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## Child protection, safeguarding and the role of the African Charter on the Rights and Welfare of the Child: Looking back and looking ahead

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**Summary:** *With 30 years since the adoption of the African Charter on the Rights and Welfare of the Child, this article discusses how the Charter has contributed to understanding and addressing children's rights to protection. Looking back, the article examines the impetus for the Charter in the context of an emerging field of child protection on the continent. Next, the article charts the paradigm shift in the child protection sector that occurred after the adoption of the Charter and the gradual development of African jurisprudence on child protection and safeguarding. This analysis is based on a comprehensive review of Concluding Observations and Recommendations by the African Committee of Experts on the Rights and Welfare of the Child and relevant*

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documents, including *General Comment 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*. Looking ahead, the article posits future directions for child protection and safeguarding, including addressing new risks and harms enabled by digital technology. In conclusion, the article underscores the importance of the Children's Committee in articulating African perspectives and catalysing state party action to realise children's rights to protection in accordance with the Charter. Through the state party reporting process and with reference to *General Comment 5* and forthcoming guidance, the Committee can continue meaningful dialogue with state parties to address persistent and new challenges to child protection taking a systemic approach.

**Key words:** *Africa; children's rights; child protection; child safeguarding; African Charter on the Rights and Welfare of the Child; African Committee of Experts on the Rights and Welfare of the Child*

## 1 Introduction

'Child protection' is generally defined as the protection of children from all forms of violence, abuse, exploitation and neglect, as well as the various measures for responding to harm.<sup>1</sup> The term is broad, encompassing abuse and exploitation that occurs in all settings both within and outside the child's home and in the digital environment. It includes areas that are not necessarily violations of children's rights but that may heighten children's risk of harm, such as children on the streets or in conflict with the law.<sup>2</sup> In contrast to child protection efforts that work to prevent and respond to all forms of violence against children in all contexts, 'child safeguarding' focuses on the realm of organisational responsibility. The term is becoming more commonly understood with reference to the organisational 'duty of care' and the responsibility to 'do no harm'.<sup>3</sup> There has been greater

1 See Myers and Bourdillon's critique of the usefulness of 'child protection' as a category for policy and programmes: W Myers & M Bourdillon 'Introduction: Development, children, and protection' (2012) 22 *Development in Practice* 437-442, <http://www.tandfonline.com/doi/abs/10.1080/09614524.2012.672962> (accessed 21 May 2020).

2 K Landgren 'Protection: The United Nations Children's Fund experience' in M O'Flaherty (ed) *The human rights field operation: Law, theory and practice* (2007) 184.

3 The origins of safeguarding in the context of aid can be traced back to the 2002 West African 'sex-for-food' scandal: United Nations High Commissioner for Refugees and Save the Children UK 'Sexual violence and exploitation: The experience of refugee children in Liberia, Guinea and Sierra Leone' (2002), <https://www.parliament.uk/documents/commons-committees/international-development/2002-Report-of-sexual-exploitation-and-abuse-Save%20the%20Children.pdf> (accessed 15 February 2020).

scrutiny of safeguarding following the 2018 'Oxfam scandal'<sup>4</sup> and several inquiries into institutional child abuse in the 'global North'.<sup>5</sup> While it is possible to conceptually differentiate 'child safeguarding' and 'child protection', they are highly interdependent in practice – especially in countries where the child protection system is not well-resourced or functioning. Considering the various state and non-state organisations delivering services for children in Africa, child safeguarding measures are essential to support the realisation of children's rights to protection.

Thirty years since the adoption of the African Charter on the Rights and Welfare of the Child (African Children's Charter),<sup>6</sup> it is timely to reflect on how the Charter has contributed to understanding and addressing children's rights to protection. This article aims to undertake this endeavour – looking back and looking ahead. The article is divided into three parts. The first is retrospective and examines the impetus for the African Children's Charter in the context of an emerging field of child protection on the continent. The second part charts the paradigm shift in the child protection sector that occurred after the adoption of the African Children's Charter and the gradual development of African jurisprudence on the Charter and child protection and safeguarding obligations. This is based on a comprehensive review of Concluding Observations and Recommendations by the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) and an analysis of General Comment 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 (General Comment 5)<sup>7</sup> and other regional measures aimed at introducing safeguarding

4 For further discussion of safeguarding in humanitarian and development activities, see A Kaviani Johnson & J Sloth-Nielsen 'Safeguarding children in the developing world: Beyond intra-organisational policy and self-regulation' (2020) 9 *Social Sciences* 19.

5 Eg, Royal Commission of Inquiry into Abuse in Care (New Zealand); Royal Commission into Institutional Responses to Child Sexual Abuse (Australia); Independent Inquiry into Child Sexual Abuse in England and Wales; The Pontifical Commission for the Protection of Minors (Vatican); De Winter Commission about violence towards minors in the Dutch child protection system (The Netherlands).

6 African member states of the Organisation of African Unity 'African Charter on the Rights and Welfare of the Child' OAU Doc CAB/LEG/24.9/49, [https://www.un.org/en/africa/osaa/pdf/au/afr\\_charter\\_rights\\_welfare\\_child\\_africa\\_1990.pdf](https://www.un.org/en/africa/osaa/pdf/au/afr_charter_rights_welfare_child_africa_1990.pdf) (accessed 21 May 2020).

7 African Committee of Experts on the Rights and Welfare of the Child '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"', <https://www.acerwc.africa/wp-content/uploads/2019/09/ACERWC%20General%20Comment%20on%20General%20Measures%20of%20Implementation%20African%20Children's%20Charter.pdf> (accessed 16 February 2020).

principles. The third part of the article posits future directions for child protection and safeguarding on the continent, including addressing new risks and harms enabled by digital technology. In conclusion, the article underscores the importance of the African Children's Committee in articulating African perspectives and catalysing state party action to realise children's rights to protection in accordance with the Children's Charter. With General Comment 5, the African Children's Committee has clearly set out its position on child protection systems, including safeguarding measures. Through the state party reporting process and with reference to General Comment 5 and forthcoming guidance, the African Children's Committee can continue meaningful dialogue with state parties to address persistent and new challenges to child protection taking a systemic approach.

## 2 Looking back – The impetus for the African Children's Charter

### 2.1 Child protection and the adoption of the African Children's Charter

Although the origins of the African Children's Charter are known in broad terms, the *travaux préparatoires* and other documentation no longer exist.<sup>8</sup> What is known is that the impetus for the treaty originated from a conference held in Nairobi in 1988, a year before the finalisation of the United Nations (UN) Convention on the Rights of the Child (CRC). Only three African states had participated for the bulk of the decade-long drafting process of the CRC. By the time it reached the final stage, nine African countries were involved. Viljoen records that the African initiative to draft a regional treaty was born partly out of frustration with the UN process.<sup>9</sup> The failures of the UN drafting process are regarded as three-fold: Africans

8 Having worked on aspects related to the Charter for two decades, and fielded queries from numerous researchers over the years seeking access to any form of background documentation from this pre-digital era, Sloth-Nielsen can readily confirm that no such documentation can be found.

