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# Cultural contextualisation of the child's right to education: An analysis of the interrelated nature of the child's rights to education and culture in the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child

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**Summary:** *The United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child Africa are the two foremost instruments on the rights of the child that are applicable in Africa. From a cultural perspective, the African continent is culturally diverse and requires that when considering the child's right to education, the interrelatedness of education and culture should be taken into consideration. Building on the normative frameworks provided by CRC and the African Children's Charter, the accompanying General Comments are analysed to further establish this interplay. Critical engagement with CRC and the African Children's Charter and the General Comments is required to ensure that the law does not become stagnant but rather addresses the specific needs of the child as society*

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*changes and ensures that education remains adaptable and flexible. The article considers the extent to which the child's right to education incorporates and protects the child's cultural rights. This analysis centres on identifying the interrelatedness between education and culture in both CRC and the African Children's Charter and considers how this relationship can advance the protection and realisation of rights for the child in Africa. State parties should take the interrelatedness of culture and education seriously in realising the child's right to education that is sensitive to contextual and cultural circumstances.*

**Key words:** *culture; education; children's rights; Convention on the Rights of the Child; African Charter on the Rights and Welfare of the Child*

## 1 Introduction

When examining the rights of the child, international human rights instruments can play a valuable role in the recognition, protection and, ultimately, the realisation of the child's rights by providing binding standards and guidance on the interpretation and realisation of rights. The United Nations Convention on the Rights of the Child (CRC)<sup>1</sup> serves as the first binding treaty providing specifically for the recognition of children's rights. From an African regional perspective on children's rights, the African Charter on the Rights and Welfare of the Child (African Children's Charter)<sup>2</sup> is the primary regional treaty on children's rights. Both CRC and the African Children's Charter recognise and provide for the child's right to education,<sup>3</sup> as well as the protection of their cultural rights.<sup>4</sup> As provided by Courtis and Tobin, 'the right to education epitomises the indivisibility and interdependence of all human rights, and has been described as a multiplier right, given its role in enabling the enjoyment of so many other rights'.<sup>5</sup> The article accordingly considers the interconnectedness of education and culture and how embracing this interconnectedness can advance the protection and

1 UN General Assembly Convention on the Rights of the Child, 20 November 1989, United Nations Resolution 44/25 of 20 November 1989; D Reynaert and others 'A review of children's rights literature since the adoption of the United Nations Convention on the Rights of the Child' (2009) 16 *Childhood* 518.

2 OAU African Charter on the Rights and Welfare of the Child Doc CAB/LEG/24.9/49 (1990).

3 See arts 28 & 29 of CRC and art 11 of the African Children's Charter.

4 See arts 30 & 31 of CRC and arts 12 & 21 of the African Children's Charter.

5 ESCR Committee General Comment 13 (21st session, 1999) 'The right to education (art 13)' UN Doc E/C.12/1999/10 para 2; C Courtis & J Tobin 'Article 28: The right to education' in J Tobin (ed) *The UN Convention on the Rights of the Child: A commentary* (2019) 1058.

realisation of rights. Examining the relationship between the child's right to education and cultural rights serves as a mechanism to contextualise the child's right to education and the examination, therefore, questions the extent to which this interrelated nature can be identified in CRC and the African Children's Charter.

CRC will be used as a point of departure for the analysis of the way in which to establish how the child's rights to education and culture are protected in terms of international law. The value of regional law is then considered with reference to the African Children's Charter by examining the contribution the Children's Charter makes in further protecting and contextualising the child's rights to culture, specifically in the context of the African region. To this extent, CRC and the African Children's Charter will be contrasted textually to determine how these instruments differ and how the Children's Charter provides specifically for the contextualisation of the child's rights in Africa. A comparative analysis is incorporated to identify points of convergence and divergence when considering the relationship between the child's education and their culture.<sup>6</sup>

Once the normative frameworks of CRC and the African Children's Charter have been set out, the interplay and interconnectedness between education and cultural rights in these two instruments are examined. References are made here to the role of General Comments that provide additional clarity.<sup>7</sup> Of specific importance will be the two General Comments on the child's education as produced by the United Nations (UN) Committee on the Rights of the Child (CRC Committee) and the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee).<sup>8</sup> The

6 See, eg, BD Mezmur 'The African Children's Charter versus the UN Convention on the Rights of the Child: A zero-sum game?' (2008) 1 *SA Public Law* 1-29; D Olowu 'Protecting children's rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child' (2002) 10 *International Journal of Children's Rights* 127-136; DM Chirwa 'The merits and demerits of the African Charter on the Rights and Welfare of the Child' (2002) 10 *International Journal of Children's Rights* 157-177.

7 CRC Committee General Comment 1 (2001) 'Article 29(1): The aims of education' UN Doc CRC/GC/2001/1; CRC Committee General Comment 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art 31) UN Doc CRC/C/GC/17; CRC Committee General Comment 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1) UN Doc CRC/C/GC/14; CRC Committee General Comment 18 (2019) on harmful practices UN Doc CRC/C/GC/18/Rev.1; African Children's Committee General Comment on article 31 of the African Charter on the Rights and Welfare of the Child on 'The responsibilities of the child' (2017); African Children's Committee General Comment 9 on article 11 of the African Charter on the Rights and Welfare of the Child on the Right to Education ACERWC/GC/9/25 (2025); ESCR Committee General Comment 13 (21st session, 1999) 'The right to education (art 13)' UN Doc E/C.12/1999/10.

