1
Social Work Officer	P2	1
Senior Finance Officer	P3	1
Assistant Accountant	GSA5	1
Human Resources Officer	P2	1
Program Officer (M&E)	P2	1
Gender Officer	P2	1
Interpreter and Translator	P3	4
Procurement Officer	P3	1
ICT Officer	P2	1
Protocol Officer	P2	1
<b>SUPPORT STAFF</b>		
Administrative Assistant	GSA5	1
Bilingual Secretary	GSA4	1

167 Ibid, para 33

168 Ibid.

Front Desk officer	GSA2	1
Clerk	GSA3	1
Records Assistants	GSB6	1
Driver	GSB7	2
Security Supervisor	GSA5	1
Security	Sub-contracted	
Cleaners	Sub-contracted	
Total Proposed Regular Posts		46

## *Children's Rights on the Agenda of the AU Assembly and Executive Council*

By 2020 the Africa Union's Executive Council and Assembly should consistently have included an item on their agenda on the rights of the child

The Executive Council meets at least twice a year in an ordinary session and can also meet in extraordinary sessions. These meetings are held prior to the Assembly Summit. The AU Assembly holds two ordinary session and extraordinary sessions as the need arises. The Committee reports to the Executive Council each year and the Executive Council always issues decisions on the Committee's activity report. On the agenda of the Council in its 36<sup>th</sup> Ordinary session in January 2020, the Council invited Member States to mobilise the necessary resources to eliminate FGM, and other harmful social norms and traditional practices, strengthening policy and legislative frameworks for the protection of women and girls against FGM, as well as enhancing the allocation of sustainable financial resources and data for the elimination of this practice.<sup>169</sup> At its 34<sup>th</sup> Ordinary Session in 2019, the Executive Council welcomed the ACERWC's findings and recommendations of the continental study on children on the move, and encouraged Member States to widely disseminate the outcomes of the study and work towards their implementation.<sup>170</sup> In 2018, at its 33<sup>rd</sup> Ordinary Session, the Executive Council commended the Government of Malawi for re-affirming its commitment to the October 2016 settlement agreement by amending its Constitution to raise the age of majority from 16 to 18 years of age, which is in line with the African Children's Charter, and encouraged the Government to work towards the full harmonisation of its other legislations, which are not in line with the provisions of the Charter.<sup>171</sup> The Council also requested the ACERWC to scale up its work in safeguarding and promoting the rights and welfare of children in cyberspace, namely the protection of children's information, rights to safety, informed choices and digital literacy.<sup>172</sup>

Each AU summit has a theme, nearly all of which will impact on children in some way. The AU Assembly at its 29<sup>th</sup> ordinary session in 2017 took a decision on ending child marriage in Africa. The Assembly strongly condemned the abduction and forcible marriages of young girls particularly in conflict situations and made a commitment to prosecute the perpetrators of these vices.<sup>173</sup> The Assembly urged Member States to fully implement legal instruments that empower the girl child and to integrate activities and programmes on the girl child in national development frameworks.<sup>174</sup> At the 30<sup>th</sup> Ordinary Session of the Assembly in 2018, the Assembly reaffirmed its commitment to ensure protection of children in conflict situation in Africa and took note of the activities being undertaken to this effect and invited the Chairperson of the Commission to expedite the nomination

<sup>169</sup> EX.CL/Dec. 1084(XXXVI).

<sup>170</sup> EX.CL/Dec.1043 (XXXIV), para 7.

<sup>171</sup> EX.CL/Dec.1017 (XXXIII), para 4.

<sup>172</sup> EX.CL/Dec.1017 (XXXIII), para 6.

<sup>173</sup> Assembly/AU/Dec.659 (XXIX), para 6.

<sup>174</sup> Assembly/AU/Dec.659 (XXIX), para 3.

of a Special Envoy for the protection of children in conflict situations.<sup>175</sup> At its 33<sup>rd</sup> ordinary session in 2020, the Assembly committed to keeping the issue of child marriage at the top of its agenda and reaffirmed the Assembly's commitment to the AU Campaign on Ending Child Marriage, including keeping the fight against child marriage on national, regional, and continental agendas.<sup>176</sup>

However the Committee further urges the AU Commission to: undertake to finalize the process of appointing the Special Envoy on CAAC by 2020 in light of the decision Assembly/AU/Dec.718 (XXXII), wherein the AU endorsed the request to appoint a Special Envoy for Children in conflict situations; to ensure that there is a robust, institutionalized and financed child protection architecture, which facilitates coordination and quality programming to address the needs of children in armed conflict as well as in all AU peace support operations; to integrate child protection indicators in the Roadmap on Silencing the Guns; to review the implementation of its previous decisions on children in armed conflict to enable the PSC in determining further steps to address existing challenges for implementation of decisions; to expedite the rolling out to Member States and RECs/RMs of the AU Disarmament, Demobilization and Reintegration Operational Guidelines for Children which were developed by the Peace and Security Department in 2014; to expedite the adoption of the Draft Guidelines for the Protection of Civilians in African Union Peace Support Operations, including the protection of children; and to institutionalise an AU accountability mechanism to end FGM in Africa.<sup>177</sup>

## Progress by CSOs and NGOs

### *Obtaining Observer Status with the ACERWC*

By 2020 CSOs/NGOs working on the rights of children should have obtained observer status with the African Children's Committee and should be fully participating in the sessions and work of the Committee

The granting of observer status is the main way of formalising the relationship between the Committee and CSOs. It gives the recipient CSOs a more formal access to engage with the Committee and participate in its work in more specific ways. The ACERWC's criteria for granting observer status (revised) recognize the important role of CSOs in the implementation and monitoring of children's rights. As of 2020, observer status has been granted to 34 International Organisations and NGOs working on promotion and protection of the rights and welfare of the child in Africa. In total the Committee has granted observer status to 34 organizations. During the reporting period observer status was granted to 18 of these CSOs and NGOs which shows that CSO engagement is increasing.

### CSOs AND NGOs GRANTED OBSERVER STATUS BETWEEN 2016 & 2020

N	NAME OF THE NGO/CSO	YEAR OF GRANTING OBSERVER STATUS
1	African Union of the Blind	December 2017 (30th Ordinary Session)
2	Amnesty international	November 2018 (32nd Ordinary Session)
3	Association des Femmes Chefs de Famille (AFCF)	September 2020 (35 <sup>th</sup> Ordinary Session)
4	Centre for Human Rights	December 2017 (30th Ordinary Session)

<sup>175</sup> Assembly/AU/Dec.677 (XXX), para 20.

<sup>176</sup> Assembly/AU/Dec.771 (XXXIII), para 6.

<sup>177</sup> Thirty-Sixth Ordinary Session of the AU Executive Council 'Activity Report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC)' 06 - 07 February 2020, Addis Ababa, Ethiopia, para 26.

## CSOs AND NGOs GRANTED OBSERVER STATUS BETWEEN 2016 & 2020

N	NAME OF THE NGO/CSO	YEAR OF GRANTING OBSERVER STATUS
5	Centre for Reproductive Rights	November 2018 (32nd Ordinary Session)
6	Defence for Children International (DCI)	April 2017 (29th Ordinary Session)
7	ECPAT International	December 2017 (30th Ordinary Session)
8	Equality Now	May 2018 (31st Ordinary Session)
9	Graca Machel Trust	September 2020 (35 <sup>th</sup> Ordinary Session)
10	Halley Movement	December 2019 (34th Ordinary Session)
11	Human Rights Watch	December 2017 (30th Ordinary Session)
12	Initiative for Social and Economic Rights (ISER),	October 2016 (28th Ordinary Session)
13	Kenya Alliance for Advancement of Children	December 2017 (30th Ordinary Session)
14	Legal and Human Rights centre	33rd Ordinary Session March 2019
15	Regional Psychosocial Support Initiative (REPSSI)	October 2016 (28th Ordinary Session)
16	SOS Esclaves	November 2018 (32nd Ordinary Session)
17	Terre des Hommes Holland	May 2016 (27th Session)
18	The CRADLE - The Children's Foundation	December 2017 (30th Ordinary Session)

\*See ACERWC website <https://www.acerwc.africa/cso-engagements/>

### *Submitting Communications and Shadow Reports*

By 2020 CSOs and NGOs should have made use of the procedures before the African Children's Committee, by submitting communications and shadow reports

Civil society has participated formally in many of the aspects of the Committee's work. With the exception of Ethiopia and Algeria, in every case of a State Party report being received, civil society coalitions have prepared and presented a corresponding complementary report to the Committee on their views on the status of implementation of the ACRWC. The ACERWC sessions are attended by increasing numbers of civil society organisations, eager to assist the Committee in advancing the child rights agenda in Africa.<sup>178</sup>

Of note has been the meaningful inputs by civil society to the Committee to enable it to develop its

<sup>178</sup> Save the Children 'Advancing Children's Rights: A civil society guide on how to engage with the African Committee of Experts on the Rights and Welfare of the Child' 2019, 3ed, p 8.

rules of procedure, finalisation of TORs for Special Rapporteurs, and development of action plans and strategic plans. The guiding documents have resulted in the Committee solidifying its presence within the AU architecture and providing a firm platform for engagement with all stakeholders. Through this dedicated support from the CSOs, the AU organs have incrementally invested financially in the work of the ACERWC, a true testament that civil society plays a critical role in influencing government decision making on children's rights and welfare.<sup>179</sup> The Committee is currently facing delays in getting CSO reports.

Despite the progress among CSOs in using the procedures of the Committee to advance children's rights, there are many gaps that need to be filled. Recently the Committee has struggled to get complementary reports on State Party reports it has received. Moreover, the Communications procedure of the Committee has not been explored and utilized by CSOs. In this regard, the Committee is working towards creating awareness and training civil society about its communications procedures in collaboration of its partners.

## *Popularisation and Dissemination of the ACRWC*

By 2020 CSOs/NGOs should have assisted with the translation into local languages, the popularisation and dissemination of the African Children's Charter, the Committee's activities and the rights of the child, more generally.

The Committee in examining State Party reports has noted that in some nations the Charter is not translated into local languages for effective dissemination. The Committee urged the government of Cameroon to translate the Charter into local languages to ensure its effective dissemination and effective application by both government departments and CSOs.<sup>180</sup> The government of Benin was also urged to intensify its efforts to popularise the contents of the Charter by translating the Charter to local languages, incorporating the Charter in the education system at all levels and undertaking popularisation events among government officials working on child rights issues and other stakeholders.<sup>181</sup> In Niger 6,000 copies of the ACRWC were distributed in eight regions of the country by the Coalition of Nigerien Organisations for Children's Rights (CONIDE).<sup>182</sup>

Burundi's international NGOs and CSOs working for children contribute effectively to the dissemination of the Charter and awareness raising on the rights of the child. For example, the Government of Burundi, in collaboration with OIDEB (Ineza Observatory for the Rights of the Child in Burundi), with the support of UNICEF, drew up a training module on the rights of the child.<sup>183</sup>

In Zimbabwe, Plan International in collaboration with other stakeholders published and disseminated the Committee's concluding observations and recommendations and developed a work plan for the implementation of the recommendations.<sup>184</sup> In Ethiopia, UNICEF published the concluding observations of the Committee.<sup>185</sup>

179 Ibid.

180 Concluding observations and recommendations of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the initial report of the Republic of Cameroon on the status of the implementation of the African Charter on the Rights and Welfare of the Child, 2016, para 5.

181 Concluding observations and recommendations of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the initial report of the Republic of Benin on the status of the implementation of the African Charter on the Rights and Welfare of the Child, 2019, para 10.

182 Report submitted by Niger Under Article 43 (1) (B) of the African Charter on the rights and welfare of the Child, 2018, para 8.

183 Initial Implementation Report African Charter on the Rights and Welfare of the Child of the Republic of Burundi 2017, para 21.

184 Report of the ACERWC on the Follow-Up Mission conducted to monitor the implementation of Its concluding observations and recommendations to the Republic of Zimbabwe 12-15 June 2019, para 7.1.

185 Report of the ACERWC on the Follow-Up Mission conducted to monitor the implementation of Its concluding observations and recommendations to the Government of the Federal Democratic Republic of Ethiopia on the initial report of Ethiopia, 2018, para 7.

Tanzania has conducted several training and awareness-raising programs and carried out dissemination activities to selected journalists (i.e. radio broadcasters and news editors, TV broadcasters and editors). In addition, 400 trainers have been trained on children's rights as well as on the Charter and other international instruments in the period.<sup>186</sup> In Zanzibar, the State Party, through the Ministry of Empowerment, Social Welfare, Youth, Women and Children developed a popular version of a manual on children's rights based on the Charter and other International Instruments. This manual has been disseminated to various stakeholders who work for the best interest of the children, including CSOs working with children such as Zanzibar Association for Children Advancement (ZACA), Zanzibar Female Lawyers Association (ZAFELA), Zanzibar Association of People with HIV/Aids+ (ZAPHA+) and Zanzibar Network for Children Rights (ZANECRI).<sup>187</sup>

Guinea-Bissau's training on children rights, is a process that occurs on all occasions and opportunities, even though it is not a program specifically designed for such use. It referred to the continuous and directed actions to the various stratum of society in relevant events, where the component of the children rights, always constituted subject matter of training approaches, sensitization and clarification, meant for Professional Associations, Judicial Magistrates and Public Prosecution Service, Police officers, Migration and Foreigners Service, Criminal Investigation, Penitentiary Services, Military Units, Teachers and Students, at various levels of education, health professionals, social media, civil servants, and workers in general.<sup>188</sup>

## Conclusion

A review of Agenda 2040 in this reporting period (2016 - 2020) on Aspiration 1 reveals that the African Children's Charter, as supervised by the African Children's Committee, has great potential to be an effective continental framework for advancing children's rights. Although the Charter has not yet attained full ratification, the ACERWC is consistently encouraging and engaging the six States that have not yet ratified to do so. State Parties to the Charter are however lagging in their reporting obligations under the Charter although the same State Parties are up to date with their reporting obligations under the CRC. The Committee has tried to lessen this reporting burden by stating that the same reports submitted to the CRC can be submitted to the ACERWC provided they adapted to the African Children's Charter's themes. Partner NGOs such as UNICEF, Save the Children, Plan International etc. have previously played a crucial role in assisting State Parties in their reporting obligations and further engagement with them could ensure steady compliance in State Reporting. Four State Parties are yet to remove their reservations to some provisions of the Charter and are encouraged to do so.

The period under review has seen the ACERWC conducting the highest number of missions in a year, which reflects the support being given to the ACERWC by the AU. However additional human, financial and technical support is still needed to successfully carry out the mandate of the Committee. The ACERWC has also increased its engagement with various organs of the AU such as the Peace and Security Council and the African Commission, but still needs to improve its engagement with the engagement with the Pan – Africa Parliament and the Economic, Social and Cultural Council.

Engagement between ACERWC and RECs in this reporting period has been instrumental in the promotion and implementation of Agenda 2040 and other continental studies such as Children on the move and CAAC. The Committee has conducted popularization workshops for Agenda 2040 in the EAC, ECOWAS and ECCAS, and the North and Horn of Africa Regions. The success of these workshops should reflect in the increased implementation of the Committee's recommendations by State Parties represented at these workshops.

The ACERWC has also partnered with CSOs and NGOs to develop advocacy tools on the African Children's Charter. CSOs have also submitted complementary reports with almost every State Report that has been submitted to the Committee, thus assisting the Committee to get an objective view of the situation of children in their given countries. CSOs and NGOs are also increasingly attending the ACERWC's sessions eager to assist the Committee with the Child Rights Agenda in Africa. During

<sup>186</sup> Consolidated 2nd, 3rd and 4th Reports on the implementation of the African Charter on the Rights and Welfare of the Child by the Government of the United Republic of Tanzania, 29th Ordinary Session of ACERWC, 2017, para 24

<sup>187</sup> *Ibid.*  
<sup>188</sup> Republic of Guinea-Bissau, 1st Implementation Report of the African Charter on the Rights and Welfare of the Child (2008 – 2018), para 101.

the reporting period the Committee received 8 communications which reflects the trust ensured on the Committee's decisions. CSOs and NGOs are further encouraged to assist in the translation of the Charter into local languages.

## Aspiration 02

An effective child-friendly national legislative, policy and institutional framework is in place in all Member States



# By 2040

- A child-friendly national legislative, policy and institutional framework is in place and is enforced in all States.
- Existing child-friendly national legislative, policy, and institutional frameworks are reinforced.
- Well-capacitated child-centered institutions function effectively and in a rights-based way, serving the best interests of the child.

## **ASPIRATION 2: AN EFFECTIVE CHILD-FRIENDLY NATIONAL LEGISLATIVE, POLICY AND INSTITUTIONAL FRAMEWORK IS IN PLACE IN ALL STATE PARTIES**

Child law reform has been widely recognised as one of the signal achievements of the 30 years since the adoption of international standards pertaining children's rights in the CRC and the African Children's Charter.<sup>189</sup> Many countries, if not nearly all African countries, have dedicated children's statutes,<sup>190</sup> which are to an extent based on, and compliant with, the normative framework of international and regional children's rights.

As Article 1 of the ACRWC provides:

"Member States of the Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter." (emphasis supplied).

Yet, as commentators have pointed out, challenges lie at the level of implementation of existing laws,<sup>191</sup> and additionally, norms and principles are constantly evolving as new insights develop, and new ways of responding to the promotion and protection of children's rights emerge. Hence, there is an articulated need for the constant review and scrutiny of existing statutes and regulations, as well as the need to articulate policy and guidance in legislation – and hence binding - formats.

It has been noted<sup>192</sup> that whilst State parties often succeed in adopting primary legislation, the formulation and enactment of the Regulations required to flesh them out often takes a lengthy period, resulting in the delayed coming into operation of the main legislation itself. Namibia and Lesotho provide two such examples of this.

Further, there is a demonstrable need for ongoing development of allied materials, both for purposes of capacity building amongst professionals, and for education of the general public and civil society. These could include:

- Summaries and plain language guides, either generally or on matters specific to a sector (health, education, the disability sector and so forth)
- User manuals for professionals (eg social and auxiliary workers, justice professionals, law enforcement officials)
- Curriculum development (eg for police training colleagues, social work academies, judicial training institutes)
- Development of subsidiary guidance (standard operating procedures, protocols, inter agency and interdepartmental working agreements, directives, departmental instructions, information directories)

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<sup>189</sup> See Arts K (2014) Twenty-five years of the United Nations Convention on the Rights of the Child: achievements and challenges. *Netherlands International Law Rev* 61(3): 267–303, Liefwaard T, Sloth-Nielsen J (eds) (2016) "Introduction" in *The United Nations Convention on the Rights of the Child: Taking stock after 25 years and looking ahead* Brill publishers, The Netherlands. ISBN; Van den Hole W (2014) Children's rights from a legal perspective in "International Handbook on children's rights studies" Routledge, New York.

<sup>190</sup> ACPF 2018 Child Wellbeing Report (Addis Ababa, 2018).

<sup>191</sup> D Chirwa "Monitoring and Accountability Mechanisms for the Implementation of Children's Rights in Africa" (unpublished paper prepared for the ACPF, 2016). The duty to ensure the realisation of children rights is positive in nature and hence requires the state to promote, protect and fulfil children's rights. Effective implementation of rights requires that the state is directly held accountable to individuals or groups. Hence, it has emphasised the need to provide access to remedies where the rights of the individual children have been breached for which reparations in the form of compensation, rehabilitation or reintegration and other remedies may be appropriate. Such remedies may be provided by the courts and non-judicial or quasi-judicial institutions.

<sup>192</sup> Personal Communication, Prof B Mezmur, Member of the ACERWC and former chairperson of the ACERWC.

The increasing entry into the terrain of judicial pronouncements on one or another aspect of children's rights, notably in countries which follow a system of judicial precedent and when superior court orders bind the executive, means that child law is progressively under review through interactions with the Courts.

Zimbabwe provides a good example of this in the period of this Agenda 2040 review.

## ZIMBABWE IN FOCUS

The Constitutional Court of Zimbabwe, as well as various High Courts, have handed down seminal judgments giving effect to Charter rights since the adoption of Agenda 2040. In *S v Banda; S v Chakamoga*, on review,<sup>193</sup> the High Court invoked section 81(3) of the Constitution, in a matter involving two adult men convicted of having sexual relations and impregnating two girls aged 15 years of age. The one accused subsequently took the young girl as his wife while the other gave the young girl two small sums of money after he had had his way with her. In each case, the accused was sentenced to 24 months' imprisonment, half of which was suspended. On review, the High Court noted with concern that the sentences handed down by the trial court trivialised the constitutional protection of children's rights. The trial court's sentence and approach to children's rights was heavily criticised.<sup>194</sup>

The judge clarified that judicial officers were constitutionally mandated to adopt a reasonable interpretation consistent with international conventions, treaties, agreements:<sup>195</sup>

"Gone are the days when it was enough for a judicial officer to be insular in his jurisprudence: attention must be paid to international best practices, particularly on matters that impinge on the rights of vulnerable groups, such as children. The current position that Zimbabwe holds on the African continent requires judicial officers to rise to the responsibility that go with it and help, if not lead, in setting judicial standards and benchmarks for the protection of children."

Charewa J was of the opinion that the constitutional obligation (and that of international and regional law) placed on the courts, and the High Court in particular by s 81(3), makes it imperative to reconsider the sentencing regime for sexual offences. In his view, "the courts must be seen to apply the law in a manner that achieves the intended aim of the legislature which is to effectively protect children from predatory older persons".

*S v Chokuramba*<sup>196</sup> came before the Constitutional Court by way of confirmation proceedings following the declaration of unconstitutionality of judicial corporal punishment by Muremba J.<sup>197</sup> The High Court had declared that section 353 of the Criminal Procedure and Evidence Act, which permitted the sentencing of whipping on juvenile male offenders as unconstitutional.

Addressing alternative sentencing options and dismissing that corporal punishment can serve the interests of keeping juveniles out of prison, the Court stated that:<sup>198</sup>

"Keeping male juvenile offenders out of jail cannot justify the imposition of inhuman or degrading punishment on male juvenile offenders as the means of securing the legitimate objectives of punishment.... Human dignity may not be infringed upon for any reason. No interest, such as saving the male juvenile offender from imprisonment, can justify infringement of human dignity. Interpretation of what constitutes the best interests of the male juvenile offender cannot be used to justify practices which conflict with the juvenile's human dignity and right to physical integrity... Judicial corporal punishment is not in the best interest of the male juvenile".

The Court relied on the UNCRC, ACRWC, International Covenant on Civil and Political Rights (ICCPR) as well as on the Beijing Rules in coming to the conclusion that the primary focus should be on the rehabilitation of children in conflict with the law, and that the sentence of juvenile whipping could not survive constitutional scrutiny.

193 CRB GVE 644/15, CRB Mhw 450/15, HH 47-16) [2016] ZWHHC 47 (20 January 2016).

194 *S v Banda; S v Chakamoga* (CRB GVE 644/15, CRB Mhw 450/15, HH 47-16) [2016] ZWHHC 47 (20 January 2016) at 1.

195 *Ibid* at 5.

196 CCZ 10/19, Constitutional Application No. CCZ 29/15) [2019] ZWCC 10 (03 April 2019).

197 *S v C (A Juvenile)* (CRB R 87/14) [2015] ZWHHC 718 (30 December 2014).

198 *Ibid.*, at 40.

It must also be noted at the outset that the current period is seeing the review of the implementation of children’s legislation and the structures for child rights implementation taking place in a number of countries in Africa. This is supportive of the requirement that national legislation and children’s rights institutions should be kept constantly under review, to ensure that they continue to be ‘fit for purpose’, to address gaps and inconsistencies and to deal with newly emerging themes and child protection concerns.

By way of example. Mozambique is currently supporting a review of the system for children’s access to justice (although this has been somewhat delayed due to the lockdown put in place under COVID).<sup>199</sup> South Sudan has recently launched a bid for a service provider to put the necessary protocols and training materials in place to further implementation of the Child Act, 2008. Namibia has introduced segments dealing with children’s rights, children in conflict with the law, and child protection in the national Police academy.<sup>200</sup> Zimbabwe has plans afoot to replicate this initiative in 2020-2021. Botswana commissioned an eight-volume guide for social workers on the implementation of the Child Care and Protection Act in 2016.<sup>201</sup> Since 2016, the Judicial Training Centre in Dakar has, with launched a Juvenile Justice Training Programme. Trainers composed of magistrates, specialized educators, lawyers, prison officers, social workers, police officers, and gendarmes are expected to undergo specialised education courses that will enable them to train others.<sup>202</sup>

## Child-friendly national legislative, policy, and institutional framework

By 2020 member States should have embarked on a process of comprehensive and systematic review of their national statutory, customary and religious law relating to children.

By 2020 member States should have considered the adoption of a single, comprehensive and accessible children’s rights statute, harmonising and consolidating existing laws on children at the national level.

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199 The assignment is being undertaken by Maestral International.

200 The author was a member of a team which undertook this work, including presentation of “train the trainer” workshops.

201 This was prepared by the present author.

202 Save the Children “Mapping of child protection accountability mechanisms in armed conflict in Africa” (2019).

## **ACERWC 2018 General Comment no 5 on General measures of implementation of the African Children's Charter and systems' strengthening for child protection"**

The ACERWC released in 2018 a General Comment on "General measures of implementation of the African Children's Charter and systems' strengthening for child protection." This General Comment comprehensively described the nature of the state obligation concerning various dimensions of the legislation required to domesticate the ACRWC. Thus par 5.3.1 provides as follows:

"As part and parcel of the legislative obligation incurred under Article 1 of the Charter, legislative provisions concerning child protection are required. Legislation to underscore the right of children to protection from all forms of abuse, neglect, maltreatment and degradation is a necessary element of the fulfilment of the right provided for in Article 16 of the Charter, as well as selected other Charter rights such as Article 15; Article 20(2); Article 21; Article 27; and Article 29. Such legislation should include within its ambit the protection of refugee, migrant, stateless and internally displaced children. The legislation to provide for responses to child abuse and neglect should contain the entire array of protective measures, which "shall include effective procedures for the establishment of special monitoring units to provide support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up in instances of child abuse and neglect" (Article 16(2) African Children's Charter). The Committee has in the past stressed that legislation must be adopted to outlaw corporal punishment in all settings, that is, as a judicial punishment, in the alternative care system, in schools and in the home. To this end, constitutional provisions which aim to protect children from all forms of violence whether from public or private sources can be usefully deployed to support such legislation. Furthermore, it must be born in mind that the abolition of corporal punishment in all settings might need sector-specific legislation (eg education law, penal law, etc). Appropriate sanctions for violations should be enacted.

The legislation should specify clearly the requirements for declaring a child to be in need of alternative care, and for a range of responses to reported incidents of abuse, neglect, maltreatment and degradation, bearing in mind that the removal of the child from the family should be a last resort, and that parental poverty should ordinarily not be a sufficient ground for the separation of children for their families."

As stated, most countries have proceeded to enact child statutes in the period before the adoption of the Agenda 2040 goals (some examples: Angola (2012), Mozambique (2008), South Africa (2005 and 2008), Nigeria (2007), Eswatini (2012), Botswana (2009), Tanzania (2009), Zanzibar (2011), Egypt (2006), DR Congo (2009), Djibouti (2015), Gambia (2005), Guinea (2008), Liberia (2011), Madagascar (2007), Mal (2011), Mauritania (2005), Mauritius (1995 and 2008), Rwanda (2011), Sierra Leone (2007), South Sudan (2008), Sudan (2010), Togo (2007), Tunisia (1995 and 2010).<sup>203</sup> Somalia has a juvenile justice statute of 2007.

On the other hand, some countries remain to adopt comprehensive legislation, or their legislation is still in draft form and remains to be shepherded through Parliamentary processes. Zambia is an example of the latter, as a draft child law has been in preparation for some years. Ethiopia has yet to draft a child law that is of a comprehensive nature (as opposed to amendments to the Penal or Family code). Countries that do not appear to yet have a modern child protection statute include Cameroon, Central African Republic, Chad, Comoros, Congo Brazzaville, Cote D'Ivoire, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Guinea Bissau, Libya, Niger, Sao Tome et Principe, and Senegal.

The ACERWC has encouraged the finalisation of work-in-progress to adopt modern comprehensive children's statutes in its concluding observations to Senegal, Zimbabwe, Chad, Cote D'Ivoire, Ethiopia, and Eritrea.

<sup>203</sup> Morocco has a family code (2004) and a law related to human trafficking (2016), but it not evident that child protection is comprehensively addressed, for instance in legislatively establishing all the requisite elements of a child protection system. Soo too, Senegal has legislative protection relating to violence, child labour and a national family code but this does not necessarily entail the establishment of a comprehensive child protection system.

Some legislative achievements have indeed taken place during the period under review. Benin enacted a Child Code in 2015,<sup>204</sup> and Algeria finalised a Child Protection law in the same year.<sup>205</sup> Rwanda emphasised during its initial report to the ACERWC that it was drafting a Family and Persons Law that would incorporate the recommendation of the ACERWC in response to its report.<sup>206</sup> In its second concluding observations, the ACERWC noted this plan with appreciation, urged Rwanda to expedite the adoption of the law, incorporating the definition of a child as being under 18 years. Notably, in 2016, Rwanda adopted the law setting the age of majority at 18 years and the minimum age for marriage to 21 years.<sup>207</sup>

Namibia's comprehensive Child Care and Protection Act 3 of 2015 came into effect in 2016, with the promulgation of extensive Regulations to underpin implementation of the Act. This omnibus legislation addresses comprehensively the alternative care system, child protection and some aspects of the children's rights in family contexts, amongst others.

The DRC passed a new law in 2016<sup>208</sup> which seeks to comprehensively address the state's treaty obligations, including (by express reference) the African Charter on Human and People's Rights (ACHPR) and the CRC. Even though domestication of the ACRWC is not mentioned, several important dimensions of the text do in fact apply the ACRWC, including extensively providing for the child's right to a name, nationality and to birth registration, raising the minimum age of marriage for girls and boys to 18 years, and the strengthening of provisions to ensure the protection of the rights of the Congolese child against all kinds of abuses in intercountry adoption.

Uganda has already completed a 'second phase' review of the earlier Children Act 1996,<sup>209</sup> promulgated shortly after the CRC came into effect. Amongst many changes, are new provisions provides for mandatory reporting of child abuse by medical practitioners, teachers and social workers/ counsellors, and provisions outlawing corporal punishment in schools.

In November 2016,<sup>210</sup> Ghana's Parliament has passed the Children's (Amendment) Bill, 2016 into Law. The Bill amends the Children's Act, 1998 (Act 560), to make provisions in respect of foster-care and adoptions to meet international standards. Currently, placement of vulnerable children in foster care and adoption is uncoordinated, making it impossible to track the whereabouts and welfare of children, who come into the alternative care system. There was also no effective system in place to monitor children sent out of the country on inter-country adoptions. The amendments to Act 560 (the Children's Act) enable Ghana to better comply with alternative care provisions of the Convention on the Rights of the Child, 1990, the African Charter on the Rights and Welfare of the Child and the 1993 Hague Convention on Intercountry adoption.

Arguably, states have been less successful in harmonising customary legal norms with the ACRWC. This is understandable, given that customary law is by definition unwritten, and passed down in the oral tradition. Hence, legislative interventions (and even judicial decisions) are not necessarily very effective in halting recourse to traditional practice and customary norms at local level. Obviously, community awareness campaigns and education initiatives can assist in changing socially accepted beliefs, and this is required alongside law reform.

The harmonisation imperative affects not only girl children, but women more generally. The Committee for the Convention on the Elimination of Discrimination against Women (CEDAW) has commented in this regard:

“In its observations on the report of Equatorial Guinea, it identified a number of customary

204 [https://www.acerwc.africa/wp-content/uploads/2019/10/CO\\_Initial\\_Report\\_Benin\\_Sep\\_2019\\_English.pdf](https://www.acerwc.africa/wp-content/uploads/2019/10/CO_Initial_Report_Benin_Sep_2019_English.pdf)

205 [https://acerwc.africa/wp-content/uploads/2018/14/Concluding\\_Observations\\_Algeria.pdf](https://acerwc.africa/wp-content/uploads/2018/14/Concluding_Observations_Algeria.pdf)

206 [https://acerwc.africa/wp-content/uploads/2018/14/CO\\_Rwanda\\_2nd\\_Periodic\\_Report.pdf](https://acerwc.africa/wp-content/uploads/2018/14/CO_Rwanda_2nd_Periodic_Report.pdf)

207 UNICEF Review of Child Rights in Africa (2020) p 21.

208 Law no 16/008 of 15 July 2016 amending and completing the law n° 87-010 of 1 st August 1987 bearing on the Family Code.

209 Revised in 2000 with minor amendments.

210 Also in 2016, Cabo Verde introduced a child related decree, but it limited to the sphere of child labour ([https://www.africanchildforum.org/cldr/Legislation%20Per%20Country/2018%20Update/Cape%20Verde/capeverde\\_hazardouslabour\\_2016\\_fr.pdf](https://www.africanchildforum.org/cldr/Legislation%20Per%20Country/2018%20Update/Cape%20Verde/capeverde_hazardouslabour_2016_fr.pdf))

norms that discriminate against women, including matters involving the minimum age for marriage, child custody, inheritance rights, and women’s lack of access to civil courts to defend their rights. In its observations on the report of DRC, the Committee found that customary norms that discriminate against women included levirate (in which the brother of a deceased man is obliged to marry his brother’s widow), “pre-marriage” authorised before the legal age of marriage, and urged the State party to raise awareness among traditional groups and leaders around the importance of reviewing these discriminatory practices against women.”<sup>211</sup>

From the CRC Committee, Concluding Observations Niger (2018): “In the light of the State Party’s information on the prevalence of application of customary law over its statutory law in most personal status matters, including marriage and inheritance, the Committee urges the State party to harmonize its statutory and customary laws with the provisions of the Convention and to eliminate customary practices that are not in line with the Convention. In this regard, the Committee recommends that the State Party accelerates the adoption of the draft Children’s Code, aimed at harmonizing national legislation with the Convention, and the adoption of the Family Code.”<sup>212</sup>

## Child-friendly national legislative, policy, and institutional frameworks are reinforced

By 2020 member States should, if these are already in existence, strengthen a child-friendly legislative, policy and institutional framework.

A number of countries have adopted specific legislative enactments in the period under review to further the legislative basis for a children’s rights approach. This “piecemeal” approach is not necessarily inconsistent with the Charter, nor with the requirements of Agenda 2040. For instance, Zimbabwe and Namibia are some way into drafting new child justice legislation, and Zimbabwe is busy with a constitutionally compliant new Children’s Act for child protection. An entirely new children’s law in Kenya is all but complete, after expert input, technical review, and public consultation. South Africa gazetted an omnibus Children’s Act Amendment Bill in 2020. It will bring changes to a range of child rights issues, such as acquisition of parental responsibilities and rights, who is considered a child in need of care, and surrogacy.

### *Corporal punishment*<sup>213</sup>

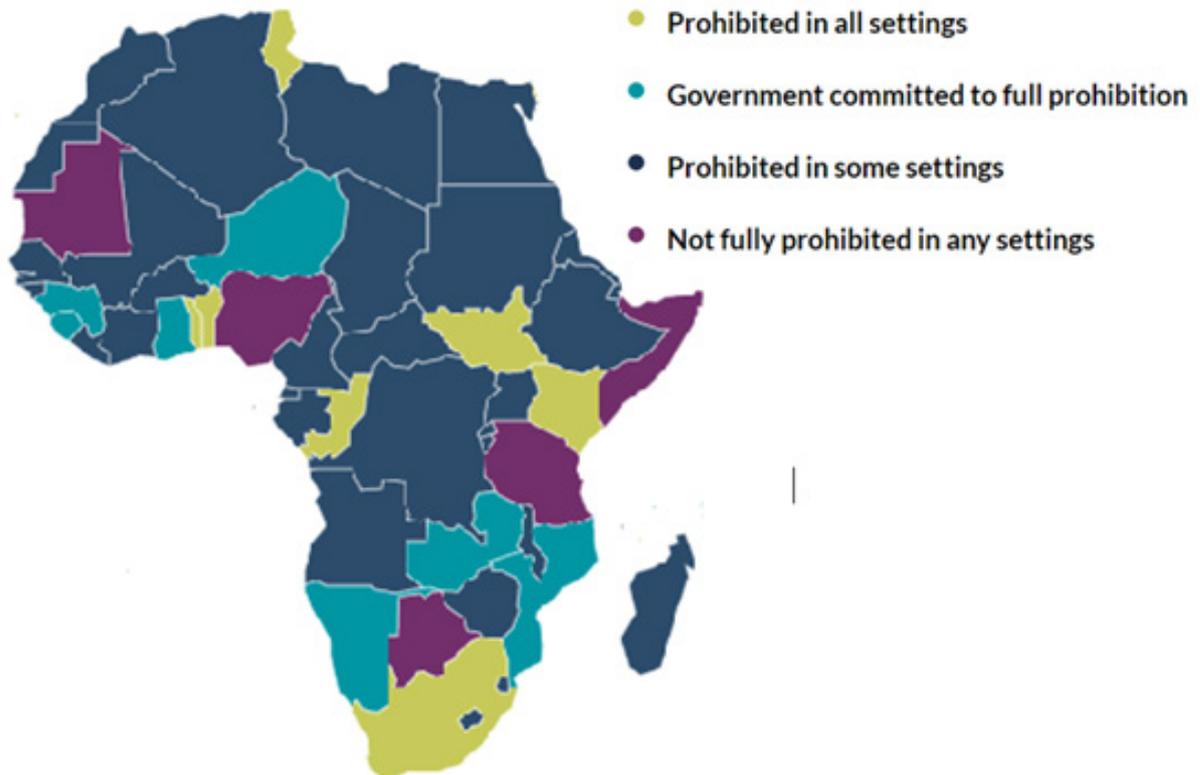
At the time of writing, there are nine African countries in which corporal punishment is prohibited in all settings: Togo, Benin, Republic of Congo, Kenya, Tunisia, Cape Verde, South Sudan, Seychelles, and South Africa. In South Africa, the probation occurred during the period under review, following the decision of the Constitutional Court in *FORSA v Minister of Justice and Constitutional Affairs*.<sup>214</sup>

211 Plan International and ACPF (2019) “Getting Girls Equal” p 50.

212 Plan International and ACPF (2019) “Getting Girls Equal” p 51.

213 See also the discussion of this in Aspiration 7: Violence against children.

214 CCT 320/17 (judgment of 28 September 2019).



In the Seychelles, the Children (Amendment) Act 2020 was adopted by the National Assembly on 12 May 2020 to explicitly prohibit corporal punishment and repeal the defence [of reasonable chastisement]. The Children (Amendment) Act 2020 amended the Children Act 1982 to insert a new article 70B which states: “(1) Notwithstanding any other law, no child shall be subjected to corporal punishment. (2) Any person who contravenes subsection (1) commits an offence and on conviction is liable to a fine of SCR25,000 or to imprisonment for not more than 2 years, or to both a fine and imprisonment, provided that the Court shall first consider other appropriate means of disposing of the matter, taking into consideration the relationship between the offender and the child.” The Children (Amendment) Act 2020 also repeals article 70(7) of the same Act, which recognised a right to parents and other adults with lawful control of a child to “administer proper punishment”. The 2020 Act further states in its introduction that, in addition to repealing the statutory defence, it aims to abolish “any other defence with respect to assault against a child available to parents and persons acting in loco parentis” – leading to children having “the same legal protection from assault as adults.” Corporal punishment is defined as “any kind of physical punishment of a child to maintain discipline or to enforce a rule in the exercise of parental authority, or rights or authority derived from having charge, custody, access, care, maintenance, or control of the child.” The Children (Amendment) Act 2020 was assented to by the President on 19 May 2020 and is now in force.”<sup>215</sup>

In Benin, too, corporal punishment was declared unlawful in the home in 2015. The Children’s Code 2015 (Loi No. 2015-08 portant code de l’enfant en République du Bénin) states in article 39 (unofficial translation): “Parents or other persons legally responsible for a child will ensure that discipline is enforced in such a way as to ensure that it is treated with humanity and with respect for its human dignity. If necessary, they may punish the child. In no case may the punishment constitute a violation of the child’s physical integrity or torture or inhuman or degrading treatment. Any punishment must be education in intent and accompanied by an explanation.” Article 130 states: “The State shall ensure that discipline within the family, at school and in other public or private institutions does not involve corporal punishment or any other form of cruel or degrading treatment.”<sup>216</sup>

The Government of Benin reported to the Committee on the Rights of the Child in 2016 that corporal

215 <https://endcorporalpunishment.org/reports-on-every-state-and-territory/seychelles/> (accessed 10 August 2020)

216 <https://endcorporalpunishment.org/reports-on-every-state-and-territory/benin/>.

punishment is punishable under the Criminal Code (art. 312), regardless of whether the offence results in bodily injury. A new Criminal Code was reportedly adopted in June 2018 (Loi No. 2018-15 portant Code penal).

In Kenya, the Protection Against Domestic Violence Act 2015 protects children as well as adults from violence and the threat of it, from direct violence as well as witnessing violence between adults, and from single as well as repeated acts of violence. The right of parents and others to “administer reasonable punishment” in article 127 of the Children Act 2001, confirming the common law right to punish children, has yet to be repealed, but this provision is now void (rendered ineffective) under article 2(4) of the Constitution, according to the reading of the situation by the Global Initiative to End All Corporal Punishment.

Other countries are inching towards prohibition. In Rwanda, article 347 of the Civil Code 1988 which confirmed parents’ “right of correction” was repealed by Law No. 32/2016 of 28/08/2016 Governing Persons and Family. However, the NGO Global Initiative to End All Corporal Punishment argues that clarity in law that all degrees and kinds of corporal punishment are unacceptable and unlawful is required. Explicit prohibition of all corporal punishment should be enacted. Similar considerations apply to their reading of the current state of affairs in Namibia.

### ***Child marriage***<sup>217</sup>

Based on information sourced from the website of the INGO “Girls not brides”, it seems that eleven African countries have established 18 as the minimum age of marriage, without exceptions. These are Botswana, The Democratic Republic of Congo, Egypt,<sup>218</sup> Kenya, Ghana, Malawi, Mauritania, Nigeria, South Sudan, Uganda, and Zimbabwe. This position was established in Zimbabwe in 2016 after a constitutional court ruling the outlawed child marriage in all forms. Additionally, there is a 2016 court ruling in Tanzania to this effect, which was upheld by the Court of Appeal despite a government appeal against the lower court finding.

Burundi enacted legislation aimed at preventing and responding to gender based violence. The chapeau refers amongst other to the CRC and the African Charter on Human and People’s Rights, but not the ACRWC directly. However, the legislation does introduce measures aimed at combatting early marriage (marriage precoce).<sup>219</sup>

Mozambique adopted legislation relating to child marriage in 2019.<sup>220</sup> However, as far as can be ascertained, it has not yet been promulgated by the President and is, at the time of writing this report, not yet in force. Guinea’s draft revision of its Children’s Code removed the provision that allowed boys and girls under 18 to marry with the consent of their parents or legal guardians,<sup>221</sup> while Seychelles has set the age for marriage at 18 irrespective of gender and removed a requirement for paternal consent. Madagascar, which previously allowed girls to enter into marriage at 14 and boys at 17, has revised its legislation to establish the age of consent for marriage at 18 for both sexes.<sup>222</sup> So, too, has Côte d’Ivoire, which reports that it has corrected discriminatory provisions that previously set different ages of marriage for women and men and the waiting period for the remarriage of women after their husbands died or after divorce.<sup>223</sup>

But there may be backward steps. On 10 August 2020, there were indications that Somalia might enact legislation to formally recognise child marriage. “The federal parliament of Somalia is set to vote on a heavily amended ‘Sexual Intercourse Related Crimes Bill’ that will further violate the

217 See also Aspiration 7: Violence against children.

218 Conflicting information about Ethiopia exists, with one source stating that the minimum age is legislatively fixed at 18 years in the Family Code of 2000.

219 [https://www.africanchildforum.org/clr/Legislation%20Per%20Country/2018%20Update/Burundi/burundi\\_preventionprotectionofvictimsand-repressionofgender-basedviolence\\_2016\\_fr.pdf](https://www.africanchildforum.org/clr/Legislation%20Per%20Country/2018%20Update/Burundi/burundi_preventionprotectionofvictimsand-repressionofgender-basedviolence_2016_fr.pdf).

220 Law on Preventing and Combating Premature Unions (Law No. 19/2019, of 22 October).

221 Guinea CRC Report, 2018, para. 40.

222 Madagascar CEDAW Report, 2015, para. 121.

223 Côte d’Ivoire CEDAW Report, 2018, para. 247

human rights, agency and bodily autonomy of children, women and girls in Somalia," according to a petition that is being circulated. The United Kingdom Ambassador to Somalia has weighed in on the issue, tweeting that the "new draft allows marriage at puberty, plus says a forced marriage is one where the family (not individual) doesn't consent."<sup>224</sup> The law recognising child marriage effectively permits sexual relations with a child.

Obviously, the ACERWC decries retrogressive measures such as this. The Committee has sent letter of Urgent Appeal to the Government of Somalia in August 2020 request the Government to reconsider its proposal in revising the Sexual Intercourse Related Crimes Bill and ensure that its laws are not contrary to the Charter. In a similar vein, the ACERWC sent a letter of objection to Mauritius in relation to the age of marriage as well.

The African Committee of Experts on the Rights and Welfare of the Child issued a letter of urgent appeal to the Government of Mauritius on 27 October 2019. The Committee issued the letter on the eve of the adoption of a child rights bill by the Government of Mauritius. While commending the measures taken to adopt a child rights bill, the Committee expresses concerns about the protection of children from child marriage under the draft bill. The Committee notes that section 9 of the draft bill, which reads "Forcing child to be married (1) No person shall force a child to be married civilly or religiously" places the burden of refusing child marriage on a child, as opposed to protecting children from child marriage. The Committee also expresses concern that article 145 of the Civil Code of the Republic of Mauritius allows for children from 16 -18 years of age to be married with parental consent, and that the draft bill does not contain a provision to repeal this rule.

### *Anti-trafficking laws*<sup>225</sup>

Many countries on the continent have adopted anti-trafficking legislation or provisions. Many of these predate the time period for this review. Some countries have addressed child trafficking under child-specific laws or laws that cover all persons including children, such as penal codes. In a number of countries, legislation covering all forms of trafficking, as indicated in the Palermo Protocol, has been passed. In countries like South Africa, the Palermo Protocol forms the basis of domestic legislation; while in nations such as Kenya, legislation is broader and covers additional forms of exploitation. Rwanda covers only certain forms of exploitation, including forced labour, sexual exploitation and removal of organ(s).

#### **Countries that have adopted dedicated anti-trafficking legislation**

Angola, Botswana, Burkina Faso, Cameroon, Central African Republic, Djibouti, Egypt, Ghana, Guinea Bissau, Kenya, Malawi, Mali, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Senegal, Sierra Leone, South Africa, Sudan, Tanzania, Tunisia, Uganda, and Zambia

Legislation in Côte d'Ivoire, Chad, Benin, Guinea and Tunisia only covers sex and labour trafficking. In South Africa, the Trafficking in Persons Act of 2014 (in operation from 2015) places a duty on every person who knows or ought to have known or suspected that a child is a victim of trafficking to report it immediately for investigation.

During the reporting period, Proclamation No.1178/2020 Prevention and Suppression of Trafficking in Persons and Smuggling of Persons was issued by Ethiopia, and Congo passed child friendly anti trafficking legislation in 2019. Tunisia enacted Organic Law n ° 2016-61 of August 3, 2016, relating to the prevention and the fight against trafficking in persons. Namibia enacted law 1 of 2018 to combat human trafficking. Nigeria amended The Trafficking in Persons Law Enforcement and Administration Act in 2015, and Niger and Malawi also adopted anti human trafficking legislation in that year.

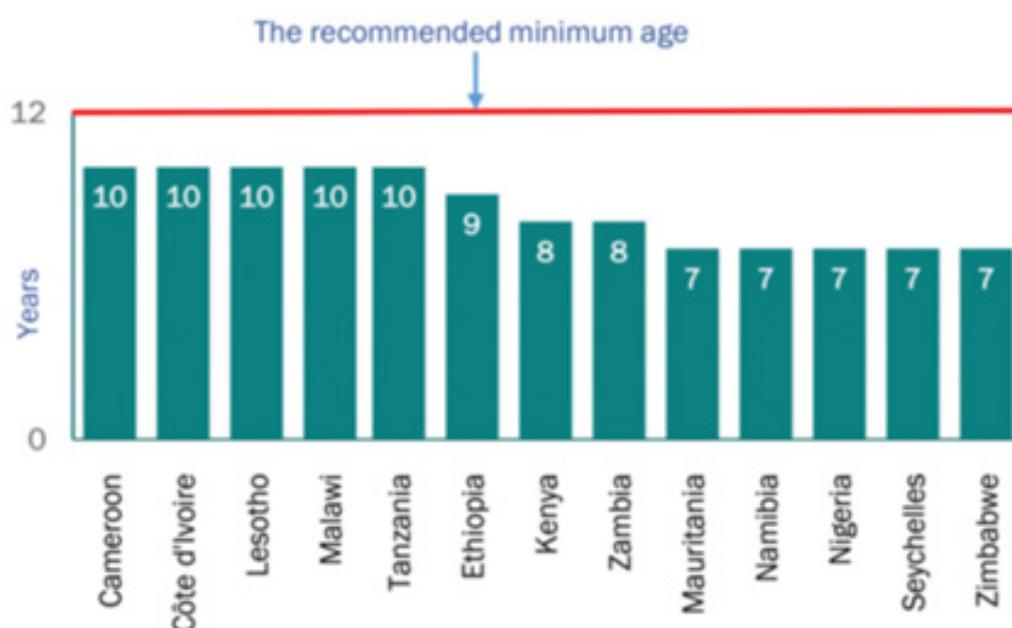
224 [https://www.bbc.com/news/live/world-africa-47639452?ns\\_mchannel=social&ns\\_source=twitter&ns\\_campaign=bbc\\_live&ns\\_linkname=5f3119026210a90670a73f76%26Row%20in%20Somalia%20over%20%27forced%20child%20marriage%27%20bill%262020-08-10T10%3A40%3A16.274Z&ns\\_fee=0&pinned\\_post\\_locator=urn:asset:dc69975c-619b-43dd-bc5b-a218ddd2e1e1&pinned\\_post\\_asset\\_id=5f3119026210a90670a73f76&pinned\\_post\\_type=share](https://www.bbc.com/news/live/world-africa-47639452?ns_mchannel=social&ns_source=twitter&ns_campaign=bbc_live&ns_linkname=5f3119026210a90670a73f76%26Row%20in%20Somalia%20over%20%27forced%20child%20marriage%27%20bill%262020-08-10T10%3A40%3A16.274Z&ns_fee=0&pinned_post_locator=urn:asset:dc69975c-619b-43dd-bc5b-a218ddd2e1e1&pinned_post_asset_id=5f3119026210a90670a73f76&pinned_post_type=share)

225 See also Aspiration 7: Violence against children.

## Minimum Age of Criminal Responsibility

By 2020 member States should have legislated the minimum age of criminal responsibility to be 12 years or above.

