IN THE BEST INTERESTS OF THE CHILD

Harmonising Laws on Children in West and Central Africa

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The African Child Policy Forum
IN THE BEST INTERESTS OF
THE CHILD

Harmonising Laws on Children
in West and Central Africa
THE AFRICAN CHILD POLICY FORUM (ACPF)

ACPF is a leading pan-African policy and advocacy centre on child rights.

ACPF was established with the conviction that putting children first on the public and political agenda and investing in their wellbeing are fundamental for bringing about lasting social and economic progress in Africa and its full integration into the world economy.

The work of ACPF is rights-based, inspired by universal values and informed by global experiences and knowledge. ACPF aims to provide a platform for dialogue; to contribute to improved knowledge of the problems facing children in Africa; to identify policy options; and to strengthen the capacity of NGOs and governments to develop and implement effective pro-child policies and programmes. For more information, please visit our website at www.africanchildforum.org and our African Child Information Hub at www.africanchild.info.

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<th>Full Form</th>
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<tr>
<td>ACPF</td>
<td>The African Child Policy Forum</td>
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<tr>
<td>ACERWC</td>
<td>African Committee of Experts on the Rights and Welfare of the Child</td>
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<td>ACRWC</td>
<td>African Charter on the Rights and Welfare of the Child</td>
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<td>AU</td>
<td>African Union</td>
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<tr>
<td>CARMMA</td>
<td>Campaign for Accelerated Reduction of Maternal Mortality in Africa</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination Against Women</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities</td>
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<td>CSO</td>
<td>Civil Society Organisation</td>
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<tr>
<td>ECOWAS</td>
<td>Economic Community of West African States</td>
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<td>EFA</td>
<td>Education for All</td>
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<tr>
<td>FGM</td>
<td>Female Genital Mutilation</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>HIV/AIDS</td>
<td>Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome</td>
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<tr>
<td>ILO</td>
<td>International Labour Organization</td>
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<tr>
<td>MDG(s)</td>
<td>Millennium Development Goal(s)</td>
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<tr>
<td>NEPAD</td>
<td>New Partnership for Africa’s Development</td>
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<tr>
<td>NGO</td>
<td>Non Governmental Organisation</td>
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<tr>
<td>OAU</td>
<td>Organization of African Unity</td>
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<tr>
<td>UDHR</td>
<td>Universal Declaration on Human Rights</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNAIDS</td>
<td>Joint United Nations Programme on HIV/AIDS</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UNEP</td>
<td>United Nations Environment Programme</td>
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<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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PREFACE

In 2006, ACPF conducted research on harmonisation of laws on children in 19 countries in Eastern and Southern Africa, following which individual country reports were produced. A synthesis report was published in 2007, entitled *In the Best Interests of the Child: Harmonising Laws in Eastern and Southern Africa*. The published report is available online and in hard copy. ACPF has now conducted similar research in 11 West and Central African countries, namely, Benin, Burkina Faso, Cameroon, Central African Republic (CAR), the Gambia, Ghana, Mali, Niger, Nigeria, Sierra Leone and Togo.

The country reviews are comprehensive. Based on the provisions of the CRC and the ACRWC and their corresponding instruments, the reviews measure developments in each country in relation to the general measures of implementation of the two treaties; the definition of a child; general legal principles (non-discrimination, the best interests of the child, the right to life, survival and development, and respect for the views of the child); specific civil rights and freedoms such as the right to a name and nationality and child justice rights; economic, social and cultural rights such as healthcare, education, leisure and access to cultural activities; and finally, special protection measures.

The two treaties are complementary in nature, and it is important for African countries to take into account both the CRC and the ACRWC in the development of their laws, policies and programmes on children.

As is seen in this report on West and Central Africa, there has been some effort in the region to harmonise laws with the CRC and the ACRWC. Since the ratification of the CRC, out of the 11 countries under the review, five have enacted new laws on children, four have adopted sectoral reviews of their laws, and two have adopted decrees on specific subjects concerning children. Such effort is to be highly commended. However, a lot still needs to be done in the region in relation to harmonising laws on children with international standards. It is therefore crucial that all countries in Africa review their laws on children on a continuous basis. May this report act as a yardstick for every state in the region to reflect on what they still need to do in terms of harmonising their laws to ensure that the African dream of full realisation of the rights of each and every child is attained.

This report is a significant step towards establishing a common voice for children in Africa, and we urge all states in West and Central Africa to take the recommendations from this research at heart.

David Mugawe
Executive Director
EXECUTIVE SUMMARY

The United Nations (UN) Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACrWC, or African Children’s Charter) have been ratified by an impressive majority of African states. Ratification requires states to undertake all appropriate legislative, administrative and other measures to implement children’s rights as recognised in these and other similar instruments.

Therefore, following ratification, States Parties are obliged to align their national laws with international human rights provisions and standards, to ensure that they reflect their commitments under the ratified treaties. This is what is often referred to as ‘domestication’ or ‘harmonisation’.

As the body charged with monitoring compliance and implementation of the provisions of the CRC, in its General Comment No 5. (para 18), the Committee on the Rights of the Child (the Committee) has called for harmonisation of laws relating to children, stating:

The Committee believes a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the Convention is an obligation. The review needs to consider the Convention not only article by article, but also holistically, recognising the interdependence and indivisibility of human rights. The review needs to be continuous rather than one-off, reviewing proposed as well as existing legislation. And while it is important that this review process should be built into the machinery of all relevant government departments, it is also advantageous to have independent review...

In light of that, this report reviews the extent to which a number of West and Central African countries have harmonised their laws along the lines of what is required under the CRC and the ACrWC. The countries in question are Benin, Burkina Faso, Cameroon, Central African Republic (CAR), the Gambia, Ghana, Mali, Niger, Nigeria, Sierra Leone and Togo. All the countries in the review have ratified the CRC, and CAR is the only country that has not yet ratified the ACRWC.

Many of these countries have started the process of implementation of the provisions of these treaties by taking legislative measures to harmonise existing laws with the principles and provisions of the CRC and the ACRWC. This study therefore provides valuable information on the legislative and other measures taken by these countries in the implementation of the CRC and ACRWC. It also highlights the progress made, and identifies the difficulties encountered and the remaining challenges facing harmonisation efforts in the countries involved.

Like the 2007 harmonisation report for Eastern and Southern Africa, this report highlights the fact that a comprehensive, consultative and multi-sectoral review of laws relating to children is a first and essential step in the harmonisation process, necessary in order to identify inconsistencies and gaps. Specific actions of the harmonisation process include:

1. Consultative processes
2. Multi-sectoral processes
3. Capacity building
4. Child participation
5. Legal reform
6. Implementation of policies and procedures
7. Establishing monitoring mechanisms.
It is also important to underscore the fact that harmonisation of children’s laws involves much more than simply copying the provisions of the relevant international and regional instruments in question; it requires elaboration of the provisions.

Based on the findings of the review of the study countries, this report contains various recommendations and identifies some specific issues that need immediate attention.

The first measure identified for action in the harmonisation effort is to **audit and review existing legislation** in a holistic, multi-sectoral and inclusive manner. In this respect, the need for continuous audit and revision of laws is also necessary in instances where an initial comprehensive review of laws has been done. One of the cross-cutting limitations in the context of harmonisation of children’s laws in Africa is the presence of a significant number of pending Bills, hence there is a need to **enact on a priority basis, the pending Bills** relating to children’s rights.

A harmonisation process needs to take a number of substantive issues into account. For instance, the need to **adopt a standard definition of a child** cannot be overemphasised. This means that countries should explicitly, by law, define a child as any person below the age of eighteen years. This is particularly important because it ensures that children’s rights as enshrined in the CRC and the ACRWC are applicable to all persons under the age of 18.

In setting various minimum ages, states need to take into account the importance of protection, participation and the evolving capacities of the child. The best interests of the child require that children are protected from early or forced marriage. In line with Article 21 of the ACRWC and the recommendations of the CRC Committee in the 2003 General Comment No. 4 on Adolescent Health and Development, the minimum age of marriage should be set at 18 for both genders, irrespective of whether the marriage is concluded under civil, customary or religious law.

Having a provision in the domestic law **prohibiting discrimination** in line with the CRC and the ACRWC is a crucial element in harmonisation, which ensures equal protection and enjoyment of rights for all children within the state. In addition, there is a need to raise awareness of the fact that, in line with Article 3 of the African Children’s Charter, the duty of non-discrimination rests with all actors, including communities, and not just the state.

In respect of socio-economic rights, harmonisation should lead, among other outcomes, to **ensuring that universal free and compulsory primary education** is enshrined in the law, and that there is access to primary health care, nutrition and improved water and sanitation. The latter requires governments to **increase the budgets they allocate to health progressively to as high as 20 percent of GDP**.

**Zero tolerance to any form of violence against children** should also be incorporated in law. Apart from the provisions of the CRC and the ACRWC, further guidance in addressing violence against children in national law should be sought from ILO Convention 182 on the Elimination of the Worst Forms of Child Labour, the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (OPSC), the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict and the newly adopted General Comment No. 13 of the Committee on the Rights of the Child, on the Right of the Child to Freedom from all Forms of Violence. States that have not yet done so
should ratify these documents as a matter of priority. The Report of the Independent Expert for the United Nations Study on Violence against Children also contains numerous recommendations for action to prevent violence against children, and to protect children from violence in the home, family, schools, care and justice systems, the work place and the community.

The study also highlights the need to develop legislative provisions for the protection of orphaned and vulnerable children, particularly children living with or affected by HIV/AIDS, children with disabilities, and children of minorities. Provisions should also be put in place to facilitate national adoptions. States are therefore encouraged to adopt the Hague Convention on the Protection of Children and Co-operation in respect of Intercountry Adoptions (1993).

States Parties’ efforts in harmonisation should also include a child justice administration that is child-friendly and in the best interests of children. Achieving this includes adopting restorative justice and rehabilitation schemes for children in conflict with the law, focusing on diversion from the criminal justice system at all stages, legislating for the right to free legal representation for child victims and offenders, establishing child friendly courts with trained judges on children’s rights in both urban and rural areas around the country, establishing proper data collection systems concerning children in conflict with the law to enable the measurement of monitoring and improvement in child justice over time, and ensuring an effective complaints system for addressing rights violations of children deprived of liberty.

