

Review of progress in the advancement of child rights in Africa: Reflecting on the past and future challenges and opportunities



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United Nations Children's Fund
Three United Nations Plaza
New York, New York 10017

February 2020

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PREFACE

As the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) mark 30 years, the UNICEF Evaluation Office, in partnership with the UNICEF Office to the AU/UNECA, launched a reflection on the successes and failures in advancing child rights in Africa, as well as the challenges and opportunities that the future holds. This report is the product of the review carried out by two independent experts, John Njoka and Romola Adeola.

I would like to sincerely thank John and Romola for their expertise and dedication throughout the entire process.

The review would not have been possible without the support and engagement of the African Committee of Experts on the Rights and Welfare of the Child and the UNICEF country offices and staff in Africa. Special thanks go to colleagues who supported missions and data collection in Nigeria, Morocco, Kenya, South Africa and DRC, including: Milen Kidane, Nkiru Maduechesi, Amandine Inna Renee Bollinger, Rachid Amri, Vikas Singh, Monika Sandvik-Nylund, Won Ki Hong, Christian Michaud and Flore Rossi. I would also like to acknowledge the inputs by UNICEF staff in Geneva, government staff, NGOs and civil society partners in the different countries where the review team engaged.

Let me also thank the members of the Reference Group who offered their guidance throughout the exercise. The members include: Edward Addai, Andries Viviers, Ratna Jhaveri, Urs Nagel, Michele Tarsilla, Robert Stryk, Mme Aver Gavar, Catherine Wanjiru Maina, Samrawit Getanew, Marie-Consolee Mukangendo and Jephthe Mve Mvondo.

Finally, many thanks go to Jane Mwangi and Carlotta Tincati for the management of this review and Celeste Lebowitz, Geeta Dey and Dalma Rivero for their tireless administrative support.

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LIST OF ABBREVIATIONS AND ACRONYMS

ACRWC	African Charter on the Rights and Welfare of the Child	ESARO	East and Southern Africa Regional Office
ACERWC	African Committee of Experts on the Rights and Welfare of the Child	IGAD	Inter-Governmental Authority on Development
ACHPR	African Commission on Human and Peoples' Rights	IOM	International Organization for Migration
AU	African Union	MENARO	Middle East and North Africa Regional Office
AUC	African Union Commission	MICS	Multiple Indicator Cluster Survey
CFI	Child Friendliness Index	NGO	Non-Governmental Organization
CRC	United Nations Convention on the Rights of the Child	NHRI	National Human Rights Institution
CRVS	Civil Registration and Vital Statistics	OAU	Organization of African Unity
CSOs	Civil Society Organizations	RECs	Regional Economic Communities
DHS	Demographic and Health Survey	UNECA	United Nations Economic Commission for Africa
DRC	Democratic Republic of Congo	UNICEF	United Nations Children's Fund
GDP	Gross Domestic Product	WCARO	West and Central Africa Regional Office



1

INTRODUCTION





1.1. Background

The year 1989 marked a historical milestone when world leaders made an unprecedented commitment to children world-wide, through the adoption of the Convention on the Rights of the Child (CRC) by the United Nations General Assembly.

Soon thereafter, building on the momentum around the CRC, African states recognized the need for an additional legal instrument that would cover the reality and protect the specificities of children in the African region. They envisioned a treaty that would complement the CRC and fill in legal gaps pertinent to the rights of children in Africa. By including a range of specifications, such as the situation of children in displacement after conflict, children living under apartheid and the disadvantages of the female child, the African Charter on the Rights and Welfare of the Child (ACRWC or the African Children's Charter) was adopted in 1990 and became, only one year after the adoption of the CRC, the first ever region-specific instrument for children's rights.

The ACRWC became legally binding ten years later (1999), and, as of today, has been ratified by 49 African Union (AU) Member States.¹ The United Nations Children's Fund (UNICEF) has provided support to the advancement of the ACRWC on different levels. Initially, at the Member State level, by providing technical and financial support towards the full ratification and implementation of the ACRWC i.e. help with preparing initial and periodic

State Party reports (which are required every three years), as well as civil society's 'shadow' reporting, and support to the implementation of concluding observations and legislative efforts to embed the Charter into state legislation. Since 2005 UNICEF has also been supporting the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), which draws its mandate from the ACRWC, through technical assistance to its secretariat and members, including on the development of the Committee's five-year strategic plans. Today, UNICEF work in this regard is expected to expand further to support states with their reporting requirements on the implementation of Africa's Agenda for Children 2040² as well as related instruments such as the global 2030 Agenda for Sustainable Development, and the CRC.

As the thirtieth anniversary of the adoption of the ACRWC approaches, UNICEF would like to contribute to knowledge about the advancement of children's rights in the context of the ACRWC, reflecting on the past and shedding light on the opportunities that the ACRWC and the CRC hold for the future. This document follows a review undertaken

¹ States that have not ratified the ACRWC include: Democratic Republic of Congo, Morocco, São Tomé and Príncipe, Somalia South Sudan and Tunisia. See: < <https://libertyandhumanity.com/wp-content/uploads/2018/09/2-UNICEF%E2%80%99s-support-to-the-African-Children%E2%80%99s-Charter-Committee-final.pdf>>. As this assignment was starting, São Tomé and Príncipe ratified the ACRWC on 27 June 2019.

² In 2015 the AU adopted Agenda 2063: The Africa We Want, which brings all continental and regional initiatives under one umbrella. The ACERWC adopted its own vision, Africa's Agenda for Children 2040: Fostering an Africa Fit for Children which was supported by UNICEF in its development. Agenda 2040 elaborates on Paragraph 53 of Agenda 2063 (African children shall be empowered through the full implementation of the African Charter on the Rights of the Child) with the main objective of assessing the achievements and challenges of effective implementation of the African Children's Charter.



in the second half of 2019 and shared for validation purposes during the Fifteenth Civil Society Organizations' Forum on the African Charter on the Rights and Welfare of the Child held in Egypt in November 2019.

1.2. Purpose and objectives

According to the terms of reference (Annex 1), the review serving as the base to this report analysed progress made in children's rights in Africa, the context and prospects of improving the situation in the near future. Specifically, there were four main objectives for this review, namely to:

- Reflect on progress in the advancement of child rights in Africa for the last 30 years;
- Determine the roles of different actors in this progress, particularly in strategic positioning for child rights over time;
- Examine country level accountability mechanisms in response to the ACRWC work; and,
- Reflect on the future challenges that the African continent will face and the ways in which the ACRWC, in this context, can best position itself, including for Africa's Agenda for Children 2040, the 2030 Agenda and the CRC.

1.3. Approach and Methodology

The review was undertaken using a qualitative participatory approach. A reference group was formed comprising different UNICEF evaluation specialists and advisors based in regional and country offices in East and Southern Africa (ESARO), West and Central Africa (WCARO), Middle East and North Africa (MENARO), the Africa Union and United Nations Economic Commission for Africa (AU and UNECA) Liaison Office and the New York-based UNICEF Evaluation Office and Human Rights Office.

Two UNICEF specialists on child protection and education, based in Benin and South Africa respectively, were also in the team. This reference group catered for UNICEF engagement and ownership with both the process and outputs of the review. This group was mainly advisory with the following responsibilities:

- a. Provide inputs in the inception phase to influence the approach of the review and, where necessary, provide information and institutional knowledge as key informants;
- b. Support the work of the team by facilitating connections with key informants and ensuring the team has relevant reference documents;
- c. Assess selected review products (terms of reference, inception report and draft and final reports) and provide written comments to the team; and
- d. Where feasible, contribute to the post-review action plan and dissemination strategy.

Two consultants were hired to conduct this piece of work and undertook a review of existing information on the African Children's Charter and related human rights instruments. This review helped capture information on the role of the ACRWC, UNICEF contributions to the advancement of child rights, efforts by countries to use the Charter as well as engagement with the ACERWC itself. The documents reviewed included:

- State Party reports for countries that have submitted at least an initial report to the ACERWC.
- Concluding observations and recommendations provided by the ACERWC as feedback to these reports.
- Reports of the ACERWC's field missions either to promote the ACRWC or to advise on ratification for those countries yet to ratify (South Sudan, Somalia,



Tunisia, Democratic Republic of Congo and Morocco). These reports provided analysis and information on the situation of child rights in both ratified and non-ratified countries.

- Analytical reports by organizations working on child rights in the context of the ACRWC such as various reports by the African Child Policy Forum on child wellbeing in the continent including the African Report on Child Wellbeing 2018. Documents were also sought from international and regional organizations such as Save the Children and Plan International.
- Documentation from the UNICEF, AU and UNECA Liaison Office on its activities and achievements as well as challenges over time. These could include promotion and support missions to the ACRWC as well as reports on specific country situations.

The consultants collected and perused through all the ACRWC reports submitted by State Parties that have so far ratified the Charter and which were duly considered by the ACRWC. The reports helped identify the following issues:

- The motivation behind submission of the report(s);
- Efforts undertaken by the State Party and other actors including civil society to promote and protect child rights. This helped identify good practices and missed opportunities;
- How the reports were prepared and roles played by different actors including UNICEF; and
- The extent to which commitments by the State Party to enhance child rights have been addressed over time.

Field visits were undertaken in selected countries. A variety of criteria was used for the selection of countries (which constituted the country case studies of the review):

- Ratification versus non-ratification of the ACRWC;
- Regions in the AU;
- Languages (anglophone and francophone mix as a minimum);
- Development and humanitarian contexts (since the two are discernible in the continent);
- Thematic issues (e.g. children affected by armed conflict, child marriage, corporal punishment, malnutrition and child trafficking);
- Practicality of effective coverage including time, cost, and exposure to health and security risks.

Based on these criteria, the consultants selected the following five countries: Kenya, Morocco, Nigeria, South Africa and Democratic Republic of Congo (DRC).³ Kenya, Nigeria and South Africa have ratified the ACRWC and reported on its implementation (Kenya and Nigeria more than once). The DRC and Morocco have both ratified the CRC but not the ACRWC (the DRC has signed but not ratified the ACRWC; Morocco has not ratified the ACRWC). It was important to check how child rights are being promoted and protected in contexts where the ratification of the African Charter has not taken place.

During these field visits, in-depth discussions were held with a range of actors in the child rights field. These included UNICEF country offices, other United Nations agencies, government ministries and departments responsible

³ Only remote interviews were conducted in the DRC.



for children's issues, civil society organizations (CSOs) working on child rights including national coalitions (where they exist), independent human rights institutions focal points and departments working with children, and children's and youth organizations.

An online questionnaire was developed and sent out to 52 countries where UNICEF has offices. This was a self-assessment done by the UNICEF teams in-country. The questionnaire was administered by senior management to ensure accuracy of information and accountability thereof. A total of 38 responses were received representing a 73 per cent response rate.

In addition to interviews in the case study countries, face-to-face interviews were conducted at the AU headquarters in Addis Ababa covering the ACERWC and other AU organs working with this body (Department of Social Affairs and Department of Labour, Migration and Employment) and United Nations agencies. In order to further discern the relationship between the CRC and ACRWC, telephone/skype interviews were organized with the Geneva-based CRC Committee and related actors but these could not take place due to the tight schedule of the CRC Committee at the time of the review.

Given the focus of the review in terms of reflecting on the past and the future, data analysis was done in four ways:

- Analysis of what has worked and why;
- Analysis of what has not worked and why;
- Stakeholder responsibility analysis – focus on the Committee, Governments and UNICEF; and

- Options analysis to discern the future role for the ACERWC, UNICEF, Governments and CSOs.

The review was faced with two main limitations. First was the short time allocated for the exercise. Normally, and given the geographical and socio-economic diversity of Africa, a review of this magnitude would take longer in order to cover more countries and to go beyond the national level. Reliance on data triangulation compensated for time constraints. Second was the dilemma of deeper case studies versus the continental focus. It is important to note that the case studies are meant to illustrate the bigger picture but efforts were made to prepare debriefs with specific country proposals in Morocco and Nigeria (see annex for country reports).

1.4. Organization of the report

The report is organized into six chapters. This is the introduction part setting the pace in terms of the review focus and design. Chapter two presents a situational analysis of children's rights in Africa through different contexts. Chapter three considers the role of the ACRWC and its future. Chapter four analyses the roles of the actors of change and chapter five looks at strategic priorities for UNICEF.



2

ADVANCEMENT OF CHILD RIGHTS: WHERE WE STAND





This chapter presents a situational analysis of children’s rights in Africa. It focuses on the changes in the rights of children and the factors which impact their fulfillment (demographic dynamics, politico-economic context, socio-cultural environment, technology and urbanization, and other specific variables).

2.1. Demographic dynamics

Africa’s population stands at 1.2 billion people⁴ making the continent the second most populous after Asia. Annual fertility rates have been high in most countries at over 2.53 per cent for the last 30 years due to low use of contraception but also to the young population structure. Close to half of this population is under the age of 18 and the majority is youthful and in their prime age. The African Report on Child Wellbeing 2018 and UNICEF observe that the population of children in the continent increased fivefold between 1950 and today with a projection of 1 billion by the year 2050, making up 40 per cent of the world’s children.

Life expectancy in the continent is low at an average of 52 years due mainly to a host of preventable illness and there is generally low human development and quality of life. Nigeria, Ethiopia, Egypt, the DRC and South Africa are the most populous countries in that order with close to 200 million people in Nigeria⁵ and 54 million in South Africa.⁶ Seychelles and São Tomé and Príncipe are the least populated at 94,000 and 203,000, respectively.⁷ This diversity in population is also reflected in population density, linguistic and socio-cultural aspects, all of which affect attention, measures and sensitivity to rights of children.

Figure I: Changes in the population of children between 1950 and 2055



Source: African Report on Child Wellbeing 2018

⁴ <www.worldbank.org/en/region/afr/overview>.

⁵ Data on Nigeria is an estimate since there has not been a census since 2006. Data quality in the country is further limited due to porous borders and a weak system of civil registration.

⁶ UNICEF, 'Generation 2030 Africa, 2014', <www.unicef.org/publications/files/Generation_2030_Africa.pdf>.

⁷ UNICEF, 'Generation 2030 Africa, 2014', <www.unicef.org/publications/files/Generation_2030_Africa.pdf>.



Migration is prevalent, especially the displacement of people for climate reasons. The Sahel region, in particular the four countries around the Lake Chad Basin – Cameroon, Chad, Niger and Nigeria - experienced increased dry spells leading to hunger, starvation and suffering for children and their families.⁸ Between 2015 and 2019, it is estimated that global carbon emissions increased by 20 per cent. The global target is to limit emissions to 1.5°C above pre-industrial levels hence the possibility of and steps towards meeting this target are of worldwide concern. If current emission rates are not reversed, there are a plethora of risks including loss of life and livelihood, loss of shelter and dwelling, health-related illness and increased marginalization. Water and sanitation will be affected in places already experiencing shortages. Under the ClimateEmergencyDeclaration.org, over 1,000 climate change activists and pro-climate action politicians from around the world have declared a climate emergency during the last year.

Climate-related migration has led to the displacement and movement of young people, including from Africa to Europe and Asia. Statistics reveal that 337 children died during migration on the African continent from 2014–2018.⁹ However, this figure does not fully capture the exact number of deaths of migrant children given the dearth of data and the need for improved knowledge on patterns of movements. The effect of displacement on children is often multidimensional and touching on a plethora of rights including education, survival

and development, and protection from abuse and torture. Child abduction and forced recruitment of children are also evident challenges. These are issues that emerge from the Charter for which state obligations are clear. The ACERWC reinforced this in its notable study on children on the move in Africa.¹⁰

2.2. Economic and political context

Africa relies heavily on primary production but there are emerging resources and new technologies linked to the information revolution. Mobile money and its effect on the service industry is a case in point for Kenya and the continent. According to the African Child Policy Forum report on child wellbeing¹¹ the economies of Africa have generally performed well at 3.6 per cent in GDP growth in 2017 and this figure is expected to rise to over 4 per cent in 2019. However, figures from the International Monetary Fund (2019) show an expected slight decline in 2019/2020.

Indeed there is evidence that the continent has not experienced the global financial shocks of the yesteryears hence the concept of “Africa Rising”. However, and owing to lack of political goodwill with regards to prioritization of resource allocation, this growth has not translated to decent jobs and benefits for a large section of the population. Domestic resources and government revenues have not flowed as anticipated leading to high poverty, unemployment and inequality. The mood is that overall

⁸ In a recent survey by International Organization for Migration (IOM), over 50 per cent of respondents in Cameroon indicated having been forced to flee their villages because of climate-related factors. A lack of access to livelihood activities and/or a dependence on humanitarian assistance in the four countries around the Chad Basin was attributed both to changing climatic factors and the Boko Haram insurgency. See <www.iom.int/news/iom-conducts-first-climate-data-tracking-lake-chad-basin>.

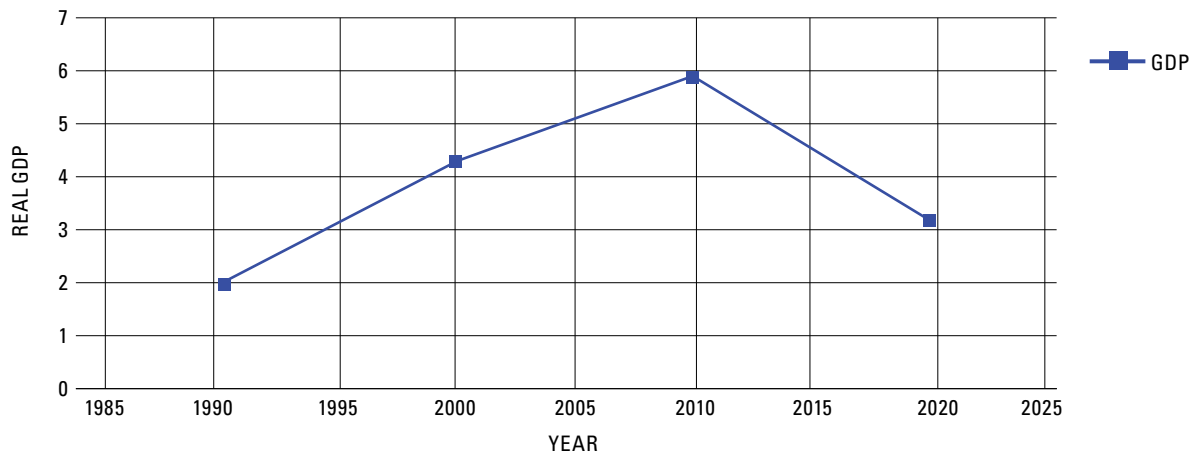
⁹ International Organization for Migration, *Fatal journey volume 4: missing migrant children*, 2019.

¹⁰ African Committee of Experts on the Rights and Welfare of the Child, *Mapping children on the move within Africa*, 2018.

¹¹ Ibid.