8 Both the CRC Committee and the African Children's Committee have produced General Comments on the child's right to education. CRC Committee General

extent to which these General Comments provide guidance on the interconnectedness between the child's education and their culture will be explored. The value of the General Comments lies in their interpretive guidance to state parties and setting out the content of these rights.

It is important to acknowledge that the concept of culture is not stagnant, but rather ever-changing and adaptable to new challenges as well as the needs of a specific community.<sup>9</sup> The challenge, however, lies in the implementation of the child's rights in a manner that is culturally appropriate and sensitive to context, but does not result in protecting harmful practices under the guise of respecting cultural rights.<sup>10</sup> Consequently, it is important that the normative framework provides for the necessary flexibility that incorporates context and culture. Recommendations are finally provided for how state parties to both CRC and the African Children's Charter should take this interplay seriously so as to advance the protection and realisation of the child's right to education that is sensitive to contextual and cultural circumstances.

## 2 Considering culture and education in the Convention on the Rights of the Child

### 2.1 Considering culture

Provision is made for the centrality of culture in the Preamble to CRC and provides that the importance of the 'traditions and cultural values' should be taken into consideration for the protection and harmonious development of the child. Brief references are also

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Comment 1 (26th session, 2001) 'Article 29(1): The aims of education' UN Doc CRC/GC/2001/1; African Children's Committee General Comment 9 on article 11 of the African Charter on the Rights and Welfare of the Child on the Right to Education ACERWC/GC/9/25 (2025).

9 T Kaime 'Vernacularising the Convention on the Rights of the Child: Rights and culture as analytic tools' (2010) 18 *International Journal of Children's Rights* 642.

10 T Kaime 'The Convention on the Rights of the Child and the cultural legitimacy of children's rights in Africa: Some reflections' (2005) 5 *African Human Rights Law Journal* 223.

made to the importance of culture in articles 17<sup>11</sup> and 20<sup>12</sup> of CRC in relation to access to information and alternative care.

The two central provisions that focus on cultural rights are articles 30 and 31 of CRC. Article 30 provides that in jurisdictions with ethnic, religious or linguistic minorities or persons of indigenous origins, these children must not be denied the right to enjoy their culture, religion or language. Article 31 recognises the child's rights to rest, leisure, and participating in recreational activities, cultural life and the arts.<sup>13</sup> Of specific importance for this article is the child's right to participate in cultural life. This part of article 31 will therefore be the focus, with the result that the child's rights to rest and leisure will not form part of the analysis. Article 31 also provides that state parties have the duty to respect and promote the right of the child to fully participate in cultural and artistic life. Equality of opportunity in this regard is also emphasised.<sup>14</sup>

## 2.2 Right to education in the Convention on the Rights of the Child

CRC recognises the child's right to education in articles 28 and 29. Article 28 provides that state parties must recognise the child's right to education, and additionally creates specific responsibilities for state parties in relation to the realisation of the right. Article 28 provides for free and compulsory primary education,<sup>15</sup> the accessibility and availability of secondary and higher education for all,<sup>16</sup> encouragement of regular attendance at schools and the reduction of the drop-out rate.<sup>17</sup> A normative framework is provided

11 Art 17: 'States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall: (a) encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29; (b) encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources.'

12 Art 20: '1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. 2. States Parties shall in accordance with their national laws ensure alternative care for such a child. 3. Such care could include, inter alia, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.'

13 Art 31(1) CRC.

14 Art 31(2) CRC.

15 Art 28(1)(a) CRC.

16 Arts 28(1)(b) & (c) CRC.

17 Art 28(1)(e) CRC.

for the child's right to education in article 28 that is comparable to other international instruments.<sup>18</sup> Central to article 28 is the provision of primary education that should be compulsory and free.<sup>19</sup> Courtis and Tobin argue that while article 28 is formulated in terms of progressive realisation and subject to the availability of resources, the right to primary education stands out.<sup>20</sup> Courtis and Tobin state that 'with respect to primary education, which holds a special place within international law, it would be difficult, if not impossible, for a state to refute the claim that this level of education must be provided free of charge'.<sup>21</sup>

The formulation of article 28 emphasises the need for education to be child-centred and child-friendly. This means that education must be specifically suited to the needs of the child. CRC requires that a balance must be struck between protecting the child while at the same time empowering them.<sup>22</sup> CRC also specifically recognises the child as an active participant and the holder of rights.<sup>23</sup> The interrelatedness between the child's culture and their education, therefore, should be considered as a way to ensure that the child has the opportunity to learn about their own culture as well as those of others, within the educational space.