Most African States have legislated their MACR's to be 12 years or above,<sup>226</sup> however there is a variance. MACR's below 12 years are still found in Cote d'Ivoire (10 years),<sup>227</sup> Zambia (8 years),<sup>228</sup> Cameroon (10 years),<sup>229</sup> Ethiopia (9 years),<sup>230</sup> Kenya (8 years),<sup>231</sup> Lesotho (10 years),<sup>232</sup> Mauritania (7 years),<sup>233</sup> Zimbabwe (7 years)<sup>234</sup> and Seychelles (7 yrs).<sup>235</sup> MACR's that are as high as 16 can be found in Sao Tome et Principe,<sup>236</sup> Mozambique,<sup>237</sup> Cape Verde,<sup>238</sup> Guineae Bissau,<sup>239</sup> and 15 in Burundi.<sup>240</sup>



\*Adapted from ACPF Child Wellbeing Report 2020

<sup>226</sup> Angola 14 Penal Code, Article 17(1). The minimum age was lowered from 16 when the Penal Code 2006 came into force despite criticism from the UN Committee on the Rights of the Child; Central African Republic 14 [Loi No. 10.001 portant code penal Centrafricain, Article 9.]; Mali 13 ([Ordonnance No. 02-062 /P-RM du 5 juin 2002, Article 98.]), Madagascar 13 [Ordonnance No. 62-038 du 19 Septembre 1962 sur la protection de l'enfance, Article 35], Togo 14 [Children's Code 2007, Article 302]); Chad 13 years (Loi No 007/PR/99 Portant procédure de poursuites et jugement des infractions commises par les mineurs de treize (13) à moins de dix huit (18) ans, Article 22.)

<sup>227</sup> Loi No. 60-366 du 14 novembre 1960 portant code de procédure pénale, Article 116]

<sup>228</sup> However, a male person under the age of 12 is presumed incapable of having carnal knowledge, a provision that prevents the prosecution of younger boys for certain sexual offences. [Penal Code, Section 14]

<sup>229</sup> Code Pénal, Article 80(1).

<sup>230</sup> Penal Code, Article 52.

<sup>231</sup> [Penal Code, Section 14(1) and (2). However, a male person under the age of 12 is presumed to be incapable of having carnal knowledge, a provision that prevents the prosecution of younger boys for certain sexual offences. MACR is being reviewed to (12) twelve years under the Children Bill, 2020.

<sup>232</sup> Children's Protection and Welfare Act 2011, No. 7 of 2011, Section 79(1) - (4).

<sup>233</sup> Ordonnance No. 2005-015 portant protection pénale de l'enfant, Article 2.

<sup>234</sup> Criminal Code, Sections 6 and 7. Males under the age of 12 are presumed to be incapable of sexual intercourse, though this is a rebuttable presumption and a younger boy can be prosecuted for sexual offences related to sexual intercourse where it can be demonstrated that he was capable of performing the act on the balance of probabilities [Criminal Code, Sections 63].

<sup>235</sup> However, a male under the age of 12 is presumed to be incapable of having carnal knowledge, a provision that prevents the prosecution of younger boys for certain sexual offences. [Penal Code, Section 15.]

<sup>236</sup> Penal Code, Article 19.

<sup>237</sup> Penal Code sets the minimum age of criminal responsibility at 16 years.

<sup>238</sup> Criminal Code, Article 17.

<sup>239</sup> Código Penal Guineense, Decreto Lei No. 4/93, Artigo 10.

<sup>240</sup> Code Penal du Burundi, Loi No. 1/5 du 22 Avril 2009 portant revision du code penal, Article 28.

South Africa recently amended its minimum age of criminal capacity through the Child Justice Amendment Act 28 of 2019, which was promulgated on 4 June 2020.

### ***Provisions improving the protection accorded to child victims and witnesses***

An instance of promising practice came with the release, in November 2017, of amended regulations relating to the Sexual Offences Courts in South Africa. Financial constraints had necessitated certain revisions, but public comments were taken into account. The regulations covered such things as, among others, facilities at courts (where they require child-friendly facilities, devices and equipment); processes for dealing with judicial trauma debriefing; and provision of support services and staff. In providing for basic requirements in waiting areas, the regulations stipulate, among other things, that waiting areas for complainants must be furnished in a manner that takes into account the different ages of child and adult complainants; and that there are appropriate resources available for victim empowerment support services.

Girls who are complainants in rape cases would certainly benefit from these norms and standards.<sup>241</sup>

During August 2020, South Africa also tabled comprehensive new legislative provisions to enable vulnerable witnesses to provide evidence through an intermediary. These new provisions are yet to be debated in Parliament. Although not confined to benefitting children alone, they will be of major significance to improving conviction rates and reducing secondary trauma to child victims if adopted.

### ***Regional legislative initiatives***

During the period under review, in 2016, countries in the EAC, including Kenya, South Sudan, Tanzania and Uganda, adopted the East African Community Prohibition of Female Genital Mutilation Act in order to harmonise laws, policies and strategies to end FGM across the region.<sup>242</sup>

Also in 2016, the Southern African Development Community Parliamentary Forum (SADC-PF) adopted its Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage. In support of the AU Campaign to End Child Marriage, the model law requires SADC member states to harmonise their national laws to prevent child marriages.<sup>243</sup>

In West Africa, experts in Child Rights and protection from ECOWAS in collaboration with the EU and UNICEF, held a meeting 21st January 2019 in Abuja, Nigeria, to review and validate the ECOWAS Child Policy and its Strategic Action Plan (2019-2023) which focuses on ending child marriages in the region. The ECOWAS Commission presented three texts for validation namely; the Child Policy and Strategic Plan of Action and the Roadmap on Prevention and Response to Child Marriage that seeks to chart a clear course for the region.

### ***National Action Plans***

National action plans on children's rights in general, or on specific areas targeted for child protection, abound on the Continent. For instance, Mozambique has a National Plan for the Area of Disability (PNAD II 2012-2019), and Ethiopia has a National Policy on Children. Seychelles reported to the CRC Committee in 2016 that it was developing a National Policy on Adolescent Sexual and Reproductive Health. Malawi had a National Plan of Action for Vulnerable children 2015-2019.<sup>244</sup> Ghana adopted a National Action Plan for the elimination of the worst forms of child labour in Ghana (2017 – 2021). The Moroccan government launched in 2019 a comprehensive national action plan to fight forced

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241 Plan International and ACPF (2019) "Getting Girls Equal", p 33.

242 Getting Girls Equal, p 75.

243 Getting Girls Equal, p 71; Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage, available at <https://www.girlsnotbrides.org/wp-content/uploads/2016/10/MODEL-LAW-ON-ERADICATING-CHILD-MARRIAGE-AND-PROTECTING-CHILDREN-ALREADY-IN-MARRIAGE.pdf>.

244 <http://extwprlegs1.fao.org/docs/pdf/mal169445.pdf>

child begging.<sup>245</sup> Djibouti's National Strategic Action Plan for Children was evaluated in 2017 and subsequently a new National Policy for Children was adopted. It has a strong strategic goal of "creating a protective environment for all children that promotes the realization of their fundamental rights". This strategic goal rests on five main pillars, four of which are taken directly from the Convention on the Rights of the Child. These are survival of the child, development of the child, protection of the participation of the child, and institutional support and capacity-building.<sup>246</sup> The Democratic Republic of Congo reported that it did not have a single National Action Plan, but that it had several dealing with themed issues, namely These include: the National Plan of Action to combat the worst forms of child labour in the Democratic Republic of the Congo (2012-2020); the Plan of Action to combat the recruitment and use of children and other serious violations of the rights of the child by the Armed Forces and security services in the Democratic Republic of the Congo; the National Strategic Plan of Action to prevent and combat violence against children; the Plan of Action for the national gender strategy to combat maternal and child mortality in the Democratic Republic of the Congo, the framework for speeding up the reduction in maternal and child mortality (call for action to keep our promises) adopted by the Ministry of Public Health in September 2012; and the National Plan of Action for the registration of births in the civil register.<sup>247</sup> Many more examples of sectoral and other action plans could be adduced.

However, the real issue is not whether a National Action Plan or sectoral plans exist, but what the content of their goals and targets is, the means of execution, and how robust monitoring and evaluation (end of cycle reviews) are.

## Well-capacitated child-centred institutions

Not many - if any - countries have a Ministry devoted exclusively to children, as children's issues are usually combined with other social welfare groups, such as women or the elderly, disability, or with labour or sports. The issue of ministerial and other national coordination bodies is discussed at length in the African Child Policy Forum's 2016 African Child Wellbeing Report, in chapter 3, and does not bear repetition here.

As many recent studies evidence,<sup>248</sup> specialised children institutions such as children's courts, dedicated police and victim units, victim support centres, probation services and so forth have proliferated in many African countries, including during the period under review. Often time these "roll outs" have been confined to larger urban areas, or limited by budgetary and human resources constraints, but undeniably progress has been made. The reach of diversion programmes have been widened.<sup>249</sup> Care reforms have been spearheaded, such as in Ghana and Kenya.



Kenya's Department of Children's Services annual work plan for the 2020-2021 year includes a variety of systems strengthening activities, such as the launch of a child protection workforce curriculum, building the capacities of child protection workforce officers, the development of a framework to strengthen the child protection social workforce and piloting the implementation of the Guidelines for the Alternative Family Care of children in Kenya in a number of counties to prevent family separation and strengthening of families, strengthening the availability and quality of alternative family-based care (e.g. kinship, foster care, guardianship, *kafala*)

245 <https://northafricapost.com/35937-morocco-launches-action-plan-to-combat-exploitation-of-children-for-begging.html>

246 [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fDJI%2f3-5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fDJI%2f3-5&Lang=en)

247 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/129/21/PDF/G1612921.pdf?OpenElement>

248 DCI and ACPF (2018) "Spotlighting the invisible: access to justice for Children in Africa"; Plan International and ACPF (2019) "Getting Girls Equal".

249 Eg in Zimbabwe, where the initial 5 pilot sites were increased incrementally to 16 by 2019.

for children in need of care and protection, and transform institutional care through the progressive reliance on institutions in favour of family-based care. Among the plans include an induction course for the newly appointed Adoption Committee, and guidelines for *guardian ad litem*s who will represent children's interests in adoption processes. It is intended to draft and disseminate a child friendly, popular version of the national prevention and response plan concerning VAC, as well a National Guidelines on child online protection.

In Zambia, the Ministry of Gender is in the process of strengthening its policies and programming on gender-based violence and has created One Stop Centres at district and community level in response to gender-based violence and the VACS. The United Nations' Joint Programme on Gender Based Violence has been supporting these efforts for the past few years.

The ACERWC General Comment no 5 of 2018 (as mentioned) provides significant guidance to State Parties in the mechanisms and underlying components required to take forward the systems strengthening agenda and build enhanced specialised child-centred institutions.

The General Comment provide that States:

- Should have established well-resourced and mandated structures, such as national children's rights observatories and ombudspersons for children, which also include children as members; States should also have established appropriate structures that provide leadership and oversight and are accountable for the implementation of national laws, policies and programmes for children, and for strengthening the work of the African Children's Committee.
- Should have developed a policy framework and have set up functional mechanisms to co-ordinate the implementation of inter-sectoral programmes for children, which would involve all relevant ministries and departments as well as civil society, the private sector and institutions represented and led by children themselves.
- Should have adopted and started implementing a National Plan of Action for Children, including a national strategy on child marriage.
- Should, in collaboration with the relevant AU organs and the African Children's Committee, have developed training programmes to build the technical capacities of key State officials and members of civil society to undertake the reform of children-related laws and policies and to prepare accurate and effective State reports under the African Children's Charter.
- Should have systematically documented, in accessible format, including publications, and analysed good State practice on harmonising national law, policy and practice with the African Children's Charter.
- Should have undertaken costing, to quantify the cost connected to the prolonged violations of children's rights compared to the benefit to the State of curbing violations

The ACRWC Committee has expressly recommended that State parties should consider the establishment of a children's ombudsman, as such an institution has the ability to strengthen the accessibility, impact and effectiveness of the NHRIs in the protection and promotion of the rights of children.<sup>250</sup>

Mauritius was the first country in Africa to establish an independent children's rights institution in the form of an ombudsperson for children. The main objectives of the ombudsperson for children is to ensure that the needs, interest and rights of children are given full recognition by public authorities, private bodies and individuals, to promote the best interest of the child and to encourage the implementation of the CRC and ACRWC.<sup>251</sup> The Office of the ombudsperson for children also has

<sup>250</sup> ACRWC General Comment No. 5, 50.

<sup>251</sup> The Role, Powers and Functions of the Ombudsperson for Children available at <http://oco.govmu.org/English/AboutUs/Pages/The%20Role%20Powers%20and%20Functions%20of%20the%20ombudsperson%20for%20Children.aspx> (accessed on 1 May 2020).

the capacity to receive complaints and take action.<sup>252</sup> The Office of the ombudsperson for children is regarded as an important institution, with the budget for the Office being allocated directly from the Prime Minister and the Office also received increasingly more power.<sup>253</sup>

Building on the first dedicated office in Africa of an ombud for children in Mauritius, Malawi enacted the National Children's Commission Act 12 of 2019 establishing this body, with representation from (amongst others), nominees from civil society, from religious organisations, with ex officio representation from certain government quarters, and with a co-opted child representative and a senior level representative of the Human Rights Commission. The Commission is empowered to appoint professional staff to assist with carrying out its functions. As far as can be ascertained, the Commission is still to be established.

Djibouti enacted a law setting up the National Council of the Child in 2016, within the period under review in this evaluation. A study of its functions and objectives reveals that is to play a largely coordinating and promotional function, rather than serving as a body to whom complaints of right violations can be addressed with a view to their resolution.

The Western Cape Province as appointed the first ever Commissioner for Children<sup>254</sup> on 1 June 2020. This body will have powers to receive and investigate complaints of violations, albeit on a provincial level. It has been suggested that Murang'a County in Kenya may follow suit in setting up a county-level structure to function as a children's ombud.<sup>255</sup>

Children's desks at National Human Rights Institutions<sup>256</sup> are a common feature on the continent, and these functionaries continue to interact with the ACERWC in state party reporting processes. The Network of African National Human Rights Institutions (NANHRI) is a regional umbrella body that brings together 46 African National Human Rights Institutions. NANHRI, whose Secretariat is based in Nairobi, Kenya, is registered under Kenyan law as an independent legal entity and has been operational since 2007.<sup>257</sup>

In 2012, on the margins of 51st Session of the ACHPR, NANHRI held a regional workshop for African NHRIs on the reporting process to the ACHPR and the ACERWC. In November 2017, NANHRI convened a capacity building training workshop for African National Human Rights Institutions for the improved promotion and protection of children's rights.<sup>258</sup> NANHRI is co-organising and event on addressing children affected by armed conflict in October 2020, following on a conference hosted by the AU Commission on this theme a month earlier.

However, not much else on children's rights appears on the NANHRI website, and under "useful links" there is no reference to the website of the ACERWC. This points to the need for further engagement with NANHRI, as also for the need to involve them in DAC events and other ACERWC activities.

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252 Child rights connect 'State Party Examination of Mauritius' Third to Fifth Periodic Report 68th Session of The Committee on The Rights of The Child 12 January – 30 January 2015' (2015) 3.

253 Child Rights Connect (2015) 3.

254 The Western Cape Children's Commissioners Act, No 2 of 2019 (Western Cape Children's Commissioner Act).

255 At a workshop in Leiden, July 2019.

256 See, in general J Sloth-Nielsen "Chapter 8: The role of National Human Rights Institutions in enhancing the impact of children's rights reporting in Africa" (Pretoria University Law Press, forthcoming September 2020).

257 <https://www.nanhri.org/our-work/thematic-areas/cooperation-with-regional-human-rights-mechanism/>

258 The report of this workshop is available on the NANHRI website.

## Conclusion

Some legislative achievements have indeed taken place during the period under review. The process of law reform and harmonisation is an ongoing one, to be monitored for the next reporting period of Agenda 2040 (2025). These all point to the need to keep legislative processes in the child law space under scrutiny, not only as regards the topic or issue being deliberated, but also to examine final contents to ensure compliance with children's rights law. While some progress has been made, the review has revealed that States have been less successful in harmonising customary legal norms with the ACRWC. At the same time, regional legislative initiatives to end harmful cultural practice such FGM and child marriage which seek to harmonise laws, policies and strategies should similarly be reviewed in the next reporting period.

Not all States have a national or sectoral action plan and where those exist the means of execution and robustness of monitoring and evaluation are wanting. This is exacerbated by the lack of the establishment of ministries exclusively devoted to children. In line with previous recommendations of the Committee, States which have yet to do so should consider the establishment of a children's ombudsman to strengthen the accessibility, impact and effectiveness of the NHRIs in the protection and promotion of the rights of children.

The Committee notes also the lack of functional mechanisms across a number of States to co-ordinate the implementation of inter-sectoral programmes for children. At the same time, the Committee welcomes multisectoral initiatives of States to reform their care and protection systems for children by decreasing the reliance on institutional care, and strengthening family-based alternatives. The Committee emphasises the need for States to ensure enhanced support to children and families at risk of separation and include same in sectoral plans.

## Aspiration 03

Every child's birth and other vital statistics are registered



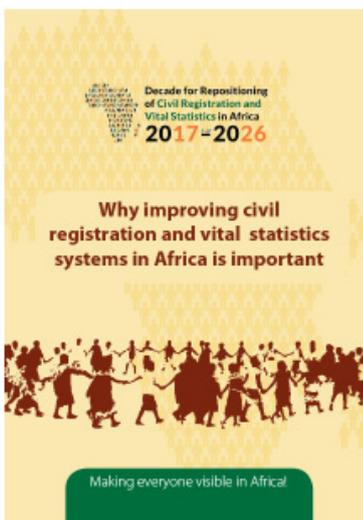
# By 2040

- Birth registration is universal, compulsory and free.
- All legal systems contain an effective and accessible framework for the registration of all births.
- The framework is implemented effectively to ensure that every child is registered at birth.
- An accessible system for the registration of marriages and deaths is also put in place.
- All legal systems contain an effective and accessible provision ensuring that a child acquires the nationality of the country of his or her birth, if, at birth, the child is not granted nationality by any other State

## ASPIRATION 3: EVERY CHILD'S BIRTH AND OTHER VITAL STATISTICS ARE REGISTERED

Birth registration is an essential right of the child, without which the child lacks a legal identity and, in effect, is invisible to policy planners and service delivery implementers. Birth registration is regarded as a key child protection tool, contributing as it does to the elimination of child marriage, to an effective separate justice system for children and to avoiding the evil of child soldier recruitment, amongst others. A dedicated target (16.9) under Goal 16 of the SDGs aims to provide legal identity for all, including birth registration, by 2030. Functioning civil registration systems are the main vehicles through which a legal identity for all – and target 16.9 – can be achieved. Such systems produce vital statistics, including those on birth registration, which are foundational for achieving sustained human and economic development.

Africa has historically had weak and ineffective birth registration systems, which ties along with poorly functioning civil registration and vital statistics (CRVS) systems more generally. Realising the necessity of effective CRVS systems, the AU has taken on board the improvement of birth registration rates. The first meeting of African Ministers in charge of the civil status was held in Durban in South Africa in 2012, and this has been followed by annual meetings. The last meeting took place in Zambia in 2019. The Africa Programme on Accelerated Improvement of Civil Registration and Vital Statistics (APAI-CRVS) is a regional programme developed following the political commitment and policy directives of the ministers in charge of civil registration to reform and improve CRVS systems on the continent. At the regional level, the programme is guided by a Regional CRVS Core Group led by the Economic Commission for Africa (ECA) in partnership with African Union Commission (AUC), African Development Bank (AfDB), Secretariat of African Symposium on Statistical Development, United Nations Children's Fund (UNICEF), World Health Organization (WHO), United Nations High Commissioner for Refugees (UNHCR), United Nations Population Fund (UNFPA), INDEPTH Network, Plan International and PARIS21. The Secretariat of the Programme is based in African Center for Statistics (ACS) at ECA.



Significant interventions have taken place to improve birth registration rates, efforts which have been noted by the African Committee of Experts on the Rights and Welfare of the Child.

The ACERWC has frequently commented on birth registration in its responses to State Party reports. For instance, commenting on the report of Angola in 2017, the ACERWC said that it "notes with appreciation the various campaigns undertaken by the Government of Angola in 1998, 2001, and 2016 to sensitize communities about birth registration and to provide free birth registration services during the campaigns."<sup>259</sup> IN relation to Malawi, the Committee noted with concern the lack of adequate dissemination of the National Registration Act at district level, which has resulted in low awareness, and lack of implementation in many districts. The Committee further noted with concern the low registration rates in districts where health facility-based birth registration has not yet commenced and registration is obtained on demand.<sup>260</sup>

Increasing birth registration is one of the SDGs, more particular target 16.9, which has as an indicator the percentage of births of children aged below 5 registered. The 2019 report on the progress towards the fulfilment of the SDGs paints a not unpromising picture for North Africa (5 countries, 98% population covered, 92% birth registration rate), whilst Sub-Saharan Africa still lags (43 countries, 98% population coverage, 44.5% birth registration rate).<sup>261</sup> This is the lowest of all regions in the

259 Angola's initial report on the African Charter on the Rights and Welfare of the Child para 20.

260 ACERWC Concluding observations Malawi (2018) par 18.

261 <https://unstats.un.org/sdgs/files/report/2020/secretary-general-sdg-report-2020--Statistical-Annex.pdf> (accessed 10 July 2020).

world. Nevertheless, many states have stepped up efforts in accordance with AU priorities, albeit off very low rates.

In many countries, the low levels of registration are caused by socio-demographic factors, such as the level of education of the parents, cultural barriers, lack of knowledge that registration is free of charge in the first days or months after a child's birth, and limitations of resources. Scaling up birth registration rates can involve initiatives such as organizing mass birth registrations, opening new birth registration posts, leveraging health services (eg in maternity wards) to capture newborn children's details, and using mobile birth registration units to reach more remote and rural areas,

#### THE ACERWC, birth registration and nationality

In the decision on the communication submitted by the African Centre of Justice and Peace Studies (ACJPS) and People's Legal Aid Centre against the Government of Republic of Sudan, (COMMUNICATION N2: 005/Com/001/2015 DECISION NO: 002/2018) birth registration and transmission of nationality was at stake.

The Complainants alleged that Ms. Iman Hassan Benjamin, who currently resides in Sudan was born on 5 September 1994 in Sudan to Ms. Hawa Ibrahim Abd al-Karim and Mr. Hassan Benjamin Daoud who were married on 5 April 1980. The marriage was conducted by the sharia ma'zoun [notary] of al-Hasaheesa town, Al-Jazeera state, Sudan. Her mother is a Sudanese national and holds a Sudanese Nationality certificate. Her deceased father was born in Juba in what is now South Sudan; and served in the Sudanese Police Force. On 9 July 2011, almost six months after the death of her father, South Sudan seceded from Sudan. Ms. Iman's father's death certificate states that he died at the Khartoum Hospital on 29 January 2011. It was also recorded on his death certificate that he was a Sudanese national.

On 19 July 2011, the National Assembly of the Republic of Sudan adopted amendments to the Sudan Nationality Act of 1994. These amendments entered into force on 10 August 2011 following signature of the President of the Republic of Sudan. These amendments provide for, among others, the automatic revocation of Sudanese nationality of those who became citizens of the Republic of South Sudan. The amendments further provide that Sudanese nationality shall be revoked where the Sudanese nationality of the responsible parent is revoked because of de facto or de jure entitlement to South Sudanese nationality. According to the nationality laws of the Respondent State, dual nationality with South Sudan is not permitted.

By the time the complainant tried to register for her university education she only had a birth certificate, which is not sufficient as she is also required to have a national identity number which she could get only through presentation of a nationality certificate. When the complainant submitted her application for a nationality certificate, it was submitted that the Civil Registration Department directed her to the Alien Persons Department to register her name, indicating that she has lost her Sudanese nationality since her father would have become South Sudanese upon the secession of South Sudan. This in turn, according to the Complainant, resulted in her loss of Sudanese nationality. Apart from not being able to attend her university education, such automatic loss of nationality left the complainant stateless. This was alleged to have violated provisions of the African Children's Charter, specifically Article 3 (the right not to be discriminated against); Article 4 (the protection of the best interest of the child); Article 6(3) on the right to acquire a nationality) and Article 6(4) relating to the obligation to prevent statelessness.

After a careful review of the applicable law and the arguments adduced by both parties, the Committee found that the Respondent State was in violation of its obligation under article 3 of the Charter on non-discrimination and article 6(3) and (4) of the Charter on right to nationality and prevention of statelessness as well as having committed a consequential violation of Article 11 on the right to education of the Children's Charter. The Respondent state party was required to urgently grant nationality to the complainant as she has a Sudanese mother and as she would otherwise be stateless. It further called on the Respondent state party to revise its Nationality Act with a view to ensuring that children born to Sudanese mothers automatically obtain Sudanese nationality in the same way as children born to Sudanese fathers.

## Birth registration is universal, compulsory and free

By 2020 States should adopt strategies in line with the Africa Programme on Accelerated Improvement of Civil Registration and Vital Statistics (APAI-CRVS).

By 2020 States should have put in place a simplified, easily accessible and free system for registering every child immediately after birth.

Several countries have adopted new **legislation** providing for free birth registration. A new Child Code in Benin recognizes in its Article 17, the right of children to birth registration without fees.<sup>262</sup> However, the average rate of birth registration hides important disparities according to the place of residence, the level of household incomes and the level of instruction of the household head.<sup>263</sup> For eight out of ten under five children, births have been registered with the civil registration centre, and 62% own birth certificates. In contrast, 19% do not. The ratio of children whose births have been registered does not vary practically following their age or gender. But children whose births have been registered with the civil registration authorities are proportionally less numerous in the rural than urban area (76% versus 87%).

In August 2016, Rwanda adopted a new Law N° 32/2016 of 28/8/2016 governing persons and family. The law meets the international principles of a comprehensive civil registration system which are: Compulsoriness, Continuity, Universality and Permanence. All provisions on penalties of imprisonment for failure to register children were removed.<sup>264</sup> The 2016 law extended the duration for birth registration from 15 days to 30 days. With this law, registration procedures were simplified to allow the registration of a child by a single parent. Further, in 2014, the Government commenced the introduction of e-registration at birth at health facilities and said that this would be rolled out in all public health facilities including health centres and hospitals. The system is set to enhance straightforward data collection and production of vital statistics. For the purpose of better coordination, the system is being implemented in collaboration of National Institution of Statistics Rwanda, National Identification Agency, the Ministry of Health and the Ministry of Local Government.<sup>265</sup>

Upon adoption of the new law governing persons and family in Rwanda, training of Civil Registrars and officers in charge of civil registration were organized and conducted countrywide. In addition, capacity building was conducted for data managers at health centres and good governance officers at district level in matters related to civil registration specifically on the importance of birth registration. Further, extensive sensitization campaign on child registration was conducted from November 2016 to January 2017 and 621,862 children were registered. Similar campaigns were conducted in refugee camps through which 7,801 and 11, 212 children were registered in 2016 and 2017, respectively.<sup>266</sup>

In Botswana, a vast country which is sparsely populated, the Government has established 34 decentralized district registration offices across the country to promote **accessibility**, with all hospitals and clinics equipped with maternity facilities which are mandated by the law to register births and deaths. These are complemented by mobile field visits of teams to reach out to remote settlements. The issued birth certificate is embedded with high security features to curb acts of fraud. The Government in collaboration with UNICEF has embarked on a project for mobile registration that will achieve on spot real time registration and issuance of birth certificates in the remotest areas.<sup>267</sup> The Government has further waived registration fees charged for late birth registration.<sup>268</sup>

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262 Benin ACERWC Report (2017), para. 82.

263 Benin ACERWC Report (2017), para. 84.

264 Rwanda UNCRC Report (2018), para. 75.

265 Rwanda UNCRC Report (2018), para. 76.

266 Rwanda UNCRC Report (2018) para 79.

267 Botswana UNCRC Report (2017), para. 63.

268 Botswana UNCRC Report (2017), para. 65.

Niger reported to the CRC Committee that huge strides had been made in improving access to birth registration and that the Government aims to set up registry offices in all 17,000 administrative villages and tribes by 2015, in order to achieve universal coverage, in line with its policy in this area. Registry office staff have become increasingly qualified, as a result of in-service training that has been provided for over 2,500 professionals, including 518 mayors and their deputies. Means of transport are provided to communal services to enable them to conduct monitoring visits to registry offices on a regular basis. As a consequence, the time taken to issue a birth certificate has fallen from 3 months to 2.5 weeks.<sup>269</sup>

In Burundi, a generalised exemption has been granted to internally displaced, returnees and dispersed persons with a view to allowing the registration of births without incurring penalties provided for by law. The renewal of this exemption is done every year at the end of a workshop seminar on civil status organised for the provincial controllers of civil status and the socio-cultural advisers of the Province Governors.<sup>270</sup>

Cabo Verde has created modern and effective mechanisms for registration at birth, based on online registration with the support of health professionals, and free issuance of the first birth certificate at the time of registration. The Registration at Birth Project was promoted through a national campaign.<sup>271</sup> In terms of results, there was a change from a situation in which 80% of children under 5 years of age had not yet been registered to 8% of children from 0 to 6 years old who were not yet registered, which was already achieved by 2013.<sup>272</sup>

Djibouti, fully conscious of the importance of birth registration, has reaffirmed it in the new legislation establishing the Code on the Legal Protection of Minors Act No. 95/AN/15/7 L of 18 May 2015 on the protection and promotion of minors, which emphasizes that “every child shall be registered at birth and shall have from birth the right to a name, the right to acquire a nationality and, as far as possible, to know and be cared for by his or her parents (art. 7).”<sup>273</sup>

Nevertheless, nearly 7 per cent of Djiboutians under the age of five have not received a birth certificate despite the 40-day extension granted to parents to carry out this operation at the Population Directorate in Djibouti City and especially in its decentralized services in the interior regions.<sup>274</sup> The Population Directorate, an administrative service responsible for birth registration attached to the Ministry of the Interior, has nonetheless conducted a number of campaigns among urban and rural populations to stress the importance of civil status documents for the realization of citizens’ rights. These operations were particularly intensive in 2014, with the introduction of the new digital national identity card, and involved the most remote areas of the country.<sup>275</sup>

The Government of Guinea reports that it has regularly organized campaigns to facilitate the registration of births and the regularization of civil status documents at the national, regional and prefectural levels.”<sup>276</sup>

Despite progress made in some States, birth registration is not universally free. For instance, Eswatini levies a charge of E60 even for first birth registration within 60 days,<sup>277</sup> and penalties are charged for late registration as is the case in a number of States. Even where births are registered, children do not always have registration certificates. In Cameroon, for instance, among children aged 5-17 years, the percentage of those whose births have been registered is 75% and 69% have a birth certificate.

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269 Niger UNCRC Report (2017), para. 44.

270 Burundi UNCRC Report (2017), para 48.

271 United Nations Committee on the Rights of the Child, ‘Second periodic report submitted by Cabo Verde under article 44 of the Convention, due in 1999’ (12 October 2017), UN Doc. CRC/C/CPV/2

272 As above par 61.

273 Djibouti UNCRC Report (2019), para. 163.

274 Djibouti UNCRC Report (2019), para. 165.

275 Djibouti UNCRC Report (2019), para. 166.

276 Guinea UNCRC Report (2018), para. 52.

277 Eswatini ACERWC Report (2016), para. 73.

## An accessible system for the registration of birth and other vital events must also be put in place

By 2020 States Should have put in place an accessible and effective vital registration system not only for births, but also for marriages and deaths, embedded in a sensitisation campaign about the importance of registration for the realisation of the child's rights and the curbing of child marriages.

Many countries experience resource constraints to fully mobilise an effective CSVR system. Lesotho, for example, with a large rural population, reported to the CRC Committee that "Central and district capacity within the Office of the Registrar is seriously inadequate hence unable to proactively identify unregistered children. This also causes delays in the issuance of birth certificates."<sup>278</sup>

Madagascar's reforms relating to civil status documents were adopted by parliament during its May 2018 session. Essentially, the law provides for:

- Digitizing the civil registry;
- Establishing national and local civil registry offices;
- Extending the deadline for declaring a birth to 30 days;
- Granting community leaders the power to accept birth notifications;
- Increasing the penalties related to civil registration.<sup>279</sup>

In 2018, the Government Council adopted a strategic plan for the period 2018–2027 to improve the civil registration system.<sup>280</sup> The plan's priority areas are civil registration and birth registration, particularly for children of specific demographic groups and vulnerable groups, including children of migrants and the children of families living on the street, disadvantaged families and families living in isolated areas, as well as children of stateless persons. Since 2017, as part of the plan's implementation, public awareness-raising campaigns on the importance of birth registration have been conducted, together with local leaders, in the district of Ambovombe Androy.

Eswatini reported to the ACERWC that "The Constitution provides that a child can gain citizenship from either parent subject to them following the prescribed procedures." However, a child born to a married couple does not automatically acquire nationality from his or her mother, but the father. The Government has not made any changes as yet to the law, as required in terms of the UN Committee's concluding observation numbers 32 and 33 to ensure that children can derive their nationality, not only from their father, but also their mothers unless the child is born outside of marriage and is not adopted or claimed by the father.<sup>281</sup>

By 2020 State parties to adopt legal provisions that a child born in the State with one parent (either mother or father) also acquires the nationality of that State at birth.

There remain countries where children cannot derive their nationality from both mothers and fathers, unless the child is born outside of marriage and is not adopted or claimed by the father. Eswatini is one such example. The issue was supposed to be reviewed during the drafting a new bill on citizenship, which does not seem yet to have occurred. Eswatini reported to the CRC Committee that "two underlying challenges limit the efficacy of the various initiatives are the persistent lack of resources and the non-alignment of the current civil registration laws and procedures with the [Child Protection and Welfare Act] CPWA. The Country needs a systematic Review and alignment of a new Births, Marriages and Deaths Act and procedures with the CPWA."<sup>282</sup>

According to UNHCR, in Mauritania, mothers can confer nationality to children when the father is

278 Lesotho UNCRC Report (2016), para. 99.

279 Madagascar UNCRC Report (2019), para. 63.

280 Madagascar UNCRC Report (2019), para. 65.

281 Eswatini ACERWC Report (2016), para. 72.

282 Eswatini UNCRC Report (2017), para. 63.

unknown or stateless. Children born in Mauritania to Mauritanian mothers and foreign fathers, or to mothers who were born in Mauritania themselves, also acquire Mauritanian nationality. However, in the latter two instances, these children can renounce their nationality at majority, even if this leaves them stateless. Children born abroad to Mauritanian mothers and foreign fathers can opt for Mauritanian nationality in the year before majority.<sup>283</sup>

Somali children who are born in Somalia to a Somali father are considered 'legitimate' and therefore Somali citizens. Similarly, children born outside Somalia to Somali parents derive citizenship from the father. Those born to Somali parents coming back to Somalia from the diaspora are considered Somali citizens. This is provided for in the past citizenship law."<sup>284</sup> However, children born outside Somalia to a Somali mother and non-Somali father do not acquire Somali citizenship. This will be addressed in the proposed Citizenship Law where it will be put forward that citizenship may also be acquired if either parent is Somali. Article 8 of the Provisional Constitution states that the State will provide direction on how to acquire and lose citizenship.<sup>285</sup>

Botswana has addressed the children's preservation of identity in the Citizenship Act, where if one of the parents of the child is Motswana, the child is considered to be a citizen of Botswana, accessing all rightful services and holding dual citizenship of both parents until they turn 21 years when they may choose their citizenship.

Children born to Burundian men or women have the same rights under the nationality law.

Madagascar has reacted to Concluding Observations regarding the transmission of nationality. Following the UN CRC Committee's recommendation, the Government of Madagascar adopted Act No. 2016-038 of 25 January 2017, on the Nationality Code. The Act's new article 9 makes it possible for women to pass on their nationality to their children irrespective of marital status. Mothers now transmit nationality to their children in the same way as fathers.

In 2018, the African Union Specialized Technical Committee on Migration, Refugees and Internally Displaced Persons reviewed the text of draft Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa. The draft seeks to enshrine equal nationality rights for women and men to acquire, change or retain their nationality and with respect to the nationality of their children. The next step will be a legal review of the text of the draft Protocol by the African Union Specialized Technical Committee on Justice and Legal Affairs, prior to adoption of the Protocol by the AU Assembly and its opening for signature and ratification by AU Member States.<sup>286</sup>

## Overall gaps and challenges

Most countries in Africa are endeavouring to improve birth registration; there are birth registration projects sponsored by international development partners in 36 sub-Saharan countries at present.<sup>287</sup> These initiatives are taking place against what is too often an exceptionally low base. A diagram below illustrates the remaining challenges:

Overall progress towards SDG target (proportion of under 5 births registered).<sup>288</sup>

283 <https://www.refworld.org/pdfid/5f0d7b934.pdf> (UNHCR briefing note on Gender Nationality Law and Statelessness 2020). Law reform has been brought about in Sierra Leone in 2017 as well. two States, Liberia and Eswatini, pledged to resolve issues of gender discrimination in their respective nationality laws before the end of the #Ibelong Campaign in 2024. Four African states are additionally flagged by UNHCR as having gender discriminatory nationality laws that could lead to statelessness: Mauritania, Togo, Burundi, Sudan, Somalia and Libya).

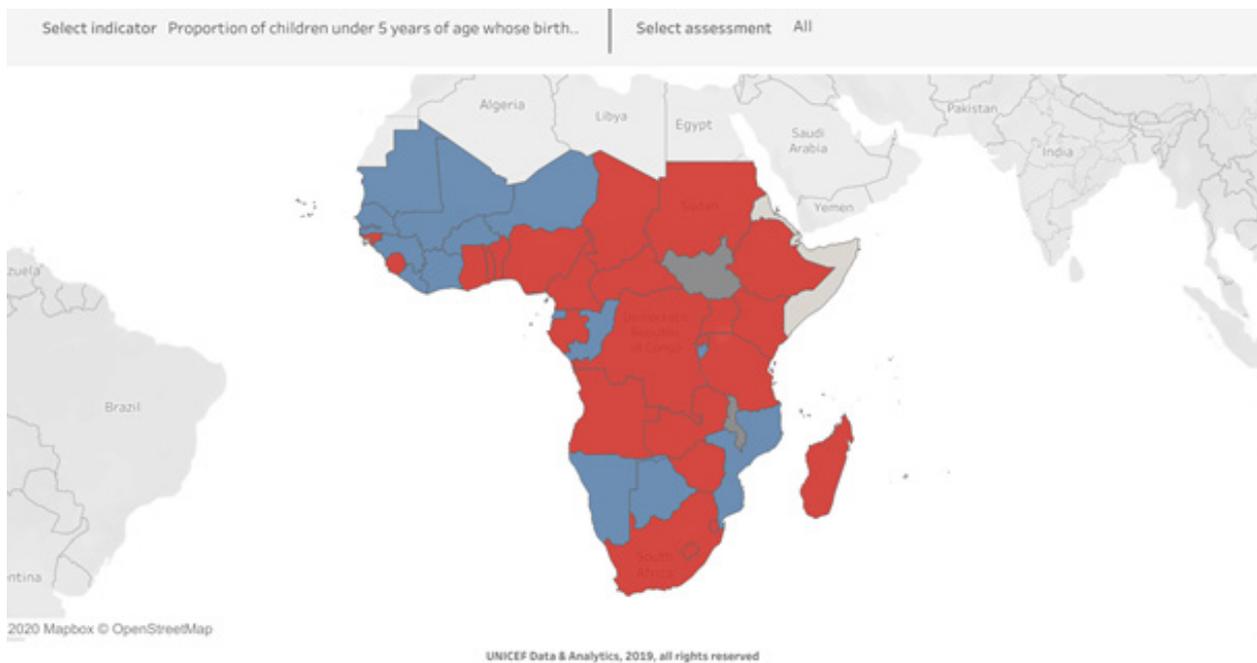
284 Somalia UNCRC Initial Report (2019), para. 115.

285 Somalia UNCRC Initial Report (2019), para. 116.

286 <https://www.refworld.org/pdfid/5f0d7b934.pdf>

287 WHO, Global Fund and Plan International, EU-UNICEF, Global Financing Facility/ World Bank and so forth

288 <https://data.unicef.org/resources/progress-for-every-child-in-the-sdg-era-dashboard-2019/>



In the above map, States marked in blue are considered on track and targets met, while those identified in red require accelerated progress. Grey indicates that data is not available. If North African countries are added, then Morocco is on track, Algeria has met targets, for Libya there is no data available and Egypt is on track.

The Sub-Saharan Africa average registration of children under 5 is 46% (World Bank, Completeness of Birth Registration, derived from UNICEF's State of the World's Children based on household surveys and ministry of health data).

The births of 95 million children under age 5, slightly over half of all children in Sub-Saharan Africa have never been recorded (UNICEF, Civil Registration in Sub-Saharan Africa). One in three of these unregistered children are in just three countries - DRC, Ethiopia and United Republic of Tanzania. Moreover, 120 million children have no birth certificates. If the trend continues, an estimated 115 million children in Sub Saharan Africa will be unregistered by 2030.

Subsaharan African birth registration 2010-2018 average 46%; Eastern and Southern Africa 40%, West and Central Africa 53% (UNICEF, State of the World's Children 2019).

Civil society organisations/non-governmental organisations] should educate parents and raise general awareness about the importance and modalities of birth registration.

## Conclusion

The assessment reveals that achieving the goal of universal, compulsory and free birth registration has not been met though progress has been made. While the Committee welcomes progress of some States, it notes with concern the need to accelerate progress in a number of States. The assessment also reveals the need to improve legislative frameworks and ensure that they are implemented effectively so to ensure that children do not remain invisible to policy planners and service delivery implementers. In this regard, the Committee notes with concern that children across a number of States cannot derive their nationality from both mothers and fathers and urges States to address this matter. States where children cannot derive their nationality from both mothers and fathers should undertake legislative efforts to address the matter for the next assessment period.

The assessment also reveals that birth registration is not universally free, undermining effective CSVR systems and hindering vital registration. States are urged to address the lack of universally free registration as well as the socio-demographic factors which impede registration.

## Aspiration 04

Every child survives and has a healthy childhood.



# By 2040

- No child dies a preventable death.
- Mother-to-child-transmission of HIV is eliminated.
- Children living with HIV are identified and provided with anti-retroviral treatment and are sustained on treatment to achieve viral load suppression.
- Every child is vaccinated against vaccine-preventable diseases, in particular diphtheria, tetanus, whooping cough, measles, polio and tuberculosis.
- The effect of malaria and other preventable illnesses on children is curbed.
- Nutritional supplementation, in particular of Vitamin A, is available to every child.
- Children are educated about HIV, AIDS and sexuality, with a focus on the prevention of HIV transmission.
- Exclusive breastfeeding is generally accepted and practised.
- Maternal mortality is significantly reduced.
- All children have access to and make use of quality, primary health care services; the treatment and prevention to HIV and AIDS, tuberculosis, malaria, pneumonia and diarrhea are prioritised.

## ASPIRATION 4: EVERY CHILD SURVIVES AND HAS A HEALTHY CHILDHOOD

Article 5 of the African Children's Charter sets forth the inherent right to life which shall be protected by law. It places an obligation upon states to ensure, to the maximum extent possible, the survival, protection and development of the child. At the same time, Article 14 provides that every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health and places an obligation on States to pursue the full implementation of this right and take relevant measures. Good health is the foundation for wellbeing. This chapter will explore Aspiration 4, which provides that every child survives and has a healthy childhood

By 2020 member States should have reduced by one-third premature mortality from non-communicable diseases through prevention and treatment and promoted mental health and wellbeing.

By 2020 member States should have ended preventable deaths of newborn children and children under five years of age.

Target 3.2 of the SDGs seeks to end preventable deaths of newborns and children under 5 years of age, with all countries aiming to reduce neonatal mortality to at least as low as 12 per 1000 live births and under five mortality to at least as low as 25 per 1000 live births. In 2018, the neonatal mortality rate per 1000 live births in Africa was 27.2, representing a substantial deviation from the global average of 17.7.<sup>289</sup> According to the WHO, the risk of a child dying before the age completing five years of age is still highest in the WHO African Region (76 per 1000 live births), with five out of the 6 countries having an under-five mortality rate above 100 deaths per 1000 live births. The under-five mortality rate is 70.3 for females and 81.3 for males.<sup>290</sup> This is also a substantial deviation from the global averages of 36.4 for females, 40.7 for males, and 38.6 for both girls and boys. These averages mask in-country differences. In Morocco, for instance, the infant mortality rate is almost 50 per cent higher in rural areas compared with urban areas (14.86 urban and 21.59 rural).<sup>291</sup>

However, some progress has been made. The total number of under-five deaths in Africa from 2016 to 2018 decreased by 100,540.<sup>292</sup>

Noncommunicable diseases (NCDs) threaten progress towards the SDGs and the aspirations set forth in Agenda 2040. Between 2015 and 2017, the WHO estimates that 299,183 children under the age of 5 died due to NCDs.<sup>293</sup> This data represents a decrease of only 1,303 deaths from 2015 to 2017. The rapid rise in NCDs is predicted to impede poverty reduction initiatives in low-income countries, particularly by increasing household costs associated with health care.<sup>294</sup> One risk factor for NCDs is the harmful use of alcohol. In 2017, Malawi launched its National Alcohol Policy, which included an increase in taxes and enhanced regulations on advertising for alcohol, restrictions on physical availability of retailed alcohol, and enacting and enforcing drunk-driving laws. Of those outlined goals, Malawi has a taxation on alcohol, but has not yet achieved the other provisions.<sup>295</sup>

289 World Health Organization, neonatal mortality rate, available at <https://apps.who.int/gho/data/node.gswcah>.

290 World Health Organization, under-five mortality rate, available at <https://apps.who.int/gho/data/node.gswcah>.

291 UNICEF Review of progress in the advancement of child rights in Africa: Reflecting on the past and future challenges and opportunities (2020).

292 World Bank, number of under-five deaths, available at <https://databank.worldbank.org/reports.aspx?source=2&series=SH.DTH.MORT&country=SSF,ZAF,CAF,DZA,EGY,TUN,LBY,MAR>.

293 World Health Organization, Global Health Observatory data repository, available at <https://apps.who.int/gho/data/view.main.CM-1002015REG6-CH16?lang=en>.

294 WHO, Noncommunicable Diseases, <https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases>.

295 See Republic of Malawi National Alcohol Policy, available at <file:///C:/Users/Veronica/Downloads/National+Alcohol+Policy+-+Book+Final+-+August+2017.pdf>; see also BMC Public Health, Implementation of tobacco and alcohol control interventions, available at <https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-018-5825-7#Tab2>.

## Sexual and reproductive health

By 2020 member States should have ensured universal access to sexual and reproductive health-care services, including family planning, information and education, and the integration of reproductive health into national strategies and programmes.

By 2020 member States should have put in place programmes to educate and sensitise parents to enable and capacitate them to take care of their newborn children.

Access to sexual and reproductive health (SRH) services is a key determinant of child and maternal health and necessary to achieve SDGs 3 and 5. While some progress has been achieved in a number of country contexts, there are challenges in accessing SRH services and information which leaves girls unable to protect themselves from unwanted pregnancy, childbirth-related complications, and sexually transmitted infections (STI's), including HIV.<sup>296</sup> According to the WHO, despite some progress, "the STI epidemic continues to pose a serious public health threat in the Region. The current coverage of services is inadequate, and the rate of expansion is too slow to achieve global targets."<sup>297</sup> Prevention programmes are of limited scope and coverage in the region, due to financial constraints and inadequate integration of STI and HIV services.<sup>298</sup>

### ESWATINI IN FOCUS

"Adolescents in Swaziland face a number of sexual and reproductive -related health risks and challenges. Early sexual debut is common, as is inter-generational sex, often with multiple partners, as well as risky sexual and other behaviours, such as low rates of condom use and substance abuse. For example, 50 percent of girls have had their first sexual engagement by the age of 17 years and 7 percent by the age of fifteen years. Factors such as poverty and educational exclusion aggravate the risks faced by adolescents of risky behaviours, and this in turn has driven the high HIV prevalence, especially among young girls in the country."<sup>299</sup>

SRH services are critical to improving numerous health outcomes such as infant and child mortality rates and HIV prevention, among others. Most African countries still have an unmet need for family planning (contraception) of 22% or higher.<sup>300</sup> Only four countries (Ethiopia, Nigeria, South Africa, and Togo) have laws and policies in place that allow adolescents to access SRH services without third party authorization.<sup>301</sup> The remaining countries either allow for only partial access to the SRH services, or no access at all.<sup>302</sup> In Cabo Verde, the legal framework was strengthened with the adoption and entry into force of the Child and Adolescent Statute. The State Party reported to the CRC Committee that "the quality of care has been strengthened in the 2 units for adolescent specific care in Reproductive Health Centres of the 2 main cities (Praia and Mindelo)."<sup>303</sup> In July 2018, Madagascar adopted Act No. 2017-043 of 25 January 2018 establishing general rules on reproductive health and family planning, as part of efforts to reduce adolescent "vulnerability to early pregnancy, abortion, sexually transmitted infections and HIV/AIDS and to tackle the persistence or emergence of certain diseases."<sup>304</sup> In Eswatini, the SRH policy provides that every clinic and hospital should provide a family planning programme for the general population but access to comprehensive family planning

296 See Plan International and ACPF (2019) "Getting Girls Equal" Report.

297 Ibid.

298 WHO, "GLOBALHEALTH SECTOR STRATEGY ON SEXUALLY TRANSMITTED INFECTIONS 2016–2021: IMPLEMENTATION FRAMEWORK FOR THE AFRICAN REGION" (29 August 2017), UN Doc. AFR/RC67/7, para. 11.

299 Eswatini UNCRC Report (2017), para. 166.

300 World Health Organization 2018 Progress Report: Reaching Every Newborn National 2020 Milestones, available at <https://www.healthynewbornnetwork.org/hnn-content/uploads/Final-Country-Progress-Report-v9-low-res.pdf>.

301 SHR: Africa Region (2019) Scorecard, available at [https://www.afro.who.int/sites/default/files/2020-06/\\_SRHR%20-%20AFRO%20Region%20-%202019\\_Final\\_21May\\_0.pdf](https://www.afro.who.int/sites/default/files/2020-06/_SRHR%20-%20AFRO%20Region%20-%202019_Final_21May_0.pdf).

302 Ibid.

303 Cabo Verde UNCRC Report (2017), para. 110.

304 Madagascar UNCRC Report (2019), para. 152.

information and services remains one of the SRH challenges.<sup>305</sup> SRH issues disproportionately affect girls with disabilities, who often do not have their own autonomy to make the decision to undergo reproductive health procedures.

Only few countries permit the legal termination of pregnancy. In some States, the termination of pregnancy is legal but cannot be performed without prior information being provided to the girl child (e.g. Cabo Verde);<sup>306</sup> in others consent of a parent, guardian, or legal representative is required. In most countries where it is permitted, it is most often permitted under certain conditions, *i.e.* to save a woman's life, preserve health, or in cases of rape or incest, or foetal impairment. Even where it is permitted, girls often lack appropriate information about safe abortion and may not recognise the early signs of a pregnancy. In countries where abortion is illegal or inaccessible, women and girls have resorted to unsafe and clandestine abortions, performed outside public health centres, often in unhygienic conditions and by untrained practitioners, and sometimes leading to death.

There is very limited data available on the integration of HIV and sexuality education in secondary schools in the African region, but from what is available, Cabo Verde, Eswatini, Niger, Rwanda, Sao Tome and Principe, and South Africa have reportedly achieved 100% integration of such programs into their secondary schools, and Seychelles has achieved 81% integration.<sup>307</sup>

In June 2020, Mali and Sierra Leone were selected to become new members of the WHO Global Sexual Reproductive Health and Rights (ARHR) initiative.<sup>308</sup> The SRHR Initiative began with four countries in the African Region, namely Benin, Burkina Faso, Rwanda and South Africa, and has since encouraged countries to develop policy briefs and further advocacy for SRHR (including on the integration of SRHR into UHC/National Health Insurance/PHC) and capacity building, through the national dissemination and orientation of WHO guidelines on Safe Abortion and contraception.

By 2020 member States should have achieved universal health coverage, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all.

By 2020 member States should have developed health centres and hospitals dedicated to children and should have ensured that all health centres and hospitals are child friendly.

By 2020 member States should have set up a fully-functional health infrastructure equipped to deal with children's health concerns; States should ensure that the health infrastructure is able to effectively respond to emergency situations such as the outbreak of Ebola in Guinea, Liberia and Sierra Leone.

