

To cite: RD Nanima 'Evaluating the role of the African Committee of Experts on the Rights and Welfare of the Child in the COVID-19 era: Visualising the African Child in 2050' (2021) 21 *African Human Rights Law Journal* 52-73
<http://dx.doi.org/10.17159/1996-2096/2021/v21n1a4>

Evaluating the role of the African Committee of Experts on the Rights and Welfare of the Child in the COVID-19 era: Visualising the African child in 2050

Robert Doya Nanima*

Senior Law Lecturer, Department of Criminal Justice and Procedure, University of the Western Cape, South Africa
<https://orcid.org/0000-0001-8825-3376>

Summary: *Africa has gained much traction in recognising the rights of the child with an emphasis on his or her holistic environments. Three general environments that affect a child are identified: first, a peaceful environment informed by adequately functional institutions that aid the implementation of all laws that improve the position of the child; second, an environment punctuated by emergencies such as armed conflict, public health emergencies or humanitarian situations. The third environment is where a child who has moved from humanitarian situations seeks solace. This may include internally-displaced persons and refugees/asylum seekers. This article evaluates the role of the African Committee of Experts on the Rights and Welfare of the Child as the only regional human rights body that monitors the promotion and protection of the rights of children. The evaluation covers the third environment in the context of the COVID-19 era. It is argued that the current traction by the Committee after the outbreak of the pandemic can be used to improve the position of the child towards the 2050 aspirations. An evaluation of the effects of the pandemic on the child is*

* LLB (Makerere) Dip LP (Law Development Centre) LLM LLD (Western Cape); rnanima@uwc.ac.za

done followed by a visualisation of the child in 2050. An analysis of the normative, institutional and jurisprudential framework of the Committee in the Covid-19 era follows. A juxtaposition of the use of Agenda 2040 to realise the 2050 visualised child is done. This informs a proposed model that the Committee may adopt, followed by a conclusion and recommendations.

Key words: *African Children’s Committee; African Children’s Charter; Agenda 2040; jurisprudence; normative; COVID-19*

1 Introduction

The success of any human rights system at the domestic, regional or international level requires an adequate development of the normative, institutional and jurisprudential frameworks.¹ While the normative framework informs the laws in use, the institutional framework relates to the expertise of the human resources that apply the theoretical principles to the practical challenges. Consequently, the jurisprudential framework is developed by the institutionalised structure as it engages the normative provisions in the human rights instrument. It follows that the jurisprudential framework then organically develops over time. The evaluation of these three aspects is critical to taking stock of a human rights system on any thematic issues that are within its mandate. This aids the evaluation of its successes, challenges and insights on the way forward.

The African Committee of Experts on the Rights and Welfare of the Child (African Children’s Committee) was established under the African Charter on the Rights and Welfare of the Child (African Children’s Charter).² As will be shown shortly, this article discusses the institutional structure, the normative structure in light of the value addition that the Children’s Charter presents and the evolving jurisprudence of the African Children’s Committee; all in the context of the COVID-19 pandemic.³ The article also directs the conversation to the child who has moved from areas of armed conflict to relatively peaceful areas due to internal displacement or as a refugee or asylum seeker.⁴ From this point forward, an evaluation of the argument and the sub-claims underscored in the abstract follows.

1 B Thomas ‘The normative and institutional evolution of the international human rights’ (1997) 19 *Human Rights Quarterly* 703 723.

2 African Charter on the Rights and Welfare of the Child CAB/LEG/24.9/49 (1990), art 42.

3 See part 4 below.

4 The qualification of this child is made in part 2 below.

2 Revisiting the COVID-19 pandemic and its effect on children

Before the outbreak of COVID-19, the world had witnessed various pandemics and epidemics leading to loss of life.⁵ Persons with low social and economic status remain greatly affected, due to living conditions that make it hard to use public health interventions or utilise various healthcare options.⁶ Children who are refugees or internally displaced are grossly affected by pandemics due to poverty, overcrowding, exposure to the virus, and limits in the use of hand hygiene.⁷

The world was gripped with COVID-19 that spread from Wuhan, China in December 2019 to over 219 countries. As of 17 November 2020, there were 54 771 888 confirmed cases of COVID-19, including 1 324 249 deaths.⁸ Various countries adopted restrictions to curb the spread of the virus, ranging from the declaration of periods of emergency to periods of disaster to curfews, among others.⁹ Most countries adopted public health interventions to mitigate the spread of the virus, which included non-pharmaceutical measures such as restrictions on the movement of people; non-attendance of school by children; and limited access to health care, among others.¹⁰ The public was advised to practise social distancing of at least one and a half metres; use masks; wash hands for at least 20 seconds; use sanitisers; clean surfaces as frequently as possible; and practise self-isolation.¹¹

These public health interventions add to existing problems that present various challenges that affect children's enjoyment of their

-
- 5 Eg, over 500 million people, a third of the world's population, were affected by Spanish flu and between 50 and 100 million people died. See J Edwin *Epidemic influenza. A survey* (1927) Chicago: American Medical Association; FW Hampton 'Statistics of influenza morbidity: With special reference to certain factors in case incidence and case fatality' (1920) *Public Health Reports* (1896-1970) 584. See also J Niall & J Mueller 'Updating the accounts: Global mortality of the 1918-1920 Spanish influenza pandemic' (2002) *Bulletin of the History of Medicine* 105.
- 6 SE Mamelund '1918 pandemic morbidity: The first wave hits the poor, the second wave hits the rich' (2018) 12 *Influenza and Other Respiratory Viruses* 311.
- 7 B Galobardes et al 'Indicators of socio-economic position (part 1)' (2006) 60 *Journal of Epidemiology and Community Health* 7.
- 8 WHO Coronavirus Disease (COVID-19) Dashboard, <https://covid19.who.int/> (accessed 18 November 2020).
- 9 Eg, on 15 March 2020 South Africa declared a national state of disaster under sec 27 of the Disaster Management Act 57 of 2002. Uganda declared a notification of the disease and engaged measures to mitigate its spread under sec 11 of the Public Health Act.
- 10 Coronavirus disease (COVID-19) advice for the public, <https://bit.ly/2Yya34I> (accessed 18 November 2020).
- 11 As above.

