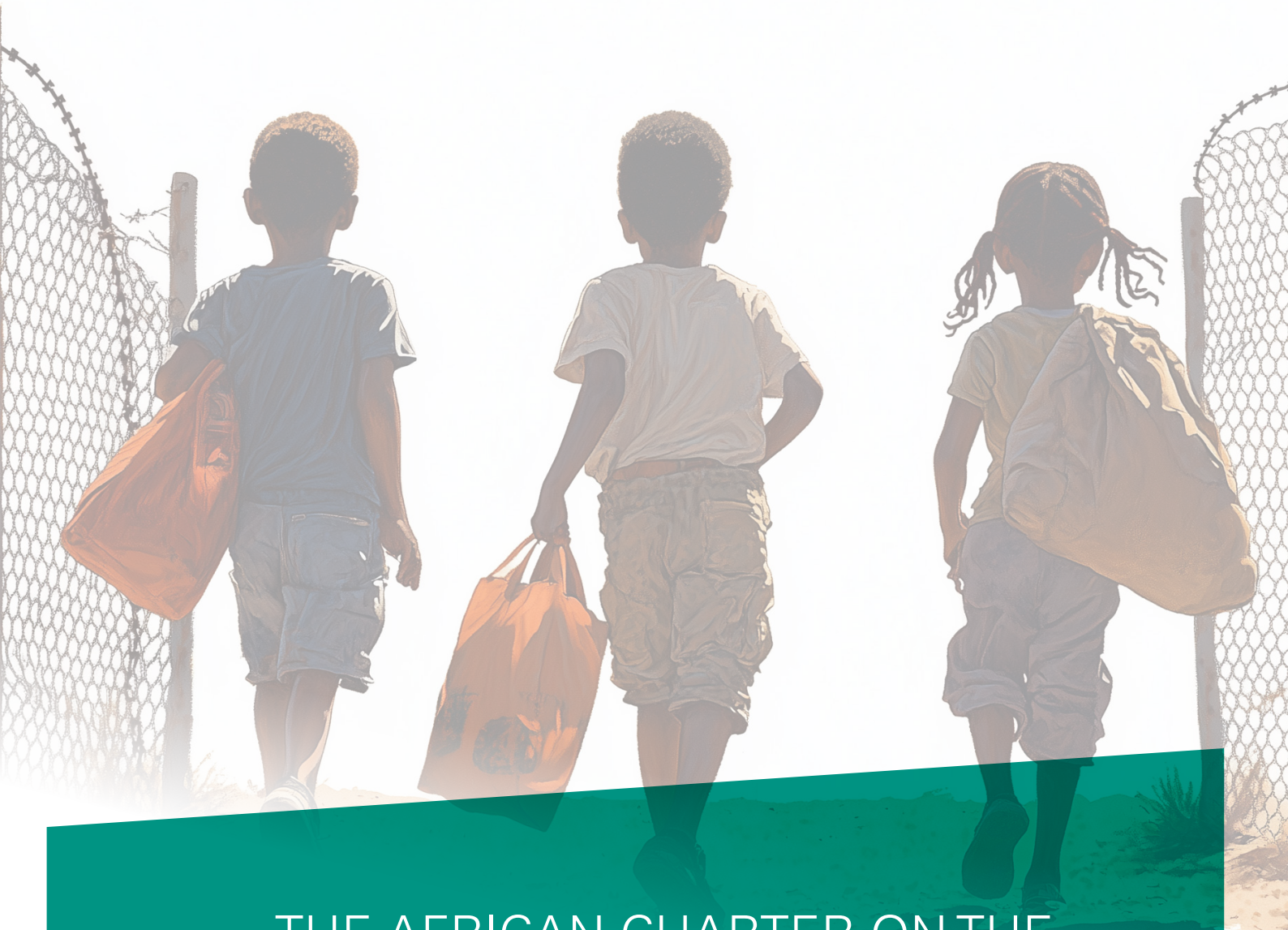




ACERWC
African Committee of Experts on
the Rights and Welfare of the Child



THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD AND CHILDREN ON THE MOVE **ADVOCACY FACTSHEET**

An Organ of the
African Union



www.acerwc.africa



I. THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD (ACRWC)

The ACRWC protects different categories of children on the move from abuse, violence, exploitation and discrimination. It also guarantees their equal rights to enjoy the full spectrum of the rights in the charter, such as the right to education, healthcare and participation. Additionally, the ACRWC emphasizes the best interest of the child, which is the primary consideration in all actions and decisions concerning children, reinforcing the rights protected under the Charter.

ARTICLE 23 – REFUGEE CHILDREN

1. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties.
2. States Parties shall undertake to cooperate with existing international organizations which protect and assist refugees in their efforts to protect and assist such a child and to trace the parents or other close relatives or an unaccompanied refugee child in order to obtain information necessary for reunification with the family.
3. Where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.
4. The provisions of this Article apply mutatis mutandis to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.