By 2020 member States should have achieved the immunisation against measles and polio of all infants; and should strengthen the health care system to allow for effective routine immunisation of all children for all major diseases, in line with the Global Vaccine Plan (GVAP) 2011-2020.

By 2020 member States should, in line with the Immunisation Declaration, have achieved the GVAP target of at least 90 per cent national coverage and at least 80 per cent coverage in every district for all nationally-available vaccines.

305 Eswatini UNCRC Report (2017), para. 169.

306 Cabo Verde UN CRC Report, para. 114.

307 Ibid.

308 WHO Regional Office for Africa, The WHO Global Sexual and Reproductive Health and Rights initiative welcomes two new members in the African Region, 08 June 2020, available at <https://www.afro.who.int/news/who-global-sexual-and-reproductive-health-and-rights-initiative-welcomes-two-new-members>.

## Universal health coverage is achieved and access to medicines and vaccines is available for every child

States have not achieved the goal of universal coverage. Universal health coverage for children across the continent remains an aspiration, with many children currently left behind. Where universal coverage is not extended free of charge, children have challenges in accessing medical services, often due to the prohibitive cost of receiving health services. While some progress has been made in some States to ensure that primary healthcare services are accessible and available to all children, children face numerous challenges in enjoying equitable access to critical health services thereby placing children at risk. Vital healthcare interventions are often not reaching the areas and children who need them.

Progress has been made with the establishment of health insurance schemes in a number of States. In Djibouti, Act No. 24/AN/14/7 of 5 February 2014 instituted a Universal Health Insurance Scheme, establishing “a health insurance system based on the principles of national solidarity, legal entitlement and access to health care for all.”<sup>309</sup> There is however a long way to go to ensure that healthcare is accessible for all and that barriers to access are removed. Rwanda too has a community health insurance scheme.

Progress toward universal health coverage requires a transition from child and adolescent-friendly projects to child and adolescent-responsive health systems. According to a study by the Columbia Global Center, “in the event of national scale-emergencies, epidemics, and disasters, hospitals, and medical institutions in Sub-Saharan Africa do not have a standard protocol, capacity to immediately mitigate as well as the resources to ensure children receive the stipulated and adequate care.”<sup>310</sup> The COVID-19 pandemic revealed large gaps in accessing health and nutrition services and the challenges in coping with health emergencies as will be discussed in chapter 11.

“Immunisation coverage across Africa has greatly increased over the past few decades, with corresponding reductions in disease mortality and morbidity. Future increases in coverage are anticipated to return large health benefits, but coverage rates in many countries across the continent are far from national targets, with many rates stagnating or falling.”<sup>311</sup>

Access to basic immunisation against deadly childhood illnesses is key to protecting a child’s right to life and adequate health. According to a study published in the Lancet, immunisation coverage across Africa has greatly increased over the past few decades, with corresponding reductions in disease mortality and morbidity, though coverage rates across the continent are far from meeting national targets. Vaccination coverage varies markedly across countries. Even where basic vaccinations are near universal, coverage is not considered satisfactory. While polio vaccinations have ensured that the disease is stopped across the continent, Covid-19 threatens the continued provision of this and other important vaccines.<sup>312</sup>

309 Djibouti UNCRC Report (2019), para. 23.

310 <https://globalcenters.columbia.edu/news/mapping-sub-saharan-africa-pediatric-hospitals-and-assessment-their-capacity-respond-public>

311 Local trends in immunisation coverage across Africa, available [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(19\)30702-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)30702-0/fulltext).

312 See further chapter 11 of this report.

## SOMALIA IN FOCUS

“More than 23,000 suspected cases of measles were reported in 2017, representing more than a six-fold increase compared to 2016, with 84 per cent of these children under ten years of age. Most measles cases came from Banadir, Togdheer, Mudug, Lower Shabelle, Bari and Bay regions. In response, over 602,000 children aged six to 59 months in 35 hotspots were vaccinated.”<sup>313</sup>

On the other hand, it is estimated that coverage is only 6 percent in the WHO African region for immunization against Hepatitis B. Vaccination against HPV for girls between the ages of 9 and 14 is an effective strategy to reduce risk of cervical cancer later in life. Unfortunately, only a few African States provide this important vaccine with less than 3 percent of countries providing it. Cabo Verde reported that vaccinations are an important part of the National Health Policy, with 10 vaccinations provided free of charge for children under the age of one years old.<sup>314</sup> Vaccination campaigns held every three years have reportedly resulted in Cabo Verde declaring itself Poliomyelitis-free in 2016.<sup>315</sup> In Mozambique progress has also been made with the introduction of three new vaccines in 2015 (i.e. rotavirus, the IPV vaccine, and the second dose of the vaccine against measles).<sup>316</sup>

Data is key to making evidence-based interventions. In Tunisia, a computerized database system has been put in place to monitor vaccination coverage.<sup>317</sup>

## Children living with HIV are identified and provided with anti-retroviral treatment and are sustained on treatment

By 2020 member States should have provided all children living with HIV with anti-retroviral treatment.

By 2020 member States should have improved programmes to ensure a sustained reduction in HIV prevalence and incidence among adolescents.

By 2020 member States should have prioritised the treatment and prevention of HIV, tuberculosis, malaria, pneumonia and diarrhoea, so as to reduce under-5 mortality.

By 2020 member States should have improved a minimum package of proven childhood interventions based on successful strategies such as Accelerated Child Survival and Development (ACSD) and Integrated Management of Childhood and Neonatal Illnesses (IMNCI) as part of national health policies and plans, poverty reduction strategies and health sector reforms.

UNAIDS estimates indicate that HIV incidence has fallen in many of the most severely affected countries. This is reportedly the result of adolescents and young people adopting safer sexual practices, and because more people living with HIV are accessing treatment to lower their viral load. Sub-Saharan Africa, however, has the highest prevalence of adolescents living with HIV, with approximately 1.5 million (88 per cent) living in sub-Saharan Africa. The table below demonstrates the percentage of adolescents aged 15 to 19 in West and Central Africa who know where to get tested for HIV, have ever been for a test, and have been tested in the last year (2015-2019).

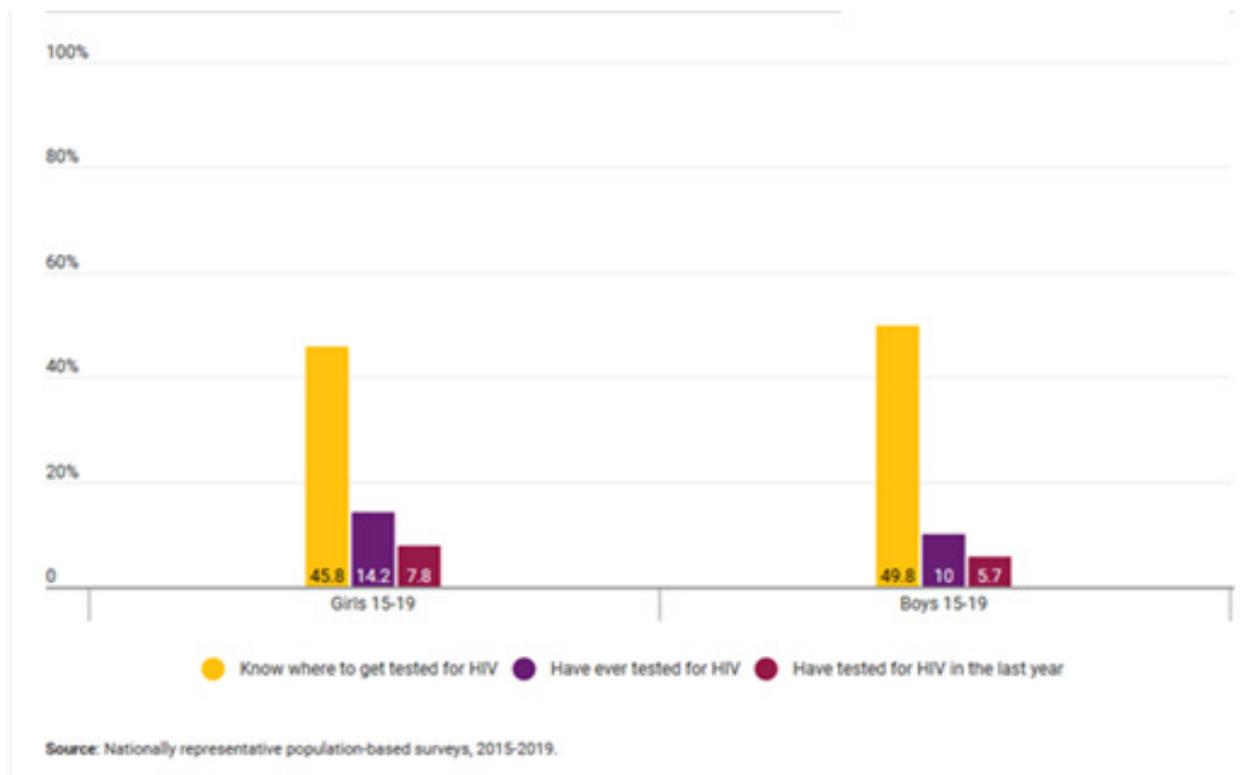
313 Somalia UNCRC Report (2019), para. 216.

314 Cabo Verde UNCRC Report (2017), para. 97.

315 Cabo Verde UNCRC Report (2017), para. 99.

316 Mozambique UNCRC Report (2018), para. 273.

317 Tunisia UNCRC Report (2018), para. 76.



Testing rates are low in some States with boys less likely to have been tested resulting in adolescents not knowing their status. Only 27 per cent of adolescent girls and 16 per cent of adolescent boys aged 15-19 in Eastern and Southern Africa have been tested for HIV in the past 12 months and received the result of the last test.<sup>318</sup> Testing rates in West and Central Africa are even lower. According to UNICEF, “[i]f current trends continue, there will still be some 183,000 annual new HIV infections among adolescents in 2030.”<sup>319</sup>

“AIDS-related deaths are rising among only one population group and that is young people. We will fail to achieve the end of AIDS if national policies and practices continue to restrict young people’s access to HIV, sexual and reproductive health services. We must tackle the determinants of HIV risk and vulnerability and facilitate the realization of young people’s rights so that they can achieve their full potential in life.”

-UNAIDS

There were 68,292 deaths due to HIV/AIDS for children under five years old in 2017, which is 6,742 less under-five deaths than 2015.<sup>320</sup> WHO estimated a total of 480,000 deaths due to HIV/AIDS in Africa in 2017, which means that approximately 14.2 percent of HIV/AIDS deaths in Africa in 2017 were in children under five years old.<sup>321</sup> Not all States have provided all children living with HIV with anti-retroviral treatment while others provide access to varying degrees. For instance, universal and equitable access to HIV testing and antiretroviral treatment free of charge is reportedly provided by health centers, central and regional hospitals throughout Cabo Verde.<sup>322</sup> Ministries of Health reportedly work with WHO and CSOs to develop differentiated services, including in Nigeria, Ghana, Uganda,

318 <https://data.unicef.org/topic/hivaids/adolescents-young-people/>

319 Ibid.

320 World Health Organization, Number of deaths by region HIV/AIDS, available at <https://apps.who.int/gho/data/node.main.ChildMortREG1002015?lang=en>.

321 See World Health Organization Number of Deaths Due to HIV/AIDS Estimates by WHO Region, available at <https://apps.who.int/gho/data/node.main.623?lang=en>.

322 Cabo Verde UNCRC Report (2017), para. 107.

Rwanda, Kenya, Tanzania, Zambia, Mozambique, Eswatini, Lesotho, and Namibia.<sup>323</sup> Additionally, SRH services are integrated within support groups and clinic visits through the programme.

Diarrhoea remains a leading killer of young children. In 2017, diarrhoeal diseases accounted for 235,606 deaths of children under the age of five.<sup>324</sup> Since 2004, WHO and UNICEF have recommended that oral rehydration salts (ORS) and zinc supplements be used to treat childhood diarrhoea.<sup>325</sup> Little data is available on the current availability of Zinc/ORS in African countries. The WHO has data on Zinc/ORS distribution in just four countries, and only as recently as 2016. The rate of distribution of Zinc/ORS however varies.<sup>326</sup>

Pneumonia kills more children than any other infectious disease.<sup>327</sup> Most deaths occurred among children under the age of two, and almost 153,000 within the first month of life, UNICEF reports. Three of the five countries with the highest numbers of deaths globally were African countries - Nigeria [162,000], DRC [40,000], and Ethiopia [32,000].

Immunization is an essential component for reducing under-five mortality. Immunization coverage estimates are used to monitor coverage of immunization services and is considered a good indicator of health system performance by the WHO. In 2018, 20 African countries achieved 90 percent or higher percentage rate of one-year-olds receiving three doses of pneumococcal conjugate vaccine (PCV3) in a given year.<sup>328</sup> The WHO, however, did not have data on Chad, Comoros, Egypt, Equatorial Guinea, Gabon, Guinea, Somalia, South Sudan, or Tunisia. Despite this missing data, most reported countries showed an increase in vaccination since 2016. Most notable was Mauritius, which had only a 10 percent PCV3 vaccination rate in 2016, but a 96 percent PCV3 vaccination rate in 2018.

As explained by the WHO, it is well recognised that estimating the incidence of TB in children is difficult, and published estimates vary.<sup>329</sup> In 2016, Kenya became the first country to launch child-friendly TB medicines.<sup>330</sup> In 2018, only 27 percent of children under 5 years old estimated to be eligible for TB preventative treatment were started on it.<sup>331</sup>

By 2020 member States should have made insecticide-treated nets available to all children under five in malaria-endemic areas.

Malaria is the third highest infectious disease causing the death of children. According to the WHO, the continent continues to shoulder more than 90 per cent of the global malaria burden. Little progress has been made to reduce deaths across 10 African countries hardest hit by malaria. According to the WHO 2019 World Malaria Report, the majority of deaths occurred in sub-Saharan Africa where approximately 24 million children were estimated to be infected with the deadliest form of malaria. In 2017, 257,076 children under the age of five in the African region died due to

323 See Africaid Zvandiri Regional Work, <https://www.africaid-zvandiri.org/regional-work> For example, in Zimbabwe, the national programme Zvandiri provides a package of differentiated services for children, adolescents and young people living with HIV so that they know, understand, and accept their HIV status; start and maintain Antiretroviral treatment, and remain engaged in treatment, care, and support services

324 WHO Number of Deaths by Region: Diarrhoeal Diseases, <https://apps.who.int/gho/data/view.main.CM1002015REG6-CH3?lang=en>.

325 UNICEF: Diarrhoea, Diarrhoea remains a leading killer of young children, despite the availability of a simple treatment solution, October 2019, available at <https://data.unicef.org/topic/child-health/diarrhoeal-disease/#figure-modal-263>.

326 See GAPPD Monitoring Progress, available at [https://www.who.int/maternal\\_child\\_adolescent/epidemiology/gapdd-monitoring-progress.xlsx?ua=1](https://www.who.int/maternal_child_adolescent/epidemiology/gapdd-monitoring-progress.xlsx?ua=1). As of 2016, Burundi is reported as having just 6% of children under five with diarrhoea receiving ORS/Zinc; Ethiopia at 16.6%; South Africa at 27.9%; and Uganda at 29.6%. However, the percentage of Zinc supplements (without ORS) of children under five with diarrhoea was slightly higher, though still only sparsely available. In 2016, Burundi had 15% of children receiving supplements; Egypt and Ethiopia each had 33.3%; South Africa had 36.8%; Uganda had 40%, and Senegal had 6.8%.

327 UNICEF, One child dies of pneumonia every 39 seconds, agencies warn, 11 November 2019, available at <https://www.unicef.org/press-releases/one-child-dies-pneumonia-every-39-seconds-agencies-warn>.

328 World Health Organization, Global Health Observatory data repository, available at <https://apps.who.int/gho/data/view.main.PCV3v>.

329 WHO: Tuberculosis, <https://www.who.int/tb/areas-of-work/children/childhoodTBestimates/en/>.

330 See TB Alliance, Kenya Becomes First Country to Introduce New Child-Friendly TB Medicines, available at <https://www.tballiance.org/news/kenya-becomes-first-country-introduce-new-child-friendly-tb-medicines>. See also Kenya's National Tuberculosis, Leprosy and Lung Disease Program (NTLP) <https://www.nntp.co.ke/>.

331 WHO Global Tuberculosis Report, 2019, Executive Summary, available at [https://www.who.int/tb/publications/global\\_report/GraphicExecutiveSummary.pdf?ua=1](https://www.who.int/tb/publications/global_report/GraphicExecutiveSummary.pdf?ua=1).

Malaria.<sup>332</sup> Only Uganda reported significant reductions of malaria cases. Universal access to and use of insecticide-treated bed nets (ITNs) remains the goal for all children living in endemic areas and at risk of malaria. There is a lack of data on the use of insecticide treated beds for children under five years old. UNICEF reports that over the last decade, the percentage of children sleeping under ITNs in sub-Saharan Africa increased from less than 5 per cent to over 50 per cent.<sup>333</sup> However, coverage has improved only marginally since 2015, with disparities in ITN coverage across countries in Sub-Saharan Africa, ranging from a low of less than 20 per cent to a high of around 90 per cent.<sup>334</sup>

## Mother-to-child transmission of HIV eliminated

By 2020 member States should have achieved the goal of providing anti-retroviral medicines to at least 90 per cent of pregnant women living with HIV.

By 2020 member States should have eliminated new HIV infections among children by 90 per cent, and have achieved a reduction in the number of AIDS-related maternal deaths by 50 per cent.

Maternal health refers to the health of women during pregnancy, childbirth and the postpartum period. Antiretroviral (ARV) medicines for pregnant women are used to prevent mother-to-child transmission (MTCT) of HIV. As of 2019, 15 countries had met or exceeded the goal of providing ARVs to at least 90 percent of pregnant women living with HIV.<sup>335</sup> In fact, the WHO reported that in 2019, Benin, Botswana, Eswatini, Malawi, Mauritius, Mozambique, Namibia, and Uganda had all achieved the target of reaching 100% of pregnant women living with HIV to receive ARV medicines.<sup>336</sup> There is still progress to be made, however, as Sudan's estimated percentage reported was only 4 percent, representing a decrease since 2017. Additionally, Egypt in 2019 only provided ARV medicines to an estimated 16% of pregnant women who needed them. Cabo Verde reported to the CRC Committee that awareness of the possibility of mother-to-child transmission of HIV has improved since 2015.<sup>337</sup>

### CABO VERDE IN FOCUS

"Awareness of the possibility of mother-to-child transmission of HIV has improved: in 2017, 52% of the population knew that there is a possibility of reducing the risk of mother-to-child transmission of HIV when taking a medicine, when in 2015 little more than 1 in 5 people had this knowledge; the proportion of people who know that HIV can be transmitted through breastfeeding is around 80% in women and 70% in men; in relation to knowledge of HIV transmission during pregnancy, 64% and 67% respectively for women and men; the knowledge that HIV can be transmitted during childbirth is 78% in women and 6% in men. However, if one considers the proportion of people who are aware of these 3 pieces of information simultaneously, the proportion drops to 46% among men and 40% among women."<sup>338</sup>

There were approximately 142,630 cases of children ages 0-14 newly infected with HIV in 2018, representing a 12,850 decrease from 2016, or roughly an 8.3 percent reduction of new cases<sup>339</sup> Most notably, Côte D'Ivoire has reduced its number of new cases in children by 40.1 percent since 2015; Malawi has reduced its new cases since 2015 by 45.3 percent; and Namibia has reduced its

332 World Health Organization, Number of deaths by region: Malaria, available at <https://apps.who.int/gho/data/view.main.CM-1002015REG6-CH8?lang=en>.

333 UNICEF: Malaria: October 2019, available at <https://data.unicef.org/topic/child-health/malaria/>.

334 Despite overall advancement, countries like Gabon are struggling to make ITNs available, with only 6.25 percent of its population in malaria-endemic areas sleeping under an ITN in 2018 (a 1.95 percent decrease since 2016 (World Health Organization, Insecticide-treated nets coverage for malaria prevention Data by country, available at <https://apps.who.int/gho/data/view.main.UHCMALARIAITNv>).

335 World Health Data Platform, Estimated percentage of pregnant women living with HIV who received antiretrovirals for preventing mother-to-child transmission, available at <https://www.who.int/data/gho/data/indicators/indicator-details/GHO/estimated-percentage-of-pregnant-women-living-with-hiv-who-received-antiretrovirals-for-preventing-mother-to-child-transmission>.

336 Ibid.

337 Cabo Verde UNCRC Report (2017), para. 105.

338 Cabo Verde UNCRC Report (2017), para. 105.

339 World Bank, World Development Indicators, <https://databank.worldbank.org/reports.aspx?source=2&series=SH.HIV.INCD.14&country=ZAF,CAF,SSF,DZA,LBY,TUN>.

number of new cases by 54.5 percent since 2015.<sup>340</sup> Despite this encouraging decrease in the total number of new cases and encouraging trends in the individual States mentioned above, Angola, Burkina Faso, Egypt, Equatorial Guinea, Mali, and Nigeria have reported an increase in the number of cases in the past five years.<sup>341</sup>

By 2020 member States should have reduced the maternal mortality rate in their countries to below at least 500 per 100 000 live births.

Haemorrhage, infection, high blood pressure, unsafe abortion, and obstructed labour are the leading causes of maternal morbidity and mortality. According to WHO, in 2017, Sub-Saharan Africa alone accounted for roughly two-thirds (196 000) of maternal deaths. Egypt, Tunisia, Seychelles, Cabo Verde, Mauritius, Morocco, and Libya have the lowest rates of maternal mortality. South Sudan has the highest rate of maternal mortality at 1150 per 100,000 live births, followed by Chad and Sierra Leone. Of all African States, 19 States have not met the target to reducing maternal mortality to under 500 per 100,000 live births. Girls are at higher risk of complications during pregnancy and childbirth, including death. Abortion in Burkina Faso ranks third among the causes of maternal mortality and is prohibited and criminalised except in the cases specified by law.<sup>342</sup>

“Complications during pregnancy and childbirth are the leading causes of death among adolescent girls on the continent. Girls face greater risks in pregnancy and childbirth than older women, including life-threatening obstructed labour. This is a result of physical immaturity of girls whose pelvises are not fully developed and thus are susceptible to obstructed labour which is the main cause of fistula. The increased risk is not only related to age but also to levels of education, social and economic status, and access to health-related information and services, including prenatal and postnatal healthcare services.”

-ACPF and Plan International, Getting Girls Equal (2019)

By 2020 member States should have improved access of women to attending antenatal care, resulting in a significant increase in the percentage of women attending antenatal care.

There are large data gaps when it comes to antenatal care in Africa as well as intra-regional disparities of coverage of basic maternal health interventions like antenatal care. While Southern Africa reported almost universal coverage in 2010, in West Africa about one third of pregnant women did not receive antenatal care visits. The WHO only has data on antenatal care coverage for Gambia, Lesotho, and Tunisia from 2016-2018.<sup>343</sup> WHO reports that from 2016 to 2018, the percentage of women aged 15-49 with a live birth who received antenatal care four or more times was 75.6% for Gambia, 76.6% for Lesotho, and 84.1% for Tunisia.<sup>344</sup> Eswatini, however, reported an antenatal and post-natal programme. In particular, it states “There is a free and strong antenatal care programme in hospitals and clinics in the country. Antenatal care is almost universally available in Swaziland, with 98% of pregnant women attending these services at least once.”<sup>345</sup>

By 2020 member States should have increased the number and accessibility of birth attendants and should have sensitised communities to the benefits of birth attendants, so as to achieve a significant increase in the number of pregnant mothers who are attended to by health care workers during birth.

340 See *ibid.*

341 See *ibid.*

342 Burkina Faso CEDAW Report, para. 137.

343 See WHO Antenatal care coverage Data by country, available at <https://apps.who.int/gho/data/node.main.ANTENATALCARECOVER-AGE4?lang=en>.

344 *Ibid.*

345 Eswatini UNCRC Report (2017), para. 169.

In 2019, the proportion of deliveries assisted by skilled birth attendants was 90% or greater in nine African countries.<sup>346</sup> 13 countries achieved 80% or higher assisted-delivery rates, but 11 countries were below 50% assisted-delivery rates in 2019.<sup>347</sup> Eswatini reported to the CRC Committee that the rate of child births attended by skilled personnel in the country is also high, with 82% of women delivering in health facilities.

By 2020 member States should have allocated at least 15 per cent of the national budget to health, in line with the Abuja and Dakar budgetary targets.

According to data from the WHO Global Health Observatory Data Repository, the median amount of health expenditure as a percent of total government expenditure is 6.1% across the continent while the average is 7.2 percent. Only two States – Zimbabwe (15.2%) and Madagascar (15%) have met budgetary targets, followed by Botswana (14.3%), Tunisia (13.6%), and South Africa (13.3%). Figures across the continent however vary with South Sudan at allocating only 2 percent of its national budget to health. Health expenditures in Sub-Saharan Africa fall short of the 15 per cent targets when the average current health expenditure is expressed as a percentage of national budget.

By 2020 member States should be supporting communities, particularly by improving the conditions giving rise to disease. Ministries of Health should play a leadership role in co-ordinating multi-sectoral and multidisciplinary interventions to address the social determinants of health. The responsibility for action with respect to health should rest with the highest level of government.

According to the WHO, as of 2019, a total of 33 African countries have an operational unit / branch / department in the Ministry of Health with responsibility for NCDs.<sup>348</sup> Additionally, nine countries reported having a national multisectoral commission, agency, or mechanism for NCDs.<sup>349</sup> Cameroon, for example, has established five national programmes to fight against NCDs, within the Department of Disease Control, Epidemics, Pandemics (DLMEP), and headed by a NCDs coordination unit.<sup>350</sup>

By 2020, the African Union's political organs should have reinvigorated their political commitment to maternal mortality, in line with the AU's Campaign on Accelerated Reduction of Maternal Mortality (CARMMA), and should have embarked on a continental campaign for the dramatic decrease in infant mortality; political organs should have targeted countries with a maternal mortality rate of more than 500 (Sierra Leone (1 100); Chad (980); Central African Republic (880); Somalia (850); Burundi (740); DRC (730); South Sudan (730); Côte d'Ivoire (720); Guinea (650); Liberia (640); Niger (630); Cameroon (590); Guinea-Bissau (560); Nigeria (560); Mali (550); and Malawi (510)), to assist them to significantly reduce the maternal mortality rate in their countries.

By 2020, the African Union should have facilitated a common African position on the migration of health professionals and led engagement with Organisation for Economic Co-operation and Development (OECD) countries to overcome the devastating impact this migration is having on Africa's health systems.

In 2009, the AU responded to the crisis of high maternal deaths by placing maternal death firmly on its agenda and launching the Campaign for the Accelerated Reduction of Maternal Mortality in Africa (CARMMA). According to the campaign, 46 States had launched CARMMA.

According to the new Africa Health Strategy for 2016-2030, although most African countries have put in place policy frameworks to improve the availability of health professionals, the health workforce

346 SRHS Scorecard 2019.

347 Ibid.

348 World Health Organization, Infrastructure Data by Country, <https://apps.who.int/gho/data/view.main.2472>.

349 Ibid.

350 World Health Organization, African Health Observatory, Health Analytical Profile 2016 Cameroon, available at [https://reliefweb.int/sites/reliefweb.int/files/resources/health\\_profile\\_cameroon\\_2016\\_eng.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/health_profile_cameroon_2016_eng.pdf).

is still lacking in many areas.<sup>351</sup> Based on these shortcomings within the health workforce in Africa, it was recommended that a “continental mechanism” be put in place to regulate and manage migration of health workers in Africa.<sup>352</sup> In 2018, the African Union adopted The Revised Migration Policy Framework for Africa and Plan of Action (2018-2027), which contained a recommendation for member states to “develop tailored labour migration opportunities, including permanent, temporary and circular migration for diverse skill levels, and aid the integration of migrants into their hosting communities and ensure that they have the same access as citizens to health care, psychosocial support, social services, education, basic public services and housing” in order to meet labour market needs.<sup>353</sup> Even with these strategies in place, the COVID-19 pandemic has revealed shortcomings in how both sending and receiving countries manage the movement of health workers.<sup>354</sup>

## Conclusion

The assessment reveals that States have not achieved the targets set forth. Only two States have met the budgetary targets in line with the Abuja or Dakar targets of allocation of the per cent of the national budget required which certainly impacts meeting the other targets, including the goal of universal coverage which remains an aspiration with many children currently left behind. While some progress has been made in some States to ensure that primary healthcare services are accessible and available to all children, children face numerous challenges in enjoying equitable access to critical health services, especially in rural and other hard to reach areas. Progress has however been made with respect to the establishment of health insurance schemes in a number of States. Infant mortality rates remain high despite some progress as does the risk of a child dying before five years of age. Concern remains over reported disparities in infant mortality among children living in rural areas. Only slight improvements were seen in relation to reducing mortality due to NCDs.

The assessment further reveals that most African countries still have an unmet need for family planning despite SRH services being critical to improving numerous health outcomes such as infant and child mortality rates and HIV prevention, among others. The Committee welcomes the finding that indicate that HIV incidence has fallen in many of the most severely affected countries. Testing rates, however, remain low.

While the Committee welcomes that immunisation coverage across Africa has greatly increased, it notes that coverage rates across the continent are far from meeting targets with vaccination coverage varying markedly across countries. It is also of concern that little progress has been made to reduce deaths across 10 African countries hardest hit by malaria, with malaria ranking the third highest infectious disease causing the death of children.

While some progress has been made to increase the number of pregnant mothers who are attended to by health care workers during birth, haemorrhage, infection, high blood pressure, unsafe abortion, and obstructed labour remain the leading causes of maternal morbidity and mortality across the continent. The Committee welcomes the finding that 15 countries had met or exceeded the goal of providing ARVs to at least 90 percent of pregnant women living with HIV. Concern, however, remains with respect to the lack of accessibility in other States to prevent mother-to-child transmission of HIV. At the same time, large data gaps when it comes to antenatal care as well as intra-regional disparities of coverage of basic maternal health interventions like antenatal care.

While most African countries have put in place policy frameworks to improve the availability of health professionals and the African Union has adopted The Revised Migration Policy Framework for Africa and Plan of Action (2018-2027), there is much work to be done to strengthen the health workforce. As will be discussed in the ultimate chapter, Covid-19 has illuminated exceptional gaps in the health systems and ability to respond to pandemics. Notably, only 33 States have a relevant operational unit / branch / department in the Ministry of Health with responsibility for NCDs.

351 AU, Africa Health Strategy 2016-2030, p. 7, available at [https://au.int/sites/default/files/documents/24098-au\\_ahs\\_strategy\\_clean.pdf](https://au.int/sites/default/files/documents/24098-au_ahs_strategy_clean.pdf)

352 Ibid., p. 19.

353 AU, The Revised Migration Policy Framework for Africa and Plan of Action (2018-2027), p. 12, available at [https://au.int/sites/default/files/newsevents/workingdocuments/32718-wd-english\\_revised\\_au\\_migration\\_policy\\_framework\\_for\\_africa.pdf](https://au.int/sites/default/files/newsevents/workingdocuments/32718-wd-english_revised_au_migration_policy_framework_for_africa.pdf)

354 AU Press, Mobility of African Health Workers comes under the Spotlight Post COVID-19, 20 July 2020, available at <https://au.int/en/pressreleases/20200730/mobility-african-health-workers-comes-under-spotlight-post-covid-19>

## Aspiration 05

Every child grows up well-nourished and with access to the basic necessities of life.



# By 2040

- Children who are most at risk are identified in their respective communities and their rights are prioritised and improved.
- Extreme poverty, measured as people living on less than \$1.25 a day, is eradicated among all children.
- Poverty, according to national definitions, is reduced by at least half the proportion of children living in poverty in all its dimensions.
- Every child has access to sources of clean and safe drinking water, hygienic sanitation and hygiene facilities, adequate nutrition, and shelter or basic housing.
- No child experiences hunger or is exposed to food insecurity; no child is underweight or stunted.
- Social security schemes aimed at the most vulnerable children in society, such as children who head households and children with disabilities, are in place and are effectively implemented in practice.
- National health insurance extends to all children, including the most vulnerable children, such as the children of unemployed parents, children without parental care and orphans.
- Child-sensitive social protection is provided to children and families most in need of care.
- Children with disabilities realise their full potential.
- There are no street children in African cities or towns; no child is forced to beg for a living.

## **ASPIRATION 5: EVERY CHILD GROWS UP WELL-NOURISHED AND WITH ACCESS TO THE BASIC NECESSITIES OF LIFE**

African children come from a poverty deficit, which has led to hunger malnutrition and stunting for vast swathes of the child population. This in turn impacts on health and on children's ability to benefit from education. Measuring progress in reducing and eliminating these growth deficits is crucial in the fight to give every child a chance in life.

According to the ACPF's 2018 Child Wellbeing report, stunting among children under five has gone down by eight percent over the last 16 years, but the current average still stands at an unacceptably high 30.4 percent. More than half of all African countries have stunting rates above 30 percent, and in some of them more than half of children under five are stunted. Rates may have declined slightly, but according to the WHO, actual numbers of stunted children have risen from 50.4 million to 58.5 million over the last 15 years.<sup>355</sup> In West and Central Africa, which carries a disproportionate burden, the number of children suffering from stunting rose from 22.9 million in 2000 to 28.1 million in 2016.<sup>356</sup>

Affording to all African children the best chance in life by 2020 is a core objective of these aspirations.

Between the date of adoption of the 2040 Agenda (2016) and 2019, African economies were showing a steady but incremental improvement in performance. However, this did not necessarily translate into more jobs, more social protection for the ultra-poor, or less inequality.<sup>357</sup> Moreover, rural-urban inequalities mask in-country differences, such as those between urban and rural areas. Deficits continue to overwhelmingly negatively affect children in rural and remote locations due to factors including a lack of access to services. Often children in rural and remote places experience a lack of access to water, sanitation and general health and hardly complete school in countries such as CAR Ethiopia and Niger.

Sadly, the promising upward trajectory in African economies experienced until 2019 was jolted by the impact of COVID-19. The World Bank reports that "The COVID-19 (coronavirus) outbreak has set off the first recession in the Sub-Saharan Africa region in 25 years, with growth forecast between -2.1 and -5.1 in 2020, from a modest 2.4% in 2019".<sup>358</sup> The impact of COVID is discussed more fully in Chapter 11 of this report.

Social protection can play a role in empowering youth by allowing households to invest in the health and education of children and adolescents, preparing them for healthy and productive futures. One popular tool of social protection is cash transfers. These have been widely demonstrated to improve household food security, consumption, productive activities and school enrolment. Because cash transfer programmes aim to reduce poverty and food insecurity and improve human capital, they generally do not have direct outcomes on adolescent mental health, risk behaviour and violence as primary objectives. However, by targeting poverty and vulnerabilities, these programmes may address some of the structural drivers of adverse outcomes in adolescence. The evidence from sub-Saharan Africa linking cash transfers and safe transitions to adulthood is growing. In addition to increasing school enrolment among secondary school-age youth, government cash transfer programmes have been found to delay sexual debut and pregnancy and to reduce transactional and age-disparate sex among adolescent girls.<sup>359</sup>

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355 Child Wellbeing Report, p 22.

356 As above p. 13.

357 As above p. 8-9.

358 <https://www.worldbank.org/en/region/afr> (accessed 15 July 2020).

359 <https://www.unicef-irc.org/publications/pdf/Tanzania%20Cash%20Plus%20Midline%20Report.pdf> (accessed 18 July 2020).

## Children who are most at risk are identified

By 2020, member States should be supporting family and community-based actions that enhance children's health, nutrition and wellbeing, including safe drinking water, improved sanitation and hygiene as well as appropriate young child feeding practices and food security measures when needed.

Child hunger is a pervasive problem in Africa. The table below, taken from the ACPF Report "For Lack of Will: Child Hunger in Africa", illustrates this point.

Countries with the highest and lowest Global Hunger Index Scores in Africa, 2018

COUNTRY	GHI_2018 SCORE	SEVERITY BASED ON GHI_2018
Central African Republic	53.7	Extremely Alarming
Chad	45.4	Alarming
Madagascar	38.0	Alarming
Zambia	37.6	Alarming
Ghana	15.2	Moderate
Gabon	15.4	Moderate
Senegal	17.2	Moderate
Egypt	14.8	Moderate
South Africa	14.5	Moderate
Mauritius	11.0	Moderate
Morocco	10.4	Moderate
Algeria	9.4	Low
Tunisia	7.9	Low

Source: 2018 Global Hunger Index<sup>7</sup>

In this seminal report, the African Child Policy Forum makes the following points:

- Hunger contributes to about 45% of childhood mortality in Africa. One third of child deaths in Africa is attributable to micronutrient deficiencies.
- Children's physical and mental development depends on the amount and quality of food they take in, especially in the first 1000 days or the first two years of life. Children who get insufficient food are likely to develop less optimally than others – they are stunted and suffer from health complications.
- Hunger has immediate and long-lasting adverse effects on the physical, emotional and intellectual development of children, on their life-time experiences and earnings, and on a country's economic performance. Hungry, stunted children do less well in school and suffer from low self-esteem. They are less healthy and productive, earn less and therefore have lower incomes as adults than their peers. All of this of course has direct impact on a country's economic performance. It is estimated that child hunger costs African countries between 1.9 and 16.5% of their GDP. Stunting alone is estimated to have reduced Africa's present GDP per capita by 10%. Ensuring that children have enough food is, therefore, not as

glibly characterized a “social welfare” waste, but an investment in people’s wellbeing, social justice and a country’s economic future.<sup>360</sup>

Amongst the recommendations are that nutrition policies should prioritise the critical first thousand days from conception through to the first two years of life and the nutrition of mothers. Further, they suggest that implementing nutrition-related behavioural change programmes leads to positive outcomes in child wellbeing.<sup>361</sup> Complementing this should be policies that provide targeted safety net programmes for the poor and the vulnerable, especially women.

The AU adopted a Nutrition Strategy 2015-2020 which covers the period included in this Review.

## Social security schemes aimed at the most vulnerable children in society

By 2020 member States should have allocated adequate resources to the wellbeing of children, in particular, to ensure access to basic nutrition, health and education through pro-poor social protection programmes for those most in need, including the most vulnerable children; States should have increased their investment in basic services for its population, while focusing on children.

By 2020 member States should be focusing on the poorest and most vulnerable in the distribution of allocations, in order to reduce inequalities affecting the population as a whole, including children.

By 2020 member States should have adopted and be implementing pro-poor social protection policies and programmes, such as cash transfers or child grants for all vulnerable children, and particularly for child-headed households.

By 2020 member States should have institutionalised social protection by putting in place appropriate institutional arrangements to build the capacity of systems and individuals to efficiently deliver social protection services.

By 2020 member States should have made an explicit commitment to entrench children’s socio-economic rights within national legislation or in their constitutions.

By 2020 member States should have developed and implemented a minimum social protection package, consisting of at least targeted child support grants to the poorest segment of the population, within a comprehensive social protection system through progressive expansion and coverage of programmes to reach all those most in need of such children.

By 2020 member States should have taken specific measures to reach marginalised and vulnerable children and included them in all their programmes.

Cash transfer programmes, the prime modality for social protection to benefit children, have mushroomed in the first two decades of the 20<sup>th</sup> Century. Africa has been no exception with most countries in Africa having some form of targeted SCT (social cash transfer, also known as CCT (Conditional cash transfer)) in place.

However, research on effects and consequences continues to highlight areas for improvement or more nuanced programming. A recent paper on the “Give Directly” cash transfer program in Kenya found that cash transfers helped stimulate local economic activity. On the other hand, research on Malawi’s Social Action Fund has found evidence of increased food insecurity among non-beneficiaries.<sup>362</sup> Channelling significant sums of money into poor village economies may cause

<sup>360</sup> ACPF (2019). For Lack of Will: Child Hunger in Africa. Addis Ababa: African Child Policy Forum (ACPF).

<sup>361</sup> As above p 4.

<sup>362</sup> <https://www.worldbank.org/en/news/feature/2019/12/27/cash-transfer-programs-should-be-wary-of-negative-spillovers> (accessed 15 July

prices of commodities to rise, thereby negatively affecting non-beneficiary households.

Below is a table of social protection programmes taken from the World Bank Social Security Report 2018, highlighting those which can be of benefit to children.<sup>363</sup>

COUNTRY		No. OF BENEFICIARIES
Algeria		
Angola	Card cash transfer programme	200 000
Benin	Decentralised service driven by communities	13 000
Botswana	Destitute persons' programmes	35 441
Burkina Faso	Social safety net project	85 000
	Unconditional cash distribution	27 000
Burundi	Take a step forward	2000
Cape Verde	OVC support	550
Cameroon	Cash transfer	21500
	National solidarity and social justice	118 710
Central African Republic	Emergency livelihood support	46168
Chad	Project Care	11 833
	Protection of Sudanese refugees settled in Chad	308 862
Comoros	Cash transfers	2537
DRC	Communities in Crisis cash transfer programme	64343
Congo Republic	FSA project	40 000
Côte d'Ivoire	Programme National des Filets sociaux productifs	5000
Djibouti	PNSF	16 344
Egypt	Takaful and Karama	1,964,895
Ethiopia	Pilot social cash transfer Tigray	17 705
Gabon	National Social Action Fund	
Gambia	Cash Transfer	
Ghana	LEAP	213 414
Guinea	Cash transfer for nutrition and girls education	10 000
Guinea-Bissau	Cash transfer programme	200 000
Kenya	Cash Transfer for OVCs	365 232
	Hunger safety net programme	101 630
Lesotho	Child Grants Programme	24, 500
Liberia	Social Cash Transfer Programme	8000
Madagascar	FSS	26.500
Malawi	Social Cash Transfer Scheme	782, 561
Mali	Jigisemejeri	60,715
Mauritania	Conditional cash transfer	7100

2020).

363 Excluding non-contributory old age pensions and grants for persons with disabilities.

Mauritius		
Morocco	INJAZ	22627
Mozambique	Basic Social subsidy programme	379 850
Namibia	Social Assistance	175, 659
Niger	Cash transfer with disaster risk management component Family Allowance	68 737
Nigeria	Conditional cash transfer for girl's education Eradication of extreme poverty and hunger	16 271 47 746
Rwanda	Vision 2020	86 772
Sao Tome	Needy Mothers	1,224
Senegal	National Cash Transfer programme	300 000
Seychelles	Social welfare assistance	2978
Sierra Leone	Social safety nets programme	136 768
Somalia	Building resilience through Social Safety nets Short term humanitarian transfers	15 000 5925
South Africa	Child Support Grants	11 703
South Sudan	Juba Urban Poor cash response pilot	42000
Sudan	National Student Welfare Fund Zakat	200 000 15 327 000
Tanzania	Productive Social Safety Net	1,098,856
Togo	CCT with conditions	12, 079
Tunisia	PNAFN Cash Transfer	89 626 242 000
Uganda	Compassion international child development programme Northern Uganda Social Action fund	94 457 108 540
Zambia	Social Cash Transfer	240 000
Zimbabwe	Harmonised cash transfer	52 000

## Targeting the most vulnerable

### *Child-sensitive social protection is provided to children and families most in need of care*

By 2020 member States should have studied and developed legislation and policies for children in need of alternative care, or special support.

By 2020 member States should, as far as possible, have dealt with vulnerability in a multi-pronged, multi-dimensional and comprehensive way, targeting all vulnerable children indiscriminately, regardless of the cause of the vulnerability; children's rights promotion and development practice should embrace comprehensive service delivery for vulnerable children within a holistic, effective and sustainable system.

By 2020 member States should have addressed the root cause of the extreme vulnerability and exclusion of children, and should not be using criminal law provisions, such as vagrancy laws, to target and criminalise the conduct of children in need of care.

The average spending on social protection across Africa currently remains around four percent of GDP. It has remained so over the last years showing stagnation of investment being made in this important sector.<sup>364</sup> There is also a large difference among countries in their commitment to provide social protection to children and families. While countries like Egypt, Tunisia and South Africa currently spend about 10-11 percent of their GDP on such programmes, less than one percent of GDP (0.7 percent) is spent in Madagascar, Nigeria and Zambia. Countries that invested the least are the ones where multidimensional poverty is the highest.<sup>365</sup>

Social protection programmes have strong and consistent impacts on school enrolment of girls particularly in secondary education where many families face financial barriers.<sup>366</sup>

On the occasion of the tenth anniversary of the UN Guidelines for the Alternative Care of Children (2009), the UNGA in 2019 unanimously adopted a resolution on the Rights of the Child focusing specifically on children without parental care. The resolution, which was co-sponsored by Benin, C'ôte D'Ivoire, Cabo Verde, Lesotho, Nigeria, Madagascar, Tunisia and South Africa, urged States to strengthen child welfare and child protection systems and improve care reform efforts.<sup>367</sup> The Resolution calls on States to undertake efforts to reunify families where this is in the best interests of the child, noting that children should not be separated from their families solely due to poverty or lack of access to resources. It also urges States to provide a range of alternative care options and to protect all children without parental care, among other recommendations. Care reforms efforts are underway in a number of countries across the continent.

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364 ACPF Child Wellbeing Report 2018.

365 As above.

366 Plan international and African Child Policy Forum (2019) "Getting Girls Equal"

367 <https://bettercarenetwork.org/library/social-welfare-systems/child-care-and-protection-policies/2019-unga-resolution-on-the-rights-of-the-child>

“It is our responsibility to reform our system of care to promote family-based care, prevent unnecessary child-family separation and facilitate safe and stable child reintegration where separation has occurred. Kenya has made significant progress in meeting our responsibilities towards children outside of parental care or at risk of separation. At the end of 2017, the Government of Kenya reaffirmed its commitment to protect children and institute well-planned care reforms as integral part of our national priorities towards children and families.”

-Kenya Situational Analysis Report, Foreword

Rwanda, through the national strategy for Child Care Reforms as approved by the Rwandan Cabinet of Ministers in 2012, has been widely hailed as a leader in care reforms and family strengthening. Rwanda’s care reform and family strengthening programme has included legislative reforms, strengthening the professional and para-professional child protection workforce, distributing support packages to vulnerable families and developing foster care on a significant scale. As a result, over 3,000 children were reunited with families and communities from 2012 to 2019. In Malawi, since 2014, the number of children in institutional care has decreased from 10,136 in 2014 to 8,049 in 2017, attributed mainly to the pioneering Reintegration Programme implemented in Blantyre, Dedza, Lilongwe and Mangochi, and the closure of some child care institutions due to financial challenges. Malawi’s National Policy on Orphans and other Vulnerable Children emphasises that children should grow up in a family environment and into the broader community where they can socialise with fellow children and that institutionalisation of children should be a matter of last resort.<sup>368</sup> Recent interest has been shown by stakeholders in Ghana to consider kinship care as an alternative care option in child welfare policy. However, a recent study to explore current kinship care challenges revealed the children in kinship care reported inadequate basic needs, educational neglect, and lack of adequate emotional attachment as the major difficulties. The study revealed that challenges faced by CKC in Ghana mostly come from the limited financial and emotional resources of caregivers.<sup>369</sup> Kenya has also commenced care reforms in five demonstration counties (Kilifi, Kisumu, Kiambu, Murang’a and Nyamira) as will be discussed in Chapter 11 while efforts are also underway in Uganda and Zambia, to name a few.

By 2020 member States should have adopted and effectively implemented laws prohibiting the use of children for begging.

Begging should be proscribed as per the ACRWC. However, concrete examples are not readily available, and further research on this may be required.

However, COVID-19 may have amplified responses to child begging as illustrated in the recent BBC article:

<sup>368</sup> Government of Malawi, 2019, Reintegrating Children from Institutional Care - a feasibility study on a model for Malawi.

<sup>369</sup> Experiences of Children in Kinship Care (CKC) in Ghana: Challenges for Cultural Practices  
Ebenezer Cudjoe, Alhassan Abdullah, Marcus Y. L. Chiu 2020 Journal of Family Issues.

“Tens of thousands of Koranic school children were recently crammed into open vans and sent back home from cities and towns across northern Nigeria in a controversial move by state governments to prevent the spread of coronavirus within their territories. There was a ban on travel, but the vans, with children sitting shoulder-to-shoulder, were allowed to criss-cross the country’s highways to get the boys to their homes in villages, often thousands of miles away.

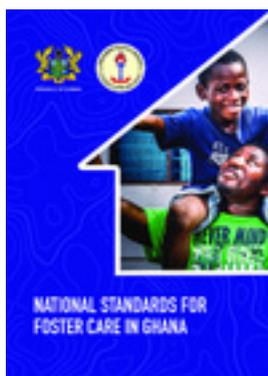
All of Nigeria’s 19 northern states had two-way movement - some children were leaving for home while others were returning home. It was probably one of the biggest ever state organised mass movements of minors in Africa’s most-populous state, whose population of around 200 million is divided roughly equally between Muslims and Christians.

No-one knows how many of the children were sent home but Kaduna state alone said it had repatriated 30,000. What no-one knew was that hundreds of the children already had coronavirus, so officials had inadvertently contributed to spreading the virus rather than containing it.”<sup>370</sup>

Locking up children for vagrancy continues to feature in reports. In January 2020, Human Rights Watch released a report “As Long as We Live on the Streets, They Will Beat Us: Rwanda’s Abusive Detention of Children”. It describes how, for over a decade, Gikondo Transit Center in Kigali, Rwanda’s capital city, has served as an unofficial detention facility where street children, street vendors, sex workers, homeless people, and beggars are arbitrarily locked away. Since 2017, the government has introduced a new legal framework and policies ostensibly designed to reintegrate people accused of exhibiting “deviant behaviors,” including children living on the streets, as part of its strategy to “eradicate delinquency.” But this legislation has only regulated and enshrined arbitrary detention at the Kigali Transit Center—the official name for the Gikondo Transit Center. Under the new framework, anyone exhibiting “deviant behaviors,” defined as “actions or bad behavior such as prostitution, drug use, begging, vagrancy, informal street vending, or any other deviant behavior that is harmful to the public,” can be held in a transit center for up to two months.

Zimbabwe still has a colonial era Vagrancy Act on the statute books, which can be used to round up the weak and vulnerable, such as children.<sup>371</sup>

By 2020 member States should have relaxed fostering and adoption laws and sensitised the community to the advantages of fostering and adopting children who are outside the family environment.



A number of African countries have ratified The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (HCCH 1993 Adoption Convention) in the period since adoption of Agenda 2040. These are Cote d’Ivoire (2015), Zambia (2015), Namibia (2016), Ghana (2017) and Benin (2018) and Congo (2020).<sup>372</sup> As regards adoption and fostering laws, some advances in this regard have been noted. Notably, Ghana and Namibia introduced new legislation to underpin adoption and alternative care, and Ghana has recently released guidelines on foster care (2020). However, some countries have not amended their legislation on adoption in accordance with the ratification imperative. The CRC Committee had the following recommendation to Core D’Ivoire in 2019:

“While noting the accession of the State party to the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption in 2015, the Committee is concerned that the legislation applicable to adoption does not yet reflect international standards and safeguards on adoption.”<sup>373</sup>

370 <https://www.bbc.com/news/world-africa-52617551> (10 May 2020).

371 Vagrancy Act of 1960.

372 In addition to those existing State parties, ie Burkino Faso (1996), Cabo Verde (2010), Eswatini (2013), Guinea (2004), Kenya (2007), Lesotho (2012), Madagascar (2004), Mali (2006), Mauritius (1999), Rwanda (2012), Senegal (2011), Seychelles (2008), South Africa (2003), and Togo (2010).

373 <https://bettercarenetwork.org/sites/default/files/Cote%20D%27Ivoire%20Country%20Care%20Review.pdf>

The ACERWC also suggested to Benin in 2017 to legislate domestically to entrench safeguards in inter-country adoption.