rights. These include armed conflict;¹² civil wars;¹³ terrorism;¹⁴ increased displacement; droughts; and food insecurity.¹⁵ These challenges affect the enjoyment of other rights such as the rights to food,¹⁶ education,¹⁷ health¹⁸ and access to justice for children who are victims or are in conflict with the law. The enjoyment of the right to food for children has been affected by limited access to food. The United Nations High Commissioner for Refugees reported that millions of refugees, especially children across Africa who relied on regular aid to meet their food needs, were bound to suffer shortages due to COVID-19.¹⁹ These problems have continued to escalate due to the lack of available measures to deal with malnutrition at national levels. It is important to look at the various challenges that children faced in the context of their environments. For instance, statistics showed that 52,4 per cent of children in refugee camps present high levels of anaemia, acute malnutrition and stunted growth.²⁰ These challenges existed before the onslaught of the pandemic. In countries with peaceful environments the lack of access to justice

-
- 12 Statistics show that one out of every four children are in areas of armed conflict, and six out of the 10 most dangerous countries to raise a child are in Africa. See Save The Children 'War on children' (2018) 15, <https://bit.ly/31tQ1tp> (accessed 19 October 2020).
- 13 These have greatly affected children, with the result that they cannot attend school. Increased attacks on schools that used to be safe havens have continued. The continued and growing insecurity in the Sahel region has forced nearly 2 000 schools in Burkina Faso, Mali and Niger to close down, and the continued use of schools for military purposes has disrupted education in the case of more than 400 000 children across the three countries and left 10 050 teachers unable to work or displaced by the violence. UNICEF 'School closures in the Sahel double in the last two years due to growing insecurity', <https://uni.cf/3fjEh2v> (accessed 20 November 2020).
- 14 Crisis Group, <https://bit.ly/3pPgJr5> (accessed 20 November 2020).
- 15 According to OCHA, in Mali the number of internally displaced people has more than doubled over the past year to reach around 100 000. Burkina Faso faces unprecedented displacement with more than 100 000 people uprooted in 2019 alone. In Niger's Tillaberi and Tahoua regions, violence has forced more than 70 000 people from their homes. Sahel Humanitarian Crisis (2019), <https://bit.ly/2iYt3L> (accessed 20 November 2020).
- 16 Food and Agricultural Organisation of the United Nations 'The right to adequate food in emergency programmes' (2014), www.fao.org/3/a-i4184e.pdf (accessed 20 June 2020). For a domestic perspective, see B Nkrumah 'Opening Pandora's box: A legal analysis of the right to food in South Africa' (2019) 52 *De Jure Law Journal* 47.
- 17 Eg, in the Sahel region a UNICEF report in February 2019 indicates that the closure of schools has doubled due to insecurity. See report, UNICEF (2014) 'School closures in the Sahel double in the last two years due to growing insecurity – UNICEF', <https://uni.cf/2Z9ma7G> (accessed 20 November 2020).
- 18 The World Health Organisation states that globally over 2 billion people in more than 40 countries face high health risks from crisis conditions. See A Musani et al 'The challenges of securing health in humanitarian crises', <https://bit.ly/3g0u6yX> (accessed 20 November 2020).
- 19 'UNHCR and WFP warn refugees in Africa that face hunger and malnutrition as COVID-19 worsens food shortages', <https://bit.ly/2Kiq36k> (accessed 20 November 2020).
- 20 Y Jemal, J Haidar & WK Makau 'The magnitude and determinants of anaemia among refugee preschool children from the Kebribeyah refugee camp, Somali region, Ethiopia' (2017) 30 *South African Journal of Clinical Nutrition* 1.

affected children. While one may argue that this is a less dire situation than malnutrition, the failure for a child victim to have a remedy, or the violation of his or her rights as a child in conflict with the law, the traumatic effect on the child has repercussions that affect his or her holistic development.²¹ For instance, in South Africa the enactment of the COVID-19 regulations under the Disaster Management Act restricted the enjoyment of parental care towards children whose parents or caregivers were neither staying together nor had parental plans in place.²² The challenge lay in the discrimination occasioned to these children due to the application of the regulations.

The use of social distancing among vulnerable children such as refugees or internally-displaced persons remains a challenge, especially where they are in populated camps.²³ Crowded settlements cannot adequately use the recommended social distancing of at least one and a half metres. This only leads to more health hazards that may not mitigate the spread of the pandemic.²⁴ This is exacerbated by the restrictions on movement that impact the provision of child-related health initiatives such as immunisation and the supply of essential vaccines and medicines.²⁵ The disruption in childhood immunisation for COVID-19 in Africa is due to its reliance on functioning health facilities and stable communities that were subjected to public health interventions.²⁶ The other challenge has been instances where the integration of the displaced persons or refugees with the host communities has overstretched the existing health services.²⁷

The requirement to use masks and sanitisers and cleaning surfaces as frequently as possible is based on the assumption that one can afford to buy the resources to do this, especially in the absence of palliative care.²⁸ While the option of washing hands with water

21 T Liefgaard 'Access to justice for children: Towards a specific research and implementation agenda' (2019) 27 *The International Journal of Children's Rights* 195.

22 For a detailed analysis of this law and how the Court approached it to protect the child, see RD Nanima 'From regulations to courts: An evaluation of the inclusive and exclusive criteria on children with co-caregivers in the era of COVID-19' (2020) 21 *Economic and Social Rights Review* 10-14.

23 W Williams 'COVID-19 and Africa's displacement crisis' (2020), <https://bit.ly/3et1Ggu> (accessed 20 November 2020).

24 A Wells 'Keeping displaced communities safe and healthy as COVID-19 pandemic takes hold' (2020), <https://bit.ly/2Ba0XST> (accessed 20 November 2020).

25 In Ghana, immunisation came to a standstill due to the restrictions on movement of the population. See R Nelson 'COVID-19 disrupts vaccine delivery' (2020) 20 *The Lancet Infectious Diseases* 546.

26 AA Adamu et al 'COVID-19 and routine childhood immunisation in Africa: Leveraging systems thinking and implementation science to improve immunisation system performance' (2020) 98 *International Journal of Infectious Diseases* 161-165.