9 F Viljoen 'Supra-national human rights instruments for the protection of children in Africa: The Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child' (1998) 31 *Comparative and International Law Journal of Southern Africa* 199, [https://journals.co.za/content/cilsa/31/2/AJA00104051\\_309](https://journals.co.za/content/cilsa/31/2/AJA00104051_309) (accessed 16 February 2020). See also F Viljoen 'The African Charter on the Rights and Welfare of the Child' in CJ Davel (ed) *Introduction to child law in South Africa* (2009) 214. See also BD Mezmur 'The African Children's Charter versus the UN Convention on the Rights of the Child: A zero-sum game?' (2008) 230 *South African Public Law* 1 and sources cited at fn 22.

were underrepresented during the drafting process;<sup>10</sup> potentially divisive and emotive issues were omitted during consensus building between states from diverse backgrounds; and the aim of reaching a compromise meant that specific provisions on aspects peculiar to Africa were ignored. Concern for children's rights in the African human rights systems was not novel. In 1979 the Assembly of Heads of State and Government of the Organisation of African Unity (OAU) had adopted a Declaration on the Rights and Welfare of the African Child at its 16th ordinary session in Monrovia, Liberia. The Declaration recognised the need to take all appropriate measures to promote and protect the rights and welfare of the African child.<sup>11</sup>

In 1988 the African Network for the Prevention and Protection Against Child Abuse and Neglect (ANPPCAN) and the United Nations Children's Fund (UNICEF) hosted a conference on 'Children in situations of armed conflicts in Africa'. One of the conference objectives was to consider whether there were gaps in CRC that needed to be filled with a regional-specific treaty. Some of the peculiarities of the African situation omitted from CRC were identified.<sup>12</sup> In collaboration with the two organisations that had organised the workshop, the OAU set up a working group of African experts, chaired by Lee Muthoga, to develop a draft charter. The draft followed the usual route of scrutiny by the Secretary-General and consideration by the Council of Ministers. There was some debate<sup>13</sup>

10 Only Algeria, Morocco, Senegal and, to some extent, Egypt participated meaningfully.

11 A Lloyd 'Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: Raising the gauntlet' (2002) 10 *International Journal of Children's Rights* 179, [https://brill.com/view/journals/chil/10/2/article-p179\\_4.xml](https://brill.com/view/journals/chil/10/2/article-p179_4.xml) (accessed 9 June 2020).

12 These were identified as follows: The situation of children living under apartheid was not addressed; disadvantages influencing the female child were not sufficiently considered; practices that are prevalent in African society, such as female genital mutilation and circumcision, were not explicitly mentioned; problems of internal displacement arising from internal conflicts did not receive attention; socio-economic conditions, such as illiteracy and low levels of sanitary conditions, posed specific problems in Africa; the African conception of the community's responsibilities and duties had been neglected; in Africa the use of children as soldiers and a compulsory minimum age for military service is of great importance; the position of children in prison and that of expectant mothers had not been given attention; and CRC negates the role of the family (also in its extended sense) in the upbringing of the child and in matters of adoption and fostering. See L Muthoga 'Introducing the African Charter on the Rights and Welfare of the African Child and the Convention on the Rights of the Child' (1992), paper delivered at the International Conference on the Rights of the Child, Community Law Centre, University of the Western Cape.

13 The delegate from Sudan commented on the vagueness of the African Children's Charter and its similarity to CRC, while the delegate from Senegal stated that the Preamble was unsatisfactory and that the text should more adequately reflect the social and economic conditions in Africa. The representative from Nigeria mentioned that the rights of 'illegitimate children' were not covered by the draft Charter. The representative of Swaziland wanted parents' rights to be mentioned, and that of Botswana wanted the draft rewritten to be

at the Assembly of Heads of State and Government, but the African Children's Charter was adopted without dissension on 11 July 1990. The treaty entered into force in 1999 upon receipt of the requisite minimum number of ratifications by member states. The monitoring body provided for in the Children's Charter was established in 2002.

Many substantive articles of the African Children's Charter are geared towards child protection. The most pertinent is article 16 (protection of the child against abuse and torture),<sup>14</sup> but many other articles revolve around specific child protection themes. These include prohibition on child marriage;<sup>15</sup> on harmful cultural practices detrimental to the welfare, dignity, normal growth and development of the child;<sup>16</sup> protection against involvement in armed conflict;<sup>17</sup> a prohibition on begging;<sup>18</sup> protection against sexual exploitation;<sup>19</sup> and protection against all forms of economic exploitation (in an article titled 'child labour').<sup>20</sup> A cursory examination of the provisions of article 16 suggests that at the time of its adoption it was almost entirely aspirational. While some countries had child protection laws, these neither provided any detail on investigation, reporting, monitoring, follow-up, and so forth, nor was there in practice any form of specialisation in the child protection services. This will be discussed further in part 3.

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comprehensible to children. The representatives of Uganda, Lesotho, Tunisia and Ethiopia had comments about the need for an implementation strategy. See P Veerman *The rights of the child and the changing image of childhood* (1991) 279.

- 14 Article 16 provides: '1. State parties to the present Charter shall take specific legislative, administrative, social and educational measures designed to protect the child from all forms of torture, inhuman and degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse whilst in the care of the child. 2. Protective measures under this article include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention, and for identification, reporting, referral, investigation, treatment and follow-up of all instances of child abuse and neglect.' The reference to the phrase 'whilst in the care of the child' is an unfortunate typographical error which should have read something to the effect that it occurred while in the care of parents and other persons caring for the child (cf art 19(1) CRC). The reference in the heading to 'torture' appears to indicate that this article is a (partial) amalgam of arts 37 and 19 of CRC. Sub-article (2) is close in wording to art 19(2) CRC, but absent are the provisions for judicial involvement, as appropriate, as a conceivable response to reports of child abuse and neglect.

15 Art 21(2).

16 Art 21(1).

17 Art 22(2).

18 Art 29(1).

19 Art 27.

20 Art 15.

## 2.2 Child protection: Policy and programming in the 1990s

The 'discovery' of child abuse and neglect in the home is of relatively recent provenance, stemming from the seminal 1962 publication by Kempe et al, *The battered child syndrome*.<sup>21</sup> The initial research was largely epidemiological, resulting in *ad hoc* social and legal responses. Reporting requirements for professionals such as doctors and teachers were already in place in the 'North' from the 1980s. However, writing in 2002 Lachman et al express the view that

[w]hile progress may have been made in North America, Australasia, and Western Europe, the position of children in the countries of Asia, South America, Eastern Europe, and Africa remains tenuous. The concept of child protection is often a distant dream, and the very structures<sup>22</sup> of society negate the attempts to alleviate the position children find themselves in.<sup>23</sup>

Lachman et al observe that the literature in Africa was largely limited to documentation of the incidence and prevalence of different types of child abuse. Unlike high-income countries, research had not yet moved to programme evaluation, risk assessment and intervention. They suggested that this was due to the scale of child abuse, the lack of resources to undertake research, and the limited number of trained researchers in the region. Lalor, citing Ennew et al, claimed that academic and grey literature on child sexual abuse in Africa consisted of 'an almost total vacuum'.<sup>24</sup> Clinical<sup>25</sup> and survey research findings published during the 1980s and early 1990s were almost exclusively undertaken in South Africa.<sup>26</sup> Some commentators were of the view that child sexual abuse did not occur in the region due to the close-knit communal living structures of 'pre-modern' African culture. Where it did occur, it was purportedly linked to labour migration and changing family and social structures. This view is disputed by Lalor.

21 <https://www.kempe.org/about/history/> (accessed 20 May 2020).

22 Including poverty and resource scarcity, HIV/AIDS (although this mostly post-dates the adoption of the African Children's Charter), conflict and war, gender discrimination and patriarchy, and so forth.