Figure II: Real Africa GDP for 1990–2019 for each decade



Source: International Monetary Fund, 2019

growth is not being felt at lower levels.¹² Youth unemployment is high at over 60 per cent¹³ yet young people are having children leading to worse poverty for them and their offspring, and intergenerational poverty.

The political and economic contexts of African countries are closely intertwined. They borrow heavily from the colonial experiences. For instance, the political systems are heavily centralized and struggle to devolve real power and resources even where constitutions and subsidiary laws call for devolution. A case in point is Kenya where there was a near-constitutional crisis following disagreements between the national and county Governments with regards to the division of revenue. Services virtually came to a standstill for the first quarter of the 2019–2020 financial year. In Nigeria, the struggles between the federal Government and state Governments have

meant it is difficult to implement the Child Rights Act, passed in 2003 soon after Nigeria ratified the ACRWC, in 10 out of the 36 states.

Another issue with the politico-economic context is the allocation of resources on paper without releasing them to the ministries and departments. Many ministries and departments such as the police claim to be starved of resources since they are only allocated and not disbursed. This, coupled with a lot of spending on state security and running bureaucracies, has resulted in African countries lacking resources for their children. For instance, although many Governments allocate generous resources to education,¹⁴ most of the money goes to paying salaries and administration costs with little going, for instance, to strengthening teacher skills and learning infrastructure. By the time these resources reach the individual child, they are negligible.

¹² In 2018, the AU celebrated the theme Winning the Fight Against Corruption: A Sustainable Path to Africa's Transformation during which the need to prevent and fight corruption was underscored to avail of resources for health, education and social protection. How this translates to concrete action remains to be seen in future.

¹³ Africa Renewal, 'Africa's jobless youth cast a shadow over economic growth', <www.un.org/africarenewal/magazine/special-edition-youth-2017/africas-jobless-youth-cast-shadow-over-economic-growth>, accessed 3 January 2020.

¹⁴ The Incheon Declaration 2015 requires that at least 15–20 per cent of total public expenditure be for education.



A major economic dynamic in Africa has been the integration of global economies through interconnections and advancement in technologies, which comes with certain challenges. Although there are benefits relating to technology transfer, access to free markets and global products, the continent has not fully benefited from this process given the state of its industrialization and the fact that, in comparative terms to the rest of the world, its trade capability nodes are not fully developed to connect with the global system.

Moreover, there are regions of the continent that are more well-developed than others. For instance, the five largest economies: Algeria, Angola, Egypt, Nigeria and South Africa are emerging forces on the global scene. And while the GDPs of these countries attest to the strong force they come with, there is much to be desired in terms of access, development and human rights protection for their populations. For instance, the income poverty prevalence in some of these economies (pegged at more than 50 per cent for Nigeria and South Africa) and the drawbacks on mobility makes the narrative of globalization as a beneficial system a relatively distant echo for a huge population on the continent.

2.3. Socio-cultural environment

Africa is characterized by a fast changing socio-cultural situation. Institutions such as the extended family that traditionally catered for children's health, nutrition, education, as well as discipline and overall socialization have been altered in form and function. One of the issues of the family across Africa is the growing absence of parents from their

children's lives. This is a factor in the many cases of child truancy, child and teenage pregnancies as well as the denial of basic rights to children. According to studies on risky sexual behaviors,¹⁵ socio-cultural factors do explain the changing sexual patterns, which have a negative effect on population parameters and overall poverty.

Related to the role of parents is access to social safety nets. Traditional families used to cater for all family members. Changing socio-cultural contexts mean less social safety nets leading to increased vulnerabilities. Although the same traditional values and norms are blamed for such child rights violations as female genital mutilation and child marriage as well as neglect, the dimension of positive safety nets cannot be ignored. Indeed, there are programmes that are also using traditional institutions to address these same violations in Kenya, Nigeria and South Africa.

The African Children's Charter came into being primarily due to the demand for sensitivity to African values and norms of childcare and childhood. However, these values have changed with increased modernity in the last thirty years.

2.4. Urbanization

Africa is rapidly urbanizing. Population growth in urban areas across the continent is at an annual rate of 3.7 per cent. The urban population, reaching 50 per cent of the total population¹⁶, has been steadily putting more pressure on urban services and facilities such as education, health care and child protection. Megacities such as Lagos host

¹⁵ Wangunyu, Isaac K. 'Factors Influencing Risky Sexual Behaviour Among the Youth in Kenya' unpublished Master of Arts thesis in Population Studies, Research Institute, University of Nairobi, 2006. See also Faith to Action Network, 'Report on Teenage Pregnancies in Kilifi County', Kenya, 2017.

¹⁶ United Nations Department of Economic and Social Affairs, *World Urban Prospects*, 2018.



populations larger than entire countries. The urbanization of Africa is contributed to by a combination of rural-urban migration, natural increase, and conflicts and insecurities that push huge numbers of immigrants to cities from the surrounding hinterlands as well as countries. Nigeria illustrates this with people being pushed into Lagos, Abuja and Kano not just from rural Nigeria but from neighbouring volatile Niger, Chad and Cameroon. A similar situation is occurring in Morocco where migrants from sub-Saharan Africa and even Asia seeking to enter Europe through Spain throng to the port of Tangiers.

In addition the urbanization of Africa, especially West and North Africa, is explained by divisive development policies lacking in territorial approaches of rural-urban or urban-rural linkages.¹⁷ In line with the modernization approach of separated rural and urban areas, policies either focus on rural agriculture or urban infrastructure thereby creating service and infrastructural disparities between rural and urban areas. This occasions discontent among the mostly young population which when coupled with limited opportunities in agriculture, push these young people to towns and cities not for available opportunities but for perceived ones. A territorial approach would ensure a total rural transformation alongside inclusive urbanization.

Contrary to popular thinking that African's urbanization is due solely to rural-urban migration, increasing urbanization on the continent (at an average of 42.5 per cent) is also due to natural increase and expansion of urban boundaries into the rural hinterlands.¹⁸ Many



rural areas have grown into small towns and cities in both population and lifestyle terms. This trend presents different challenges for families and communities in raising children and their care and protection.

Global statistics indicate that millions of poor urban children are more likely to die before the age of 5 years old than their rural counterparts.¹⁹ Yet rural-urban inequalities 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 the Central African Republic, Ethiopia and Niger. In Morocco, the infant mortality rate is almost 50 per cent higher in rural compared with urban areas (14.86 urban and 21.59 rural).²⁰

¹⁷ Hussein, Karim and David Suttie, *Rural-Urban Linkages and Food Systems in sub-Saharan Africa: The Rural Dimension*, IFAD series, 2019.

¹⁸ *ibid.*

¹⁹ UNICEF, *Advantage or paradox? The challenge for children and young people of growing up urban*, 2018.

²⁰ Morocco Ministry of Health, *Enquête Nationale sur la Population et la Santé Familiale (ENPSF) 2018*, Annexe E : Liste des Principaux Indicateurs <http://www.sante.gov.ma/Documents/2019/10/ENPSF-2018.pdf>



2.5. Technology

Africa has undergone a technological revolution during the last two decades. The growth of the internet, computerization of services, including those meant for children, as well as adoption of technology for learning has exposed children to the internet, changed the nature of work and with these shifts come related emerging challenges and opportunities. While cybersecurity has become a major concern within the context of children's rights, there is also growing concern that the so-called Fourth Industrial Revolution and the labour-substitution effect of automation threatens African economies' ability to leverage manufacturing for job creation.²¹ Governments are being challenged to invest more in robust technologies. It also means that the new generation of youth needs different types of jobs as opposed to employment in the traditional manufacturing sector.

Technology has spread even to rural areas with the urbanization trends mentioned above and the emergence of small and intermediate towns. The online presence of children's rights has raised awareness which, in turn, likely explains the higher number of reported cases of abuse and violence although the resolution of cases and prevention of violence still appear to be on the slow side. The availability of the internet and a three-dimensional culture in itself should make access to children's rights faster and more effective.

The prospects afforded by artificial intelligence and automation in economic growth, health and education have increased justification on its relevance in shaping a progressive global order. Although technology has the

beneficial effect of fostering human rights, it also raises questions. For children, these questions relate to online safety given the prevalence of cyber-bullying. In Africa, studies on cyber-bullying and its effect on children are yet to significantly resonate. However, it is clear that cyber-bullying is a significant concern in some countries with more advanced technology. A global study in 2018 revealed that South Africa had high rates of cyber-bullying. In Kenya and Nigeria, child trafficking and the sex trade have been more pervasive with technological improvements. Children are often trafficked under the disguise of house help work advertised online.

2.6. Specific groups

Enjoyment of children's rights would be much easier were all children the same. However, this is not the case. Children are differentiated by gender, conflict and disability, among others.

The gender disparity is the most obvious with girls suffering from retrogressive socio-cultural practices such as early marriage, female genital mutilation and discrimination in access to services including access to education and training. Basic issues such as access to sanitary facilities for girls during menstruation and proper sanitation may mean they drop out of school due to the associated stigma and shame.

The African Report on Child Wellbeing quoting a study by the ACERWC²² observes that children are 24 times more likely to die from illness and injury during conflict than in peace times. The study reveals a 50 per cent

²¹ Tony Blair Institute for Global Change, *Adapting to the 4IR: Africa's development in the age of automation*, 2019. See <<https://institute.global/sites/default/files/articles/Adapting-to-the-4IR-Africa-s-development-in-the-age-of-automation.pdf>>.

²² African Committee of Experts on the Rights and Welfare of the Child, *The Impact of Conflict and Crises on Children in Africa*, 2016.



increase in child deaths and a 20 per cent increase in child malnutrition during conflicts. Experiences in the DRC and northern Nigeria show that children growing up in conflict situations form the largest out-of-school populations and are highly unlikely to complete primary and secondary education. The end result is a vicious cycle for children. UNDP in Nigeria has devoted an entire Human Development Report to the theme of conflict and peacebuilding showing that when conflict interacts with limited provision of services it renders access to opportunities and choices scarce thereby generating more conflict, violence and underdevelopment.²³

Countries such as DRC have a situation in which over half of the armed groups are made up of children under 18 years of age.²⁴ Many children in these situations miss schooling and are often unaccompanied and live without appropriate care. Sexual exploitation, female genital mutilation and cutting (FGM/C) and early and child marriage, particularly affect girls. FGM/C is almost universal in Somalia, Guinea and Djibouti, with levels of around 90 per cent. Worldwide, the levels of child marriage are highest in sub-Saharan Africa, where nearly 4 in 10 young women were married before age 18.²⁵ Boys are increasingly facing physical violence especially forced recruitment into armed groups. Girls are also associated with armed forces and groups in large numbers as domestic helpers (fetching firewood and water, cooking, carrying supplies, and so on) and as 'wives' or sexual slaves. Girls

accounted for 35 per cent of the 745 children recently released in Yambio, South Sudan.²⁶ There is a general fatigue in supporting child protection programmes in DRC as in other "forgotten emergencies" such as Somalia.

The wave of attacks on civilians in parts of the continent also requires a child rights response. Non-state armed groups, such as Boko Haram in Nigeria and Al-Shabaab in Somalia, continue to commit grave violations against children, including killing and maiming, recruitment and use, abduction, and rape and other sexual violence, which is a particular risk to the girl child. . Not only do such actions have a long-term psychosocial effect on children, they significantly deprive children of chances of survival and development. Children in areas in which armed groups operate may be denied access to education and other vital services.

The population of children living with disabilities is rarely captured in statistics on children. In 2016, UNICEF ESARO supported the Education Development Trust to undertake a study of children with disability in the region.²⁷ The report found a disability rate of 6.4 per cent of children aged 0-14 years in sub-Saharan Africa compared to 5 per cent globally. However, knowledge on this form of inequality is still limited. Programming for inclusive support for these children cannot even begin if they are not well known or understood. The planning philosophies of Governments should be that every child matters but this is easier said than done.

²³ UNDP Nigeria, *Achieving Human Development in North East Nigeria*, <http://hdr.undp.org/sites/default/files/hdr_2018_nigeria_finalfinalx3.pdf>, 2018.

²⁴ Global Child Protection Area of Responsibility, Desk Review Data on DRC, 2019

²⁵ UNICEF, Female genital mutilation data, <<https://data.unicef.org/topic/child-protection/female-genital-mutilation/>> accessed 2 January 2020; UNICEF, Child Marriage data, <<https://data.unicef.org/topic/child-protection/child-marriage/>> accessed 2 January 2020.

²⁶ UNICEF, Practical Guide to fulfil the reintegration needs and rights of girls formerly associated with armed forces and armed groups in South Sudan, 2019 <www.unicef.org/southsudan/media/2296/file/UNICEF-South-Sudan-Practical-Guide-Reintegration-Girls-2019.pdf>.

²⁷ <www.unicef.org/esaro/Regional-children-with-disabilities-UNICEF-EDT-2016.pdf>



2.7. Changes in children’s rights

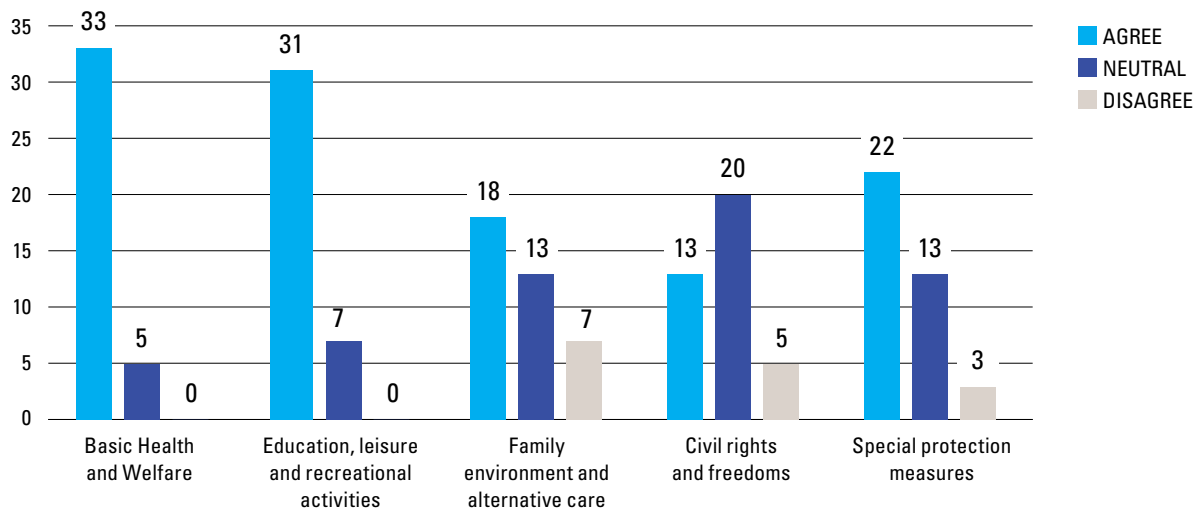
Child rights changes can be categorized in five groups, as provided for under the CRC and the ACRWC; namely basic health and welfare; education, leisure and recreational activities; family environment and alternative care; civil rights and freedoms; and special protection measures.

Despite the unfinished business and the trends affecting child rights mentioned earlier, much change has been seen in health and education, as also indicated by UNICEF country offices consulted through the online survey (see Figure III).

At the moment, statistics show that infant mortality has almost halved in the five years to 2017 (from 87 to 47 deaths per 1,000 live births).²⁸ Lesotho has reduced under-five-mortality from 122 deaths per 1,000 to 76²⁹. Liberia shows a phenomenal reduction of child mortality from 260 per 1,000 to 75 per 1,000 during the 30 years under review.³⁰ Similar changes are notable for under-five-mortality rates in Rwanda, from 152 to 37.9 per 1,000.³¹

Stunting among under-fives has also gone down by eight per cent over the last 16 years.³² In Ethiopia, for instance, the prevalence of stunting, wasting and undernutrition have decreased considerably; stunting reducing

Figure III: Reported key areas of change by UNICEF country offices in Africa



Source: Online survey, 2019 (n=38 but country offices gave multiple responses)

²⁸ Africa Child Policy Forum, *African Report on Child Wellbeing: Progress in the Child-friendliness of African Governments*, 2018.

²⁹ Lesotho MICS, 2018

³⁰ <https://data.unicef.org/country/lbr/>

³¹ <https://data.unicef.org/country/rwa/>

³² Africa Child Policy Forum, *African Report on Child Wellbeing: Progress in the Child-friendliness of African Governments*, 2018



from 51 per cent in 2005 to 37 per cent in 2019 and the prevalence of wasting (12 per cent to 7 per cent) and undernutrition (41 per cent to 21 per cent) being almost halved.³³

Despite evidence of improvements, there are wide variations across regions and countries and numbers are still high in too many of these. Globally the worst 22 performing countries for under-five mortality are all in Africa, with Somalia having the highest risk of a child dying before completing five years of age (at 122 deaths per 1,000 live births; global average 38.6).³⁴ Stunting among under-fives still affects almost a third of children (30.4 per cent)³⁵ and is increasing in West and Central Africa.

Huge strides were made in universal primary education, increasing from 63 million to 152 million students in the 25 year period to 2015.³⁶ Education enrolment numbers are impressive, at over 90 per cent in many African countries. Primary school enrolment reached close to universal levels in countries such as Algeria and Benin.³⁷ However, some countries such as Nigeria still have a huge challenge of out-of-school children with over 10 million children not in school.³⁸ Moreover, more than half of the children are not learning as expected according to UNICEF and UNESCO estimates³⁹. Learning proficiency is measured by student

ability to read a simple text but teacher absenteeism, a high teacher-pupil ration and overcrowded classes can negatively impact learning. Girls are more disadvantaged from the primary school level onwards as they have to combine household tasks with learning. Other gender barriers to girl education include preference for boy child education as well as a pedagogy that is gender unaware.⁴⁰

The slow changes in family environment, civil liberties and special protection measures are explained by a myriad of factors. These include weak birth registration systems as in the cases of DRC and Nigeria,⁴¹ weak legal systems for example in Côte d'Ivoire and Cameroon where minimum age of criminal responsibility remains at 10,⁴² weak alternative care mechanisms in countries like Guinea and Djibouti, weak progress in handling children affected by the law and generally restrictive legislation in provision of rights of adults and children.

In summary, the status of child rights in Africa is characterized by mixed progress. Survival and development rights have recorded improvements while other rights remain largely violated. In many cases issues of family environment, civil liberties and special protection measures have only begun to get attention during the last decade.

³³ Ethiopian Public Health Institute (EPHI) and ICF, *Ethiopia Mini Demographic and Health Survey 2019: Key Indicators*, Rockville, Maryland, USA, 2019, <<https://dhsprogram.com/pubs/pdf/PR120/PR120.pdf>>.

³⁴ World Bank data <https://data.worldbank.org/indicator/SH.DYN.MORT> accessed 26 February 2020

³⁵ Africa Child Policy Forum, *African Report on Child Wellbeing: Progress in the Child-friendliness of African Governments*, 2018, Table A3.7 Maternal and child health indicators.