Scope

Provides explicit protections for children who are refugees, asylum seekers, or those seeking refugee status due to armed conflict, civil unrest, natural disasters, or similar emergencies. The provision applies mutatis mutandis to internally displaced children.



Key Protections:

- Entitlement to special protection and humanitarian assistance from the state.
- Right to enjoy all rights in the Charter regardless of their refugee status.
- Duty of states to cooperate with international and regional organizations.
- Emphasis on the child's best interests in all measures concerning refugee children.
- States must take necessary steps for family tracing and reunification.

Relevance to children on the move: This is the most directly applicable provision for displaced children (internally and across national borders) and ensures their comprehensive protection during humanitarian crises.

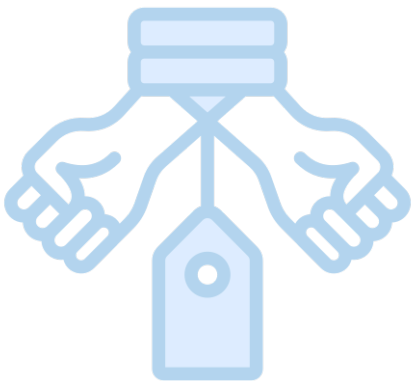
ARTICLE 29 – SALE, TRAFFICKING AND ABDUCTION

States Parties to the present Charter shall take appropriate measures to prevent:

- a. the abduction, the sale of, or traffick of children for any purpose or in any form, by any person including parents or legal guardians of the child;
- b. the use of children in all forms of begging.

Scope

Protects children from sale, human trafficking, and abduction, which are common risks during migration or displacement.



Key Protections:

- Prohibits the abduction, sale, or trafficking of children for any purpose or in any form.
- States must take appropriate measures to prevent, detect, and punish such acts.
- Emphasizes both preventive and protective state obligations.

Relevance to children on the move: Displaced, unaccompanied, or migrant children are at high risk of trafficking, especially during irregular migration or in border regions. This article strengthens their protection under criminal law.

ARTICLE 24 – ADOPTION

States Parties which recognize the system of adoption shall ensure that the best interest of the child shall be the paramount consideration and they shall:

- a. establish competent authorities to determine matters of adoption and ensure that the adoption is carried out in conformity with applicable laws and procedures and on the basis of all relevant and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and guardians and that, if necessary, the appropriate persons concerned have given their informed consent to the adoption on the basis of appropriate counselling;
- b. recognize that inter-country adoption in those States who have ratified or adhered to the International Convention on the Rights of the Child or this Charter, may, as the last resort, be considered as an alternative means of a child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- c. ensure that the child affected by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- d. take all appropriate measures to ensure that in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child;
- e. promote, where appropriate, the objectives of this Article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework to ensure that the placement of the child in another country is carried out by competent authorities or organs;
- f. establish a machinery to monitor the well-being of the adopted child.

Scope

While not specific to displacement, it's important for unaccompanied or separated children, including refugee or migrant children, who may enter alternative care or adoption processes.



Key Protections:

- Adoption must be authorized by competent national authorities.
- Should only proceed if it serves the child's best interests and respects national/international laws.
- States must safeguard against illegal or exploitative practices, such as trafficking under the guise of adoption.
- Inter-country adoption is allowed only as a last resort, when no suitable domestic care solution exists.

Relevance to children on the move: Displaced children are especially vulnerable to exploitation; this article ensures legal safeguards in alternative care situations.

ARTICLE 6 – NAME AND NATIONALITY

1. Every child shall have the right from his birth to a name.
2. Every child shall be registered immediately after birth.
3. Every child has the right to acquire a nationality.
4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

Scope

Ensures the right to name, birth registration and certification, the right to nationality and prevention of statelessness of children.



Key protections:

- Every child has the right to a name at birth and to acquire a nationality.
- States are required to ensure birth registration immediately after birth.
- No child shall be deprived of nationality, especially where this would lead to statelessness.

Relevance to children on the move: Children on the move (e.g., born in displacement, refugee camps, or to stateless parents) are at high risk of not being registered or recognized by any state. The provision ensures access to legal identity, a prerequisite for accessing education, healthcare, and all protection services.

II. THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD (ACERWC)

The ACERWC, mandated to monitor the implementation of the ACRWC, undertakes several initiatives for the protection of the rights of children on the move.



HON. SABRINA GAHAR

Special Rapporteur on Children on the Move



SPECIAL RAPPORTEUR ON CHILDREN ON THE MOVE

Established in December 2017, the Special Rapporteur's mandate encompasses a range of responsibilities aimed at safeguarding the rights of children on the move:

- **Investigative Missions:** Conducting field visits to assess the conditions and challenges faced by migrant, refugee, and displaced children.
- **Data Collection and Analysis:** Gathering information on the circumstances of children on the move to inform policy and practice.
- **Policy Evaluation:** Reviewing existing laws and policies to identify gaps in the protection of asylum-seeking, refugee, and displaced children.
- **Stakeholder Engagement:** Collaborating with governments, international organizations, and civil society to advocate for the rights of children on the move.
- **Recommendations and Follow-up:** Providing guidance on necessary actions and monitoring the implementation of recommendations to improve the welfare of these children.