Kenya instituted a moratorium on adoption by foreign nationals in 2014. This was intended to provide the space needed to overhaul adoption legislation and procedures. This was subsequently challenged as being in violation of the 2001 Children's Act and the Kenya Constitution, but the Government of Kenya re-instituted the ban in September 2019 with the international of taming rogue adoptions allegedly taking place.<sup>374</sup> In 2020, the High Court of Kenya declared the moratorium "in excess of power, illegal, and unconstitutional. Until the [Children's] Act is amended to exclude inter-country and resident adoptions, the courts are bound to allow these adoptions."<sup>375</sup> Kenya is now at an advanced stage of preparing a new Children's Act (as of 2020), which will include detailed rules and regulations on intercountry adoption, to comply with the spirit and objectives of the Hague Convention.

As regards the DRC, the Ministry of Justice (MOJ) confirmed to the U.S. Embassy in Kinshasa that, pursuant to a 2016 law, intercountry adoptions from the DRC continue to be suspended, effective July 15, 2016. The MOJ; the Ministry of Foreign Affairs; the Ministry of Gender, Family, and Children; and the Immigration Authority (DGM) agree that intercountry adoptions from the DRC are not legally possible at this time (this is May 2020).<sup>376</sup> Due to the suspension of adoptions and the continued suspension of the issuance of exit permits in adoption cases, government will not allow adopted children to leave Congolese territory. Thus, adopted children have no legal means to exit the country.

By 2020, the African Children's Committee should have scrutinised State reports from the point of view of the poorest and most vulnerable children.

By 2020, the African Children's Committee should have guided States to ensure that socio-economic rights are made effectively justiciable in their legal systems.

The ACERWC is highly attuned to the need to budget and provide programmes for the most vulnerable children. In responding to Benin in 2017, the Committee said "Considering the fact that investment on health and social protection of children remains low in Benin, the Committee recommends the State Party to give priority to children and increase the allocated budget to sectors that work on children's rights and welfare."<sup>377</sup> In regard to Angola, the Committee opined that the "nutrition crisis is becoming a big problem in the country, especially in the southern region, due to climate change and which has led to malnutrition of a large number of children. Access to safe drinking water in those areas has also become a challenge due to the non-operation of water points and has led to increase in water borne diseases. With a view to responding to the nutrition crisis in the southern region, the Committee urges the State Party to collaborate with partners and provide food assistance and make water points operational to prevent outbreak of deadly diseases such as cholera. The Committee recommends that the State Party undertakes measures to engage in Public Health Education campaigns to sensitise communities on hygiene and handling of water in an effort to reduce the incidence of water borne diseases. The Committee also recommends that the Government of Angola undertakes measures such as sensitization to promote and ensure exclusive breast feeding for the first 6 months. The Committee recommends that the State Party increases access to nutrition and micronutrients...."<sup>378</sup>

In its response to the 2<sup>nd</sup> and 3<sup>rd</sup> periodic reports of Rwanda, the Committee had this to say: "Therefore the Committee urges the State Party to put together collective efforts to fight malnutrition through promotion of improved feeding practice in the community; integrating nutrition objectives into agricultural programmes; providing school feeding programs for the most vulnerable children; promoting exclusive breastfeeding for the first six month after birth; and improving the nutrient content of foods through regulatory frameworks. The State Party is also encouraged to train more

374 <https://www.theeastafrican.co.ke/tea/news/east-africa/kenya-bans-child-adoption-by-foreign-nationals-1427022>

375 Adoption Cause No. 99 of 2017 (OS).

376 <https://cd.usembassy.gov/u-s-citizen-services/child-family-matters/adoption/>

377 Par 6

378 ACERWC Concluding Observations Angola, par 17 (2017)..

physicians and midwives as well as ensure that health care centers are well equipped. Furthermore, the Committee recommends that the State Party continues its efforts to construct water reservoirs to increase the coverage of improved drinking water in rural areas of the country.”<sup>379</sup>

By 2020 the African Union’s political organs should have taken the lead in monitoring the implementation of the AU’s Social Policy Framework through developing an appropriate tool setting benchmarks and time-bound goals to ensure greater accountability for the implementation of social protection.

There does not seem to be a set of bench marks and time bound goals yet attached to the AU Social Policy Framework. This indicator should probably be removed for the next review.

By 2020, national partners should have become fully involved in the formulation and implementation of national social protection programmes, while better aligning their engagement and contributions to national-led social policy frameworks.

By 2020, national partners’ research centres should have studied and disseminated information, created awareness and understanding about the benefits of social protection for economic growth among policy makers and practitioners to increase awareness of the long-term economic benefit of social protection, beyond the moral and human rights imperatives.

Much of the information about national responses to social protection have already been provided in the first part of this chapter.

By 2020, development partners should have committed to increased and longer-term investments in building and strengthening national social protection structures for social protection in terms of skills, capacity and organisational ability and effectiveness.

By 2020, development partners should have made funding decisions based on a broad analysis of funding gaps set against an overall social protection strategy developed in a participatory manner so that social protection strategies are owned and led by government.

Social security and anti-hunger programmes have to be intensified and deepened, especially as COVID-19 has led to rising poverty levels. In a recent brief, in which COVID-19, Gender and social security are reviewed, UNICEF<sup>380</sup> notes that “[t]he economic shock will impact on the poorest hardest. Women and children are disproportionately affected by poverty. Girls and women of reproductive age are more likely to live in poor households than boys and men. Women are also overrepresented in jobs in the informal sector that are particularly vulnerable during times of economic upheaval and often poorly covered by social protection systems. Women and girls are likely to be hardest hit by compounded economic impacts”.

Amongst UNICEF’s recommendations relevant to this chapter of the Agenda 2040 aspirations are:

- Prioritising gender alongside disability, age and other marginalised group in needs assessments and decisions on targeting. Ensure rapid analysis is undertaken to guide decisions to scale up social protection responses, such as choices about targeting, and advocate with partners to expand coverage for vulnerable children and women, including informal sector workers. For example, various COVID-adapted programmes are targeting informal workers, pregnant women, women receiving maternity benefits or those seeking to respond to childcare needs
- Removing conditions which may add additional burdens and unnecessary risks to women and children

379 Concluding observations Rwanda (2015), par 26.

380 UNNICEF “Gender-Responsive Social Protection during COVID19: Technical note” (2020).

- Finding mechanisms to support children in alternative care/living in child-headed households, including adolescent girls who face specific risks
- Designing in-kind assistance - from food, to soap, to nappies, to menstrual hygiene kits, to sexual and reproductive health needs – ensuring that gender and age differential needs are considered
- Including explicit gender-responsive outcomes in social protection plans, from “cash plus” life-skills and mentoring components focused on SRHR and adolescent and women’s economic empowerment as a central part of economic recovery for households; to labelling and messaging to support girls’ access to education as children return to school.

## Conclusion

The assessment reveals that the targets set forth in Aspiration 5 have not been met. Poverty, hunger, malnutrition and stunting continue to have negative impacts on health. While social security (including cash transfers) and anti-hunger programmes have been expanded in a number of countries, there is a need to ensure that data is collected to guide decisions to scale up social protection responses and ensure wider inclusion. In this regard, the Committee notes that the average spending on social protection across Africa remained stagnant in recent years and emphasises the need to scale up data-informed interventions for children with meet the specific needs of boys and girls as well as children with disabilities or from other marginalised groups.

The Committee welcomes measures by some States to study and develop legislation and policies for children in need of alternative care, or special support. However, much work is to be done to ensure that children in need of care and protection are not unnecessarily institutionalised, family-based alternatives to institutionalisation are strengthened, and that mechanisms are put in place to ensure that families are strengthened and preserved.

The Committee is concerned that the legislation applicable to adoption in a number of countries does not yet reflect international standards and safeguards on adoption despite a number of States acceding to the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption in 2015 and calls on States to amend and/or adopt legislation accordingly. Similarly, legislation concerning forced begging is wanting across a number of countries, with children reportedly rounded up from the streets in a number of States.



## Aspiration 06

### Every child benefits fully from quality education

By 2040

- All children receive early stimulation and learning opportunities from birth onwards.
- Pre-school education is prioritised and increasingly made compulsory for all children.
- Every child starts and completes free, quality, primary and secondary education that leads to relevant and effective learning outcomes.
- Primary and secondary education is free, without hidden costs impeding access.
- Children with learning, mental and physical impairments are included and given the necessary support to complete primary and secondary school; as far as possible, the principle of inclusive education is fully implemented; where appropriate, special-needs schools are opened for children with mild to severe learning, mental and physical impairments.
- Boys and girls have equal opportunities and access to primary and secondary school education; no girl child is denied education as a result of becoming pregnant.
- There is gender equity among teachers, with an equal percentage of male and female teachers; there is a safe and gender-sensitive responsive learning environment comprising facilities, materials, and rights-based curricula; teachers are adequately qualified, well trained and motivated; all schools are safe spaces, with adequate facilities conducive to effective learning, and respectful of learners' dignity; sport infrastructure at schools is expanded and extra-curricular activities for children are available; a teacher-learner ratio of at most 1:40 is maintained in all classrooms.
- Schools provide universal access to affordable information, communication and technology devices, content and connectivity, and integrate these into teaching and curricula.
- The content and pedagogical approach of education at secondary level is directed at equipping learners for employment, creating employment and entrepreneurship; primary and secondary education focuses on science, technology, engineering, mathematics and informational technology; girls fully participate in science, technology engineering and mathematics education.
- Mother-tongue education is introduced into primary schools.
- Education inculcates a spirit of pan-Africanism among the youth, in order to cultivate a common identity and destiny and facilitate a pan-African approach and the African Renaissance; AU clubs are formed in all schools across the continent; education engenders positive African values Africa's Agenda for Children 2040 and instils pride in our common heritage as Africans.
- Rights-based curricula with common features and standards are developed across the continent, aimed at critical thinking and leadership, and espousing the values of integrity, accountability and transformative citizenship.
- Education prepares children for change, and equips them to be change agents; age-appropriate, informed and evidence-based education on sexuality and reproductive rights at school enable girls and boys to make informed sexual and reproductive choices; themes such as gender violence, discrimination and abuse, harmful practices and peaceful resolution of disputes are addressed as part of a 'life skills' learning programmes.
- Clear standards exist and effectively regulate the activities of private actors in providing education.
- Every child is educated about his or her rights and responsibilities.
- All learners acquire the knowledge and skills needed to promote sustainable development through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development.

## ASPIRATION 6: EVERY CHILD BENEFITS FULLY FROM QUALITY EDUCATION

The right of every child to education is firmly recognised in numerous treaties, judicial and quasi-judicial decisions, and other legal sources. SDG 4 sets the goal of inclusive and equitable quality education and promotion of lifelong learning opportunities for all. Despite the existence of legal and policy frameworks for the protection of the right to education and the considerable progress made in boosting primary and lower secondary school enrolment, prior to the pandemic, the World Bank estimates that approximately 50 million children across the continent remain out of school.<sup>381</sup> The realities are especially stark for girls, and other vulnerable children, including children living in conflict-affected areas, children with disabilities, refugee children, migrant children, internally displaced children, street connected children, and children from marginalised communities, among others. While some children are in school, not all are learning. Poorly resourced education systems, poor-quality instruction, and lack of basic infrastructure in many contexts hinder learning. For children who do have access to education, levels of learning are low.<sup>382</sup> Of those children who are in school, few will reach a minimum level of proficiency in reading and numeracy by the end of primary school.

### Article 11: ACRWC

Every child shall have the right to education.

In 2016, the Continental Education Strategy for Africa (CESA 16-2025) was adopted during the 26th Ordinary Session of the AU Assembly as the framework for transforming education and training systems in Africa. The strategy identified that key sub-sectors such as pre-primary, technical and vocational and non-formal education are severely underdeveloped and that training systems are also characterized by low quality of teaching and learning, inequalities and exclusion at all levels, among others. This chapter will examine the progress and challenges in relation to achieving the aspiration of every child benefitting from equal and quality education.

## Early Childhood Education

Early childhood education and development is a key pillar of CESA 16-2025.<sup>383</sup> Early learning has a profound impact on brain development and contributes to learning, health, economic and social outcomes. Despite its importance, pre-primary education is identified as a neglected sub-sector across the continent that deserves special attention. ECDE largely remains fragmented across health, education, child protection and social protection.<sup>384</sup> The chart below is compiled from data provided by the World Bank on the Pre-Primary School Enrolment Most Recent Value (% gross).

381 World Bank Group, Sajitha Bashir, Marlaine Lockheed, Elizabeth Ninan, and Jee-Peng Tan, "Facing Forward: Schooling for Learning in Africa" (5 March 2018), <https://openknowledge.worldbank.org/bitstream/handle/10986/29377/9781464812606.pdf?sequence=14&isAllowed>.

382 Ibid.

383 In 2019, an ECED Cluster was developed under the umbrella of the strategy.

384 GPE, <https://www.globalpartnership.org/blog/scaling-early-childhood-development-interventions-africa>.

	Data Year	Overall (% gross)	Girls (% gross)	Boys (% gross)		Data Year	Overall (% gross)	Girls (% gross)	Boys (% gross)
Algeria	2011	79	80	78	Liberia	2017	125	126	125
Angola	2016	40	37	42	Libya	2006	10	10	10
Benin	2018	25	26	25	Madagascar	2018	40	41	38
Botswana	2015	21	4	21	Malawi	2015	84	84	83
Burkina Faso	2018	4	4	4	Mali	2018	7	7	7
Burundi	2018	15	16	15	Mauritania	2015	10	12	9
Cabo Verde	2018	73	74	73	Mauritius	2018	98	99	98
Cameroon	2018	34	35	34	Morocco	2018	51	47	55
CAR	2017	3	3	3	Namibia	2018	34	35	34
Chad	2016	1	1	1	Niger	2018	8	8	8
Comoros	2018	22	22	21	Nigeria	2010	42	41	42
Congo, Rep.	2012	13	13	13	Rwanda	2018	22	23	22
Cote d'Ivoire	2018	8	8	8	Sao Tome and Principe	2016	50	53	48
Djibouti	2019	9	9	9	Senegal	2018	17	18	16
DRC	2015	4	5	4	Seychelles	2018	95	96	94
Egypt	2018	29	29	29	Sierra Leone	2018	14	15	13
Equatorial Guinea	2015	43	44	43	Somalia	1986	0	0	0
Eritrea	2018	23	23	23	South Africa	2017	25	25	25
Eswatini	2011	27	28	27	South Sudan	2015	11	11	12
Ethiopia	2015	29	29	30	Sudan	2017	47	47	46
Gabon	2011	35	36	35	Tanzania	2018	41	41	41
Gambia	2018	42	43	40	Togo	2018	23	23	23
Ghana	2018	115	116	114	Tunisia	2016	45	45	44
Guinea	2011	15	15	16	Uganda	2017	14	15	14
Guinea-Bissau	2010	15	7	6	Zambia	2016	8	8	7
Kenya	2016	76	75	77	Zimbabwe	2013	47	48	46
Lesotho	2016	39	40	38	Western Sahara	-	-	-	-

Large data gaps across the continent in relation to ECED also remain. Despite some progress, pre-primary enrolment across the continent lags behind globally. In Sub-Saharan Africa, only 20 percent of children from three to six years old can access critical learning opportunities.<sup>385</sup> The lack of prioritization of ECE results in children enrolling late in school. In Liberia, for example, children enrol in school for the first time at the age of 11-12.<sup>386</sup>

## Free and compulsory education

By 2020 member States should have in place a policy for effective free and compulsory primary, and free secondary education.

By 2020 member States should have ensured that free compulsory education for all children is a legal requirement and factual reality.

States have an obligation to realise the right to education by providing free, inclusive, quality, public education. A number of States provide the right to free and/or basic education within their Constitutional frameworks.<sup>387</sup> Other States have included such matters in other legislative

<sup>385</sup> See World Bank, "Early Years: Resources", available <https://www.worldbank.org/en/programs/earlyyears>.

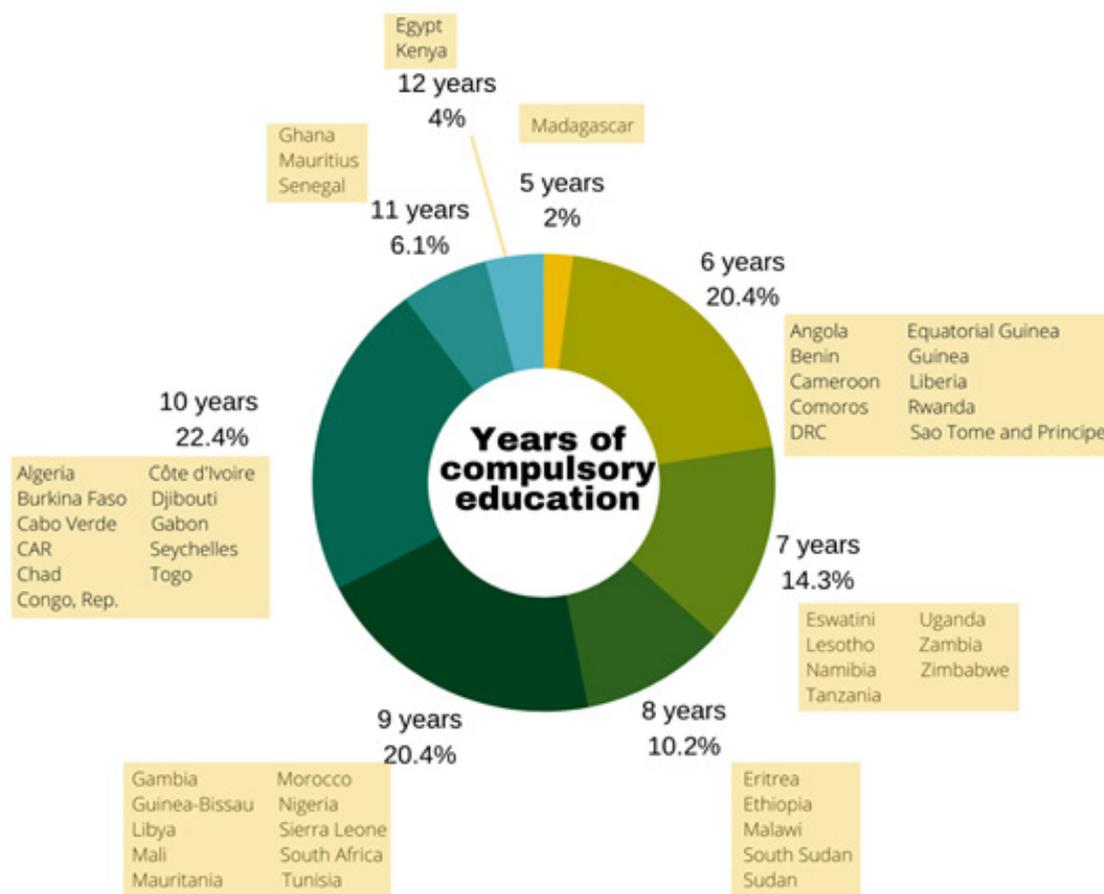
<sup>386</sup> ACERWC, "Report of the ACERWC on the Follow-up Mission Conducted to Monitor the Implementation of its Concluding Observations and Recommendations to the Republic of Liberia" (January 2020), available <https://www.acerwc.africa/wp-content/uploads/2019/11/Liberia-follow-up-mission-report.pdf>.

<sup>387</sup> Angola's Constitution, for example, sets out as a "fundamental task of the state" the promotion of "policies that will ensure universal access to compulsory free education under the terms defined by law" (Article 21). The Preamble of the Constitution of Cameroon provides that "primary education shall be compulsory. The organisation and supervision of the education system shall be the bounden duty of the state."

instruments.<sup>388</sup> While most States do prescribe compulsory years, this is not always a factual reality. The majority of countries have set out the number of years that children are legally obliged to attend school, which ranges from 5 years to 12 years. Botswana, Burundi, Mozambique, Niger and Somalia are the only countries on the continent which do not set compulsory education by law.<sup>389</sup> The graph below identifies the number of years of compulsory education.

School feeding contributes to inclusive quality education and advances health and nutrition outcomes of school going children across the continent. A 2018 AU study entitled 'Sustainable School Feeding Across the African Union' recognises the important role that school feeding programmes have played in improving retention, attendance and enrolment rates at schools as well as reduced repetition and dropout rates. School feeding also improves cognitive performance and completion and promotion rates. Notwithstanding the progress, many children remain out of school.

Location and distance to school remains a challenge for many children, posing a barrier to access and affecting quality of education. School access is also hampered by poor roads or transportation which is unavailable or unaffordable. The matter is compounded by the lack of access to online learning, an issue which has been starkly illuminated during the Covid-19 pandemic. Nearly 90 per cent of students in sub-Saharan Africa do not have household computers while 82 per cent are unable to get online.<sup>390</sup>



\*Information compiled from the World Bank (August 2020)

Moreover, quality education is a challenge in almost all African countries due to lack of trained and skilled man power, poor investment in the education sector, lack of teaching materials, and high student to teacher ratio.

388 See e.g. Article 113, Loi n° 2015-08 (Children's Code) (Benin); Law No. 2015-635 of 17 September 2015 on compulsory schooling (Côte D'Ivoire).

389 <https://data.worldbank.org/indicator/SE.COM.DURS?end=2016&locations=ZG&s>; <https://data.worldbank.org/indicator/SE.COM.DURS?end=2016&locations=ZQ&s>

390 <https://en.unesco.org/news/startling-digital-divides-distance-learning-emerge>

In Sub-Saharan Africa, 32 million children between the ages of 6 and 11 are out of school across the region. 46% of these children will start at a later age, but one-fifth will remain entirely excluded. Sub-Saharan Africa has the lowest rates of participation rates in primary education with 28 million children out of school. Sub-Saharan Africa also has the highest rate of exclusion, with 19% of primary school-age children denied the right to education, followed by Northern Africa.<sup>391</sup> West and Central Africa account for one-third of the global total of primary school age children. Data gaps, however, exist. UNESCO reports that “data [is] missing for 24 of 51 countries that represent 23 million of the 32 million primary-age out-of-school children in the region.”<sup>392</sup> Rates of enrolment continue to drop at the secondary school level. In relation to secondary school, sub-Saharan Africa has the highest rate of out-of-school adolescents (37%), followed by North Africa. West and Central Africa account for one-fifth of lower secondary age children who are out of school globally.<sup>393</sup> Even where states have in place a policy for effective free and compulsory primary, and free secondary education, the completion rate of both lower and upper-secondary education remains low, with disparities by region, setting (urban compared to rural), and gender. According to the 2020 Global Education Monitoring Report, the number of children out of school in Sub-Saharan Africa is growing.

It is, however, important to note that even where education is “free,” barriers remain. Where school is free, access is hindered by the need for families to purchase necessary school stationery, books, uniforms and other school-related expenses. School levies, examination fees and recreational activities also serve as a hindrance to participation. The lack of access to education support is also a factor leading to child separation, leading families in a number of States to place their children in residential care institutions. Progress has however been made. Legislative reforms in Zimbabwe to include legal guarantees on state-funded basic education which were ongoing in 2018<sup>394</sup> were adopted in 2020. Zimbabwe’s amended Education Act (2020) reasserts the constitutional protection that students should not pay fees, or levies, from preschool up to Form 4, the end of lower secondary education, and says no pupil shall be excluded from school for non-payment of school fees. Rwanda reports the positive effect of providing free primary education, noting the “very positive impact on children from poor families especially girls who were forced to stay at home and let the brothers proceed with schooling due to limited finance.”<sup>395</sup>

By 2020 member States should have allocated at least 9 per cent of gross domestic product (GDP) on education, in line with the Dakar budgetary targets.

The opportunity for all children to enjoy free and compulsory primary education without distinction requires that States progressively provide adequate financial and other resources in their education budget. The allocation of expenditure to education, however, remains inadequate across the continent. According to data provided by the World Bank, only Botswana (9.6%) has allocated at least 9 per cent of gross domestic product (GDP) on education in line with the Dakar budgetary targets,<sup>396</sup> followed by Sierra Leone (7.5%), Tunisia (6.6%), and South Africa (6.2%). The average expenditure in Sub-Saharan Africa remains at 4.6%.<sup>397</sup> There are, however, disparities with South Sudan, CAR and DRC’s budgetary allocations being 1%, 1.1% and 1.5% of annual GDP, respectively.<sup>398</sup> In other contexts “the actual expenditure mix is in itself a source of inefficiencies.”<sup>399</sup> In Zimbabwe, for instance, this contributes to the reliance on student fees and levies, creating further education disparities.<sup>400</sup>

391 See UNESCO, “Fact Sheet no. 56” (September 2019) Doc No. UIS/2019/ED/FS/56.

392 Ibid., p. 14.

393 <https://www.unicef.org/wca/what-we-do/education>

394 See Education Amendment Bill, 2018 H.B.1, 2019, available <https://www.parl.zim.gov.zw/component/k2/education-amendment-bill-2018-h-b-1-2019>

395 UN Committee on the Elimination of Discrimination Against Women, ‘Seventh to ninth periodic reports of States parties due in 2014’ (5 October 2015), UN Doc. CEDAW/C/RWA/7-9, para. 27.

396 World Bank, “Government expenditure on education, total (% of GDP), available <https://data.worldbank.org/indicator/SE.XPD.TOTL.GD.ZS>

397 Ibid.

398 Ibid.

399 UNICEF, “Zimbabwe Education Brief” (2018), available <https://www.unicef.org/esaro/UNICEF-Zimbabwe-2018-Education-Budget-Brief.pdf>

400 UNICEF, “Zimbabwe Education Brief” (2018), available <https://www.unicef.org/esaro/UNICEF-Zimbabwe-2018-Education-Budget-Brief.pdf>

Progress is, however, being made to meet targets. The Committee has welcomed the progressive increase in a number of States.<sup>401</sup> Rwanda, for example, has doubled funding allocated for education for children with disabilities in recent years, while Liberia has made progress with respect to budgetary allocation for basic (lower and upper) education schools. In Ethiopia, the Committee noted the increase in budget allocation in 2018 but also mentioned that more clarity is required as to whether the allocation is child sensitive.<sup>402</sup>

## Girls and education

By 2020 member States should have enacted legislation and ensured an environment conducive to the pursuit of education by girls.

By 2020 member States should have eliminated all gender disparities in education and ensured equal access to girls at all levels of education.

Gender inequality has a profound impact on girls' education throughout the continent, with sub-Saharan Africa having the highest rates of exclusion for girls.<sup>403</sup> More girls on the continent will never go to school as compared with boys. The majority of States have, however, achieved relative parity with the enrolment of boys and girls at pre-primary levels. However, enrolment of girls in ECED in Botswana, Guinea-Bissau, Morocco remains less than that of boys. Unfortunately, in subsequent years, girls' access to and participation in school starts to decline in many countries throughout the continent. Girls are grossly underrepresented in technical and vocational areas. In Seychelles, this is attributed partially to gender imbalances in staffing at the pre-primary and primary levels which is reported to perpetuate and reinforce stereotyping, impacting girls.<sup>404</sup> In Cabo Verde, the Special Law on Gender-Based Violence and associated regulatory framework (Decree-Law no. 8/2015) was adopted to promote gender equality and non-discrimination, in particular the education system, from pre-school to higher education, including vocational training. The implementation of this law includes training and awareness raising activities for education managers and teachers on education for gender equality in a context of the classroom.<sup>405</sup> Burundi reports establishing a national unit for the promotion of girls' education in the Ministry of Basic and Secondary Education, Vocational Education, Vocational Training and Literacy.<sup>406</sup>

Troubling are reports of girls who do attend school but who are not all learning. A 2017 UNESCO reports estimate that 70 million girls or 90 per cent of those enrolled in school in sub-Saharan Africa will be unable to read by the time they complete primary school.<sup>407</sup> By the time they have completed primary school, only 85 per cent of boys minimum proficiency levels in reading. Ensuring that all learners acquire the knowledge and skills needed to promote sustainable development requires that children who are in school are learning. To illustrate this point, CEDAW in its concluding observations to Côte d'Ivoire noted the disproportionately high levels of illiteracy among girls, and particularly among girls living in rural areas and girls living with disabilities.<sup>408</sup>

401 See e.g. Burkina Faso (GPE, "Annonce de contribution faite par le Burkina Faso pour la période 2017-2020 lors de la Conférence de financement du GPE à Dakar, le 2 février 2018", <https://www.globalpartnership.org/fr/content/annonce-contribution-burkina-faso-3e-conference-financement-gpe>), Guinea (ACERWC, "Rapport de Mission du CAEDBE sur le suivi de la mise en Ouvre de ses Observations Finales et Recommanations Adressées au Gouvernement de la République de Guinée sur le Rapport Initial de la Guinée" (October 2019), available <https://www.acerwc.africa/wp-content/uploads/2020/01/Guinea-Followup-Mission-Report.pdf>), Liberia (See e.g. ACERWC, "Report of the ACERWC on the Follow-up Mission Conducted to Monitor the Implementation of its Concluding Observations and Recommendations to the Republic of Liberia" (January 2020), available <https://www.acerwc.africa/wp-content/uploads/2019/11/Liberia-follow-up-mission-report.pdf>), Rwanda (Rwanda UNCRC Report (2018), paras 32, 132).

402 ACERWC, "ACERWC's Report on the Follow-up Mission Conducted to Monitor the Implementation of its Concluding Observations and Recommendations to the Government of the Federal Democratic Republic of Ethiopia on the Initial Report of Ethiopia" (February 2019), <https://www.acerwc.africa/wp-content/uploads/2020/01/Ethiopia-mission-report-with-NV.pdf>

403 See UNESCO, "Fact Sheet no. 56" (September 2019) Doc No. UIS/2019/ED/FS/56.

404 See e.g. Seychelles UNCRC Report (2016), para. 90.

405 Cabo Verde UNCRC Report (2017), para. 49.

406 Burundi UNCRC Report (2017), para. 11.

407 See UNESCO, "Fact Sheet No. 46" (September 2017) Doc. No. UIS/FS/2017/ED/46.

408 UN Doc. CEDAW/C/CIV/CO/4, para. 39.

“Across sub-Saharan Africa, 4 million girls will never attend school compared to 2 million boys.”

-UNESCO (2019)

Girls face barriers to education as a result of poverty, cultural norms and practices, poor infrastructure, violence, labour, time-intensive domestic chores, harmful traditional practices, trafficking, as well as armed conflict. In a number of States, girls who have never been to school or who have dropped out lived in circumstances in which they were unable to meet their basic needs for food, clothing, health services, information and housing.<sup>409</sup> Poverty drives girls to undertake work either at home or in the informal economy. In Cabo Verde, while the majority of children engaged in an economic activity go to school, girls engaged in economic activities are more likely not to be in school (29% as opposed to 18% among boys).<sup>410</sup> For some girls, cultural stigma or where parents don't see the need to invest in education results in girls not enrolling in school.

Access to water also plays a role. For girls who live in households without easy access, the responsibility of fetching water for household usage may have a detrimental effect on school attendance.<sup>411</sup> Girls who do attend school also face sexual harassment and violence in school. In Burkina Faso, this is noted as “an obstacle to the enrolment, retention and satisfactory performance of girls in schools.”<sup>412</sup> Perpetrators often go unpunished. However, Cabo Verde reported to the CRC Committee that a teacher and a school guard were sentenced for sexual crimes against schoolgirls in 2016.<sup>413</sup>

Menstrual hygiene management is also a key issue with inadequate access to sanitary products, single-sex sanitation facilities in schools, as well as water and soap, impacting school attendance and retention. In 2020, Zimbabwe adopted legislative reforms amending the Education Act to require the state to provide “sanitary ware and other menstrual health facilities to girls in all schools to promote menstrual health.”

Child marriage and early pregnancy has an impact on girls' education. Teenage pregnancy is a factor driving large proportions of girls to drop out of school across the continent.<sup>414</sup> Botswana reported, for example, that more than one-third of all girls in secondary school dropped out as a result of teenage pregnancy.<sup>415</sup> Preventive measures such as life skills education are also being used to reduce pregnancy rates in schools.<sup>416</sup> Unfortunately, many girls do not re-enter education after giving birth. Pregnant girls across a number of country contexts face challenges with regards to education, including as a result of policies banning pregnant girls from attending education and exams or re-entering education. This means that children are born into households where mothers themselves lack education, and therefore often struggle to provide for their children.

By 2018, a number of countries (26 countries) had adopted laws or policies that protect adolescent girls' education during pregnancy and motherhood.<sup>417</sup> Some States like Gabon and Côte d'Ivoire guarantee girls' right to continue school during pregnancy and after giving birth. Most States have

409 See e.g. Côte d'Ivoire CEDAW Report, para. 155, citing “Vulnérabilité des jeunes filles face au VIH/sida en Côte d'Ivoire — Une analyse genre”.

410 Cabo Verde UNCRC Report, para. 168.

411 Plan International and ACPF, “Getting Girls Equal” (2019).

412 Burkina Faso CEDAW Report 2016, para. 54.

413 Cabo Verde UNCRC Report 2018, para. 90.

414 Plan International and ACPF, “Getting Girls Equal” (2019).

415 UN Committee on the Elimination of Discrimination Against Women, “Fourth periodic report submitted by Botswana under article 18 of the Convention, due in 2014\*” (18 December 2017), UN Doc. CEDAW/C/BWA/4, para. 177.

416 Botswana UNCRC Report (2017), para. 175..

417 Human Rights Watch (2018), *Leave No Girl Behind in Africa Discrimination in Education against Pregnant Girls and Adolescent Mothers* available [https://www.hrw.org/sites/default/files/report\\_pdf/au0618\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/au0618_web.pdf); “Africa: Pregnant Girls, Young Mothers Denied School” (16 June 2019) available <https://www.hrw.org/news/2019/06/16/africa-pregnant-girls-young-mothers-denied-school>.

policies addressing re-entry. Since the adoption of Agenda 2040, a number of States have made efforts to address discriminatory policies which lead to the exclusion of pregnant girls and young mothers. In 2017, In Cabo Verde also reversed its expulsion policy in 2017, providing pregnant students with maternity leave, and committed to guarantee reasonable accommodations in schools for young mothers.<sup>418</sup> Pregnant girls under Zimbabwe’s 2010 conditional re-entry policy were expelled from school and only allowed to return following three-months. As recently as February 2019, Zimbabwe introduced an amended Education Bill which protects pregnant girls from exclusion. The law was adopted in 2020.<sup>419</sup> Additionally, in March 2020, Sierra Leone lifted its 2010 decision to ban pregnant girls from attending school, replacing it with two new policies focused on “radical inclusion” and “comprehensive safety” of all children in the education system.<sup>420</sup> While some progress has been made, in other contexts, some States have regressed. For instance, in 2017, Tanzania imposed a controversial ban against pregnant students, adolescent mothers, and married girls. There is however concern that laws and policies guaranteeing re-entry are not well-monitored or effectively enforced.

By 2020 member States should have substantially increased the number of young persons with relevant skills, including technical and vocational skills, for employment, decent work and entrepreneurship

Rising unemployment among young people is a challenge for all countries across the continent. Agenda 2040 focuses on the development of technical and vocational skills and access to training for employment, decent jobs and entrepreneurship. In 2018, the AU adopted the Continental Strategy for Technical and Vocational Educational and Training (TVET) to Foster Youth Employment. In many States, support for young persons to acquire professional skills through TVET programmes are key elements of the development strategy. Despite this, TVET is largely fragmented and uncoordinated, with most States lacking a unified policy and legal framework. Although these challenges persist, “[i]t is quite remarkable that in many African countries, training is already attached to the Ministry of Higher Education. This is a positive signal that cannot be ignored.”<sup>421</sup> In some States, TVET is also being increasingly provided by non-State actors. For instance, in Niger, the private vocational training sector increased from 72 in 2010 to 82 institutions in 2015.<sup>422</sup>

In 2020, Egypt reported to CEDAW that it encourages TVET, guaranteeing the provision of free independent university education.<sup>423</sup> In 2017, Tunisia adopted Act No. 13 of 2017 regarding measures to make basic vocational training obligatory.<sup>424</sup> In Tunisia as well as Niger efforts are also underway to provide TVET opportunities to young persons who have dropped out of school.<sup>425</sup> While girls are less likely to attend TVET, in Seychelles for example, “more girls are gradually being enrolled in Vocational Centres.”<sup>426</sup> At the same time, large data gaps exist. For instance, Somalia reported little data on TVET as well as the lack of availability of TVET opportunities. In Somalia, the Government estimates that 95 per cent of youth aged between 14 and 24 years are not in any type of tertiary institution.<sup>427</sup> North Africa has, however, “seen rapid expansion of tertiary education participation, outpacing the global average in recent years.”<sup>428</sup>

418 Cabo Verde CEDAW Report, para. 11.

419 Education Amendment Act, 2019 (Act 15-2019).

420 See Government of Sierra Leone Ministry of Basic and Senior Secondary Education, Press Release, available <https://africanlii.org/sites/default/files/Sierra%20Leone.pdf>.

421 [https://au.int/sites/default/files/pressreleases/35308-pr-tvet-english\\_-\\_final\\_2.pdf](https://au.int/sites/default/files/pressreleases/35308-pr-tvet-english_-_final_2.pdf).

422 Niger ACERWC Report (2017), para. 302.

423 See CEDAW/C/EGY/8-10, para. 84.

424 Tunisia UNCRC Report (2018), para. 21 (“Act No. 13 of 2017 regarding measures to make basic vocational training obligatory”).

425 See e.g. Ibid.; Niger ACERWC Report (2017), para. 34.

426 Seychelles UNCRC Report (2016), para. 156.

427 Somalia UNCRC Report (2019), para. 275.

428 UNESCO, “Global education monitoring report, 2020: Inclusion and education: all means all” (2020).

By 2020 member States should have ensured that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development.

SDG 4.7 aims to provide learners with the knowledge and competencies to realise all of the SDGs. As part of this target, Global Citizenship Education (GCED) and Education for Sustainable Development (ESD) aim at equipping children and "young people with the knowledge, skills, values, attitudes, and behaviors to constructively and creatively[...] create more sustainable and resilient societies and to become proactive contributors to a more peaceful, tolerant and inclusive world."<sup>429</sup>

Target 4.7 measures the extent to which GCED and ESD, including gender equality and human rights, are mainstreamed in national education policies, curricula, teacher education and student assessments. In a regional technical workshop on GCED and ECD in East Africa, participants noted the lack of understanding and awareness of conceptual knowledge of GCED and ESD, lack of clear policy frameworks, and poor implementation hindering the realization of Target 4.7.<sup>430</sup> The lack of international standards and guidelines for policy development, planning or integration at the national level were also reported as a challenge. At a Southern Africa regional workshop, lack of funding was also noted. Notwithstanding, progress has been reported. Botswana, for instance, reports that human rights education has been incorporated in curricula at pre-school, primary and secondary school levels.<sup>431</sup> In Kenya, a Guide to mainstreaming Education for ESD and GCED into Kenyan universities was developed.<sup>432</sup>

By 2020 member States should have built and upgraded education facilities that are child-, disability- and gender-sensitive and that provide a safe, non-violent, inclusive and effective learning environment for all.

By 2020 member States should reach out to disadvantaged and socially-excluded groups, mostly in rural areas, and vulnerable children, including persons with disabilities, indigenous children and children of ethnic and/or religious minorities.

SDG 4 includes the target of eliminating gender disparities in education and ensuring equal access for persons with disabilities. Children with disabilities across Africa are less likely to attend school or complete primary education notwithstanding that most African States have ratified or acceded to the CRPD. This is especially so for children living in rural areas, as accommodation or support is rarely provided by local schools. In some States a higher percentage of girls with disabilities, especially in rural areas, drop out of school because of lack of proper sanitation and single-sex facilities.<sup>433</sup> Some progress is reported. In Burkina Faso, separate latrines are being built to encourage the enrolment and retention of girls in school.<sup>434</sup>

There are numerous reports by States of establishing specialised schools. Where specialised schools are established, they are often provided at the primary level, effectively excluding children with disabilities from achieving secondary and tertiary levels of education. The Committee has taken this opportunity to remind States that inclusive education requires that students with disabilities are

429 <http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Nairobi/esdgc eden.pdf>.

430 Ibid., p. 19.

431 Botswana UNCRC Report (2017), para. 33.

432 <https://unesco.go.ke/wp-content/uploads/2019/10/GUIDELINES-FOR-ESD-AND-GCE.pdf>.

433 See e.g. Plan International Kenya, et. al, "Shadow Report in Response to the Eighth Periodic State Report by Kenya to the Committee on the Elimination of All Forms of Discrimination Against Women" (2 October 2017), p. 17.

434 UN Committee on the Elimination of Discrimination Against Women, "Seventh periodic report of States parties to be presented in 2014" (9 June 2016), UN Doc. CEDAW/C/BFA/7 ("Burkina Faso CEDAW Report 2016), para. 83.

able to learn in a mainstream school environment, with staff of specialised schools playing a key role in helping achieve greater inclusion in mainstream schools. As large data gaps exist in relation to children with disabilities, evidence-informed policies for inclusivity are wanting, resulting in an inadequate allocation of resources to address children with disabilities and their needs.<sup>435</sup> Legislation in nearly 25 percent of African States provide for children with disabilities to be educated in separate settings.<sup>436</sup> Angola, for example, set targets to include 30,000 children with special education needs in mainstream schools by 2022. Kenya is also transitioning towards inclusive education, with an estimated 2,000 primary and secondary mainstream schools providing education for students with disabilities. Countries with policies sometimes face challenges. For example, while South African law provides for inclusive education in mainstream public schools, it reported the development of new segregated schools and the lack of provisions for children with severe intellectual disabilities to the CRPD.

By 2020 member States should have put in place a legal framework to regulate and monitor educational services provided by non-State institutions.

Education across the continent is being provided at an increasing pace by non-State actors including, NGO, faith-based, philanthropic and other private actors. Notwithstanding, States remain duty-bearers and have the obligation to provide education under the African Children's Charter. As the role of non-State providers of education is increasing across the continent, legal and regulatory frameworks, and where provided, its enforcement remain inadequate. A recent study conducted on 20 States in Sub-Sub-Saharan Africa found, among other things, that the lack of capacity on the part of governments is a "contributor to uneven policy implementation and creates opportunities for rent-seeking and corruption."<sup>437</sup> This lack of capacity also contributes to the growth of education services being provided in unofficial markets. Nevertheless, hopeful signs of States taking responsibility are acknowledged by leading African experts.<sup>438</sup> Uganda and Kenya have, for example, in 2018 defended their role in regulating private schools before national courts in cases involving Bridge International Academies, a for-profit private chain of nursery and primary schools in Uganda, Kenya, Nigeria, Liberia, and India. Further efforts are however needed across many States to better regulate and effectively monitor education provided by non-States actors in line with its obligations.

### **UGANDA: *Bridge International Academies v. Attorney General, Uganda* (Miscellaneous Cause No. 160 of 2016)**

In 2016, the Ugandan Ministry of Education, Science Technology and Sports announced the closure of all Bridge International Academies for failing to respect the national standards, particularly that "material used could not promote teacher pupil interaction" and that "poor hygiene and sanitation [...] put the life and safety of the school children in danger". Bridge Academies challenged this decision before Ugandan courts. The High Court ultimately found that the State has a duty to ensure quality of education and training, and may close institutions that do not comply with the basic requirements and minimum standards as required by the law so long as it complies with due process requirements. In reaching its conclusion, the High Court confirmed the State's obligation to protect the right to education, including by preventing abuse by private actors.

In 2019, the Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education were adopted following a three-year participatory consultation and drafting process. The Principles reflect existing human rights law and standards, providing guidance on how to put them into practice, particularly in the context of a rapid expansion of private sector involvement in education. As recognised in the Abidjan Principles, "the changing realities and growing challenges of private education are often referred to by UN human rights treaty

435 See e.g. ACPF and Plan International (2019).

436 UNESCO, 2020 GEM Report, available <https://education-profiles.org/>

437 Baum, Donald R., et. al, "Regulating market entry of low-cost private schools in Sub-Saharan Africa: Towards a theory of private education regulation" (2018), <https://openknowledge.worldbank.org/bitstream/handle/10986/29146/j.ijedudev.2017.10.020.pdf?sequence=1&isAllowed=y>

438 UNESCO (2018), available <https://en.unesco.org/news/pros-and-cons-private-and-public-education-africa>

bodies in general comments and concluding observations, UN Special Rapporteurs have submitted several reports on the topic, and there is a growing relevant regional and domestic jurisprudence". In recognising the role of private education, the Abidjan Principles reaffirm State obligations to establish free, quality public education systems, regulate private education and fund quality public education. In 2019, a resolution on States' Obligation to Regulate Private Actors Involved in the Provision of Health and Education Services was adopted by the ACHPR which recognised the Abidjan Principles. In particular, it referred to overarching principle No. 5 of the Principles which provides that "States must prioritise the funding and provision of free, quality, public education, and may only fund eligible private instructional educational institutions, whether directly or indirectly, including through tax deductions, or land concessions, international assistance and cooperation, or other forms of indirect support, if they comply with applicable human rights law and standards and strictly observe all substantive, procedural, and operational requirements".<sup>439</sup> In March 2020, the ACHPR recognised the Abidjan Principles once again in a Resolution on the Need to Develop Norms on States' Obligations to Regulate Private Actors Involved in the Provision of Social Services.<sup>440</sup>

By 2020 member States should have substantially increased the supply of qualified teachers, including through international co-operation for teacher training in developing countries.

The availability of trained teachers is key to building strong education systems. Unfortunately, the Committee takes note of the inadequacy of the workforce, including low academic and professional levels of teachers. According to UNESCO, there continues to be a decline in the number of qualified teachers since 2000 as a result of schools hiring contract teachers without qualifications to cover gaps at lower cost.<sup>441</sup> It is reported that only 64% of primary and 50% of secondary school teachers in Sub-Saharan Africa have the minimum required training. The Global Partnership for Education (GPE) contributed to efforts through the increase of supply of qualified teachers through international cooperation in a number of States with some important progress made. In Benin, the pupil-to-trained teacher ratio halved between 2009 and 2018. This period was also marked by the training of 63,000 teachers to improve pedagogical skills and the certification of 8,000 community teachers.<sup>442</sup> Benin's education sector plan (2018-2030) seeks to continue to train education sector actors, teachers, trainers and supervisors as well as administrative and guidance staff.<sup>443</sup> Progress to increase the number of qualified teachers is reported, for example, in Zambia and Mozambique.

By 2020 member States should have promoted the use of African languages as a medium of instruction as well as subjects of study in the school systems.

There is a clear link between language policy and learning. Some States Parties have reported the use of local African languages as a medium of instruction. In Botswana, a pre-school programme in some remote areas, staffed by people from the local communities, provides instruction in Setswana and English. These schools are however "seriously under-funded and under-resourced."<sup>444</sup> In Burundi, the Government reported programmes in Kirundi language teaching at all levels.<sup>445</sup> In Mozambique, 92,105 children in 744 public and community schools, in all the provinces, are benefitting from classes given in the local languages. In bilingual education, the classes are taught in 16 national languages by 1,687 trained teachers.<sup>446</sup> In Egypt, education is provided in Arabic.<sup>447</sup> These are but a few examples.

439 ACHPR / Res. 420 (LXIV) 2019.

440 ACHPR/Res. 434 (EXT.OS/ XXVI1) 2020.

441 <http://uis.unesco.org/sites/default/files/documents/meeting-commitments-are-countries-on-track-achieve-sdg4.pdf>

442 GPE, "Results Report 2020", available [https://www.globalpartnership.org/sites/default/files/document/file/2020-06-GPE-results-report-2020\\_0.pdf](https://www.globalpartnership.org/sites/default/files/document/file/2020-06-GPE-results-report-2020_0.pdf) p. 42.

443 See Plan sectoriel de l'éducation 2018 -2030 du Bénin, available <https://www.globalpartnership.org/fr/content/plan-sectoriel-de-leducation-2018-2030-du-benin>

444 Botswana UNCRC Report (2017), para. 198.

445 Burundi UNCRC Report (2017), para. 45.

446 Mozambique UNCRC Report (2018), para. 351.

447 UN Doc. CEDAW/C/EGY/8-10, para 84.

In 2019, the Southern Africa Development Community adopted Kiswahili – an official language in Tanzania, Kenya and Rwanda and of the African Union – as its fourth official language. In 2019, Rwanda’s Ministry of Education announced that English would be replacing Kinyarwanda as the language of instruction in Rwandan schools, with Kinyarwanda to be taught as a mandatory subject in both private and public schools.

“Africa is the only continent where the language of instruction is more often than not a foreign language, making it difficult for children to cope with a new language and structured approaches to teaching and learning.”

-Continental Education Strategy for Africa CESA 16-25

## Conclusion

The Committee welcomes the legislative frameworks of a number of States which provide the right to free and/or basic education within their Constitutional frameworks but notes with concern that even where States do prescribe compulsory years, this is not always a factual reality. Pre-primary education is a neglected sub-sector, with ECDE remaining largely fragmented across health, education, child protection and social protection across the continent.

The Committee notes that school feeding has played an important role in ensuring inclusive quality education and positive health and nutrition out-comes of school going children across the continent. While considerable progress was made in boosting primary and lower secondary school enrolment, prior to the pandemic, it is of concern that 50 million children prior to the pandemic were out of school, with girls and other vulnerable children, including children living in conflict-affected areas, children with disabilities, refugee children, migrant children, internally displaced children, street connected children, and children from marginalised communities, among others excluded.

Girls across the continent continue to face barriers to education as a result of poverty, cultural norms and practices, poor infrastructure, violence, labour, time-intensive domestic chores, harmful traditional practices, trafficking, as well as armed conflict. At the same time, concerns remain over gender-based violence in schools and the gap in legal and policy frameworks which should be complemented with strong monitoring and reporting procedures. Measures should be taken to ensure that negative cultural attitudes about girls attending school are eliminated, and to facilitate gender-responsive facilities and curricula. At the same time, there is a need in a number of states to adopt or amend legislation to end the exclusion from school of pregnant and married girls and provide re-entry opportunities.

The allocation of expenditure to education remains inadequate across the continent. The assessment reveals that only one State has met budgetary targets for education. The Committee reminds States that they should progressively provide adequate financial and other resources in their education budget to provide opportunity for all children to enjoy free and compulsory primary education without distinction.

Even where children are in school, the assessment reveals that not all are learning due to poorly resourced education systems, poor-quality instruction, and lack of basic infrastructure. The Committee remains concerned over the availability of trained teachers and of the reported inadequacy of the workforce, including low academic and professional levels of teachers. It however notes the efforts of some States and of the GPE which contributed to efforts through the increase of supply of qualified teachers through international cooperation.

Member States have not met the goal of ensuring inclusive education for students with disabilities

so that they are able to learn in a mainstream school environment, with staff of specialised schools playing a key role in helping achieve greater inclusion in mainstream schools. The Committee notes with concern the disparities for school enrolment and attendance for children with disabilities, especially those in rural areas, notwithstanding that most African States have ratified or acceded to the CRPD. At the same time, evidence-informed policies for inclusivity are wanting, resulting in an inadequate allocation of resources to address the education needs of children with disabilities.

Education services across the continent are being increasingly provided by non-state actors with inadequate legal and regulatory frameworks as well as enforcement, contributing to the growth of education services being provided in unofficial markets. As the assessment reveals, Africa remains the only continent where the language of instruction is more often than not a foreign language. While some efforts are underway, further efforts are needed to ensure that learning is provided in local languages.



## Aspiration 07

Every child is protected against violence, exploitation, neglect & abuse

# By 2040

- No child is exposed to any form of violence, including gender-based violence in the public or private sphere; children are free from physical and psychological abuse, sexual violence and exploitation, and sex trafficking.
- Harmful practices (such as breast ironing, female genital mutilation or cutting and child marriage) have been ended.
- No child is exposed to sexual exploitation and used for child pornography.
- Harmful child labour practices and child trafficking for forced labour is eliminated.
- No child is subjected to corporal punishment.