³⁶ Bashir, Sajitha, Marlaine Lockheed, Elizabeth Ninan, and Jee-Peng Tan. 2018. *Facing Forward: Schooling for Learning in Africa*. Africa Development Forum series. Washington, DC: World Bank

³⁷ <www.unicef.org/algeria/education; https://www.unicef.org/infobycountry/benin_statistics.html#117>.

³⁸ <www.unicef.org/nigeria/education>.

³⁹ Africa Child Policy Forum, *African Report on Child Wellbeing: Progress in the Child-friendliness of African Governments*, 2018.

⁴⁰ Less than 1 in 20 poor, rural girls in sub-Saharan Africa is on track to complete secondary school, seven times less likely than non-poor, urban boys. The International Commission on Financing Global Education Opportunity, *The Learning Generation: investing in education for a changing world*, undated.

⁴¹ In Nigeria, only 47 per cent of children under age 5 have their births registered, while in DRC and Tanzania less than 1 in 4 infants under age 1 have their births registered. UNICEF Data <<https://data.unicef.org/topic/child-protection/birth-registration/>>, accessed 3 January 2020.

⁴² Child Rights International Network, *Minimum Ages of Criminal Responsibility in Africa*, <<https://archive.crin.org/en/home/ages/Africa.html>>, accessed 3 January 2020



3

ROLE OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD





The previous chapter focused on taking stock of the current situation and developments with regards to rights of children. This chapter analyses the role of the ACRWC within this context.

3.1. Normative issues

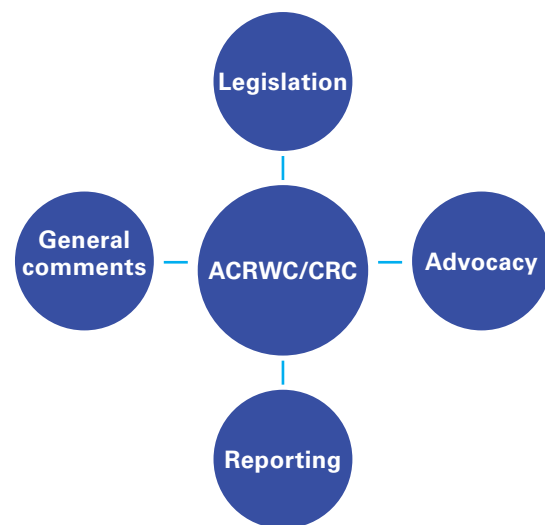
The African Children’s Charter complements or elaborates on some of the CRC’s provisions. These include: the definition of the child, best interest of the child, protection against apartheid, responsibility of the child, protection against harmful social and cultural practices, and children in armed conflict.

On the definition of the child, the CRC provides that a child is an individual below 18 years of age ‘unless under the law applicable to the child, majority is attained earlier.’⁴³ However, the Charter incorporates no such proviso but simply defines a child as an individual below 18 years of age. With regards to best interest of the child, the ACRWC makes this principle *the* primary consideration in all matters concerning children. However, the CRC makes it *a* primary consideration. The difference is the strength of emphasis on the principle. Moreover, the ACRWC contains new areas that are not in the CRC such as the responsibility of the child and protection against apartheid. While the CRC makes reference to traditional practices prejudicial to child health and requires states to ‘take all effective and appropriate measures’ with a view to abolishment,⁴⁴ article 21(2) of the ACRWC explicitly prohibits child marriage and betrothal of boys and girls and sets the minimum age of marriage at 18 years old. It further provides for compulsory registration of marriage in an official registry. With respect to armed conflict, the ACRWC is explicit on the prohibition of recruitment of children under the age of

18 years. Accordingly, it provides that states ‘shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.’⁴⁵ The Optional Protocol to the CRC on the involvement of children in armed conflict notes that the recruitment of under-15s by either armed forces or armed groups constitutes a war crime (Article 5). It prohibits the recruitment of under-18s under any circumstances by armed groups (Article 4) and permits the recruitment of 15–18-year-olds by armed forces under certain conditions (Article 3).

From a theoretical point of view, an illustration of the role of the ACRWC and CRC would appear as presented in Figure IV below.

Figure IV: Theoretical contributions of the ACRWC and CRC



Source: authors’ own elaboration

⁴³ CRC, art 1.

⁴⁴ CRC, 24(3).

⁴⁵ Charter, art. 22(2).



Empirically, the review found that the ACRWC’s contribution to children’s rights is seen by UNICEF country offices as mostly enhancing awareness of child rights (29 countries) and legal reform (26 countries), followed by improving accountability.

In the next sub-sections, a brief analysis of specific contributions of the ACRWC is presented.

3.2. Shaping legislation

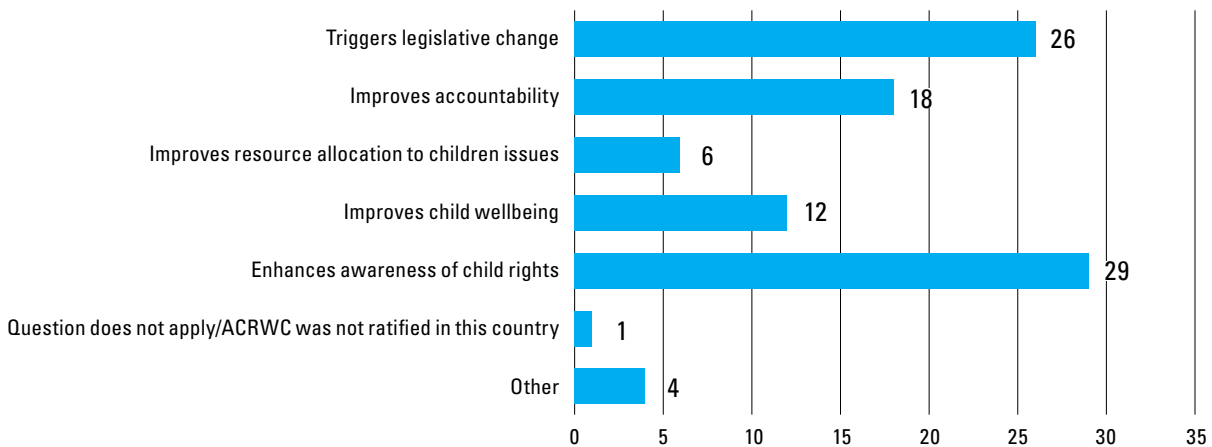
Over the last decade, one of the most notable impacts of the ACRWC is how it has shaped national law and policy on the protection of children’s rights in Africa. Many countries developed laws on children following ratification of the ACRWC, e.g. the Children’s Act in Kenya, Child Law Act in Nigeria, Child Rights and Protection Act in Malawi, South Africa’s Children’s Act and Sierra Leone’s Child Act. Like the CRC and ACRWC, these

consolidated laws are the foundation of efforts to implement the principles they espouse. Countries that have not ratified the ACRWC still have scattered laws on children and are behind in legislation.

In some cases, reference is made to the African Children’s Charter as a basis for new legislation such as the case of Lesotho, Liberia, Rwanda, Sierra Leone and South Africa. In most cases, the laws specifically incorporate provisions related to the value areas of the ACRWC.

Regarding the definition of the child, the provision of the ACRWC resonates in child-specific national legislation. For instance, the Algeria Child Protection Law defines a child as a person who has not attained the age of 18 years.⁴⁶ Likewise, article 2 of the Egypt Child Law defines a child as ‘all individuals who have not reached the age of eighteen (18) complete calendar years.’⁴⁷ In the Guinea Child Code, article 1 defines

Figure V: Reported Contributions of the ACRWC by UNICEF country offices in Africa



Source: Online survey, 2019 (n=38 but country offices gave multiple responses)

⁴⁶ Algeria, Child Protection Law No. 39 of 2015.

⁴⁷ Egypt, Law No. 12 of 1996 (amended by Law No. 126 of 2008).



every individual under the age of 18 is a child.⁴⁸ Also, under Ghana's Children's Act, a child is defined as a person below the age of 18 years.⁴⁹ As with Ghana, a child is defined under the child legislations of Uganda and Kenya as 'a person below the age of eighteen years.'⁵⁰ Similar provisions resonate from child legislations in southern African countries including Botswana and Madagascar.⁵¹

Moreover, in laws relating to child trafficking, as with the laws of Gabon,⁵² and Benin,⁵³ a child is explicitly defined as a person under 18 years of age. There are laws in some states that incorporate provisos in the section defining a child and others that have variations in the ages of children in laws, specifically relating to marriage. With regards to the former, for instance, Congo's Law on Child Protection recognizes a child as any human being under the age of 18 'who has not yet reached the age of majority by special provision.'⁵⁴ The Child Protection Code of Mali incorporates a similar clause on special provisions.⁵⁵

With regard to the best interest principle, however, there are differences between countries with some national legislation incorporating other provisions of the ACRWC and deviating from its provision on best interest. For instance, the Children Act of Kenya provides that the 'best interests of

the child shall be a primary consideration' with respect to 'all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies'.⁵⁶ As with Kenya, the Child Right Act of Sierra Leone makes best interests of the child 'a primary consideration in any decision or action that may affect the child'.⁵⁷

Moreover, under the Egypt Child Law, the best interests of the child is also 'a primary consideration in all decisions and procedures whatever the department or authority issuing or undertaking them'.⁵⁸ However, the 2009 Tanzanian Law of the Child Act takes the position of the ACRWC providing that '[t]he best interest of a child shall be *the* primary consideration in all actions concerning a child whether undertaken by public or private social welfare institutions, courts or administrative bodies'.⁵⁹ Similarly, the Lesotho 2011 Children's Protection and Welfare Act provides that 'the best interests of a child shall be *the* primary *consideration* for all courts, persons, including parents, institutions or other bodies in any matter concerning a child'.⁶⁰ This provision is also contained in the Democratic Republic of Congo's Law on Child Protection which requires the best interest to be the paramount consideration in all measures and decisions relating to children.⁶¹

⁴⁸ Guinea, Child Code (2008).

⁴⁹ Ghana, The Children's Act 1998.

⁵⁰ Kenya, The Children's Act (2001); Uganda, Children's Act (1997).

⁵¹ Madagascar, Law on Child Protection (2007).

⁵² Gabon, Law relating to the prevention and combat of Child trafficking (2004).

⁵³ Benin, Law relating to the movement of minors and suppression of child trafficking (2006).

⁵⁴ Congo, Law on Child Protection (2010).

⁵⁵ Mali, Child Protection Code (2002), art 2.

⁵⁶ Kenya, The Children's Act (Rev. 2012), art 4(2).

⁵⁷ Sierra Leone, The Child Right Act (2007), art 3(1).

⁵⁸ Egypt, Child Law (2008), art. 3.

⁵⁹ Tanzania, The Law of the Child Act (2009), art. 4(2).

⁶⁰ Lesotho, Children's Protection and Welfare Act (2011), art. 4 (2).

⁶¹ Democratic Republic of Congo, Loi n°09/001 portant protection de l'Enfant (2009), art. 6.



With regards to harmful social and cultural practices, the prohibition of practices such as child marriage and betrothal of children resonates in national legislations. The Child Care, Protection and Justice Act of Malawi prohibits subjecting a child to 'social or customary practice that is harmful to the health or general development of the child.'⁶² It further prohibits child marriage and criminalizes the act as an offence punishable with an imprisonment term of 10 years. Similarly, the Children's Law of Liberia prohibits and criminalizes child marriage.⁶³ Legislation in Ghana and Tanzania contains similar provisions on harmful practices providing that no one shall 'subject a child to torture or other cruel, inhuman or degrading treatment or punishment including any cultural practice which dehumanises or is injurious to the physical and mental well-being of a child.'⁶⁴

Moreover, in relation to armed conflict, the ACRWC's explicit prohibition of recruitment of children under the age of 18 years resonates in the laws of states such as Kenya, Lesotho and Sierra Leone. Article 28(1) of Sierra Leone's Child Rights Act explicitly provides that 'the minimum age of recruitment into the armed forces shall be eighteen.'⁶⁵ The Children Act of Kenya prohibits the recruitment of children in armed conflicts.⁶⁶ Also, Lesotho's Children's Protection and Welfare Act prohibits the recruitment of children in armed conflicts.⁶⁷

The provisions of the ACRWC on child responsibility are expounded upon. Article 23 of the 2005 Children's Act of the Gambia recognizes



the fact that 'every child has responsibilities towards his or her family and society, The Gambia, and other legally recognized national and international communities'. However, these duties depend on age and ability.⁶⁸ The 2011 Rwandan Law on the Rights and Welfare of the Child frames the duty in the context of respect for any human being, especially parents or guardians, love for country (patriotism) and duty to study.⁶⁹

Through the communications procedure spelt out in Article 44 of the ACRWC, the instrument has also had significant influence on jurisprudence related to child protection. Its provisions on name and nationality, protection against child abuse and torture, recruitment of children in armed conflict among others have formed the basis of these communications.

⁶² Malawi, Child Care, Protection and Justice Act (2010), art. 80.

⁶³ Liberia, Children's law (2011).

⁶⁴ Tanzania, The Law of the Child Act (2009), art. 13(1); Ghana, The Children's Act (1998), art. 13(1).

⁶⁵ Sierra Leone, The Child Rights Act (2007), art. 28(1).

⁶⁶ Kenya, Children Act (Rev. 2012), art. 10(2).

⁶⁷ Lesotho, Children's Protection and Welfare Act (2011), Art 22(o).

⁶⁸ Gambia, Children's Act, art 23(2).

⁶⁹ Rwanda, Law relating to the rights and welfare of the child (2011), arts. 21-23.



In the case of the 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, the ACERWC contributed to the protection of Nubian children at risk of statelessness given the legal and administrative hurdles in acquiring nationality. The ACERWC emphasized that ‘the obligation that States Parties including Kenya have under Article 6(4) of the ACRWC is not an obligation of conduct but an obligation of result. States Parties need to make sure that all necessary measures are taken to prevent the child from having no nationality.’⁷⁰ Based on the multiple violations of ACRWC provisions, the ACERWC notably recommended that Kenya ‘take all necessary legislative, administrative, and other measures in order to ensure that children of Nubian descent in Kenya, that are otherwise stateless, can acquire a Kenyan nationality and the proof of such a nationality at birth.’⁷¹

In *Michelo Hansungule and others (on behalf of children in northern Uganda) v the Government of Uganda*, the provisions of the ACRWC formed the basis of complaint against Uganda in light of the situation of children affected by armed conflict in the northern region of the country. The ACERWC found the Government of Uganda in violation of Article 22 of the ACRWC given evidence of recruitment of children in the Ugandan armed forces. While there were reports that

some of these recruitments were consensual on the part of the children, the ACERWC expressed the fact 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.’⁷²

3.3. General Comments

Advancing the interpretation of children’s rights is a significant impact of the Charter. One notable instrument of the Charter to this end is the General Comments. Over the last decade, General Comments have been developed to leverage the ACRWC. These comments provide guidance to states on obligations in the context of the protection of children’s rights. The General Comments relate to issues such as strengthening child protection, child marriage, child responsibilities, name and nationality, and children of incarcerated and imprisoned parents and primary caregivers.⁷³ For example, leveraging on Article 31, the ACERWC commented on the role of children in furthering family cohesion, national progress, communal solidarity and African values. Through the optics of Article 21(2) and Article 6(b) of the African Women’s Protocol, both the ACERWC and the African Commission on Human and Peoples’ Rights (ACHPR) developed a General Comment on Child Marriage.

⁷⁰ Decision on the communication submitted by the Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on behalf of children of Nubian decent in Kenya) v the government of Kenya (2011), para 52.

⁷¹ Decision on the communication submitted by the Institute for Human Rights and Development in Africa, para 69 (1).

⁷² Decision on the communication submitted by Michelo Hansungule and others (on behalf of children in northern Uganda) v the Government of Uganda (2013), para 58.

⁷³ General Comment No. 1 (article 30 of the African Charter on the Rights and Welfare of the Child) on “children of incarcerated and imprisoned parents and primary caregivers (2013); General Comment on article 6 of the African Charter on the Rights and Welfare of the Child: “right to birth registration, name and nationality” (2014); General Comment on article 31 of the African Charter on the Rights and Welfare of the Child on “the responsibilities of the child” (2017); Joint General Comment of the African Commission on Human and People’s Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on ending child marriage (2017); 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 (2018).



Based on these provisions, pertinent measures which states can take to enforce the prohibition of child marriage were emphasized.

The ACERWC has also leveraged on Article 6 of the ACRWC to comment on the issue of name and nationality observing that national laws often do not contain the right explicitly provided in the Charter. On the basis of this provision, the ACERWC stressed the nature of state obligations emphasizing the need for states lacking civil registration laws to develop such laws, and where these laws exist to ensure their implementation. Where laws are inadequate, states are asked to revise them in line with the provision of the General Comment.

Leveraging on the explicit prohibition of child recruitment in Article 22(2) of the Charter, the ACERWC has engaged in studies

on children in armed conflict and is in the process of developing a General Comment for the protection of children in this context.

It is important for countries to be sensitized to the General Comments and related documents of the ACERWC as supportive materials to the ACRWC. From the review, some people even in policy circles think that Article 31 of the ACRWC on Responsibilities of the Child contradicts the rights conferred by the instruments. This could substantively be corrected by understanding the General Comment of this specific article.

3.4. Contribution to Advocacy

Over the last 30 years, the ACRWC has shaped advocacy on children's rights in Africa. The impact of the ACRWC, as a tool for engagement with states, has been most visible in the work of CSOs at the national, regional and international levels. By contextualizing child protection in the region, it counters existing narratives whereby treaties would not be responsive enough to African specificities.

The fact that the ACRWC is highly inclusive and seeks to foster collective ownership of African values in relation to child protection makes it well-placed to enhance children's rights. Over the years its influence has grown from a tool of reference to inspiring a plethora of advocacy strategies by various institutions, governmental and non-governmental, to further children's rights in Africa. A concrete example of this is the AU Campaign on Ending Child Marriage in Africa first launched in 2014 for two years and adopted in more than 20 African countries.⁷⁴

⁷⁴ Girlsnotbrides, 'African Common Position on the AU Campaign to End Child Marriage in Africa; African Union extends campaign to end child marriage until 2017', 21 November 2015.



3.5. State Party reporting

Since its adoption, the ACERWC has served as a basis for engagement with states. The Charter's state reporting process serves as an opportunity for introspection within states on progress made to advance the rights of children and is also an avenue for extrospection by the ACERWC. Through this process, the ACERWC draws the attention of states to areas of concern where implementation of such rights ought to be enhanced.

The CRC Committee plays a similarly imperative function, and the impact of the ACRWC in its reporting process has the potential to add significant value. To understand this point, it is relevant to look at concluding observations of the ACERWC and draw out significant influences of the ACRWC in the advancement of children's rights as captured in State Party reports.