The need to ensure the existence and function of mechanisms and bodies, with widespread representation from government and civil society, to promote and own the processes of national harmonisation, including coordination and monitoring, is also crucial. In addition, States should be encouraged and supported to report on a timely basis and in a comprehensive manner on application of laws to the treaty Committees, and to ensure children’s participation in the reporting process.
CHAPTER 1
OVERVIEW AND CONTEXT
1.1 CONTEXTUALISING THE CONVENTION ON THE RIGHTS OF THE CHILD AND THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

1.1.1 The Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC), adopted as a United Nations (UN) treaty in 1989, was the culmination of a decade of work and negotiations between governments and non-governmental organisations. It heralded a critical shift in perspectives on children, from perceiving them as victims and recipients of welfare, to seeing and treating them as individual rights holders. The CRC expresses a modern approach to the child, on account of its holistic approach to children’s rights. The CRC assumes that the child is not merely an object of solicitude and care, but is a subject of fundamental rights and basic liberties.

There have been three key phases in the development of child rights from the beginning of the last century to the present:

- The first phase began in 1924 with the adoption by the League of Nations of the Geneva Declaration on the Rights of the Child. This was later cited as the beginning of the formal establishment of an international movement for children’s rights.
- The second phase saw the adoption of the Declaration on the Rights of the Child in 1959, and the International Year of the Child in 1979 to celebrate its 20th anniversary. 1979 also saw the beginning of the drafting of the Convention on the Rights of the Child, a process that was completed in 1989, when the General Assembly of the UN adopted the text. This was followed by a record number of ratifications, partly thanks to the World Summit on Children in 1990.
- In the third and current phase, the focus is on implementation, accountability and monitoring of the CRC, following its unprecedented and near universal ratification.

The CRC remains the most rapidly ratified international human rights treaty. The USA and Somalia signed the treaty in 1995 and 2002 respectively, but neither has yet ratified it. Until recently these were the only two countries in the world yet to ratify the CRC. Now, with South Sudan becoming a state, that number has increased to three.

The CRC has 41 substantive articles, setting out the key rights, covering a broad spectrum of rights from child welfare and child protection to child justice. The importance of the near universal ratification of the CRC cannot be overstated, as it demonstrates a global commitment to the rights of the child as a basis for action.

The CRC has been supplemented by two Optional Protocols: the Optional Protocol on the Involvement of Children in Armed Conflict, which raises the minimum age for involvement of children in armed
conflict to 18, and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, which strengthens the CRC’s protection in these areas. The draft of a third Optional Protocol to the CRC, which establishes a communications procedure for children’s rights violations, was adopted by the Human Rights Council on 17 June 2011, and the final text is expected to be adopted by the UN General Assembly in December 2011.

All the 11 countries covered in this report (Benin, Burkina Faso, Cameroon, Central African Republic (CAR), the Gambia, Ghana, Mali, Niger, Nigeria, Sierra Leone and Togo) signed the CRC in 1990. Sierra Leone, Ghana, Benin, The Gambia, Mali, Niger and Burkina Faso were amongst the first countries in the region to ratify the CRC. Central African Republic and Cameroon were the last in the region to ratify the CRC.

Ghana was the first country in the region to review its legal framework for children, a process which resulted in its landmark Children’s Act of 1998. Nigeria came up with its Child Rights Act in 2003, while Niger drafted its Children’s Code in 2005 and Togo enacted a Children’s Code in 2007. The Gambia put in place a comprehensive Children’s Act in 2005, and Benin and Sierra Leone enacted their Children’s Acts in 2007. Cameroon is currently undergoing a legal review process to harmonise children’s laws in the country, which has resulted in a draft Bill to lead ultimately to a Child Protection Code and a draft Bill to institute the Persons and Family Code. In the Central African Republic and Mali, the process for comprehensive review and consolidation of child-related laws has not yet been instituted, and Burkina Faso is currently working on a draft Child Code.

1.1.2 The African Charter on the Rights and Welfare of the Child (ACRWC)

Member states of the Organisation of African Unity (OAU) adopted a Declaration on the Rights and Welfare of the African Child in 1979, the International Year of the Child. This culminated in the enactment of the African Charter on the Rights and Welfare of the Child, which was adopted in 1990 by the Assembly of Heads of States of the OAU and which entered into force in 1999.

Like the CRC, the ACRWC is a comprehensive instrument that sets out rights and defines universal principles and norms for the status of children. The ACRWC and the CRC are the only international and regional instruments that cover the whole spectrum of civil, political, economic, social and cultural rights.

The rationale for putting in place an African Children’s Charter was the feeling amongst African member states that the CRC missed important socio-cultural values and economic realities of the African experience. In the ACRWC, underlying the provisions of the Charter is “the need to include African cultural values and experiences in considering issues pertaining to the rights of the child”. However, this needs to be done without compromising children’s best interests through harmful traditional and religious practices. The ACRWC therefore challenges traditional African views that conflict with children’s rights on issues such as child marriage, parental rights and obligations towards children, and children born out of wedlock. It expressly proclaims its supremacy over custom, tradition, cultural and religious practices, and it stipulates outright prohibition of

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6 Both protocols were adopted and opened for signature, ratification, and accession by General Assembly Resolution 54/263 of May 2000.
the recruitment of children in armed conflict; the prohibition of marriages and betrothals involving children; prohibition of the use of children as beggars; and the right of children to return to school after pregnancy.

The ACrWC thus specifically tackles African issues – for example, by calling for apartheid and similar systems to be confronted and abolished. Apartheid may have been defeated in South Africa, but this provision is also ‘applicable to children living under regimes practicing ethnic, religious or other forms of discrimination that justify special measures for the welfare of children in those countries’.

While the ACrWC makes progressive and commendable efforts to address the particular realities of children in Africa, it also has the following limitations:

- The omission of a provision mirroring Article 4 of the CRC, which requires state parties to commit and apply resources, to the maximum extent of their availability, to ensure the realisation of child rights. This omission is regrettable, as it means the African Children’s Charter has no mechanism to place a duty on a state to provide resources to ensure the realisation of children’s rights.
- Although it makes provisions for special protection mechanisms for the disabled, it fails to ‘expressly include disability as a prohibited ground for discrimination’.
- The CRC specifically ascribes rights to minority and indigenous children, but there is no similar provision in the African Children’s Charter, despite the fact that a number of countries in the region have significant populations of minorities and indigenous groups.
- There is some criticism of the description of children’s duties to parents in the Charter. However, provided these duties fall within the ambit of children’s rights and do not contravene any of the rights provided in the Charter, they do not conflict with children’s rights.

Currently, 46 out of 54 African countries have ratified the ACrWC. All the countries in this review, with the exception of the Central African Republic (CAR), have ratified it.

1.1.3 Monitoring committees

Both the CRC and the ACrWC established Committees – respectively named the UN Committee on the Rights of the Child (The CRC Committee) and the African Committee of Experts

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9 Article 21, ACrWC.
10 Ibid, Article 22(2).
11 Ibid, Article 21.
12 Ibid, Article 29(b).
13 Ibid, Article 11(6).
16 Article 13, ACrWC
17 Chirwa D, op. cit. 157.
18 Article 30 CRC.
19 Chirwa D, op. cit. 157.
20 Article 31, ACrWC.
21 Even the Universal Declaration of Human Rights (UDHR) states in Article 29(1) that everyone has a duty to their community.
on the Rights and Welfare of the Child (The African Committee of Experts or ACERWC) – charged with monitoring their implementation, via examination of State Party reports.\textsuperscript{22} The African Committee of Experts began meeting in 2001, but has only received 14 State Party reports to date.

The African Committee of Experts can entertain individual complaints in the form of ‘communications’ from any person in matters relating to the Charter,\textsuperscript{23} and in this regard it is much stronger than its CRC counterpart. However, a draft Optional Protocol on a Communications Procedure for the CRC was adopted by the Human Rights Council on June 17 2011, and is expected to be adopted by the UN General Assembly in December 2011. A critical flaw of the African Children’s Charter is that its reports on communications can only be published upon the approval and scrutiny of member states. This poses a challenge to the independent monitoring role it is supposed to play.\textsuperscript{24}

The African Committee of Experts has established Rules of Procedure and Guidelines for Reports of State Parties that seek, as far as possible, to complement those of the CRC Committee and avoid duplication, particularly on reporting by state parties. According to paragraph 24 of the Guidelines for Initial State Party Reports, the African Committee of Experts allows the submission of the same report made to the CRC Committee, to the African Committee, provided that the report to be submitted to the African Committee highlights the peculiarities of the ACRWC. For more detailed information on reporting to the Committees, see Annex 2.

There have been calls for the African Union (AU) to give greater attention to children’s rights, including through strengthening the African Committee of Experts by allocating resources and making children’s rights a substantive agenda item on the Summit of Heads of State, the overall decision making body of the AU.\textsuperscript{25}

\textsuperscript{22} Article 43, CRC and Article 41, ACRWC.
\textsuperscript{23} Article 44, ACRWC.
\textsuperscript{24} Article 45(3), ACRWC.
The Central African Republic signed the ACRWC on April 4, 2003 but has not yet ratified it.

1.2 THE FRAMEWORK FOR CHILDREN’S RIGHTS

The CRC and the ACRWC constitute a comprehensive listing of obligations to the child that states recognise on becoming party to the treaties. These obligations are both direct (for example, providing education facilities and ensuring proper administration of justice for children) and indirect (for example, enabling parents and guardians to carry out their primary roles and responsibilities as caretakers and protectors).

The CRC covers the whole range of human rights that have traditionally been classified as civil and political rights on the one hand, and as economic, social and cultural rights on the other. Although reference is made to this classification in Article 4 of the CRC, the substantive articles themselves are not explicitly divided in this way. A common classification of the rights contained in the CRC is known as the ‘three Ps’:

- **Provision**: children have the right to be provided with social and other services, from health care and education to social security benefits and an adequate standard of living.
• **Protection:** children have the right to be protected from all kinds of violent acts, including abuse, neglect, commercial sex and other forms of exploitation, torture and arbitrary detention, and unwarranted removal from parental care

• **Participation:** children have the right to have their say in all matters affecting them, and to participate in decisions affecting their lives and the society as a whole.

The UN Committee on the Rights of the Child requests that States Parties report on implementation under the following Articles: 27

• **General measures of implementation:** Articles 4, 42 and 44(6)

• **Definition of a child:** Article 1

• **General principles:** Articles 2, 3, 6 and 12

• **Civil rights and freedoms:** Articles 7, 8, 13-17, 28(2), 37(a) and 39

• **Family environment and alternative care:** Articles 5, 9-11, 18(1-2), 19-21, 25, 27(4), 39

• **Disability, basic health and welfare:** Articles 6, 18(3), 23, 24, 26 and 27 (1-3) and 33

• **Education, leisure and cultural activities:** Articles 28-31

• **Special protection measures:** Articles 22, 30, 32-36, 37 (b)-(d), 38, 39 and 40.