## ASPIRATION 7: EVERY CHILD IS PROTECTED AGAINST VIOLENCE, EXPLOITATION, NEGLECT AND ABUSE

The African Children's Charter, in Article 16, places the responsibility on States to protect children from violence. Target 16.2 of the SDGs seeks to realise the right of every child to live free from fear, neglect, all forms of abuse and exploitation. Unfortunately, violence against children (VAC) remains a pervasive challenge in Africa. VAC has been defined as "the intentional use of physical force or power, threatened or actual, against a child, by an individual or group, that either results in or has a high likelihood of resulting in actual or potential harm to the child's health, survival, development or dignity".<sup>448</sup> It includes all forms of physical and emotional ill-treatment, sexual abuse, neglect, and exploitation. Girls experience a disproportionate burden of violence.<sup>449</sup> This chapter will review the progress and challenges in meeting Aspiration 7 to ensure that every child is protected against violence, exploitation, neglect and abuse.

### Article 16: ACRWC

States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.

## Harmful child labour practices and child trafficking for forced labour is eliminated

By 2020 member States should have set a minimum age for admission into employment at 15 years or higher; this minimum age should correspond to the minimum age for completing compulsory schooling.

By 2020 member States should have prohibited all forms of harmful labour practices and child trafficking, and ensured the effective implementation of these laws.

By 2020 member States should have embarked on public information and awareness campaigns for the abolition of harmful practices, initiated collective discussions involving the communities concerned, and undertaken capacity building of professionals working with and for children.

The African continent has the highest levels of child labour in the world. 2016 Global Estimates of Child Labour indicate that one-fifth of children in Africa are involved in child labour, while 9 percent are involved in hazardous work. Sub-Saharan Africa has the largest proportion of child labourers with 29 percent of children aged 5 to 17 years as compared to North Africa where 5 percent of children aged 5 to 17 are engaged in child labour.<sup>450</sup> In all regions across the continent girls are as likely to be engaged in child labour as boys. Large data gaps, however, exist as do the capacity to monitor and enforce legal frameworks.

One of the indicators for SDG Target 16.2 is the implementation of fundamental ILO labour standards in law and practice. While the majority of African States have domestic laws setting a minimum age for admission into employment at 15 years or higher, in practice, poor enforcement means many girls start work at a very young age. Eritrea, Kenya, Nigeria, Sierra Leone, South Sudan, and Uganda are not fully in line with the ILO framework. Eritrea permits children as young as 14 years old to be employed and enter into employment contracts.<sup>451</sup> Kenya's legal framework has shortcomings

448 WHO, "World Report on Violence and Health (2002)".

449 ACPF and Plan (2019) "Getting Girls Equal".

450 UNICEF, Child Labour (October 2019), available <https://data.unicef.org/topic/child-protection/child-labour/>

451 The Labour Proclamation of Eritrea, Articles 9 & 68, available <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61291/88422/F706047418/ERI61291.pdf>.

insofar as it does not cover scenarios of informal employment.<sup>452</sup> Nigeria fails to define “child” or the age of children for its general prohibition of the use of children in employment.<sup>453</sup> However, more specific limitations, such as work in industrial undertakings and machine work, specify minimum ages of children at 15 and 16, respectively. Uganda’s minimum age of employment is 14, with an exception for light work not exceeding fourteen hours of work per week, and educational training and apprenticeship programmes.<sup>454</sup> Sierra Leone, on the other hand, permits children to perform light work from the age of 13 years old, and children are able to work full-time from the age of 15 years old.<sup>455</sup> In Zambia, child labour is predominantly in the agriculture sector.<sup>456</sup> However, Zambia’s prohibitions on hazardous labour for children do not include agricultural work among the listed hazardous occupations.<sup>457</sup> There are 27 countries with gaps between ages of compulsory education and minimum age of employment. The average gap is one year. However, Madagascar has a five-year gap (10 years for education and 15 years for the minimum age of employment) while Guinea (12 years education and 16 years for employment) and Liberia (11 years education and 15 years employment) have a four-year gaps respectively.

According to a recent study, the use of child labour has risen in cocoa farms in Ghana and Ivory Coast over the past decade despite industry promises to reduce it, a group of academics has noted. Their findings largely supporting earlier claims that were questioned by both states. The study found that the prevalence of children doing hazardous work, including using sharp tools, has also gone up in the world’s top two cocoa producers. Levels were higher than in 2010 when companies, including Mars, Hershey, Nestle and Cargill, agreed to reduce the worst forms of child labour in the cocoa sectors by 70% by 2020. The report estimated the number of children currently working in cocoa production in the two countries to 1.56m.<sup>458</sup> In response to the findings, both countries reiterated their commitment to eradicating child labour in cocoa farming.

Child trafficking is also prevalent across the continent. Anti-trafficking legislation or provisions have been adopted by almost all States, with exception of Somalia. States have adopted measures in a number of ways. While some countries have specific anti-trafficking legislation others have addressed child trafficking under child-specific laws or in penal codes. In 2015, Comoros enacted the Law Countering Child Labour and Trafficking in Children which makes it the sixth African State to adopt specific anti-trafficking legislation concerning children (see also Benin, Cameroon, Côte D’Ivoire, Gabon and Togo).

**Legislation covers all forms of trafficking as indicated in the Palermo Protocol**

- |               |              |
|---------------|--------------|
| Angola        | Mozambique   |
| Burkina Faso  | Namibia      |
| Cameroon      | Niger        |
| CAR           | Nigeria      |
| Djibouti      | Senegal      |
| Egypt         | Sierra Leone |
| Ghana         | South Africa |
| Guinea Bissau | Sudan        |
| Kenya         | Tanzania     |
| Malawi        | Tunisia      |
| Mali          | Uganda       |
| Mauritius     | Zambia       |
| Morocco       |              |

A total of 25 countries have adopted definitions of trafficking in line with the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol). In some States (e.g. South Africa), the Palermo Protocol forms the basis of domestic legislation while in others (e.g. Kenya) legislation is broader and includes additional forms of exploitation. Other States have failed to set out all of the forms of exploitation. Rwanda’s legislation only addresses certain forms of exploitation (e.g. forced labour, sexual exploitation and removal of organs). During the reporting period Tunisia undertook legislative efforts with the adoption of Organic Act No. 58 of 2017 which amended the Criminal Code to

452 See Section 56 of the Employment Act; Section 12 of the Employment (General) Rules; Section 10.4 of the Children Act. Compare with sections 28 and 30 of the Basic Education Act.

453 Labour Act, Section 59, available [https://www.labour.gov.ng/Doc/LABOUR\\_ACT.pdf](https://www.labour.gov.ng/Doc/LABOUR_ACT.pdf).

454 The Employment (Employment of Children) Regulations, 2012, available <https://www.ilo.org/dyn/natlex/docs/SERI-AL/88352/108266/F-470420301/UGA88352.pdf>.

455 Section 127 of the Child Rights Act, available <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/78338/83704/F1971620091/SLE78338.pdf>.

456 International Labour Organization, *Zambian Children Call for a Stop to Child Labour*, [https://www.ilo.org/africa/media-centre/pr/WCMS\\_710405/lang--en/index.htm](https://www.ilo.org/africa/media-centre/pr/WCMS_710405/lang--en/index.htm).

457 The Prohibition of Employment of Young Persons and Children (Hazardous Labour) Order, 2013, available <https://www.ilo.org/dyn/natlex/docs/SERIAL/95833/113000/F-1150065941/ZMB95833.pdf>.

458 <https://www.news24.com/news24/africa/news/child-labour-rising-in-west-africa-cocoa-farms-despite-efforts-report-20201019>

broaden the definition of sexual exploitation of children to include boys, whereas previously it had been limited only to girls.<sup>459</sup> The Act which came into force in 2018 also includes a number of provisions which obliges the State to care and protect children from all forms of violence.<sup>460</sup>

Three States have enacted legislation which is not fully aligned with the Palermo Protocol. Algeria's Penal Code (2009) requires proof of force, fraud, or coercion to prove child sex trafficking while Cameroon's 2011 anti-trafficking law requires proof of the "means" element for all cases involving children, contrary to the Palermo Protocol. Zimbabwe in its Trafficking in Persons Act (2014), on the other hand, defines trafficking as a movement-based crime.

Some progress has been made to adopt regional approaches to the issue. In 2015, the EAC passed Resolution (EAC-EALA/RES/3/5/2015) to address cross border human trafficking in the EAC. To better coordinate anti-trafficking frameworks, the East African Legislative Assembly passed the EAC Counter-Trafficking in Persons Bill in 2016 which adopts a definition of human trafficking consistent with the Palermo Protocol. As of August 2020, the Bill's assent from the Heads of State of EAC Member States East African Community (EAC) member states has yet to be given.

While a number of countries have developed national action plans, there are data gaps which hinder the design, implementation and monitoring of these policies to accelerate the elimination of child labour and trafficking.

## Harmful practices have ended

By 2020 member States should have domesticated laws designating the minimum age of marriage as 18 years, in compliance with international law.

By 2020 member States should have prohibited all forms of physical abuse, sexual violence and exploitation, sex trafficking, female genital mutilation (FGM) child marriage and child pornography, and ensured the effective implementation of these laws.

By 2020 member States should have strengthened collaboration with traditional and faith leaders and built upon their influential voice to enhance awareness among families and communities about the detrimental impact of harmful practices on children; to clarify that these practices are not based on or legitimised by religion; and to support a process of social change which may lead to the lasting abandonment of these practices.

By 2020 member States should have adopted and effectively implemented legislation prohibiting all forms of violence against children, including new and emerging manifestations, supported by detailed legal provisions on counselling, reporting, investigation and prosecution of incidents of violence against children.

By 2020 member States should have provided for a means of redress and of fighting impunity, as well as for addressing the root-causes behind harmful practices, including discrimination against particularly vulnerable children.

By 2020 member States should have removed from all national legislation any legal provisions providing justification for, or allowing consent to, harmful practices against children, including on grounds of culture, tradition, honour or religion.

By 2020 member States should have adopted legislation abolishing female genital mutilation, sensitised and trained health care workers to refrain from conducting medicalised forms of FGM and to educate the community.

459 Tunisia UNCRC Report (2018), para. 21, referring to Organic Act No. 58 of 2017 to combat violence against women.

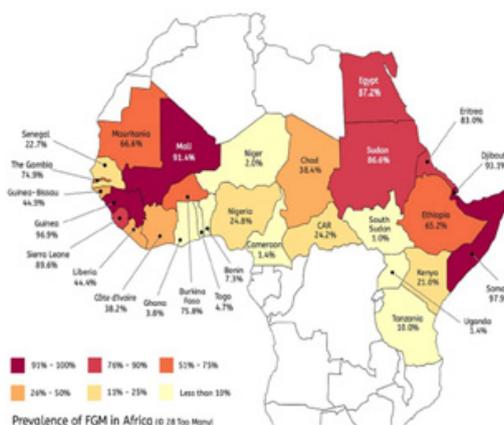
460 Tunisia UNCRC Report (2018), para. 139.

Article 1(g) of the Maputo Protocol defines harmful cultural practices to include all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity. Harmful cultural practices are often rooted in societal attitudes that regard women and girls as inferior to men and boys. FGM and child and/or forced marriage are among the most prevalent, and have a negative impact on girls' quality of life; enjoyment of sexual and reproductive health; and curtail educational and employment opportunities for girls, among other negative effects.<sup>461</sup> They are not, however, the only harmful cultural practices. The map on the right indicates those countries which have yet to enact legislation which prohibits harmful cultural practices. There is progress across a number of States to involve religious leaders in the protection of children against harmful practices, and most notably in relation to the harms of FGM.



For instance, breast ironing is a practice common in West and Central Africa whereby girls are subjected to breast ironing which involves the massaging of a young girl's chest with hot tools in an attempt to flatten their developing breasts which leads to long-lasting health issues. In Zimbabwe and South Africa, girls are subjected to forced virginity testing.<sup>462</sup> Girls are also often the target of witchcraft accusations in a number of countries. In Zimbabwe, for example, girls are pledged for purposes of appeasing spirits.<sup>463</sup> In Benin, ritual infanticide is reported, affecting the child's right to life," as well as children in so-called voodoo initiation convents, all of which are punishable offences.<sup>464</sup> These are but a few examples. The majority of States (42) have enacted laws which prohibit harmful traditional practices. Botswana, Burundi, Cabo Verde, Comoros, Congo, Eswatini, Gabon, The Gambia, Libya, Madagascar, Mozambique, and Sierra Leone do not have laws.

## Female Genital Mutilation (FGM)



According to the AU, there are more than 50 million girls in Africa under the age of 15 years who are at risk of being subjected to FGM by 2030 unless concerted action is not taken.<sup>465</sup> FGM violates a girl's right to health, to be free from violence, right to life and physical integrity, right to non-discrimination, and the right to be free from cruel, inhuman or degrading treatment. The procedure involves "partial or total removal of the female external genitalia or other injury to the female genital organs for non-medical reasons." Egypt has the world's second highest number of women and girls (31 million) who have undergone FGM, most of whom have been subjected to the practice in early adolescence.<sup>466</sup> At the same time, Egypt has had the

<sup>461</sup> See e.g. Committee on Economic, Social and Cultural Rights, General Comment 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, para. 29.

<sup>462</sup> UN Committee on the Elimination of Discrimination Against Women, 'Sixth periodic report submitted by Zimbabwe under article 18 of the Convention, due in 2016\*' (24 January 2019), UN Doc. CEDAW/C/ZWE/6, para. 37.

<sup>463</sup> UN Committee on the Elimination of Discrimination Against Women, 'Sixth periodic report submitted by Zimbabwe under article 18 of the Convention, due in 2016\*' (24 January 2019), UN Doc. CEDAW/C/ZWE/6, para. 37.

<sup>464</sup> See Loi n° 2015-08 portant code de l'enfanten République du Benin. See also Benin ACERWC Report (2017), para. 360; Benin UNCRC OPSC Report (2016), para. 28.

<sup>465</sup> <https://au.int/en/pressreleases/20190211/african-union-launches-continental-initiative-end-female-genital-mutilation>

<sup>466</sup> UNICEF, Female Genital Mutilation in the Middle East and North Africa: Facts and Figures, available <https://www.unicef.org/mena/sites/unicef.org.mena/files/2020-02/FGM%20English%20.pdf>

strongest progress in eliminating the practice among high prevalent countries. In Sudan, girls will typically undergo the practice between the ages of 5 and 9 years old.<sup>467</sup> In both countries, there is an increase in the medicalisation of the practice, with almost 8 in 10 girls having been cut by medical practitioners. In countries like Djibouti, traditional practitioners are responsible for the practice. The increased prevalence of FGM during COVID is discussed in chapter 11 of this report.

Five States (Chad, Liberia, Mali, Sierra Leone, and Somalia) have not enacted laws which criminalise FGM. Most recently Sudan introduced amendments to its Criminal Law in 2020. Article 141 criminalises FGM and sets penalties at three years imprisonment and a fine or closure of the premises in which FGM took place. Somalia is the only State in East Africa which does not have a law banning FGM despite the fact that nearly all girls will undergo the practice. In Chad, an implementing decree to ban FGM was finally passed in 2018, but it reportedly is still awaiting signature in the Office of the President. Progress continues to be made. For instance, in 2018 Tunisia introduced FGM as a new offence (Article 221(3) of the Organic Law).<sup>468</sup>

“Most Somali women and girls have undergone some form of FGM. This trend is similar in both urban and rural populations or between different social classes and education levels. Although FGM is performed mainly by traditional practitioners, the trend is slowly changing where more and more FGM is performed in clinics or hospitals, especially among the more educated and wealthier families, who consider it safer to have the procedure performed by medical professionals.”<sup>469</sup>

-Somalia, Report to the UN CRC (2019)

FGM is also cross-border in nature, with girls sometimes taken to neighbouring countries to undergo the practice, usually to avoid prosecution under domestic laws. In response, the EAC Prohibition of FGM Act was enacted to promote cooperation in the prosecution of perpetrators of FGM through harmonisation of laws, policies and strategies to end FGM across the region. Angola, while reporting that FGM is not practiced in the country, reported that “efforts need to be made to control it since Angola has received a high influx of immigrants and persons from other countries and cultures where female genital mutilation is practiced.”<sup>470</sup>

Some progress has been made. In Guinea, women who perform FGM have been trained and sensitized to prevent the practice. At the same time, Government and CSOs adopted “a community- and rights-based approach and of a listening and dialogue approach to the issue, the changing of social norms and the punishment of those who perform female genital mutilation.”<sup>471</sup> In July 2015, the President of Guinea publicly condemned the practice, the Minister of Justice pledged to enforce legal provisions, while the Minister of Health pledged to take all administrative and other appropriate measures to halt the medicalization of FGM.

In Angola, a commission was established to analyse the “religious phenomenon and the harmful practices of some religious sects and groups.”<sup>472</sup> In Benin, local religious leaders have been included in discussions on eliminating the killing of children accused of witchcraft in the north of Benin and in mechanisms to raise awareness and promote dialogue and behavioural change.<sup>473</sup> In Djibouti, religious organizations have benefited from awareness-raising and social mobilization activities

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467 Ibid.

468 Tunisia UNCRC Report (2018), para. 142.

469 Somalia UNCRC Report (2019), para. 242.

470 Angola UNCRC Report (2016), para. 110.

471 Guinea UNCRC Report (2018), para. 41.

472 Angola UNCRC Report (2016), para. 61.

473 Benin UNCRC OPSC Report (2016), para. 33.

and are therefore aware of the harmful impact of FGM.<sup>474</sup> Guinea has similarly reported engaging religious leaders to combat FGM through the Secretariat of Religious Affairs and has a harmonized sermon against the practice which is preached across the country.<sup>475</sup>

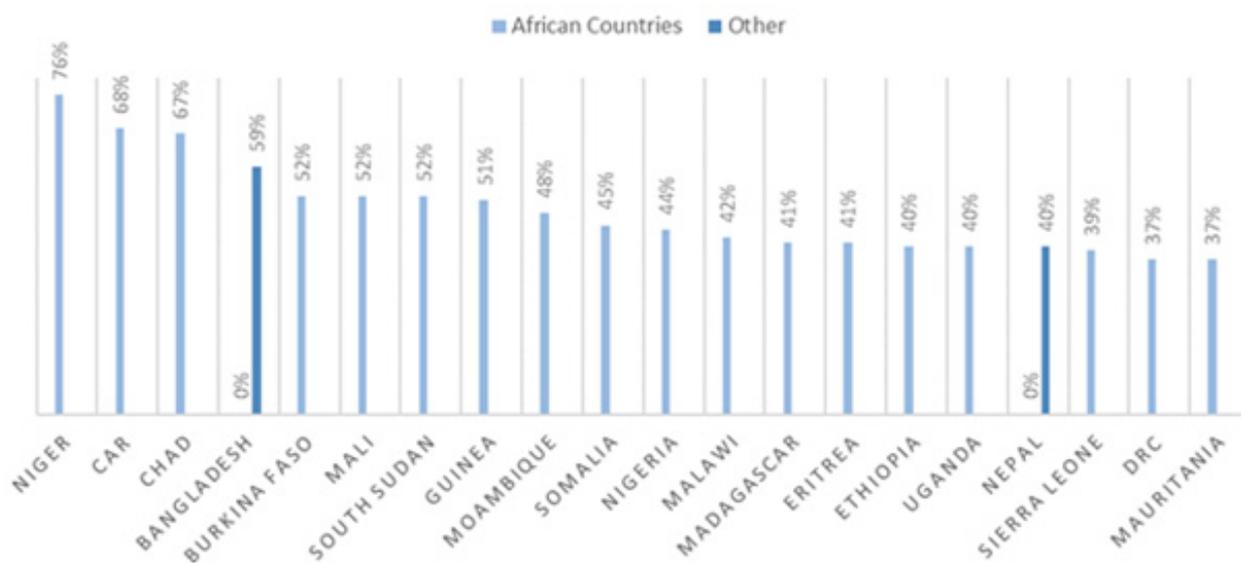
## GUINEA IN FOCUS

“The first conviction of a perpetrator of genital cutting did not take place until 2014. The case in question concerned two practitioners of genital cutting who were convicted in Conakry in 2014. Other legal proceedings for genital cutting, initiated against two practitioners in January 2015, resulted in a conviction. A total of three cases have been reported by the justice system since 2013. Since 2014, there have been 14 cases of arrests in Guinea, of which 7 have resulted in convictions.”<sup>476</sup>

## Child marriage

Child marriage is any formal marriage or informal union where one or both of the parties are under 18 years of age and is prohibited under international and regional law. As discussed in Aspiration 2, while the majority of States have set the minimum legal age for marriage at 18, weak enforcement and the lack of effective mechanisms for registration of birth, marriage and termination of marriage results in a high rate of prevalence across the continent.

According to UNICEF, 37% of young women in Sub-Saharan Africa are married before the age of 18. Globally, African States comprise 18 of the 20 countries with the highest prevalence as seen in the chart below. The prevalence may, however, be higher than reported. For example, in Botswana it is reported that while there are no official reports on arranged marriages, that “the magnitude of the problem is not known because these issues are considered culturally sensitive hence non-reported.”<sup>477</sup>



<sup>474</sup> Djibouti UNCRC Report (2019), para. 252.

<sup>475</sup> Guinea UNCRC Report (2018), para. 70.

<sup>476</sup> Guinea UNCRC Report (2018), para. 29.

<sup>477</sup> Botswana UNCRC Report (2017), para. 145.

## No child is exposed to any form of violence

By 2020 member States should have put in place quality programmes and services to prevent and respond to violence against children, including by linking with broader social protection programmes and by promoting and supporting community-based child protection interventions.

By 2020 member States should have enhanced collective advocacy efforts to promote non-violent values and awareness raising to transform attitudes condoning or normalising violence against children at all levels.

By 2020 member States should have facilitated awareness raising regarding child marriage by engaging with civil society organisations, grassroots organisations, traditional and religious leaders and the private sector, including the media.

By 2020 member States should, in conjunction with relevant stakeholders, have supported a comprehensive country-wide study to identify factors inhibiting the effective implementation of laws protecting children against violence, abuse and exploitation, and formulating strategies for their successful implementation.

By 2020, Traditional leaders should have played a decisive role in the protection of children from violence, including harmful practices, by using their influential voice to enhance awareness amongst families and communities about the detrimental impact of harmful practices on children; to clarify that these practices are not based on or legitimised by religion; and to support a process of social change that may lead to the permanent abandonment of these practices.

Violence against children (VAC) is widespread across Africa in homes, schools, communities, workplaces, and even care and justice systems, with girls at particular risk.<sup>478</sup> Sexual violence is rampant.<sup>479</sup> Children as young as one years old are subjected to violent discipline or psychological abuse.<sup>480</sup> As discussed in Aspiration 2, not all States prohibit domestic violence or corporal punishment and even where it is outlawed, challenges persist, especially where it enjoys a degree of social acceptability. States are increasingly recognising the need to address it through well-informed education initiatives to address attitudes and practices.<sup>481</sup> But severe and shocking abuses continue to emerge: on 20 October 2020, a BBC news investigation uncovered systemic child abuse inside Islamic schools in Sudan. There are nearly 30 000 Islamic schools, known as khalwas, across the country. The investigation has found that boys as young as five-years-old are routinely chained, shackled and beaten by the 'sheikhs', or religious leaders in charge of the schools. The investigation also found evidence of sexual abuse. For 18 months, an undercover reporter secretly filmed inside 23 khalwas across Sudan. He found many of the children were malnourished and living in squalid conditions, forced to sleep on the floor in extreme heat. Sick children were left without medical help.<sup>482</sup>

### *Corporal punishment legislation in Africa*<sup>483</sup>

The legal situation concerning the prohibition on corporal punishment is discussed under Aspiration 2. Efforts are underway across a number of States to facilitate awareness raising about harmful traditional practices. Progress is also being made to address the issue of corporal punishment. In Botswana, traditional leaders and communities, among others, are engaged in the importance

<sup>478</sup> ACPF and Plan International (2019) "Getting Girls Equal".

<sup>479</sup> The Guidelines on Combating Sexual Violence and its Consequences in Africa (the Guidelines) were adopted by the African Commission on Human and Peoples' Rights during its 60th Ordinary Session held in Niamey, Niger from 8 to 22 May, 2017.

<sup>480</sup> See e.g. Benin ACERWC Report (2017), para. 117.

<sup>481</sup> See e.g. Cabo Verde UNCRC Report (2017), para. 66.

<sup>482</sup> <https://www.theguardian.com/global-development/2020/oct/19/revealed-chaining-beatings-and-torture-inside-sudans-islamic-schools>.

<sup>483</sup> Source: [endcorporalpunishmentnow.org](http://endcorporalpunishmentnow.org)

of other alternative discipline for children with antisocial behaviours.<sup>484</sup> In Eswatini, advocacy and awareness raising initiatives, including a national dialogue on violence against children in and around schools, saw church and community representatives commit themselves to ending violence against children and make schools safer places for children.<sup>485</sup>

By 2020 member States should have regulated the use of the media (radio and television) and social media in abusing children.

General Comment No. 13 of the CRC Committee on the Right of the Child to Freedom from all Forms of Violence, recognises diverse forms of violence against children, including emerging forms of violence through information and communications technology (ICT), and requires States to legislate on the same. In 2014, the AU adopted the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention), which seeks to strengthen and harmonize existing cybersecurity legislation and to repress cybercrime in Member States.<sup>486</sup> However, as of February 2020, only 14 States have signed the Convention, and of those 14, only 8 have ratified.<sup>487</sup> A survey by the AU Commission reports that only eight countries have a national strategy on cybersecurity.<sup>488</sup> Botswana, Ghana and South Africa have adopted laws criminalising online sexual exploitation.

By 2020 member States should have taken legislative and administrative measures, including the review of legislation and policies, and adopted a comprehensive strategy to eliminate attacks on, killing of and discrimination against children with albinism.

There are serious concerns at the continued widespread discrimination, stigma and social exclusion directed at persons with albinism as well as reports of systematic attacks against persons with albinism in multiple countries, including against children.<sup>489</sup> Children with albinism are subjected to murder, mutilation, ritual rape, infanticide and trafficking of persons, organs and body parts, as well as grave robberies, as reported across at least 28 States. Girls with albinism are also often targets of sexual violence, owing to the myth that sexual intercourse with them can bring a cure to HIV/AIDS.<sup>490</sup>

“Owing to a combination of deep misunderstanding of the condition of albinism, inadvertent exclusion from human rights advocacy, a paucity of best practices concerning the human rights of persons with albinism, and the absence of specific measures concerning persons with albinism, the implementation of human rights norms and standards can be challenging.”

-UN Report of the Independent Expert on the enjoyment of human rights by persons with albinism (2019)

484 Botswana UNCRC Report (2017), para. 93.

485 Eswatini ACERWC Report (2016), para. 108.

486 African Union Convention on Cyber Security and Personal Data Protection, 2014, available at <https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection>.

487 Status List, African Union Convention on Cyber Security and Personal Data Protection, available at <https://au.int/sites/default/files/treaties/29560-sl-AFRICAN%20UNION%20CONVENTION%20ON%20CYBER%20SECURITY%20AND%20PERSONAL%20DATA%20PROTECTION.pdf>.

488 AUC. (2018). Cyber Security and Cybercrime Policies for African Diplomats, available at <https://au.int/en/file/34122-wd-04prescybersecurity-cybercrimeandtheaufordiplomatsmooctarypdf>.

489 373 Resolution on the Regional Action Plan on Albinism in Africa (2017-2021) - ACHPR/Res.373(LX)2017; Resolution ACHPR/Res.263 2013 on the prevention of attacks and discrimination against persons with albinism; Resolution ACHPR/Res.349 2016 on the attacks on persons with albinism in Malawi.

490 UN Doc. A/74/190, para. 15.

For instance, Lesotho reported to the CRC Committee in 2016 that albinism is prevalent and that although persons with albinism are not killed, they are “believed to be a curse and, consequently, they are often ill-treated.”<sup>491</sup> Mozambique reports concern in recent years over cases of trafficking and violence against people with albinism, including children, for their body parts.<sup>492</sup> However, efforts have been made. In 2015, Mozambique amended its Penal Code to include trafficking in persons and organs.<sup>493</sup> The Government also responded by adopting a plan of action to address the issue of protecting persons with albinism.<sup>494</sup> This has reportedly resulted in Mozambique having the highest number of cases prosecuted for violence perpetrated against persons with albinism. Mozambique, however, reported continued work on its plans notwithstanding the political and economic situation of the country.<sup>495</sup> Conversely, Niger reported to the ACERWC that “[c]hildren with albinism are neither marginalized nor stigmatized in Niger and enjoy the same protection as all children living in the country. To better defend their rights, people with albinism have come together.”<sup>496</sup>

Despite the serious violations of human rights faced by children with albinism, few countries have specific laws, policies and measures that specifically address the human rights of persons with albinism.<sup>497</sup> Progress is being made. Specific mention of persons with albinism has also been proposed in Malawi’s Disability Bill of 2019 with similar initiatives reported in Guinea, Kenya and Uganda.

By 2020 member States should have engaged with the UN, AU and aid agencies to ensure that children are protected from being sexually exploited by aid workers, military personnel and peacekeepers, and that the perpetrators of such acts be prosecuted and punished.

Over the last five years incidents have been reported of the sexual exploitation of children by members of UN peacekeeping missions, peacekeepers, aid workers and military personnel. While impunity is rampant throughout the continent, some prosecutions of military officials have taken place as discussed in chapter 9. Enhanced effort towards timely investigation and prosecution is however needed. The adoption of the African Union Policy on prevention and response to sexual exploitation and abuse for peace support operations, an important milestone, occurred during 2018 in the reporting period under review.

### **KENYA IN FOCUS: Sexual exploitation by missionaries at orphanages**

In 2020, an American Christian missionary pleaded guilty before a US District Court Judge to sexually abusing four girls – two as young as 11 years old – at an orphanage he established in Kenya in 2008 and operated until 2017. According to the US Department of Justice, “the defendant purported to be a Christian missionary who cared for these children and asked them to call him ‘Dad.’” Instead, he “... preyed on their youth and vulnerability.” The missionary has pleaded guilty to four counts of engaging in illicit sexual conduct with a minor in a foreign place and is to be sentenced on 29 September. This was not his first encounter with the law. In 1996, he pleaded guilty to assault with intent to commit sexual abuse and was sentenced to two years’ probation. The sentencing hearing is set for 29 September 2020.

491 Lesotho UNCRC Report (2016), para. 509.

492 Mozambique UNCRC Report (2018), para. 105.

493 UNHRC, Statement by the United Nations Independent Expert on the enjoyment of human rights by persons with albinism, Ms. Ikponwosa Ero, upon conclusion of her official visit to Mozambique – 21 August to 3 September, 2016. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20440&LangID=E>

494 [http://www.mgcas.gov.mz/st/FileControl/Site/Doc/8996plano\\_de\\_acciao\\_sobre\\_albinismo\\_2015.pdf](http://www.mgcas.gov.mz/st/FileControl/Site/Doc/8996plano_de_acciao_sobre_albinismo_2015.pdf).

495 Ibid.

496 Niger ACERWC Report (2017), para. 502.

497 UN Doc. A/74/190.

## Progress of the AU

By 2020 the AU should have set a minimum age for admission into employment at 15 years or higher; this minimum age should correspond to the minimum age for completing compulsory schooling.

By 2020 the AU should have prohibited all forms of harmful labour practices and child trafficking, and ensured the effective implementation of these laws.

By 2020 the AU should have embarked on public information and awareness campaigns for the abolition of harmful practices, initiated collective discussions involving the communities concerned, and undertaken capacity building of professionals working with and for children.

The AU campaign to End Child Marriage was launched in 2014 and was initially meant to last for a duration of two years, targeting ten high burden countries. It was later extended to 2018, targeting 30 high prevalence countries. UNICEF reviewed the campaign from 2014 to 2018. In 2019, a new campaign strategy was adopted for the 2019-2023 period, with a notable need to expand the campaign in North Africa. As part of the campaign, the AU appointed a Goodwill Ambassador for Ending Child Marriage and the ACERWC in 2014 adopted the Addis Ababa Declaration on Ending Child Marriage, appointing an AU Special Rapporteur. Following the launch of these initiatives, in 2015 the Heads of State and Government of the AU announced that they had formally adopted an African common position on the AU campaign to end child marriage in Africa (the AU Common Position).

## KEY STRENGTHS OF THE AU CAMPAIGN (UNICEF, 2019)<sup>498</sup>

**Member State engagement:** The AU has established its leadership on ending child marriage in Africa. The campaign has created a space and platform for African leaders to engage on the issue of child marriage and has enlisted all but four targeted countries in its support of the campaign.

**High-level advocacy and events:** Many high-level key events have been held, which have united Heads of State and partners, including civil society, in committing to end child marriage and calling for action, including hosting the first (and soon second) African Girls Summit.

**Profile of child marriage raised within the AU:** The campaign has brought child marriage onto the agenda of AU institutions of importance, including the Peace and Security Council.

**Partner commitment:** Although insufficiently resourced, the campaign has generated commitment and enthusiasm from multiple partners in its support.

**Advancements in pan-African policy and normative framework:** The campaign has resulted in tangible advancements in the pan-African policy and normative framework for ending child marriage, including the adoption of the African Common Position on the AU Campaign to End Child Marriage in Africa.

**National results:** National gains have been made from the revision of legislation to the production of costed national plans to end child marriage.

**Enhanced evidence base:** The campaign has directly enhanced the evidence base to support programming to end child marriage in terms of country-specific and thematic research, for example, on child marriage and adolescent pregnancy, and on harmful traditional practices and economic development.

UNICEF also provided a series of recommendations. These are, namely, that: (i) the conceptual framework needs to be updated to include a robust theory of change in consultation with partners; (ii) monitoring and evaluation needs streamlining, including enhancing reporting to the ACERWC; (iii) targeting of member States needs a stricter focus; (iv) there is a need to adopt a comprehensive narrative which is also reframed in terms of girls as rights-holders; and (v) there is a need to strengthen partner engagement in the community. Among the recommendations include human resources for the Campaign Secretariat and other resources.

The AU has adopted a number of other campaigns and initiatives to end violence against children. In 2019, the AU Initiative on Eliminating Female Genital Mutilation was launched. In 2019, the AU adopted the Ten-Year Action Plan on the Eradication of Child Labour, Forced Labour, Human Trafficking and Modern Slavery in Africa (2020-2030) to achieve the objective and targets of the AU Agenda 2063 regarding elimination of all forms of child labour in the continent in line with target 8.7 of the UN Agenda 2030. The Regional Action Plan on Albinism in Africa (2017–2021) was also developed in response to human rights violations being committed against persons with albinism, including children.<sup>499</sup> Adoption of the plan has however been slow. The PAU in their Resolutions of the Second

<sup>498</sup> [https://www.unicef.org/protection/files/Summary\\_Review\\_of\\_the\\_AU\\_Campaign\\_to\\_End\\_Child\\_Marriage.pdf](https://www.unicef.org/protection/files/Summary_Review_of_the_AU_Campaign_to_End_Child_Marriage.pdf)

<sup>499</sup> See also Report of the Independent Expert on the enjoyment of human rights by persons with albinism on the Regional Action Plan on Albinism in Africa (2017–2021), UN Doc. A/HRC/37/57/Add.

Ordinary Session of the fifth Parliament of May 17, 2019 noted that only five AU Member States had adopted the Regional Plan. These are among a number of initiatives to end violence against children.

## Conclusion

The assessment reveals that violence against children is widespread across Africa in homes, schools, communities, workplaces, and even care and justice systems, with girls at particular risk of all forms of physical and emotional ill-treatment, sexual abuse, neglect, and exploitation. Significant gaps exist have been identified in the quest to meet Aspiration 7 and ensure that every child is protected against violence, exploitation, neglect, and abuse.

The Committee notes with concern that not all States have prohibited domestic violence or corporal punishment, and of the degree of social acceptability which persists. Of further concern is that children with albinism continue to face serious violations of human rights and that few countries have specific laws, policies and measures that specifically address the human rights of persons with albinism.

While there has been some progress concerning the adoption of child labour and anti-trafficking legislation/provisions, there is a need to ensure they are in line with the ILO framework and the Palermo Protocol, respectively. The assessment reveals significant gaps for children in the informal sector which requires that States respond by ensuring that child labour laws should be strictly enforced and cover the informal sector. The Committee urges States to take immediate steps to outlaw all forms of violence (including corporal punishment in all settings, without exception), promote models of positive discipline as an alternative to the use of physical and humiliating punishment in all settings, and strengthen measures to identify, investigate and prosecute perpetrators by providing relevant actors with appropriate training and allocation of resources.

The Committee remains concerned that the prevalence of harmful cultural practices continue to violate the rights of girls across the continent. The Committee urges States who have yet to enact legislation which prohibits harmful cultural practices to do so. As discussed in Aspiration 2, while the majority of States have set the minimum legal age for marriage at 18, the Committee remains further concerned over the staggering number of girls (50 million) who are at risk of being subjected to FGM by 2030 unless concerted action is taken to prevent this violation of a girl's right to health, to be free from violence, their right to life and physical integrity, their right to non-discrimination, and the right to be free from cruel, inhuman or degrading treatment. The Committee welcomes progress across a number of States to involve religious leaders in the protection of children against harmful practices.

The Committee further remains concerned over continued reports of the sexual exploitation of children by members of UN peacekeeping missions, peacekeepers, aid workers and military personnel, and of the impunity for these crimes. The Committee takes this opportunity to remind States of their obligation to ensure fair and timely investigation and prosecution in line with principles of justice. At the same time, the Committee applauds the adoption of the AU policy on prevention and response to sexual exploitation and abuse for peace support operations.

The Committee further welcomes the progress made by the AU in relation to a number of campaigns and initiatives to end violence against children in relation to FGM, the Eradication of Child Labour, Forced Labour, Human Trafficking and Modern Slavery in Africa (2020-2030), the Regional Action Plan on Albinism in Africa (2017–2021), among others. Progress of these initiatives will be the subject of the next assessment.



## Aspiration 08

Children benefit from a child-sensitive criminal system

# By 2040

- The minimum age of criminal responsibility in all State parties is set at 12 years or above.
- A holistic juvenile justice system is in place, including a comprehensive law on juvenile justice, with provisions for diversion and efficient alternatives to the justice system.
- Children in conflict with the law are kept out of prison; alternatives such as mediation, diversion and alternative dispute resolution are developed.
- All State parties have developed and implemented crime prevention strategies for children.
- All justice proceedings concerning children avoid undue delay and postponement of proceedings is kept to a minimum.
- Where detention of children is used as last resort, institutions have their rehabilitation and reintegration as the main objective of all policies and processes from the moment the child arrives.
- Accurate evidence and data on the administration of criminal justice for children is collected and used to inform policy reform.
- The criminal justice system responds to the needs of child victims and witnesses of crime before, during and after trial.

## ASPIRATION 8: CHILDREN BENEFIT FROM A CHILD-SENSITIVE CRIMINAL JUSTICE SYSTEM

The ACERWC has over the years paid particular attention to children and the justice system, including by appointing a member from amongst its ranks as the Special Rapporteur on Children in Conflict with the Law.<sup>500</sup> The Committee makes reference to the Kampala Guidelines on Action for Children in Justice Systems in Africa in its consideration of State Party Reports. Most important, perhaps, is that the Committee declared that the theme of the DAC for 2020 would be “Access to Child Friendly Justice system in Africa,” illustrating contemporary relevance and the need to push reform agendas.

The Committee has consistently stressed the need to promote equal access to justice for children in line with SDG 16.3. For instance, in some Concluding Observations, recommendations have been provided to States to provide and enhance mechanisms and structures which ensure the application of non-custodial penalties on juvenile offenders. In addition, where detention is necessary and suitable, minors have to be detained separately from adults in all correction facilities in the country. Other observations include the need for States Parties to conduct training of judicial officers, prosecutors and police on rehabilitation and on the reintegration of juvenile offenders.

### ACERWC Note Verbale on DAC 2020 - Child Friendly Justice System

“A child friendly justice refers to the justice system that is designed or adjusted to be sensitive to the particular issues that children face when they come into contact with the law and courts (or proceedings) for whatever reason. In its broader sense, a child friendly justice can be defined as a justice system which guarantees the respect and the effective implementation of all children’s rights at the highest attainable level taking into consideration the child’s level of maturity and understanding and the circumstances of the case. It is, in particular, a justice system that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights of due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity’.

A child friendly justice system requires that children who come into contact with the law are treated in a child-sensitive manner. This requirement extends to children as suspects or victim of a crime, and those who engage with the justice system for aid. The detention of a child should consistently be used as a measure of last resort for the shortest possible duration. Alternatives to detention as well as rehabilitation and reintegration services for the child and caregivers have to be used.

A child friendly justice system requires that children who come into contact with the law are offered free legal aid. There should be a sensitisation of stakeholders in the child justice systems such as, police officers, prosecutors, defence lawyers, and judicial officers to the needs of the child in the justice system.”<sup>501</sup>

500 The Hon Clement Mashamba, whose term of office expires in 2020.

501 Note Verbale to State parties explaining the context of the theme chosen for the 2020 DAC.

## Progress by member States

### *A holistic juvenile justice system is in place, including a comprehensive law on juvenile justice*

By 2020 member States should have programmes in place to ensure that judicial personnel, law enforcement agents and other professionals involved in the criminal justice system are sensitised to provide child-friendly services.

By 2020 member States, in collaboration with national partners, should have embarked on a campaign to sensitise professionals and the general public on the importance of a child-friendly and a rights-based approach in the justice sphere.

By 2020 member States should have implemented legislation explicitly requiring the separation of children and adults at all points of detention.

By 2020 member States should have introduced a system for expediting investigations and prioritising cases where the defendant or any victim or witness is a child.

By 2020 member States should have programmes in place to ensure that judicial personnel, law enforcement agents and other professionals involved in the criminal justice system are sensitised to provide child-friendly services.

By 2020 member States, in collaboration with national partners, should have embarked on a campaign to sensitise professionals and the general public on the importance of a child-friendly and a rights-based approach in the justice sphere.

This review has revealed significant gaps across the continent in ensuring a child-friendly and a rights-based approach to justice. Measures as well as programmatic responses across the continent are varied and can also be disparate within a single State. There is indeed a long way to go to achieve the goals and targets above.

That said, a number of States have undertaken to ensure appropriate sensitisation is taking place to enhance child-friendly services. In Djibouti, the Ministry of Justice and UNICEF organised a training seminar on the Code on the Legal Protection of Minors (Act No. 95/AN/15/7 L of 18 May 2015), for stakeholders in the child protection system, in particular the police, prosecution authorities and courts.<sup>502</sup> With the assistance of Terre des Hommes, in Mauritania, several multidisciplinary training courses have been conducted for juvenile justice practitioners – 90 practitioners in Nouakchott received training on alternatives to the detention of children; 68 practitioners in Nouadhibou received training on principles relating to children, the application of the Children's Code, alternative measures and legal assistance for minors; and 70 practitioners in Rosso have received training.<sup>503</sup>

It is important to note in this regard that children in need of care and protection are sometimes detained in some States. For instance, in Nigeria, “[i]t has been reported that “80 per cent of girls detained in the Girls’ Remand Home were non-criminal cases, i.e. ‘being beyond parental control’, or ‘care and protection’ and civil dispute cases.”<sup>504</sup> At the same time, there is concern that children in conflict-affected areas are detained with adults for their alleged association with non-state armed groups or terrorist organisations as will be discussed in Chapter 9.

The Committee, while commending Angola for adopting the Juvenile Court Law and the Juvenile Court Procedure Code to improve juvenile justice administration, expressed concern that the Juvenile

<sup>502</sup> Combined third to fifth periodic reports on the Convention of the Rights of Child submitted by Djibouti under article 44 of the Convention, due in 2012 [Date received: 6 February 2019], para 340.

<sup>503</sup> Combined third to fifth periodic reports on the Convention on the Rights of the Child submitted by Mauritania under article 44 of the Convention, due in 2013 [Date received: 10 January 2017], para 195.

<sup>504</sup> [https://archive.crin.org/sites/default/files/crin\\_status\\_offences\\_global\\_report\\_0.pdf](https://archive.crin.org/sites/default/files/crin_status_offences_global_report_0.pdf) (p 29 accessed 26th August 2019).

Court is operational only in the Luanda Province and the juvenile administration in Luanda does not have adequate trained human and financial resources.<sup>505</sup> Moreover, the Committee has observed from the State Party report that there are no rehabilitation centers for children who are detained and that children are detained with adults.<sup>506</sup> The Committee was of the view that lack of implementation of the Juvenile Court Law and the lack of separate facilities to accommodate children in conflict with the law is contrary to the principles of the Charter which urge for prevention and diversion measures as well as provision of legal aid, alternatives to custodial sentences, and separation of children in detention facilities.<sup>507</sup>

The Committee also noted that in Benin, in practice, there are only two juvenile courts in Abomey and Abomey-Calavi and that children are being detained in prisons with adults.<sup>508</sup> The Committee recommended that the State Party should consider adopting pre-trial diversion programs to ensure that children in conflict with the law are not subjected to the regular justice administration procedure; establish additional juvenile courts in more regions, and train more juvenile judges; and alternatively, place children in conflict with the law in other public centres that already exist such as the Social Promotion Centres or create separate cells for children in prisons so that they are separated.<sup>509</sup> The Committee also notes with concern that children are imprisoned with adults in the region of Diourbel in Senegal and therefore recommends that the State Party establish a separate detention centre for children in order to prevent recidivism and promote the social rehabilitation of child offenders.<sup>510</sup>

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**505** Concluding observations and recommendations of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the initial report of the Republic of Angola on the status of the implementation of the African Charter on the Rights and Welfare of the Child, 2017, para 44

**506** Concluding observations and recommendations of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the initial report of the Republic of Angola on the status of the implementation of the African Charter on the Rights and Welfare of the Child, 2017, para 44

**507** As above.

**508** Concluding observations and recommendations of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the initial report of the Republic of Benin on the status of the implementation of the African Charter on the Rights and Welfare of the Child, 2019, para 40.

**509** Concluding observations and recommendations of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the initial report of the Republic of Benin on the status of the implementation of the African Charter on the Rights and Welfare of the Child, 2019, para 40.

**510** Concluding observations and recommendations by the African Committee of Experts on the Rights and Welfare of the Child on the Republic of Senegal periodic report on the status of implementation of the African Charter on the Rights and Welfare of the Child, 2019, para 58.

## Comprehensive Juvenile Justice System Madagascar

To bring the juvenile justice system into conformity with international standards and conventions, the Government adopted Act No. 2016-018 of 22 August 2016 on measures and procedures applicable to children in conflict with the law and repealed Ordinance No. 62-038 of 19 September 1962.

### Specialised training for law enforcement officials

Since 2013, some 350 non-commissioned officers and gendarmes from different regions have improved their knowledge of children's rights, laws and procedures applicable to children, and appropriate techniques for meeting with, listening to and interviewing children during investigations – whether they are victims or alleged offenders requiring legal protection because of their situation.

This training was provided in collaboration with actors such as the National Police and the Ministry of Justice to implement the provisions of Act No. 2016-018 of 22 August 2016 on measures and procedures applicable to children in conflict with the law, and for the effective application of the mechanism for monitoring cases involving child victims.

In 2017, 50 criminal investigators from the National Gendarmerie, from all regions, received training on measures and procedures applicable to children in conflict with the law and on service standards in order to accelerate the processing of cases involving such children.

Additionally, the Ministry of Justice issued Circular No. 39-MJ/SG/DGAJER/DRL/13 of 10 May 2013 on guidelines for processing the cases of children in conflict with the law.

Circular No. 03-MJ/SG/DGAJER/DRL/CIRC/2017 of 31 January 2017 was issued pursuant to the provisions of Act No. 2016-018 of 22 August 2016 that concern pre-trial detention (Official Gazette No. 3718 of 10 November 2016).

A capacity-building programme for justice officials has been organized to ensure the effective enforcement of laws by the justice system. This training covers:

- The new provisions set forth in Act No. 2016-018 of 22 August 2016;
- The service standards to accelerate the processing by courts of first instance of cases involving children in conflict with the law;
- The mechanism for monitoring cases concerning child victims of violence that come before courts of first instance;
- The monitoring framework for cases involving children in conflict with the law, child victims and children at risk;
- Reflection on the implementation and operationalization of the data-collection and feedback system that covers children in conflict with the law who are in detention in Madagascar.

Since 2016, training has been provided in four regions for 30 judges and prosecutors and 30 registrars from 10 courts of first instance, and for 49 criminal investigators from the child protection and anti-vice squads of the National Police and the National Gendarmerie. The training was followed by an evaluation and coordination workshop involving 10 members of the child protection network.

In late 2016 and 2017, the Directorate of Prison Reform conducted campaigns to disseminate laws relating to minors in detention, including Act No. 2016-018 of 22 August 2016, in the following 12 prisons: Tsiroanomandidy, Miarinarivo, Arivonimamo, Vatomandry, Toamasina, Maevatanana, Mahajanga, Tsiafahy, Manjakandriana, Ankazobe, Moramanga and Toliara.

### Separation of children from adults

Madagascar has 82 prison facilities. Of these, 41 central prisons and 3 detention centres (at Sambava, Iharana and Andapa) receive minors, while 2 re-education centres are reserved for them. Therefore, minors may be detained at 46 of the 82 facilities. Of the 41 central prisons, 22 have a juvenile wing. However, underage girls are not yet separated from women prisoners. A total of 131 minors are in detention with adults

In 2017, the High Council of the Prison Service approved a bill on the general organization of the prison system for children in detention. The draft text provides for children's separation from adults and the appointment of social reintegration officers to support them. It puts the emphasis on the internal regulations that minors are informed about, preparations for social reintegration, and ways of monitoring the detention of minors.<sup>511</sup>

## Abolishing the Death Penalty

By 2020 member States should have abolished the use of the death penalty in respect of offences committed by children; States should have ensured that the death sentence may not be imposed on pregnant women or the mothers of young children.

With the exception of only a few countries, the death penalty in respect of offences committed by children

511 Combined fifth and sixth periodic reports submitted by Madagascar on the Convention on the Rights of the Child under article 44 of the Convention, due in 2018 [Date received: 24 January 2019], CRC/C/MDG/5-6.

has long been abolished in many parts of Africa. A few of these countries include Liberia, Sudan and South Sudan. In Liberia, children who are 16 years and above can be sentenced to capital punishment.<sup>512</sup> The Liberian Penal Code continues to provide for the use of the death penalty and life imprisonment despite the initiation of a 2014 reform which continues to be considered through a consultative process.