On the definition of a child, for instance, the ACERWC (in its first concluding observation) recommended that Rwanda should engage in legislative reform in order to harmonize and define a single age for children, i.e. 18 years of age, in line with the ACRWC.⁷⁵ In response, Rwanda emphasized that it was drafting a

Family and Persons Law that would incorporate the recommendation of the ACERWC.⁷⁶ In its second concluding observation, 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.⁷⁷ Notably, in 2016, Rwanda adopted the law setting the age of majority at 18 years and the minimum age for marriage to 21 years.⁷⁸

Another example relates to harmful social and cultural practices. Upon consideration of the first report from Tanzania in 2010, the ACERWC urged the country to design and implement advocacy measures to address harmful traditional practices.⁷⁹ In its next report to the ACERWC, Tanzania emphasized that it had launched a Child Marriage-Free Zone campaign to scale up action against child marriage.⁸⁰ Moreover, with respect to FGM, Tanzania emphasized that it had complied with the Committee's recommendation on awareness-raising and campaigning to end FGM through collaborative efforts with stakeholders engaging with traditional leaders and community media, and in developing programmes for alternative sources of income for persons who perform FGM.⁸¹

⁷⁵ 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) 3.

⁷⁶ 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).

⁷⁷ Concluding recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the second and third periodic report of the Republic of Rwanda on the status of the implementation of the African Charter on the Rights and Welfare of the Child, paras. 9-10.

⁷⁸ Rwanda, Law No 32/2016 Governing Persons and Family (2016), para. 24.

⁷⁹ Concluding recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the Republic of Tanzania report on the status of implementation of the African Charter on the Rights and Welfare of the Child (2010), 8.

⁸⁰ Tanzania, *Consolidated 2nd, 3rd and 4th reports on the implementation of the African Charter on the Rights and Welfare of the Child by the government of the United Republic of Tanzania* (October 2015), 60; Concluding observations and recommendations of the African Committee of Experts on the Rights and Welfare of the Child to the government of the United Republic of Tanzania on its combined second, third, and fourth periodic report on the implementation of the African Charter on the Rights and Welfare of the Child (2017), 13.

⁸¹ Tanzania, *Consolidated 2nd, 3rd and 4th reports on the implementation of the African Charter on the Rights and Welfare of the Child*, 62-63.



With regard to refugee children, the ACERWC recommended that South Africa eliminate barriers (legal and non-legal) to their access to social services.⁸² In response, the South African National Action Plan for children (2019–2024) 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.

A further example pertains to the responsibility of the child. The ACERWC recommended that Kenya educate children on their responsibility towards family and the national community and empower them to contribute to building solidarity.⁸³ In response, in its second report to the ACERWC, Kenya emphasized 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.⁸⁴

The ACERWC, through its Agenda 2040, notes that Benin, Botswana, Burundi, Cape Verde, Djibouti, Equatorial Guinea, The Gambia, Guinea-Bissau, the Seychelles, Swaziland and Zambia have never submitted a state report to the ACERWC, but have all submitted at least their initial reports to the CRC Committee. The ACERWC notes that “This data set strongly suggests a predilection for the UN system.”

Ideally, the voice of CSOs should be incorporated in the State Party reporting but even when consulted, the views of the CSOs are not always comprehensively incorporated in what is submitted to the ACERWC. Furthermore,

there are struggles during the reporting process with regard to who supports the report preparation, translation and the physical submission. Reporting to the Committee on the Rights of the Child and ACERWC is the responsibility of the State Party. UNICEF and civil society provide alternative reports, and UNICEF also supports the State Party in its reporting to the Committees. However, some governments claim not to have resources for the process, and there are also limitations to implement the concluding observations and recommendations due to resource constraints as well as a lack of political will.

3.6. Future of the ACRWC

The analysis in the previous sections of this chapter reflected on the role of the ACRWC until today. The previous chapter considered different set of challenges to the advancement of children’s rights such as technology and economic and demographic dynamics. How the instrument responds to emerging challenges in the future, and whether child rights can be further advanced in the midst of these challenges, also depends on whether its provisions are best availed of and its role optimized.

The ACRWC provides a general framework spelling out the norms of child rights. Although the ACRWC is ratified by 49 countries, some of them such as Botswana, Egypt and Sudan have made reservations on certain sections of the instrument⁸⁵. The reservations appear to water down the commitments. On Africa’s Agenda for Children 2040, the review found

⁸² 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), 14.

⁸³ 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.

⁸⁴ Kenya *Second and third State Party periodic report 2012-2017 on the African Charter on the Rights and Welfare of the Child* (November 2018) 72.

⁸⁵ <www.acerwc.africa/reservations/>



that there is limited awareness for support for it, with some actors feeling that it is an additional tool. In general, ratification of the non-ACRWC instruments, which the agenda urges ratification of, has been slow with some countries such as Kenya not even ratifying Optional Protocol no. 1 of the CRC on the Sale of Children, Child Prostitution and Child pornography. A country like Nigeria does not consider itself held to the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption yet one of its largest states (Lagos) has accepted inter-country adoption. Only Gabon has ratified the Optional Protocol on a Communications Procedures.

ACRWC norms can be interpreted through the legal instruments of the ACERWC such as the General Comments (see section 3.3 above). In order to keep the Charter responsive and relevant to emerging challenges as well as to related instruments such as the 2030 Agenda and the CRC, it should emphasize the weight of these General Comments, ensuring sensitivity to emerging issues and usefulness in addressing them. The role of the General Comments in the advancement of children's rights should be analysed moving forward.

One area where the provisions of the ACRWC can be applied to emerging issues is technology. For example, although the ACRWC does not explicitly address this issue, some of its provisions may be relevant to countering cyber-bullying. The provision on protection against child abuse and torture is a case in point and specifically on the need for states to '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.'⁸⁶ While safety is an important issue, access to technology is also pertinent. In the context of education, this is imperative given the role of technology in education. Technology can expand the reach of education, especially for children in rural areas. But more importantly, it can enhance the quality of knowledge to ensure that children are afforded similar opportunities in global advancements on learning. However, for this to occur it is important for access to be placed centrally within the context of the discussion on the right to education and also in the realization of Aspiration 3 of Africa's Agenda for Children 2040 on education.



⁸⁶ Article 16 of the African Children's Charter.



The ACERWC should be made more aware of emerging priorities as it implements Africa's Agenda for Children 2040. In 2014, the AU passed the Convention on Cybersecurity and Personal Data Protection that criminalizes the production, procurement, dissemination and possession of child pornography through a computer system. The Convention is yet to be enforced as it has been ratified by only five countries (Ghana, Guinea, Mauritius, Namibia, Senegal).⁸⁷ The ACERWC has a role in this in so far as it affects children.

If the economic gains experienced by some economies are to be felt, there needs to be a significant whole-of-society approach. In more concrete terms, what this will imply is that in programming for integrated markets, there must be actions that integrate children, and that develop indicators for monitoring progress based on the principles of best interests, survival and development and non-discrimination. Moreover, there must be an understanding of how globalization may also affect children where it is organized through practices that infringe on children's rights and promote abuses such as child labour. Leveraging on the provisions of the ACRWC, it will be imperative to accentuate the prohibition of child

labour practices and abuse. In harnessing the gains of globalization for children, one of the valuable entry points of the ACRWC will be to ensure that an understanding of state obligations on education advance the requisite skill set to aid children connect with the future benefits of this process.

To further protect children on the move, there is a need for the ACERWC to support evidence-based programming among Member States, leveraging state reporting processes to highlight blind spots and areas where protection for these children needs to be strengthened at national level. Although the ACRWC does not explicitly pronounce on attacks on children, it incorporates significant provisions that can be leveraged to protect children in such situations. For instance, it provides that states 'shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.'⁸⁸ Moreover, it also provides that states 'shall undertake to protect the child from all forms of sexual exploitation and sexual abuse'.⁸⁹ These provisions can be expanded to address the issue of attacks on children which significantly affects the furtherance of children's rights in Africa.

⁸⁷ AU, List of countries which have signed, ratified/acceded to the African Union Convention On Cyber Security And Personal Data Protection, <<https://au.int/sites/default/files/treaties/29560-sl-AFRICAN%20UNION%20CONVENTION%20ON%20CYBER%20SECURITY%20AND%20PERSONAL%20DATA%20PROTECTION.pdf>>, 28 June 2019

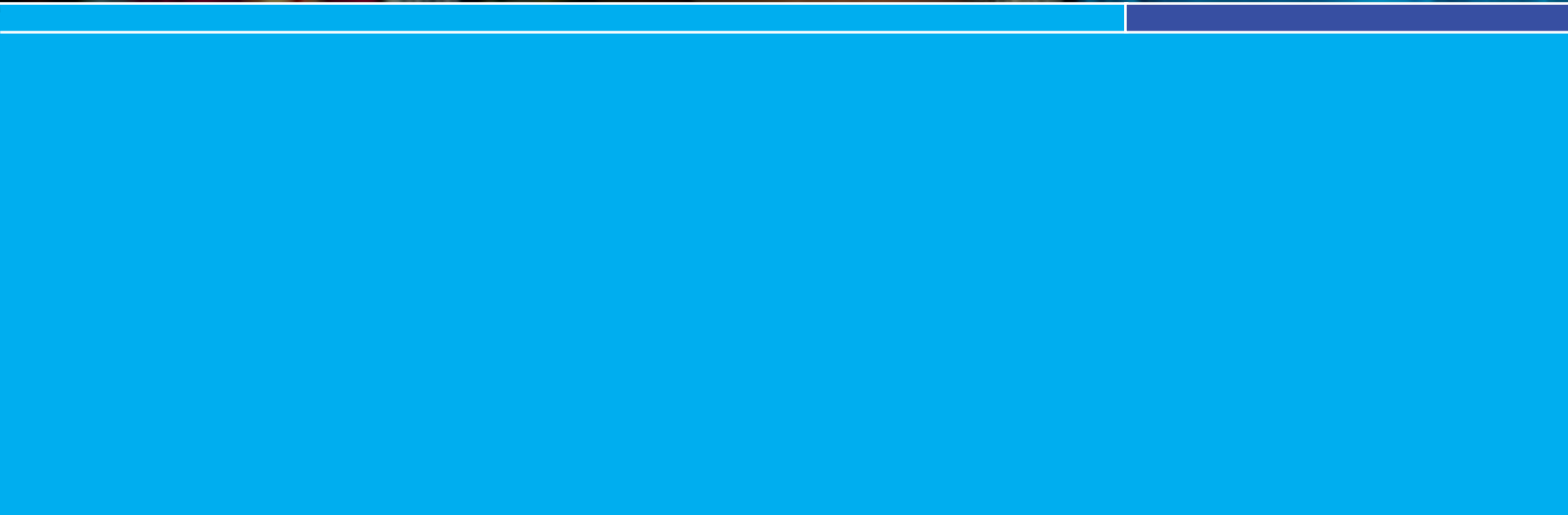
⁸⁸ Article 23(2) of the African Children's Charter.

⁸⁹ Article 27(1) of the African Children's Charter.



4

ACTORS OF CHANGE





The chapter examines the activities of various players influencing the regional landscape of child rights and explains progress arising from those interventions. The context of child rights in Africa is characterized by an array of actors from the local level to national, regional and continental levels. These actors perform their roles under different mandates but with the converging direct or indirect intention to change lives for children.

4.1. Role of the African Union Commission and its organs

The African Union Commission (AUC), based in Addis Ababa, Ethiopia, is the AU's secretariat and undertakes the day-to-day activities of the Union. Its functions include representation coordination and operational support to AU policies and programmes as defined by the AU Constitutive Act and various legal instruments.

Many years before the idea of an African treaty on children was conceived, the AU (then the Organization of African Unity, OAU) had placed children on its agenda when it adopted a Declaration on the Rights and Welfare of the Child in 1979 and the African Charter on Human and Peoples' Rights in 1981.⁹⁰ Specifically, the Declaration urged Member States to take legislative and other measures to safeguard the rights of the child and address the inequalities between male and female children. Principle 2 of the 1979 declaration called on Governments *"to review provisions relating to children in their legal codes*

particularly paying attention to the unequal status of female children in some parts of Africa." Also, principle 3 urged Governments to *"thoroughly examine cultural legacies and practices that are harmful to normal growth and development of the child such as child marriage and female circumcision, and should take legal and educational measures to abolish them."* The declaration however had no binding force and was regarded as "policy statements for African States".

The African Charter on Human and Peoples' Rights together with the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (popularly known as the Maputo Protocol) are also important in the promotion of children's rights.

The African Charter on Human and Peoples' Rights has been used to promote child rights. An example of the work of the African Commission on Human and Peoples' Rights—which oversees the African Charter on Human and Peoples' Rights—is a communication from Sudan (Box 1).

⁹⁰ Adu-Gyamfi J. and F. Keating, *Convergence and Divergence between the UN Convention on the Rights of the Children and the African Charter on the Rights and Welfare of the Child*, *Sacha Journal of Human Rights*. 3(1): 2013, pp.47-58.



Box 1: Sudan Communication 236/2000—*Curtis Francis Doebbler vs. Sudan*

On 13 June 1999, a group of female students at the Nubia Association at Ahlia University held a picnic in Buri, Khartoum along the banks of the river. They were sentenced to 25-40 lashes for ‘public order’ offences, contrary to Article 152 of the Criminal Law of 1991, because they were not properly dressed or acted in a way considered immoral, for example the girls danced and talked with boys.

A complaint was brought to the Commission stating that this punishment was carried out in violation of Article 5 of the African Charter on Human and Peoples’ Rights, which prohibits inhuman or degrading treatment.

The Commission ruled the communication admissible and requested the Government of Sudan to:

- Immediately amend the Criminal Law of 1991, in conformity with its obligations under the African Charter and other relevant international human rights instruments
- Abolish the penalty of lashes; and
- Take appropriate measures to ensure compensation of victims

(Decision made at the 33rd Ordinary session in Niamey, Niger 15-29 May 2003)⁹¹

The Commission is therefore a viable mechanism on child rights in Africa, although priority should be given to the ACERWC. The two entities have worked together, for instance in issuing a recent Joint General Comment to End Child Marriage in Africa.⁹²

Children’s issues within the AU are housed within the Department of Social Affairs, which seeks to promote the AU’s health, labour, employment, migration, social development, drug control, crime prevention, sport and cultural agenda. However, the specific treaty body working on child rights and wellbeing within the AUC is the ACERWC.



⁹¹ For full decision, see <<http://hrlibrary.umn.edu/africa/comcases/236-2000.html>>.

⁹² <www.acerwc.africa/general-comments/>



4.2. The African Committee of Experts on the Rights and Welfare of the Child

The specific treaty body working on child rights and wellbeing within the AUC is the ACERWC, which has four functions (Article 42): promotion, protection, monitoring and interpretation of the African Children’s Charter.

In addition to this mandate, the ACERWC can receive and consider communications (article 44) and resort to any appropriate method of investigations to address any matter under the ACRWC (article 45).

The ACERWC performs its promotional mandate through information-gathering, research, capacity-building programmes, promotional missions and visits to State Parties, and encouraging the effective

implementation of the Charter by both state and non-state institutions. It also formulates and lays down principles and guidelines aimed at protecting the rights and welfare of the child, and key to its mandate is to develop themes for the Day of the African Child.

Members of the ACERWC are organized around thematic areas as well as countries.⁹³ These thematic areas include children in vulnerable situations, child marriage and other harmful practices, children and armed conflict, child participation, child education, parental and child responsibilities, children on the move, children in conflict with the law, violence against children, and health, welfare and development.

Members serve these thematic areas as special rapporteurs with specific terms of reference to monitor and report on rights

Figure VI: Achievements of the ACERWC



Source: authors’ own elaboration

⁹³ <https://www.acerwc.africa/the-experts/>



of children around these themes. In its twenty years of existence the ACERWC has achieved the following (Figure VI).

Celebrations for the Day of the African Child⁹⁴ have become more diverse in location and the ACERWC has improved its follow-up with actors such as UNICEF. However, this follow-up remains weak, especially with regard to themes being taken up at country level. Children also need to be more empowered in their participation in the Day of the African Child.

From the review, it becomes clear that besides the Peace and Security Council, with which the ACERWC has collaborated concerning children affected by armed conflict, and the African Commission on Human and Peoples' Rights, the ACERWC does not have strong links with other entities. Many actors within the AUC hardly know the role and functions of the ACERWC. Many AU departments and child-focused agencies interviewed during the review feel that the ACERWC could do better to strengthen its links with other AU departments and organs so as to enhance its effectiveness. The entity is at times even understood to be a non-governmental organization within the AU, which should not be the case.

4.3. Role of Governments

As custodians and duty bearers of their children and citizens Governments in general are responsible for ensuring rights for all. It is

clear that African Governments as State Parties to the ACRWC have implemented measures at both legislative and policy as well as structural levels to champion child rights in addition to reporting to the ACERWC. Many countries such as Kenya, Malawi, South Africa, Tanzania and others have developed laws on children as well as policies specific to the child and supportive sectoral mechanisms, e.g. health, education, labour and social protection. In many African countries, there are reinforcement ministries, departments and agencies including the judiciary, police, prosecution, education, health and others.

Since 2008, the African Child Policy Forum has produced an index every two years (Child Friendliness Index or CFI),⁹⁵ which measures the responsiveness and accountability of African countries to children. Ideally the CFI is an accountability tool for CSOs to use in their advocacy with Governments in their areas of jurisdiction. For the last eight years, the CFI looked at adoption, implementation and enforcement of laws on children. Two indicators were added to the CFI in 2018 to include public expenditure on children's basic needs and contribution to child wellbeing outcomes as well as children's participation in decisions that affect them. The index places African countries in five categories (most child-friendly countries with a mean score of 0.7457, child-friendly with a mean score of 0.5676, fairly child-friendly with a mean score of 0.4887, less child-friendly with a mean score of 0.4293, and least child-friendly with a mean score of 0.3261).⁹⁶

⁹⁴ DAC unites actors across Africa in support of child rights, and is used by the ACERWC to draw attention to States Parties' obligations to children's rights under various annual themes.

⁹⁵ For details on the CFI methodology, see <<http://data.africanchildinfo.net/bfhyjkg/child-friendliness-index-score>>.

⁹⁶ Africa Child Policy Forum (2018) African Report on Child Wellbeing: Progress in the Child-friendliness of African Governments



Countries with a high income per capita do not necessarily commit more to children as noted in this report. Equatorial Guinea, Nigeria and Sudan are lagging behind in the CFI even with their resources due to limited political will to invest in children. Mauritius and Tunisia have been consistent with the CFI score. Birth registration in these countries is for instance over 99 per cent. The most improved countries in the last ten years have been Gambia (49th place/ 30th place), Sao Tome and Principe (48/31), and Benin (41/23), while countries deteriorating include Zambia (21/48), Uganda (19/40), Cameroon (16/49), Mali (17/35), DRC (15/46) and Malawi (13/21). The least child-friendly and declining countries allocate as low as 1.8 per cent on sectors such as education and have also been weak at harmonizing local laws with international instruments like the CRC and the ACRWC.