23 P Lachman et al 'Challenges facing child protection I. Overview – Lessons from the "South"' (2002) 31 *Child Abuse* 589. Writing a decade earlier, Lachman correctly notes that not all instances of child abuse can be attributed to structural or societal factors. P Lachman 'Child protection in Africa: The road ahead' (1996) 20 *Child Abuse and Neglect* 543 544.

24 K Lalor 'Child sexual abuse in sub-Saharan Africa: A literature review' (2004) 28 *Child Abuse and Neglect* 439 441, <https://linkinghub.elsevier.com/retrieve/pii/S0145213404000547> (accessed 15 March 2020).

25 Undertaken at hospitals where sexually-abused children had been presented for treatment.

26 The 'initial "discovery" of child sexual abuse in the United States in the 1970s was followed by a similar "discovery" in South Africa 15-20 years later (references omitted). Outside of South Africa, it is only in the last five years that other countries in sub-Saharan Africa have begun to address the problem of child sexual abuse in their practice and professional literature (references omitted)'; Lalor (n 24) 456.

He attributes the 'discovery' of child sexual abuse to the previous lack of knowledge among child protection professionals and society in general, and the lack of child protection structures to detect, record and treat victims of child abuse.<sup>27</sup>

It is not surprising that systemic responses to child abuse in the region were absent due to a failure to situate child abuse and neglect in any coherent societal context. The 'tertiary interventions' that did occur aimed at removing children from allegedly harmful situations after the situation had reached the point where removal was the only safe option.<sup>28</sup> Given the chronic underdevelopment of governmental social workers and auxiliary systems, most interventions were driven by charities and church groups. This continues as child protection systems in Africa depend heavily on non-governmental and faith-based organisations to deliver the preponderance of services to respond to child abuse and neglect. It may therefore be concluded that child protection, outside of specific interventions with targeted groups,<sup>29</sup> was barely a discipline at the time of the adoption of the African Children's Charter. The next part will chart major developments that occurred in the years after the African Children's Charter entered into force.

### **3 Shifts in the child protection landscape and the emerging jurisprudence of the African Children's Committee**

#### **3.1 A 'systems' approach to child protection**

By the time of the new millennium, a conceptual framework for a 'systems' approach to child protection was starting to take shape. Developed by international agencies such as UNICEF, Save the Children, and the UN High Commissioner for Refugees (UNHCR), it represented a paradigm shift in the sector. Writing in 2005, Landgren highlighted that child protection approaches to date had focused largely on legislative reform and curative responses instead of the underlying systems that failed to protect children. She argued that

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27 Lalor (n 24) 451.

28 Human Sciences Research Council 'South Africa Country Report on the Situation on Prevention of Child Maltreatment Study' Final report submitted to the Prevention of Violence, Department of Violence and Injury Prevention and Disability, Non-communicable Diseases and Mental Health (Geneva: World Health Organisation 2009) v.

29 Children recruited as child soldiers, female genital mutilation (FGM) and child labour are three of the most prominent, although evidence hereof is rather anecdotal.



these approaches, such as small-scale projects providing care and rehabilitation for 'street children', orphans and victims of trafficking and sexual exploitation, even if significantly scaled up, would be 'unlikely to make a dent in the incidence of abuse'.<sup>30</sup> While such 'issues-based' efforts had produced benefits, Wulczyn et al remarked that it resulted in a fragmented and inefficient response, which left 'pockets of unmet need'.<sup>31</sup> Issues-based efforts did not account for the realities of children's lives and the multiple and overlapping forms of abuse and exploitation that children faced.<sup>32</sup> The systems approach was put forward to address these limitations and to take a systemic approach to systemic issues.<sup>33</sup> Krueger et al observe that this paradigm shift brought the child protection discourse closer to the comprehensive public sector reform that had occurred in the health and education sectors.<sup>34</sup>

Landgren elaborated a 'Protective Environment Framework'<sup>35</sup> with eight broad and interconnected elements that could strengthen children's protection and reduce their vulnerability to risks. The eight elements constituted government commitment and capacity; legislation and enforcement; culture and customs; open discussion; children's life skills, knowledge, and participation; the capacity of families and communities; essential services; and monitoring, reporting and oversight.<sup>36</sup> These elements were reshaped in UNICEF's

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- 30 K Landgren 'The protective environment: Development support for child protection' (2005) 27 *Human Rights Quarterly* 214-222, [http://muse.jhu.edu/content/crossref/journals/human\\_rights\\_quarterly/v027/27.1landgren.html](http://muse.jhu.edu/content/crossref/journals/human_rights_quarterly/v027/27.1landgren.html) (accessed 21 May 2020).
- 31 F Wulczyn et al 'Adopting a systems approach to child protection: Key concepts and considerations' UNICEF 2010 1, [https://www.unicef.org/protection/files/Adapting\\_Systems\\_Child\\_Protection\\_Jan\\_2010.pdf](https://www.unicef.org/protection/files/Adapting_Systems_Child_Protection_Jan_2010.pdf) (accessed 14 May 2020).
- 32 MG Wessells 'Bottom-up approaches to strengthening child protection systems: Placing children, families, and communities at the center' (2015) 43 *Child Abuse and Neglect* 8-9, <https://linkinghub.elsevier.com/retrieve/pii/S0145213415001246> (accessed 18 January 2020).
- 33 Wessells (n 32) 9.
- 34 A Krueger, G Thompson & V Crispin 'Learning from child protection systems mapping and analysis in West Africa: Research and policy implications' (2014) 5 *Global Policy* 47-48, <http://doi.wiley.com/10.1111/1758-5899.12047> (accessed 10 May 2020). See also Myers and Bourdillon's critique that attempts to organise child protection as a public service, such as health and education, have produced unsatisfactory experiences globally. They suggest that there 'appears to be something inherently relational and situational about the protection of children that resists universalisation and standardisation, which is one reason for growing interest in placing more activity related to protection within the context of community'. W Myers & M Bourdillon 'Concluding reflections: How might we really protect children?' (2012) 22 *Development in Practice* 613-616, <http://www.tandfonline.com/doi/abs/10.1080/09614524.2012.673558> (accessed 22 May 2020).
- 35 The Protective Environment Framework was first set out in the 2002 UNICEF Operational Guidance Note; UNICEF 'UNICEF Child Protection Strategy, E/ICEF/2008/5/Rev.1,' [https://www.unicef.org/protection/CP\\_Strategy\\_English\(1\).pdf](https://www.unicef.org/protection/CP_Strategy_English(1).pdf) (accessed 23 May 2020).
- 36 Landgren (n 30) 227-242.