A qualitative element is added by article 29 of CRC, which provides for the direction and focus of education. Article 29(1)(a) specifically centres on the duty of the state to direct education to the development of the child's personality, talents and mental and physical abilities. Human rights education and the development of respect for fundamental freedoms is also incorporated in the provision. Article 29 thus captures the developmental aims of education and again emphasises the need for education to be child-centred, child-friendly and empowering.<sup>24</sup>

Article 29 of CRC also explicitly incorporates the child's culture in the aims of education. The relationship and interrelatedness between the child's education and their culture is directly recognised in article 29(1)(c), which provides that education must be aimed at '(t)he development of respect for the child's parents, his or her own

18 Courtis & Tobin (n 5) 1062.

19 Art 28(1) CRC.

20 Courtis & Tobin (n 5) 1061.

21 Courtis & Tobin (n 5) 1061-1062.

22 M Verheyde *A commentary on the United Nations Convention on the Rights of the Child: Article 28: The right to education* (2006) 9; CRC Committee General Comment 1 (n 7) para 2; Courtis & Tobin (n 5) 1059 & 1060.

23 'States Parties recogni[s]e the right of the child to education'; Verheyde (n 22) 9.

24 CRC Committee General Comment 1 (n 7) para 2; Courtis & Tobin (n 5) 1059 & 1060.

cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own'. The interrelated nature of rights in CRC is illustrated in article 29.<sup>25</sup> Article 29(1) achieves this by integrating and reinforcing other rights into the aims of education – including cultural rights. This reinforces the view of the right to education as an empowerment right or multiplier right.

### **2.3 Interrelatedness between culture and education in the Convention on the Rights of the Child**

When considering the provisions identified above, a clear link can be identified between articles 29, 30 and 31 of CRC. The right to education is connected to minority rights and expression of culture as well as the child's right to participate in cultural life. From the formulation of article 29(1)(c) the interplay between education and culture becomes clearer, as the development of the child's cultural identity, language and values is identified as an aim of education. Section 29(1)(c) underscores the need for contextualisation and diversity in culture by not only recognising the need to develop the child's respect for their own culture, but also those of others.

The child's rights to education and culture are clearly and explicitly incorporated in CRC. However, what is clear from a textual reading of the provisions on education and culture is the acknowledgment of flexibility for state parties in the development of legal rules and policy in accordance with their cultural context. In considering the Preamble to CRC, Kaime submits:<sup>26</sup>

Thus, the CRC's call to take due account of local traditions and cultural values should not be construed as a misplaced plea for a romantic rendition of some hegemonic culture that existed in the past but rather as a testament to the changing nature of both rights and culture and recognition that the two concepts can be used to reinforce and complement each other.

This means that children's rights should not be reduced to mere normative standards but rather reflective of real-life challenges of communities to aid in their realisation.<sup>27</sup> This is also applicable to the role of culture in the educational context.

<sup>25</sup> CRC Committee General Comment 1 (n 7) para 6.

<sup>26</sup> Kaime (n 9) 642.

<sup>27</sup> Kaime (n 9) 645.

Building on the normative framework provided by the provisions discussed above, the Committee on the Rights of the Child (CRC Committee) has expanded on the child's rights to culture and education in its General Comments.<sup>28</sup> The CRC Committee not only plays an important role in monitoring the implementation of CRC by means of the reporting procedure set out in article 44 of CRC, but also provides interpretive guidance on the provisions of the Convention through General Comments by providing normative content to the rights in CRC.<sup>29</sup>

The very first General Comment of the CRC Committee centres on article 29 of CRC.<sup>30</sup> The General Comment expands on the aims of education and provides state parties with appropriate guidelines for the child's right to education. The General Comment provides that the child's education must be aimed at developing the child's personality, talents and abilities.<sup>31</sup> It also emphasises the value of a subjective approach that embraces the child's unique characteristics, abilities, learning needs and interests.<sup>32</sup> Importantly, the General Comment provides that education should be contextualised in order to be appropriate to the child's culture, environment and social environment.<sup>33</sup> In practice, this means that education must be flexible and sensitive to the needs of a changing society that considers diversity in culture and social settings. The content of education as well as the applicable teaching methods should also be culturally appropriate and relevant.<sup>34</sup> The need for education to be adaptable and flexible is consequently underscored and requires that the child's culture be viewed as a relevant factor, for example, when the curriculum is determined.<sup>35</sup>

28 CRC Committee General Comment 1 (26th session, 2001) 'Article 29(1): The aims of education' UN Doc CRC/GC/2001/1; CRC Committee General Comment 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art 31) UN Doc CRC/C/GC/17; CRC Committee General Comment 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1) UN Doc CRC/C/GC/14; CRC Committee General Comment 18 of the Committee on the Rights of the Child (2019) on harmful practices UN Doc CRC/C/GC/18/Rev.1.

29 H Keller & L Grover 'General Comments of the Human Rights Committee and their legitimacy' in H Keller & G Ulfstein (eds) *UN human rights treaty bodies* (2012) 117; D Weissbrodt, JC Hansen & NH Nesbitt 'The role of the Committee on the Rights of the Child in interpreting and developing international humanitarian law' (2011) 24 *Harvard Human Rights Journal* 118.