In many African countries Governments have developed departments and ministries to coordinate and provide oversight. Many of

these departments are also home to women's issues, youth development, labour, health, education, social services, community or family issues. Although combining children's issues with women's, youth and other family, community and social issues may appear to be good for integration, there is a possibility that those issues will only receive attention as a footnote. It is imperative for Governments to prioritize children's issues in both policy and practice, beginning with placing children's in the right governmental department followed by genuine political commitments.

A concern arising from the review is the setting up of numerous and often parallel structures for child rights promotion and implementation. Different units within a country or even a ministry will each perform specialized functions for children but without coordination. Often there is confusion and duplicity of roles leading to a waste of resources and time. Kenya has a Department for Children's Services, a National Council for Children's Services and even a Child Welfare Society of Kenya, all three performing unclarified roles and often uncoordinated and without oversight.

Another challenge with Governments is the allocation of resources, both financial and non-financial. Child-focused sectors attract few resources compared with security and infrastructure. Although education is allocated up to 20 per cent of the GDP in many countries, resources go into administrative costs and not to ensuring delivery of quality. Two countries (Cote d'Ivoire and Nigeria) have introduced financial benchmarks for child protection⁹⁷ and the results are worrying. Allocations to child protection are well below a dollar per child. Few staff work for children within government

⁹⁷ For the Nigeria study see <www.unicef.org/nigeria/media/2446/file/Financial%20Benchmark%20for%20Child%20Protection.pdf>.



offices. Much work is done by volunteers and staff of international organizations seconded to these offices. Africa has numerous social work force training institutions but Governments are not using these staff appropriately.

Lastly, the focus of child rights programming has been on formal actors within government and civil society sectors. The non-formal sector encompassing traditional and religious leaders

and councils of elders has been ignored or at best given marginal attention despite their role in upholding community standards and values. These community leaders are the gatekeepers of societies and peoples and deserve to be included in the conversation around children's rights.⁹⁸ It is a complex roadmap. Huge countries such as DRC and Nigeria face a myriad of coordination challenges with working with a prevalence of non-formal groups.

Box 2: Good practices and Innovation

During the course of this research, a series of evidence-based practices were identified. These practices aim to serve as solution-oriented designs that could advance children's rights in Africa. On the point of relevance, these practices were chosen based on their suitability in the context in which they were applied as valuable interventions for constructive solutions. Moreover, these practices were selected given that they had positive effects.

The identified practices are replicable and feasible to adapt. They are drawn from key findings and practices in the field and may serve as a basis for cross-fertilization of solutions in the advancement of child rights. The good practices are imperative for the development of results-based activities and as feasible pathways towards sustainable results-based solutions in the furtherance of children's rights.

Measures such as South Africa's focus on child participation ensure that voices of children reach national policy. Given the growth of urbanization in Africa and the resulting loss of community, Nigeria's focus on domestic violence and sexual response stands out as an innovation that incorporates psychosocial dimensions in the support. The latter is lacking in many responses. Morocco's inter-ministerial coordination provides a model that can be harnessed to improve coordination efforts. Kenya's data collection efforts with the national statistical agency is an example of a workable modality to bridge information gaps. DRC's ban on child marriage within a context of conflicts and war proves that this exploitation of children can be dealt with if the state rises to the occasion.

UNICEF has worked with Governments in these five countries and 47 others across the continent. These good practices has made UNICEF learn that: there is hope for the African child despite the difficult context; Governments should take a lead in the work with children; other actors need to be engaged for these efforts to succeed; and focus on specific issues for children such as child marriage is an imperative if advancement and realization of child rights is to be a reality.

⁹⁸ <<https://au.int/en/pressreleases/20151201>>.



Box 2 continued

South Africa:

- coordination of child rights issues in the Presidency;
- incorporation of ACERWC and CRC issues within a National Plan of Action 2019–2024;
- child ambassadors in each of its 9 provinces;
- a national campaign on women and girls;
- child participation within the National Planning Commission 2015–2020.

Nigeria:

- a domestic violence and sexual abuse response team;
- use of social media for child protection response;
- community-based child protection system;
- development of financial benchmarks for child protection;
- shared values and co-creation with the private sector.

Morocco:

- child participation structures at the child observatory and the human rights council;⁹⁹
- a complaints mechanism for children at the human rights council;
- inclusion of children in the democracy and human rights plan 2018–2021;
- championing joint partnerships for children in African Urban areas;
- inter-ministerial coordination of human rights including children.

Kenya:

- prioritization of data for children;
- child participation in ACERWC reporting;
- a progressive constitution with an entire article on children;
- social spending on children at 40 per cent.

DRC:

- ban on child marriage;
- role of NGOs in services for children affected by armed conflict;
- free primary education policy.

Cross-border issues:

- Benin, Burkina Faso, Mali, Niger and Togo ratifying the 2014 AU Convention on Cross-border cooperation which systematizes handling of cross-border issues in Africa including child protection.

⁹⁹ <https://www.cndh.org.ma/an/press-releases/child-protection-training-session-principle-participation>



4.4. Role of UNICEF and other United Nations agencies

UNICEF is the global leader on children's issues. In most countries, UNICEF is simultaneously organized around themes and functions. This means having sections on education, health and nutrition, social policy, child protection, HIV and AIDS, water and sanitation, as well as planning, monitoring and evaluation, and advocacy and communications.

Ideally these departments should work together within the spirit of "one UNICEF" and to a larger extent "one UN". Country Programme Documents are prepared outlining programme priorities for the country and meant to be implemented using integrated approaches. Stakeholders interviewed for the purpose of the review have pointed to the challenges of making sure that this is always the case. Despite its work being central to the ACRWC and the CRC, UNICEF is viewed by some informants as not engaging strongly with other United Nations agencies. There are joint programmes with the United Nations Population Fund, International Organization for Migration, United Nations High Commission for Refugees, United Nations Office of Drugs and Crime and other actors. The links could be made more structural as opposed to being project-based.

Across most of UNICEF, the CRC has been the guiding instrument. Article 45 of the CRC gives UNICEF the role of providing advice and technical support to the CRC Committee. Against this mandate a major activity of UNICEF in Africa has been to support countries in their reporting on the CRC. Yet few countries have received support for

reporting to the ACRWC. Indeed interviews conducted for the purpose of this review suggested that UNICEF staff within countries or even at the AU level are not always aware of the ACRWC and the ACERWC and its work including Africa's Agenda for Children 2040. There is a general lack of understanding of the difference between the ACRWC and the CRC so some actors believe it would be right to operate on the basis of the CRC only.

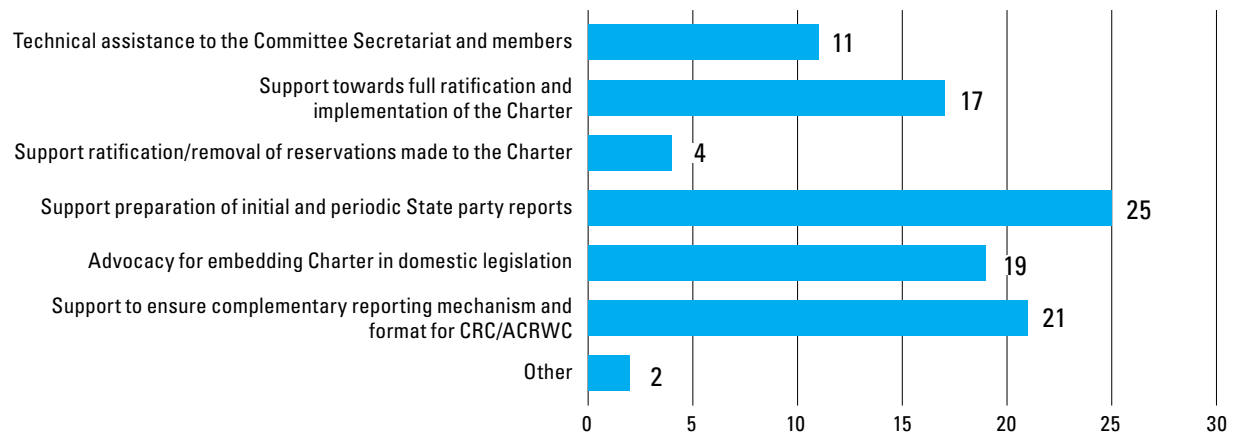
Viewing the CRC and the ACRWC as synonymous is flawed. Indeed, in its preamble the CRC implied that countries are unique, especially those in the developing world, and it is this uniqueness that led to the formulation of the ACRWC a year after the adoption of the CRC. It is an important point because what may be considered as traditions and values could also be key barriers to the advancement of children's rights. Many reservations to the CRC and the ACRWC are grounded in this difference in perception. It follows that it would be better to recognize and address this, beginning with the frameworks that articulate these traditions and values.

Despite this general trend of prioritizing the CRC, South Africa recently embarked on a more inclusive approach to the two frameworks. The Country Office consolidated the concluding observations and recommendations for both reports and prepared a National Plan of Action to implement them.

The role of UNICEF in Africa is summarized in Figure VII. The agency has supported reporting by the state (25 countries) and CSOs (21 countries), supported domestication of the Charter (19 countries) and its full ratification and implementation (17 countries).



Figure VII: Major role of UNICEF in the advancement of child rights, as cited by country offices



Source: Online survey, 2019 (n=38 but country offices gave multiple responses)

Some CSO stakeholders interviewed for the purpose of this review feel that the organization at times gets involved in implementing what would ideally be left to Government and civil society. According to UNICEF staff, it supports Governments and CSOs with implementation as a last resort. However, the organization should not wait for desperate situations to offer support. Related to this, UNICEF is seen as too close to Governments to take issue with state actors when things are not going well. For example, in Kenya and Morocco where the institutionalization of children is very real for most of the past under review. UNICEF should be championing a deinstitutionalization strategy globally. The organization has also been seen as moving too quickly with hardware programmes in education and health at the expense of child protection issues in places such as DRC where informants report there being a general fatigue with funding. In most countries, child protection and hardware programmes are not considered together.

Finally, there is concern over UNICEF undertaking short-term projects instead of more life-changing ones. Some stakeholders feel that UNICEF needs to take on more strategic concerns with government actors and CSOs. For instance, capacity-building for actors in the justice sector should be more widespread and cover a wider area rather than selected localities. This would have better traction.

4.5. Civil society organizations

Africa has a wide range of civil society actors. They range from international organizations to national and local organizations at the lowest levels of communities (usually wards, locations and districts). Many are informal in operations but have government registration and recognition. Rising mainly after the 1980s, these entities seek to fill the gap left by states in service provision but have also ventured in advocacy campaigns.



In countries such as DRC, CSOs provide much of the social welfare for children. This is also the case in Morocco although the government provides some funding to CSOs. Most of Africa's conflict and hard-to-reach areas characterizing the arid and semi-arid regions are dominated by these actors. This is also true of urban informal settlements and slums where Governments desist from social service provision claiming that these are illegal settlements. CSOs thus provide what could be termed as community services especially in education and health.

CSOs have a strong role to play in holding Governments accountable. According to the African Child Policy Forum's Report on Child Wellbeing (2016),¹⁰⁰ there are a number of tools to do so. These include the South Africa Child Gauge which is an annual publication by the Children's Institute of the University of Cape Town, the CFI and child-specific indicator series like the Angola Multiple Overlapping Deprivation Analysis (A-MODA).¹⁰¹ Although the involvement of national statistical agencies has improved child-focused data gathering in many African countries, investments in up-to-date and comprehensive data tracking and information systems are still needed. Much of the efforts are funded by international development partners and donors and gaps remain where this funding is not forthcoming.

Child-led CSOs are emerging entities working with vulnerable children and managed by young adults themselves to improve the situation for children. The African Movement for Working Children and Youth¹⁰² based in Dakar, Senegal is an example. It organized a children's summit recently and has been regularly participating in sessions of the

ACERWC presenting children's voices. It has partnerships with the private sector and international actors such as Plan International. Other child-led actors are often mobilized around international and national CSOs to take part in ACERWC and CRC sessions.

CSOs do encounter tensions with Governments particularly when they engage in advocacy. Consequently, countries such as Algeria and Ethiopia had their reports to the ACERWC considered without CSO reports since the non-state actors failed to submit complementary texts.

One way that the CSOs strengthened their advocacy and work with children was through the formation of the CSO Forum on the African Charter on the Rights and Welfare of the Child¹⁰³. The Forum brings together CSO networks from the five sub-regions of the continent prior to the ACERWC ordinary sessions to discuss their issues and deliver a common message upon the opening of the ACERWC session. Supported by UNICEF and international child-focused agencies Save the Children, Plan International and recently Terre des Hommes Netherlands, these forums also help the CSOs share experiences, learn from each other and chart a common agenda for advocacy.

Virtually all CSOs are funded by foreign donors and development partners mirroring the Government and even AU situations. The explanation for this is the genesis of civil society where inefficiencies in government operations led donors to shift to alternative funding modes in favour of CSOs. The question often raised in African political economy is the extent to which CSOs should

¹⁰⁰ ACPF, *African Report on Child Wellbeing: Getting it Right – Bridging the Gap between Policy and Practice*, 2016.

¹⁰¹ <www.unicef.org/esaro/UNICEF-Angola-2018-A-Multidimensional-Analysis-of-Child-Poverty.pdf>.

¹⁰² <www.facebook.com/African-Movement-of-Working-Children-and-Youth-AMWCY-489715444720861/>.

¹⁰³ For the latest report on one forum see: <<http://eachrights.or.ke/wp-content/uploads/2019/06/14th-CSO-FORUM-Report.pdf>>.



be involved in service provision compared with advocacy¹⁰⁴. They have largely missed the opportunity to challenge the power imbalances characterizing their rise, operations and survival as well as the structural barriers to development including for children and their families and communities.

CSOs have, for the last 10 years, coalesced around the CSO Forum on the African Charter on the Rights and Welfare of the Child. However, a third of that time has been riddled with internal squabbles and lack of operational efficiency. This limits the ability and vigour of the entities to challenge Governments to be more accountable.

4.6. Other actors

Other actors within the architecture of child rights in Africa include independent national human rights institutions (NHRI) and media. In 2002, the CRC developed a General Comment on independent human rights institutions foreseeing their usefulness in providing oversight not just for general human rights.¹⁰⁵ The CRC Committee recognizes and welcomes the independent human rights institutions in its pre-sessions and sessions including accepting reports from these entities. The same cannot be said for the ACERWC, yet there are 44 independent human rights institutions.

It was recently found that within the independent human rights institutions, issues of children are handled generically alongside other broader human rights programmes and

projects.¹⁰⁶ The institutions are underfunded and their expenditure is only for running costs, not for developing programmes. Coupled with a lack of dedicated staff on child rights, these institutions do not prioritize children's issues. Some, including examples in Senegal, have weak constitutional mandates and limited awareness of what they can do to enhance child rights.

Media actors are critical for the continent. Media has been used as technology to promote child rights and child participation. There is a lot of attention currently focused on online sexual abuse at the expense of looking at technology from a more positive perspective. Traditional and social media are being used to report on child rights violations but there are innovations currently in place. Mtoto News is an emerging organization based in Kenya and working with the ACERWC to promote the use of media by children to articulate their situations and rights. It was established in 2017 to fill the gap created by the lack of children's voices in mainstream and digital media. In November 2018, Mtoto News worked with children to prepare the children's report to accompany Kenya's second and third report to the ACERWC. In Nigeria and other African countries, there is a youth network working with UNICEF to track and report on child rights violations. Across Africa, toll free numbers run by Child Helpline International¹⁰⁷ and specific mobile service providers are another positive use of technology. However, these forms of media need to form a sub-system within a broader child protection system.

¹⁰⁴ Plan International, *Promoting Child Rights to End Child Poverty: Achieving Lasting Change through Child-Centered Community Development*, 2010; See also Shivji, Issa, G., *Silences in the NGO Discourse: The Role and Future of NGOs in Africa*, FAHAMU Publications, 2007.

¹⁰⁵ <www.unicef-irc.org/publications/pdf/crcgencommen.pdf>.

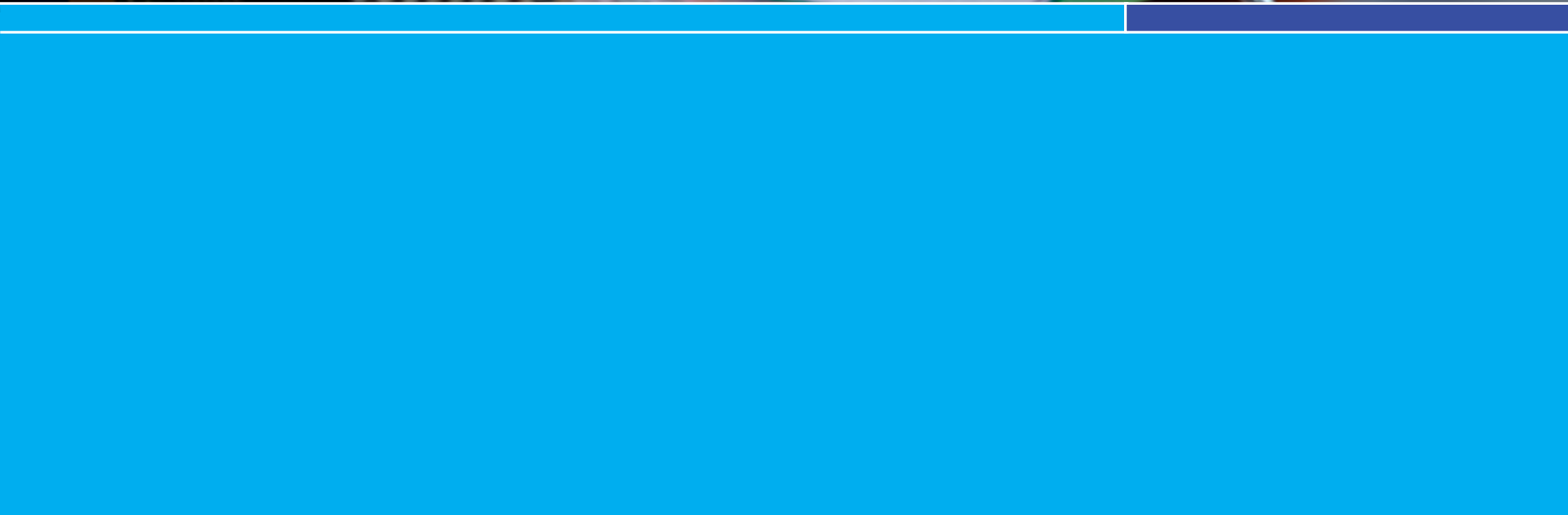
¹⁰⁶ Network of African National Human Rights Institutions, *Child Rights Mapping Report*, Project Report supported by Plan Pan African Office with Sweden funding, 2017.