Similarly, the African Committee of Experts developed guidelines in 2003 for initial reports of States Parties to the ACRWC, which require states to report under the following Articles: 28

• **General measures of implementation:** Article 1

• **Definition of the child:** Article 2

• **General principles:** Articles 3, 4, 5, 7, 12 and 26

• **Civil rights and freedoms:** Articles 6-10, and 16

• **Family environment and alternative care:** Articles 16, 18(3), 19(2-3), 2 and, 25

• **Health and welfare:** Articles 5, 13, 14, 20(2a-c), and 26

• **Education, leisure and cultural activities:** Articles 11 and 12

• **Special protection measures:** Articles 5(3), 15-17, 21-23, 25, 26-30,

• **Responsibilities of the child:** Article 31.

The general principles of the CRC and the ACRWC

Also known as the ‘four pillars’, these general principles are the underlying principles of all the rights in the CRC. The principles are: non-discrimination; 29 the best interests of the child; 30 the right to life, survival and development; 31 and respect for the views of the child. 32 Under the ACRWC, these principles are also provided for, 33 although instead of respect for the views of the child, the ACRWC provides for freedom of expression by stipulating that every child who is capable of communicating his or her own views shall be assured the rights to express his or her opinions freely in all matters. 34 These principles have to be fully respected when implementing the treaties.

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29 Article 2, CRC.

30 Article 3, CRC.

31 Article 6, CRC.

32 Article 12, CRC.

33 Articles 3 & 26, 4 and 6 of the ACRWC provide for non-discrimination, the best interests of the child and the right to live, survival and development, respectively.

34 Article 7 and 12, ACRWC.
1.3 HARMONISATION

Box 1: General measures of implementation

**CRC – Article 4**

Mandates State Parties to take all appropriate legislative and administrative and other measures for the implementation of the rights contained therein.

**The African Children’s Charter – Article 1**

Obliges states to recognise the rights, freedoms and duties enshrined in the Charter and to undertake the necessary steps to adopt such legislative or other measures as may be necessary to give effect to the provisions of the Charter.

Following ratification, States Parties are obliged to align their national laws with international human rights provisions and standards, to ensure that they reflect their commitments under the ratified treaties. This is what is often referred to as ‘domestication’ or ‘harmonisation’.35

Domestication is done through a nation’s Constitutional provisions and/or by enacting new legislation giving international law the status of domestic law. These legislative, administrative and other measures are intended to reduce and eliminate discrepancies between the provisions and procedures of the national legal laws and the provisions of the CRC and the ACRWC. Either mode of domestication is necessary to give effect to international treaties and roll out implementation in laws and policies.

There are different levels at which harmonisation can be achieved:

1. A broad review of existing laws and policies and consolidation of laws relating to children into a single piece of legislation
2. Ad hoc amendments or formulation of law relating to children, targeting existing or new issues and leading to specific amendments or statutes on particular issues.

The CRC Committee advocates, among other things, for:

(a) A comprehensive, systematic legislative review where the review process is done in a comprehensive and systematically coordinated manner. The Committee has raised concerns where States Parties do not consider the above approach.36

(b) A well-qualified advisor of parliament to assist in technical matters.37

(c) The provision by States parties of Law Reform Commissioners with concrete directions and necessary resources to perform their mandated tasks.38

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35 These two terms are used interchangeably in this study.
36 UN Committee on the Rights of the Child, Concluding Observations on Swaziland’s Initial Report, CRC/C/SWZ/CO/1, 16 October2006, para 7.
37 Ibid, para 8.
(d) Harmonisation of all applicable provisions of different jurisdictions, namely customary/traditional, religious and regular law.\(^{39}\)

(e) All efforts and resources necessary for the enactment of comprehensive children’s legislation, as a matter of priority.\(^{40}\)

### Box 2: The position of the UN Committee on the Rights of the Child on harmonisation

As the body charged with monitoring compliance and implementation of the provisions of the CRC, the CRC Committee has called for harmonisation of laws relating to children, stating that:

*The Committee believes a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the Convention is an obligation. The review needs to consider the Convention not only article by article, but also holistically, recognizing the interdependence and indivisibility of human rights. The review needs to be continuous rather than one-off, reviewing proposed as well as existing legislation...*

*The Committee welcomes the incorporation of the Convention into domestic law, which is the traditional approach to the implementation of international human rights instruments in some but not all States. Incorporation should mean that provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is conflict with domestic legislation or common practice. Incorporation by itself does not avoid the need to ensure that all relevant domestic law is brought into compliance with the Convention.*

**General Comment No. 5 paras 18 &20**

While the position of the African Committee on harmonisation is not yet clearly and expressly provided for, it is expected that it will be very similar to the one by the CRC Committee.

Following a legislative review, states may choose to consolidate all their laws on children in a single comprehensive children’s statute, or to opt for separate thematic statutes – for example, on child justice, or child welfare, depending on their particular needs. Whatever the choice, it is important that the legislation is comprehensive on all the rights of the child.\(^{41}\) States should continue to strengthen their efforts to amend or adopt their legislation with a view to bringing it into full conformity with the provisions in the treaties,\(^{42}\) in the most user-friendly and effective manner possible.

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\(^{42}\) UN Committee on the Rights of the Child, Concluding Observations on Mozambique’s Initial Report, CRC/C/15/Add.172, 3 April 2002, para 12(a).
In the Gambia, Ghana and Sierra Leone, the result of the legislative review was the enactment of Children’s Acts, which consolidated former statutes relating to children.

The CRC and the ACRWC require states to take administrative or other measures to give effect to their provisions. Measures such as the establishment of institutions and domestication of treaties can pave the way for the realisation of this requirement, by obliging the state to create appropriate organs and structures. Domestication of children’s rights and instruments serves to show a nation’s commitment to the provisions. It also has an impact on the enforceability of the rights before the courts in the respective countries. At the international level, domestic legislation may be employed as evidence of a state’s compliance with international obligations.

### 1.3.1 Mechanisms for harmonisation or domestication of international law

A country’s approach to domestication of international law depends on the legal system, although sometimes the political system may have an impact on the ratification and domestication process.

#### 1.3.1.1 Techniques of treaty domestication

Treaties create legal obligations that bind states under international law. In terms of the principle articulated in Article 26 of the Vienna Convention on the Law of Treaties, States Parties are required to give effect to the obligations under the Covenant in good faith. Accordingly, states that have ratified human rights treaties, like the CRC and the ACRWC, are obliged to give effect to the treaties in their domestic legal systems by domesticating the norms and standards in the treaties through adoption, incorporation or transformation.

By adoption, treaty provisions have direct legal effect in the domestic legal order, but retain their international character therein. The underlying thrust of the technique is that international and municipal laws are parallel aspects of a single legal order. This is the contention of the monist school of thought. Incorporation refers to the integration and application of international obligations into domestic law. Transformation refers to the transformation of a treaty obligation using legislation to amend or supplement domestic law. In other words, transformation of a treaty occurs by domesticating the provisions of that treaty into domestic legislation, or through enactment of an enabling legislation. Incorporation and transformation are forms of dualism.

Brownlie identifies monism and dualism as the two main theories affecting the reception of international law in domestic legal systems. Monists assert the supremacy of international law in a single hierarchy of law and see it as directly applicable in the domestic legal system. Dualists regard international law and domestic law as two separate systems operating at two different levels. Thus, as part of a separate legal system international law requires legislative action to be applicable in the domestic system.

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43 Article 4 of the CRC; and Article 1 of the ACRWC.
45 1969.
48 Ibid.
internal transformation of the treaty has not taken place, its internal effect is limited in terms of the ‘rule of presumption,’ which states that when applying and interpreting the treaty, courts should start from the presumption that the legislature did not intend to act contrary to the State’s international obligations.\textsuperscript{49} In the dualist approach, the onus is upon a national legal system to determine the status and force of law, which will be accorded to treaty provisions within such a legal system.

When a treaty provision applies directly as international law, the issue of its legal status in relation to domestic law arises. In a dualist approach, an incorporated or transformed treaty provision is on par with domestic legislation. When the provisions of the treaty apply as international law, and the national Constitution does not offer guidance and the status is not self-evident, then the courts will have to determine the relationship.\textsuperscript{50} Theorists of Public International Law hold that a duly ratified treaty takes precedence over all national laws including the fundamental law of the land (the Constitution).\textsuperscript{51} Conversely, tenors of nationalist doctrine hold that duly ratified treaties are subject to the municipal legal order and are on equal basis with national laws and have no supremacy over the Constitution.

The consequence of adoption of treaties by ratification is that they have a supra-legal value above national laws, but are subjected to the Constitution. However, internationalists hold that on the basis of the grundnorm, which marks the expression of the common will of states, there is no norm above the treaty norm. This is explained by the fact that the individual will of a state cannot override a common will of states, and thus, according to internationalists, the Constitution and the internal legal order are nothing more than pure fact. Consequently, the concept of imperfect ratification may be invoked here – that is, a state cannot take advantage of the violation of its Constitution to disregard a treaty. Stated otherwise, a State cannot as a result contend that it signed a treaty in violation of its Constitution. The Vienna Convention on the Law of Treaties (1969) takes this stance.\textsuperscript{52}

In 1949 the International Law Commission stated in Article 13 of the Draft Declaration on Rights and Duties of States that:…every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its own Constitution or its laws as an excuse for failure to perform this duty.\textsuperscript{53}

\textsuperscript{51} This approach has been reiterated time and again by the then Permanent Court of International Justice (PCIJ) and the present International Court of Justice (ICJ). See Tcheuwa JC, “Quelques aspects du droit international à travers la nouvelle Constitution du Cameroun du 18/01/1996”, \textit{La Tribune de Droit Public 77}, (1999) 90.
\textsuperscript{52} Article 46 of the 1969 Vienna Convention provides as follows; (1) ‘A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.(2) A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith’.
\textsuperscript{53} Yearbook of the ILC, (1949) pg246 at 288. This rule was recommended to member states of the UN in the General Assembly Resolution 375 (IV).
1.3.1.2 Legal systems

Common law systems generally follow the English system, where jurisprudence mainly stems from national case law and case law from other common law jurisdictions seen together with legislation. In civil law systems, codified law or legislation takes prominence over case law; courts make decisions based on specific legislative provisions. They also apply rules of interpretation to specific legislation where there are gaps, rather than rely on previous judgments in other cases. Some countries have a dualist system, which incorporates aspects of common law and civil law, together with aspects of customary and religious law.