2008 Child Protection Strategy adopting two main approaches, namely, strengthening child protection systems and supporting social change for improved protection.<sup>37</sup> Subsequently, there were various efforts to map and assess national child protection systems around the world. In Africa this was particularly important to ensure that African perspectives and the prominent role of communities were integrated into the dialogue on national child protection systems.<sup>38</sup>

By the next decade there was a growing body of research and practice on the strengthening of child protection systems in the region. In 2013 a Joint Interagency Group representing the African Child Policy Forum, the ANPPCAN and others<sup>39</sup> issued a 'call to action' for sub-Saharan Africa.<sup>40</sup> The call to action presented elements necessary for an effective child protection system, namely, appropriate policies, legislation and regulations; well-defined structures and functions and adequate capacities; supportive social norms; effective promotion, prevention and response actions; high-quality evidence and data for decision making; and efficient fiscal management and sufficient resource allocation.<sup>41</sup> Five years later the African Children's Committee articulated its approach to child protection systems strengthening in General Comment 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. The next part traces the gradual development of African

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- 37 UNICEF (n 35). See also Save the Children Sweden 'Why effective national child protection systems are needed: Save the Children's key recommendations in response to the UN Secretary General's study on violence against children' 2006, <https://resourcecentre.savethechildren.net/node/2754/pdf/2754.pdf> (accessed 24 May 2020); Save the Children UK 'A "rough guide" to child protection systems' 2009, <https://resourcecentre.savethechildren.net/node/5103/pdf/5103.pdf> (accessed 24 May 2020).
- 38 Child Frontiers Ltd 'Mapping and assessing child protection systems in West and Central Africa: A five-country analysis paper' Plan International, Save the Children International, UNICEF 2011) iii, [http://www.socialserviceworkforce.org/system/files/resource/files/Mapping%20and%20Assessing%20CP\\_Systems\\_5\\_Countries\\_Analysis\\_Paper\\_FINAL.pdf](http://www.socialserviceworkforce.org/system/files/resource/files/Mapping%20and%20Assessing%20CP_Systems_5_Countries_Analysis_Paper_FINAL.pdf) (accessed 14 May 2020). Eg, Maestral International 'Child protection systems: Mapping and assessing Eastern and Southern Africa' (2011), <https://resourcecentre.savethechildren.net/library/child-protection-systems-mapping-and-assessing-eastern-and-southern-africa> (accessed 14 May 2020); African Network on Prevention and Protection against Child Abuse and Neglect 'Desk review and analysis of literature on child protection systems in the Eastern Africa region (Ethiopia, Kenya, Rwanda, South Sudan, Sudan, Tanzania and Uganda)' Save the Children Sweden 2012, <https://resourcecentre.savethechildren.net/sites/default/files/documents/7032.pdf> (accessed 10 May 2020).
- 39 Environnement et Développement du Tiers-monde; International Social Service; Mouvement Africain des Enfants et Jeunes Travailleurs; Plan International; Regional Inter-Agency Task Team on Children and AIDS; Regional Psychosocial Support Initiative; Save the Children; SOS Children's Villages International; Terre des hommes; UNICEF; and World Vision International.
- 40 Joint Inter-Agency Group 'Strengthening child protection systems in sub-Saharan Africa: A call to action' (2013).
- 41 Joint Inter-Agency Group (n 40) 7.

jurisprudence on child protection up until the issuance of General Comment 5.

### 3.2 Emerging African Children's Committee jurisprudence on child protection

Child protection featured on the agenda of the African Children's Committee from its inception.<sup>42</sup> However, it took some years before the Children's Committee could play its role in substantively promoting and protecting children's rights. The initial term of office of the Children's Committee was largely spent drafting Rules of Procedure and reporting guidelines for state parties. State parties did not provide reports to the African Children's Committee until 2005<sup>43</sup> and the Children's Committee finally held its first pre-session for consideration of state party reports in 2008.<sup>44</sup> In 2009 the African Children's Committee issued its first Concluding Observations and Recommendations for Egypt and Nigeria.<sup>45</sup> The documents were brief and lacked sufficient detail. For example, the Children's Committee recommended to Egypt to adopt 'very severe' criminal penalties for child sexual exploitation and 'mechanisms' for victim support. Despite the limitations of these initial recommendations, the advantages of a regionally-specific child rights treaty were immediately apparent. Members of the African Children's Committee were 'sufficiently familiar with local exigencies to be able to engage immediately and with authority on African issues'.<sup>46</sup>

42 During its inaugural meeting at the AU headquarters in Addis Ababa, Ethiopia, in 2002, the African Children's Committee collectively highlighted issues requiring priority attention, the majority of which concerned child protection, namely, children in armed conflicts; child labour; child trafficking; the sexual abuse and exploitation of children; orphans affected and infected by HIV; children's rights to education; the formulation of a National Plan for Children; and resource mobilisation: A Lloyd 'The first meeting of the African Committee of Experts on the Rights and Welfare of the Child' (2002) 2 *African Human Rights Law Journal* 324.

43 BD Mezmur 'The African Committee of Experts on the Rights and Welfare of the Child: An update' (2006) 6 *African Human Rights Law Journal* 561. Pursuant to art 43 of the African Children's Charter, state party reports are to be submitted 'within two years of the entry into force of the Charter for the State Party concerned; and thereafter, every three years'.

44 BD Mezmur & J Sloth-Nielsen 'An ice-breaker: State party reports and the 11th session of the African Committee of Experts on the Rights and Welfare of the Child' (2008) 8 *African Human Rights Law Journal* 21.

45 Both Egypt and Nigeria's Concluding Observations and Recommendations are undated, but Sloth-Nielsen and Mezmur highlight that they were issued shortly before the 14th session in November 2009, a full year after they had been debated; J Sloth-Nielsen & BD Mezmur 'Like running on a treadmill? The 14th and 15th sessions of the African Committee of Experts on the Rights and Welfare of the Child' (2010) 10 *African Human Rights Law Journal* 545.

46 J Sloth-Nielsen & BD Mezmur 'Out of the starting blocks: The 12th and 13th sessions of the African Committee of Experts on the Rights and Welfare of the Child' (2009) 9 *African Human Rights Law Journal* 345.

Over time the length of Concluding Observations increased and more concrete recommendations for state parties to realise children's rights to protection emerged.<sup>47</sup> The following analysis of Concluding Observations and Recommendations until 2018<sup>48</sup> is grouped by major and recurring themes relating to child protection that arose from the comprehensive review.<sup>49</sup> Although beyond the scope of this article, it should also be noted that the communications procedure pursuant to article 44 of the African Children's Charter has also significantly influenced issues of child protection.<sup>50</sup> Many of the General Comments of the African Children's Committee also elaborate on child protection themes.<sup>51</sup>

### 3.2.1 Policy, legislation and enforcement

Legislation and policy frameworks for child protection feature prominently in the African Children's Committee's recommendations. Harmonising the age of the child in various laws (including customary and religious laws) in line with article 2 of the African Children's Charter appears in all recommendations to date. This relates to the minimum age of marriage, employment, criminal responsibility, sexual consent and recruitment in armed forces. Many state parties are urged to introduce laws to ban corporal punishment in all

47 To date, the Concluding Observations and Recommendations on Senegal's periodic report are the longest at 20 pages (July 2019). The average number of pages is 12. The review undertaken for this article revealed a lack of consistency in length and format.

48 During the period up to and including 2017, the African Children's Committee had issued Concluding Observations and Recommendations for 32 countries, namely, Egypt, Nigeria, Burkina Faso, Mali, Tanzania, Kenya, Uganda, Rwanda, Togo, Senegal, Niger, Sudan, Liberia, Ethiopia, Guinea, Kenya, Mozambique, Madagascar, Namibia, Zimbabwe, Rwanda, Lesotho, Algeria, Gabon, Ghana, Cameroon, Eritrea, Côte d'Ivoire, Chad, Comoros, Angola and Sierra Leone. All recommendations were obtained from the website of the Children's Committee, <https://www.acerwc.africa/reporting-table/>, except for Kenya's which was not available. Most recommendations are undated but mention the African Children's Committee Session in which the state party report was considered.

49 These categories are not exclusive and there is overlap between them. Civil rights and freedoms, including birth registration, are not included in this analysis.

50 Covering issues of name and nationality, protection against child abuse and torture, and the recruitment of children in armed conflict; UNICEF 'Review of progress in the advancement of child rights in Africa: Reflecting on the past and future challenges and opportunities' (2020) 24-25, [https://www.unicef.org/evaldatabase/files/Review\\_of\\_child\\_rights\\_in\\_Africa.pdf](https://www.unicef.org/evaldatabase/files/Review_of_child_rights_in_Africa.pdf) (accessed 24 May 2020).