¹⁰⁷ <www.childhelplineinternational.org/wp-content/uploads/2019/09/AnnualReport2018.pdf>. In Africa, there are currently 26 full members and 9 associates of Child Helpline International working to give voice to children on matters of ending VAC and overall child protection including online sexual exploitation and abuse.



5

STRATEGIC PRIORITIES FOR UNICEF





This chapter examines the strategic focus that UNICEF should consider in order to more positively influence the future agenda for the African children. UNICEF has a primary role in this process given its mandate by the CRC. However, the success and sustainability of UNICEF work will depend on how well it engages with other actors, especially those with government responsibility at the various levels (continental, national and local).

5.1. Legislative issues

The first set of priorities pertains to the legislative aspects of child rights. A major question is why Africa is yet to achieve universal ratification of its child rights regional instrument, the ACRWC. Given that this is what provides for the uniqueness of the continent and provides for realization of the aspirations around rights of children, it is important for UNICEF to work towards universal ratification. This is also a priority captured in Africa's Agenda for Children 2040 and in the ACERWC Strategic Plan 2015–2019.

Full ratification of the ACRWC means working closely to support missions of the ACERWC but also being more strategic in terms of engaging the Permanent Representatives Council of the AU. It is important for the AU Liaison Office to invest in holding meetings and briefings with Permanent Representatives Council members whose countries are yet to ratify the ACRWC. A technical support function should be undertaken with the ACERWC Secretariat for this and related legislative actions.

Connected to this is the need to ensure that countries such as Botswana, Egypt, Mauritania and Sudan that have reservations with regards to the ACRWC withdraw those reservations as these negatively impact negatively the spirit of

the ACRWC and by extension the CRC. UNICEF can prepare technical notes on the benefits of such withdrawals for children in the long term.

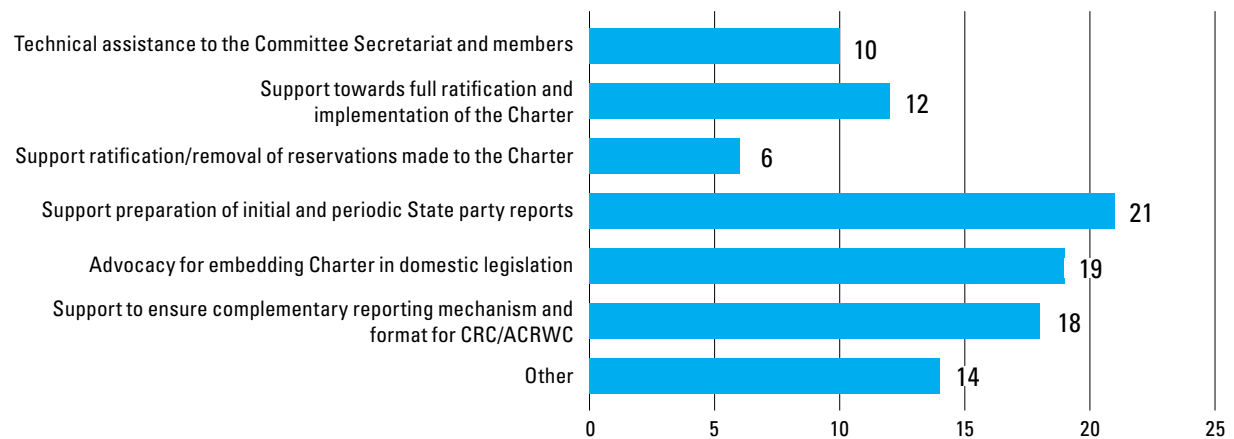
Figure VIII presents the priorities for UNICEF country offices, which include technical support around country reporting followed by embedding of the ACRWC in domestic laws and technical and financial resources for implementation.

The reporting cycle is an important element of the ACRWC beginning with getting states to prepare and submit their reports on time. UNICEF will need to start with a list of countries and their reporting calendars. Given that all countries usually prepare reports to the CRC, one way to start working on efficient reporting is to consider reporting duties for the CRC alongside those of the ACRWC. It could mean having focal points in all UNICEF country offices charged with the responsibility of following up on reporting for these instruments as a minimum gauge of accountability to children. The focal points can also engage with the relevant government ministries and departments to ensure allocation of resources for the reporting as well as ownership of the process.

Reporting for CSOs is important as it helps to triangulate state-led data gathering and analysis. Even if CSOs are in most cases engaged with State Party reporting



Figure VIII: Priority role of UNICEF to further support advancement of child rights according to country offices



Source: Online survey, 2019 (n=38 but countries gave multiple responses)

it is important for them to be supported to prepare their own reports. Separate reports will also need to be prepared by children and presented as such. Independent human rights institutions have been left behind in the ACRWC reporting. These institutions should be mobilized to take part independently in the State Party reporting but also to prepare their own reports. Preparation of these reports should be based on the annual reporting for independent institutions to their establishing authorities, usually parliaments. Country offices should be encouraged to work with these institutions in this regard.

Reporting alone is not adequate and sufficient but is a starting point for accountability. After reporting, states should be questioned on the measures they are taking to promote and protect children's rights. All the concluding observations for both the CRC and the ACRWC should be consolidated into an action plan translated into appropriate languages for advocacy and implementation. These plans should form the core of

UNICEF country programme documents and operations. Supported government and CSO activities should mirror these priorities.

An important area of technical support for UNICEF is to encourage countries to incorporate the issues raised in the concluding observations and recommendations within domestic laws and policies. Other sources of legislative reforms that need support should be the ongoing campaigns with the AU on child marriage, children affected by armed conflict and others. This requires working more closely with the campaigns. A key imperative should be to have a consolidated law on children within each country.

5.2. Policy priorities

UNICEF technical support should be given to countries to fast track the development of policies relating to child rights. A starting point would be advocacy to ensure that all countries with a UNICEF presence have completed national action plans on children.



The national plans should seek to integrate all sets of child rights (survival, development, participation and protection) through measures that provide practically for this synergy. They should have clear indicators of progress and performance, be realistically costed and used to evolve annual plans and budgeting.

Besides the national action plans, it is important to engage with different stakeholders on the extent to which the ACRWC and CRC agendas are being handled at the policy level. UNICEF needs to engage with the highest policy organs in every country with the country representative taking the lead on this. These two instruments need to form the core of the country operations including sectoral programme priorities.

An important policy aspect should be to have a national policy on children in each country tying together all issues of children in one explicit statement and a combination of strategies on how to engage with those issues. The policy should be costed and time bound with clear milestones and indicators.

Child rights need to be integrated into different policy areas including urbanization, climate change, migration and technology. This means policy analysis and advocacy on these and other areas at country, sub-national and sectoral levels. It implies seeking links and synergies even with non-traditional sectors and development programmes. UNICEF staff should be actively looking out for these links and synergies in the current fast-changing African continent. Putting the child first should be the driving force. Academia and policy think tanks can help in the timely analysis of these issues if well mobilized in advance, supported with policy analysis capacity and engaged consistently.

There has been substantial progress made on matters of women's rights and gender. Learning on child-related policies can benefit from this progress, including working collaboratively, adopting a more encompassing approach such as focusing on the boy and girl child, proactive support to the family and community as drivers of rights of children as well as consistent monitoring and evaluation. It could also mean working with women's rights and gender policymakers and implementers as allies.

Children themselves should be engaged in policy formulation processes. Public participation of children to determine their destiny needs to become the norm and not an event. Meeting of children's parliaments and councils should be regularized taking into account the schooling and related protection issues. Involvement of differently abled children such as those with disabilities and street children as well as those affected by conflicts and the law should be proactively sought, invested in and sustained. It means investing in children's own organizations and related social formations at school, community and different administrative levels. Children's participation in policy engagements should go beyond policy formulation to implementation, monitoring and evaluation. This means also investing in the mindsets of adults at various policy levels continentally, nationally and locally in devolved units. The ACRWC itself needs capacity-building in this regard. It implies replicating the traditional African socialization models of evolving capacities of children as agency. CSOs have a lot of learning on these models and should be engaged accordingly.



5.3. Programmatic priorities

Implementation priorities for improvement have been cited by UNICEF country offices to include better coordination, budget allocation and attention to specific groups of children (Figure IX). Other required improvements are in the areas of harmful social norms, having dedicated children’s laws, empowerment of legal officers, having public debates for children, promoting income generation for families, and more social workers for children.

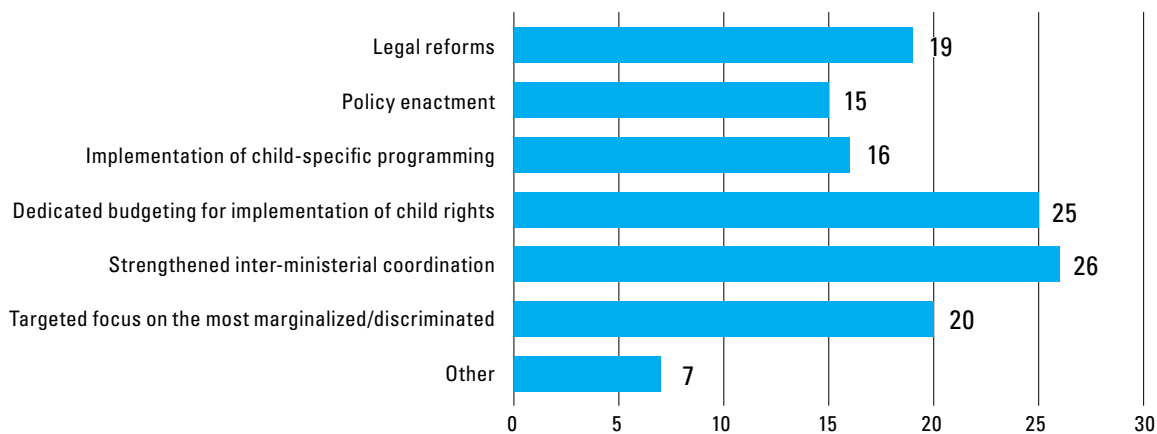
Programmes for advancement of child rights should adopt a continuum dimension where the concluding observations and recommendations of the ACRWC and the CRC take priority. This will strengthen commitment to the international instruments and accountability to national constitutions and laws. However, there are specific programming priorities that should be maintained across the board.

Supporting government investments in data and evidence should be a primary priority for UNICEF. Currently UNICEF supports MICS

and DHS in many countries as well as child protection and gender-based databases. It will be critical to check which data is still missing and seek to gather this for effective child rights programming. One way of doing this is being sensitive to the indicators of the ACRWC, CRC and Sustainable Development Goals as well as Africa’s Agenda for Children 2040. These should be the basic reference points for data gathering and programming. Effective gathering of data means working with and strengthening statistical agencies, academia and think tanks based on an effectively coordinated knowledge management mechanism.

UNICEF as the global leader in children’s rights should be able to assist Governments capture, store and share good practices and innovations on working with children. There needs to be communities of practice promoted in this regard. Sharing good practices needs to take place at all levels including with communities and children themselves. At the AU liaison level, developing inter-state dialogue on good and innovative practices should be a key investment. The UNICEF Liaison Office to the

Figure IX: Key areas that could be improved to advance child rights as cited by UNICEF country offices



Source: Online survey, 2019 (n=38 but countries gave multiple responses)



AU further needs to share cross-country good practices with all country and regional offices with demonstrations of how these can be adapted and scaled up. This means investing in knowledge management and learning as well as the related systems and procedures.

Another key priority is the improved coordination of actors. Many countries lack effective coordination mechanisms in practice. Coordination is mentioned in policy documents and projects but it remains on paper. UNICEF should invest in making these mechanisms work and having the

Governments take effective charge of these processes. This means championing the role of the responsible policy and technical focal units within AU, regional economic communities, countries and devolved and sub-national units.

Improving the capacities of children and child-led organizations in national level dialogues on development should also form a key programme priority. UNICEF cannot work with children without supporting their

voices and engagement spaces. Usually working with school-based children is the quick fix but not inclusive given the many children left out of participatory processes, e.g. working children, street children, those of indigenous populations, migrating children and others. The focus should be to invest in inclusive processes and structures at continental, national and sub-national levels.

Working with independent human rights institutions should be a priority to enhance accountability since these institutions have the legal muscle to demand accountability from both government and other actors. This element of policy development can be expanded to work with parliamentary committees on human rights and issues related to children (education, health, labour and social protection). This means forging alliances with others civil society actors.

Given the emerging changes in the context of children, there are specific priority areas of attention as contained in Box 3.

Box 3: Specific priorities for children

Changing urbanization and demographics calls for:

- Enhancing urban programming for children especially those on the streets, in slums and informal settlements.
- Integrated programming to ensure rural-urban linkages.
- Addressing remoteness beginning with a re-definition of how to offer services to migrants. Reaching all children should include those with disabilities as well as street children.
- Giving voice to rural-based children who are often left behind. This means enhanced advocacy and giving a greater role to the local governments.
- Re-defining child protection systems and civil registration to cater for migrating communities and avoid discrimination.



Box 3 continued

- Re-defining the social service workforce to also include police and immigration officials. The workforce also needs to cater for the separation of families resulting in increasing urbanization.
- Collaboration and development of a continental strategy for the protection of street children and those without parental care.
- A need to involve media to highlight issues and inform advocacy especially for vulnerable children who are in danger of being left behind.
- Radicalization of youth and children leads to many children missing out on their childhood and being exposed to dangers and related survival risks. Preventive propaganda as well as child and youth empowerment programmes working with value-based traditional and religious leaders can counteract this.

Addressing conflicts, climate change and displacements calls for immediacy in terms of:

- Enhancing disaster preparedness including institutional strengthening
- Children on the move are exposed to detention, loss of documentation, violence and exploitation. Humanitarian action, peace and resilience-building need to be prioritized, based on sound data and evidence
- Strengthening cross-border mechanisms and linking these to child care and development
- Strengthening conflict resolution and transformation mechanisms at family, community and national levels, and cross border
- Mainstreaming child rights within emergency programming
- Strengthening the role of the family in childcare
- Protecting education in emergencies policies and programmes including safe schools
- Need to adapt education systems to the emergency situations which will involve better methods of tracking, tracing and follow ups
- Follow up on the child during conflicts and emergencies and acting according to best interests
- Changing technology and globalization calls for:
 - Training and teaching children on coding and self-protection
 - Embarking on positive parenting to emphasize values more than technology. This also means strengthening the family structure in Africa as well as paying attention to children without parental care
 - Changing education systems to reflect the new world of work
 - Undertaking advocacy to promote openness and keeping abreast with the changing technology landscape
 - Lobbying African countries to sign, ratify and implement the 2014 African Union Convention on Cyber-security and Personal Data Protection.



ANNEX 1:

Terms of Reference – Final version

Title/PURPOSE	Undertake a Review of the African Charter on the Rights and Welfare of the Child (ACRWC): Reflecting on the past and future challenges and opportunities
RECRUITING OFFICER	Evaluation Specialist, UNICEF Evaluation Office
CONTRACT MODALITY	Individual Contracts (2 international consultants)
Location of Assignment	Home based with travels to Addis Ababa, Ethiopia and to the two countries selected as case studies (TBC)
Language(s) required	English and French
Duration of Contract	15 June – 30 December 2019

A. Introduction

1989 marked the year in which world leaders made a historic commitment to children worldwide, through the adoption of the Convention on the Rights of the Child (CRC) by the UN General Assembly. Soon thereafter, building on the momentum that surrounded the CRC, African States recognized the need for an additional legal instrument that would cover the reality and protect the specificities of children in the African region. African States envisioned a treaty that would complement the CRC and fill in legal gaps, vis-a'-vis child protection in Africa, that the CRC could not fully provide for. By including a range of specifications, such as the situation of children in displacement after conflict, children living under apartheid and the disadvantages of the female child, the African Charter on the Rights and Welfare of the Child (ACRWC) was adopted in 1990 and became, only one year after the adoption of the CRC, the first ever *region-specific* instrument for children's rights.

The ACRWC became legally binding ten years later (1999), and, as of today, has been ratified by all but six of the 54 AU Member States.¹⁰⁸ Through the years, UNICEF has provided support to the advancement of the ACRWC on different levels. Initially, at the Member State level, by providing technical and financial support towards the full ratification and implementation of the ACRWC i.e. helping with preparing initial and periodic State Party reports (which are required every three years), as well as civil society's 'shadow' reporting, and supporting the implementation of concluding observations and legislative efforts to embed the Charter into the domestic legislation of States. Subsequently, from 2005, UNICEF has also been providing support to the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), which draws its mandate from the ACRWC, through technical assistance to its Secretariat and members, including on the development of the Committee's five-year Strategic Plans. Today, UNICEF's work in this regard is expected to

¹⁰⁸ These include: Democratic Republic of Congo, Morocco, Somalia, São Tomé and Príncipe, South Sudan and Tunisia. See: <https://libertyandhumanity.com/wp-content/uploads/2018/09/2-UNICEF's-support-to-the-African-Children's-Charter-Committee-final.pdf>



expand further to support States with their reporting requirements on the implementation of 'Africa's Agenda for Children 2040'.

As the 30th anniversary of the adoption of the ACRWC approaches, UNICEF is seeking to contribute to the body of knowledge about the ACRWC, reflecting on its past role and shedding light on the opportunities it holds for the future.

B. Objectives and Purpose of the Review

The objective of this review is as follows:

- to reflect on the *past contributions* of the ACRWC vis-a'-vis the advancement of child rights in Africa;
- determine *UNICEF's* specific contribution towards the implementation of the ACRWC and its strategic positioning over time;
- examine what actions/activities are taking place at the country levels in response to the ACRWC work; and,
- reflect on the *future challenges* that the African continent will face and the ways in which the ACRWC, in this context, can best position itself, including for the 'Africa's Agenda for Children 2040'.

By reflecting on these issues, the review is expected to craft new ideas and reflect on how the ACRWC and related institutional arrangements can be harnessed and strengthened to further advance child rights in Africa.

C. Indicative Key Questions

Broadly, the review will attempt to answer the following questions:¹⁰⁹

1. *What role has the ACRWC had in furthering the advancement of child rights in Africa?*
 - *To what extent has the ACRWC effectively complemented the CRC? What interactions have occurred, institutionally and substantively, between the CRC and the ACRWC?*
 - *Are there key trends that can be observed across States that have ratified; signed but not ratified; and not ratified, respectively, the ACRWC?*
2. *What role(s) did UNICEF specifically play in relation to the implementation of the ACRWC and vis-a'-vis the ACERWC?*
3. *In which instances did UNICEF most actively engage? Why?*
 - *Where there missed opportunities? If so, why?*
 - *What lessons can be learned from UNICEF's engagement in the monitoring and reporting processes of the ACRWC, as well as in support of processes for the full ratification of the treaty?*
4. *How are countries working to advance child rights in Africa, as per the aspirations of the Charter?*
5. *How consistent are the countries' actions in relation to the Committee's work?*
 - *What good practices and innovations can be captured on how countries have upheld the principles of the Charter in the context of the ongoing changes in the continent?*

¹⁰⁹ The questions will be reviewed and further fine-tuned during the inception phase, and with Reference Group members.