27 Williams (n 23).

28 'Coronavirus disease (COVID-19) advice for the public', <https://bit.ly/2Yya34I> (accessed 20 November 2020).

and soap for 20 seconds seems manageable, statistics show that in sub-Saharan Africa 40 per cent of a population of 780 million people do not have access to clean water.²⁹ Concerning sanitation, research indicates that while North Africa has 90 per cent coverage of sanitation, sub-Saharan Africa stands at 30 per cent.³⁰ This limits the efficacy of mitigation efforts during public health emergencies such as COVID-19.

3 Visualising the child in 2050

The African Union (AU) adopted Agenda 2063 to transform Africa into a global powerhouse of the future, to spur economic growth and to improve the standard of living holistically for all persons in Africa.³¹ Agenda 2063 is informed by seven broad aspirations.³² The sixth aspiration calls for 'an Africa whose development is people driven, relying on the potential offered by African people, especially its women and youth, and caring for children'.³³

This informed the adoption of Agenda 2040 by the African Children's Committee in 2016, to cater for the progressive improvement of the child in the wider framework of Agenda 2063.³⁴ The Children's Committee is entrusted by the AU to realise Aspiration 6 of Agenda 2063 by engaging children and the youth.³⁵ Agenda 2040 is a 25-year programme that calls for a long-term and strategic progress in implementing children's rights in Africa. It provides a child-based focus for the AU's Agenda 2063, which highlights children's rights and welfare concerns in paragraph 53.

Agenda 2063 is guided by ten aspirations that include the provision of an effective continental framework for advancing children's rights,³⁶ and the existence of an effective child-friendly national legislative, policy and institutional framework in all member

29 United Nations Department of Economic and Social Affairs 'International Decade for Action "Water for life" 2005-2015' (2015), <https://bit.ly/2H15QMd> (accessed 20 November 2020).

30 As above.

31 African Union (2020), <https://bit.ly/2AXoiXs> (accessed 20 November 2020).

32 Goals and Priority Areas of Agenda 2063, <https://au.int/en/agenda2063/goals> (accessed 20 November 2020).

33 Aspiration 6 at Goals and Priority Areas of Agenda 2063 (n 32).

34 Agenda 2040 elaborates para 53 of Agenda 2063, to realise the intent of establishing long-term strategies to lead to the sustenance and protection of children's rights in Africa within a period of 25 years from 2015 to 2040. See details at Agenda 2040, <https://www.acerwc.africa/agenda-2040/> (accessed 20 November 2020).

35 Aspiration 6, Goal 15, <https://au.int/en/agenda2063/goals> (accessed 20 November 2020).

36 Agenda 2040 (n 34) Aspiration 1.

states.³⁷ In addition, Agenda 2040 calls for the registration of every child's birth and other vital statistics;³⁸ the survival of the child who also has a healthy childhood;³⁹ and the growth of a well-nourished child with access to necessities in life.⁴⁰ It is expected that every child benefits fully from quality education,⁴¹ and is protected against violence, exploitation, neglect and abuse.⁴² The benefits have to extend to a child-sensitive criminal justice system,⁴³ freedom from the impact of armed conflicts and other disasters or emergencies,⁴⁴ and the minor's participation in matters that concern him or her.⁴⁵ It is crucial to relate these aspirations with the child affected by a public emergency such as COVID-19.

Before visualising the child in 2050 as a product of the implementation of Agenda 2040, it is prudent to contextualise the child now in the context of the COVID-19 era. This is against the background that the pandemic has had a profound impact on children, with the poorest and most vulnerable being the hardest hit.⁴⁶ Consider a hypothetical situation where we have child A, who stays in a peaceful community, goes to school, and has access to health care and stays with caregivers.⁴⁷ Consider another child B, who is in an area with emergencies such as armed conflict, famine and drought, and he or she is conditioned to live in this environment. A good example is a child affected by armed conflict.⁴⁸ Consider the third child C, who has moved from areas of emergency to other areas that seem safe.⁴⁹ This includes a child who is internally displaced, a refugee or asylum seeker.⁵⁰ It should be noted that all these children (A, B and C) are entitled to the promotion and protection of their rights in all their environments. While Child A

37 Agenda 2040 Aspiration 2.

38 Agenda 2040 Aspiration 3.

39 Agenda 2040 Aspiration 4.

40 Agenda 2040 Aspiration 5.

41 Agenda 2040 Aspiration 6.

42 Agenda 2040 Aspiration 7.

43 Agenda 2040 Aspiration 8.

44 Agenda 2040 Aspiration 9.

45 Agenda 2040 Aspiration 10.

46 OECD 'Combating COVID-19's effect on children', <https://bit.ly/3nKPDQ3> (accessed 20 November 2020).

47 State parties usually emphasise the protection of this child as a citizen on the basis of the social contract between the child and the state.

48 Workshop Report on Children Affected by Armed Conflict and other situations of violence, Geneva, 14-16 March 2011, <https://bit.ly/2VRKSZN> (accessed 20 June 2020); J Macted 'Children and armed conflict in Africa' (2003) 9 *Social Identities* 72.

49 JM Shultz et al 'Internally displaced "victims of armed conflict" in Colombia: The trajectory and trauma signature of forced migration' (2014) 16 *Current Psychiatry Reports* 475; A Özerdem & T Jacoby 'Conflict induced internal displacement' (2007) *Human Rights in Turkey* 159.

50 RD Nanima 'The enjoyment of the right to health beyond areas of armed conflict: An evaluation of Kenya's practice and jurisprudence on refugee children' in M Amutabi (ed) *Africa's new deal* (2019) 257.

is better placed to benefit because of the relative peace he or she enjoys in the community, the same cannot be said about child B or C (visualised child). This category is hit hardest with the compromised enjoyment of their rights and the possible failure to adequately use possible interventions. Furthermore, this child, who lacked or had limited access to essential services such as health care, schools, online shopping before the COVID-19 pandemic, is bound to continue suffering significantly.⁵¹

Available statistics emphasise the conversation on the visualised child as far as they form the bulk of the 13 million child refugees, one million child-asylum seekers and 17 million internally-displaced children.⁵² Moreover, more than 3 700 000 children live in refugee camps or collective centres.⁵³ These numbers show the extent of the effect of armed conflict on these children – thus the need to conduct this study. An evaluation of all the aspirations concerning the visualised child cannot be done extensively. A look at a few aspirations that speak to the former are hinted on below.