51 See General Comment on art 30 of the African Children's Charter on 'children of incarcerated and imprisoned parents and primary caregivers' (2013); General Comment on art 6 on the 'right to birth registration, name and nationality' (2014); General Comment on art 31 on 'the responsibilities of the child' (2017); Joint General Comment of the African Commission on Human and Peoples' Rights and the African Children's Committee on ending child marriage (2017).

settings.<sup>52</sup> This recurring theme is not surprising given the normative function of the African Children's Committee.

Beyond normative frameworks, the African Children's Committee recommends the enforcement of legislation including the investigation and prosecution of various forms of child abuse and exploitation. By 2014 there was mention of some countries with specialised sections in the police (such as Liberia, Ethiopia and Kenya) indicating progress since the time of drafting of the African Children's Charter where any form of specialisation in the services was rare. State parties are recommended to continue various efforts to ensure that perpetrators 'are not met with impunity'.<sup>53</sup> The African Children's Committee also draws attention to holding both formal and informal private sector actors accountable for economic exploitation – specifically in the form of child labour.<sup>54</sup>

### 3.2.2 *Adequate capacities and sufficient resource allocation*

The African Children's Committee pays progressively more attention to ensuring adequate capacities and sufficient resource allocation over the years. The 2014 recommendations for Liberia are notable as the first explicit discussion of the various elements of the system that need to be in place for children's protection and the capability of the state to deliver the system. The Children's Committee observes that implementation of the law is constrained as the 'structure devised by the law is not compatible with the available human resources available for social welfare', recommending that Liberia adopt a 'coherent policy framework to meet the welfare needs of children'.<sup>55</sup> This realistic assessment by the African Children's Committee does not appear to be reiterated in any other recommendations.

### 3.2.3 *Supportive social norms*

Fostering supportive social norms is part of building and strengthening a country's child protection system. It is important to recognise that

52 Eg, Concluding Observations and Recommendations for Sudan; Liberia; Mozambique; Madagascar; Namibia para 25; Zimbabwe para 26; Rwanda para 19; Lesotho para 27; Gabon para 26; Eritrea para 10; Côte d'Ivoire para 23; Chad para 24; Comoros para 18; Angola para 26.

53 Eg, Concluding Observations and Recommendations for Liberia (to investigate cases and bring perpetrators before justice); Ethiopia (to continue to build the capacity of specialised police units so that perpetrators are not met with impunity); Kenya (to continue actions towards a child-friendly justice system).

54 Eg, Concluding Observations and Recommendations for Liberia, Ethiopia, Guinea, Kenya, Madagascar, Comoros.

55 Concluding Observations and Recommendations for Liberia 4.

social and cultural norms may either be protective of children or enhance their vulnerability to abuse and exploitation. The African Children's Committee frequently draws attention to community attitudes and practices that enable or tolerate various forms of child abuse and exploitation. Examples are the practice of parents of forcing their pregnant daughters to marry perpetrators of sexual abuse,<sup>56</sup> the treatment of domestic violence as a 'family affair' which prevents it from being reported to authorities,<sup>57</sup> and the stigmatisation of those who report sexual abuse by family members.<sup>58</sup> The African Children's Committee's recommendations to address these attitudes and harmful practices focus on awareness raising and sensitisation for a 'change of mentality'.<sup>59</sup> They encourage the involvement of schools and traditional and religious leaders at the grassroots level.<sup>60</sup> Since 2017 the African Children's Committee has encouraged state parties to implement the AU campaign on ending child marriage.<sup>61</sup>

The African Children's Committee frequently recommends widespread awareness raising to address child labour.<sup>62</sup> They recommend dedicated sensitisation for community leaders and religious teachers to address the *Alamajiri* system.<sup>63</sup> Since 2016 the African Children's Committee has provided guidance beyond simply raising awareness and discusses how barriers to change can be overcome through community-level interventions. This is particularly important and addresses critiques of the 'disconnect' between formal national child protection systems and the realities of communities in Africa.<sup>64</sup> In its recommendations for Sierra Leone, for example, the African Children's Committee recommends developing a strategy for addressing social norms and behaviour that 'underpin vulnerability

56 Eg, Concluding Observations and Recommendations for Uganda, Guinea and Kenya.

57 Eg, Concluding Observations and Recommendations for Liberia and Lesotho.

58 Concluding Observations and Recommendations for Madagascar.

59 Concluding Observations and Recommendations for Uganda para 7.

60 Eg, Concluding Observations and Recommendations for Uganda, Rwanda, Guinea, Namibia, Zimbabwe, Lesotho, Algeria, Gabon, Eritrea, Côte d'Ivoire, Sierra Leone.

61 Eg, Concluding Observations and Recommendations for Côte d'Ivoire and Angola.

62 Eg, Concluding Observations and Recommendations for Uganda and Liberia.

63 Where children are attached to *imams* (religious leaders) for religious teaching and instruction but end up on the streets as beggars: Concluding Observations and Recommendations for Nigeria. This is also raised in the Concluding Observations and Recommendations for Senegal and Guinea.

64 Eg, Child Frontiers Ltd (n 38) 32–37; Training Resources Group and Play Therapy Africa 'Strengthening child protection systems in sub-Saharan Africa: A working paper' Inter Agency Group on Child Protection Systems in Sub-Saharan Africa 2012 10, [https://www.unicef.org/protection/files/strengthening\\_child\\_protection\\_systems\\_in\\_sub-Saharan\\_Africa\\_-\\_August\\_2012.pdf](https://www.unicef.org/protection/files/strengthening_child_protection_systems_in_sub-Saharan_Africa_-_August_2012.pdf) (accessed 10 May 2020); Wessells (n 32), Krueger et al (n 34).

to child labour' and to support and capacitate community-based early warning and early intervention mechanisms.<sup>65</sup>

### 3.2.4 *Effective prevention actions*

The African Children's Committee frequently calls for an examination of 'root causes' to prevent child abuse and exploitation. This is closely linked to social norms and aligns with a systems approach to examine underlying vulnerabilities. In this regard, the Children's Committee has progressively made more specific and actionable recommendations.<sup>66</sup> For example, the Committee recommends Guinea to consider alternative income-generating activities for those who perpetrate female genital mutilation (FGM). More recent recommendations elaborate on the complex and overlapping factors contributing to children's vulnerability. This indicates a deepening understanding by the Committee of the challenges that children face. For example, the African Children's Committee's Observations for Gabon highlight poverty, social exclusion, the absence of legal identity or lack of citizenship, child labour and organised crime as factors making children vulnerable to sexual exploitation.<sup>67</sup>

### 3.2.5 *Essential services*

The African Children's Committee provides progressively more comprehensive recommendations for support to child victims of abuse and exploitation. For example, in its recommendations for Namibia and Zimbabwe the African Children's Committee makes the same recommendation for state parties to

set in place a child-friendly reporting mechanism for victims of abuse and torture, to increase the work pool of psychologists and social workers in the criminal justice system, to build the capacity of the police to adequately respond to rape cases, to improve the conviction rate of offenders, established victim support programmes, and to promote community outreach efforts with a view of raising awareness.<sup>68</sup>

Since 2017 the African Children's Committee has discussed the importance of accessible toll-free helplines for child victims.<sup>69</sup> The Children's Committee also elaborates on specialist services for child

<sup>65</sup> Para 32.