Chart 1: Domestication of international standards

Incorporation by a statute:
These are countries with a dualist approach to international law, where a national law or domestic version of the treaty is necessary before it is applicable nationally.

Automatic incorporation:
Countries that follow a monist approach to international law, i.e. where there is no distinction between international and national law. Once ratified, the treaty automatically becomes binding law in the country and can be directly invoked and applied as soon as its ratification is published. However, it is not always clear whether international law prevails in case of conflict with national laws. Therefore it may be necessary to adopt specific legislative measures to bring existing legal provisions into full compliance with international human rights law. Thus one can avoid discussions about the question of whether international law prevails over domestic law.
Incorporation by the judiciary:

The judiciary, particularly in countries with a dualist approach to international law, can play a role in domestication of provisions of international treaties. Where the legislature (parliament) has not enacted laws to incorporate the treaty, the judiciary may nonetheless rely on the provisions of the treaty in adjudicating cases, thereby giving the treaty a status of national law.

1.3.2 Experiences of harmonisation in the countries in the study

The review of experiences in the countries under this study has identified a number of practical steps and approaches that have already been used to harmonise national laws with the provisions of the CRC and the ACRWC. These strategies are based on the strategies deployed by Cameroon, the Gambia, Ghana, Nigeria and Sierra Leone. They do not represent all the steps these countries undertook, nor were they all followed in all the countries. However, they can be considered as good practices for the countries seeking to harmonise their laws relating to children.

a. Consultative processes

A review of existing legislation is best done through a widely participatory process. This can help to build strategic partnerships among other stakeholders, including government departments, technical experts, civil society organisations, children and young people and international partners; and it can create the foundation for an understanding of children’s rights and effective implementation of new legislation.

b. Multi-sectoral processes

As children’s rights span various disciplines, it is beneficial to have a multi-sectoral representation during review – including the justice, health, education, finance and social welfare sectors – to ensure that all aspects of the CRC and the ACRWC are covered. It is particularly important that the review process should not be confined to the legal sector. A multi-disciplinary approach fosters open and transparent reform and facilitates comprehensive legislation, policy and ownership by stakeholders. This is critical for the credibility of the reform process and in order to mobilise support for the successful implementation of ensuing legislation. The multi-disciplinary and multi-sectoral approach is exemplified by the Cameroonian experience, where the current law reform process has involved a number of key stakeholders including the Ministry of Social Affairs, the Ministry of Health, the Ministry of Education, the National Commission on Human Rights and Freedom, and civil society organisations in the drafting and amendment of laws and
policies on the rights of the child. The review process must also incorporate thematic groups targeting specific issues (for example, on vulnerable children).

c. Capacity building
Capacity building through study tours enables national officials to learn from other countries that have carried out reform in similar or different systems, with the objective of evaluating the most appropriate models and practices. When the review has been completed and legislation is being enacted, it is particularly important to compare legislation from other countries with similar jurisdictions. No concerted capacity building activities were identified in any of the study countries with respect to the law reform process.

d. Child participation
The review process should also ensure wide and effective institutionalised child participation; for example through partnerships with schools to solicit children’s views. In 2004, the wife of the then Lagos State Governor in Nigeria instituted what is now known as the “busy bee” competition for children in public schools. The winner of that event is inaugurated to act as Governor of the state for one day. Usually, new legislation or policy on a children’s issue is presented for the approval of the ‘one-day’ Child Governor. This activity could, however, be viewed as a tokenistic inclusion in activities, formulated, planned and arranged by adults.

1.3.3 Legal reform
Countries have the option of consolidating their legislation on children’s rights into a single comprehensive act after the review process. This was the approach adopted in Ghana, Gambia, Nigeria, Sierra Leone and Togo with their respective Children’s Acts. The second option is thematic legislation on children, where the review process yields more than one statute that seeks to harmonise laws with the CRC and the ACRWC. For example, in Cameroon there is a draft Bill on Child Protection, which is expected to be the single national instrument on the rights of the child. In addition to the Child Protection Code, the Cameroonian legislature is at the same time working on the Family Code. This code will also deal with the rights of the child, notably in the area of adoption, affiliation and succession.

Even the best-drafted legislation will have gaps. It is therefore necessary that all laws emerging from the review process expressly state that where omissions emerge outstanding issues should be interpreted in the light of provisions of the CRC and the ACRWC. This is recommended for all legislation, particularly where the proposed legislation is a first attempt to harmonise domestic law with international standards, as gaps may only become evident as the law is implemented. An express provision authorises the courts to look directly at the CRC and the ACRWC, as well as the Concluding Observations of the Committees monitoring the implementation of these treaties, in guiding their considerations and decisions. The CRC Committee has commended situations in which the CRC clearly takes precedence over domestic law where the two conflict. It is also advisable that domestic legislation reflects the identified general principles of the CRC and the ACRWC.

1.3.4 Implementation of policies and procedures
Following the review and enactment of legislation comes the challenging task of implementation. There are several approaches that can be adopted:

- Countries are encouraged to embark on a costing exercise on the draft legislation. This approach can help address the crucial issue of allocation of resources for implementation in good time.
• Any law is only as effective as its implementation mechanism. In addition to law reform, government must enact policies and guidelines and establish mechanisms and institutions for effective implementation of laws.

• The CRC Committee recommends that consideration be given to providing an independent monitoring mechanism through which children can make complaints about abuses for their rights, such as a Children’s Ombudsperson.54

• The Committee highlights the need to establish a single mechanism for the development of child rights policies, plans and programming, and for the coordination of implementation of the CRC.55

1.3.5 Monitoring

It is important that any laws enacted have a monitoring mechanism. States may choose which monitoring mechanism they establish, but an institutionalised form of monitoring is necessary to complete the harmonisation cycle. It is recommended that monitoring bodies institutionalise children’s participation in monitoring the treaty reporting processes.

A distinction should be made between independent monitoring and self-monitoring, or monitoring by a national governmental council or committee established for the purpose of supervising and planning and evaluating the implementation of the CRC.

These national mechanisms are often vested with the responsibility for, and duty for supervision over, planning, financing and coordinating children’s rights in the country. They may also supervise or advise government on the drafting of state party reports to the CRC Committee and the African Committee of Experts. It is recommended that states take all necessary measures to provide such institutions with adequate human, financial and other resources; a clear mandate; and sufficient authority to carry out their mission.

54 UN Committee on the Rights of the Child Concluding observations on Mozambique’s Initial Report, CRC/C/15/Add.172, 3 April 2002, para 16(b).
55 Ibid, para 14(a).
CHAPTER 2
GENERAL PRINCIPLES AND PROTECTION STANDARDS UNDER THE CRC AND THE ACRWC
2.1 DEFINITION OF A CHILD

Box 3: Definition of a child in the CRC and the ACRWC

**CRC – Article 1**

For the purposes of the present Convention, a child means *every human being below the age of eighteen years* unless, under the law applicable to the child, majority is attained earlier.

**ACRWC – Article 2**

For the purposes of this Charter, a child means *every human being below the age of eighteen years*.

Both the CRC and the ACRWC state that a child is defined as a person under the age of 18 years. The CRC allows for an exception to this fundamental rule in cases where the state has an age of legal majority below the age of 18 years (e.g. 16). Therefore the principle is that childhood should end at 18, unless legal majority is attained earlier, e.g. by marriage. However, the protections of the CRC still apply where countries have established a higher age of majority, e.g. 21. The definition may call into play different minimum ages (for example, the minimum age for sexual consent, minimum age for lodging complaints, minimum age for driving, minimum age for labour, minimum age for marriage, and so on).

In this regard, however, it should be noted that the CRC does not contain any specific minimum age for these activities, with one exception: Article 38 prohibits the use and recruitment of children below the age of 15 in armed conflict or hostilities. The ACRWC is stricter, by prohibiting recruitment to the armed forces for all persons below the age of 18.56 The ACRWC also requires the setting of the minimum age of marriage at 18,57 while a similar provision cannot be found in the CRC.

In conclusion, the setting of minimum ages for various activities by children is left to a large degree to national legislation. As a general rule, it could be argued that ages that pertain predominantly to protection issues should be set as high as possible, while minimum ages in connection with participation issues should be set as low as possible. In this respect, it is important to take into account the concept of the evolving capacities of the child.58 States also have to take into account the international human rights instruments by which the state is bound: for instance, the minimum ages set in ILO Conventions 138 and 182, and in the Optional Protocols to the CRC. The setting of minimum ages is not, however, free from problems, because the CRC and the ACRWC do not provide specific instructions in this regard. For instance, both treaties require the setting of a minimum age for criminal responsibility,59 leaving it to states to decide what that minimum age should be.

56 Article 22, ACRWC.
57 Article 21, ACRWC.
58 Article 5, CRC.
59 Article 40, CRC; Article 17, ACRWC.
2.1.1 Inconsistencies in minimum ages

In the majority of countries under this study, there are inconsistencies and differences in the definitions of age of majority and minimum ages for things such as sexual consent, marriage, completion of basic education, and eligibility for employment. These must be addressed.

2.1.2 Age of a child and legal majority

In Burkina Faso, The Gambia, Ghana, Mali and Nigeria, the age of a child is 18. In the Central African Republic, Cameroon, Niger and Togo, there is no overarching definition of a child, but based on the fact that these are countries to which automatic incorporation of ratified international treaties applies, it can be presumed that a child is a person aged below 18. In nine countries under this study – Benin, Burkina Faso, Central African Republic (CAR), the Gambia, Ghana, Niger, Nigeria, Sierra Leone, and Togo – the age of majority is 18 years. In Mali, the age of majority is not uniform, varying between 18 and 21 depending on criminal law, civil law or other social and political factors. In Cameroon there is no legal age of majority applicable to the whole country. In civil matters, the French Civil Code (1804) applicable to French Cameroon considers anyone below the age of 21 a minor; but under the English Common law applicable to Anglophone Cameroon, the age of majority is 18 years, whilst the draft Child Protection Code defines a child as everyone below the age of 18 for electoral and criminal majority, and 21 for civil majority.