30 CRC Committee General Comment 1 (n 7).

31 Art 29(1)(a) CRC; CRC Committee General Comment 1 (n 7) para 9; L Lundy & J Tobin 'Article 29: The aims of education' in Tobin (n 5) 1118.

32 Art 29(1)(a) CRC; CRC Committee General Comment 1 (n 7) para 9.

33 As above.

34 Courtis & Tobin (n 5) 1069.

35 CRC Committee General Comment 1 (n 7) para 9.



Article 29(1) of CRC provides that state parties agree to direct education to promote the values of article 29 – this clearly includes respect for differences.<sup>36</sup> According to the General Comment, '[t]his agreement overcomes the boundaries of religion, nation and culture'.<sup>37</sup> Articles 29(1)(c) and (d) highlight two components: the need to develop respect for the child's own cultural identity but also respecting the culture of others. A balanced approach to education requires that diverse values and cultures are reconciled through dialogue and respecting the differences of others.<sup>38</sup> Article 29(1)(a) also makes it clear that education must be directed at the 'development of the child's personality, talents and mental and physical abilities to their fullest potential'. Children should not be discriminated against but, rather, the uniqueness of every child must be celebrated and used to enrich the education process.<sup>39</sup> Cultural diversity and differences should therefore be celebrated and encouraged.

The aims as set out in article 29 and the General Comment provide content to the right to education so that state parties have clarity on the aims of education. Specific references to the child's culture are also included, signifying the importance of culture within the educational space. The CRC Committee has made it clear in the General Comment that the aims of article 29 should form part of national education policies and has urged states to take the required steps to incorporate these aims into national law.<sup>40</sup> State parties should ultimately be cognisant of the relationship between culture and education when formulating policy and legislation. The incorporation of culture can be meaningful in ensuring that normative standards of CRC are properly contextualised and aligned with the flexible approach made clear in the Preamble to CRC.

The CRC Committee has also expanded on the relationship between the child's culture and education in General Comment 14. General Comment 14 provides guidance on the interpretation of article 3 of CRC, which recognises the best interests of the child. This General Comment provides that in determining the best interests of the child, the child should not only be seen as an individual, but also as a member of a group. This means that the child's best interests are both an individual and a collective right, which requires that the right be considered in relation to collective cultural rights.

36 CRC Committee General Comment 1 (n 7) paras 4 & 11.

37 CRC Committee General Comment 1 (n 7) para 4.

38 As above.

39 CRC Committee General Comment 1 (n 7) para 11.

40 As above.

This is important, as in many instances cultural rights are exercised within a group. This also highlights the need for children to learn about their own culture but also be respectful of others. This is especially important in jurisdictions that are culturally diverse. The child's cultural identity should also be safeguarded and considered as a factor in assessing the child's best interests.<sup>41</sup> The importance of a community in relation to cultural rights and best interests of the child is acknowledged. In assessing and determining the child's best interests, the General Comment stresses the relevance of the specific circumstances of each case and each child, and explicitly recognises that cultural context must be taken into consideration.<sup>42</sup>

The General Comment, however, does provide that '[c]ultural identity cannot excuse or justify the perpetuation by decision-makers and authorities of traditions and cultural values that deny the child or children the rights guaranteed by the Convention'.<sup>43</sup> The child's cultural rights and their cultural identity, therefore, will not trump the child's best interests if, for example, a cultural practice is inconsistent with CRC.

Additionally, General Comment 17 on rest, leisure, play and cultural activities also makes a relevant contribution in understanding the interplay between culture and education. As noted above, the focus will be on the element of cultural activities for purposes of this article, rather than on rest, leisure and play. While the General Comment does not centre on article 30 of CRC, it does provide guidance on the child's participation in cultural activities.<sup>44</sup> The importance of a community is underscored in the General Comment as providing the child with a 'sense of belonging' and that involvement in a community assists them in developing their own identity.<sup>45</sup> Child participation in cultural activities with other members of their cultural community is therefore important. Learning opportunities that contribute to children appreciating and understanding diversity must be developed and implemented.<sup>46</sup> It is also by means of participation that children can express their cultural identity.<sup>47</sup> Highlighting the importance of participation in realising the child's rights, the General Comment sets out three interrelated dimensions that are mutually reinforcing.<sup>48</sup>

41 CRC Committee General Comment 14 (n 7) paras 55 & 56.

42 CRC Committee General Comment 14 (n 7) para 48.

43 CRC Committee General Comment 14 (n 7) para 57.

44 As above.

45 CRC Committee General Comment 17 (n 7) para 11.

46 CRC Committee General Comment 17 (n 7) para 12.

47 CRC Committee General Comment 17 (n 7) paras 14(f) & (g).

48 CRC Committee General Comment 17 (n 7) para 15(a).

The dimensions encapsulate the child's access, opportunities and contribution to cultural activities.