By 2050 the visualised child's rights are expected to be adequately protected at the African region and the states' level in existing legislative, policy and institutional frameworks.⁵⁴ The outbreak of the pandemic reiterates the need to include the protection of children in the states' disaster management and responses,⁵⁵ and protection against all forms of violence, exploitation, neglect and abuse.⁵⁶ Furthermore, this child should be able to access the uninterrupted registration of his or her birth and other vital statistics even during periods of emergency⁵⁷ and have access to necessities in life.⁵⁸ The envisioned child is expected to benefit from quality education even in situations of public emergency.⁵⁹ This brings to the fore the

51 United Nations High Commissioner for Refugees 'Global trends: Forced displacement' (2018) Geneva.

52 D You et al 'Migrant and displaced children in the age of COVID-19: How the pandemic is impacting them and what can we do to help' (2020) 10 *Migration Policy Practice* 33.

53 United Nations High Commissioner for Refugees, Global Trends: Forced displacement (2018) Geneva.

54 Agenda 2040 (n 34) Aspiration 1.

55 Eg, research in 2018 showed that while Kenya had very progressive policies concerning the education and health of children, they did not deal with refugees. See Nanima (n 28) 257. In South Africa, although the policies on child security extend to refugee or migrant children, the practice is different. See Child Support Grant, <https://bit.ly/3pNTowk> (accessed 20 November 2020). See also L Golden 'Do "vast numbers" of refugee and migrant children rely on SA social services?' (2018), <https://bit.ly/3g6mV86> (accessed 26 June 2020).

56 Agenda 2040 (n 34) Aspiration 7 should be engaged by 2050 to reflect this position.

57 Agenda 2040 Aspiration 3 should be engaged by 2050 to reflect this position.

58 Agenda 2040 Aspiration 5 should be engaged by 2050 to reflect this position.

59 Agenda 2040 Aspiration 6 should be engaged by 2050 to reflect this position.

rhetoric of the provision of online education during the pandemic and the questions of access to data, internet connections, and online education materials for all children, including refugees, migrants or internally-displaced persons.

Other benefits that this child needs include a child-sensitive criminal justice system, which caters for both children as victims of human rights abuses and those in conflict with the law.⁶⁰ This calls for improved access to both civil and criminal justice. A case in point is Uganda that has been trying to use its Judicature (Audio-Visual) Rules to have online courts.⁶¹ This would be instructive in ensuring that access to physical involvements at courts cannot be used. Access to justice need not be limited to the children who are citizens, but even those who are migrants, refugees or of other similar status.⁶² Besides, the participation of the child in matters that concern him or her in public health emergencies should be adequately engaged by 2050.⁶³ This includes the use of virtual tools as a form of communication, advocacy, and information at a time such as this. It is argued that on some of these platforms involving children, the voice of the child has not come out strongly. It is proposed that child participation is key to the realisation of the position of the visualised child.

4 Normative, institutional, and jurisprudential framework of the African Children's Committee in the COVID-19 era

The normative provisions of the African Children's Charter provide added value to the protection of the child. First, it adopts the straight 18-year definition of the child without qualification.⁶⁴ This is in contrast to the position in the Convention on the Rights of the Child (CRC) which qualifies a child to be 18 years old or the national age that provides for the attainment of maturity at an earlier age.⁶⁵ The Children's Charter as such offers better protection because of the straight 18 position.⁶⁶ Second, the Charter creates sufficient protection to the child affected by armed conflict, tension and strife.

⁶⁰ Agenda 2040 Aspiration 8 should be engaged by 2050 to reflect this position.

⁶¹ See RD Nanima 'A right to a fair trial in Uganda's judicature (visual-audio link) rules: Embracing the challenges in the era of COVID-19' (2020) 46 *Commonwealth Law Bulletin* 351.

⁶² As above.

⁶³ Agenda 2040 (n 34) Aspiration 10 should be engaged by 2050 to reflect this position.

⁶⁴ Art 2 African Children's Charter.

⁶⁵ Convention on the Rights of the Child, 1577 UNTS 3 art 1.

⁶⁶ BD Mezmur 'Happy 18th birthday to the African Children's Charter: Not counting its days but making its days count' (2017) 1 *African Human Rights Yearbook* 125.

To this end, its article 22 deviates from the silence of CRC on the protection of the child in armed conflict, tension and strife.⁶⁷ Also, the limited position of the Optional Protocol to CRC on the non-recruitment of children in armed groups is amplified by the African Children's Charter which provides for the protection for all children affected by armed conflict and not those that are recruited as child soldiers.⁶⁸ Furthermore, the wording in the Children's Charter shows a deliberate effort to apply both humanitarian and human rights law to protect the child in situations of conflict.⁶⁹

Other additional points of added value in the African Children's Charter include the provision of better protective standards for children because of the recognition of the peculiar challenges faced by the African child in the spheres of socio-economic, developmental, cultural and traditional circumstances.⁷⁰ Other challenges include natural disasters, armed conflicts, exploitation and hunger.⁷¹ Furthermore, the deliberate prohibition of child marriage in the Children's Charter⁷² contrasts the position of CRC and the jurisprudence in the General Comment on ending child marriages which allows children below the age of 18 to marry because of evolved capacities.⁷³

The African Children's Charter then provides for the African Children's Committee to promote and protect these rights through the collection and documentation of information, the organisation of meetings and recommendations to governments.⁷⁴ Its mandate extends to the formulation of principles and rules to protect the rights and welfare of children in Africa,⁷⁵ cooperation with other African, international and regional institutions and organisations concerned with the promotion and protection of the rights and welfare of the child.⁷⁶ The Children's Committee also monitors the implementation of the Children's Charter through various avenues such as the consideration of communications, state party reporting, investigative visits and the use of recommendations in Concluding Observations.⁷⁷ It should be noted that following the apogee of the COVID-19 pandemic, most of these obligations have been

67 Art 22 African Children's Charter.

68 As above.

69 As above.

70 Fourth preambular para African Children's Charter.

71 As above.

72 Mezmur (n 66) 125.

73 Para 20 General Comment on Marriages.

74 Art 45(a)(i) African Children's Charter.

75 Art 45(ii) African Children's Charter.

76 Art 45(iii) African Children's Charter.

77 Arts 43, 44 & 45 African Children's Charter.

suspended, affecting the usual execution of its mandate. The African Children's Committee's use of online methods through virtual sessions and meetings has been a critical engagement of its Rules of Procedure.⁷⁸

The institutional structure of the African Children's Committee is informed by the African Children's Charter. Thus:⁷⁹

- (1) The Committee shall consist of 11 members of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child.
- (2) The members of the Committee shall serve in their personal capacity.
- (3) The Committee shall not include more than one national of the same state.