2.1.3 Discrimination based on gender: differences in age of marriage and sexual consent

2.1.3.1 Age of marriage

The internationally accepted standard for the minimum age of marriage is 18. This is explicitly enshrined in the ACRWC. Although the CRC does not contain a specific provision in this regard, the CRC strongly recommends State Parties review or reform their legislation and practice to increase the minimum age of marriage, with and without parental consent, to 18 years for both girls and boys.

There are considerable gender and other variations in the minimum age of marriage in the study countries. Some countries, such as CAR, Ghana, Nigeria, Sierra Leone and Togo, have undertaken law reform to remove disparities in the minimum age of marriage, adopting 18 as the uniform age for both sexes. In the Gambia, although there is no express provision for the age of marriage, the 2005 Children’s Act, which defines a child as someone aged below 18, provides in section 24 that no child is capable of contracting a valid marriage.

The minimum age of marriage can therefore be construed as 18. However, Gambian customary laws recognise the marriage of a girl from as early as 13 years and the consummation of such a marriage is not regarded as a criminal offence. In Cameroon, the minimum age of marriage is 21; but

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60 Article 22, ACRWC.
61 UN Committee on the Rights of the Child, General Comment No 4. on Adolescent Health and Development, CRC/GC/2003/4, 1 July 2003, para 20.
the 1981 Ordinance governing Civil Status provides for an exceptional situation where a girl of 15 years or a boy of 18 years can get married under a waiver granted by the President of the Republic for serious reasons. In Burkina Faso girls can get married at 17 years, while boys are legally supposed to wait until they are 20. In Niger, following the Mandel Decree of 1939, the minimum age of marriage is 16 for boys and 14 for girls. However, under the Civil Code, which has precedence over the Decree by virtue of the Constitutional law theory of hierarchy of norms, the minimum age of marriage for boys is 18 years and 15 years for girls.

In Mali, males may not contract a marriage until they have turned 18, and females may not marry until they have turned 15. Discretion is given to the Minister of Justice to waiver the age requirement when there are substantial reasons to do so. A draft Individuals and Family Code, however, sets the age of marriage at 18 years for both males and females. Benin, Cameroon and Mali are the only three study countries with the possibility of a waiver below the minimum legal age of marriage. Customary law further compounds these discrepancies in ages, because of the duality of modern law (civil code) and customary law.

In Ghana, where the minimum age of marriage is 18, if a child is forced into marriage an action may be brought before a competent court and the parents of the would-be-husband can be stopped from enforcing the marriage. However, such judicial efforts are dampened by certain socio-cultural practices – such as trokosi, which is practiced in some Ghanaian districts. Trokosi is a practice whereby a virgin girl who is yet to experience her first menstruation is given to a deity to atone for an offence committed by a relative. Although the laws of Ghana criminalise this practice, trokosi and similar practices weaken judicial efforts at discouraging child marriages.

While the Nigeria Federal Child’s Rights Act (CRA) of 2003 defines a child as one who is below the age of 18, the federal structure of the Nigerian government means that every state has its own definition of a child. Consequently, the definitions differ depending on the subject. The age of marriage, for example, is a highly controversial issue and varies between states. For instance, in Northwest and North-Central Nigeria, 14 years is the age of marriage.

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62 Section 52(1) 1981 Ordinance on Civil Matters. The law does not elaborate on what serious reasons would be taken into consideration and has left the matter open to speculation.

63 In Nigeria, the Children and Young Persons Act (CYP) was initially enacted as an ordinance in 1943. It has been subsequently amended through several legislations (i.e. Ordinances 44 of 1945; 27 of 1947; 16 of 1950 and the Laws of Nigeria 131 of 1954 and 47 of 1955 and Order in Council 22 of 1946). Intended as a national law (Cap 32 Laws of the Federation of Nigeria and Lagos 1958), provisions were made for their adoption as regional laws and subsequently as state laws. As a result, the law was extended to the Eastern and Western Regions of Nigeria in 1946 by Order-in-Council, No 22 of 1946. The law was enacted for the Northern Region in 1958 and constituted the Children and Young Persons Law, Cap 21 of the Laws of Northern Nigeria (1963). Lagos State also adopted the law in 1970 – Children and Young Persons Law (Cap 26 of the Laws of Lagos State).

64 See section 177, Child’s Rights Act 2003.

65 A draft Child’s Rights Bill, aimed at enacting into law in Nigeria the principles enshrined in the CRC and the ACRWC, was prepared in the early nineties. However, it was only after ten years with several Heads of Government and heated debates by Parliamentarians that the Bill was eventually passed into law by the National Assembly in July 2003. It was assented to by the President of the Federal Republic of Nigeria in September 2003, and promulgated as the Child’s Rights Act 2003. The Child’s Rights Act is a comprehensive piece of legislation which incorporates all the rights and responsibilities of children, consolidates all laws relating to children into one single legislation, and specifies the duties and obligations of government, parents and other authorities, organisations and bodies.
2.1.3.2 Sexual consent

The CRC and the ACRWC do not contain any specific provision related to the minimum age of sexual consent – that is, the age at which a child can, with her or his informed and voluntarily given consent, legally engage in sexual activities with another person. The CRC Committee does, however, recommends that States Parties provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the danger of early pregnancies, prevention of HIV, and the prevention and treatment of sexually transmitted infections.\(^{66}\)

There are differences in minimum ages of sexual consent across the study countries. In CAR, Ghana, Nigeria, and Togo, the minimum age of sexual consent is 16 years. In Benin, Cameroon, Mali, Niger and Sierra Leone, the minimum age of sexual consent does not exist. In the Gambia, there is no express provision for minimum age of sexual consent, but it can be deduced as 18 from the Children’s Act of 2005, which defines a child as anyone below the age of 18 and prohibits marriage with a child,\(^{67}\) seduction of a child,\(^{68}\) prostitution of a child\(^{69}\) and procurement of a child.\(^{70}\)

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\(^{66}\) UN Committee on the Rights of the Child, General Comment No 4. on Adolescent Health and Development, CRC/GC/2003/4, 1 July 2003, para 28.

\(^{67}\) Section 24.

\(^{68}\) Section 27.

\(^{69}\) Section 29.

\(^{70}\) Section 30.
2.1.4 Minimum age of employment and school leaving age

The CRC and the ACRWC require States Parties to set a minimum age of admission to employment, but without specifying the minimum age.⁷¹ The ACRWC makes a reference to the relevant provisions of the ILO Conventions, which States Parties should take into account. ILO Conventions 138 and 182 contain specific minimum ages for admission to employment. It should be noted that only a few of the countries under review did ratify the ILO conventions. The general rule is that the minimum age for work should be set at 15, allowing developing countries to set it at 14.

Directly linked to this minimum age is the minimum age for compulsory and free primary education. The CRC Committee has repeatedly recommended that States Parties avoid gaps between these two minimum ages. Compulsory primary education should be required until the age at which a child can be admitted to employment, in order to avoid situations whereby a child completes primary education at an age at which he or she is not allowed to work, because this may result in illegal child labour.

All the countries under review have a minimum age of employment; however only Benin, Burkina Faso, CAR, Ghana, Mali, Nigeria, and Togo have minimum ages for compulsory education. In Nigeria, however, the age at which a young person can legally work is set at 16 years, which is higher than the expected age of completion of compulsory basic education (which is 15 years). Such gaps leave children vulnerable to exploitation through illegal employment. Whilst section 82 of the Labour Code of Cameroon sets the legal minimum age of employment at 14 years in compliance with ILO Convention 138, the law also allows the Minister in charge of labour to grant a waiver of employment to a child below that age in view of local circumstances and the nature of the work to be accomplished. Similarly, Togolese law provides the minimum age of employment and completion of compulsory education at 15 years, save where derogation is granted by the minister in charge of labour. ILO Convention No. 138 provides provisions that allow children to engage in ‘light work’. The Convention states that children between the ages of 13 and 15 years old may do light work as long as it does not threaten their health and safety, or hinder their education or vocational orientation or training. The Convention also provides possible exceptions for developing countries, and allows them to set the minimum age for light work at 12 to 14 years.

The risk of child exploitation and abuse also exists in countries where there is no compulsory education, and is further compounded by lack of free education, as it is not possible to enforce compulsory education where it is not free.

2.1.5 Minimum age of criminal responsibility (MACR)

Both the CRC and the ACRWC require that States Parties set a minimum age for criminal responsibility, but without indicating what an acceptable minimum age would be. The discussion on what the minimum age of criminal responsibility (MACR) should be is often fraught with misunderstanding. The CRC Committee gave the following explanation:⁷² the MACR means that

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⁷¹ Article 32, CRC and Article 15, ACRWC.
children who commit an offence at an age below that minimum cannot be held responsible in a penal law procedure. Even very young children do have the capacity to infringe penal law, but if they commit an offence at an age below the MACR the irrefutable assumption is that they cannot be formally charged and held responsible in a penal law procedure. For these children, special protective measures can be taken, if necessary and if this in their best interest. The CRC Committee is of the opinion that a minimum age of criminal responsibility below the age of 12 is not internationally acceptable.\(^{73}\)

Cameroon has the lowest threshold for the age of criminal responsibility, at 10 years. All the other countries under review have set criminal responsibility at between 13 and 18 years, in line with international guidelines, which set the minimum age at 12. In Nigeria, however, while the Child’s Rights Act sets the minimum age for criminal responsibility at 18, there are discrepancies in the application of the law in various states across the country. For example, in the southeast of the country it is between 7 and 12 years; in the north-central region it is 12-18 years; and in the northwest it is between 14 and 21 years.

In addition to the minimum age, some countries also have a legal rule of *doli incapax*, whereby children are presumed to lack the capacity to discern right from wrong and to act in accordance with this understanding. However, the presumption is rebuttable upon the production of proof beyond reasonable doubt by the state. In other words, the state can overturn the operation of the presumption with appropriate evidence to show that the child has capacity.

\(^{73}\) Ibid.
Regardless of special measures, the minimum age at which criminal responsibility is attributable remains the basis upon which children are subject to the justice system. Thus, children as young as 10 in Cameroon can be held criminally responsible in national courts. Although neither the CRC nor the ACRWC specifies the minimum age of criminal responsibility, the UN Committee on the Rights of the Child, in its 2007 General Comment No. 10 on children’s rights in juvenile justice, sets the minimum age of criminal responsibility at 12 years, and calls for the abolishment of the use of the doli incapax presumption. Box 4 outlines the recommendations of the Committee in this regard.