In relation to education, the General Comment refers specifically to articles 28 and 29 of CRC and the connection to article 31. The General Comment notes that the implementation and realisation of the rights in article 31 is essential in achieving the aims of article 29.<sup>49</sup> Children from minority groups should be encouraged to participate in cultural activities and should be afforded equal opportunities to do so.<sup>50</sup> Furthermore, opportunities must be created so that children can explore, participate, create and shape their culture.<sup>51</sup>

In considering the provisions of CRC, the child's right to education is protected and recognised quite extensively as set out in sections 28 and 29. The incorporation of the child's cultural rights, however, are not as extensive, with articles 30 and 31 making the most notable contributions. What is significant is that article 29(1)(a) provides that education must be aimed at developing the child's respect for their own cultural identity. The interrelatedness between culture and education is consequently recognised in CRC. The General Comment further develops this interplay and incorporates the role of culture to a much greater extent. This is made clear, for example, in General Comment 14, which illustrates the interplay between education and culture in the context of the child's best interests, as well as General Comment 17 which highlights the importance of education in advancing the child's participation in cultural activities. General Comment 1, which centres on the child's education, makes a notable contribution in recognising the valuable role that culture can play in realising the child's right to education.

As previously noted, the value of CRC lies in the manner in which it is contextualised. It is necessary to find a balance between the universal normative standards of CRC and its practical application for state parties to ensure that cultural context is considered with a view to facilitating and advancing the protection and recognition of the child's rights. The General Comments serve as valuable resources for state parties to further their engagement with the interrelatedness between education and culture in advancing the child's right to education. From the provisions in CRC, the interrelated nature of the child's cultural rights and their right to education can be clearly and explicitly identified. CRC, therefore, acknowledges the child's right to education as an empowerment right to realise the child's

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49 CRC Committee General Comment 17 (n 7) para 27.

50 CRC Committee General Comment 17 (n 7) paras 28 & 52.

51 CRC Committee General Comment 17 (n 7) para 32.

cultural rights. Furthermore, the incorporation of culture within the education provisions illustrates the need for education to be culturally relevant and sensitive.

### 3 Considering culture and education in the African Children's Charter

#### 3.1 Cultural rights in the African Children's Charter

The African Children's Charter recognises and considers the role of culture from the outset. The Preamble recognises the unique circumstances and situation of children in Africa, with specific reference to 'cultural, traditional and developmental circumstances'. The Preamble also states that 'the virtues of their cultural heritage, historical background and the values of the African civilisation which should inspire and characterise their reflection on the concept of the rights and welfare of the child' should be considered. From the Preamble it can be noted that the African cultural context must be considered as central to the protection and interpretation of the child's rights in Africa.

Article 1 of the African Children's Charter centres on the obligations of state parties and provides that customs, traditions, cultural or religious practices that are inconsistent with the rights, duties and obligations in the Charter must be discouraged.<sup>52</sup> The language used in article 1(3) recognises the interplay between rights and cultural context and that the child must be protected from customs and practices that are inconsistent with the Charter. The provision makes it clear that while culture must play a significant role, the African Children's Charter is supreme over any custom or cultural practice that is not aligned with the rights in the Charter.<sup>53</sup>

Article 12 of the African Children's Charter recognises the child's right to leisure, recreation and cultural activities. Once again, the emphasis will be on the element of the child's participation in cultural activities, rather than on the elements of leisure and recreation. Article 12 emphasises the need for the child to freely participate in cultural activities,<sup>54</sup> and that state parties must respect and promote their right to fully participate in cultural activities. This means that

<sup>52</sup> Art 1(3) African Children's Charter.

<sup>53</sup> Chirwa (n 6) 158.

<sup>54</sup> Art 12(1) African Children's Charter.

state parties must provide for appropriate and equal opportunities in this regard.<sup>55</sup>

Article 21 of the African Children's Charter provides for the protection against harmful social and cultural practices.<sup>56</sup> The provision requires state parties to take all appropriate measures to eliminate harmful social and cultural practices that affect the child's welfare, dignity, normal growth and development. Emphasis is also placed on the elimination of customs and practices that are prejudicial to the child's health and life,<sup>57</sup> as well as discriminatory customs or practices.<sup>58</sup>

The importance of individual duties, which is specifically provided for in article 31 of the African Children's Charter, incorporates the responsibilities of the child. The provision sets out that the child has responsibilities towards their family, society, the state, their community and the international community. For example, the child has the responsibility to preserve and strengthen African cultural values. Cultural rights share a strong connection to communitarianism, which is a central element in African culture, and the role of individual duties is indicative thereof.<sup>59</sup>

### 3.2 The child's right to education in the African Children's Charter

The African Children's Charter recognises the child's right to education in article 11(1) and is closely aligned with the education provisions of CRC.<sup>60</sup> The similarity in language use is striking, as the Children's Charter also provides for free and compulsory primary education and the provision of secondary and higher education.<sup>61</sup> While CRC dedicates article 28 to the right to education and article 29 to the aims of education, the African Children's Charter dedicates article 11 to education rights and is quite comprehensive in its recognition as it provides content to the right to education in article 11(2) by specifying the aims to which the education of the child should be

55 Art 12(2) African Children's Charter.

56 See U Assim 'Article 21: Protection against harmful social and cultural practices' in J Sloth-Nielsen, E Fokala & G Odongo (eds) *The African Charter on the Rights and Welfare of the Child: A commentary* (2024) 301-317.