As such, this shows that these qualities should speak to the calibre of members of the Children's Committee. From a procedural perspective, the Committee cannot have more than two members from a state party,⁸⁰ and their tenure is tagged to a maximum of two terms in office.⁸¹ This ensures an ascertainable term of office that is not mired by perpetuity. However, this has been tested in the era of COVID-19 as elections that were poised for July 2019 could not be held due to the restrictions on movement to curb the spread of the pandemic.⁸² Besides, the Committee adopts its own procedure in the execution of its mandate. For matters to do with quorum and execution of this mandate, the Committee is guided by the Revised Communication Guidelines, the Revised Rules of Procedure and the Revised Implementation Hearing Guidelines.⁸³ It is argued that the continued engagement of some members of the Committee whose term was due to expire in July 2020 was to ensure that problems such as the lack of quorum would be avoided.⁸⁴

78 For details, see <http://acerwc.africa/> (accessed 18 November 2020).

79 Arts 31(1)-(3) African Children's Charter.

80 Art 35 African Children's Charter.

81 Art 37 African Children's Charter.

82 A look at the bureau details of the current experts indicates that the term of six experts was due to expire in July 2020. This seems to have been extended until a convenient session of the Executive Council is convened to conduct the elections. See the Committee Experts, <https://bit.ly/3nyxeWn> (accessed 18 November 2020).

83 Revised Guidelines for the Consideration of Communications, <https://bit.ly/3xVciHl> (accessed 25 July 2021). See also Revised Rules of Procedure of the African Children's Committee, Communications, <https://bit.ly/3h36CeF> (accessed 25 July 2021).

84 This potentially dangerous predicament was evidently avoided through the successful convening of the virtual 35th and 36th session of the African Children's Committee. See <https://www.acerwc.africa/> (accessed 18 November 2020).

In the development of its jurisprudence, the African Children's Committee is mandated to draw inspiration from the international law on human rights, particularly from the provisions of the Universal Declaration of Human Rights (Universal Declaration), CRC and other instruments adopted by the UN and by African countries in the field of human rights, and from African values and traditions.⁸⁵ This is an indication that the African Children's Charter allows its Children's Committee to apply other pieces of international law to protect the child, such as the Refugee Convention and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which may speak to children who are either refugees or internally-displaced persons whose rights may be in danger of an actual or possible violation.

Besides, the African Children's Charter calls for a child rights-based approach which engages four principles that have to be used in dealing with matters affecting a child. First, this approach engages the best interests principle as the yardstick for measuring all actions, laws and policies of a state affecting children. The best interests of the child are 'the' primary consideration by which to measure all actions, laws and policies that affect children.⁸⁶ Further, in determining who must apply the 'best interests' principle, the phrase 'in all actions' (concerning the child) as used in the Children's Charter provides significant guidance. This principle has been referred to in all the General Comments adopted by the African Children's Committee.⁸⁷ To this end, it would be good to see the development of jurisprudence on the best interests of the child at a time such as this.

Second, the principle of non-discrimination asserts states' obligation to protect children from any form of discrimination and to take positive action to promote their rights without exception.⁸⁸ The third principle is the need to uphold the right to life, survival and development of the child. It is proposed that this term is interpreted broadly to include physical, mental, emotional, cognitive, social and cultural development of the child.⁸⁹ This is an indication that the literal definition of the right to life is not sufficient on its own – thus calling for a broad approach that speaks to other aspects that would

85 Art 46 African Children's Charter.

86 In contrast with the Convention on the Rights of the Child which states that the best interests of the child are 'a' primary consideration. The article 'a' in CRC shows that in determining on issues that consist of the child's interests, the best interest principle may not be the only principle to be consulted.

87 Some of the notable examples include the General Comment on Article 22; children in situations of conflict, paras 24-30; and General Comment 1 (Article 30 of the Charter) on 'Children of incarcerated and imprisoned parents and primary caregivers' 2013, paras 22-24. All General Comments are available at www.acerwc.africa/general-comments (accessed 23 October 2020).

88 Art 3 African Children's Charter.

89 Art 5 African Children's Charter generally.

affect the child's development.⁹⁰ Fourth, the child-based approach requires that children are heard and their views considered in any matters affecting them.⁹¹ This extends to according due weight to the considerations of children whose capacities have evolved.⁹² Other activities of the African Children's Committee continue to develop its jurisprudence. In its concept note for the commemoration of the day of the African Child 2019,⁹³ the Committee gives insights on emergencies that affect children. It states that humanitarian crises may be natural disasters, such as earthquakes, tsunamis, floods and health epidemics.⁹⁴ As such, this broad understanding of humanitarian crises also calls for humanitarian action by states that may not be experiencing (armed) conflicts but other disasters or emergencies that require humanitarian action.⁹⁵

As the African Children's Committee celebrates its thirtieth anniversary in 2020, it has developed much traction concerning the child affected by armed conflict. Much can be said about its activities between 2016 and 2020. First, it has undertaken studies concerning the plight of the child affected by armed conflict. In the Continental Study on the Children Affected by Armed Conflict, the Children's Committee identified the changing roles of the child as far as girls were increasingly recruited into armed groups, and used as suicide bombers in some areas controlled by armed groups.⁹⁶ Another study on mapping children on the move identified various factors that lead children to migrate in Africa.⁹⁷ These two studies, however, did not contextualise the possibility of a pandemic of the magnitude of COVID-19.

Second, the Children's Committee has remained resilient in making strategic appointments such as senior child protection officers,⁹⁸

90 See General Comment on Article 6 of the Charter: Right to birth registration, name and nationality, para 16.

91 General Comment on Article 6 of the Charter: Right to birth registration, name and nationality, paras 21-22.

92 Art 7 African Children's Charter. See also General Comment 12 of the Convention of the Right of the Child on Child Participation. See also General Comment on Article 22, paras 31 & 41.