<sup>66</sup> Eg, Concluding Observations and Recommendations for Ethiopia, Guinea, Rwanda.

<sup>67</sup> Para 50.

<sup>68</sup> Paras 26 & 27, respectively. See also Concluding Observations and Recommendations for Gabon (recommending a child-friendly and accessible reporting and rehabilitation mechanism for victims) para 26.

<sup>69</sup> See Concluding Observations and Recommendations for Cameroon para 16.

victims of trafficking,<sup>70</sup> child victims of sexual exploitation in refugee camps<sup>71</sup> and children affected by armed conflict.<sup>72</sup>

### 3.2.6 *Children in conflict with the law*

The African Children's Committee recommends specialist training for the justice work force to support children in conflict with the law.<sup>73</sup> The Children's Committee also recommends improving legislative and policy standards for child justice, promoting diversion, and ensuring sufficient human and physical resources for child justice.<sup>74</sup> There are recommendations for dedicated areas for women who are pregnant or with small children in detention in situations where alternatives to detention cannot be found.<sup>75</sup> The African Children's Committee highlights the importance of consulting children and meaningfully considering their views in the context of administrative and judicial proceedings that concern them.<sup>76</sup>

70 Eg, Concluding Observations and Recommendations for Madagascar and Ghana.

71 Eg, Concluding Observations and Recommendations for Rwanda para 28; Eritrea para 23.

72 Eg, Concluding Observations and Recommendations for Liberia, Kenya, Rwanda.

73 Eg, Concluding Observations and Recommendations for Togo, Rwanda, Lesotho, Côte d'Ivoire.

74 Eg, Concluding Observations and Recommendations for Tanzania (to allocate enough human and physical resources); Togo (to establish child justice courts and structures); Sudan (to establish specialist courts and dedicated areas for children in detention centres); Liberia (to ensure 'well-resourced courts' and reform its system to implement the new law); Ethiopia (to develop laws and policies to see all forms of detention as a last resort and for the shortest period of time); Guinea (to conduct cases *in camera*, the separation of children and adults and the supply of facilities to prisons accommodating children); Mozambique (to make its system child-friendly and introduce diversion and ensure detention remains an option of last resort); Madagascar (to increase the number of specialised judges and establish rehabilitation centres for children nationwide); Namibia (to train officials and recruit psychologists and social workers to establish more child-friendly courts nationwide); Algeria and Gabon (to increase the pool of psychologists and social workers in the child justice system); Ghana (to advocate the use of detention as a measure of last resort and where children are detained, to ensure that they are not detained with adults and to undertake to develop alternatives to detention); Chad (to train enough judges, prosecutors and police and to improve conditions for children in detention); Comoros (to create separate detention centres for children); Angola (to establish juvenile courts, implement diversion, provide legal aid, and establish rehabilitation centres); Sierra Leone (to allocate adequate resources to family courts and child panels, legal aid for children, guidelines for non-custodial sentences, and to ensure that sentencing children to imprisonment is done as a measure of last resort and where they are imprisoned, to ensure that children are kept separately and provide necessary support).

75 Eg, Concluding Observations and Recommendations for Sudan.

76 Eg, Concluding Observations and Recommendations for Namibia and Angola.



### 3.2.7 *Alternative care*

With respect to family environment and alternative care, the African Children's Committee makes wavering indications on institutional care. The 2014 Concluding Observations for Liberia contain the first clear statement on prioritising family-based care and ensuring institutional care is a last resort. The Children's Committee discourages, or suggests the regulation of, informal adoption and traditional fostering arrangements.<sup>77</sup> State parties are recommended to introduce monitoring and minimum standards for institutions, including those that are privately run.<sup>78</sup>

### 3.3 **General Comment 5 and measures introducing safeguarding principles**

Except for the 2014 Concluding Observations and Recommendations for Liberia, the African Children's Committee does not expressly discuss the elements of a child protection system or encourage state parties to adopt a systems approach. This is likely to be influenced by the format of state party reporting, which aligns with the articles of the African Children's Charter. The African Children's Committee's position on child protection systems strengthening is articulated for the first time in General Comment 5 of 2018. The General Comment was inspired by a seminar hosted for the African Children's Committee in 2013 on systems strengthening for child protection in sub-Saharan Africa. There was a request from international partners for a dedicated General Comment on systems strengthening. However, the topic was ultimately combined with that of the African Children's Charter's General Measures of Implementation as a whole.

The General Comment recognises that all systems reflect a nested structure. In the case of child protection, the African Children's Committee explains that children are embedded in families or kin, living in communities that exist within a wider societal system. Given

<sup>77</sup> See also Concluding Observations and Recommendations for Ethiopia (family reunification is recommended as a priority for orphans and vulnerable children and where this is not possible, these children should be provided with necessary care until an alternative family environment is found).

<sup>78</sup> Eg, recommendations for Namibia and Zimbabwe 'to increase its social workers' work pool; to build the capacity of existing social workers; to strengthen already-existing and to establish new public alternative care facilities; to effectively supervise or monitor alternative care institutions; enter collaborate with CSOs' (paras 29 & 31, respectively). See also Rwanda (to standardise and closely monitor foster care and social welfare institutes) para 23; Gabon (to improve childcare services and monitor and supervise institutional facilities) para 31; Lesotho (to work with privately-run institutes to assist in record keeping and tracking children in their care) para 30.

the nested nature of systems, specific attention needs to be paid to coordinating the interaction of these sub-systems so that the work of each system is mutually reinforcing to the purpose, goals and boundaries of related systems. Well-functioning systems pay attention to developing and fostering cooperation, coordination, and collaboration among all levels of stakeholders, from community level upwards.<sup>79</sup> Systems may be formal and informal, and protection systems may interact with other systems such as health and education.

General Comment 5 also for the first time introduces safeguarding principles. The African Children's Committee states that

state parties should ensure that CSOs [civil society organisations] and international organisations that work directly with children must be required to adopt child safeguarding policies. Persons who have abused children should be prevented from working with them, including in civil society organisations, even as volunteers.<sup>80</sup>

This is an important directive for state parties, which has not yet been considered in Concluding Observations. The issues are highly relevant given the preponderance of organisations delivering services for children in the region. The African Children's Committee frequently recommends state party collaboration with CSOs and non-governmental organisations (NGOs)<sup>81</sup> but with no associated safeguarding measures. Safeguarding measures are necessary for all organisations – state and non-state. As this directive falls in a section of the General Comment directed at NGOs, community-based organisations and international NGOs, it might erroneously be taken to imply that state structures and their employees are exempted from safeguarding measures. Since direct contact with children is frequently found at county, provincial regional and district/local levels,<sup>82</sup> it should be an explicit injunction by the African Children's

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<sup>79</sup> Para 6.1.

<sup>80</sup> Para 6.7.

<sup>81</sup> Eg, Concluding Observations and Recommendations for Nigeria (to cooperate with NGOs working on child protection); Burkina Faso (to coordinate with government ministries, NGOs and CSOs to tackle harmful practices); Liberia (to work with CSOs to facilitate social welfare services to unaccompanied children); Ghana (in partnerships with CSOs to launch a comprehensive programme of rescue, rehabilitation and reintegration of children in child labour).