**Box 4: Minimum age of criminal responsibility**

**General Comment No. 10: Children’s rights in juvenile justice**

Para 32 - Rule 4 of the Beijing Rules recommends that the beginning of MACR shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity. In line with this rule the Committee has recommended States Parties not to set a MACR at a too low level and to increase the existing low MACR to an internationally acceptable level. From these recommendations, it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.

Para 33 - At the same time, the Committee urges States Parties not to lower their MACR to the age of 12. A higher MACR, for instance 14 or 16 years of age, contributes to a juvenile justice system which, in accordance with article 40 (3) (b) of CRC, deals with children in conflict with the law without resorting to judicial proceedings, providing that the child’s human rights and legal safeguards are fully respected.

Using the above criteria, all the countries except Cameroon have a minimum age of criminal responsibility above the 12 year cut off age set by the Committee on the Rights of the Child.

**2.1.6 Conclusion on minimum age**

Legislative reform and policy frameworks to enhance the rights of children are underway in most of the countries under review. These include setting down a general age by which childhood ends, as well as minimum ages for various other activities and statuses, in conformity with international child law standards. The age disparities in minimum ages are sometimes gender-based, and individual country disparities on minimum age in different areas of law often hinge on cultural grounds; however, States Parties are obliged to close existing gaps and undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the CRC, the ACRWC and other international and regional instruments on children’s rights.
2.2 THE INCORPORATION OF GENERAL PRINCIPLES INTO NATIONAL LAW

2.2.1 Non-discrimination

Box 5: The principle of non-discrimination

**CRC – Article 2**

State parties **shall respect and ensure the rights set forth** in the present Convention to each child within their jurisdiction **without discrimination of any kind**, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

**ACRWC- Article 3**

Every child shall be entitled to the enjoyment of the rights and freedom recognised and guaranteed in this Charter **irrespective of the child’s or his/her parents’ or legal guardians’ race, ethnic group, colour, sex, language, relation, political or other opinion, national or social origin, fortune, birth or other status**.

The prohibition of discrimination contained in Article 2 of the CRC is very broad and requires state parties to review legislation, planning and education, and to raise awareness and disseminate information to address and redress disparities brought about by discrimination. This obligation addresses both legalised and *de facto* discrimination.

State Parties are encouraged by the CRC to take all necessary measures to ensure that customary law does not impede the implementation of general principles, notably through raising awareness among community members.

The study revealed that all the countries under review have a principle of non-discrimination in either the Constitution or other laws that is generally applicable to all citizens. In order to assess the applicability of the principle of non-discrimination in the countries under review, this principle is discussed below in the following thematic areas: discrimination based on gender; disability; ethnic origin or minority or indigenous status; and birth (for children born out of wedlock).

### 2.2.1.1 Discrimination based on gender

**a. Inheritance and property rights**

In Niger, only two issues of discrimination based on sex are noted. The first, which is based on cultural norms and practices, concerns the issue of succession rights due to Islamic belief, whereby the boy child is allowed to inherit double the girl child’s share of inheritance according to the 2004 law on Judicial organisation. This is despite Niger’s ratification of the CRC, the ACRWC and more specifically the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Attempts to reform this discriminatory practice have been met with considerable resistance from some Islamic leaders.

In the Gambia, discrimination against the girl child can be clearly seen in matters concerning inheritance and property under the Muslim personal laws. The sharing of property under Muslim law is based on the Fourth Chapter of the Holy Koran. Verse 11 reads as follows:
Allah commands you as regards your children (inheritance). To the male a portion equal to that of two females, if (there are) only daughters, two or more, the share is two thirds of the inheritance, if only one, her share is half. For parents, a sixth share of inheritance to each if the deceased left children; if no child, and the parents are the (only) heirs, the mother has a third. If the deceased left brothers (or sisters), the mother has a sixth.

In Cameroon, while the Constitution prohibits discrimination of any kind and proclaims equality between the sexes, cultural and traditional practices continue to hinder the application of the right to non-discrimination in national courts. For example, the Supreme Court of Cameroon confirmed a decision of a lower court that held that an illegitimate child could not succeed the deceased father if the latter had a legitimate child. In such situations, children are denied access to their parents’ property, with a negative impact on their chances for survival and well-being.

Since the introduction of the Sharia Penal Code in 1999 in some Northern Nigerian States (Bauchi, Borno, Gombe, Katsina, Kebbi, Jigawa, Niger, Sokoto, Yobe and Zamfara), the situation of children, particularly girls, remains a major source of concern. Many of the problems are deeply rooted in cultural traditional and religious practices, such as female genital mutilation, early marriage or child betrothal, tribal marking, autocratic child rearing practices, and female infanticide. It is important to note that Islamic law does not recognize children born out of wedlock.

Since the inauguration of a new Nigerian government in May 2007, only Niger State has abolished the Sharia Penal Code.

b. Education

In Ghana, while the Constitution provides that no person shall be discriminated against, the girl child has suffered discrimination in regard to education, against a backdrop of cultural relativism. In the Northern part of the country, for example, girls are often asked to drop out of school and get married, while boys are encouraged to remain in school. This practice is not unique to Ghana, and is practiced in many of the countries reviewed. The Government of Ghana has, however, taken policy steps and mechanisms to ensure that children – particularly girls – remain in school. For example, the Girls’ Education Unit was established to facilitate and advocate the education of the girl-child, to undertake regular sensitisation and awareness programmes, and to encourage families to send their girls to school. Similarly, in Togo steps have been taken to increase the enrolment of girls in schools by requiring girls to pay less school fees than boys, and further steps are also underway to eradicate fees in public schools altogether.

Eliminating gender discrimination has resulted in the growth of the number of female students in the education system in the Gambia. At the basic school level, girls are now at parity with boys. The Big Bang Education Campaign in 2002 focused specifically on rural areas, with the aim of reaching the last 10% of children not in school, and encouraging parents to enrol their daughters. In the same year, the President of the Gambia launched the President’s Empowerment for Girls Education Project (PEGEP), which provides

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74 Arrêt n° 1005 of 09/05/72.
sponsorship for girls in schools from grades 1 to 12. The Girls Education Sponsorship Trust Fund and the Girl Friendly School Initiative are additional programmes contributing to the increase in the enrolment and retention of girls in Gambian schools.

In Niger, as a result of cultural influences, schooling is preferably provided to boys, while girls are in many cases given out for early marriage.

Box 6: Protecting the girl child from non-discrimination in Nigeria

In all the countries under review, apart from actions taken via express Constitutional provisions in relevant child laws, Nigeria is the only country that has extensively regulated discrimination against the girl child. Policies that relate to non-discrimination include the National Policy on Education, the Universal Basic Education Act (2004), and the Education Sector Reform Act (2007). The Government has also established more schools for girls and the provision of scholarship schemes in favour of girls.

Also in existence are various state laws and edicts relating to harmful traditional practices, hawking, and withdrawal of girls from school for early marriage.

Presently, a Bill to protect the rights of women, the girl child and children has been drafted to remove any discrimination against the girl child. Nigeria has also set up national, zonal and local government task forces to remove any discrimination against the girl child.

2.2.1.2 Children with disabilities

The CRC, the ACRWC and, more recently, the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol all call upon States Parties to take all measures to ensure the full realisation and enjoyment of the rights of children with disabilities. Children with disabilities continue to remain invisible in laws and policies: in most African communities, children with disabilities do not participate in family activities, school, skills training, cultural and recreational activities and community and social life in general. This non-participation is not due to the inability of most disabled children to participate, but due instead to discriminatory practices and attitudes.

Discrimination may either be direct (for example where a disabled child is treated as inferior to a non-disabled child) or indirect (for example, where a national education policy provides for inclusive education without taking into account the fact that disabled children cannot attend mainstream school due to rigid admission standards, school buildings without steps, inaccessible toilets, etc.).

Benin and Cameroon have laws that protect the rights of persons with disabilities, particularly within the field of employment. The Gambia and Ghana are the only two countries in the study with laws that specifically address the rights of children with disabilities.
<table>
<thead>
<tr>
<th>Country</th>
<th>Legislation</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benin</td>
<td>Article 33 of the Labour Code states that employers who employ persons with disabilities are, for each such employee, exonerated from the employer’s part in the pensions and life annuities.</td>
<td>Under Beninese law, persons with disabilities have the right to special protection measures. Concerning employment, for example, the law forbids discrimination against people with disabilities and at the same time encourages employers to employ people with disabilities, through special measures.</td>
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<tr>
<td>Cameroon</td>
<td>Decree No. 90/1516 of 26 November 1990</td>
<td>The Decree prohibits discrimination between qualified disabled and non-disabled persons in recruitment and remuneration in public and private employment. The Decree states that a person’s disability should not be the cause for rejection of his or her candidature for employment.</td>
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<tr>
<td>The Gambia</td>
<td>Constitution of the Republic of the Gambia (1997) The Children’s Act 2005 ‘... recognising the special need of a disabled child, assistance extended shall be free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child and shall be designed to ensure the disabled child has effective access to and receives...health care services [and] rehabilitation services in a manner conducive to the child’s achieving the fullest possible social integration and individual development’.</td>
<td>The Constitution guarantees state and societal recognition and respect for the rights and dignity of people with disabilities, as well as protection from exploitation and discrimination. The Government of Gambia specifically recognises the special needs of children with disabilities within the Children’s Act. Recognising the difficulties faced by people with disabilities in accessing education, the Government, in its Education Policy (1998-2003), recognised the rights of people with disabilities to equal access to educational opportunities within the country. The Government has also established a multi-sectoral working group on childhood development, including children with disabilities. Furthermore, a community-based rehabilitation programme working with visually impaired children has been set up. Training is also provided by the Integrated Education Project on how to teach pupils with vision impairments, through teacher’s workshops on education for children with disabilities.</td>
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<tr>
<td>Ghana</td>
<td>Section 10 of the Children’s Act (Act 560 of 1998) provides special provisions for the treatment of children with disabilities. The Disability Act, 2006 (Act 715) provides for: the rights of persons with disabilities to family and social life; education for children with disabilities to develop to their maximum potential; and protection of children against exploitation and discrimination.</td>
<td>In Ghana there are two schools for the visually impaired, eight schools for the hearing impaired located in eight regions, and five special schools for the mentally challenged, all located in various parts of the country. However, the lack of adequate funds to purchase special equipment, teaching aids and educational materials hinders the full realisation of the rights of children with disabilities.</td>
</tr>
</tbody>
</table>
Discrimination against children and persons with disabilities is a serious problem in many African countries. Children and persons with disabilities are traditionally perceived as dependant individuals who evoke sympathy, if not pity, and who require societal protection and support to compensate for their disabilities. As such, persons with disabilities are predominantly seen as subjects of care rather than legal entities entitled to respect and full enjoyment of human rights. Children and persons with disabilities therefore remain hidden in the policy and legislative frameworks.