93 Concept Note of the Commemoration of the Day of the African Child, <https://bit.ly/2UKW6Oj> (accessed 19 November 2020).

94 Concept Note (n 93) para 6. World Vision International (US) 'What is a humanitarian disaster?' <http://www.wvi.org/disaster-management/what-humanitarian-disaster> (accessed 20 November 2020).

95 World Vision International (n 94).

96 Study on the impact of armed conflict on children, <https://bit.ly/3nKZup4> (accessed 20 November 2020).

97 Mapping Children on the Move within Africa – ACERWC, <https://bit.ly/3nJEPkY> (accessed 19 November 2020).

98 See Appointments made in 2019, <https://www.acerwc.africa/the-secretariat/> (accessed 19 November 2020).

Special Rapporteurs on children affected by armed conflict,⁹⁹ and consultants to engage the issues affecting children in situations of armed conflict.¹⁰⁰ This culminated into the adoption of a General Comment on Article 22 of the Charter on children in situations of conflict during the 35th virtual session of the Committee during the COVID-19 pandemic.¹⁰¹ The challenge is that the General Comment does not sufficiently delineate armed conflict, tension and strife, leaving the matter to the Committee to develop these definitions. The current occurrence of the pandemic offers a good time to introspect on children affected within and out of conflict situations.¹⁰²

Third, the African Children's Committee continues to hand down key principles in the promotion and protection of the rights of the child. In recent decisions, the Committee has used the principle of due diligence to advise state parties on ensuring the realisation of the rights of the child under the African Children's Charter.¹⁰³ In principle, the Children's Committee advised that due diligence of the state is evaluated based on the result of measures used to address the violations of the rights of the child.¹⁰⁴ The adoption of crucial principles came to the fore outside the realm of individual communications when the Committee issued a Guiding Note on the protection of children during COVID-19. It called on state parties to tailor responses to suit the special vulnerabilities of the concerned group of children such as refugees and those who are internally displaced in light of the variations of the impact of the pandemic on them.¹⁰⁵ It should be noted, however, that this evaluation has to be informed by the dictates of Agenda 2040 in light of what has been done as of 2020.¹⁰⁶

99 See <https://www.acerwc.africa/special-rapporeurs/> (accessed 19 November 2020).

100 See appointment of consultant to draft the General Comment on Article 22 of the African Charter on the Rights and Welfare of the Child, in the Report of the 32nd session of the African Children's Committee, item 5, paras 32-37, <https://bit.ly/36PG635> (accessed 19 November 2020).

101 See Final Communiqué of the Committee on the 35th session, <http://acerwc.africa/> (accessed 19 November 2020).

102 The reluctance to develop definitions is pointed to in the General Comment paras 18 and 21.

103 See *Institute for Human Rights and Development in Africa and Finders Groups Initiative on behalf of TFA v Cameroon* Communication 6/Com/002/2015, paras 46-57; *MRGI & Another v Mauritania* Communication 7/Com/003/2015 paras 47-58 on the use of due diligence and the best interests principle.

104 *MRGI* (n 103) paras 47-58; *Institute for Human Rights and Development in Africa* (n 103) paras 46-57.

105 Guiding Note on Children's Rights during COVID-19, 8 April 2020, para vii, <https://bit.ly/3nR1X1h> (accessed 19 November 2020).

106 Art 42(a)(ii) African Children's Charter.

5 An evaluation of Agenda 2040 as a working model to 2050

The evaluation of Agenda 2040 as a tool towards the realisation of the 2050 visualised child uses five key aspects that are drawn from the Aspirations of Agenda 2040. These include the adoption of laws, policies and institutions; the use of states' disaster management and responses; and the registration of births and other statistics. Other aspects include ensuring that children benefit from quality education; the existence of a child-sensitive criminal justice system; and the use of the African Children's Committee's normative mandate to push for the realisation of the rights of the child towards the visualised position in 2050.

5.1 Adoption of laws, policies and institutions

The African Children's Committee has indeed done quite a lot in offering direction to state parties on the adoption of adequate laws, policies and institutions to protect the child. It has called for the improvement of the lives of vulnerable children such as refugees, children with disabilities and other related cases.¹⁰⁷ This has extended to the reiteration that states provide for the enjoyment of rights of these vulnerable children in areas of access to health care, access to justice, the provision of education facilities and the enjoyment of the right to water and sanitation.¹⁰⁸ The Committee has continued to remind states to reinforce their commitment to protecting children through the harmonisation of national laws with provisions of the African Children's Charter.¹⁰⁹ Several states have since 2016 adopted child-friendly national legislative, policy and institutional frameworks.¹¹⁰ However, some state parties still have non-child-

¹⁰⁷ Concluding Observations on the Republic of Cameroon's Report on the status of implementation of the African Charter on the Rights and Welfare of the Child, para 26, <https://bit.ly/38edLUB> (accessed 20 November 2020).

¹⁰⁸ As above.

¹⁰⁹ Concluding Observations and Recommendations by the African Committee of Experts on the Rights and Welfare of the Child on the People's Democratic Republic of Algeria Report on the status of Implementation of the African Charter on the Rights and Welfare of the Child the African Charter on the Rights and Welfare of the Child, para 5, <https://bit.ly/2YKf010> (accessed 20 November 2020).

¹¹⁰ See Concluding Observations and Recommendations of the African Committee of Experts on the Rights and Welfare of the Child on the initial report of the Republic of Angola on the status of the implementation of the African Charter on the Rights and Welfare of the Child, paras 3-4, <https://www.acerwc.africa/reporting-table/> (accessed 20 November 2020); Concluding Observations on Algeria (n 109).

friendly legislative, policy and institutional frameworks¹¹¹ that are exacerbated by reservations to the African Children's Charter.¹¹²

Based on the foregoing paragraph, one may argue that the emphasis of the Children's Committee in the gains above is not expressly aligned to public health emergencies. This is because the recommendations that are usually proposed by the Committee to state parties are informed by the circumstances in individual states. These include the provision of the right to education, access to health care, the protection of vulnerable children such as refugees and children with disabilities or children in conflict with the law.¹¹³ It should be noted that these rights are interdependent where the enjoyment of one may inform the enjoyment of others, such as the enjoyment of the right to health care as a precursor to the enjoyment of the right to dignity, education and life. A look at the follow-up missions to some states has shown increased traction towards the promotion and protection of the rights of the child.¹¹⁴ As indicated earlier, the specific aspects of reforms such as access to the provision of health care, education, water and sanitation that speak to public health interventions remain lacking. As such, this points to the Children's Committee's engagement of underlying challenges in national laws, policies and institutions to protect the child which, once engaged, would greatly inform the public health interventions.