The Committee remains concerned over a worrying trend of executions of persons sentenced to death who were below the age of 18 at the time of the commission of the offence as well as the number of children and lactating mothers on death row in South Sudan. The Committee notes the legal prohibition of capital punishment of children in South Sudan in its Constitution (Article 21(2)) and Child Act of 2008 (Article 21(a)), however, the practice still persists. For instance, in September 2019, South Sudan executed a young man who was sentenced to death at the age of 17 years.<sup>513</sup> Another young man, Magai Matiop Ngong is still on death row, pending an appeal against his conviction. He was sentenced to death in 2017 when he was 15 years old following a trial without legal representation. Two children were also executed in 2017 and one in 2018.<sup>514</sup>

The Committee has sent a Letter of Urgent Appeal to the President of South Sudan to end the death penalty against children.<sup>515</sup> The Committee also sent a letter of Urgent Appeal to Sudan in 2018 to put an end to the death penalty.<sup>516</sup> The letter was sent following the worrying news and reports about a death sentence that the Central Criminal Court of Omdurman pronounced on Ms Noura Hussein. According to reports, Ms Noura Hussein *was sentenced to death for killing a man she was forced to marry and who raped her. Reports indicate that once she was forcefully wedded when she was a child*, Noura has been raped by her husband who was assisted by family members to restrain her mobility. Noura then allegedly stabbed her husband to death to defend herself when he was trying to rape her again the following day. In the Urgent Letter of Appeal, the ACERWC therefore urged the Government of the Sudan to ensure the non-execution of the death sentence pronounced against Noura and to ensure that she gets fair retrial that takes in to account all the mitigating circumstances of her case.<sup>517</sup> The Committee further urged the Government to take measures towards ensuring accountability of those who officiated the forced marriage of Noura and the family members of the deceased husband that assisted in her rape.<sup>518</sup>

## *Diversions and Restorative Justice*

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512 See e.g. ACERWC, "Report of the ACERWC on the Follow-up Mission Conducted to Monitor the Implementation of its Concluding Observations and Recommendations to the Republic of Liberia" (January 2020), available <https://www.acerwc.africa/wp-content/uploads/2019/11/Liberia-follow-up-mission-report.pdf>

513 Amnesty International 'Human Rights in Africa: Review of 2019 - South Sudan [AFR 01/1352/2020] , available at <https://www.ecoi.net/de/dokument/2028290.html>

514 Amnesty International 'Executions of Juveniles Since 1990 as of November 2019' available at <https://www.amnesty.org/download/Documents/ACT5002332019ENGLISH.pdf>

515 See ACERWC - Appeal to the President of South Sudan to end death penalty against children at <https://www.acerwc.africa/%20News/appeal-to-the-president-of-south-sudan-to-end-death-penalty-against-children/>

516 See ACERWC - The Committee sent a letter of Appeal for Noura Hussein May 17, available at <https://www.acerwc.africa/Latest%20News/the-committee-sent-a-letter-of-appeal-for-noura-hussein-may-17/>

517 See ACERWC - The Committee sent a letter of Appeal for Noura Hussein May 17, available at <https://www.acerwc.africa/Latest%20News/the-committee-sent-a-letter-of-appeal-for-noura-hussein-may-17/>

518 See ACERWC - The Committee sent a letter of Appeal for Noura Hussein May 17, available at <https://www.acerwc.africa/Latest%20News/the-committee-sent-a-letter-of-appeal-for-noura-hussein-may-17/>

By 202 member States should have taken special measures allowing for diversion and restorative justice in respect of children; States should be referring children to juvenile justice institutions where they can learn skills and be reintegrated into society without compromising their psychological or physical well-being.

By 2020 member States should have set up alternative measures to pre-trial detention, such as bail and written notices to appear at court.

The use of diversion services to ensure that child offenders do not end up with criminal records is a practice that is on the rise, albeit that the services are led mainly by non-governmental sectors and provided only in a selected number of countries.<sup>519</sup>

A process of diverting a child offender away from the normal criminal justice system procedures has been provided for under the Child Care, Protection and Justice Act (CCPJA), 2010 of Malawi. The philosophy behind diversion is that the effects of subjecting a child offender to a fully-fledged criminal justice system are far more detrimental than diverting the offender from the system. Other comprehensive provisions and structures have also been adopted e.g. child panels.<sup>520</sup> For purposes of detention, the CCPJA has provides for special places for children on remand. The places are referred to as Safety Homes. After trial, a child cannot be imprisoned and children against whom a finding of responsibility has been made is placed in Reformatory Centres.<sup>521</sup>

In 2012, the Ministry of Gender, Child and Social Welfare for South Sudan developed a Strategic Framework on Justice for Children (2012) which promotes diversion as well as alternatives to pre-trial detention for child offenders at County level in line with the Child Act. An additional strategy for developing diversion and restorative justice was developed in 2013 and has been tried out in Malakal and Wau but owing to the conflict disruption has not yet been fully implemented. Since 2015, the Ministry of Social Development in Western Bahr el Ghazal State of South Sudan also engaged in a small-scale diversion programme designed to build on the strengths of customary restorative justice traditions. It is intended for this model to be scaled up in areas less affected by conflict and is based upon extensive research and consultation conducted by the Ministry of Gender, Child and Social Welfare with the support of UNICEF.<sup>522</sup>

South Africa's Child Justice Act contains detailed provisions restricting the pre-trial deprivation of children's liberty in prisons. The child may be placed in prison awaiting trial only if a bail application has been postponed; the bail conditions have not been complied with; the child is older than 14 years; the child is accused of committing a very serious offence; the detention is necessary in the interests of justice; and there is a likelihood that the child, if convicted, could be sentenced to imprisonment.<sup>523</sup>

Zimbabwe established a pre-trial diversion office within the Ministry of Justice, Legal and Parliamentary Affairs in 2009. An evaluation of the functioning of pre-trial diversion was undertaken in late 2016, showing that it has had positive results in enhancing access to diversion. A potentially good practice was thus to institutionalise an office to drive the diversion programme within the Ministry, thereby also securing high-level support for the initiative.<sup>524</sup>

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519 ACPF 'Spotlighting the Invisible: Justice for Children in Africa' 2018.

520 Malawi's Initial Report Pursuant to Article 43 of the African Charter on the Rights and Welfare of the Child, December 2014, para 130.

521 Ibid, para 132.

522 Initial report of South Sudan submitted under article 44 of the Convention on the Rights of the Child to the Committee on the Rights of the Child, 2020, para 219.

523 ACPF 'Spotlighting the Invisible: Justice for Children in Africa' 2018, p51. See also Section 30 of the Act.

524 Ibid.

## South Africa in focus

In the recent case of *S v LM* and others (July 2020), the Johannesburg High Court traverses the lawfulness of the use of processes and procedures under the South African Schools Act which have been used to draw children into the criminal justice system; the constitutionality of any evidence obtained by the South African Police Services (and the National Prosecuting Authority); the interpretation by the prosecutors in exercising their statutory mandate of certain of the provisions of the Child Justice Act 75 of 2008, as amended ('the Child Justice Act) including the question of whether a child found to have committed an offence listed in 'Schedule 1' to the Child Justice Act may be ordered to undergo a period of compulsory residence as part of his/her diversion programme.

The matter had its genesis in an urgent review concerning 4 children, which came before magistrate for diversion in terms of section 41 of the Child Justice Act. The 4 children were alleged to have committed offences referred to in Schedule 1 of the Child Justice Act<sup>2</sup>. They had all tested positive for cannabis during tests had been performed at school. They were accordingly alleged to have been in possession of cannabis which constitutes an offence in terms of Schedule 1 of the Child Justice Act.

The children and their parents appeared before the magistrate; they were all, individually and separately, handed draft court orders in terms of section 42(1) of the Child Justice Act, and agreements in terms of which the children and their parents agreed, amongst other things, to undergo diversion programmes ('the diversion agreements). The diversion agreements were then made orders of court. The 4 matters under consideration were matters where the children had allegedly not complied with the diversion agreements. The prosecutor sought to invoke more onerous diversion programmes, and the children were referred for a period of compulsory residence at a Child and Youth Care Centre (CYCC). This was not a competent outcome for the offence in question; it was therefore set aside by the Court, which ordered their release.

The parties were in agreement that it is no longer a criminal offence for children to use or be found in possession of cannabis.<sup>525</sup> It was in effect a status offence, which in international law terms must be abolished. Amongst other sources, the Court relied on article 47 of the "Guidelines on Action for Children in the Justice System in Africa", which were officially endorsed by the African Committee of Experts on the Rights and Welfare of the Child on 11 July 2012.<sup>526</sup> Several constitutional rights (equality, the child's best interests, the child's right not to be detained except as a matter of last resort) were also implicated.

A second question was whether it is permissible for a child to be 'referred' to the criminal justice system after failing a drug test administered by his/her school? The South African Schools Act comprehensively regulated that approach to drug testing in schools. No criminal proceedings may be instituted against the learner regardless of whether she is found in possession of an illegal drug or simply tests positive for such illegal drug.<sup>527</sup> The appropriate response to a learner found in possession of an illegal drug or who has tested positive for such an illegal drug is to address the issue, first and foremost, with her parent and, if so requested, refer the child for counselling and/or to a rehabilitation centre. The only sanction authorised is the institution of disciplinary proceedings against the child.

The Court was concerned about the apparent disregard by the decision makers for the constitutional imperatives that should guide the decisions of the stakeholders and the statutory processes outlined by the Child Justice Act.<sup>528</sup> These include the obligation to conduct an assessment by a probation officer which was not complied with; that the Act does not provide for so-called "informal diversion"; that the Child Justice Act expressly requires a prosecutor not to divert where it appears that the child is in need of care and protection; that the programme to which the children were diverted seemed to operate outside of the strictures of the Child Justice Act and is unaccredited, which is impermissible; that rather than selecting one (or one or more in combination) diversion, the prosecutor had imposed almost every level one diversion option available to him/her in terms of the Child Justice Act, thereby throwing the proverbial book is thrown at these children; and that the residential diversion programmes ultimately imposed on the children, assuming they were competent, were indeterminate in length (i.e. there was no fixed duration). "There can, and leaving aside the lawfulness of the use of such process for the moment, never be a justification for this type of an order,"<sup>529</sup> which violated the principle of detention for the shortest period of time. Finally, the Court held that Child Justice Act 75 of 2008 does not permit, under any circumstances whatsoever, for a child accused of committing a Schedule 1 offence<sup>530</sup> to undergo any diversion programme involving a period of temporary residence.

<sup>525</sup> In view of the decision of Minister of Justice and Constitutional Development v Prince CCT 108/17. The court emphasised "that this case does not engage with questions like whether children should use or possess cannabis or whether the use of cannabis is good or bad for the health and social well-being of children" (par 31) and that "the selling and provision of cannabis to minors and the use and possession in public, is and will continue to be a criminal offence" (par 30). The Prince judgment of the Constitutional Court had left children in an invidious position: those who use and/or possess cannabis could be treated as criminals and criminally prosecuted for this behaviour whereas their adult counterparts were not criminally liable (para 35).

<sup>526</sup> Para 45.

<sup>527</sup> Para 92.

<sup>528</sup> Para 95.

<sup>529</sup> Para 112.

<sup>530</sup> This schedule contains a list of minor/trivial offences.

## Care for children of imprisoned parents or caregivers

By 2020 member States should have reviewed sentencing procedures in order that a non-custodial sentence is always considered when parents or primary caregivers of children are being sentenced;

By 2020 member States should be providing for appropriate alternative care for children whose parent or primary caregiver is imprisoned;

By 202 member States should have established special institutions to house children in prison, under very exceptional circumstances when non-custodial measures cannot be considered, and it is in a child's best interests to live with a parent or caregiver in prison.

The imprisonment of a parent or primary caregiver impacts the rights of the child in a number of ways. Most judicial systems across the continent do not take into account the unique needs and best interests of children when imposing sentences and the need to ensure that non-custodial sentences. Where detention is necessary, States should have procedures to ensure that procedures allow for contact to be maintained as well as ensuring appropriate alternative family-based care for children. Unfortunately, an unknown number of children of imprisoned parents are placed in institutional care where other family-based alternatives should be sought.

A number of States have, however, adopted measures and procedures relating to children of incarcerated parents and caregivers. Kenya enacted the Persons Deprived of Liberty Act No. 23 of 2014 which provides that mothers with infant children be accommodated in separate facilities and receive nutritional supplements for the growth and development of the child.<sup>531</sup> Kenya also reported placing children in alternative family care taking into consideration the best interest of the child. In addition, Kenya has established female probation hostels to rehabilitate female adults accompanied by their children as an alternative to imprisonment where the children access education and essential services.<sup>532</sup>

Benin's new Child Code (2015), acknowledges in its articles 320 to 323 a new legal framework for management of children on imprisoned mothers: by defining first the right of the child born in jail (art 320); the time limit of the child presence during the detention of the mother (art 321); the rights of the pregnant women deprived of freedom are also clarified (art 322); finally, the article 323 clarifies the necessary infrastructure accommodations for female offenders.<sup>533</sup>

In Cameroon, some civil society stakeholders have distinguished themselves in caring for children born to imprisoned mothers. Such is the case with the Relais Parents-Enfants Association, the NGO Mère-Enfant, Justice and Peace Commissions, that organize specific actions targeting children whose mothers are in prison, especially in preparing for the school year (school kits, various textbooks and manuals), and in organizing end-of-year festivities (Christmas Tree Ceremony with the handing over of presents to children).<sup>534</sup>

The Committee has noted with concern that children are incarcerated with their mothers and the latter do not have dedicated room in the prison, and do not get an adapted diet to their condition and to the age of the children in Senegal. The Committee was also extremely concerned that children of imprisoned mothers do not have suitable play facilities within the prison nor the opportunity to leave

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531 Kenya Second and third State Party periodic report 2012-2017 on the African Charter on the Rights and Welfare of the Child (November 2018), para 9.1.

532 Ibid.

533 Combined (Initial and Periodic) Report of Benin on the Implementation of the African Charter on the Rights and Welfare of the Child, 2015, para 310.

534 Periodic Report of Cameroon on the Implementation of the African Charter on the Rights and Welfare of the Child (2011 - 2014), p35.

the establishment and experience ordinary life outside its walls.<sup>535</sup>

In Angola, the Committee noted with appreciation that the State Party provides prenatal and antenatal care for pregnant women in prison. However, the Committee noted that children below the age of 3 might be imprisoned with their mothers. The Committee recommends that the State Party provides non-custodial sentences to expectant mothers and mothers of infants.<sup>536</sup> While appreciating the provision in the Correctional Services Act of 2017 and the National Health Policy of breast-feeding and for bonding between a mother and infant in Eswatini, the Committee notes with concern that children may stay in correctional facilities for lengthy period of time with their incarcerated caregivers.<sup>537</sup>

In Sierra Leone, the Committee noted that the State Party allows mothers with infants to keep their children with them in prison, and provides the mothers and the infants with medical, psycho-social and parenting support.<sup>538</sup> However the Committee has been informed that children of imprisoned parents or caregivers have no access to a special diet and most mothers lack access to basic welfare items, such as toiletries or sanitary napkins, and medicines. Furthermore, once the children are removed from prison they usually end up in orphanages. Hence the Committee recommended that the State Party should provide special treatment to expectant mothers and mothers/caregivers of infants who are accused or found guilty of a crime, in accordance the principles included in Article 30 of the Charter and the Committee's General Comment number 1 on Article 30 of the Charter.<sup>539</sup>

By 2020 member States should have established a clear child protection policy in closed institutions that is known to all staff, with step-by-step procedures on how allegations and disclosures of violence are to be handled.

By 2020 member States should ensure appropriate reintegration and rehabilitation support services for children in conflict with the law, including through a multi-disciplinary approach involving the social workforce.

In order for children in conflict with the law in Mauritania to enjoy the protection provided for by the Convention on the Rights of the Child, the authorities established the El Mina Centre for the Reception and Social Reintegration of Children in Conflict with the Law. The Centre falls under the Ministry of Justice and its mission is in line with the Children's Code.<sup>540</sup>

Rwanda has transit centres governed in accordance with the Law N 17/2017 of 28/04/2017 establishing the National Rehabilitation Service (NRS) and determining its Mission, Organisation and Functioning. This law defines transit centres as "premises used for accommodating on a temporary basis the people whose behaviours may constitute a cause for placement in the rehabilitation centre. The Government decided to invest resources in trying to rehabilitate individuals who exhibit deviant behaviour and this has shown a 70% success rate in the last 7 years.<sup>541</sup> However, as noted in Chapter 5 above, reports of abuses in these institutions have been recorded.

The programme to support the improvement of juvenile justice in Tunisia envisages care for children at all stages of the judicial process, all the way through to reintegration. This involves numerous

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535 Para 59, 60 Senegal.

536 Angola para 45.

537 Concluding observations and recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the initial report of the Republic Kingdom of Eswatini on the status of implementation of the African Charter on the Rights and Welfare of the Child, 2019, para 54.

538 Concluding recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the initial report of the Republic of Sierra Leone on the status of implementation of the African Charter on the Rights and Welfare of the Child, 2017, para 31.

539 Concluding recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the initial report of the Republic of Sierra Leone on the status of implementation of the African Charter on the Rights and Welfare of the Child, 2017, para 31.

540 Combined third to fifth periodic reports submitted by Mauritania on the Convention on the Rights of the Child under article 44 of the Convention, due in 2013 [Date received: 10 January 2017], para 198.

541 Combined fifth and sixth periodic reports submitted by Rwanda under article 44 of the Convention on the Rights of the Child, due in 2018 [Date received: 10 July 2018], para 186.

different stakeholders interacting with the organs of the judiciary, chiefly civil society groups and the social welfare and integration centres supervised by the Ministry of Social Affairs. Activities under the programme include the provision of technical and material support to those institutions.<sup>542</sup> The first project, with the El Mourouj II Residents' Association, sought to provide support to around 125 children being held in the city's reformatory by implementing economic and social initiatives to promote their social reintegration. The success of the experiment has served to demonstrate the role that civil society can play in reintegrating children, avoiding recidivism and building the social and professional capacities of minors in conflict with the law to ensure their proper incorporation into social and economic life following release.<sup>543</sup> The second project, with the Childhood Horizons Association in Gabes, sought to promote the use of the mediation mechanism in the governorate of Gabes through cooperation among local authorities such as the social welfare and integration centres, child protection delegates, the judicial authorities, law enforcement and others. The idea was to draw attention to the importance of the mediation mechanism, which is enshrined in and regulated by law, adapt it to the situation of each particular child offender and encourage and facilitate its use. Follow-up and evaluation reports testify to the positive outcome of the project, with an increase of 36 per cent in recourse to mediation between 2015 and 2016.<sup>544</sup>

In 2006 Cape Verde approved a new institutionalisation regime for children aged between 12 and 16 years and who are agents of some fact qualified by law as a crime, for Legislative Decree No. 2/2006 of November 27, which entered into force in February 2007. This law also regulates the organization and operation of the Socio-educational Centres. The socio-educational measures aim at the education of the child for the right and his/her integration into the community life, in a dignified and responsible way.<sup>545</sup> One such socio – educational centre is located the Orlando Pantera Socio-Educational Centre – located on the island of Santiago, with the capacity to accommodate 30 children of both sexes and aims to promote the social reintegration of children and adolescents in conflict with the law. In terms of human resources, the Centre has 16 collaborators (1 coordinator — psychologist, 4 professional social reintegration technical staff, 1 social educator, 1 social worker and 3 security agents). The pedagogical and therapeutic programs and methods used at the Orlando Pantera Socio-Educational Centre are subject to the principle of adequacy, taking into account the purpose and duration of the institutionalization and the needs of the children, notably, in terms of personal and social development and strengthening of their sense of responsibility in a relationship of empathy.<sup>546</sup>

By 2020 member States should ensure that the specific needs of child victims and witnesses of crime are addressed before, during and after trial.

Child victims and witnesses of crimes require special care and protection, including trauma-informed support which meets their specific and individual needs. Only through appropriate support, careful planning and risk assessment, can contact with child victims and witnesses be performed in a manner that limits risks to everyone and ensures that their rights are protected. States have adopted procedures and measures to varying degrees however their availability vary between States and within.

In Botswana, where a child is a victim of abuse, the proceedings are held in camera to protect the identity of the child. Only authorised officials and the parents are allowed inside the court room; the proceedings cannot be published, disclosing the identities of the child (Section 172 of the Criminal Procedure and Evidence Act and Section 93(1) of the Children's Act).<sup>547</sup> By virtue of the Evidence Act of Seychelles arrangements can be made for the child to give evidence outside the courtroom

542 Combined fourth to sixth periodic reports submitted by Tunisia under article 44 of the Convention on the Rights of the Child, due in 2017 [Date received: 30 April 2018], para 260.

543 Ibid, para 263.

544 Ibid, para 264.

545 Second periodic report submitted by Cabo Verde under article 44 of the Convention on the Rights if the Child, due in 1999, [Date received: 12 October 2017], para 154.

546 Ibid, para 162.

547 Combined second and third reports submitted by Botswana under article 44 of the Convention on the Rights of the Child, submitted in 2017, para 219.

transmitted through closed circuit television, to give evidence behind a screen, partition or one way glass or to even have a relative or friend by his or her side to provide emotional support.<sup>548</sup> As regards child victims and witnesses, in Tunisia, the Ministry of Justice's Centre for Legal and Judicial Studies is currently drafting a bill on child victims, which reflects the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime and is in line with the Lanzarote Convention.<sup>549</sup>

To improve access to justice and redress for child victims in Madagascar, a mechanism that includes legal assistance has been put in place to monitor cases of violence against children. A plan extending the scope of the monitoring mechanism to courts in four target regions has been put into operation in 11 courts of first instance. The mechanism allows for the traceability of cases involving child victims that are referred to the courts, particularly by Vonjy centres, regardless of whether the perpetrators are adults or minors.<sup>550</sup>

In Madagascar, child witnesses enjoy legal protection under Act No. 2016-017, including testimonial aids (art. 385.1). Testimonial aids or other measures may be granted at the request of witnesses under 18 years of age and witnesses with impairments.<sup>551</sup> The presiding judge may order protection measures for witnesses, taking into account their age, physical or mental impairments, the nature of the offence and the nature of the relationship between the witness and the accused, if any.<sup>552</sup> Additional measures include allowing the witness to testify outside the courtroom by closed-circuit television; allowing the witness to testify behind a screen or other arrangement that prevents him or her from seeing the defendant; authorizing the presence of a trusted person during the testimony; excluding the public or certain individuals from the courtroom for all or part of the proceedings when it is in the interests of public morals, the maintenance of order or due process of law; and prohibiting the media from disclosing the identity of victims and witnesses in all judicial proceedings, including preliminary investigations.<sup>553</sup>

The Committee has recommended to the Government of South Africa to ensure that specialised policing and court services for child victims are adequately resourced and implemented as a matter of urgency.<sup>554</sup> The Committee also encouraged the government of Cameroon to make provision for mechanisms through which child victims can contact authorities in the case of abuse in particular the creation of accessible toll-free number throughout Cameroon.<sup>555</sup> The Committee also urged Cameroon to provide and put in place a care protocol and assistance for child victims of sexual violence and other forms of inhumane treatment and ensure that children victims of torture and ill treatment have effective access to appropriate complaint mechanisms or procedures.<sup>556</sup>

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548 Consideration of reports submitted by States parties under article 44 of the Convention on the Rights of the Child Combined fifth and sixth periodic reports of States parties due in 2016 Seychelles [Date received: 13 June 2016], para 180.

549 Combined fifth and sixth periodic reports submitted by Madagascar under article 44 of the Convention on the Rights of the Child, due in 2018 [Date received: 24 January 2019], CRC/C/MDG/5-6, para 259.

550 Ibid, para 286.

551 Ibid, para 292.

552 Ibid, para 292.

553 Ibid, para 293.

554 Concluding observations and recommendations of the African Committee of Experts on the Rights and Welfare of the Child to the Government of the Republic of South Africa on its first periodic report on the implementation of the African Charter on the Rights and Welfare of the Child, 2019, para 15.

555 Concluding recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACER-WC) on the Republic of Cameroon's report on the status of implementation of the African Charter on the Rights and Welfare of the Child, 2017, para 16.

556 Ibid, para 16.

## *Accurate evidence and data on the administration of criminal justice for children is collected and used to inform policy reform*

By 2020 member States should have developed reliable mechanisms for collecting accurate, disaggregated data on the practice and administration of criminal justice for children, including case load data for children, case characteristics, data and resource data based on juvenile justice indicators in line with international child-rights standards.

There are significant data gaps across the continent when it comes to children in conflict with the law and the justice system. The most significant data gaps concern the disaggregation of data. There is an especially large data gap when it comes to the specific involvement of girls in justice systems, with the exception of data on sexual violence cases in which girls predominate as victims.<sup>557</sup>

Some States have reported encouraging progress towards collection and analysis of disaggregated data on juvenile justice, though progress across the continent is uneven. In Madagascar, a workshop was held in 2015, in partnership with the United Nations Development Programme (UNDP), to determine how criminal cases should be coded.<sup>558</sup> The principal objective is to set up a mechanism for the collection and processing of data, disaggregated by age and sex, in order to get information on criminal cases involving rights violations and on access to justice.<sup>559</sup> At the time of writing, no published information on the results of this program were found.

The Child Protection Information Management System (CPIMS) has been implemented or is being rolled out in a number of countries as a web-enabled information management and monitoring system. Where implemented it is used to collect and centrally record and report on children, including those in juvenile detention facilities. Its use is, however, often inconsistent.

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557 ACPF and Plan International, *Getting Girls Equal* (2019)

558 Madagascar UNCRC Report (2019), para. 42.

559 Madagascar UNCRC Report (2019), para. 43.

## **TUNISIA IN FOCUS: Good Practice in Data Collection**

In Tunisia, the Ministry for Women, Children, the Family and Older Persons runs the Child Info database to develop sectoral statistical indicators to assist in data analysis and decision-making on the basis of objective assessments and accurate information.<sup>560</sup>

Statistical indicators are periodically updated according to information source (census, studies, administrative records) as follows: Ninety per cent are updated every year; three per cent are updated every five years; four per cent are updated every 10 years.<sup>561</sup>

One of the outputs of the database is the national report on the condition of children, which was republished in 2015 to cover the years 2010 to 2015 and is a mechanism for national action.

During the revision of the Child Protection Code, those statistics were used to distinguish between children at risk and child victims and to create new mechanisms capable, from the outset, of protecting the latter from any violence to which they might be subjected. The statistics were also used to ensure ongoing and high-quality care as well as rehabilitation, reintegration and fair and comprehensive compensation for any harm suffered.

### **Information system regarding the activities of child protection delegates**

This consists of an integrated database for child protection delegates, which facilitates the approaches to and handling of cases involving children at risk, children in conflict with the law or foreign children. The information system has contributed to the preparation and dissemination of analytical reports based on statistical indicators regarding the situation of children in care.

As of 2013, the information system on the activities of child protection delegates has been enhanced with additional variables that aim to produce indicators on violence against children including children at risk and children in conflict with the law, in order to throw light and obtain data on that phenomenon, which is increasing, and to conduct more objective analyses

### **Collection of data on care institutions**

This is an electronic application with which to monitor data regarding the integrated centres for youth and children. It facilitates access by staff working in the institutions to statistics relative to children at different stages, the care approaches taken and the general features of the children being cared for. It also serves to document the services for children and their families and to monitor and evaluate the outcome of those services.

By 2020, States should have put in place regular independent inspections and monitoring of detention facilities by qualified bodies, at times unannounced, with full access to facilities and the freedom to interview children and staff in private.

Children in detention are sometimes detained out of sight and their well-being is not always prioritised by states. As such, children are at risk of violations of their rights which necessitates independent detention inspections and monitoring oversight to ensure that institutions are in compliance or can be held accountable for non-compliance.

The precise manner in which States carry out the oversight of detention facilities varies across the continent. For instance, some States have established oversight institutions specifically mandated to oversee places of detention (e.g. South Africa's Judicial Inspectorate of Correctional Services). In other States, Government agencies or institutions with broader human rights mandates (e.g. NHRIs) may have this responsibility. The manner in which these activities are carried out and their scope is

560 Tunisia UNCRC Report, para 59.

561 Ibid, para 60

too diverse to address in full. However, a few examples can be drawn. For instance, as of January 2019, the Ministry of Justice of Madagascar has carried out quantitative monitoring of minors in detention in 16 regional directorates.<sup>562</sup>

In Tunisia, a partnership agreement between the Ministry of Justice, Human Rights and Transitional Justice, the Ministry of Youth and Sports and the Ministry for Women, Children and the Family was concluded on 12 January 2015. Its purpose is to improve the services provided by correctional centres for children in conflict with the law and to develop intervention mechanisms so as to achieve the fundamental goals of those centres while respecting the national system of children's rights and relevant international treaties. The partnership agreement also seeks to promote the supervisory role of child protection delegates by allowing them, within their territorial jurisdictions, to undertake periodic visits to child correctional centres, at any time and without notice or prior authorization, in order to examine the living conditions and the extent to which the children's rights are being respected.<sup>563</sup>

In Tanzania, the Commission for Human Rights and Good Governance in collaboration with inspection mandated bodies has developed Standardised Monitoring Tools to monitor Juvenile in detention facilities. The Office of the DPP has started conducting regular monitoring missions of remand<sup>564</sup> and prison facilities to assess the situation prevalent therein with a view to improving the treatment of children incarcerated therein. In the period under report, a total number of 89 detention facilities were inspected in 23 out of 31 regions. During the inspection, 46 pre-trial children cases were withdrawn through *nolle prosequi*<sup>565</sup>; and all cases filed in Primary Courts were withdrawn therefrom and instead filed in District Courts, where it is ideally safer for children to be prosecuted.<sup>566</sup>

The National Development Plan 2017-2019 (NDP) in Somalia proposes the establishment of the National Commission for Protection of Children to uphold promotion and protection of child rights; development and implementation of a National Plan of Action for Children at national and state levels; strengthening the capacity of all national institutions in charge of provision and protection of children; building strategic partnerships between government and civil society organizations, private sector and the media; and the establishment of an effective monitoring and evaluation system to report on the status of Somali children and influence policy dialogue and programming.<sup>567</sup> While there is not a specific provision related to children in conflict with the law, this proposition was raised in conjunction with the process of developing the Somali Child Rights Act.

By 2020, States Should have reviewed and developed prevention strategies addressing the root causes of offending, such as poverty and inequality, by emphasising inclusion and access to basic services, with children at particular risk of coming into conflict with the law, being specifically targeted with support services.

The root causes of offending are complex, multifaceted, and vary for each child. Addressing the drivers requires meaningful inclusion, participation in political and social life, and access to basic services. As discussed throughout this report, States have a long way to go to achieve these goals.

In 2017, Angola reported that programs adopted to mitigate the factors that contribute to the prevalence of evidence that provide indications of the situation of children in conflict with the law "have not been effective."<sup>568</sup> The government has adopted measures whose precepts reflect aspects that cover especially the necessity to protect, care for and educate the child for a better future.<sup>569</sup> Angola also reported that projects to build re-education centers that will house children in conflict

562 Madagascar UNCRC Report (2019), para. 265.

563 Tunisia UNCRC Report, para 160.

564 In the State Party remand or detention facilities are police lock-ups run by the Police Force.

565 This is a formal withdrawal of a case made by the prosecution indicating that the State has no intention to proceed with prosecution.

566 Tanzania ACERWC Report, para 15.

567 Somalia UNCRC Report (2019), para. 36.

568 Angola UNCRC Report (2017), para. 176.

569 Angola UNCRC Report (2017), para. 177.

with the law “so that their childhood is not interrupted and so that they may proceed with their reintegration into society in a sound environment” were planned.<sup>570</sup> These precepts are found in Article 48 of Law 25/12 and in Law 9/96.<sup>571</sup>

In Mozambique, the Law on the Jurisdictional Organisation of Minors sets the parameters of assistance to minors in the field of crime prevention, through the application of measures of protection, assistance or education, which are alternatives to the deprivation of freedom.<sup>572</sup> Despite these parameters, there are not yet any institutions for attending children in conflict with the Law outside of confinement.<sup>573</sup> One juvenile detention centre exists. However, judicial authorities admonish and reprimand children below the age of responsibility (16), but the children are restored to freedom and delivered to their families (holding the parents responsible).<sup>574</sup> They also report beginning the implementation of a multi-sector programme seeking to prevent child delinquency and the development of programmes for the recovery of child offenders, through community programmes and the creation of institutions that have this as their vocation.<sup>575</sup>

As of April 2018, there is a bill being drafted by the Ministry of Justice in Tunisia to amend the Child Protection Code with the addition of a chapter on child victims, children at risk and child offenders, including how to protect and deal with them effectively, as well as a proposal for a law to amend articles 114 and 116 of the Child Protection Code with a view to imposing an obligation to provide information to child offenders and their families and refer them to a child protection delegate to act as mediator between the offending child and the victim.<sup>576</sup>

In Eswatini, various educational and behaviour-change initiatives are run by the Government of Eswatini in partnership with development partners and NGOs which raise awareness and seek to prevent the use and abuse of harmful substances by youth. For example, peer education and advocacy is provided through the Clinic Teen Clubs and education is integrated into the school curriculum. At high school level, a standalone Life Skills curriculum has been introduced which covers a range of behavioural issues, including substance abuse.<sup>577</sup>

In order to develop a programme of prevention and recovery of children in conflict with the law, Mozambique has begun implementation of a multi-sector programme seeking to prevent child delinquency and the development of programmes for the recovery of child offenders, through community programmes and the creation of institutions that have this as their vocation.<sup>578</sup>

## Progress by the ACERWC

By 2020 the ACERWC should have elaborated on the juvenile justice system, exploring, for example, the respective responsibility of parents, communities and schools for educating children about wrongfulness or right and wrong.

Through the theme of the 2020 DAC ‘Access to Child Friendly Justice’ - the ACERWC highlighted the key messages that State Parties should get across in their celebration and advocacy.

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570 Angola UNCRC Report (2017), para. 178.

571 Angola UNCRC Report (2016), para. 189.

572 Mozambique UNCRC Report (2018), para. 409.

573 Mozambique UNCRC Report (2018), para. 410.

574 Ibid.

575 Mozambique UNCRC Report (2018), para. 411.

576 Tunisia, UNCRC Report (2018), para. 22.

577 Eswatini ACERWC Report (2016), para. 267.

578 Mozambique UNCRC Report (2018), para. 411.

## Key messages

- “Africa’s Agenda 2063 and 2040 cannot be achieved without attention to the children whose rights are continually violated in humanitarian emergencies. There is need for a concerted effort on the specific needs and concerns of these children.
- The States’ approach to the possible violation of the rights of the child should engage a child based approach that uses the four principles of children’s rights as a tool for realising a child-friendly justice system.”

## Conclusion

This review has revealed significant gaps across the continent in ensuring a child-friendly and a rights-based approach to justice, with measures as well as programmatic responses across the continent varying significantly. While a number of States have undertaken some measures to ensure appropriate sensitisation is taking place to enhance child-friendly services – often with support of CSOs – there is a long way to go to achieve the goals and targets above. The assessment also reveals that the root causes of offending are complex, multifaceted, and vary for each child. Addressing the drivers requires meaningful inclusion, participation in political and social life, and access to basic services. As discussed throughout this report, States have a long way to go to achieve these goals.

While most States have adopted a minimum age for criminal responsibility, this varies as discussed further in Aspiration 2. The Committee, however, remains concerned over executions of persons sentenced to death who were below the age of 18 at the time of the commission of the offence in two States.

The assessment further revealed a critical need for States to enhance mechanisms and structures which ensure the application of non-custodial penalties on juvenile offenders, including through the adoption of pre-trial diversion programs to ensure that children in conflict with the law are not subjected to the regular justice administration procedures and the adoption/expansion of juvenile courts which are accessible across countries. The use of diversion services to ensure that child offenders do not end up with criminal records is a practice that is on the rise, albeit that the services are led mainly by non-governmental sectors and provided only in a selected number of countries.

The lack of juvenile/child-friendly courts, and access to same especially in rural areas also results in children being detained with adults. The Committee takes reminds States that where detention is necessary and suitable, children are to be detained separately from adults in all correction facilities. The precise manner in which States carry out the oversight of detention facilities varies across the continent. At the same time, the assessment reveals the need for States Parties to conduct training of judicial officers, prosecutors and police on rehabilitation and on the reintegration of juvenile offenders.

A number of States have, however, adopted measures and procedures relating to children of incarcerated parents and caregivers. Most judicial systems across the continent, however, do not take into account the unique needs and best interests of children when imposing sentences and the need to ensure that non-custodial sentences. The imprisonment of a parent or primary caregiver impacts the rights of the child in a number of ways, including through an unknown number of children of imprisoned parents who are placed in institutional care where other family-based alternatives should be sought. States should therefore have procedures that allow for contact to be maintained as well as ensuring appropriate alternative family-based care for children.

In this regard, it is of concern that, in some States, children in need of care and protection are sometimes placed inappropriately in juvenile detention facilities (e.g. remand homes, rehabilitation schools, etc.). The Committee reminds States that institutional care is a last resort and that such facilities for children in conflict with the law are inappropriate for children who are in need of care and protection.

# By 2040



## Aspiration 09

Every child is free from the impact of armed conflicts & other disasters or emergency situations

- Armed conflict on the continent is significantly reduced.
- The proliferation of arms, in particular small arms and light weapons, has been halted.
- Armed forces deployed during hostilities are proactively supported by military training, which includes specific modules dealing with issues such as the identification of children, the verification of age, and the handover referral system of children to civilian authorities at the earliest possible instance.
- There are no child soldiers; no child is recruited into the armed forces or plays a direct part in armed hostilities.
- The social, cultural, economic and political determinants of conflict and violence are addressed through changing of attitudes and behaviour.
- Basic services are restored in States facing conflict and instability; children's wellbeing, reflected in low infant mortality rates and extensive access to health care and education, is the worst in States undergoing protracted conflict and instability.
- Children, in particular the youth and adolescents, play a key role in peace-building and prevention, so as to draw attention to the structural and more immediate causes of conflict as they relate to children.
- Children involved in and affected by armed conflict are reintegrated into communities and provided with adequate psychosocial support.
- Children's rights are integrated into peace-making, peace-building and preventive actions.
- Children are equipped to be resilient in the face of disasters or other emergency situations.
- Separated and unaccompanied children are prioritised and provided with special protection.

## ASPIRATION 9: EVERY CHILD IS FREE FROM THE IMPACT OF ARMED CONFLICT<sup>579</sup>

**THE GOAL TO END ALL WARS IN AFRICA BY 2020 HAS NOT BEEN MET**

Under the African Children's Charter, States are obliged to protect children at all times, including during armed conflict. Aspiration 9 was adopted against the backdrop of decades of conflict across the continent, marked by the use of child soldiers and other serious and grave violations of human rights, which has had devastating effects on the rights and wellbeing of children. The adoption of this Aspiration followed the 2013 commitment by AU member States to achieve the goal to end all wars on the continent by 2020 as well as the AU's campaign to "Silence the Guns" in Africa. This Chapter identifies the progress and challenges faced in meeting the goal to ensure that every child is free from the impact of armed conflicts by 2020. While Aspiration 9 also concerns the impact of disasters and other emergencies, the progress and challenges to meeting the Agenda 2040 goals will be addressed in Chapter 11.

Africa is the second most conflict-affected continent globally, with one in five children being affected by conflict.<sup>580</sup> As found in the Committee's 2016 Continental Study on the Impact of Conflict and Crises on Children in Africa, protracted conflicts and crisis situations, including civil wars, international armed conflict, and other forms of armed violence such as intercommunal violence and terrorist activities continue to have devastating effects on children.<sup>581</sup> In cognisance of the devastating impact on the rights and welfare of children in Africa, a Special Rapporteur on Children and Armed Conflict with effect from December 2017 was appointed by the Committee. The Peace and Security Council (PSC) of the African Union Commission has also appointed a staff member specifically to address Children affected by Armed Conflict during the current reporting period.

It is reported that one in four children in Africa are living in conflict, with six African States (CAR, DRC, Mali, Nigeria, Somalia, South Sudan) listed among the 10 worst conflict-affected countries in which to be a child.<sup>582</sup> While Southern Africa has enjoyed relative peace and stability, the cross-border dynamics of conflict, including the threat of terrorism in the Sahel, Lake Chad Basin, and Horn of Africa has raised fear of its spread to other parts of Africa.<sup>583</sup> It is however important to recognise that today there are far fewer conflicts than two decades ago.

In this regard, the PSC plays a key role in the promotion of peace, security and stability in Africa, anticipation and prevention of conflicts, including through the promotion and implementation of peace-building and post-conflict reconstruction activities to consolidate peace and prevent the resurgence of violence.<sup>584</sup> The PSC holds annual open session on the issue of children and armed conflict in which the Committee takes active part. From 2015 to 2019, the PSC was seized of a number of conflict and crisis situations, including the Ebola epidemic and socio-political crises, some of which have escalated into violence. Elections can be a source of instability and crisis. It is noteworthy that in 2020, elections will be held across 22 African countries, many of which are conflict-affected or recovering from conflict.<sup>585</sup>

579 Disasters, pandemics and emergencies form the subject matter of Chapter 11.

580 Save the Children, "Mapping of Child Protection Accountability Mechanisms in Armed Conflict in Africa", August 2019.

581 See generally ACERWC, "Continental Study on the Impact of Conflict and Crises on Children in Africa", October 2016.

582 Save the Children, "Stop the War on Children 2020: Gender Matters" (February 2020).

583 AU, Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa, for the Period from February 2019 to February 2020, paras 4, 99. See also UN Security Council, Annual Report of the Secretary-General on Children and armed Conflict, UN Doc. S/2020/525, para. 14.

584 See General Comment on Article 22 (September 2020).

585 Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Comoros, Côte d'Ivoire, Egypt, Ethiopia, Gabon, Ghana, Guinea, Mali, Namibia, Niger, Senegal, Somalia, Somaliland, Seychelles, Tanzania and Togo (see International Crisis Group, "Eight Priorities for the African Union in 2020", Crisis Group Africa Briefing N°151 (7 February 2020)).

## SITUATIONS BEFORE THE PEACE AND SECURITY COUNCIL

<b>2019</b>	CAR, DRC, Gabon, Guinea-Bissau, Kenya, Libya, Gambia, Somalia, South Africa, Sudan, and the Sahel region <sup>586</sup>
<b>2018</b>	Burundi, CAR, DRC, Guinea-Bissau, Horn of Africa (Djibouti, Eritrea, Ethiopia, and Somalia), Lesotho, Lake Chad Basin (Chad, Cameroon, Niger, and Nigeria), Sahel (Mali, and border region between Burkina Faso, Mali, and Niger), Somalia, South Sudan, and Sudan
<b>2017</b>	CAR, DRC, Guinea-Bissau, Kenya, Lake Chad Basin (Chad, Cameroon, Niger and Nigeria), Libya, Mali, Gambia, Sahel (emphasis on Mali and Niger), Somalia, South Sudan, Sudan, and Western Sahara
<b>2016</b>	Cameroon, CAR, DRC, Gabon, Gambia, Guinea, Guinea-Bissau, Kenya, Liberia, Libya, Sierra Leone, Somalia, South Sudan, Sudan, Western Sahara
<b>2015</b>	Burkina Faso, Burundi, CAR, Comoros, Ethiopia, Great Lakes Region, Guinea, Guinea-Bissau, Kenya, Libya, Madagascar, Mali, Rwanda, Sierra Leone, Somalia, South Africa (as it relates to Lesotho), South Sudan, Sudan, and Western Sahara

During the reporting period, CAR, DRC, Libya, Mali, Somalia, Sudan, and South Sudan remained on the agenda of the UN Security Council owing to the nature and scale of violations being committed against children. Nigeria remained a situation of concern as a result of the “scale and brutality” of violations committed by Boko Haram against children in the Lake Chad Basin region, affecting children in Nigeria, Cameroon, Niger, and Chad.<sup>587</sup> The socio-political crises in Cameroon’s Anglophone Northwest and Southwest regions and in Burundi saw an escalation of violence impacting children during the reporting period.<sup>588</sup> In light of the gravity and number of violations committed against children, Cameroon and Burundi have been added as situations of concern by the UN Secretary-General and will be included in his next annual report on children and armed conflict in 2021.<sup>589</sup>

Children continue to bear the brunt of armed conflict severely impacting their human rights, development and well-being. They are more likely to be separated from their families and less likely to be enrolled in school or to have access to basic needs, making them more vulnerable to disease and malnutrition.<sup>590</sup> Conflict has displaced millions of children both internally and across the continent, which is home to one-third of the world’s refugees. Children continued to be subjected to serious and grave violations of their human rights,<sup>591</sup> including by being abducted, killed and maimed, recruited and used in conflict and subjected to rape and other forms of sexual violence by parties to conflict, including state and non-state actors. A pattern of abduction by parties to conflicts has also been documented in DRC, Nigeria, South Sudan, and Somalia which are often a precursor to other violations including recruitment and use and/or sexual violence. Girls, especially those living with disabilities, are at far higher risk of sexual and other forms of gender-based violence whilst boys are much more likely to be exposed to killing and maiming, abductions and recruitment. Impersonal grave violations also persist, with schools and hospitals attacked or used by armed groups/forces

<sup>586</sup> Over deepening concerns over security and the Lake Chad Basin, threat posed by Boko Haram, and rise in inter-communal violence, among others.

<sup>587</sup> Continental Study on the Impact of Conflict and Crises on Children in Africa; SG Report 2019, paras 206, 216.

<sup>588</sup> AU, Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa, for the Period from February 2019 to February 2020, para. 46.

<sup>589</sup> UN Security Council, Report of the Secretary-General: The Situation in Burundi, UN Doc. S/2019/837 (24 October 2019); Burundi UNCRC Report (2017), para. 7; AU Assembly, “Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa, for the period from February 2019 to February 2020”, Doc. Assembly/AU/5(XXXIII), available [https://au.int/sites/default/files/documents/38309-doc-8\\_report\\_on\\_psc\\_on\\_its\\_activities\\_and\\_the\\_state\\_of\\_peace\\_security\\_in\\_africa\\_.pdf](https://au.int/sites/default/files/documents/38309-doc-8_report_on_psc_on_its_activities_and_the_state_of_peace_security_in_africa_.pdf), para 46.

<sup>590</sup> See generally ACERWC, “Continental Study on the Impact of Conflict and Crises on Children in Africa”, October 2016.

<sup>591</sup> Grave violations as enumerated by the Security Council in its resolutions and as first identified in resolution 1261 (1999). See General Comment on Article 22 (September 2020).

while critical and life-saving humanitarian access is frequently denied by parties in a number of contexts.<sup>592</sup> The very threat of abduction has an impact on children and especially girls; often forcing them to stop attending school thereby disrupting their access to education.<sup>593</sup>

**BETWEEN 2014 AND 2018, THERE WERE AT LEAST:<sup>594</sup>**

- **24,183** verified instances of recruitment and use of children in conflict
- **11,369** children killed or maimed in conflict
- **4,678** verified instances of sexual violence against children in conflict
- **3,062** verified attacks on schools
- **473** verified instances of attacks on hospitals
- **9,284** verified abductions of children; and at least 2,833 verified instances of denial of humanitarian assistance

The Committee has expressed concern over the rise in grave violations against children since 2014. In 2014, there were 6,620 grave violations which nearly doubled to more than 12,000 in 2015.<sup>595</sup> 2018 was marked by the highest levels of children killed or maimed in armed conflict since the UN started monitoring and reporting on grave violations. In 2019, there was a slight decrease in the number of grave violations from 11,774 in 2018<sup>596</sup> to at least 10,181 incidents, affecting 8,974 children (6,941 boys, 2,000 girls, and 33 unknown) across CAR, DRC, Mali, Nigeria, Somalia, South Sudan, and Sudan.<sup>597</sup> These numbers, however, include only those incidents verified by the UN Monitoring and Reporting Mechanism and therefore do not represent the magnitude of the problem owing to security and access restrictions which hinder the ability to monitor, report, and verify incidents. In Libya, for instance, reports have been received of the increase in recruitment and use of children but cases have not been verified in five years owing to the security situation marked by recurring violations of the ceasefire and compounded by the increasing foreign political and military interference in the country.<sup>598</sup> Underreporting also persists as a challenge, especially in the case of sexual violence, including against boys.

Article 22 of the ACRWC is meant to ensure that children benefit from the rights, protection, and care that they are entitled to in the context of armed conflict, in accordance with human rights and international humanitarian law. In 2020 the ACERWC adopted a General Comment on Article 22 of the ACRWC. The development of the General Comment on Article 22 arose out of the need to guide and offer insights to State Parties in the prevention of the violations of the rights of children in armed conflict. It is also instructive in the protection of children in the course of armed conflicts, strife and tensions on the African continent. State Parties should therefore also have regard to the Committee's General Comment and ensure its dissemination, including to the general public, other professionals such as academics, judges, parents, guardians, teachers, legal aid officers, social workers and other related persons who work with, and for children.

592 See generally ACERWC, "Continental Study on the Impact of Conflict and Crises on Children in Africa", October 2016.

593 UN Human Rights Council, "Report of the Special Representative of the Secretary-General for Children and Armed Conflict" (28 December 2018), UN Doc. A/HRC/40/49, para. 8.

594 Based on data compiled by Save the Children which assessed the number of violations in each African country in the reports, by violation, across five years as provided in the UN-Secretary General Annual Report on Children and Armed Conflict (Save the Children, "Stop the War on Children 2020: Gender Matters" (February 2020)).

595 Save the Children, "Stop the War on Children 2020: Gender Matters" (February 2020).

596 Ibid.

597 UN Doc. S/2020/525, paras 30, 54, 101, 103-104, 108, 136, 148, 157, 206.

598 AU, Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa, for the Period from February 2019 to February 2020, paras 89, 94.

## Progress by member states

The Committee commends the majority of African States which have ratified the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OPAC). During the reporting period, three States Parties ratified OPAC; namely, South Sudan (2018), CAR (2017), and Guinea (2016).<sup>599</sup> Comoros and Mauritania have neither signed nor ratified OPAC; while Liberia, Somalia, and Zambia have signed but not ratified it.

### *Minimum age of recruitment*

By 2020 states should have prescribed 18 years or above as the minimum age of recruitment into the armed forces, and effectively enforced this standard

<b>STATES WHICH SHOULD RAISE THE MINIMUM AGE OF RECRUITMENT TO 18</b>
ALGERIA
CABO VERDE
CAMEROON
GUINEA-BISSAU
LIBYA
NIGER
SAO TOME AND PRINCIPE

The African Children's Charter is the first regional treaty to establish 18 as the minimum age for recruitment and participation in hostilities. Accordingly, States Parties are obliged to take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain from recruiting any child.

The majority of States Parties have prescribed 18 years or above as the minimum age of recruitment into armed forces in line with their obligations under the African Children's Charter.<sup>600</sup> The Committee, however, takes note that seven States which have failed to do so. Niger has not set the minimum age of recruitment by law. Cameroon<sup>601</sup> has set the minimum age of recruitment at 17. Sao Tome

<sup>599</sup> UN Treaty Collection, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, as of 31 July 2020.

<sup>600</sup> Mauritius does not have armed forces, and the age of entry into the Police force and the Emergency Response Unit, (ERU), is 18 years of age (ACPF, Minimum Age to Recruitment into the Army: International and Regional Law, available [http://www.africanchildforum.org/clr/Harmonisation%20of%20Laws%20in%20Africa/other-documents-harmonisation\\_6\\_en.pdf](http://www.africanchildforum.org/clr/Harmonisation%20of%20Laws%20in%20Africa/other-documents-harmonisation_6_en.pdf))

<sup>601</sup> See generally UN Committee on the Rights of the Child, "Consideration of reports submitted by States parties under article 44 of the Convention Second periodic reports of States parties due in 2000" (22 October 2009), UN Doc. CRC/C/CMR/2, para. 44.

and Principe (17)<sup>602</sup> and Cabo Verde (17)<sup>603</sup> allow for children 17 years of age to voluntarily enlist upon the informed consent of parents or legal guardian as does Guinea Bissau<sup>604</sup> which also requires that the young person is informed of the duties and responsibilities associated with military service and upon demonstrating proof of age. In Algeria, children 17 years of age can voluntarily join depending on if they have obtained a certain level of education and upon the consent of a parent/caregiver.<sup>605</sup> A draft bill to raise the minimum age from 17 to 18 was reported by Libya in its 2009 combined third and fourth period report on the CRC but has yet to be enacted. The Committee recalls its position that there is no room within the provisions of the African Children's Charter to accommodate the concept of voluntary recruitment under the age of 18<sup>606</sup> and therefore strongly recommends that all States set and/or raise their minimum age of recruitment to 18.