57 Art 21(1)(a) African Children's Charter.

58 Art 21(1)(b) African Children's Charter.

59 J Sloth-Nielsen and BD Mezmur 'A dutiful child: The implications of article 31 of African Children's Charter' (2008) 52 *Journal of African Law* 164.

60 KD Beiter *Protection of the right to education by international law: Including a systematic analysis of article 13 of the International Covenant on Economic, Social and Cultural Rights* (2006) 217.

61 Olowu (n 6) 128.

directed. Both CRC and the Children's Charter recognise the child's right to education as well as provide for the aims of education.

As noted above, both CRC and the African Children's Charter make provision for the aims of the child's education and, indeed, many of the aims are the same in the two instruments.<sup>62</sup> With regard to developing the child's respect for their culture, CRC and the African Children's Charter diverge, as the Children's Charter emphasises regionality. CRC's formulation refers to education that must develop the child's respect for their parents and also for their own culture and that of others.<sup>63</sup> The African Children's Charter applies a regional approach by specifically stating that education should be aimed at strengthening and preserving positive African morals, traditional values and cultures.<sup>64</sup>

The education clause of the African Children's Charter provides that one of the aims of education should be the preservation and strengthening of positive African morals, traditional values and cultures.<sup>65</sup> The use of language draws a clear connection between the Preamble and the education clause, emphasising the role of African values. Article 12 of the Children's Charter recognises the child's rights in relation to leisure, recreation and cultural activities. The child has the right to freely engage and participate in these activities that are appropriate to their age.<sup>66</sup> State parties also have the duty to respect and promote the child's right to fully participate in cultural and artistic life and should encourage the provision of equal opportunities.

More recently, in 2025, the African Children's Committee issued a General Comment on the child's right to education,<sup>67</sup> making it clear that the General Comment is aimed at 'accentuating an African position on the right to education'.<sup>68</sup> The General Comment expands on the normative content of article 11 by setting out the different parts of the provision and by setting out the different components of the right to education.

It is made clear that the four general principles serve as the lens through which the right to education, as other rights in the Children's Charter, should be interpreted. Additionally, the child's evolving

62 Art 11(2) African Children's Charter; art 29 CRC.

63 Art 29(1)(c) CRC; Beiter (n 60) 217.

64 Art 11(2)(c) African Children's Charter; Beiter (n 60) 217.

65 Art 11(2)(c) African Children's Charter.

66 Art 12(1) African Children's Charter.

67 African Children's Committee General Comment on art 11 (n 7).

68 African Children's Committee General Comment on art 11 (n 7) para 8.

capacities is specifically identified as a principle in considering the implementation of this right.<sup>69</sup> This requires that the child's culture, for example, should be acknowledged and that implementing the child's education with regard to their evolving capacities will ensure that their education is inclusive, relevant and meaningful.<sup>70</sup> This means that education curricula and teaching methods should be flexible, adaptable and appropriate depending on the child's age, cognitive development and abilities.<sup>71</sup>

This inclusion also advances the child's participation rights and the need to assign appropriate weight to their age and stage of development when they express their views and wishes in matters affecting them. This is especially important in the education context where children should be active participants. This is also emphasised in the General Comment as it provides that the child's views should be heard on the development of curricula, school governance, teaching methods, school safety and discipline and the creation of appropriate decision-making platforms.<sup>72</sup>

Another noteworthy inclusion in the General Comment is the clarity it provides on the auxiliary components of the right to education, highlighting how to right to education should be fostered in the context of emergencies and how state parties must ensure quality and purposeful education in the context of artificial intelligence and technological advancements.<sup>73</sup> These sections highlight the fact that new challenges will arise that could threaten the realisation of the child's right to education. The need for education to be adaptable and cognisant of the child's evolving capacities are key considerations.

The General Comment also underscores the role of other stakeholders in upholding the child's right to education.<sup>74</sup> These sections of the General Comment make it clear that collaboration and cooperation between state parties and other stakeholders will result in the advancement of the child's rights.

From the examination of the both CRC and the African Children's Charter, clear similarities can be identified. Both instruments recognise a child-centred approach and view the child as a rights holder. The points of divergence, however, are important to determine the additional protections that are afforded specifically to

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69 African Children's Committee General Comment on art 11 (n 7) para 11.

70 African Children's Committee General Comment on art 11 (n 7) para 18.

71 As above.

72 African Children's Committee General Comment on art 11 (n 7) para 15.

73 African Children's Committee General Comment on art 11 (n 7) paras 84-87.

74 African Children's Committee General Comment on art 11 (n 7) paras 88-93.

the African child so that these two instruments can be understood and applied in a complementary manner. The major difference lies in the manner that the African Children's Charter considers and recognises circumstances that are specific to the child in Africa. This results in a child-centred approach that is contextualised for the African continent. This is illustrated in article 11(2)(c) as well as article 31. Article 31, which is considered a unique characteristic of the African Children's Charter, strengthens this approach by providing the child with responsibilities and duties and underscoring their role as a member of a community.<sup>75</sup> The child, therefore, should not only be recognised as an individual rights holder but also as a member of a community or group when they participate in the realisation of their rights.