<sup>82</sup> Eg, in schools, shelters, places of safety, state-run orphanages, and health and primary healthcare facilities. A recurring issue identified in Concluding Observations was sexual violence and other forms of child exploitation perpetrated by teachers. Eg, Concluding Observations for Côte d'Ivoire para 23; Comoros para 30; and Angola para 49. See also Concluding Observations and Recommendations for Malawi (to harmonise the provisions of the Penal Code and Teaching Service Commission Act so that sexual offences committed against students by children are appropriately handled) para 27; Senegal (to ensure the investigation and prosecution of Koranic teachers who force children to beg or inflict other abuse, and to implement a binding national code of conduct for teachers and school officials as well as other measures to address the ongoing abuse of girls in school settings) paras 44 and 62; Benin (to ensure that children

Committee to state parties to identify safeguarding policies within government agencies in their remit. The Children's Committee should also request state parties to explain how the implementation of these policies is pursued at national, regional and district levels.

With respect to emerging measures on safeguarding, brief mention must also be made of Africa's Agenda for Children 2040: Fostering an Africa Fit for Children (Agenda 2040). Agenda 2040 is the African Children's Committee's vision and elaborates on paragraph 53 of the AU's Agenda 2063: The Africa We Want, that 'African children shall be empowered through the full implementation of the African Charter on the Rights of the Child'.<sup>83</sup> Agenda 2040 sets ambitious targets and goals under 10 aspirations, four of which directly concern children's rights to protection.<sup>84</sup> Agenda 2040 is to be implemented in each state party over five consecutive phases, the first of which concludes this year (2020). There are numerous targets to achieve by 2020, including that state parties

should have engaged with the UN, AU and aid agencies to ensure that children are protected from being sexually exploited by aid workers, military personnel and peacekeepers, and that the perpetrators of such acts be prosecuted and punished.<sup>85</sup>

The targets also state that national partners working with children 'should have a child protection policy and safeguarding policy in place, in order to ensure a safe environment for children by, for example, minimising risks of child abuse'.<sup>86</sup>

Safeguarding has also recently surfaced in the AU Policy on Addressing Sexual Abuse and Exploitation in Peace Support Operations

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are not forced to beg or undertake any child labour while enrolled in Koranic schools) para 40. This presents another opportunity for the African Children's Committee to elaborate on institutional safeguards that schools and other institutions should put into place to prevent child abuse.

83 African Children's Committee 'Africa's Agenda for Children 2040: Fostering an Africa fit for children' (2016) 9, [https://www.acerwc.africa/wp-content/uploads/2018/06/Agenda\\_2040\\_for\\_Children\\_Rights\\_in\\_Africa\\_15x24.pdf](https://www.acerwc.africa/wp-content/uploads/2018/06/Agenda_2040_for_Children_Rights_in_Africa_15x24.pdf) (accessed 31 May 2020).

84 The 10 aspirations constitute the following: (1) The African Children's Charter, as supervised by the African Children's Committee, provides an effective continental framework for advancing children's rights; (2) an effective child-friendly national legislative, policy and institutional framework is in place in all member states; (3) every child's birth and other vital statistics are registered; (4) Every child survives and has a healthy childhood; (5) every child grows up well-nourished and with access to the basic necessities of life; (6) every child benefits fully from quality education; (7) every child is protected against violence, exploitation, neglect and abuse; (8) children benefit from a child-sensitive criminal justice system; (9) every child is free from the impact of armed conflicts and other disasters or emergency situations; and (10) African children's views matter.

85 African Children's Committee (n 83) 97-99.

86 African Children's Committee (n 83) 101.

(PSO).<sup>87</sup> Although not explicitly mentioned by name, the document refers to the obligation for ‘all mission personnel ... to create and maintain an environment that prevents SEA [sexual exploitation and abuse] and have the duty to promote the implementation of the present policy’.<sup>88</sup> According to paragraph 10.9:

The AUC [African Union Commission] shall establish a mechanism to verify prior perpetrators of SEA are not deployed or redeployed to AU PSOs, in compliance with applicable laws and to the best of the AU’s abilities. This should include engaging with AU member states to ensure that they perform thorough vetting and screening as well as background and criminal reference checks of military and police personnel during pre-deployment verifications and of civilian personnel upon a request from the AUC.

The establishment of complaints mechanisms is also addressed in considerable detail. These build on safeguarding and child protection principles, albeit in the specific context of sexual abuse and exploitation in humanitarian operations. While not yet referenced by the African Children’s Committee in its Concluding Observations and Recommendations, General Comment 5, Agenda 2040 and the AU Policy on Addressing Sexual Abuse and Exploitation in PSO set out clear child protection and safeguarding standards for state parties.

#### 4 Future directions for child protection in Africa

Although it is now 30 years after the adoption of the African Children’s Charter, it is only in the last decade that state parties have systematically engaged in meaningful dialogue with the African Children’s Committee to harmonise domestic law, policies and practice in line with its provisions. There is progress across the region to develop more systemic responses to child protection based on strong normative frameworks. The development of the normative framework is one of the most important contributions of the African Children’s Charter and the African Children’s Committee. Some discriminatory laws and provisions inconsistent with the African Children’s Charter remain, but it is commonly agreed that the ‘child protection architecture, covering laws, policies and institutions, is by and large well developed and fairly well established in Africa’.<sup>89</sup>

87 AU Policy on Prevention and Response to Sexual Abuse and Exploitation in Peace Support Operations.

88 Para 7.1.

89 African Child Policy Forum ‘The African report on child wellbeing 2018: Progress in the child-friendliness of African governments’ (2018) xix, <https://www.africanchild.report/> (accessed 31 May 2020).

The major work remaining is to translate law reform and policies into practice. Instead of focusing on responses to situations of harm, prevention must be the foundation. The African Children's Committee's more recent recommendations elaborate on the complex and overlapping factors contributing to children's vulnerability and call for an examination of underlying vulnerabilities to inform effective preventive actions. This is important and reflects a deepening understanding of the challenges that children face and the gradual maturity of the sector on the continent. The demand for realistic budgets and human resources to accompany legal and policy frameworks is another more recent but critical component.<sup>90</sup> Finally, there is a need for increased and sustained evidence-based investment to promote positive social norms. This must move beyond merely raising awareness. Without supportive social norms and adequate financial and human resources for national and local child protection systems, population level changes in child protection will be elusive, and the achievement of Agenda 2040 unlikely.

Looking to the immediate and longer-term future of child protection and safeguarding on the continent, it is evident that there are new challenges that were not foreseen at the time of the African Children's Charter's development. The region is relatively more peaceful now than at any time in the recent past but there are increasingly intense domestic conflicts<sup>91</sup> in which children are direct targets.<sup>92</sup> Increasing climate-induced disasters also negatively and disproportionately impact children and heighten children's vulnerability to various forms of exploitation.<sup>93</sup> While the digital revolution is presenting enormous opportunities for learning,

90 A critique of child protection interventions in low-income countries is that they are based on unrealistic expectations including that 'serious human resource and capacity gaps, such as the absence of a cadre of professional social workers, can be bridged within the lifespan of the programme': A Krueger et al 'Child protection in development: Evidence-based reflections and questions for practitioners' (2015) 50 *Child Abuse and Neglect* 15 20, <https://linkinghub.elsevier.com/retrieve/pii/S0145213415002720> (accessed 18 January 2020).