5.2 States' disaster management and responses

In addition, the African Children's Committee has urged that children in public health emergencies are included in states' disaster management and responses.¹¹⁵ It adopts a wide definition of disaster to include natural, man-made disasters and public health emergencies.¹¹⁶ What is instructive is the call to states to protect the child against human rights violations such as violence, exploitation,

111 See Concluding Observations and Recommendations on Angola (n 110) paras 3-4.

112 See Reservations to the Charter (2020), <https://www.acerwc.africa/reservations/> (accessed 20 November 2020).

113 Concluding Observations on Angola (n 110) paras 3-4; Concluding Observations Algeria (n 109) para 4.

114 Reports from follow-up visits by the African Children's Committee Secretariat, <https://www.acerwc.africa/follow-up-missions/> (accessed 5 May 2020).

115 Africa's Agenda 2040 for Children, Fostering an Africa Fit for Children 8, <https://bit.ly/311EhKd> (accessed 27 June 2020). Eg, research in 2018 showed that while Kenya had very progressive policies concerning the education and health of children, they did not deal with refugees. Child Support Grant, <https://www.sassa.gov.za/Pages/Child-Support-Grant.aspx> (accessed 20 November 2020). See also Golden (n 55).

116 Concept Note (n 99) para 6.

neglect and abuse that the children in question face during public health emergencies.¹¹⁷

It is argued that the African Children's Committee has engaged an approach that addresses the underlying challenges that face a child. Aspiration 9 of Agenda 2040 looks towards having every child free from the impact of armed conflicts and other disasters or emergencies.¹¹⁸ It is true that the Aspiration refers to the word 'emergency' only in the heading of the aspiration,¹¹⁹ and calls for the use of academic/curriculum development measures, legislative, policy and other measures to stop the effects of conflict.¹²⁰ The use of the due diligence principle can be used by the Children's Committee to turn these measures into obligations of result. This would be a call on states to show how they have inculcated the protection of children in their responses to public health emergencies.

5.3 Registration of births and other vital statistics

The African Children's Committee has developed jurisprudence on the need for birth registration of all children and other vital statistics. It continues to call on state parties to improve the operationalisation of their birth registration bureaus to be accessible at no cost.¹²¹ The challenge remains in the continued provision of these services following the outbreak of a pandemic.

In its recent Guiding Note on Children and COVID-19, one may argue that the Children's Committee does not reiterate the need to ensure the continued registration of births and other vital statistics.¹²² It is argued, however, that it uses a health safety perspective to remind state parties to ensure that women have access to safe birth, ante-natal and post-natal care.¹²³ It may be inferred that following safe delivery, births continue to be registered. This would be instructive as it enables the state to allocate resources to cater for children based on these statistics.

117 Aspiration 7 of Agenda 2040 should be engaged by 2050 to reflect this position.

118 Agenda 2040 (n 24) Aspiration 9.

119 As above.

120 As above.

121 Concluding Observations on Cameroon (n 107) para 15.

122 Guiding Note (n 105).

123 As above.

5.4 Benefit from quality education

The African Children's Committee has reiterated the need to ensure that all children benefit from quality education even in situations of public emergencies.¹²⁴ Besides, it points out the disadvantages that the closure of schools presents to learners.¹²⁵ These include the interruption of classes, and the compromise of the right to adequate food where school feeding programmes or free and subsidised school meals are unavailable.¹²⁶ In addition, the Children's Committee has reiterated the vulnerability that children face when out of school such as susceptibility to abuse, exposure to harmful practices such as female genital mutilation and child marriages.¹²⁷ The Children's Committee has called on states to create online platforms to facilitate tailored learning activities at home for children and the provision of resources to be used by teachers and caregivers to facilitate continued learning. However, the provision of online education during emergencies raises other issues such as the availability of devices for accessing the internet, data, and the availability of online education materials for all children, regardless of their status. It is argued that the enjoyment of a right by selected children to the exclusion of others on account of their status may raise questions of discrimination.

5.5 A child-sensitive criminal justice system

Agenda 2040 requires that a child benefits from a child-sensitive criminal justice system, which caters for children as victims of human rights abuses and as perpetrators.¹²⁸ This calls for improved access to both civil and criminal justice. Jurisprudence from the African Children's Committee underscores the adoption of a General Comment on children of incarcerated and imprisoned parents and primary caregivers.¹²⁹ It is appreciated that the General Comment advises state parties to refrain from incarcerating mothers with their children.¹³⁰ However, matters of incarceration during a period of a public emergency are not provided for. This potentially dangerous predicament is solved by the Committee's general use of a child-based approach that inculcates the use of the four principles of the

¹²⁴ Concluding Observations on Cameroon (n 107) para 26.

¹²⁵ Guiding Note (n 105).

¹²⁶ As above.

¹²⁷ As above.

¹²⁸ Agenda 2040 (n 24) Aspiration 8.

¹²⁹ General Comment on Article 30 (n 87).

¹³⁰ General Comment on Article 30 (n 129) paras 6, 8 & 10.

best interests of the child, the right to survival and development, non-discrimination and the participation of a child.¹³¹

Some countries have adopted the use of online courts. A case in point is Uganda which adopted the Judicature (Audio-Visual) Rules to enable the use of online courts.¹³² A look at the objectives shows that these rules may be used to reduce the delays and costs associated with hearing cases from vulnerable witnesses such as children.¹³³ This would be instructive in ensuring access to justice where physical involvements at courts cannot be used. In practice, the courts have been hesitant to deal with children during the outbreak of the pandemic. For instance, in Ethiopia and Uganda the national lockdown led to the suspension of court sittings, placing child offenders in a very precarious position.¹³⁴ It is believed that the existence of traction that expressly deals with health pandemics at a time such as this would be instructive.