6. *To what extent is the ACRWC well positioned ('fit for purpose') to face the drivers of change in the African continent in the next few years?*

- *What can be considered the key changes that will affect children's lives the most in the next 5-10 years?*
- *What evidence exists that these shifting dynamics will usher new protection challenges for children?*
- *Are there areas against which the ACRCW should be updated and strengthened further, to ensure continued and sustained relevance of the treaty over time, including its strategic positioning towards the 'Africa's Agenda for Children 2040'.*

D. Expected Users

The expected *primary audience* of this Review is the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), and UNICEF management and staff, especially the UNICEF Liaison Office to the African Union & UN Economic Commission for Africa; regional and country offices in Africa, and HQ divisions. *Secondary audiences* include: the CRC Secretariat; the larger community of partners including governments and implementing partners; member states; donor agencies, among others.

E. Methods and Analysis

The study will answer the questions outlined above primarily through qualitative methods including a literature review (including country specific reports), case studies and interviews

with key stakeholders. The case studies will be selected with purposive sampling. If found necessary, a small survey can be administered to countries to get their perspectives.

With the understanding that ratification of the ACRWC by any given State is not in itself an indication that child rights are in fact realized, the first question will gauge the *contribution* of the ACRWC vis-a'-vis the advancement of child rights in selected ratifying States. For this purpose, the reviewers will identify relevant *indicators of advancement of child rights* and construct a *theory of change* that will help systematize the logical and sequential connections between the implementation of the treaty and such indicators. In doing so, the reviewers will draw on existing literature which has helped 'unpack' the variables through which human rights treaties have an 'impact' on the domestic level – including, inter alia: incorporation into the state's constitution/legislation; judicial decisions; changes in policies; implementation of concluding observations of relevant treaty bodies; media coverage; educational systems/programmes; customs; political stability; level of complaints systems; UNICEF roles; and domestic constituency.¹¹⁰

Given the strong linkages with the CRC, the reviewers will also shed light on the ways in which the ACRWC contributed to advancing child rights in Africa, while complementing the CRC. In selecting case studies that can inform the first question, the reviewers will pay particular attention to the selection of countries made by other studies in this field, to create synergies and avoid overlaps, including the forthcoming study by the University of Pretoria and OHCHR on the impact of UN Human Rights treaties in 20 states.¹¹¹

¹¹⁰ See 2002 study by C. Heyns and F. Viljoen. A new study on the impact of human rights treaties on domestic level will be issued in July 2019 (University of Pretoria and OHCHR).

¹¹¹ This study comes 17 years after its 'baseline' which covered 20 States. The African States included in the study were (and will be since the paper will focus on the same States): Egypt, Senegal, South Africa and Zambia.



In the second question, the reviewers will use existing country reports to determine what is happening at the country level, including the consistency in the respective country actions in response to the Committee's work. If necessary, a small survey to the countries to get some perspectives can also be undertaken. In answering the third question the reviewers will map out the different types of support that UNICEF has provided over the years to the implementation of the ACRWC and, subsequently, re-construct a '*theoretical pathway*' that connects UNICEF's efforts with outcomes in the advancement of the implementation of the ACRWC.

The fourth question will require a thorough context analysis, mapping the environment and identifying key drivers of change in Africa which will have implications on the reality of children and their rights – some of the anticipated ones include: conflict, technology, demographics, regional integration and family structures/composition. This question will rely, comparatively, to a lesser extent on the selection of case studies used to answer the first two questions.

F. Limitations and anticipated Challenges

Key limitations will include the time constraints given that the review needs to be completed before the 30th anniversary of the CRC celebrations (November 2019). As a result, prior access and availability of key data and reports will be critical. The Team will also need to balance timeliness with depth of information and well-substantiated findings. Given the time constraints, only two specific country visits are envisioned – specific criteria for selecting the countries will need to be discussed and agreed upon. It should also be noted that the case studies will allow more

details and evidence to be collected that is a lot richer and of greater depth, and at the same time, the data will not necessarily be generalized to other countries in Africa.

G. Management and governance arrangements

Evaluation Office and UNICEF Liaison Office (Addis Ababa, Ethiopia):

The Evaluation Office/UNICEF Liaison Office to the African Union & UN Economic Commission for Africa will manage the review process. The Evaluation Director will provide the overall guidance to the review. The Liaison Office will ensure the linkage with the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), and the Countries.

Review Reference Group:

The work will be guided by a Reference Group comprising key UNICEF staff and external experts who will provide guidance to the consultants and inputs in the deliverables as the review unfolds. The reference group will have the following responsibilities:

- a. Provide inputs in the inception phase to influence the approach of the review, and, where necessary, provide information and institutional knowledge as key informants;
- b. Support the work of the team by facilitating connections with key informants and ensuring the team has relevant reference documents;
- c. Review selected review products (TOR, inception report and draft and final reports) and providing written comments to the team; and,
- d. Where feasible, contribute to the post-review action plan and dissemination strategy.



H. Team composition, responsibilities and required qualifications

Team Composition and responsibilities:

The Review will be conducted by a team of two international consultants (one team leader, and one senior consultant). Each will be contracted for a total of 45 days. Individual contracts will be issued to each team member.

The review team is expected to execute the following tasks:

- a. Develop a realistic work plan for the review;
- b. Execute the review to respond to the questions stipulated in the terms of reference (or subsequent revisions of the review questions);
- c. Generate review products and deliverables as shown in the table below, and in accordance with contractual requirements.
- d. Provide written responses to comments from the reference group, and update report accordingly; and,
- e. Provide regular updates to the Review Managers.

Required Qualifications:

- a. 10 years' experience in research or work related to human rights treaties
- b. Familiarity with the CRC and ACRWC
- c. Experience with contribution analysis methods, as demonstrated by publications, and theory of change
- d. Experience with evaluations and reviews for UN agencies/bodies
- e. Familiarity with UNICEF's work
- f. Excellent oral and written communication skills in English; knowledge of French an added advantage

I. Timeframe, Tasks and deliverables

1. Inception Phase (10 days between June and mid-July 2019)
 - Tasks: conduct document review and limited interviews, prepare draft inception report, refine inception report
 - Deliverable: final inception report
2. Data collection Phase (20 days between mid-July and end-August 2019)
 - Tasks: data collection missions in two country case studies, Addis Ababa and Geneva, data analysis
 - Deliverable: country case study notes
3. Reporting Phase (10 days in October 2019)
 - Tasks: prepare draft review, incorporate feedback, produce final review
 - Deliverable: final review report
4. Dissemination Activities (5 days between November and December 2019)
 - Dissemination presentations and workshops (at least 3)

Payment Schedule

Payments will be made to each consultant upon successful delivery of each deliverable (final inception report, country case study notes, final report, and dissemination activities). The consultants will invoice based on the number of days contributed to the specific deliverables. The sum of the days should not exceed the total days outlined above in the section on timeline, tasks, and deliverables.



ANNEX 2:

Case Study Country Reports

KENYA

Background

Kenya has an estimated population of 47 million with children making up half¹¹² of this number. A population census has just been concluded with analysis ongoing. The majority of the population resides in rural areas with a diversity of social formations and cultures that have a bearing on the status and wellbeing of children. These rural areas are the worst hit by droughts and emergencies that are frequent in the country thereby negatively affecting households particularly the lives of women and children. The economy is growing at around 6 per cent per annum but there are concerns that this growth is not felt across the country and populations. The country has a devolved form of Government following the 2010 Constitution, which created 47 counties that control 4.5 per cent of the GDP. It devoted an entire Article (53) on the rights and welfare of children. The new constitution also provides for automatic adoption of international instruments into Kenyan legal frameworks.

Situation analysis

Children in Kenya suffer from child poverty despite years of investing in their health, education, water and sanitation, and social protection. 45 per cent of the country's children under the age of 18 were as at 2014 categorized as poor using the UNICEF championed Multiple Overlapping Deprivation Analysis (MODA) model.¹¹³ Given that the model derives

from the CRC, these children lack the basic needs and services necessary for their survival and development. They can hardly access education, health care, water and sanitation as well as social protection. The situation is worse in far flung rural areas such as Turkana and West Pokot with deprivation being as high as 85 per cent compared to Nairobi's 7 per cent. In these remote places, that form the bulk of the country's surface area albeit with a limited population, vulnerability is high due to harsh climatic conditions that frequently change. There are intermittent droughts and floods both of which spell doom for livelihoods and negatively affect child rights to food, education, health care, water and sanitation. The poverty study reveals that even children living among the rich experience some form of deprivation meaning that child deprivation is an issue of availability and access to services.

Kenya attained high net enrolments in education (93 per cent) and women's empowerment but remained low on the other Millennium Development Goals (e.g. maternal mortality still high at 362/100,000, skilled births only at 56 per cent, infant mortality still high, full immunization coverage is at 76 per cent from 84 per cent in 2008, and child marriage and female genital mutilation still affects a fifth of girls). Increasing urbanization and the concomitant rural to urban migration have combined with a high incidence of disease, including the prevalence of an HIV pandemic among 15-24 year olds, to negatively affect the population. There are many orphans and vulnerable

¹¹² KIPPRA Policy Brief No.63 /2018-2019: Kenya 2018 National Budget Brief.

¹¹³ KNBS and UNICEF, *Child Poverty in Kenya: A Multidimensional Approach*, 2017.



children lacking in basic care and services. Violence against children perpetrated by those closest to them is a further issue of concern. At the time of this review, there were media reports on mistreatment of children in institutions of care supported by public funds, which led the cabinet to issue an order on the streamlining of those institutions. The country has not allocated adequate resources to address multidimensional child poverty. Although social sector spending at national and county levels stands at 40 per cent of the GDP with half of this in education, the country response to the Sustainable Development Goals launched in 2016 can only be realized if resources are also channeled to such other deserving sectors as nutrition, water and sanitation, and child protection. Public resources are particularly required with dwindling overseas development aid following the country's emergence into a middle-income country in 2015.

Legal and institutional context

Kenya has ratified both the CRC and the African Children's Charter as well as the two Optional Protocols to the CRC. Other relevant instruments include the ILO Conventions 138 (Minimum Age) and 182 (Worst Forms of Child Labour). The country further developed a Children's Act in 2001, which adopts the spirit of the CRC and African Children's Charter. This Act is currently under review although the review has taken over 10 years. However, in numerous cases, reference to the African Children's Charter is hardly made, e.g. in the KNBS and UNICEF-led 2017 child poverty research and other documents on child rights such as the Alternative Care Guidelines, the CRC is the point of reference.

Kenya's children's sector is coordinated by a policy organ, the National Council for Children's Services established under the Children's Act 2001. This entity then works closely with the Department of Children's

Services, which provides technical support to children's services. Recently, a third institutional mechanism was officially launched in the name of the Child Welfare Society of Kenya to manage children's homes funded by the state. In addition to these legal bodies various ministries and departments are charged with children's issues including county Governments (for early childhood education), education, health, justice, the police, Directorate of Criminal Investigations and the public prosecutor. The Directorate of Criminal Investigations has for instance established a child protection unit to investigate cases of abuse and exploitation against children including child trafficking and online abuse and exploitation. Other actors within the state include the autonomous Kenya National Commission on Human Rights that has a children's function.

There are numerous civil society actors coordinated under various networks including the Kenya Alliance for the Advancement of Children, Girl Child Network and the ACERWC Forum (operated by the African Institute for Children's Studies). International leaders on children present in Kenya are Plan International, World Vision Kenya and Save the Children, among others. The country has several individual media practitioners and *pro bono* lawyers pursuing child rights causes.

Role of UNICEF

UNICEF Kenya works mainly with the Government of Kenya's two mandated offices dealing with children's issues (the National Council for Children's Services and the Department for Children's Services) and the line ministries and departments, including research institutes such as the Kenya Institute for Public Policy Research and Analysis, to streamline the policy environment as well as provide appropriate technical support for the various sectors.



UNICEF has provided significant support to the NCCS and DCS in formulating guidelines and standards for children's institutions as well as alternative care within an overall policy shift towards de-institutionalization. There are approximately 830 registered charitable institutions in Kenya.¹¹⁴ The position of UNICEF has been advocacy and support towards children being removed from these institutions into family and community care.

UNICEF has been instrumental in supporting VAC data generation working with the Kenya National Bureau of Statistics in addition to the Situational Analysis of Children scoping in 2017. Through its efforts, child-related data is becoming core to the country's information management systems. Other data is gathered by the respective ministries within their databases, e.g. education and health, with UNICEF sectoral support. In the education sector, UNICEF provides specific support on coordination and data generation to education for children in emergencies including refugees, internally displaced children and children within pastoralist regions.

Value and impact of the Charter

The African Children's Charter is credited with the passing of laws (mainly the Children's Act 2001) in Kenya. A law on general sexual offenses with provisions for children was passed in 2006 and has been widely used by the judiciary. In addition to laws policies seeking to advance rights of children have been adopted in the sectors of education (introduction of free primary education in 2003, National Pre-Primary Education Policy in June 2018, policy on mentorship in March 2019 and National Curriculum Policy in May 2019 to operationalize the competence-based curriculum), health care (universal health coverage

as part of the Big-4 Agenda 2018–2022), child labour (National Policy on Child Labour 2016) and social protection (National Social Protection Strategy 2011 with a cash transfer for orphans and vulnerable children).

Advocacy work by CSOs on child rights has used the framework to demand services for children, call for a review of the law where it was not responsive to rights of children and further push for proper coordination and oversight of children's services.

Good practice and areas of improvement

From the review, some good practices in Kenya include:

- Prioritization of data for children by KNBS
- Child participation in report on the ACRWC
- A progressive constitution devoting an entire Article (53) to child rights
- Social spending budget of 40 per cent at national and county government levels

The key areas of improvement include:

- Improving coordination and oversight – need to streamline roles of NCCS and the DCS
- Implementing the alternative care guidelines
- Strengthening public finance management to ensure that resources to the social sector focus on sectors such as nutrition, water and sanitation and child protection
- Adopting integrated/multidimensional and child poverty-focused approaches
- Linking CRC and the African Children's Charter in reporting beginning with sensitization of both.

¹¹⁴ National Guidelines for Alternative Care.



THE KINGDOM OF MOROCCO

Background

Morocco has a population of 35 million people, 11 million of whom are children.¹¹⁵ It is a parliamentary constitutional monarchy led by King Mohammed VI. There are 12 regions, 13 prefectures and 62 provinces. With a GDP of \$119 billion, Morocco is one of the ten largest economies in Africa. The economy thrives on agriculture, phosphate and tourism. However, the majority of the population is poor: 20 per cent of the wealth is controlled by 80 per cent of the population and vice versa. Most of the poor are rural populations, a third in remote places.¹¹⁶ In 2011, Morocco adopted a new constitution which emphasizes equal social and moral consideration for all children. It also places the primacy of international law over domestic laws thereby raising the standards for care of children and other vulnerable groups.

Situation analysis

Leaders in Morocco are concerned about the situation of children. Investments have been made in the health care, education and social protection sectors. Maternal, infant and child mortality have dropped and there are less children out of school. However, these improvements have been more evident in urban areas and among the relatively richer sections of the population compared with the rural and poorer populations.

On child protection, Morocco has been requested by the CRC Committee¹¹⁷ to address issues of children working as house helps (little maids), children on the streets, girls

and children of single mothers who are highly discriminated by the socio-cultural system, as well as children in social welfare institutions. Absence of a consolidated child law/code is a concern in the country. In addition, there are issues of coordination as observed by the CRC thus:¹¹⁸

“While noting the establishment of the Childhood Division within the Ministry for Solidarity, Women, the Family and Social Development, and the creation of synergies between public institutions working for children within the framework of “Pôle Social 4+4”, the Committee remains concerned that the coordination of the implementation of the Convention remains inadequate, which leads to fragmented and often incoherent child policy planning. The Committee is also concerned at the insufficient human and technical capacities and the decreasing budget allocated to the coordination ministry, as well as the absence of designated coordination authorities at the regional and local levels.”

Legal and institutional context

Morocco ratified the United Nations Convention on the Rights of the Child on 21 June 1993. It ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 22 May 2002 and the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography on 2 October 2001. However, it is yet to adopt the Protocol on Communication. While it has ratified these United Nations treaties, it is yet to ratify the

¹¹⁵ HCP, *Projections de la population des ménages 2014-2050*, disponible à <<https://goo.gl/MPY412/>, 2017>.

¹¹⁶ Ibid.

¹¹⁷ CRC Committee, *Concluding observations on the combined third and fourth periodic reports of Morocco*, 2014.

¹¹⁸ Ibid.



African Children's Charter. This study also picked up the fact that there are low levels of awareness on the African Children's Charter and its normative relevance to Morocco.

At a national level, Morocco developed a Family Code in 2004 which seeks to provide specific guarantees for children such as protection of life and health. Children living with disabilities are also recognized. The Family Code notes their right to special care including adequate education and rehabilitation. The Family Code does not prohibit child marriage but gives judges discretion to permit such marriage. A 2004 guardianship law (*kafala*) seeks to protect orphaned or abandoned children. Premised on sharia law, the Kafala system is an alternative to adoption practiced in Morocco. However, the law does not recognize inheritance rights for the foster child neither does it allow the child to have the family name. In 2016, Morocco adopted a law on domestic workers which sets the minimum age of domestic workers at 18 years of age. In 2018, Law No 103-13 was adopted criminalizing violence against women including sexual violence. In August 2019, Morocco adopted the Children's Rights Covenant of the Organisation of Islamic Cooperation. However, the law is yet to be passed by parliament. There have also been reforms to the Penal Code and the Code of Criminal Procedure. The Code of Criminal Procedure expands the protection regime for children in conflict with the law by creating structures through special courts and judges for minors. With respect to serious offences, the death penalty cannot be imposed. The maximum imprisonment period is 15 years. There are also national policies that address the protection of children in Morocco such as the Integrated Public Child Protection Policy

adopted by the Ministerial Commission in 2015 and Strategic Vision for the Reform of the Moroccan School (2015–2030). In 2017, the government developed a National Action Plan for Democracy and Human Rights (2018–2021) (NAPDHR) which includes a sub-section for children and, among others, notably provides for societal dialogue on the revision of article 20 of the Family Code.¹¹⁹

In 2011, Morocco adopted a new constitution which established a Consultative Council on the Family and of Childhood. Law No. 78-14 establishes the composition and function of this institution. The Ministry of Solidarity, Women, Family and Social Development is the lead agency for the protection of children and has a Childhood Division. There are other government departments that address children issues including the Ministry of Justice, Ministry of Health and the Ministry of Youth and Sports, which operates Child Protection Centres. The National Council on Human Rights (CNDH) is actively engaged in the protection of children's rights in Morocco. By virtue of Law 75-15 of 2018 which reorganized the CNDH, there is a National Redress Mechanism for Child Victims of Human Rights Violation. There is also an Inter-Ministerial Delegation on Human Rights (DIDH) responsible for coordinating human rights protection. Notably, the DIDH coordinated the elaboration of the NAPDHR. In 1993, Morocco established a National Observatory for Children's Rights (ONDE) to accelerate the implementation of children's rights and coordinate projects that will advance the protection of children in Morocco. Led by Princess Lalla Meryem, ONDE has played a significant role in raising awareness on children's rights. It also constitutes the Child Parliament which was created

¹¹⁹ Article 20 of the Family Code relates to authorizing the marriage of a girl or boy below legal age of marriage by the Family Affairs Judge.



in 1999 and through which children have been engaged in the protection of various issues. In partnership with the United Cities and Local Governments of Africa, ONDE works to eradicate the phenomenon of children in the streets through the Pan-African Campaign for African Cities without Children in the Street.