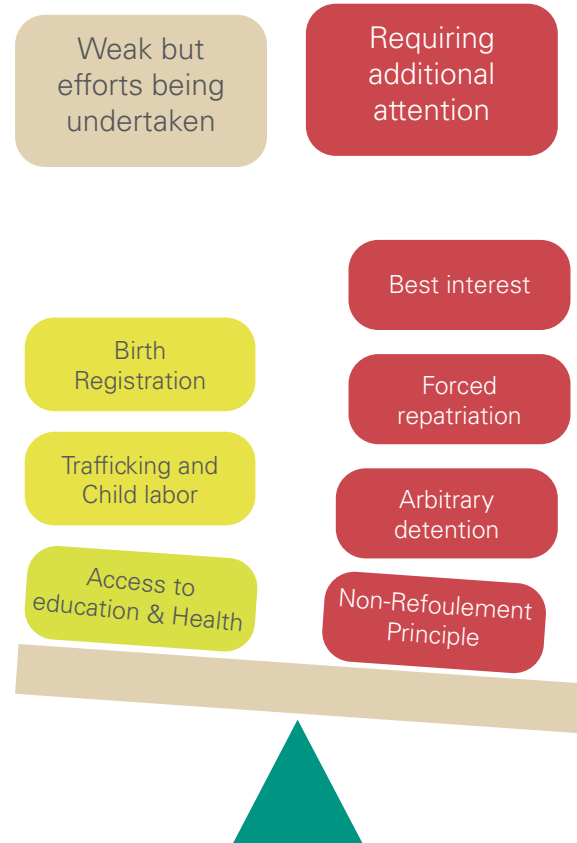


CONTINENTAL STUDY ON MAPPING CHILDREN ON THE MOVE WITHIN AFRICA

In 2019, the ACERWC published a comprehensive study titled “**Mapping Children on the Move within Africa**,” which aimed to provide an in-depth understanding of the migratory patterns and challenges faced by children across the continent. The study investigates the drivers, routes, patterns, and impacts of child migration in Africa, within and across national boundaries. It identifies four migratory routes; West and Central Africa to North Africa and Europe; Horn of Africa to Gulf States; Southern Africa movements; Intra-regional and internal migratory routes.

Key Findings:

- **Diverse Migration Drivers:** Children migrate due to various factors, including conflict, poverty, climate change, and the pursuit of better opportunities.
- **Vulnerability to Exploitation:** Children on the move are at heightened risk of trafficking, abuse, and neglect, often lacking access to essential services.
- **The Principle of Non-Refoulement:** strongly emphasizes the prohibition of returning a child to a country where they may face threats to their life, freedom, or safety. Specifically; migration control must not override child protection obligations; unaccompanied or separated children should never be forcibly returned without a best interest determination and advocates for safe, child-sensitive return procedures only when it's clearly in the child's best interests.
- **Policy and Legal Gaps:** Many countries lack comprehensive frameworks to protect the rights of migrant and displaced children effectively.



Recommendations:

- **Strengthening Legal Protections:** Develop and implement child-sensitive migration laws and policies that align with the ACRWC and other international mechanisms.
- **Durable solutions and integration:** Invest in long-term integration, including access to local communities, support networks, and sustainable livelihoods. Ensure voluntary, safe, and dignified return when appropriate, with full reintegration support in countries of origin.
- **Enhancing Data Collection:** Establish robust systems to collect and analyse data on children on the move to inform policy decisions.
- **Promoting Regional Cooperation:** Encourage collaboration among Member States and Regional Economic Communities to address cross-border child migration issues collectively.

The study serves as a critical resource for policymakers, practitioners, and stakeholders committed to improving the conditions and protections for children on the move in Africa

III. JURISPRUDENCE OF ACERWC ON CHILDREN ON THE MOVE

The Committee has a mandate to entertain communications from individuals and organisations alleging the violation of the provisions of the ACRWC by State Parties. Two of the Communications entertained by the ACERWC contain jurisprudence relevant to the protection of children on the move.



*Communication No.
002/Com/002/2009*

- **IHRDA and OSJI (on behalf of Children of Nubian Descent in Kenya) v Kenya(Nubian Case):**ACERWC affirmed the rights of Nubian children, descendants of migrants, who have not been recognized as citizens of Kenya and found Kenya in violation of article 6, failing to protect children from statelessness.



*Communication No.
003/Com/001/2012*

- **The Centre for Human Rights (University of Pretoria) and la Rencontre Africaine pour la Défense des Droits de l'Homme Versus Government of Senegal (Talibe case):**ACERWC found Senegal in violation of article 29 of the ACRWC, failing to protect children from exploitation, trafficking and begging.

- **Strategic Partnerships:**

The ACERWC, is a member of a Consortium on Children on the Move and Child Labor in Africa, among AUC, ILO, IOM and UNICEF. Along with the consortium members, the ACERWC undertakes activities that align with the common objective of enhancing the protection of children on the move, among others.





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