In some States, where 18 is prescribed as the minimum age, it is not always effectively enforced. During the reporting period, the UN verified the recruitment and use of children of 24,200 children across CAR, DRC, Mali, Nigeria, Sudan, South Sudan, and Somalia.<sup>607</sup> Children were also verified to be recruited and used in the Far North Region of Cameroon, Chad, and Niger, and sometimes for the purpose of bearing and detonating improvised explosive devices. Between 2015 and 2019 both boys and girls, some as young as six years old, were verified as being used and recruited by State and mostly non-State actors; serving as combatants, wearing uniforms, carrying weapons, manning checkpoints, and serving in support roles such porters, spies, cooks. Girls who were recruited and used were particularly vulnerable to sexual abuse and violence, including sexual slavery. Girls are also less likely than boys to be identified for

their association and are therefore less likely to be demobilised than boys. Low rates of birth registration compounds the issue across a number of countries and may lead to underage recruitment.<sup>608</sup> While age determination methods could be improved,<sup>609</sup> some progress has, however, been made. For example, the Armed Forces of the DRC (FARDC) conducts screening to determine the age of children during its recruitment campaigns and standard operating procedures for age assessments continue to be disseminated across FARDC.<sup>610</sup> This resulted in 141 children being identified and separated before enrolment in 2019.<sup>611</sup>

The Committee notes with concern that children continue to be detained and deprived of liberty for their actual or alleged association with non-state armed groups. In 2019, children were detained by

602 See Initial state party report on the Convention on the Rights of the Child: Sao Tome and Principe, 2003.  
 603 Article 31 of Legislative Decree No. 6/93 of 24 May 1993, published in official gazette No.18, series I.  
 604 See Declaration made upon ratification to OPAC; Article 31 of Law No. 4/99 (7 September 2009), Supplement to Official Gazette No. 36.  
 605 See Article 14 of Presidential Decree No. 08-134 dated 8 May 2008.  
 606 No. 2/Com/002/2009.  
 607 This number was obtained by assessing the number of children verified to have been recruited and used across all African States in the UN Secretary-General's annual report on children and armed conflict.  
 608 See e.g. UN Committee on the Rights of the Child, Concluding observations on the combined fifth to seventh periodic reports of Angola\* (27 June 2018), UN Doc. CRC/C/AGO/CO/5-7, para. 18.  
 609 See e.g. UN Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of the Niger\* (21 November 2018), UN Doc. CRC/C/NER/CO/3-5, para. 42.  
 610 2019 SG Report, para. 66.  
 611 UN Security Council, Secretary General Annual Report on Children and armed Conflict, UN Doc. S/2020/525, para. 64.

States armed and security forces in CAR, DRC, Mali, Libya, Nigeria, and Somalia for their alleged association with non-state armed groups, including terrorist organisations like Al-Shabaab and Boko Haram.<sup>612</sup> States Parties are reminded that they are required to treat children primarily as victims in line with the best interests of the child and that detention should be used only as a measure of last resort and for the shortest time possible.

### **Action Plans to address grave violations against children**

Progress has been made by State Parties, some of which have signed action plans to address grave violations against children. In February 2020, the Government of South Sudan and the UN signed the comprehensive action plan to end and prevent all six grave violations. Progress has also been made with Somalia most recently adopting a roadmap to expedite the implementation of the 2012 Action Plan on ending recruitment and use and the killing and maiming of children. The Sudan Government security forces, including the Sudanese Armed Forces, the Popular Defense Forces and the Sudan Police Forces were delisted in 2018 following compliance with the Action Plan. The situation in Côte d'Ivoire which was previously listed continued to improve resulting in its delisting by the Secretary-General in its 2016 report. Chad was similarly removed from the agenda following the delisting of the Chadian National Army and the full implementation of the action plan to end the recruitment and use of children signed with the United Nations in 2011. DRC's Action Plan on ending and preventing sexual violence against children remains under implementation.

### ***Address the root causes of conflict and inclusion of children and young people in peace building and conflict prevention***

By 2020 States should have addressed the root causes of conflict, in order to eliminate the impact of armed conflicts on children and ultimately to build a more resilient and sustainable protective environment for children in urban and rural contexts

By 2020 States should have empowered children and young people to be forces for peace and conflict prevention; children and young people are an integral part of successful efforts to prevent conflict and build peace; it follows that they should be specifically included in any attempt at addressing the structural and more immediate causes of conflict

As recognised in the AU's Master Roadmap of practical Steps to Silence the Guns in Africa by Year 2020, crises and violent conflicts are "driven by poverty, economic hardships, violation or manipulation of constitutions, violation of human rights, exclusion, inequalities, marginalization and mismanagement of Africa's rich ethnic diversity, as well as relapses into the cycle of violence in some post-conflict settings and external interference in African affairs." Other root causes of conflicts and crises include climate change, unemployment, and unequal access to land, water and wealth, among other factors.<sup>613</sup> The root causes of conflict are complex, multifaceted, and vary across each crisis and conflict context. Addressing them requires meaningful inclusion and participation in political and social life, and this includes the inclusion of children and young people.

Article 17 of the African Youth Charter recognizes the important role of youth in the promotion of peace and non-violence. At the AU PSC's 807th meeting on "Youth, Peace and Security" (2018), Member States were urged, in accordance with UN Security Council Resolution 2250, to remove all structural obstacles to effective youth participation, to mobilize the necessary resources and to develop long-term national plans of action for the effective involvement and participation of young people in the promotion of peace and security and national development processes.<sup>614</sup> Generally,

<sup>612</sup> UN. Doc. S/2020/525, paras 32, 57, 100, 110, 138, 208.

<sup>613</sup> See ACHPR, "Addressing Human Rights Issues in Conflict Situations: Towards a more Systematic and Effective Role for the African Commission on Human and Peoples' Rights" (2019).

<sup>614</sup> UN Security Council Resolution 2250 states that "[...] young people should take an active part in the establishment of lasting peace and

there is a data gap in relation to youth and peace and security. In 2017, young persons convened separately in three regional sessions for the Progress Study on Youth, Peace and Security as provided in UN Resolution 2250. Among the key recommendations from these consultations included the need to: (1) invest in capacities, agency and leadership through substantial funding support, network-building and capacity-strengthening, recognizing the full diversity of youth and the ways young people organize; (2) transform systems that reinforce exclusion by addressing the structural barriers limiting youth participation in peace and security; and (3) prioritize and build effective partnerships and collaboration whereby young people are viewed as equal and essential partners for peace.<sup>615</sup>

To promote youth participation, Nigeria enacted the “Not Too Young to Run” law in 2018 which lowered the age requirements to run for office and Cameroon ran a “Vote 18” campaign. Young persons have also contributed in post-conflict settings through their participation in, for example, truth and reconciliation processes in Liberia and Sierra Leone.<sup>616</sup> The important contributions of youth-led civil society organizations across the continent which often work in “contexts of poor governance, instability or violence” should not go unnoticed.<sup>617</sup> Unfortunately, children and young people in conflict and post-conflict settings have been commonly perceived as either perpetrators or victims of violence or as disruptive to peace, especially in the case of boys and young men.<sup>618</sup> Youth-led Initiatives and activities to fight against terrorism and violence have been undertaken in Tunisia, Morocco, and Libya.<sup>619</sup>

“According to young people consulted, concerns about youth and violent extremism result in policy responses that denigrate and often repress the legitimate participation of youth in political processes, social movements, peaceful protest and expressions of dissent.”

-The missing peace: independent progress study on youth and peace and security (2018)

### ***Ending impunity for crimes against children in the context of armed conflict***

By 2020 States should have ensured the systematic and timely investigation into and prosecution of crimes against children in the context of armed conflict, and provided assistance to victims

By 2020 States should have adopted specific measures to end impunity for violations against children; that those responsible for violating the rights of children during armed conflict are held accountable and are punished

By 2020 States should have adopted specific measures that end impunity for violations against children in armed conflict; these measures should extend to States not involved in the conflict, by way of adopting extraterritorial provisions for relevant crimes, ensuring that national provisions comply with the rules and provisions of the International Criminal Court (ICC); applying the universality principle where relevant; ensuring that domestic legislation criminalises arms trade to countries with a track record of the illegal recruitment of children

work for justice and reconciliation, and that the demographic importance of the youth of today is an asset that can contribute to lasting peace and economic prosperity”. Resolution 2419 which calls on “[...] all relevant actors to consider ways to increase the inclusive representation of youth for the prevention and resolution of conflict, including when negotiating and implementing peace agreements, to take into account the meaningful participation and views of youth, recognizing that their marginalization is detrimental to building sustainable peace and countering violent extremism as and when conducive to terrorism.”

615 UN Doc. S/2018/86, para. 59.

616 UN Doc. S/2018/86, para. 26.

617 Ibid., para. 22.

618 Report: East and Southern Africa Regional Consultation on Youth, Peace & Security (2017), available <https://www.youth4peace.info>; UN Doc. S/2018/86, para. 16.

619 See generally “Youth Consultation on Youth Peace and Security in North African Countries” (2017), available <https://www.youth4peace.info/system/files/2017-11/2017%20-%20Report%20-%20North%20Africa%20Sub-Regional%20Consultation%20on%20Youth%2C%20Peace%20%26%20Security.pdf>.

Accountability for violations committed against children is key to strengthening the protection of children and ending impunity. States are to investigate and prosecute crimes against children committed and ensure that perpetrators are held accountable and punished at the national level for genocide, war crimes, crimes against humanity, and the crime of aggression. The Committee's 2016 Continental Study on the Impact of Conflict and Crises on Children in Africa found that accountability for violations in conflict situations remains a serious problem.

According to a study undertaken by Save the Children, where perpetrators are prosecuted, they are often prosecuted for lesser offence, resulting in lower penalties.<sup>620</sup> While impunity for crimes committed in conflict is alarming, the Committee notes the reporting of domestic prosecutions taking place for crimes committed against children. In 2019, a member of the Sudanese Armed Forces was sentenced to 20 years imprisonment for raping one girl.<sup>621</sup> In CAR, one member of an armed group was sentenced to 10 years of imprisonment for sexual violence.<sup>622</sup> Two commanders of non-state armed groups in DRC were prosecuted and sentenced to life in prison for the recruitment and use of children.<sup>623</sup> Trials of three commanders of a non-state armed group on charges of war crimes, including child recruitment and use and sexual violence commenced in November 2018.<sup>624</sup> The trials of other alleged perpetrators for child recruitment to a non-state armed group are ongoing.<sup>625</sup> In 2015, 68 individuals, including high-ranking officers of FARDC and the Congolese National Police, were arrested, with 37 receiving sentences of up to 20 years' imprisonment for sexual violence against girls. These are but a few examples and large gaps exist both in relation to data as well as in meeting the goal of ensuring effective and timely investigation and prosecution of crimes committed against children in the context of armed conflict.

### Central African Republic in Focus

In 2018, Alfred Yekatom and Patrice-Edouard Ngaïssona, two anti-balaka leaders were arrested and transferred to the International Criminal Court (ICC) for crimes including the recruitment and use of children under 15 years of age in CAR. Their cases were joined in 2019 and their trial is ongoing.

Some States have adopted measures to end impunity for crimes more generally. In 2015, CAR established a Special Criminal Court (SCC) responsible for addressing serious violations of international law committed in the territory of the CAR, including crimes against humanity, war crimes and genocide. The special court became operational in 2017. The Gambia also established a Truth, Reconciliation, and Reparations Commission to establish the truth in relation to human rights violations committed under the presidency of Yahya Jammeh (1994-2016), to ensure reparations for victims, promote national reconciliation and healing, and to prevent such crimes in The Gambia.<sup>626</sup>

While States have the primary responsibility to investigate and prosecute crimes committed against children, presently, 33 African States have ratified the Rome Statute of the International Criminal Court (ICC). While Angola has signed the Rome Statute, it has faced challenges ratifying the treaty in light of incompatibility with the Constitution. During the reporting period, three States sought to withdraw from the ICC. While Burundi withdrew from the Rome Statute in 2017, Gambia initially withdrew but later retracted its withdrawal. South Africa also sought to withdraw from the Rome Statute following a dispute over the arrest of then President of Sudan Omar al-Bashir. South Africa's decision to withdraw was retracted following a decision of the High Court in *Democratic Alliance v. Minister of International Relations and Cooperation and Others*<sup>627</sup> declaring the course of

620 Save the Children, "Mapping of Child Protection Accountability Mechanisms in Armed Conflict in Africa", August 2019.

621 UN Doc. S/2020/525, para. 166.

622 2019 SG Report, para. 36.

623 UN Security Council, Annual Report of the Secretary General on Children and armed Conflict, UN Doc. S/2020/525, para. 64. See also 2019 SG Report, para. 68. The UN provided support to military justice actors, lawyers, and NGOs to support the implementation of the 2009 Child Protection Act which establishes criminal penalties for the recruitment of children (ibid.).

624 See also 2019 SG Report, para. 68.

625 UN Security Council, Annual Report of the Secretary General on Children and armed Conflict, UN Doc. S/2020/525, para. 64.

626 See Truth, Reconciliation, and Reparations Commission,

627 *Democratic Alliance v. Minister of International Relations and Cooperation and Others* (Council for the Advancement of the South African

action unconstitutional and invalid, holding that parliamentary approval is first needed to withdraw. Indications have recently arisen that South Africa's stated intention to withdraw is still manifest. Namibia has also indicated its intention to withdraw since 2016 but has not yet done so.

States are to enact legislation that incorporates in their national law the crimes and general principles of law contained in the Rome Statute. A number of States have amended their laws to varying degrees of compatibility with the rules and provisions of the Rome Statute. Since 2015, progress has been made. CAR – which had previously partially implemented the Rome Statute in its criminal and procedural criminal codes – adopted the Child Protection Code in 2020 which criminalises the recruitment and use of children. Efforts to implement the Rome Statute were made by Côte d'Ivoire to its Criminal and Criminal Procedure Codes in March 2015.<sup>628</sup> Guinea, in 2016, amended its Code of Criminal Procedure which now "compels the State to play a role in the punishment of perpetrators of relevant offences, including the recruitment of child soldiers as a war crime, and to cooperate with the International Criminal Court."<sup>629</sup> In 2015, DRC adopted the Law implementing the Rome Statute of the ICC which was promulgated into law January 2016 thereby amending the DRC's Military Criminal Code, Military Criminal Procedure Code, Criminal Code and Criminal Procedure Code. In 2016, Tunisia adopted a law which defines 'the use of children in criminal activities or armed combat' as [a slavery-like practice].<sup>630</sup> Ongoing efforts continue across a number of States. Rwanda, for example, has reported that the review of its Penal Code has resulted in a proposal to increase penalties for recruitment and use of children.<sup>631</sup> The CRC Committee has urged Rwanda to criminalize the compulsory recruitment and use in hostilities of children under 18 years of age by the national armed forces and non-State armed groups and promptly investigate and prosecute suspects and bring perpetrators to justice.<sup>632</sup> In Mali, efforts are underway to finalise the revision of the Child Protection Code which proposes to criminalise the recruitment and use of children. Mali is encouraged to continue efforts to revise its Child Protection Code, criminalising the recruitment of use of children between 15 and 18.<sup>633</sup>

Universal jurisdiction remains a vital element in the fight against impunity. Most states have not adapted and implemented the AU Model Laws Universal Jurisdiction providing for universal jurisdiction over genocide, crimes against humanity, war crimes and piracy, trafficking in narcotics and terrorism. In this regard, certain international treaties already oblige states to use universal jurisdiction (e.g. 1949 Geneva Conventions, the 1973 Convention against Apartheid, the 1984 Convention against Torture).

### ***Domestic legislation and practice to abolish arms trade***

By 2020, member States should have reviewed their domestic legislation and practice in order to abolish the arms trade to countries where children take part in armed conflict, including the trade in small arms and light weapons

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Constitution Intervening), [2017] ZAGPPHC 53; 2017 3 SA 212; 2017 1 SACR 623; [2017] 2 All SA 123

628 Loi N°2015-134 du 9 mars 2015.

629 Guinea UNCRC Report (2018), para. 137.

630 Tunisia UNCRC Report (2018), para. 21 ("Organic Act No. 61 of 2016 to prohibit and combat trafficking in persons. Article 2 of the Act defines 'the use of children in criminal activities or armed combat ... as slavery-like practices'").

631 Rwanda UNCRC Report (2018), para. 254.

632 Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Rwanda\* (28 February 2020), UN Doc. CRC/C/RWA/CO/5-6, para. 51.

633 See UN Doc. S/2020/525, para. 117.

Despite international treaties,<sup>634</sup> continental/regional treaties and protocols,<sup>635</sup> and mandatory UN arms embargoes<sup>636</sup> which address the menace of small and light weapons (SALW), SALWs continue to be used to commit a wide range of human rights and humanitarian law violations against children and threaten regional security and stability.<sup>637</sup> The Committee notes that the PSC continues to express the urgency for States Parties to enact appropriate regulations and administrative procedures to ensure effective control over the production, export, import, transit or retransfers in order to prevent illegal manufacture of, and illicit trafficking in, SALW or their diversion to non-authorized actors, such as terrorist groups.<sup>638</sup> Large data gaps however exist in relation to measures taken by States to address this issue as well as the extent and impact of illicit flows at the national level and sub-regional levels upon children.<sup>639</sup> Best practice is reported to be most established for measures to improve the management of state-owned weapons and ammunition in light of substantial international support for stockpile management.<sup>640</sup> Joint border initiatives represent another emerging area of good practice but requires the development of subregional or regional guidance.

## *Protection and assistance to separated and unaccompanied children*

By 2020, member States should have adopted policies and programmes providing for special protection and assistance to separated and unaccompanied children, including measures to ensure that they are reunified with their families.

During times of conflict children sometimes become separated from their families or caregivers. Separated and unaccompanied children face significant protection risks, including risk of abuse and sexual and gender-based violence, detention, deprivation and discrimination. While parents and caregivers have the primary responsibility for ensuring children's survival and well-being, States are responsible for ensuring that children's rights are respected, including the right to be reunified upon separation.

A number of States have put measures in place to provide protection assistance for separated and unaccompanied children. In South Sudan, unaccompanied and separated children receive case management support to ensure that families are located and reunified. Despite this, there is much to be done to address the legal and practical barriers that prevent or delay family reunification. Barriers include the lack of appropriate legal documentation which often precludes unaccompanied and separated children with access to essential services, including education and health care.

## Progress by the African Union

By 2020, the AU's political organs should have ensured that all peace-making and peace-building processes are child-sensitive, including by way of specific provisions in peace agreements, the participation of children in those processes and the prioritisation of resources.

Article 17 of the Charter recognises the important role of youth in promoting peace and security in

634 See e.g. UN Firearms Protocol, Arms Trade Treaty (ATT).

635 SADC Protocol on The Control of Firearms, Ammunition and Other Related Materials, 2001; the Nairobi Protocol on the Control, Prevention and Reduction of Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States, 2004; the Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, their Ammunitions and Other Related Materials, 2006; and the Central Africa Convention for the Control of SALW, their Ammunition and Parts and Components that can be used for their Manufacture, Repair or Assembly, 2010.

636 In place for CAR (since December 2013), Libya (since February 2011), Somalia (since January 1992), South Sudan (since July 2018), and Sudan (Darfur region, since July 2004). Arms embargoes placed on Eritrea and Liberia were lifted in 2018 and 2016, respectively.

637 See Small Arms Survey and the African Union (AU) Commission, "Weapons Compass: Mapping Illicit Small Arms Flows in Africa" (January 2019) available <http://www.smallarmssurvey.org/fileadmin/docs/U-Reports/SAS-AU-Weapons-Compass.pdf>.

638 See e.g. Communiqué adopted by the Peace and Security Council at its 860th meeting held on 18 July 2019, on illicit proliferation, circulation and trafficking of small arms and light weapons

639 Ibid.

640 See Small Arms Survey and the African Union (AU) Commission, "Weapons Compass: Mapping Illicit Small Arms Flows in Africa" (January 2019) available <http://www.smallarmssurvey.org/fileadmin/docs/U-Reports/SAS-AU-Weapons-Compass.pdf>, p. 67.

Africa.<sup>641</sup> Progress has been made during the reporting period by the AU’s political organs to include youth. At the 6th Ordinary Session of the AU Assembly in January 2016, the Assembly adopted the theme of the year 2017 as “Harnessing the Demographic Dividend through Investments in the Youth” which laid the foundation for the mainstreaming of youth in the programmes of the AU Commission.<sup>642</sup> In 2018, significant progress was made towards a framework for the contribution of African youth in peace and security (YPS). In 2018, the Peace and Security Department of the AU Commission launched the Youth for Peace (Y4P) Africa Program with the mandate of implementing relevant AU, regional, and international instruments relating to the role of youth in the promotion of peace and security in Africa. In a landmark decision of the PSC at its 807th meeting in 2018 which was the inaugural open session on Youth, Peace and Security (YPS) in November 2018, it was decided to appoint African Youth Ambassadors for Peace (AYAP) from each of the five regions who will work with the AU Youth Envoy. It was also decided to regularise an annual open session dedicated to YPS and commission a study to review the roles and contributions of African youth with the goal of fostering youth engagement and inclusion in the promotion of peace and security on the continent.

The YPS agenda has evolved since the Y4P programme was inaugurated with its priorities having been set in consultation with young persons. In 2019, the Y4P Programme also validated the draft Continental Framework on Youth, Peace and Security and the findings of the Study on the Roles and Contributions of Youth to peace and security in Africa. The validation followed consultations from representatives of youth from the five regions working on peace and security as well as Regional Economic Communities and Regional Mechanisms for Conflict Prevention, Management and Resolution in Africa. The Y4P Programme launched a call for application to all African youth, shortlisting and inviting 15 applicants – three from each of the five (5) regions – for a training and assessment workshop in November 2019, a development which resulted in the selection of one AYAP per region. The selected AYAPs were subsequently presented to the PSC and elected for a two-year tenure at its second open session on YPS. At the 33rd Ordinary Session of the Assembly of February 2020, the Assembly requested that the AU Commission institutionalise Y4P within the Peace and Security Department with a dedicated desk to coordinate the efforts of all stakeholders and facilitate its full operation.

As already mentioned, the ACERWC recently approved a General Comment on Article 22 of the Charter, the PSC has appointed a functionary with a mandate on this topic, and an annual day of discussion has been held on children affected by armed conflict by the PSC since 2014. In September 2020, a joint session was convened by the African Union Commission and the Network of National Human Rights Institutions in Africa (NANHRI), leading to a declaration and action plan on how NHRI could contribute to the “Silencing the Guns” campaign. The Committee has also conducted a Study on the Impact of Conflict and Crisis on Children in Africa where it has highlighted the main violations of children’s rights in conflict situations and recommendations are provided for all actors. Furthermore, the Committee has established a special mechanism in the form of Special Rapporteur on Children and Armed Conflict in Africa.

## Conclusion

The goal to end all wars on the continent by 2020 in Africa has not been met, with one in five children affected by conflict across the continent. Protracted conflicts and crisis situations, including civil wars, international armed conflict, and other forms of armed violence such as intercommunal violence and terrorist activities continue to have devastating effects on children and expose them to increased protection risks. The Committee remains concerned over new crises, as well as those in States which have relapsed. Of key concern is the reported increase of grave violations committed against children during the assessment period by parties to various conflicts. At the same time, the assessment reveals the displacement of children driven by conflict. While a number of States have put measures in place to provide protection assistance for separated and unaccompanied children,

<sup>641</sup> Article 20 of the AU Protocol Relating to the Establishment of the Peace and Security Council encourages CSOs and youth networks to access essential services or delay family reunification. The Committee welcomes campaigns by the AU (e.g. “Silencing the Guns”), those adopted in a number of States, and those adopted in a number of States.

<sup>642</sup> See Assembly AU/Dec.58(XVI) (2016). See also AU PSC Commission on the PSC (COPSC) Report (COPSC/PR/COM/1 (2018)), adopted at its 807th meeting held on 19 November 2018.

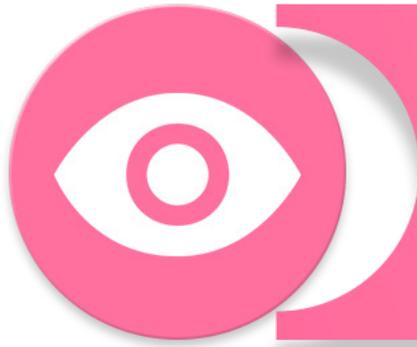
of States, as well as those youth-led initiatives which seek to ensure that no child is recruited or used. The Committee appointed a Special Rapporteur on Children and Armed Conflict with effect from December 2017 and welcomes the appointment by the PSC of a staff member specifically to address children affected by armed conflict during the current reporting period is encouraging. While the majority of States Parties have prescribed 18 years or above as the minimum age of recruitment into armed forces in line with their obligations under the African Children's Charter, several States have failed to do so. Concerning is the lack of effective enforcement of the minimum age where it is prescribed as 18. Children in a number of States continue to be recruited and used by armed forces and non-state armed groups, including terrorist organisations. Worrying is that children continue to be detained and deprived of liberty for their actual or alleged association with non-state armed groups.

At the same time, the assessment reveals that accountability for violations in conflict situations remains a serious problem. Impunity as well as prosecution for lesser crimes, often resulting in lower penalties, is of concern. The Committee takes this opportunity of their primary responsibility to investigate and prosecute crimes committed against children. In this regard, only 33 African States have ratified the Rome Statute of the ICC, and while some have amended their laws to varying degrees of compatibility with the rules and provisions of the Rome Statute. States should undertake an assessment of same and adopt/amend relevant legislation.

Universal jurisdiction remains a vital element in the fight against impunity. The Committee takes note that most states have not adapted and implemented the AU Model Laws on Universal Jurisdiction providing for universal jurisdiction over genocide, crimes against humanity, war crimes and piracy, trafficking in narcotics and terrorism. States which have not should endeavour undertake measures accordingly and are reminded that certain international treaties already oblige States to use universal jurisdiction (e.g. 1949 Geneva Conventions, the 1973 Convention against Apartheid, the 1984 Convention against Torture).

The assessment reveals that small and light weapons (SALW) continue to be used to commit a wide range of human rights and humanitarian law violations against children and threaten regional security and stability. The Committee stresses the urgency for States Parties to enact appropriate regulations and administrative procedures as previously expressed by the PSC to ensure effective control over the production, export, import, transit or retransfers in order to prevent illegal manufacture of, and illicit trafficking in, SALW or their diversion to non-authorized actors, such as terrorist groups.

Crises and violent conflicts are driven by a number of factors and the root causes are complex, multifaceted and vary across each crisis and conflict context. Addressing them requires meaningful inclusion and participation in political and social life, and this includes the inclusion of children and young people. The Committee welcomes progress during the assessment period by the AU's political organs to include youth, including the various activities undertaken to ensure meaningful inclusion and mainstreaming of young persons in the Youth, Peace, and Security agenda and in the programmes of the AU Commission.



## Aspiration 10

African children's views matter

# By 2040

- Child participation, based on the principles of representation, inclusion and accountability, is cultivated at all levels.
- Children participate meaningfully in law making and policy adoption in matters affecting their interests and are involved in the oversight of their implementation.
- Dedicated processes for children's participation Africa's Agenda for Children 2040 are in place, such as a permanent and dedicated forum in the form of a child parliament, or ad hoc forum in the form of a child caucus aimed at bringing forward the voices of children in these processes.
- At school level, child participation and leadership are cultivated by involving children in school management, for example in advisory student/learner councils.
- Legal protection is in place affirming children's rights to assemble, organise and access information and to express themselves freely.
- Children have the right to be consulted and heard in proceedings involving or affecting them.
- Children are involved in the monitoring and accountability process for this Agenda, the SDGs and the AU's Agenda 2063.

## ASPIRATION 10: AFRICAN CHILDREN'S VIEWS MATTER

Child participation is defined as an ongoing process of children's expression and their active involvement in decision-making at different levels in matters that concern them.<sup>643</sup> It requires information-sharing and dialogue between children and adults, based on mutual respect and full consideration of children's views in light of their age and maturity.<sup>644</sup> The African Children's Charter provides for child participation, highlighting that the views of children matter and must be heard (articles 4(2) and 7). A number of State Parties have taken measures to engage and consult children, and have made child participation more accountable; however, greater efforts are still required to ensure that children's views are meaningfully channelled and taken into account.<sup>645</sup> This Chapter reviews steps taken by Member States and the ACERWC between 2016 and 2020, in involving children in decision making at all levels.

### Progress by member States

#### *Involvement of children in parliamentary processes*

By 2020, member States should have adopted national legislation to institutionalise and formalise a process to involve children in parliamentary processes and in the operation of child-specific institutions

The very health of a democracy depends on a robust relationship between parliamentarians and their constituents, with the former transmitting the voices of the latter, including children, and thereby bridging the gap that separates citizens from government.<sup>646</sup> Enhanced child participation improves parliament by making it more inclusive, more representative and more democratic.<sup>647</sup> Too often children's institutions (such as Child or Youth parliaments) are one-off, symbolic events with no follow-up and hence they have little impact on policy or law making.<sup>648</sup> Institutionalising and formalising these institutions enables them to convene regularly and have more impact on policy and law making.

As part of the implementation mechanism of the Children's Act of 2005, provincial children's parliaments were set up in South Africa. Additionally, a Children's Rights Committee was established in 2016 within the South African Human Rights Commission (SAHRC) as part of its mandate to monitor and assess the observance of human rights (including children's rights) in South Africa. This Committee has to inter alia, advise the SAHRC on children's rights issues and on strategic planning for implementing the protection and promotion of the rights of the child and advise the SAHRC on monitoring of child rights, including the development of performance indicators.<sup>649</sup> Nationally, Children's Commissioners are appointed as part of the National Planning Commission, responsible for strategic planning for the nation.

The United Republic of Tanzania developed a guideline for establishing Junior Councils (2010) from National to Village level. The guideline has been used to establish Junior Councils in 17 Regions and in 122 District Councils, which are represented in the National Junior Council.<sup>650</sup> In Zanzibar about 273 Children Councils in all districts were established, where children from 7 years to 17 years have an opportunity to participate in the councils. These councils retain a formal structure for children and

643 Save the Children 'Every Child's Right to be heard: A resource guide on the UN Committee on the Rights of the Child General Comment No.12' 2011, p 3.

644 Ibid.

645 Africa's Agenda for Children 2040, p49.

646 UNICEF 'Handbook on Child Participation in Parliament' 2011, p15.

647 Ibid.

648 Ibid.

649 See South African Human Rights Commission at <https://www.sahrc.org.za/index.php/focus-areas/children-s-rights-and-basic-education>

650 Consolidated 2nd, 3rd and 4th Reports on the Implementation of the African Charter on the Rights and Welfare of the Child by the Government of the United Republic of Tanzania, 29th Ordinary Session of ACERWC, 2017, para 48.

young persons to come together to discuss issues of common interest to them and the nation.<sup>651</sup> Additionally, a Child Participation Toolkit (2011) and the National Plan of Action for Child Participation (2014) have been developed to strengthen child participation strategies and resource mobilization in Tanzania.<sup>652</sup>

In 2016, as part of the Congolese government's policy, in partnership with UNICEF, a Child Parliament was established in the Mambasa territory, in Ituri Province in DRC.<sup>653</sup> The parliamentary body consists of 400 parliamentarians divided into ten clubs of 40 parliamentarians who are elected through a Steering Committee.<sup>654</sup> The government of Sierra Leone under the Ministry of Social Welfare, Gender and Children's Affairs launched a Children's Forum Network (CFN) on the Day of the African Child in 2001. The forum has an administrative wing and a children's parliament. The forum is a national 'child-to child' organization with branches in the three Provinces and the Western Area, as well as district chapters. It was established with the express objective of enabling children's access to information, rights to be heard and participate in national and provincial decisions and processes that impact on them.<sup>655</sup> The ACERWC has recommended to the government of Sierra Leone that children's parliaments should be established by law at the district level with representation from children in vulnerable situations including girls and children with disabilities.<sup>656</sup> The Committee also recommended that the State Party should establish a mechanism through which the views of children's parliaments are given due consideration in the legislative and policy making processes in the country.<sup>657</sup>

Under Decree No. 100/167 of 5 June 2012 Burundi established a National Children's Forum which is a legal framework for the expression of children on all issues that concern them.<sup>658</sup> The Forum has delegations at regional and local level which represents both a platform of expression for children and a space for consultation and advocacy for better protection, survival, development and participation of children.<sup>659</sup> The Forum has representation from the village to the national level, and ensures representation of orphans and vulnerable children (OVCs), including children with disabilities. It is seen as a crucial mechanism for strengthening awareness of children's issues and placing children higher on the national agenda.<sup>660</sup>

Guinea Bissau has a National Children's Parliament which is institutionally assumed by the State (it is established in the very building of the National Assembly which covers its operating costs through the budget of the National Assembly).<sup>661</sup> The National Children's Parliament (PNI), is made up of children parliamentarians, from all regions of the country, in equal numbers and proportional to the members of the National People's Assembly (ANP), chosen by constituencies.<sup>662</sup> The government of Senegal is in the process of finalising and passing a decree establishing the National Children's Parliament.<sup>663</sup> To this regard, the ACERWC encouraged the State party to finalise this process which will formalise and build the capacity of the Children's Parliament with branches all over the country.<sup>664</sup>

## ***Monitoring and Accountability of Laws, Policies and Programs***

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651 Ibid, para 51.

652 Ibid, para 49.

653 Amber Sherman 'The children of Mambasa have a parliament! 2018 <https://ponabana.com/childrens-parliament-drc/>

654 World Vision 'Children's Parliaments and Children's Councils in World Vision Programmes' 2015, p5.

655 Government of the Republic of Sierra Leone Initial Report on the African Charter on the Rights and Welfare of the Child 2002-2014, para 132.

656 Concluding Recommendations by the ACERWC on the Initial Report of the Republic of Sierra Leone, 2017, para 16.

657 Ibid.

658 Human Rights Council 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 for Burundi, A/HRC/WG.6/15/BDI/1, 2012, para 12.

659 Burundi initial report on the African Charter on the Rights and Welfare of the Child, 2017, para 42.

660 UNICEF Annual Report 2013 – Burundi, p5 at [https://www.unicef.org/about/annualreport/files/Burundi\\_COAR\\_2013.pdf](https://www.unicef.org/about/annualreport/files/Burundi_COAR_2013.pdf)

661 NGOs Alternative Report on the Implementation of the United Nations Child Rights Convention in Guinea-Bissau, 2011, p12

662 Republic of Guinea-Bissau, 1st Implementation Report of the African Charter on the Rights and Welfare of the Child (2008 – 2018), para 141.

663 Concluding Observations and Recommendations by the ACERWC on the Republic of Senegal Periodic Report 2019, para 17.

664 Ibid.

By 2020 member States should have considered the views of children and young people in the monitoring and accountability of all laws, policies and programmes affecting children

Participation as a fundamental right for children, should be considered by State Parties in the monitoring and accountability of all laws, policies and programmes affecting them. Participation is also a means through which other children's rights can be realised.

In order to promote the participation of children, Tunisia reported to the CRC Committee that it has conducted a study into how children and adolescents exercised their rights to participation and responsible citizenship.<sup>665</sup> A total of 320 children of both sexes, their ages ranging from 6 to 18 and some with disabilities, participated in the initiative.<sup>666</sup> The results of the study were absorbed into the draft of a national action plan to promote the involvement of children in the areas of laws and institutional mechanisms, family life and public life. The results were also used to develop areas in which institutions could intervene in the field of children and adolescents, in media and communications technologies as well as in areas such as data, research, studies and university training.<sup>667</sup>

Through Tanzania's children's councils, children have participated in preparation of the National Child Status Reports in 2010 and 2011.<sup>668</sup> These reports are annually submitted to the House of Representatives for consideration on the 16th June, which is the Day of the African Child (DAC). In order to give children's views a high priority, these reports normally include a second part which is merged into a National Child Status Report. In the drafting processes of the Law of the Child Act in Tanzania mainland and the Children's Act in Zanzibar, the State Party also ensured that children were adequately consulted and fully participated in giving their views concerning the proposed laws.<sup>669</sup> In Benin, the National Advisory Council for children is regularly consulted at all levels in the development of policy documents, strategies and others.<sup>670</sup> Children were consulted in among others, the development of the Child Code; the national child protection policy; Adolescence and Youth Reproductive Health Peer Educators' Strategy Documents, the National Program for the Promotion of Entrepreneurship action plan and the drafting of Benin's initial report to the ACERWC.<sup>671</sup> The National Advisory Council for Children in Benin also represented children in the drafting of Benin's Report to the ACEWRC in 2019.<sup>672</sup>

Kenya submitted that children participated in the development of the Children's Bill, of 2017 through regional forums and national validation meetings. Participants were drawn from children's institutions, those living with disabilities and others from street families.<sup>673</sup> Additionally, the views of children were incorporated during the development of Kenya's periodic report to the ACERWC.<sup>674</sup> In 2015, Egypt organised a Children's Forum with the aim of activating children's participation in writing Egypt's periodic report submitted to the CRC Committee and in developing the national strategy and plan for childhood, with the participation of 50 children, and also the Governorate Children's Forum to discuss the National Plan for Childhood in 2016.<sup>675</sup>

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665 Combined fourth to sixth periodic reports submitted by Tunisia under article 44 of the CRC, CRC/C/TUN/4-6, 30 April 2018, para 28.

666 Ibid, para 29.

667 Ibid, para 28.

668 Consolidated 2nd, 3rd and 4th Reports on the Implementation of the African Charter on the Rights and Welfare of the Child by the Government of the United Republic of Tanzania. See also Report on the 29th Ordinary Session of ACERWC, 2017.

669 Ibid.

670 Ibid, para 34.

671 Combined (Initial and Periodic) Report of Benin on the Implementation of the African Charter on the Rights and Welfare of the Child, 2015, para 34.

672 Concluding observations and recommendations of the ACERWC on the initial report of the Republic of Benin 2019, para 10.

673 Kenya Second and third State Party Periodic Report 2012- 2017 on the African Charter On The Rights and Welfare of the Child, 2018, para 3.3.

674 Ibid.

675 The Egyptian Arabic Republic combined fifth, sixth and seventh periodic reports on the United Nations Convention on the Rights of the

Djibouti consulted with several groups of children in the drafting of its National Strategic Action Plan for Children. The State Party welcomed the demands made by children and incorporated in the National Strategic Action Plan for Children a component entitled “Promotion and strengthening of children’s participation in public life.”<sup>676</sup>

## ***National Parenting Education Programs***

By 2020 member States should have adopted a nation-wide parenting education program to educate parents how to involve a child in a family decision-making process on all matters concerning the child, to grant a child the opportunity to ask questions and how to give due weight to such views based on the child’s maturity and evolving capacity

With the aid of international non – governmental organisations parenting programs are present in Ethiopia, Uganda and Nigeria under the name Better Parenting.<sup>677</sup> The program was first initiated in Ethiopia in 2012, by FHI 360 through the Yekokeb Berhan Program. Between 2012 and 2015, the Yekokeb Berhan Program used the Better Parenting training manual developed by FHI 360 to educate over 73,500 parents and caregivers across Ethiopia through a network of more than 850 implementing partner staff and 25,000 community volunteers.<sup>678</sup>

The Better Parenting program is a parenting education program whose goal is to see that families have the knowledge and skills needed to raise healthy, safe and resilient children. The program has three basic strategic objectives which are: to strengthen the caregiver-child relationship; to increase the caregiver’s capacity to understand family needs and access resources and services; and to improve the caregiver’s capacity to protect children from all forms of harm and exploitation.<sup>679</sup> Although the program does not directly refer to involvement of children in family decision making process, it does enhance the relationship between children and care givers which in turn has high possibility for children to be involved in decision making.

South Africa has two parenting programs, the Sinovuyo Caring Families Programme (SCFP) for parents of 2 to 9-year-olds with challenging behaviour and the Positive Parenting Skills Training (PPST) which targets parents of 5 to 12-year-olds. These programs are aimed at providing parents with skills to develop a positive relationship with their child and to manage misbehaviour in a non-violent way. The PPST programs covers topics such as building children’s self-esteem, practising assertive parenting, gaining children’s cooperation, and applying effective discipline and problem-solving, among other things.<sup>680</sup>

## ***A culture of inclusive participation at family level***

By 2020 member States - At the family level, a culture of inclusive participation is established, a child is involved in all family decision-making processes on matters concerning him or her, parents are aware that any decision arrived at must be in the best interest of the child.

Children’s right to participate in family decision-making processes on matters that concern them, still faces enormous implementation challenges and the family seems to be the beehive of such

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Child, 2020.

676 Combined third to fifth periodic reports submitted by Djibouti under article 44 of the Convention on the Rights of the Child, 2019.

677 The program was mainly supported by USAID.

678 Art of Better Parenting <https://www.fhi360.org/sites/default/files/media/documents/resource-better-parenting-fact-sheet.pdf>. In its original form, Better Parenting was developed, pre-tested, implemented and evaluated in Ethiopia. The programme showed evidence of significant positive change in parenting, knowledge, improved adult-child communication and a reduction in harsh discipline.

679 March 2012 (original); July 2014 (revised for REPSSI); May 2016 (expanded for Uganda); September 2016 (adapted for Nigeria); May 2018 (final expansion for Nigeria). See Better Parenting Facilitator Manual [http://ovcsupport.org/wp-content/uploads/2018/05/Better-Parenting-Facilitator-Manual\\_FINAL\\_high-res-for-printing\\_23-5-2018.pdf](http://ovcsupport.org/wp-content/uploads/2018/05/Better-Parenting-Facilitator-Manual_FINAL_high-res-for-printing_23-5-2018.pdf) , Better Parenting Plus – Community Discussion Guide <https://www.crs.org/sites/default/files/tools-research/better-parenting-plus.pdf>

680 Inge Wessels, Soraya Lester and Catherine L Ward ‘Engagement in parenting programmes: Exploring facilitators of and barriers to participation Institute for Security Studies Policy Brief 82, 2016.

challenges.<sup>681</sup> Most African families have for many years been surrounded with barriers hindering children from participating in family decision-making processes, built on reasoning such as: that children's participation in family decision-making processes will undermine parental authority and control, encourage disrespect for parents, expose children to dealing with technical issues which could overburden them, waste time, and put children at risk, amongst other things.<sup>682</sup>

A survey of various African countries reveals that many countries have not yet established a culture of including children in family decision making processes on matters that concern them. A somewhat positive culture is recorded in Guinea Bissau and Benin. In Guinea Bissau, a Children's Fortnight is held at the beginning of June every year, during which several actions are taken to gather children's opinions, and actions are often carried out that allow the family members to know how to respect the child's point of view on matters concerning them.<sup>683</sup> Benin reported that in terms of its Guardianship laws, a 16 year-old minor can call a family council meeting (article 478 of the Personal Family Code) and a minor that completed 16 years of age may on a consultative basis, participate in a family council meeting (Article 481 of the Personal and Family Code).<sup>684</sup>

Comoros reported a lack of interest that adults attach to children's rights to expression as a barrier to child participation in family decision making.<sup>685</sup> In Mauritania, the child is considered as a being who owes obedience and respect to parents and adults; his point of view is not taken into account even in matters concerning him.<sup>686</sup> In Ghana, the opinions of children are still considered immature and therefore do not benefit from the necessary respect.<sup>687</sup> The State Party attributes this to 'die hard traditions'.<sup>688</sup> South Sudan also reported that there are entrenched cultural barriers that prevent children's voices from being heard in families, communities and within the broader society.<sup>689</sup> In Somalia, the family and the community believe that once a girl undergoes FGM, she is ready for marriage even if she is still in school, and such marriage takes place without the consent or views of the child being considered.<sup>690</sup> The State Party cites deep cultural traditions and beliefs that have existed for a long time where children do not have a right to be heard, as the main hindrances.<sup>691</sup> Whilst the national legislation provides a strong foundation for protecting, respecting and promoting children's right to participation in South Africa, a range of policy and implementation gaps and barriers to child participation persist. These include cultural barriers, adult resistance, and lack of adult capacities to facilitate child friendly participatory processes.<sup>692</sup>

## Progress by the committee

### *Monitoring of Implementation of the Charter*

By 2020 ACERWC should have considered the views of children and young people in the monitoring and accountability of implementation of the Charter

681 Fokala E 'Implementing Children's Right to Participation in Family Decision-Making Processes in Africa, Abo: Åbo Akademi University Press, 2017, p127.

682 Ibid.

683 Republic of Guinea-Bissau, 1st Implementation Report of the African Charter on the Rights and Welfare of the Child (2008 – 2018), para 143.

684 Combined (Initial and Periodic) Report of Benin on the Implementation of the African Charter on the Rights and Welfare of the Child, 2015, para 60.

685 Comoros Initial Report on the Implementation of the African Charter on the Rights and Welfare of the Child, 2017 p38.

686 Mauritania Initial Report on the Implementation of the African Charter on the Rights and Welfare of the Child, 2016 para 99.

687 Combined (Initial and Periodic) Report of the Republic of Ghana, on the Implementation of the African Charter on the Rights and Welfare of the Child (2005-2013), para 66.

688 Ibid, para 67.

689 Initial report of South Sudan submitted under article 44 of the Convention on the Rights of the Child to the Committee on the Rights of the Child, 2020, para 72.

690 Initial report submitted by Somalia under article 44 of the Convention on the Rights of the Child, submitted 2019, para 107.

691 Ibid, para 110.

692 Save the Children 'South Africa - National Child Participation Framework', 2018, p8.

Child participation is vital to the work of the ACERWC as it is the body responsible for the implementation, promotion, and interpretation of the African Children’s Charter. The Committee recognises the views of children and young people in the monitoring and accountability of the Charter mainly through the commemoration of the Day of the African Child. The celebrations themselves inevitably involve children in respective countries, and the UNICEF AU office annually produces a report detailing the various ways in which the DAC has been commemorated.<sup>693</sup> As much as possible, children are consulted beforehand to get their views on issues that should be highlighted to States Parties through the DAC celebrations.<sup>694</sup> The selected theme is thereafter elaborated in a concept note incorporating the views of children as well as the ideas and issues that arise in the course of the Committee’s Days of General Discussion.<sup>695</sup> The Committee has taken active steps to involve children in the selection of the themes for the DAC. At the 34<sup>th</sup> session of the Committee, UNICEF reported that 1652 adults and 1373 children participated in the commemoration of the Day of the African Child in 2019.<sup>696</sup> According to the report, the level of child participation varies from country to country, where the number of children participating in the commemoration was recorded as low as 9 in some countries.<sup>697</sup> This indicates the need for enhancing child participation in DAC commemorations. 447 boys and girls from 13 Countries across Africa participated in a consultative meeting from February to March 2015 to identify suitable themes for the DAC for 2016-18 that will address the problems they face as children in Africa. Boys and girls, in and out of school and children with disabilities aged 7-18 years participated in the exercise.<sup>698</sup>

### **Celebration of the Day of the African Child in Zimbabwe – 2019**

As part of the ACERWC’s Mission, on 15 June 2019, the Committee was invited by the Government of Zimbabwe to observe the celebration of the Day of the African Child (DAC) in the Country. The DAC celebrations included a live seating of the Child Parliament in the presence of the President as well as Ministers of sectors that work on children’s rights and welfare. The child parliament has strong structures which are a replica of the structure of the Government of Zimbabwe and has representations from all districts as well as children with various forms of disabilities. At this DAC the key note speech was delivered by the Child President and the Parliament debated on the theme of the DAC for 2019, i.e. Humanitarian Action in Africa: Children’s Rights First and other issues that are pertinent to children.

The Child President requested the celebration of DAC in Chimanimani in solidarity with those who have been affected by Cyclone Idai which destroyed 139 schools, and 90,847 students were affected and hence schools were experiencing a shortage of teaching materials, reduced staff members, infrastructure that need massive repairs, as well as low attendance rates.

Additionally, the ACERWC State reporting guidelines require that the drafting process of a State Party Report should actively involve children and child-led initiatives such as Youth or Child Parliaments and Child Rights Clubs, etc.<sup>699</sup> This is to ensure that the State reporting process as a monitoring tool for the implementation of the Charter adequately considers the views of children. Guinea Bissau reported that at the initial phase of data collection for its State Party Report, initial meetings were held with the Institute for Women and Children, including children’s organizations, institutions and

<sup>693</sup> Save the Children ‘Advancing Children’s Rights: A civil society guide on how to engage with the African Committee of Experts on the Rights and Welfare of the Child’ 3ed, 2019, p82.

<sup>694</sup> Ibid.

<sup>695</sup> Ibid.

<sup>696</sup> ACERWC 34th Session, Report of the 34th Session of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) 25 November – 05 December 2019 Cairo, Egypt.

<sup>697</sup> Ibid.

<sup>698</sup> Report of the 29th Session of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) 2nd – 9th May 2017, Maseru, Lesotho, para 54.

<sup>699</sup> ACERWC Guidelines on the Form and Content of Periodic State Party Reports to be submitted pursuant to Article 43(1)(b) of the African Charter on the Rights and Welfare of the Child, para 10.

child rights advocacy organizations, as the main data sources.<sup>700</sup> States parties will benefit from child participation within the reporting process by receiving accurate information from children regarding how the programmes and facilities they have initiated to implement the ACRWC are being used.<sup>701</sup> Child participation will also enable the committee to determine how well they are meeting the goals for which they were designed. These opinions will also assist the States Parties in developing new, or adapting old, programmes so they are more precise and effective.<sup>702</sup>

Involving children in the preparation of the CSO complementary reports is also regarded as a good practice.<sup>703</sup> The Committee benefits from the participation of children in the reporting process because a civil society report that involves children will give a more personal, critical and practical approach than the State Report.<sup>704</sup> Children's views can either be incorporated into the main body of the report or placed in a separate section to highlight the key issues from their perspectives. Children can even prepare their own report, as the children of Zimbabwe did when the Zimbabwe CSO report was presented to the ACERWC in 2014. In any event it is important to clearly highlight the contribution children have made to the report, the main issues that they have raised and recommendations that they have made.<sup>705</sup>

Children can also be part of delegations at the examination of State Party reports to the ACERWC. At the presentation of its initial implementation report to the ACERWC, the government of Cote d'Ivoire brought a child representative as part of their delegation which was commended by the Committee.<sup>706</sup> South Africa also took children as part of its delegation to the Committee (a child with a disability and a refugee child being among them). The Committee also allows children led organisations to participate in some of its sessions. In 2018, a team of the African Movement of Working Children and Youth (AMWCY) participated in the 32<sup>nd</sup> ordinary session of the ACERWC.<sup>707</sup> The African Movement of Working Children and Youth is one of the child led organisations granted observer status to the ACERWC in 2012.

Save the Children undertook a mapping of the situation of child participation in Africa, in coordination with its partners and stakeholders such as the ACERWC and children.<sup>708</sup> From the mapping study, Save the Children reported that only 4% of countries that have reported included presentations of separate child led reports to the ACERWC.<sup>709</sup> According to the study, there is lack of clarity on how children should engage with the ACERWC in State and CSO reporting processes.<sup>710</sup>

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700 Republic of Guinea-Bissau, 1st Implementation Report of the African Charter on the Rights and Welfare of the Child (2008 – 2018), para 30.

701 Save the Children 'Advancing Children's Rights: A civil society guide on how to engage with the African Committee of Experts on the Rights and Welfare of the Child' 3ed, 2019, p 70.

702 *ibid.*

703 *ibid.*

704 *ibid.*

705 *ibid.*

706 Consideration of the State Party Report: Cote d'Ivoire Report at the 29th Session of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) 2nd – 9th May 2017, para 29.

707 See <http://www.english.maejt.org/participation-at-the-32nd-ordinary-session-of-acerwc-november-12th-18th-2018-addis-ababa-ethiopia/>

708 ACERWC 34th Session, Report of the 34th Session of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) 25 November – 05 December 2019 Cairo, Egypt, para 37.

709 *Ibid.*

710 *Ibid.*

## Recommendations from Mapping Study on Child Participation

The study proposed that the ACERWC should:

Develop child participation guidelines that informs the work of the Committee in engaging with children in the execution of its mandate. This includes its mandate to consider state party reports and communications as well as to undertake various consultations including in the day of general discussions.

- Develop a General Comment on child participation, as a policy directive for State parties, CSOs and other stakeholders, to implement child participation from family level to regional level.
- Consider the idea of an African Children's parliament to enable children to continually and systematically participate in many issues concerning them at the continental level.<sup>711</sup>

After recommendations from the study by Save the Children, the Committee decided to develop child participation guidelines in a process led by itself and taking into consideration the Mapping on Child Participation in Africa study outcomes.<sup>712</sup> The Committee also decided to address the issue of separate reports by children in the Guidelines that are going to be developed. Moreover, the Committee decided to give a slot to children in all its upcoming sessions to ensure child participation.<sup>713</sup>

## *Participation in Monitoring Agenda 2040*

By 2020 ACERWC should have developed and implemented platforms for children to participate in the monitoring of this Agenda.