In 2001, the UN General Assembly took the historic step to set up an Ad-hoc Committee to consider a proposal of a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities. In 2003, the Ad-hoc Committee established a working group composed of government and NGO representatives, tasked with preparing a draft text of the Convention on the Rights of Persons with Disabilities (CRPD). The text was formally adopted by the General Assembly in December 2006, and opened for signature on 30 March 2007. The CRPD marks a ‘paradigm shift’ in attitudes and approaches to persons with disabilities, who are not to be viewed as ‘objects’ of charity, medical treatment and social protection, but rather as ‘subjects’ with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent, as well as of being active members of society. The CRPD and its Optional Protocol make specific reference to children with disabilities. The adoption of the CRPD represents a climax to a linear series of developments towards recognition of disability as a true human rights issue. The CRPD seeks to ensure that persons with disabilities, including children, can enjoy all human rights, with rights standards tailored to their typical needs. It is argued that the emphasis on independence and protecting and strengthening the dignity and autonomy of persons with disabilities should not be interpreted as downplaying the importance of care and rehabilitation services, which are also protected by the Convention.

**Box 7: Article 7 of the Convention on the Rights of Persons with Disabilities (CRPD): Children with disabilities**

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
2. In all actions concerning children with disabilities, the best interest of the child shall be a primary consideration.
3. States Parties ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age appropriate assistance to realise that right.

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In the 11 countries under review, Burkina Faso, Cameroon, Central African Republic and Mali have signed the CPRD, but only Burkina Faso and Mali have ratified it while the rest are encouraged to do so. Furthermore, the countries under review should incorporate the provisions related to children with disabilities provided in the CRC and the ACRWC, to ensure that the rights and wellbeing of this vulnerable group are realised.

2.2.1.3 Children of minorities, ethnic groups or indigenous peoples

Article 30 of the CRC provides that:

...[in] states in which ethnic, religious or linguistic minorities of persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

The elements of Article 30 are also reflected in the non-discrimination principle, which calls for indigenous children’s full enjoyment of their rights, without discrimination. The existence of Article 30 indicates a concern regarding the need for special safeguards to ensure the enjoyment of indigenous culture, religion and language. It also highlights the importance of the indigenous child enjoying these elements ‘in community with other members of his or her group’. Indigenous people and children often experience discrimination, and this can lead to various forms of exclusion and marginalisation, including cultural exclusion, economic exclusion and political marginalisation.

In its concluding observations on Cameroon’s periodic report in 2001, the CRC Committee was deeply concerned about the situation of children belonging to marginalised groups (such as Pygmy children) as a result of logging policies. While noting that discrimination is prohibited under the Constitution, the Committee was deeply concerned ‘at the disparities in the enjoyment of rights experienced by children belonging to vulnerable groups’, including pygmy children and children from other marginalised groups. Of particular concern was:

...the lack of respect for almost all their rights, including the rights to health care, to education, to survival and development, to enjoy their own culture and to be protected from discrimination.

The Committee urged the Government of Cameroon to:

...gather further information on the Pygmies and other marginalised groups of the population, and to elaborate a plan of action to protect their rights.

The government has taken some steps to address some of the concerns. It has sought to prevent discrimination against pygmy children as part of its wider efforts to prevent discrimination against children of all marginalised groups, including the Bororos, who are rural nomadic groups. These initiatives were spearheaded by a special department of the Ministry of Social Affairs, which ran a programme for socio-economic rehabilitation of marginalised populations, including a plan of action for the education of children from those populations.

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76 UN Committee on the Rights of the Child, Concluding Observations on Cameroon’s Initial Report, CRC/C/15/Add.164, 6 November 2001, para 69. Other minority groups include the Bororos and the Mafa people.
77 Ibid.
78 Ibid.
79 Ibid, para 70.
In the context of Nigeria, too, the CRC Committee expressed concern that:

...de facto discrimination of children prevails and is tolerated in the State Party, in particular vis-à-vis... children of minority groups.80

As a result, the CRC Committee requested that the Government of Nigeria provide:

...more information in its next periodic report on measures taken to give practical effect to the principle of non-discrimination as per Article 2 of the Convention, especially in relation to ... children of minority groups.81

Many of the other countries under the study also have either de facto or de jure problems of discrimination against children of minority or indigenous groups.

2.2.1.4 Children born out of wedlock

In four of the countries reviewed, children born out of wedlock experience discrimination, especially in relation to succession rights, where customary practices prevail. This is particularly true for girls. Children also experienced discrimination on grounds of parentage and affiliation rules which apply to children born out of wedlock.

Table 3: Selected examples of provisions on children born out of wedlock

<table>
<thead>
<tr>
<th>Country</th>
<th>Legislation</th>
<th>Comment</th>
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<tbody>
<tr>
<td>Cameroon</td>
<td>Under customary law, a girl child is not allowed to succeed her father.</td>
<td>While the Constitution and other laws that guarantee the right to non-discrimination take precedence over customary law, this is not always the case in practice. This poses serious setbacks to legislative and policy efforts to curb discrimination, thereby affecting the rights and wellbeing of the girl child in areas governed by customary laws and traditions. Moreover, legal redress for victims of discrimination is often not pursued by victims, due to a lack of awareness of legal remedies, and they consequently follow customs and traditions rather than the law.</td>
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<td></td>
<td><strong>Section 301 of the French Civil Code (1803) and Section 76 of the 1981 Ordinance in Cameroon</strong> recognise the rights of a deserted woman and her children to alimony for herself and her children.</td>
<td>Widespread ignorance of the law and the lack of awareness of legal provisions with respect to the maintenance of children born out of wedlock remain major setbacks. Children born of incestuous relationships are precluded from enforcing their succession rights save through their mothers. Moreover, legal action for alimony by a woman deserted with minor children is open only to married women.</td>
</tr>
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</table>


81 Ibid, para 29.
2.2.2 The best interests of the child

**Box 8: The best interest principle**

**CRC – Article 3**

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

**ACRWC – Article 4**

*In all actions concerning the child undertaken by any person or authority, the best interests of the child shall be the primary consideration.*

2.2.2.1 The best interest principle in the countries reviewed

The best interest principle is a fundamental principle that governs disputes affecting children and encompasses all the human rights of children. The principle of the best interests of the child has long been recognised by civil and common-law systems in the context of family law and child welfare legislation. Like the principle of non-discrimination, the best interest principle cuts across the landscape of children’s rights in order to ensure the full realisation of children’s rights. These two principles should be exercised together.

All the countries reviewed incorporated the best interests principle in varying degrees within their child rights legislation, including their respective Constitutions. However, in some of the countries, lack of sufficient information limited the extent to which the principle was applied.
In Togo, the best interest principle has received commendable attention. The principle is required to be at the centre of any decision concerning the child, in every circumstance. According to legislation in Togo, the best interest of the child must be understood as everything that is of some advantage to the child, to his mental, moral, physical and material wellbeing – and must be taken into account in any situation. Article 8 of the Children’s Code (2007) states that the best interest of the child is self-imposing in every action or decision concerning a child, whether by parents, public or private institutions of protection, the courts, administrative authorities, or legislative bodies. The family is considered the first circle of protection of the child, and the legislature in Togo affirms the principle of the right of every child to be brought up by their parents.

The imperative of the best interest of the child can also justify separation of parents from their children. Parents can lose their parental authority in cases related to children in danger or to the security, health or morality of the child. In cases of divorce, whatever the age of the child, custody is accorded to the man or the woman with regard to the best interest of the child.

In Sierra Leone, the Child Rights Act of 2007 promotes the best interest of a child under section 3(1). This section provides that the fundamental principle to be applied in the interpretation of the Children’s Act is the best interest of the child. Furthermore, in determining the best interest of the child, a person, court or other authority shall take into account the general principles and the spirit of the entire CRC and the African Children’s Charter.

The opinion of the child is as important as his/her best interest, as regards the measures to be taken into account. Thus the best interest of the child supposes children’s views are considered in various areas including education, religion, orientation, and social life. In adoption cases, the child has the right to consent to his own adoption.

In Nigeria, the 2003 Child’s Rights Act provides that:

...in every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority, the best interests of a child shall be the primary consideration.

In Niger, the best interest principle is prominent in divorce proceedings. Here the judge must conduct an investigation to gather information on the material and moral conditions of the child’s parents under divorce proceedings before ruling on the matter of their custody. During this investigation, the social worker gets the opinion of the child regarding their deliberate choice to live with one or the other of the parents. Before ruling on the custody, the judge must hear the child without the presence of the parents. In practice, therefore, judges are legally mandated to take the child’s best interests, in conformity with CRC. However, if the divorce ruled by the judge has the merit of preserving the interests of the child, it is different in the case of repudiation, which is a unilateral act of the husband to break the marriage; a bad interpretation of the Islamic code in these cases encourages the husband to have custody of children without legal proceedings.

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83 Ibid, Article 174.
85 Child Rights Act (2007), section 3(2).
In Mali, the principle of the best interests of the child is of primary consideration in all measures taken by the courts, administrative authorities, and public and private social protection institutions. The 2002 Child Protection Code requires that decisions concerning the child should be geared towards keeping the child in their family environment and avoiding separation from the parents, except where it appears to the judicial authority that this separation is in the best interest of the child. Every child separated from their parents has the right to remain in regular contact with them as well as with other family members, save where a competent court decides otherwise considering the best interests of the child. When considering the international adoption of a Malian child, this must be done in the best interest of the child. In juvenile justice proceedings, the children’s judge is required to consider the best interests of the child, including the personality of the child and the appropriate measures for his or her re-education and protection.

The principle of the best interests of the child is applied at national level in Cameroon through a set of criminal, civil, social and administrative measures. These measures seek to preserve the rights of the child especially in the domains of education and health. The principle is also visible in criminal, civil and labour legislation currently in force in Cameroon. Even within the two main anticipated legislations involving children’s rights, the draft Persons and Family Code and the draft Child Protection Code, the principle is frequently referred to in relevant provisions as the standard. Within the criminal law domain in Cameroon, the principle addresses substantive and procedural issues. On criminal issues, Chapter V of Book II of the Penal Code punishes ‘offences against children and the family’. These offences include abortion, prostitution, corruption of youth, indecency to a child under sixteen, homosexuality, access to alcoholic drinks, assault on children, kidnapping, kidnapping by fraud or force, forced marriage, failure to return a child, abuse in respect of bride price, desertion, and incest.