91 African Child Policy Forum (n 89) xx.

92 See African Children's Committee 'Continental study on the impact of conflict and crisis on children in Africa' (2016), [https://www.acerwc.africa/wp-content/uploads/2018/07/Study\\_on\\_the\\_impact\\_of\\_armed\\_conflict\\_and\\_crisis\\_on\\_children\\_in\\_Africa\\_ACERWC\\_FINAL\\_ENGLISH.pdf](https://www.acerwc.africa/wp-content/uploads/2018/07/Study_on_the_impact_of_armed_conflict_and_crisis_on_children_in_Africa_ACERWC_FINAL_ENGLISH.pdf) (accessed 5 June 2020); based on research in seven countries experiencing active conflict as at the time of writing (Burundi, Central African Republic, Kenya, Libya, Nigeria, Somalia and South Sudan) and six in fragile post-conflict situations or major humanitarian crises (Democratic Republic of the Congo, Guinea-Bissau, Liberia, Mali, Sierra Leone and Sudan). See also UNICEF 'How the world failed children in conflict in 2018' (2018), <https://www.unicef.org/stories/how-world-failed-children-2018> (accessed 5 June 2020).

93 See further E Boshoff 'Protecting the African child in a changing climate: Are our existing safeguards adequate?' (2017) 17 *African Human Rights Yearbook/Annuaire Africain des Droits de l'Homme* Volume 1 (2017) 23, <http://www.pulp.up.ac.za/images/pulp/books/journals/AHRY/Boshoff.pdf> (accessed 5 June 2020).

entertainment, social inclusion and civic engagement for children and young people on the continent, it has also created new risks and forms of harm.<sup>94</sup> This also has implications for child safeguarding. In 2020 the African Children's Committee is debating a draft General Comment on article 27 of the African Children's Charter, which elaborates measures required to be taken by state parties to combat 'offline' and online sexual exploitation and abuse of children. As explained in the African Children's Committee's General Comment 5, child protection systems that contain the full array of measures to prevent and respond to all forms of child abuse and exploitation are integral to the implementation of the African Children's Charter, including to address forms of violence not contemplated at its inception.

The COVID-19 pandemic has also presented numerous and unprecedented challenges to existing child protection systems. The African Children's Committee has warned that beyond the immediate health impacts of COVID-19, the social and economic disruptions will harm children's rights and welfare.<sup>95</sup> To date, evidence of the impact of COVID-19 on children's protection in the region has mostly emanated from news articles and reports from international organisations, NGOs and CSOs.<sup>96</sup> There are indications of negative impacts of the rapid de-institutionalisation of children in various alternative care settings;<sup>97</sup> increased gender-based violence (including child marriage and FGM) due to prolonged school closures;<sup>98</sup> the criminalisation of children in street situations;<sup>99</sup> the increased risk of

94 United Nations Children's Fund 'Children in a digital world' (UNICEF 2017), [https://www.unicef.org/publications/files/SOWC\\_2017\\_ENG\\_WEB.pdf](https://www.unicef.org/publications/files/SOWC_2017_ENG_WEB.pdf) (accessed 10 June 2020).

95 African Children's Committee 'COVID-19 and its implication on children's rights and welfare: Guiding note to member states of the African Union' 1, [https://www.acerwc.africa/wp-content/uploads/2020/04/Guiding-Note-on-Child-Protection-during-COVID-19\\_English-1.pdf](https://www.acerwc.africa/wp-content/uploads/2020/04/Guiding-Note-on-Child-Protection-during-COVID-19_English-1.pdf) (accessed 21 May 2020). See also AU Peace and Security Council 'Communiqué on impact of the novel coronavirus disease (COVID-19) pandemic on the security and welfare of children in Africa', <http://www.peaceau.org/uploads/com-psc-924th-psc-meeting-on-the-impact-of-covid-19-on-children-in-africa-12-may-2020.pdf> (accessed 5 June 2020).

96 E Fraser 'Impact of COVID-19 pandemic on violence against women and girls' (UK Aid from the Department for International Development) 284 1, <http://www.sddirect.org.uk/media/1881/vawg-helpdesk-284-covid-19-and-vawg.pdf> (accessed 5 June 2020).

97 PS Goldman et al 'The implications of COVID-19 for the care of children living in residential institutions' (2020) 4 *The Lancet Child and Adolescent Health* 12.

98 "'Many girls have been cut': How global school closures left children at risk' *The Guardian* 1 June 2020, <https://www.theguardian.com/global-development/2020/jun/01/many-girls-have-been-cut-how-coronavirus-global-school-closures-left-children-at-risk> (accessed 9 June 2020).

99 "'Will we die of hunger?': How COVID-19 lockdowns imperil street children' *The Guardian* 15 April 2020, <https://www.theguardian.com/global-development/2020/apr/15/will-we-die-of-hunger-how-covid-19-lockdowns-imperil-street-children> (accessed 9 June 2020).

online abuse and exploitation;<sup>100</sup> and collapsing systems of family and community support. There are also reports of sexual exploitation by state officials and community members charged with enforcing community level quarantine, as well as increased risks of sexual exploitation and abuse associated with 'outsiders' transporting goods or providing services.<sup>101</sup> Data is continuing to emerge and confirms warnings of increased child protection risks and impacts of containment measures on service delivery.<sup>102</sup>

Although COVID-19 risks the regression of child protection gains, it also presents unprecedented opportunities to 'build back better'<sup>103</sup> child protection systems. The nature of the pandemic requires localised and dynamic mechanisms and means of support to vulnerable families and children, including through technology and engagement of children and young people who constitute almost half of Africa's population. The crisis demands improved coordination between various sectors (such as health, education, labour and social welfare) and actors supporting the emergency response, including across borders, and new collaborations with academia and the industry. COVID-19 has exposed weak systems on and across the continent (and the world) and is a renewed call for states to use the maximum available resources to invest and refocus action on child protection,<sup>104</sup> including to address underlying vulnerabilities that have exacerbated the effects of the pandemic.

## 5 Concluding remarks

This article has traversed the origins, development and implementation of the African Children's Charter and its contribution to understanding and addressing children's rights to protection over the last 30 years. The issues that precipitated the development of a regionally-specific child rights treaty largely related to child protection. Accordingly, it is not surprising that many of the substantive articles of the African Children's Charter are geared towards child protection. There was a

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100 Interpol 'Threats and trends, child sexual exploitation and abuse: COVID-19 impact' (2020), <https://www.interpol.int/en/News-and-Events/News/2020/INTERPOL-report-highlights-impact-of-COVID-19-on-child-sexual-abuse> (accessed 12 November 2020).

101 Fraser (n 96) 3.

102 United Nations Children's Fund 'Protecting children from violence in the time of COVID-19: Disruptions in prevention and response services' (UNICEF 2020).

103 UN 'COVID-19 and human rights: We are all in this together' (2020) 21.

104 See the African Children's Committee's General Comment 5: 'Whilst being aware of fiscal realities, the Charter standards were set intentionally – they do not allow states parties to claim that they do not have any resources for the implementation of social and economic goods for the fulfilment of children's rights.'

major shift in the child protection sector from an issues-based to a systems approach after the adoption of the Children's Charter, but this took time to be propagated by the African Children's Committee.

After a decade of dialogue between the African Children's Committee and state parties, the basic child protection architecture now is relatively well-developed across the region. However, increased political will and investment are required to translate laws and policies into practice and realise the ambitious Agenda 2040 vision. New challenges include increasingly intense domestic conflicts, climate-induced disasters, new risks and harms enabled by digital technology, as well as the unprecedented impacts of COVID-19. These challenges demand a systemic approach and will require the maximum available resources to invest and refocus action.

The article underscores the vital role of the African Children's Committee in articulating African perspectives and catalysing state party action to realise children's rights to protection in accordance with the Charter. Through the state party reporting process and with reference to General Comment 5 and forthcoming guidance, the Committee can continue meaningful dialogue with state parties to address persistent and new challenges to child protection by adopting a systemic approach.