The civil society sector is working for the protection of children's rights including the Bayti Association and the Moroccan League for the Protection of Children. Some CSOs have come together to form the CSO Plateau, an amalgamation of civil society actors advancing child rights. These entities are trying to care for children who they feel are neglected by the state as well as raise awareness on changes required in the children's sector, including those contained in the CRC Concluding Observations in 2014.

Role of UNICEF

As the lead agency for the protection of children's rights, UNICEF works mainly in the areas of education, health and nutrition, child protection and social inclusion in Morocco. The agency is instrumental in policy formulation, e.g. in education and child protection, reporting on the CRC, situational analysis (ongoing work with ONDE) on rights of children as well as capacity-building for civil society in the country.

Good practices and areas of improvement

From the review, some good practices are:

- Child participation structures
- Complaint mechanism for children
- Inclusion of children's rights within national plan
- Joint partnerships on pan-African initiatives for children

- Inter-ministerial coordination on human rights.

Key areas of attention include:

- Effective coordination on child rights issues from parent ministry
- Ratification of the African Children's Charter
- Adoption of a Comprehensive Law/Code on children or at least radical reworking of the Family Code to address discrimination of girls and women
- Institution of a database system for children
- Reconciliation of the various forms of child participation
- Regularization of *Kafala* in law and practice
- Enhancement of the capacity of civil society organizations
- Increased accountability for children through rights-based frames.

NIGERIA

Background

With a population more than 182 million, Nigeria is the most populous African nation. Politically, Nigeria operates a federal system comprising of national, state and local governments. There are 36 states of the federation and the Federal Capital Territory (Abuja). Having a GDP of more than 397 billion, Nigeria is one of the largest economies in Africa, yet nearly 50 per cent of its population is estimated to be living in extreme poverty. Its economy is mostly oil-driven although there are strategic plans towards reviving the agricultural sector. Although the country is a secular state by virtue of the 1999 Nigerian Constitution, there are ethno-religious cleavages that impact on governance. There is also



an active conflict in its northeastern region due to the Boko Haram insurgency which has lasted over a decade. Children comprise about 50 per cent of the total population (96,344,203). Of this figure, 31.8 million are under the age of 5. Annually, there are an approximate 7 million births. Since 2009, more than 1 million children have been displaced by the Boko Haram insurgency in the northeast. The supreme law of Nigeria is the 1999 Nigerian Constitution. Although it does not specifically protect children's rights, it makes reference to the need for the Government to make sure that 'children, young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect'. However, the Constitution also creates a controversy on children's rights in recognizing that a woman shall be deemed of 'full age' upon marriage (section 29 of the 1999 Nigerian Constitution).

Situation analysis

To understand the situation of children's rights in Nigeria, it is useful to examine some of the core issues relating to children in the country. With regard to the right to survive, the country still has some ground to cover. Nigeria accounts for 20 per cent of global maternal mortality. At 132 per 1000 births, about 1 in 8 children do not reach 5 years old. Nigeria has severe acute malnutrition rates with an estimate of 2 million malnourished children. The country also has the second highest rate of stunted children globally, at 32 per cent of children under the age of 5 years. With regard to HIV, considerable progress is required to improve access for the PMTCT given the fact that 20 per cent of pregnant women with HIV have access to PMTCT services. On education, the net attendance rate at 61 per cent for primary education, 49 per cent for lower secondary school and 39 per cent for upper secondary school. However, Nigeria has the largest population of out-of-school children at

13.2 million children. Around \$6.1 billion is lost yearly due to violence against children which is 'from the cumulative loss of earnings due to loss of productivity, stemming from suffering associated with different degrees of violence, over time.' This includes physical, mental and gender-based forms of violence. Reports indicate that 6 of 10 children experience some form of violence. In the northeast, the violence against children is amplified by the Boko Haram insurgency exposing children, particularly girls to sexual violence and abduction.

Legal and institutional context

Nigeria has made some notable strides with regard to the ratification of instruments. At the global level, Nigeria ratified the CRC on 19 April 1991. It has adopted two Optional Protocols to the CRC on the Sale of Children, Child Prostitution and Child Pornography (27 September 2010) and on Children in Armed Conflict (25 September 2012). It has not yet ratified the Optional Protocol on Communication Procedure. At the regional level, Nigeria has ratified the ACRWC (2 May 2003). Under its legal system, international law is applicable once domesticated. On 31 July 2003, Nigeria domesticated its international legal obligations through the enactment of the Child Rights Act (CRA). Since enacting the CRA, Nigeria has developed policies and plans of action on child-specific and child-related issues such as education, health, HIV, food and nutrition, breastfeeding and social development. Although this law was enacted by the Nigerian National Assembly, it is non-binding constitutionally on the federal states given that prior to its enactment, it was not ratified by a majority of the state houses of Assembly. As such, it is only binding on the Federal Capital Territory (FCT) – given the powers of the National Assembly to make laws for this region – and non-binding on the 36 federating states unless re-enacted at the state level. At present, 25



states have adopted the Child Rights Law, mostly in the southern region. While 11 states, predominantly in the northern region of the country have yet to re-enact this legislation.

The Federal Ministry of Women Affairs and Social Development (FMWASD) is the lead government agency on the protection of children's rights and it is headed by a minister who is a member of the Executive Cabinet. Within the FMWASD, there is a specific section on child protection. Given the nature of Nigeria's federal system, there are similar ministries within the federal states with child protection units. However, in the largest federatal state (Lagos State), child rights issues are handled by a designated child protection unit in the Ministry of Youth and Social Development. There are also other key government ministries, departments and agencies that work on issues related to children, however, this is more from a thematic perspective in view of their mandates. A Child Parliament was established in 2003.

There are actors in the civil society sector working on child rights issues such as NACCRAN (the umbrella body for civil society coordination and the Women Trafficking and Child Labour Eradication involved in advocacy against trafficking and child labour. Among the international organizations working on issues that relate to children are Plan International and Save the Children.

Role of UNICEF

As the main lead agency within the United Nations system for the protection of child rights, UNICEF co-leads the national child protection sub-cluster with the FMWASD and works on a wide variety of child rights issues in Nigeria. The organization provides technical support in the areas of healthcare, polio eradication, HIV, immunization and women's empowerment. UNICEF has also been active

in training community nutrition mobilizers who provide information on nutrition, educate women, engage in referrals, carry out nutrition screenings and follow up on cases of mal-nutrition. In the area of water, sanitation and hygiene, UNICEF provides support to improve access to drinking water and sanitation notably in the northeast given the realization that children in protracted situations of conflict are more likely to die from the lack of safe water, sanitation and hygiene than violence. UNICEF provides technical support in access to quality education and equity in education. On child protection, UNICEF is actively engaged in providing technical support particularly in the area of ending violence against children. Through the support of UNICEF and other partners, the Nigerian government developed a 2018 report on understanding the drivers of violence against children leveraging on systematic reviews, intervention mapping and secondary data analysis of the issue. UNICEF also provides support in emergencies in view of the situation in northeastern Nigeria. While the activities of UNICEF as a global agency on children has led to significant advancements in the situation of children in Nigeria, the child rights ecosystem is comprised of a plethora of other actors including foreign governments, international organizations, other United Nations agencies, local NGOs and the private sector.

Value and impact of the Charter

In Nigeria, the Charter has impacted the development of the CRA. Notably, this instrument reflects aspects of the Charter such as the responsibility of the child and the prohibition of child marriage. There is also a prohibition on recruitment of children to the armed forces. Policies have been developed making reference to the Charter such as the National Child Policy and the National Strategy to End Child Marriage in Nigeria (2016-2021). Through the



state reports to the ACERWC, there have been interactions with the African Charter. Since its ratification Nigeria has submitted two reports to the ACERWC and has received concluding observations from the Commission emphasizing areas where a strengthened response is recommended. However, there is a need for improvement in the use of the Charter, particularly for children in armed conflict.

Good practices and areas of improvement

From the review, some good practices in Nigeria are:

- Domestic violence and sexual response team
- Use of social media for child rights protection
- Community-based management child protection system
- Financial benchmark for child protection
- Shared values and co-creation with the private sector.

Key areas for attention include:

- Awareness and use of the Charter
- Strengthening data for evidence programming and effective decision-making
- Improving child participation as a process not an event especially for children in conflict situations
- Leveraging on the Charter to address harmful practices including child marriage
- Investing in psychosocial support for child victims of abuse

- Improving the capacity of the National Human Rights Commission to enhance accountability for children.

SOUTH AFRICA

Background

The Republic of South Africa is a constitutional democracy with three levels of governance: national, provincial and municipal.¹²⁰ South Africa has a population of 56.5 million. Children comprise 19.6 million, which is about 35 per cent of the population. The most populated regions are Gauteng (21 per cent) and KwaZulu-Natal (21.2 per cent). With a GDP of USD 368,288 billion, South Africa is one of the largest economies in Africa. However, poverty levels are at 55.5 per cent¹²¹ and significantly affect children particularly of historically marginalized groups.

Situation analysis

Access to basic services such as water and basic sanitation has improved; 66 per cent of the population have access to basic sanitation.¹²² While under-five-mortality declined from 41 to 34 per 1,000 births in 2012 and 2014 respectively, recent statistics indicate that this figure is at 37 per 1,000 live births.¹²³ Infant mortality is at 29 per 1,000 live births, and maternal mortality declined between 2009 and 2016 from 189 to 134 per 100,000 live births.¹²⁴ There have also been improvements in birth registration of children under 5 years old which is at 85 per cent. But these improvements have not reached the birth registration of undocumented migrants. On education, there have been improvements over the last decade with

¹²⁰ There are 9 provinces and 278 municipalities in South Africa.

¹²¹ Stats SA 'Poverty on the rise in South Africa' 22 August 2017.

¹²² UNICEF data: South Africa: statistics, December 2018.

¹²³ UNICEF data: South Africa: statistics, December 2018.

¹²⁴ *Maternal mortality death ratios slashed in SA's public health facilities*, Medical Brief, 4 April 2018.



primary education completion rates at 91 per cent. With regard to health, more than 95 per cent of women living with HIV were receiving ARVs for PMTCT. Due to access, about 1.4 million infections were averted between 2010 and 2018.¹²⁵ However, violence against children, particularly sexual violence is a serious concern. According to a 2016 study, 42 per cent of children had experienced some form of violence with 35.4 per cent of children having been sexually abused.¹²⁶

Legal and institutional context

The South African Constitution (SACC) is categorical about protecting the rights of children. It defines a child as anyone under the age of 18 incorporating relevant international and regional standards. The country has made significant progress in the protection of children's rights. At the global level, it ratified the CRC on 16 June 1995, adopted two Optional Protocols to the CRC on the Sale of Children, Child Prostitution and Child Pornography (30 June 2003) and on Children in Armed Conflict (24 September 2009). It has not yet ratified the Optional Protocol on Communication Procedure. South Africa ratified the ACRWC on 21 January 2000. At the domestic level, South Africa has a Children's Act of 2005 which explicitly makes reference to the CRC and the Charter. It also has a Child Justice Act of 2008 which seeks to protect children in conflict with the law. Other instruments that touch on child rights issues include: Prevention and Combatting of Trafficking in Persons Act (2013) and the Maintenance Amendment Act (2015). There are also pertinent government reports such as the White Paper on Social Welfare (1997), White Paper on Families (2012)

and the White Paper on the Rights of Persons with Disabilities (2015). Aside from these instruments, there are policies that relate to children such as the National Integrated Early Childhood Policy (2015) and the Integrated Programme of Action Addressing Violence against Women and Children (2013–2018).

Institutionally, South Africa has an Office of the Right of the Child which was initially established in the Office of the Presidency post-1999. It was subsequently moved to the Department of Women, Children and Disabilities in 2010. A government reorganization led to the movement of the Office of the Right of the Child to the Department of Social Development in 2014 while issues of women and persons with disabilities sit in the Office of the Presidency. The Office of the Right of the Child also serves as a secretariat for the National Children's Rights intersectoral Coordinating Committee (NCRICC) constituted in the context of article 43 of the Charter and article 44 of the CRC. The NCRICC is responsible for coordinating the protection and promotion of children's rights and fostering collaborations.

As the national institution for the protection and promotion of human rights, the South African Human Rights Commission is significant in the furtherance of children's rights. In 2012, the Commission developed a Charter of Children's Basic Education Rights.¹²⁷ It has a designated child rights commissioner. Other government departments work on children's rights within their mandate. International NGOs such as Save the Children and Plan International have also been active in the protection of children's rights. There is an active civil society working in the furtherance of child

¹²⁵ Prevention of mother-to-child transmission (PMTCT) of HIV <<https://www.avert.org/professionals/hiv-programming/prevention/prevention-mother-child>>, last updated 8 March 2019.

¹²⁶ The Optimus Study on Child Abuse, Violence and Neglect in South Africa, 2015.

¹²⁷ South African Human Rights Commission, *Charter of Children's Basic Education Rights*, 2012.



rights in South Africa, including in academia. These include the Children's Institute, Centre for Child Law and Dullar Omah Institute.

Role of UNICEF

UNICEF plays a significant role in the furtherance of children's rights in South Africa. The organization works primarily in the areas of child and maternal health, education, child protection, social policy and advocacy. In the area of child and maternal health, UNICEF supports several government initiatives including the 'She Conquers' campaign which is designed to improve health for adolescent girls and young women. UNICEF also provides technical support in strengthening facility-level indicator dashboards to effectively monitor maternal and child care. In addition to strengthening the capacities of various agencies and civil society in the furtherance of education, UNICEF has supported government departments (Health and Social Development) in developing training manuals for Early Childhood Development.¹²⁸ In the area of child protection, UNICEF invests in prevention, protection and response, working with various government departments such as Social Development, Justice and Constitutional Development, the government Technical Task Team on Violence against Women and Children and civil society.

Value and impact of the Charter

In South Africa, the Charter impacted the development of the Children's Act of 2005. The Charter is reflected in provisions on definition of the child and responsibilities of children. There are also national plans that reflect the Charter such as the 2015 National Integrated Early Childhood Policy and National Plan of Action for Children (2012–2017). Since ratifying

the Charter, South Africa has submitted two reports to the ACERWC with concluding observations that draw attention to areas where improvements are needed. Notably, the revised national action plan incorporates actions and targets on the concluding observations. However, there is need for strengthened coordination towards implementation.

Good practices and areas of improvement

From the review, some good practices are:

- Effective coordination of child rights issues
- Child ambassador initiative
- Incorporation of concluding observation in National Action Plan
- National campaign on women and adolescent girls
- Child participation in national development initiatives.
- The key areas of attention include:
- Strengthening the efforts of various sectors towards a holistic approach to treaty body recommendations from the CRC Committee and the ACERWC
- Support to the National Planning Commission's NDP consultation process to integrate children that have not been covered
- Strengthening the children ambassador's initiative to ensure sustained support to their engagement with provincial governments on children's rights issues
- Support for the extension of the national "She Conquers" campaign geared towards protecting women and adolescent girls

¹²⁸ UNICEF South Africa: 2017 highlights.



- Collaboration with civil society working to protect refugee and migrant children.

DEMOCRATIC REPUBLIC OF CONGO

Background

In the DRC, children under 18 years of age constitute 50 per cent of the total population of 77,267,000.¹²⁹ A third of the children are under 5 years old. The country has experienced conflicts since 1996.

Situation analysis

The country experiences high child vulnerability with 59.2 per cent of the population living with US\$1.25 per day, high sexual violence, constant conflicts and displacements leading to many unaccompanied and abandoned children as well as a high under-five-mortality rate estimated at 91.1/1,000. Three quarters (75 per cent) of children are not registered at birth. In addition, there are wide disparities in secondary school access between the poorest and richest 20 per cent of the population (16 and 62 per cent, respectively). Stunting is high at 43.5 per cent and generally child health is poor.

The phenomenon of children affected by armed conflict is worrying within the DRC. Children make up 40-70 per cent of armed groups and gangs.¹³⁰ These children are used as sex slaves and active combatants. Others run errands for the militia. They miss out on schooling and related activities. In 2018, UNICEF estimated these children to be 30,000 but there is scarcity of accurate data on this phenomenon.

Legal and institutional context

DRC ratified the CRC in 1990 and has reported twice, in 2000 and 2008. Eleven years later (2001), the country ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The CRC guides the efforts of the DRC on rights of children. The country passed a child protection law in 2009 but its implementation often comes into scrutiny.

Following missions by the ACERWC to popularize the ACRWC, DRC signed the Charter in 2010 but has not yet ratified it. Some quarters claim that ratification has taken place but this is not valid as long as the ratification instruments are not filed with the ACERWC/AU.

The Constitution of the Democratic Republic of Congo, 2006 upholds the commitment to the CRC and defines minors as those aged below 18 years (Article 41) thereby providing for their protection by parents and public authorities. It also created a National Council for Children and a National Council for Women.

The country's efforts to work on children's issues have been hampered by persistent conflict and war since 1996. Stakeholders include government ministries of health, education, justice and others. Civil society is active in the country and provides, together with international agencies (United Nations, Save the Children and others), most basic social services.

Government allocation to children's services is low at 1.8 per cent of the GDP. This means that children's issues are not a priority. There are massive child protection challenges fueled by

¹²⁹ <<https://data.unicef.org/country/cod/>>.

¹³⁰ See Global Child Protection Area of Responsibility (CP AoR) 2019 Desk Review.



the ongoing conflicts and instability. Attention tends to be given to these emergencies and the humanitarian situation at the expense of child protection.

Good practices and areas of improvement

The identifiable good practices for DRC include:

- Ban on child marriage
- Working with NGOs to address issues of children affected by armed conflict
- Free education policy through the waiver of primary school fees

The recommended action points to improve child rights situation include:

- Advocacy for resource allocation to children's sector especially for reintegration of children affected by armed conflict and their education and health
- Enhanced collaboration of actors for child protection
- Improving on programming around rehabilitation and reintegration of child soldiers and children affected by armed conflict
- Investing in data and evidence on the situation of children in armed conflict and gangs.



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EVALUATION OFFICE

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February 2020**