**Children should be involved in meetings/conferences going forward**

The ACERWC has not yet developed platforms for children to participate in the monitoring of Agenda 2040. At a workshop held by the ACERWC to monitor the implementation of Agenda 2040 hosted by the EAC Community, the EAC Community recognised this lack of involvement of children in the monitoring of Agenda 2040. The EAC Community suggested that there is need for indicators to be framed in a way to ensure that there is wide consultation amongst the different groups of children such as street connected children and children engaged in commercial sex work etc.<sup>714</sup> The EAC Community recommended that children should be involved in meetings/conferences and workshops concerning the Agenda going forward. Participants at the workshop felt that there is

711 Ibid, para 140.

712 Ibid, para 158.

713 Ibid, para 159.

714 Report of the workshop on the popularization of Agenda 2040 and cross border issues affecting children in the East African Community 2018, para 4.2 (c).

a need to establish a specialized committee on technical issues and organize a children's summit annually to ensure that children's voices are heard.<sup>715</sup>

## Conclusion

Aspiration 10 is still far from being achieved on the African continent. Both the Committee and State Parties must work hard to ensure that children's voices are heard in matters that concern them.

The Committee has decided to adopt child participation guidelines taking into consideration the mapping on child participation study done by Save the Children. However, it has not laid out dedicated processes for children's participation for this Agenda. A permanent and dedicated forum in the form of a child parliament, or ad hoc forum in the form of a child caucus aimed at bringing forward the voices of children should be created for these processes.

Several State Parties across the regions have created child parliaments to ensure the involvement of children in parliamentary processes, however many still do not have this engagement process. The majority of State Parties have not developed nation-wide parenting education programs to educate parents on how to involve children in family decision-making processes on all matters that concern them. A few countries have considered the views of children and young people in the monitoring and accountability of all laws, policies and programmes affecting children.

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715     *ibid.*

## THE IMPACT OF COVID 19, EBOLA AND OTHER EMERGENCIES AND DISASTERS ON THE AGENDA 2040 GOALS



Each and every aspiration of Agenda 2040 has been affected by some of the disasters and pandemics that have prevailed in the years since 2016.<sup>716</sup> Many Charter rights have been negatively affected, such as the right to health, to education, to survival and development, and freedom of association, to mention a few. While the pandemics showed that many governments were unprepared to manage the emergency needs of their populations, COVID-19 in particular has also uncovered another disturbing defect—the fault line between those with, and those without, access to the digital world.

There is arguably no comprehensive guidance from treaty bodies such as the ACERWC or the CRC Committee as to the obligations of State parties that arise in the context of pandemics, emergencies or disasters. The closest advice can be derived from a comment made in 2008 during a Day of General Discussion hosted by the CRC Committee on “children’s right to education in emergencies.” One participant referred to the “3-Ps”: *predicting* emergencies, *preparing* for emergencies and *preventing* emergencies and said it was necessary to have tools for all of these. In addition, guidance from the ACERWC was issued early on in the days of the pandemic as follows:

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716 For instance, the Ebola epidemic in West Africa which started in 2013 was still being experienced in 2016.

## **THIS IS THE TIME TO REFLECT, ADAPT AND REGENERATE<sup>717</sup>**

The ACERWC issued a press release on 6 April to remind states of the additional obligations that they incur under the present situation towards children.

“ACERWC would like to stress the fact that beyond its immediate impacts on children health and that of their parents or caregivers, the social and economic disruptions caused by the outbreak also harms children’s rights and welfare. Reports indicate that millions of children in Africa are likely to face increasing threats to their safety and wellbeing, including gender-based violence, exploitation, and separation from families. Millions of others are ‘temporarily’ out of school due to the COVID-19, with the risk of permanent drop out, especially of children in vulnerable situations, such as inter alia, the girl child, children with disabilities, children who belong to economically disadvantaged parents and children living in rural areas to mention but a few.

The pandemic is likely to result in a devastating effect on family functioning by limiting sources of income for households, resulting in limited access to adequate nutritious food, health care, appropriate shelter and other basic needs, which will then have an immediate and longer-term consequences on the life, survival and development of children.

Against the backdrop of the above-mentioned facts and reiterating the obligations under the African Children’s Charter, which requires States to ensure the survival, protection and development of the child, enabling them to enjoy the best attainable state of physical, mental and spiritual health, the ACERWC strongly recommends Members States of the African Union to integrate the following child protection measures in their responses to the global pandemic of COVID-19:

- a. Establish a dedicated database to collect, record and monitor data on the number of children left without parental care due to COVID-19;
- b. Pursue policies that ensure support for families in meeting their responsibilities towards their children;
- c. Provide financial and material assistance to families whose income generating opportunities are curtailed due to the pandemic;
- d. Employ innovative measures, share experience and enhance collaboration to minimize the potential impact of the pandemic on the global financial system at macroeconomic level; for instance, Member States may offer to offset costs to businesses for workers taking paid leave to care for children during school closures; or introduce an emergency paid parental leave for families with younger children and children with special needs.
- e. Provide targeted financial and material support to interim care centres and families, including child-headed households and foster families;
- f. In a situation where a child is separated from her/his parents or primary caregivers, States should formulate and implement clear policies to ensure family tracing and reunification; or in case that is not possible, pursue placement within the extended family;
- g. Facilitate range of alternative care options in line with the principle of the best interests of the child, which may include placement within residential care, agencies and facilities responsible for formal care, and foster care arrangements.
- h. Further to the above-mentioned measures, the ACERWC strongly recommends for Member States of the African Union to take into considerations the principles included in the UN Guidelines for Alternative Care of Children, Resolution 64/142, as adopted by the General Assembly.”

COVID-19 has had a profound impact on children, with the poorest and most vulnerable children being the hardest hit. According to the Alliance for Child Protection in Humanitarian in humanitarian Action, the COVID-19 pandemic affects children in three main ways: (i) through infection with the virus itself; (ii) through the social and economic impacts of restrictive measures, such as control, containment and mitigation, intended to reduce or stop transmission of the virus; and (iii) through the potential longer-term effects of the crisis including economic downturn and a delay on progress towards achieving the Sustainable Development Goals. The pandemic poses unprecedented challenges as service delivery needs to be aligned with public health measures of social distancing and other

<sup>717</sup> As below.

measures such as curfews or “lockdown”.

Restrictive measures imposed by Governments across the continent to prevent the spread of the virus forced the closure of essential services, schools and other childcare facilities. It has also greatly affected livelihoods and has resulted in an increase in a need for basic services and child protection. Those who have access to digital tools are able to conduct their lives from the safety of confinement, including engaging in education, online shopping for essentials, and working from a distance. These groups have not suffered that much during the lockdown. But at the same time, those who lacked access—for example the poor or those without adequate infrastructure, digital credentials, digital education, or simply little to no opportunities because of the nature of how they earn a living—have suffered and will continue to suffer significantly going forward.

In addition to COVID-19 and Ebola, disease outbreaks such as Acute Watery Diarrhoea (AWD), cholera and measles continue to lead to preventable deaths across a number of countries. Climatic shocks, including flooding leaving children without shelter and vulnerable to waterborne diseases while El Niño-induced drought continues to impact children, impacting food security and raising risks of severe acute malnutrition. While the pandemic rages, the Horn of Africa is also currently experiencing the worst outbreak of desert locusts in decades, which is decimating crops in communities that were already facing shortages or insecurity. Other disasters like a powerful cyclone which hit north-western Somaliland, for instance, affected some 168,000 people, half of whom were children.

In all responses to pandemics and disasters, children inevitably suffer disproportionately. As previous studies have shown, as a general proposition, pandemics put women and girls at greater risk. In many developing countries, young girls are forced to drop out of school and work to supplement household income. According to the Malala Fund report, the share of girls not attending school nearly tripled in Liberia after the Ebola crisis, and girls were 25 percent less likely than boys to re-enrol in Guinea.<sup>718</sup> As a huge upsurge in VAC, child marriage, and in FGM has been noted in the current COVID-19 pandemic, obviously affecting girls. This section of the report details more fully some of the concerns raised which need to be part of the next five year review of Agenda 2040.

## ***Birth registration***

Birth registration programmes have had to reconfigure themselves, as civil registries shut down and were unavailable. “It appears that COVID has totally disrupted birth and death registrations due to closure of civil registration bureaus and the confinement measures.”<sup>719</sup> According to experts, COVID-19 has created an unprecedented demand for what is termed “end to end digital” in identity management.<sup>720</sup> Being end-to-end digital requires digital onboarding, screening, service delivery, payment, and access backed by authentication. The consensus is that the transition to an entire digital experience of civil registration has been accelerated by at least a decade by the onset of COVID-19 and the enduring measures likely to be put in place to reduce contagion.

As regards SDG 16.9, the measurement for the indicator (percentage of children under the age of 5 that have a birth certificate) needs to be altered dramatically to count digital identity in the total percentage of individuals that possess legal identity.

Principles on Identification were formulated collaboratively by the majority of the organisations involved in identity for development.<sup>721</sup> They are founded on three themes: inclusion, good design and governance. They remain relevant in the post- COVID-19 era. This challenge is now for civil registry personnel to rapidly advance access to digital birth registration, especially planning for health facilities at which children are being born are able to input information immediately.

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718 <https://blogs.imf.org/2020/07/21/the-covid-19-gender-gap/> (accessed 26 July 2020).

719 Dr J Attick, head of ID4Africa in a newsletter dated July 7 2020.

720 As above.

721 <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/213581486378184357/principles-on-identification-for-sustainable-development-toward-the-digital-age>

## *Every child survives and has a healthy childhood*

Whilst children who contract COVID-19 are most likely to recover if infected, there are nevertheless parallel risks to child survival and health. First, the ongoing crisis could increase the number of children living in poor households by up to 106 million by the end of 2020, according to the latest analysis from UNICEF and Save the Children. Immediate loss of income often means families are less able to afford basics, including food and water, which poses threats to survival.

A July 2020 study in South Africa found as follows:

“Children may be the greatest victims of the pandemic, the results of the survey shows. According to Spotlight, the Nids-Cram study includes data from roughly 7 000 respondents across the country who were asked a series of questions telephonically about hunger, health and employment between May and June. ‘In a strange way, the virus has the least effect on children, but children are going to be the greatest victims of the pandemic,’ says Professor Servaas van der Berg, an economist and National Research Foundation Chair in Social Policy from Stellenbosch University. Van der Berg is one of 30 social scientists involved in the survey. Nearly half (47%) of all survey respondents reported running out of money for food in April, the first month of the country’s hard lockdown. Adding to this, 15% said that a child in the household had gone hungry in the last week (prior to the survey interview). In households with children, 8% of respondents reported frequent hunger, which is defined as three or more days per week. To put these numbers into perspective, the General Household Survey (GHS) conducted in 2018 found that 16% of households in SA reported child hunger, meaning that a child went hungry at some point in the last year. The Nids-Cram findings are reflective of the beginning of the lockdown period, and Van der Berg explains, cannot be compared to data like the GHS that reflects an entire year. The noticeable rise in child and household hunger during the lockdown period can largely be linked to the loss of income and running out of money for food, says Van der Berg.”

Second, indirect effects on child survival stemming from strained health systems, household income loss, and disruptions to care-seeking and preventative interventions like vaccination may be substantial and widespread. Millions of children are in danger of missing life-saving vaccines against measles, diphtheria and polio due to disruptions in immunization service. Polio vaccination campaigns have been suspended. Access to health care facilities has been impacted by lockdowns, and attention diverted from primary health care programmes to dealing with the pandemic.

Lack of access to sexual and reproductive health services has potentially life threatening effects upon babies *in utero* and newborns.<sup>722</sup> Access to sexual and reproductive health services for adolescent girls and young women, including modern contraception, menstrual health and hygiene managements, access to safe abortion and post abortion care (where legal), and access to services for the clinical management of rape have been singled out.<sup>723</sup> At the same time, some countries, like Kenya, have seen an increase in teenage pregnancies. Experience from previous epidemics like Ebola and SARS showed that the indirect effects on child survival outstripped the direct effects sometimes.

Mental health and wellbeing can be seriously affected.

“When the state of emergency was announced by the President, I began to panic. We were told that to prevent getting infected from this coronavirus, we must stay at home and not go to school or work. This makes it very difficult for me because I rely on small on the spot jobs, this is how I have been providing for my family.” Deolinda, aged 19, Mozambique.<sup>724</sup>

722 [https://www.gutmacher.org/sites/default/files/article\\_files/4607320.pdf](https://www.gutmacher.org/sites/default/files/article_files/4607320.pdf) (accessed 9 July 2020).

723 Plan International ‘Living under lockdown’ September 2020.

724 Plan International ‘Halting Lives- The impact of COVID 19 on Girls and young women’ September 2020. This large international study includ-

Third, 368.5 million children across 143 countries who normally rely on school meals for a reliable source of daily nutrition must now look to other sources.<sup>725</sup> This directly impacts their nutritional status, with knock on effects for their health and well-being,

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ed interviews with over 7000 girls in six African countries (Egypt, Ethiopia, Ghana, Mozambique and Zambia) from amongst the 14 target countries in the study.

725 World Food Programme 2020.

## ***Equal Education v Minister of Basic Education, July 2020***<sup>726</sup>

The applicants on an urgent basis sought declaratory orders against the Minister of Basic Education [the Minister] and the MEC's of Education of eight provinces of South Africa [the MEC's] declaring that they are in breach of their constitutional and statutory duty to ensure that the National School Nutrition Programme [NSNP] provides a daily meal to all qualifying learners whether they are attending school or studying away from school as a result of the COVID-19 pandemic. The Minister and MEC's denied that their constitutional duty to provide basic education included the duty to provide basic nutrition. The NSNP is a programme with the NSNP's main aim to improve the quality of education by enhancing learning capacity, school attendance and punctuality as well as contributing to general health development by alleviating hunger. It was evolved and at the time of the case, was now targeting all learners at schools from disadvantaged communities, and had been running for 26 years.

In this matter Covid-19 had the devastating effect of denying 9 million school going children at least one nutritious meal a day, leaving many, many children hungry and unfed while attempting to learn.<sup>727</sup> Evidence showed that although the Government had announced measures to mitigate the loss of employment, income and suffering due to the lockdown, the programmes did not have the desired reach.<sup>728</sup> Feeding schemes were implemented and after two months of lockdown the Government stated that 788 000 food parcels were delivered. It is undisputed that the NSNP would have on its own provided 45 million meals per week, rendering the generous estimate of 788 000 food parcels bleak in comparison. There is, and was, no viable substitute for the NSNP for the children.<sup>729</sup> The net cut-back in feeding programmes mean that "many children in these households face the risk of malnutrition with possible long-term damage to their health."<sup>730</sup>

Ninety-eight percent of children go to school, despite being poor. Schools are thus the critical points of contact for reaching vulnerable children with no other state service that can connect with children on such scale and with such regularity. South Africa had reported with pride on the success of this programme to various treaty bodies, noting that the twin aims of the programme were nutritional and educational: the NSNP aims to foster better quality education by enhancing children's active learning capacity, alleviating short-term hunger, providing an incentive for children to attend school regularly and punctually; addressing certain micro-nutrient deficiencies.

Finding that there was an infringement of children's constitutional right to nutrition,<sup>731</sup> as well as the right to basic education, the Court was dismissive of the arguments of the respondents.

The Court was of the view that the Constitution also creates a negative obligation not to impair the right of access to the rights in our Constitution. Any deliberate retrogressive measure needs to be fully justified upon careful consideration with reference to the totality "of the rights provided for in the Covenant and in the context of the full use of the maximum available resources". In diminishing an existing right there is an infringement of the obligation to respect, protect, promote and fulfil the rights in the Bill of Rights contained in section 7(2) of the Constitution.

Any deliberate retrogressive measure needs to be fully justified upon careful consideration with reference to the totality "of the rights provided for in the Covenant and in the context of the full use of the maximum available resources."<sup>732</sup>

"If there was no duty on the Department to provide nutrition when the parents cannot provide the children with basic nutrition, the children face starvation. A more undignified scenario than starvation of a child is unimaginable. The morality of a society is gauged by how it treats its children. Interpreting the Bill of Rights promoting human dignity, equality and freedom can never allow for the hunger of a child..."<sup>733</sup>

Fourth, children and adolescents are having to cope with significant anxiety, stress and disruptions in

726 Case Number: 22588/2020.

727 Par 20.

728 Par 23.

729 Par 25.

730 Par 26. 11.6 million children live in households below the upper poverty line, and of South Africa's 20 million children, 13 million are enrolled in school. 9 million were on the NSFNP.

731 s28(1)(c) of the Constitution provides for a child's right to basic nutrition.

732 Par 46.

733 Par 53.

their daily lives as a result of COVID-19 and pandemic response efforts, including school closures, lack of social gatherings, increased social isolation, and more. These stressors pose a serious challenge to mental health and wellbeing.

Fifth, adolescents may be at an elevated risk of sexual violence, STIs (including HIV) and early pregnancy.<sup>734</sup>

Sixth, hand hygiene is a critical element in disease prevention. Yet billions of people lack soap and water at home, millions of children who are able to go to school lack soap and water at their school, and many health care facilities were not equipped to properly practice hygiene. Adequate water, sanitation and hygiene services for households, schools and healthcare facilities are essential to prevent the spread of infectious diseases including COVID-19. The low levels of coverage of these basic services contributes to the vulnerability of these populations to the pandemic.

## ***Sexual and reproductive health and harmful cultural practices***

COVID-19 is bringing hitherto unforeseen challenges to women's and girls' enjoyment of these rights. Tackling harmful practices – particularly the most widespread ones namely child marriage,<sup>735</sup> female genital mutilation, and gender-biased sex selection – is at the core of ensuring universal sexual and reproductive health and rights, particularly in times of global crisis. Past experience and research have shown that in times of crisis, intensified family economic stresses, and heightened concerns over girls' sexuality exacerbate these practices.

Twenty-five years on from the Cairo International Conference on Population and Development, it was estimated that ending female genital mutilation and child marriage would require \$3.4 billion a year, on average, from 2020 through 2030, to prevent 84 million girls from being subjected to these practices. Now as a result of COVID-19, the disruption of programmes to prevent female genital mutilation could result in an estimated 2 million female genital mutilation cases between 2020-2030 that could have been averted. Programme disruptions and economic hardship together will potentially result in an additional 13 million child marriages taking place over the next decade that would have otherwise not taken place (UNFPA, Johns Hopkins University, University of Washington, Victoria University, and Avenir Health).

Somali mothers and father are reported to have taken benefit of college closures amid the pandemic, asking nurses to carry out FGM on their daughters now once they have time to remain house to recuperate. Circumcisers have been extra aggressive in selling their enterprise amid the financial downturn attributable to the pandemic.

"The cutters have been knocking on doorways, together with mine, asking if there are younger ladies they'll minimize. I used to be so shocked," (name withheld) stated. "FGM is among the most excessive manifestations of violence towards women and girls. It's a lifetime torture for ladies. The ache continues till the woman goes to the grave. It impacts her training, ambition ... every part."<sup>736</sup> The United Nations Population Fund (UNFPA) predicts about 290,000 ladies in Somalia shall be subjected to FGM in the 12 months of 2020.<sup>737</sup>

In Nigeria, the United Nations Population Fund says at least 1, 025, 000 Nigerian girls still face genital circumcision every year. Nigeria still accounts for a quarter of the total number of female genital mutilation cases worldwide. Today, 33, 000 girls under the age of 18 will be forced into marriages usually to much older men. One in five females married today in Nigeria is underage. About 19 percent of women between 15 and 19 have begun child bearing. About 14 per cent would have given birth and four per cent are pregnant with their first child. The COVID-19 pandemic and its concomitant effects on the economy had worsened the plight of women and girls and deepened poverty. The

734 46.

735 Such as in Ethiopia, Kenya and Malawi.

736 <https://gruntstuff.com/somalia-sees-large-uptick-in-female-genital-mutilation-during-lockdown/70026/> (accessed 29 July 2020) (accessed 29 July 2020).

737 As above.

lockdown due to the pandemic has also made it impossible for schools to resume. In the absence of schooling, more girls are likely to drop out of school and other consequences could include early marriage and high fertility, morbidity and maternal mortality, abortion, and low self-esteem.

“The Covid-19 may have led to a higher proportion of malnourished women, girls and children. Covid-19 did not make it easy for women to access and utilise reproductive health facilities especially as the logistics of getting to health facilities were negatively impacted,” Dr Oyetunji, acting Chairman of the National Population Commission said.<sup>738</sup>

He further stated that the lockdown occasioned by the pandemic undermined the delivery of contraceptives such as condoms.

Before the coronavirus pandemic struck, Malawi already had one of the highest rates of child marriages in the world. But ever since schools closed to help combat the spread of COVID-19, remote areas have reported an increase in child marriages. Kachitsa village near Salima, a lakeshore district in central Malawi, is one such place. With no classes to attend, children spend their days playing around an old borehole. The words to their playground songs bear witness to the effect the pandemic has had on their daily lives. Many of these children have no hope that their schools will re-open anytime soon and they have also seen their friends being married off during lockdown.

A 2017 constitutional amendment raised the legal marriage age to 18 for both boys and girls in Malawi. Even so, a 2019 report from UNICEF said 46% of girls are married before 18. Poverty and lack of opportunities are the main factors behind these child marriages.

## ***Gender-based violence***

Cameroon and Mali are examples about which reports of increased GBV have been received. In each of the two countries, the evidence suggested that there was an increase in Gender-Based Violence (GBV) during the period of the coronavirus (COVID-19) pandemic, as countries applied restrictive measures to curb the spread of the virus. In Mali it was reported that there was a 35% increase in GBV, with 484 cases reported in April 2020 compared to 317 in April 2019.

The situation escalated to the point where Kenya’s president ordered an investigation into rising reports of violence against women and girls – including rape, domestic violence, female genital mutilation (FGM) and child marriage – as a result of coronavirus restrictions. Lockdowns to curb the spread of the new coronavirus have fuelled an upsurge in gender-based violence across the continent, with women and girls more isolated and vulnerable to abuse and exploitation, say women’s rights campaigners.

There are no official statistics on the number of cases of violence against women and girls in Kenya, but calls to helplines have surged more than 10-fold since lockdown measures were imposed in late March. Uhuru Kenyatta said he was concerned by “increasing tensions” within the home, noting that gender-based violence had increased, mental health issues had worsened, and instances of teenage pregnancy had escalated. “We must always remember that the family is a projection of the state. If the family is under attack, the state is under attack. If the family is weak, the country is weak,” Kenyatta said in a televised address.<sup>739</sup>

“Therefore ... I order the National Crime Research Centre to probe the escalating cases of gender-based violence (and) the worrying trend of cases where the girl child has been disempowered.”

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738 <https://punchng.com/over-one-million-nigerian-girls-still-circumcised-yearly-unfpa/> (accessed 11 July 2020)

739 <https://www.thedispatch.in/kenya-orders-probe-into-rise-in-violence-against-women-and-girls-during-pandemic/> (accessed 27 July 2020)

## Education

As a general point, in Africa, about 297 million learners have been affected. Their teachers and resources will remain underutilised for a while. The question for society is, “what next”? This is a valid concern given that no one is certain how long the health crisis will last. At the national and school levels, education technology (also known as EdTech) are trying to close the learning gap. In particular, virtual classrooms, TV, radio and online platforms have been activated or strengthened to support learning at a level that has not been seen before both inside and outside Africa.<sup>740</sup>

Broadly, learning continues through mass communication and internet-based resources. However, even within countries, the experience is uneven. Given that school closures were abrupt, about 75% of learners have limited or no access to interactive and internet-based learning materials. Such materials are open access but unreachable mainly due to connectivity related challenges. The effectiveness of educational technology depends on the strength of national networks and connectivity to technology. It's dependent on service providers and the devices at the disposal of schools, parents and learners, such as smartphones.<sup>741</sup> To add to these are country-specific market realities, such as taxes and incentives.

It must not be forgotten that parents and guardians have to work remotely to support the learning ecosystem by providing care, support and supervision to children's home learning. Much as it is a good bonding opportunity, they also at the same time have to attend to work related demands, and may also not themselves have the skills to support their children effectively.

Deep budget cuts to education and rising poverty caused by the COVID-19 pandemic could force at least 9.7 million children out of school forever by the end of this year, with millions more falling behind in learning, Save the Children warns in a new report.

Girls are likely to be much worse affected than boys, with many forced into early marriage. As the impacts of the recession triggered by COVID-19 hits families, many children may be forced out of school and into labour markets.

On a positive vein, many agencies working in education are strengthening distance learning wherever possible. Lessons are now delivered over the radio in Burkina Faso, Ghana, Rwanda and scores of other countries; on TV in Ethiopia, Libya and beyond; and on e-learning platforms.

Emergencies can provide a spur to accelerated education. For children who have not been to school or who dropped out of school before the COVID crisis and missed more than a year of learning – and as a result are over the expected age for their grade – a fuller accelerated education programme will be needed. Equally, if school closures last for more than a year, then these programmes will be needed for all affected children. Accelerated education programmes are flexible and age-appropriate, providing a basic education in a condensed format (for example, an eight-year primary curriculum in four years), using teaching and learning approaches that match young people's level of cognitive maturity. Following the Ebola epidemic in Sierra Leone in 2014, an accelerated learning project gave marginalised girls and boys the chance to learn. In 2019, 95% of a cohort of 197 pupils (109 girls, 88 boys) passed the national exams. In Uganda, through one Accelerated Education Programme, we enabled refugee girls and boys to gain access to learning. In 2019, 79% of a cohort of 508 pupils passed the national exams. With support from Save the Children and other NGOs, the Ugandan government has formalised and endorsed the Accelerated Education Programme curriculum.<sup>742</sup>

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740 The Conversation, April 19, 2020 (Moses Ngware, Senior Research Scientist, African Population and Health Research Center).

741 Smartphone penetration currently stands at far below 50% of the total population in most countries. A 2017 survey showed that smartphone penetration was at 51% in South Africa, 30% in Kenya and 13% in Tanzania. In Africa, internet penetration in March 2020 stood at 39.3% of the total population compared to the rest of the world at 62.9%. In a few countries such as Ghana and South Africa, smartphone and internet penetration seem to go hand in hand, but for other countries such as Kenya, Nigeria and Senegal, internet penetration is way ahead of smartphone penetration.

742 [https://resourcecentre.savethechildren.net/node/17871/pdf/save\\_our\\_education\\_0.pdf](https://resourcecentre.savethechildren.net/node/17871/pdf/save_our_education_0.pdf) (released 13 July 2020)

Save the Children estimates that of the 12 countries deemed to be at extreme risk of falling behind their SDG 4 target, 9 are in Africa – Niger, Mali, Chad, Liberia, Guinea, Mauritania, Nigeria, Senegal and Côte d'Ivoire – as being at 'extreme risk' of falling behind in their progress towards SDG4.

An additional 1.2 million children and young people were pushed out of school in Niger at the peak of the restrictive COVID-19 measures in the country, bringing the total number who were not receiving an education to 3.8 million. Although schools have now reopened, many of these pupils may never go back into education, Save the Children has warned. The organisation said the barriers in some parts of Niger included insecurity and attacks on education, poverty, child marriage and child labour. Children in Niger run the highest risk in the world of not returning to school after COVID-19 lockdown measures are lifted.<sup>743</sup>

## ***Child Labour***

Loss of income and the expectation for children to work during the school closure might result in more children engaged in hazardous or exploitative labour, including sexual exploitation and potentially online exploitation. Authorities in the DRC's south-eastern mining heartland are boosting efforts to tackle child labour amid concerns that the coronavirus pandemic could drive more families to put their children to work in mines, Mining Weekly reports. Mining accounts for 32% of Congo's national output and the economy has been hard hit by the pandemic, which has slowed demand for metals and other raw materials. The slump means mining workers are earning a fraction of what they did before the outbreak, and are more likely to take their children to work, according to activists and academics. Tens of thousands of children as young as six work without protective gear in artisanal mines in the country's southeast, according to rights groups including Amnesty International. About 15% of children aged five to 17 across Congo are engaged in child labour – with most doing dangerous work – a 2019 report by the National Institute of Statistics found.

Many mines were forcing workers to stay on site - to avoid coronavirus outbreaks - and providing insufficient food and water and inadequate housing, while protective equipment and hygiene measures were lacking.<sup>744</sup>

## ***Children in the alternative care system, and in the child justice system***

Children in the care system (in institutions) and those in institutions linked to the child justice system have been cardinaly affected by COVID-19. As UNICEF-IRC report "the consequences [of COVID 19] are particularly serious for children who are not within family care, such as those living in residential or institutional care, those living on the streets, and those living in conditions of servitude."<sup>745</sup>

In a number of States, children living in institutional care were rapidly released from institutions to families, other forms of alternative care, or to independent living without appropriate preparations in line with global best practices. Insufficient attention was paid to the safe return of children to their homes or families. Families receiving children were not assessed to ascertain their ability to care and provide for the children and the children received minimal preparation for the release. The release of children was also done without addressing the underlying reasons which caused separation. Sending children home to their families without appropriate preparation raises serious concerns for the health and wellbeing of children amidst the crisis as well as the risk of re-institutionalisation or further separation. At the same time, it presents an opportunity to keep children in families and prevent future reinstitutionalisation after the crisis. Among the key challenges is that frontline workers and children's services are not classified as essential workers in a number of countries which have imposed restrictive measures. This has served to undermine response.

For instance, Kenya reported its first case of COVID-19 on 13 March 2020. The Principal Secretary of

743 <https://www.savethechildren.net/news/niger-%E2%80%93-12-million-children-and-young-people-were-out-school-because-covid-19> (accessed 29 July 2020)

744 Legal Brief 26 June 2020.

745 Bakrania S and Subrahmanian R (2020) Impacts of Pandemics and Epidemics on Child Protection: Lessons learned from a rapid review in the context of COVID-19 Florence, Office of Research – Innocenti.

the Ministry of Labour and Social Protection issued a directive on 17 March 2020 to release children from Charitable Children's Institutions (CCIs) and Statutory Children's Institutions (SCIs) indicating that "all officers managing institutions should ensure that where possible the learners/residents are released from their institutions to their homes in an orderly manner and ensure that there is no exposure to the COVID-19." Staff in these institutions reacted swiftly and children were subsequently released at short notice. Shortly thereafter, a second Government Directive was issued which required Children's Officers and Social Services to submit a report detailing the number of children released. The National Council for Children's Services (NCCS) immediately responded by establishing a working group made up of UNICEF, and other key civil society actors. Together with CSOs, a rapid mapping exercise was undertaken to determine the number of children which remained in institutions and those who had remained which has been presented and is informing response in Kenya, including the collection of critical data on the whereabouts of children released from institutions so to ensure that the children are safe and needs being met post-reunification. At the same time, NCCS and the Department of Children's Services, alongside partners, have developed case management guidance and virtual monitoring tools which are being utilised by Children's Officers and CSOs to monitor children rapidly reunified and also young persons who were released from institutions but are now in supported independent living.

In this regard, it is important to note that past emergencies have yielded sharp increases in financial support to institutions, orphanage volunteering, and international adoption. These can lead to the proliferation of institutions, pulling even more children into them. This raises concerns that support for institutional care will come flooding in, disrupting family preservation efforts and putting children at greater risk of reinstitutionalisation.

Children who are deprived of liberty face challenges in self-isolation and social distancing, especially where facilities are overcrowded. Similar concerns are also present in residential care institutions where there are fears of the spread of the virus within institutions. Much like children in residential care institutions, reports of the release of children deprived of liberty have been received, including in Kenya.

### ***Children in split families***

Lockdowns that were implemented in various places resulted in children of separated or divorced parents contending with difficulties concerning their right to know and be cared for by both parents. Care and contact arrangements between parents severely compromised due to the limitations placed on freedom of movement. Moreover, the fact that schools closed thereafter completely (and remain closed) has given rise to many inter-parental disputes.

Movement of persons was only permitted in essential cases, leading to children being 'stuck' with one co-holder or even a person with no parental responsibilities and rights. A court order had to be obtained for permission for a child to travel, upon proof that this was urgent and essential. Subsequent loosening of restriction, however, received criticism as it failed to allow for children to move between co-holders who had no court order or parenting plan in place, and later regulations required that in order to get a court permit to move a child between parents not residing in the same district, it had to be "shown" that the household to which the child was to be moved had to be COVID-19 free, and written reasons had to be furnished to support the application for a permit. This provided fuel to many disputing parents, who argued that they could not prove that their former partner's household was virus free and therefore would not allow the former partner access to the child. Mediation had to take place virtually (via various platforms), in attempts to resolve conflicts, as access to courts was highly restricted.<sup>746</sup>

As intercountry adoption necessarily entails movement across borders, finalising the transfer of children was impossible due to the closure of borders. Hence, moratoria were put in place in some countries of origin. No exceptions were made for where matching might already have occurred with the intended adoptive parents, or for adoptive processes that were all but finalised.<sup>747</sup>

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746 J Sloth-Nielsen and R Sloth-Nielsen "Family Law under the threat of Covid 19" IBA newsletter Family Law Matters, July 2020.

747 See ISS Monthly Review September 2020.

## *Child Protection, broadly*

A recent rapid review by UNICEF-Innocenti of more than 6000 studies relating to the impact of pandemics and epidemics (Covid-19, Zika, Ebola, Severe Acute Respiratory Syndrome, Middle East Respiratory Syndrome, HIV/Aids and swine flu) found that the majority of studies focussed on stigmatization, discrimination and xenophobia in the context of HIV/Aids. Another group of studies were strongly concentrated on the Ebola outbreak in Western Africa. These studies contained some evidence of the effects of Ebola on orphanhood, stigma, sexual violence and exploitation, school attendance and dropout, early and adolescent pregnancy, and harmful practices. Evidence on other outcomes, or other outbreaks, was extremely limited.<sup>748</sup> The authors correctly point out, however, that every pandemic and epidemic is by its nature unique – whether spread through bodily fluids, or airborne or otherwise. Impacts and pathways will therefore differ. As a general proposition, they suggest that infectious diseases exacerbate existing vulnerabilities, generate new risks, and produce negative outcomes for children.<sup>749</sup>

Orphanhood is a key risk factor, and orphanhood itself produces other negative outcomes, such as sexual exploitation and abuse, risk of early marriage, and ending up living on the street or in child labour. Stigmatization and discrimination against infected children and adolescents are identified a pervasive. Young children and girls were more likely to be engaged in child labour and work within the home, including domestic work and chores.<sup>750</sup> Restricted access to welfare and protection services exacerbates harm and risk.

## Conclusion

Covid-19 has and continues to impact the rights and welfare of children and their well-being across a number of areas and domains. Each and every aspiration of Agenda 2040 has been affected. The assessment reveals that the pandemic has posed unprecedented challenges as service delivery needs to be aligned with public health measures of social distancing and other restrictive measures. As a result, progress in relation to some Charter rights reported in some of the previous chapters have been negatively affected, such as the right to health, to education, to survival and development, and freedom of association, to mention a few. While the pandemics showed that many governments were unprepared to manage the emergency needs of their populations, COVID-19 in particular has also uncovered significant gaps to ensuring that all of the aspirations contained herein are achieved. The potential longer-term effects of the crisis including economic downturn, impacting the realisation of the aspirations contained in Agenda 2040 will need to be assessed in the next reporting period.

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748 Bakrania S and Subrahmanian R (2020) Impacts of Pandemics and Epidemics on Child Protection: Lessons learned from a rapid review in the context of COVID-19 Florence, Office of Research – Innocenti p 2.

749 As above p 3.

750 As above p 3.

## **ANNEXURE 1**

### **Aspiration 1: Key recommendations for the next monitoring period**

1. The AU should further urge the remaining 5 Member States to ratify the Charter
2. The AU should further urge member States that have only signed the Maputo Protocol to ratify it.
3. The ACERWC is recommended to continue to work towards alignment of the period of submission of State Party Periodic Reports with that of the CRC, i.e. to increase reporting to every 5 years after the submission of the initial report.
4. The ACERWC should strengthen its follow-up on the implementation of its decisions on communications;
5. The Committee should constantly engage State Parties that have never submitted a report under the Charter to do so. This can be done by conducting a workshop specifically for those that have never reported
6. Further engagement with CSOs and NGOs is also crucial to assist States in their reporting obligations.
7. The ACERWC should increase advocacy tools for publication of children's rights.
8. The ACERWC should update its website to reflect recent updates of submitted State Party reports, communications and other resources.
9. Civil society organizations should enhance their engagement with the committee and efficiently utilise the procedures of the Committee to advance the cause of children in the continent;
10. The targets for monitoring of Agenda 2040 should be updated to include references to follow up on more recent communications received (after 2016), as well as other newly introduced activities.

### **Aspiration 2: Key recommendations for the next monitoring period**

1. The ACERWC should continue to encourage states to undertake legislative measures by crafting non existing laws, reforming outdated laws, as well as repealing non relevant laws with a view to ensure that the legislative system in State Parties is in line with the Charter;
2. The ACERWC in conjunctions with identified partners (eg in the Africa Children's Project consortium) should maintain an ongoing continental database of new legislation (including subsidiary legislation such as decrees and regulations), so that improvements (or setbacks) can be well documented in 2025, and not scattered.
3. Pending legislative reforms should be kept under scrutiny to ensure that they are child rights compliant in every way.
4. The targets and indicators for Aspiration 2 should be simplified and reduced. Overlap with

indicators and targets for other aspirations should be eliminated.

5. The ACERWC should take initiative in identifying States parties that have not yet enacted a comprehensive children's statute, and of own accord send follow up communications to these States to encourage them to finalise these expeditiously.
6. Robust systems and regular reviews should take place to ensure that adopted legislation is monitored and implemented.
7. In their reporting to the ACERWC on systems strengthening for child protection, States Parties should be encouraged to include (as annexures if needs be), details of capacity building, training, curriculum development, alternative care reform programmes, and so forth, in addition to legislation. A template for reporting might be of assistance to guide State parties in this area.
8. The ACERWC should engage with NANHRI and children's ombuds that are emerging to establish better digital synchronicity, to share documentation and to harness their efforts towards popularising key events such as the DAC

### **Aspiration 3: Key recommendations for the next monitoring period**

1. Accelerated efforts should be made for continuous data collection which is disaggregated on the basis of age and gender, focusing on those regions or countries where incomplete data exists (eg Malawi, South Sudan, Libya, Mauritius)
2. State parties to focus on eliminating the reasons for non-registration of births, rather than strive only for statistical improvements; this includes addressing accessibility of CRVS entry points, costs (including travel costs), cultural factors, excluded and marginalised populations (those with a disability, nomadic and rural populations, children born to persons in an irregular migration situation, for instance), and so forth.
3. Countries with discriminatory citizenship provisions or those whose nationality laws do not prevent statelessness to undertake the required legal revisions as a matter of urgency, with priority being given to reducing child statelessness.
4. The ACERWC should continue to urge states parties to give consideration to full implementation of General Comment no 2 (on Article 6 of the ACRWC)
5. Civic education and awareness campaigns have demonstrated efficacy in generating improved birth registration rates, and they should be an integral part of government's planning and population services. State parties should report on the campaigns and education programmes they conduct, and share good practice with each other in this regard.
6. Global development partners should be inspired to continue to support birth registration projects as integral to Africa's development and entry into the 4IR.

### **Aspiration 4: Key recommendations for the next monitoring period**

1. Undertake measures to achieve universal health coverage, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all children and close gender and other gaps (e.g. urban versus rural).

2. 19 States should reduce the maternal mortality to below at least 500 per 100 000 live births.
3. Ensure that sexual and reproductive health services are accessible while ensuring such services are responsive to the needs of girls and boys and are free, confidential, and non-discriminatory.
4. Ensure that testing of HIV for adolescents is increased.
5. States should allocate at least 15 per cent of the national budget to health, in line with the Abuja and Dakar budgetary targets.
6. Prioritise the collection and analysis of gender and sex-disaggregated data on SRH, including SRH education.

## **Aspiration 5: Key recommendations for the next monitoring period**

1. Social security programmes and social safety nets should be scaled up to reach more vulnerable people and on a greater scale than ever before.
2. African governments should work with development partners and other experts to refine targeting of measures to ensure the maximum attention for children's access to the basic necessities of life.
3. No retrogressive measures should be introduced, including in times of economic recession and hardship.
4. The ACERWC should continue to press States parties to highlight budgetary allocations for social protection, and for children specifically.
5. Reactions to child poverty, such as vagrancy, children living on the street, and child begging should be managed within a rights based framework, in a manner that ensures the dignity of every child, and his or her reintegration into society.
6. States shall accelerate care reform efforts by developing laws and programmes to prevent separation and strengthen families, increase the availability of *family-based* alternative care option and implement carefully planned and funded de-institutionalization efforts.

## **Aspiration 6: Key recommendations for the next monitoring period**

1. Ensure equal access to all levels of education, including free and unimpeded access to 12 years of education for all boys and girls.
2. Build, rehabilitate, and preserve education infrastructure and develop policies that ensure a permanent, healthy and conducive learning environment in all sub-sectors and for all, so as to expand access to quality education.
3. Enhance remote education through high-tech, low-tech, and no-tech solutions as well as improve quality of online education by making digital learning more inclusive and accessible.
4. Address school-related gender-based violence through legal and policy frameworks and

complemented with a strong monitoring and reporting procedures and take measures to ensure that negative cultural attitudes about girls attending school are eliminated and facilitate gender-responsive sanitation facilities, education instruction, curricula and textbooks which should be free from gender bias and promote equality in gender relations.

5. Adopt or amend legislation to end the exclusion from school of pregnant and married girls and provide re-entry opportunities, and ensure that the laws are fully implemented.
6. Provide cash transfers to parent(s)/caregivers to keep girls in school, including support for uniforms, books, shoes, and sanitary products.
7. Ensure that disaggregated data is collected, including in relation to ECED and TVET.

## **Aspiration 7: Key recommendations for the next monitoring period**

1. Take immediate steps to outlaw all forms of violence (including corporal punishment in all settings (school and home included)), without exception and strengthen measures to identify, investigate and prosecute perpetrators by providing relevant actors with appropriate training and allocation of resources.
2. Promote models of positive discipline as an alternative to the use of physical and humiliating punishment in all settings, including at home and in school.
3. Undertake research to better understand the underlying determinants of child marriage and develop contextualised theories of change which draw upon national understanding of the push and pull factors while systematically involving boys and men to create a supportive environment for girls' empowerment and foster positive models of masculinity.
4. Strictly enforce and or enact laws to prevent harmful cultural practices, including forced and/or child marriage, and generate social support for the enforcement of these laws by, for example, promoting the participation and role of men, particularly fathers, religious leaders and community leaders in promoting positive male role models who oppose harmful cultural practices including child marriage, including forced and arranged marriages, and are knowledgeable about its harmful impacts.
5. States should ensure that they enact and or revise child labour and anti-trafficking legislation/provisions to ensure they are in line with the ILO framework and the Palermo Protocol, respectively. Child labour laws should be strictly enforced and cover the informal sector. Anti-trafficking laws should prescribe appropriately severe penalties for perpetrators of child trafficking.
6. Enact regulations to ensure that the use of the media (radio and television) and social media address online abuse and exploitation of children.
7. Ensure that disaggregated data is collected on all forms of violence against children.

## **Aspiration 8: Key recommendations for the next monitoring period**

1. All states should raise the minimum age of criminal responsibility to 12 years or above.
2. Information on children's rights, including their right to access justice, should be made widely available.
3. Adopt child- and gender-sensitive standards and justice mechanisms which also ensure the effective participation of girls in relevant judicial and administrative proceedings, and guarantee their safety, privacy and dignity at all stages.
4. Ensure the availability of trained and specialised medical and psychosocial services for victims and witnesses.
5. Efforts to expand access to alternatives such as mediation, diversion and alternative dispute resolution should be supported, and suitable monitoring mechanisms should be adopted to ensure the ongoing effectiveness of the diversion programmes that have been developed and institutionalised.
6. The deprivation of liberty should be a last resort and used for the shortest period of time and must be consistently reinforced, and applied by judicial officials in particular and children should be held separately from adults.
7. Continuous training of all actors linked to the child justice system is required.
8. States should have reviewed and adopted sentencing procedures in order to ensure that a non-custodial sentence is always considered when parents or primary caregivers of children, and where detention is mandatory, appropriate alternative family-based care should be provided and sentences should endeavour to keep parents and children close allowing the child-parent

## **Aspiration 9: Key recommendations for the next monitoring period**

1. Address the root causes of conflict, in order to eliminate the impact of armed conflicts on children and ultimately to build a more resilient and sustainable protective environment for children in urban and rural contexts.
2. States should have reviewed their domestic legislation and practice in order to abolish the arms trade to countries where children take part in armed conflict, including the trade in small arms and light weapons.
3. Adopt national prevention plans and develop and/or implement, as relevant, action plans concerning children in armed conflict which take into account the specific needs of girls.
4. States which have not done so should raise the minimum age of recruitment to 18 years old, without exception
5. State Parties should train and build the capacity of their entire security apparatus, including troops that States may deploy within their own territory or in other countries, to prevent all types

of human rights violations against children.

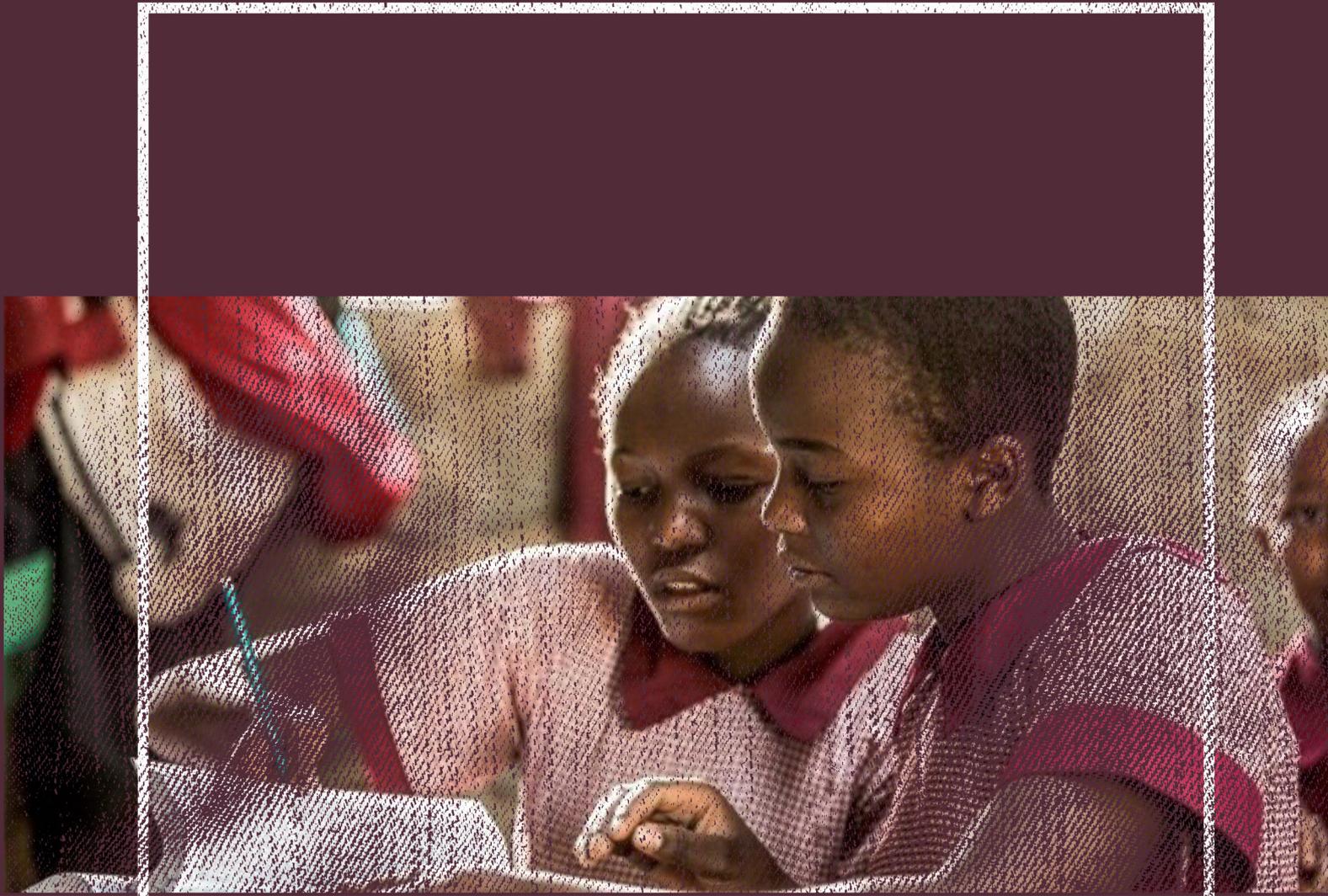
6. Ensure accountability for grave violations against children including through providing adequate resources for investigations, arrests and prosecutions and removing obstacles to access justice.
7. Ensure that children detained for their association with armed groups are treated primarily as victims and that children who may have committed crimes should be treated in accordance with principles of child justice including the use of detention as a measure of last resort and for the shortest period possible as well as the use of diversion and restorative justice.
8. States should develop handover protocols to prevent detention and ensure that children taken into military custody are swiftly transferred to civilian child protection authorities and are considered as a special group and undergo rehabilitation and family and community reintegration support.
9. Ensure respect for, and strengthen compliance with, international humanitarian and human rights law in situations of armed conflict to prevent grave violations against children and reduce the impact of conflict on children, and especially girls.
10. Strengthen and/or adopt policies and programmes providing for special protection and assistance to separated and unaccompanied children, including measures to ensure that they are reunified with their families.

## **Aspiration 10: Key recommendations for the next monitoring period**

1. The ACERWC should urge governments to establish mechanisms for engaging with children at the national level, in order that legislation, policy, planning and service development and implementation can reflect children's own concerns, experiences and suggestions
2. Governments should raise awareness among adults and children about children's right to express their opinions and its implications for children to be involved in decisions that concern them
3. Governments should also undertake education and preparation for parenthood programs to promote more democratic forms of communication between children and adults through, for example, intergenerational dialogues
4. The ACERWC should create a dedicated forum aimed at bringing forward the voices of children in the monitoring of this Agenda
5. The ACERWC should also consider the idea of an African Children's parliament to enable children to continually and systematically participate in many issues concerning them at the continental level, and should work towards developing clarity on how children can engage with its work, including through the submission of child-driven reports to complement State Party reports.

## Covid: Key recommendations for the next monitoring period

1. Communities and service providers should be sensitised to the possible longer term psychosocial and mental health effects of epidemics and pandemics and be encouraged to provide social support
2. Expanding social safety nets is central to preserving livelihoods, and assisting families to meet basic needs, and expanded measures should be targeted towards the most vulnerable groups
3. Financial support packages should support young women's economic empowerment and pay attention to the disproportionate burden of unpaid care and domestic work they experience
4. Ensuring continued access to education is key in ensuring that whole generations are not lost, and special attention must be paid to keeping girls education at the forefront and mitigate potential increases in child marriage, adolescent pregnancy, sexual exploitation and engagement with transactional sex
5. Priority attention should be given to mitigating violence against girls and women, and to maintaining access to police, justice and health services which respond to this, an ensuring that mechanisms for reporting gender based violence are available
6. Policy makers should ensure that girls are not discouraged from returning to school and adopt flexible re-admission policies after the epidemic or pandemic subsides
7. There is a need to ensure that rigorous research is conducted to track the impact of disease and disaster has been crucial in shaping child protection, health and other responses. Ongoing data collection and analysis remain key to understanding how best to mitigate negative effects and "build back better".<sup>751</sup>



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