5.6 Use of the African Children's Committee's mandate

The Children's Committee's mandate includes the consideration of state reports, and communications through the individual communications procedure, the use of follow-up visits to establish states' compliance with its recommendations.¹³⁵

State parties are obliged to submit reports for consideration by the Children's Committee.¹³⁶ Subsequently, they may advise on the modes of improvement of the rights of the child in the given state.¹³⁷ Some of the requirements should be towards requiring states to

131 These four concepts have been greatly engaged by the Committee. See Part 2 of the General Comment on Article 30 (n 87). See also 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, acerwc.africa/generalcomments/ (accessed 20 November 2020).

132 Nanima (n 61) 351.

133 'CJ launches court audio-video link technology', <https://bit.ly/2xjIDWW> (accessed 11 April 2020). See also M Nabatanzi 'UNICEF supports installation of audio-visual technology at Ugandan courts for witness protection: Protecting the rights of child witnesses', <https://uni.cf/3b5NS9X> (accessed 20 November 2020).

134 Effectively, various NGOs that deal with children stated that there were court sessions for child victims of crime and those in conflict with the law. See Plan International 'Under siege: Impact of COVID-19 on girls in Africa' (2020) 11, <https://bit.ly/3ffelzw> (accessed 20 November 2020).

135 See discussion under part 4 above on the mandate of the Committee.

136 Art 43 African Children's Charter.

137 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* 538; 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* 340.

report on steps taken to ensure the promotion and protection of the visualised child through practical explanations on non-discriminatory and inclusive approaches that speak to the enjoyment of their rights.¹³⁸ A good example that may inform the conversation is where the Committee required South Africa to use appropriate measures to ensure that asylum-seeking, migrant and refugee children are not discriminated against based on unnecessary barriers to accessing various services such as basic education.¹³⁹

As far as the communications procedure is concerned, although the current statistics show that the Children's Committee has handed down 10 decisions, this is in stark contrast to the over 300 decisions of the African Commission on Human and Peoples' Rights (African Commission).¹⁴⁰ The reiteration of key principles such as the use of due diligence on realising the visualised child is instructive.¹⁴¹ This principle requires that the state's initiative to promote and protect the rights of the child as assessed by result will lead to the engagement of measures that offer better protection, especially during public emergencies.¹⁴²

6 A working model towards 2050

The foregoing analysis shows that to a great extent the normative, institutional and jurisprudential framework of the African Children's Committee has attempted to engage the protection of the child in the wake of the various challenges that the COVID-19 pandemic has presented. This is partly because Africa has not in a long time been affected by a pandemic of this magnitude. This calls for the need to re-evaluate approaches concerning public health emergencies. In a 2016 research, Durojaye and Oluduro used an interesting principle to evaluate the African Commission's jurisprudence on the rights of women.¹⁴³ They argued that the development of the jurisprudence on women requires asking the right women question other than the

138 Concluding Recommendations by the African Children's Committee on the Kenyan first Periodic Report on the Status of implementation of the African Charter on the Rights and Welfare of the Child, para 43, <https://bit.ly/3oulRyY> (accessed 18 November 2020).

139 The African Children's Committee's Concluding Observations on South Africa's initial State Report para 22, <https://bit.ly/3otwvHo> (accessed 23 October 2020).

140 IHRDA Case law analyser, <http://caselaw.ihrda.org/> (accessed 18 November 2020).

141 See *Institute for Human Rights and Development in Africa* (n 103); MRGI (n 103) on the use of due diligence and the best interests principle.

142 MRGI (n 103) paras 47-58; *Institute for Human Rights and Development in Africa* (n 103) paras 46-57.

143 E. Durojaye & O. Oluduro 'The African Commission on Human and Peoples' Rights and the woman question' (2016) 24 *Feminist Legal Studies* 315.

right question.¹⁴⁴ This requires placing a woman at the centre of every decision and question the initiatives that ought to improve the person of the African woman. In this context, the right child question has to be addressed to the right child affected by COVID-19 to inform approaches going forward.

In the context of Agenda 2040, this would entail placing the child at the centre of the probe and asking the relevant questions as follows: What are the best interests of a child as an internally-displaced person or as a refugee in the context of COVID-19? How do national laws speak to this child? What is the protection accorded to the child in the disaster management initiatives of the state? What has been the status of registration of births and vitals at a time such as this? How can all children benefit from quality education without discrimination based on their status? How can states learn from the Committee's use of due diligence and adopt good practices to ensure the promotion of the rights of the child? These questions will greatly improve the realisation of the protection of the visualised child.

7 Conclusion and recommendations

The outbreak of the COVID-19 pandemic has shown that vulnerable children are the worst hit, whereby the pandemic and the measures to mitigate its spread still leaves child rights violations. An evaluation of the first five-year implementation plan shows the visualised child and many positive developments by the African Children's Committee during this period. This is not in disregard of the various challenges that the pandemic has placed on the normative framework of the African Children's Charter and the consequential institutional and jurisprudential position of the Children's Committee. This notwithstanding, going forward presents opportunities to work towards the protection of the visualised child through adequate laws, policies and institutions to protect him or her in public health emergencies at both national and international levels. The deliberate continuation of the registration of birth and vital information of children can be harnessed. The enjoyment of other critical rights such as the right to health care and quality education has to be engaged even during emergencies. An accessible child-sensitive criminal justice system also imports to ensure the protection of both the child victim and one in conflict with the law. A child rights-based approach has to be at the centre of all these interventions.

144 As above.

Following the COVID-19 pandemic, the normative framework of the African Children's Committee may be interpreted to include matters of public health emergencies as far as human rights violations occur during public emergencies. The point of departure is in the pointers evident in the current jurisprudence. Further engagement of states towards the development of legislation, policies and institutional frameworks that protect children in public health emergencies should be on the Children's Committee's checklist. The low registration of births and vital information during the COVID-19 era should be a learning curve towards the use of easier and more practical modes of registration where physical registration procedures cannot be used. The right to education should include the dissemination of information to children to enable them to participate in various environments through questioning in classes and other platforms in society. The use of state reporting and the communications procedure should be embraced to enable the Committee to highlight good practices and advise concerning areas of improvement.

The African Children's Committee should undertake an empirical study to tackle the effect of COVID-19 on children emphasised in this study. This will improve approaches by various stakeholders in the promotion and protection of the right of children in Africa. This will be instructive in informing methods of dealing with public health emergencies in future.