### 3.3 Considering culture and education in the African Children's Charter

From the provisions in the African Children's Charter, the Charter clearly recognises that the African continent is culturally diverse and unique. The role of culture is interwoven throughout the Charter and is viewed as a central facilitator to not only contextualise but ultimately realise the child's rights. This is illustrated in the education clause that incorporates and underscores the valuable role of culture.

Building on the substantive provisions of the African Children's Charter, the African Children's Committee has provided additional interpretive guidance in several General Comments that also highlight the interrelatedness of culture and education. The African Children's Committee's General Comment on article 31, which specifically centres on the responsibilities of the child, fortunately provides guidance on the interrelatedness between culture and education in the African Children's Charter. The African Children's Committee notes in the General Comment that this close link is illustrated in the aims of education as set out in article 11(2), which include 'respect for human rights and fundamental freedoms'; 'the preservation and strengthening of positive African morals, traditional values and cultures'; 'the preparation of the child for responsible life in a free society'; 'the preservation of national independence and territorial integrity'; and also 'the promotion and achievement of African unity and solidarity'.<sup>76</sup> The role of education in providing the child with the opportunity to learn about their community and

<sup>75</sup> Mezmur (n 6) 24-25.

<sup>76</sup> Arts 11(2)(b)-(f) African Children's Charter; African Children's Committee General Comment on art 11 (n 7) para 34.



culture as well as those of others, contributes to respecting diversity and advancing equality.<sup>77</sup> With this inclusion of African values in the education clause, Skelton and Mutu contend that the drafters of the African Children's Charter 'saw education as a vital tool to achieve these objectives and required state parties to incorporate such values in their curriculum'.<sup>78</sup> This is a clear indication that the child's culture is closely related to their right to education and that education should be used as a valuable vehicle for the protection and realisation of the child's cultural rights.

With reference to article 12 of the African Children's Charter, the General Comment provides that cultural activities must be age appropriate and advance the growth, socialisation and development of the child.<sup>79</sup> It is by participating in these cultural activities that children share in collective experiences and develop a sense of belonging in or to a community.<sup>80</sup>

The General Comment also notes that while the responsibility of the child in article 31 is a central component, it should not be used to infringe on the rights of the child. The child's responsibilities should therefore not be used to hamper or obstruct participation in cultural activities. Participation in cultural life and activities should rather be used as a means to 'teach, promote and encourage' the responsibilities of the child.<sup>81</sup> The child's rights to education and culture are closely related to their responsibilities and are mutually reinforcing. The General Comment ultimately makes it clear that the relationship between education and culture can play a valuable role in contextualising the rights of the child. The General Comment on article 31 demonstrates that communitarianism is a central element of African culture<sup>82</sup> and should be incorporated when contextualising the child's education in relation to their culture.

In the General Comment on education, the Committee also acknowledges the interrelated nature of the child's education and culture. This is especially clear in the interpretive guidance provided in relation to article 11(2)(c). It is affirmed that state parties must implement measures that ensure that education will foster respect

<sup>77</sup> African Children's Committee General Comment on art 31 (n 7) para 34.

<sup>78</sup> A Skelton & P Mutu 'Article 11: Education' in Sloth-Nielsen and others (n 56) 164.

<sup>79</sup> African Children's Committee General Comment on art 31 (n 7) para 37.

<sup>80</sup> African Children's Committee General Comment on art 31 (n 7) para 40.

<sup>81</sup> African Children's Committee General Comment on art 31 (n 7) para 41.

<sup>82</sup> See in general A Strohwalld 'An analysis of the role of African values, traditions and morals in the interpretation of children's rights' (2023) 26 *Potchefstroom Electronic Law Journal* 1-22.

for the preservation of diverse cultures,<sup>83</sup> which should advance the child's understanding and appreciation of their cultural heritage and historical background. This also means that education should not promote a culture that promotes or legitimises harmful practices.<sup>84</sup> The importance of incorporating positive cultural knowledge and practices into curricula is aptly set out in the General Comment:

The teaching of these values in curricula would play a vital role in bridging the gap between generations and ensuring the transmission of positive cultural knowledge and practices while enforcing the importance of socio-political, religious and traditional institutions in effective intergenerational communication. Integrating the teaching of these values into educational curricula and fostering intergenerational dialogue will strengthen and ensure the preservation of entrenched African cultural heritage that constitutes the uniqueness of being African.

The African Children's Charter is not a mere duplication of CRC. This is abundantly clear when considering the role that culture plays in the Children's Charter. Culture is interwoven and incorporated throughout the Children's Charter itself and the General Comments. This is also clear in the context of the child's right to education. The African Children's Charter addresses the need to contextualise rights for the child in Africa that places culture at the centre.

## 4 Considering context

Societies are not culturally stagnant but rather ever changing with the passing of time. Societies will develop and change due to social, economic and political factors.<sup>85</sup> As stated by Kaime, 'these practices are open to challenge, reformulation and substitution'.<sup>86</sup> Adaptability and flexibility of the normative framework are necessary to provide the opportunity to engage with specific cultural circumstances of a community in the application of the normative legal framework. State parties should give due weight to the importance of culture within communities and the value that it can add in localising the rights of the child. Education and learning opportunities that are tailored to include diversity in the culture of communities advances the rights of the child. Respect for diversity and difference in this sense not only advances equality but ensures that respect is fostered for the child's own culture as well as those of others.

83 African Children's Committee General Comment on art 11 (n 7) para 26.

84 African Children's Committee General Comment on art 11 (n 7) para 27.

85 Kaime (n 10) 233.

86 As above.

CRC provides for the universal recognition of the child's rights. This is in contrast to the African Children's Charter which is more regional in nature as it recognises specific circumstances applicable to the child in Africa. However, CRC and the African Children's Charter are complementary in nature and should not be viewed as being in conflict. CRC and the African Children's Charter should be read and applied together and properly contextualised by state parties to achieve the best outcome in the protection and realisation of the child's rights. It is of utmost importance that the interpretation and realisation of rights take place within the specific context of a state party and that the domestic legal framework is sensitive to the cultural context of the child as an individual as well as a valuable member of a community.

From a mere cursory comparison between CRC and the African Children's Charter, both instruments explicitly recognise the child as the holder of rights and incorporate a child-centred approach. The child's right to education is extensively recognised in CRC and the Children's Charter, and both instruments set out the aims to which education should be directed. While CRC is more universal in its formulation of the aims, the African Children's Charter is sensitive to the African context by including the aim that education must be directed at advancing African cultural values. Both instruments also emphasise two elements that should form part of the right to primary education, namely, that it should be compulsory and free.

In considering the incorporation of culture in CRC and the African Children's Charter, it is evident that the Children's Charter includes the role of culture to a greater extent than CRC. The African context of the child and the need for rights to be context-sensitive is acknowledged with this clearer incorporation of culture. This, for example, is illustrated by the limited references to culture in CRC, and the fact that CRC generally does not incorporate culture as a meaningful tool for the promotion and protection of children's rights.<sup>87</sup> In contrast, the African Children's Charter incorporates culture throughout the Charter. The Children's Charter affords culture a key role in contextualising the rights of the child in the African region. Both CRC and the African Children's Charter, however, recognise and incorporate culture in its education clauses. This clearly highlights the interrelated nature of these two rights and how education can advance cultural rights, and *vice versa*. However, it should be noted that the African Children's Charter is more extensive in its recognition of the interrelatedness between these two rights.

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87 Kaime (n 9) 639.

While a difference can be identified in the two instruments with regard to the incorporation of culture, the role of the General Comments of the CRC Committee and the African Children's Committee should not be overlooked. The General Comments discussed above play a valuable role in providing state parties additional guidance on the interplay between culture and education and emphasise that culture aids in contextualising the child's right to education. The interplay between education and culture is much more clearly recognised and expanded on in the General Comments of both the CRC Committee and the African Children's Committee. This means that both committees recognise the interrelatedness of education and culture, and that culture plays an integral role in the protection and realisation of other rights. The General Comments also signify that the child's cultural rights are interrelated to other rights and advances not only the contextualisation of those rights, but their application and realisation in a domestic setting.

State parties must therefore ensure that they pay special consideration to the child's cultural context and needs when complying with the standards set by CRC and the African Children's Charter. The valuable role of culture should, for example, be engaged with when state parties draft their legislation and policy on the child's right to education. The normative standards set by CRC and the African Children's Charter, together with the interpretive guidance provided by the General Comments of the CRC Committee and the African Children's Committee, provide state parties with the necessary framework to successfully engage with the interconnectedness between education and culture. If this opportunity is embraced by state parties, it will result in advancing the child's right to education in a context-sensitive manner.

## 5 Conclusion

It is important to use the normative framework of CRC and the African Children's Charter in a meaningful way to fully realise the child's right to education. Translating and implementing those theories and principles in accordance with the lived realities and specific contexts of the child in Africa is necessary. This approach requires that a balance must be struck between achieving universal protection of children's rights in line with the normative framework, while at the same being sensitive to the cultural integrity and needs of communities in its application.<sup>88</sup> Considering the cultural context

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88 Kaime (n 9) 638.

of the child is central to achieving this aim. The child's rights must accordingly be interpreted within the broader framework of their society.

The concept of culture is not stagnant and requires the legal framework to be adaptable and flexible to fully embrace the role of culture in society. CRC, the African Children's Charter and their accompanying General Comments recognise the need for state parties to acknowledge the interrelatedness between education and culture to ultimately ensure that the child's rights are properly localised and ultimately realised.

The value in recognising the interrelated relationship between the child's education and culture means that the role of the right to education as an empowerment or multiplier right is clearly acknowledged. When the right to education is realised in a manner that is sensitive to the child's culture, as mandated in both CRC and the African Children's Charter, it will result in stronger protection of the child's right to education. This holistic approach, which embraces the interrelatedness of these two rights, strengthens both rights, not only in terms of their normative protection, but also in the implementation and realisation of these rights.