With respect to procedural issues, special protective measures in the child’s interests are taken into consideration throughout the penal process. Section 27 (2) of the Penal Code in Cameroon provides that no woman who is with a child or who has recently delivered may begin to serve her sentence until six weeks after delivery.

Section 27 (4) of the Penal Code further states that:

Where a husband and wife have been sentenced for the same or different offences to imprisonment for less than a year, and are not in custody at the time of the sentence, and show that they have a fixed common residence and a child under the age of 18 supported by them and in their charge, the sentence of one may be suspended until expiry of the sentence on the other.

In Francophone Cameroon, the only law that expressly makes reference to the best interest principle is the French Civil Code of 1804 (Art. 302). The principle is applied in relation to custody of children and in addition, adoption can only take place if it is in the interest of the child. The rule of ‘inheritance reserve’ (réserve héritéditaire) allocates three quarters of the legacy of the estate exclusively to the children. The law also requires the award of alimony for the upkeep of children.

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86 The Penal Code, Article 337.
In Ghana, the Children’s Act and the Constitution state that the best interests of the child shall be the primary consideration of the court, persons, institutions, or other body in any matter concerned with the child. However, concern has been raised that ‘the use of this principle is dependent on the sensitivity of the officials of the particular institution concerned and may not be systematic’.

In the Gambia, section 29(1) of the 1997 Constitution provides that children shall have the right from birth to a name, the right to acquire nationality, and subject to legislation enacted in the best interests of the child, to know and be cared for by parents. During maintenance proceedings, the Children’s Act makes it mandatory that the best interest of the child is the guiding principle when dealing with children.

2.2.2.2 Budgetary commitments in implementing the best interests of the child

In most of the countries under review, there is no precise information on budgetary allocations or on administrative and decision-making processes in relation to the best interest principle.

In Benin, Burkina Faso, Mali and Niger, for example, there are no specific budgetary allocations for the implementation of children’s rights. In CAR, budgetary allocations for children’s issues have remained largely insufficient, which explains to a great extent the in effectiveness of children’s rights in the country. In 2008 for instance, budgetary allocation to education was just 10 percent of the national budget. Similarly, in the Gambia, there are limited budgetary allocations for the implementation of the provisions of the Children’s Act (such as the establishment of regional Children’s Courts and rehabilitation facilities for child offenders). Lack of enforcement, along with constraints on budgetary resources and social-cultural factors such as widespread illiteracy and belief systems or practices, reinforce the subordination of children. The poor allocation of resources - both human and financial - for the implementation of laws on children still persists in the Gambia. Thus, there is need for budgetary allocation to the relevant Department of State for effective implementation.

The Cameroon government’s budgetary allocations for the Ministry of Social Affairs have seen steady increases following the CRC Committee’s concerns and recommendations over insufficient attention to Article 4 of the Convention regarding the implementation, to the maximum extent of available resources, of economic, social and cultural rights of children. However, it is important to note the specific data on financial allocations to children’s affairs and how it is spent in the Ministry of Social Affairs: pursuant to the 1998 law, education is financed by budgetary allocations to

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88 UN Committee on the Rights of the Child Concluding observations on Ghana’s Second Periodic Report, CRC/C/GHA/CO/2, 17 March 2006, para 28.
89 Section 3(2) of the Children’s Act in the Gambia further provides that ‘a court, institution, person or any other body shall, in determining what is the best interest of child, have regard, in particular, to: Any harm that the child has suffered or is at risk of suffering; The ascertainable wishes and feelings of the child concerned, considered in the light of his or her age and understanding; the child’s physical, emotional and educational needs; the likely effect of any changes in the child’s circumstances; the child’s age, sex background and any other circumstances relevant in the matter; and where relevant, the capacity of the child’s parents or guardian or any other person involved in the care of the child in meeting the child’s needs’.
91 For instance, in 2008, the budget of the Ministry of Social Affairs stood at CFA 120 billion and went up to 180 billion in 2009.
local and regional authorities, contributions from educational partners, grants and legacies, and any other lawful funding. In Ghana, the period 2002 to 2006 saw a significant increase in total expenditure for service delivery in education, an expansion that may have improved access of the poor to educational services. In Nigeria, budgetary allocations towards promotion of children’s rights are subsumed into the budgets of the overarching Ministry of Women Affairs, under which the Children’s Bureau is located. Minus overheads and sundry recurring expenditures, the meagre resources allocated to the Bureau (usually less than 8% of the Ministry’s allocation) are further subjected to inefficient budget management.

The ACPF publication African Report on Child Wellbeing 2008: How child friendly are African governments?, provides insight into the wellbeing of children in Africa and assesses the extent to which governments meet their obligations, through analysis of a child-friendliness index based on more than 40 indicators. Out of 52 African governments, Burkina Faso ranked 3rd, and was the most child-friendly of the 11 countries reviewed in this study in terms of its budgetary commitments to children in 2004-2005. In terms of the 11 countries in this study, Burkina Faso was followed by Nigeria (16th in Africa), Mali (17th), Niger (19th), Togo (23rd), Ghana (25th), Chad (29th), Gambia (36th), Sierra Leone (43rd), Benin (46th) and CAR, the least child friendly (47th). In the 2011 African Report on Child Wellbeing which was under the theme of budgeting for children, Niger was among the top countries allocating the maximum amount of available resources to children in Africa. Sierra Leone was on the list of countries allocating the minimum of available resources to children while the rest of the study countries allocated a fair amount of available resources for children.93

2.2.3 Right to life, survival and development

Box 9: The right to life, survival and development

**CRC – Article 6**

States Parties recognise that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child.

**ACRWC- Article 5**

Every child has an inherent right to life. This right shall be protected by the law.

States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.

The death penalty shall not be pronounced for crimes committed by children.

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The right to life, survival and development is one of the four cardinal principles of the CRC and the ACRWC. It relates to life expectancy, child mortality, immunisation, malnutrition, preventative diseases and other related issues.

The ACRWC provides a positive obligation to States Parties to ensure that the rights to life, survival and development are protected by law. This imposes a special obligation on states to pass legislation that treats every act that a person or state institution commits which deprives a child of his or her life as a criminal offence; and to introduce laws that will reduce the causes of child mortality. The CRC and the African Children’s Charter mandate States Parties to ensure that the rights to life, survival and development to the maximum extent possible. This implies that in order to realise socio-economic rights, there have to be resources available, and the rights must be progressively realised.

The term ‘survival’ covers a child’s right to life and the right to meet the needs that are the most basic in a child’s existence. These needs include adequate standard of living, shelter, nutrition, and access to medical services. Amongst other things, states are urged to take all possible measures to improve neo-natal care for mothers and babies, reduce infant mortality, and improve conditions that promote the wellbeing of children. The survival and the development of a child therefore depends on the health conditions and the socio-economic and cultural environment in which the child grows. Harmful traditional practices such as infanticide greatly increase child mortality rates. Two other rights are inextricably tied with the implementation of the right to survival and development: namely, the right to health and the right to education.

Most of the countries under review have policy and legislative frameworks to protect the right to life, survival and development. Key obstacles to the realisation and implementation of some of these rights are linked to economic constraints. The following tables highlight some legal frameworks in study countries with respect to the right to life, survival and development.

### Table 4: Selected examples of legislative provisions protecting the right to life, survival and development

<table>
<thead>
<tr>
<th>Country</th>
<th>Legal provisions protecting the right to life</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benin</td>
<td>Article 7, Beninese Constitution states that ‘the rights and duties proclaimed and guaranteed by the African Charter on the Human and People’s Rights... are an integral part of the present Constitution and of the Beninese Law’. Article 4 further provides that ‘the Human Person is inviolable. Any human being has the right to the respect of his life and to the physical and moral integrity of his person. No one can be arbitrarily deprived of this right’.</td>
</tr>
<tr>
<td></td>
<td>Article 9 of the Constitution states: ‘Every human being has the right to development and to the complete fulfilment of his person in his material, temporal, intellectual and spiritual dimensions provided he does not violate other people’s rights or breach public order and morality’.</td>
</tr>
<tr>
<td></td>
<td>Article 1, Beninese Code of Persons and Family ‘the right to life and to physical and moral integrity is recognised for the child straight from conception subject to cases excepted by the law’.</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td>The Constitution of 11 June 1991 recognises the right to life in Article 2: ‘...the protection of life, safety and physical integrity are guaranteed...’</td>
</tr>
<tr>
<td>Country</td>
<td>Legal provisions protecting the right to life</td>
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<tr>
<td>-------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Cameroon</td>
<td>The Preamble of the Constitution affirms the right to life of every citizen. Under Cameroonian Criminal Law, a child cannot be subjected to the death penalty.</td>
</tr>
<tr>
<td>Central African Republic</td>
<td>Article 6, paragraph 1 of the Constitution guarantees children’s right to survival and development.</td>
</tr>
<tr>
<td>The Gambia</td>
<td>The 1997 Constitution, Section 18(1) provides that ‘...no person shall be deprived of his or her life intentionally except in the execution of a sentence of death imposed by a court of competent jurisdiction in respect of a criminal offence for which the penalty is death under the laws of the Gambia’.</td>
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<tr>
<td></td>
<td>The Criminal Code, Section 198, makes it an offence punishable by life imprisonment wilfully to destroy the life of a child capable of being born alive even before it has an existence independent of its mother. Section 140 of the Criminal Code, makes it an offence to abort a child where the mother faces no immediate health risk or threat to her own survival. Sections 197 &amp; 198 prohibit infanticide and child destruction respectively and impose a maximum punishment of life imprisonment for both offences. Sections 155, 156 and 157 prohibit desertion of children below the age of 14. Neglecting to provide food to any child of tender age is a serious offence.</td>
</tr>
<tr>
<td></td>
<td>The Children’s Act 2005, Section 6, states that ‘every child has the right to survival and development.’</td>
</tr>
<tr>
<td>Ghana</td>
<td>The 1992 Constitution of the Republic of Ghana, Article 13(1)provides that ‘no person shall be deprived of his life intentionally except in the exercise of the execution of a sentence of a court in respect of criminal offence under the laws of Ghana of which he has been convicted’.</td>
</tr>
<tr>
<td>Niger</td>
<td>Article 11 of the Constitution of August 9th 1999 states that ‘everyone has the right to life, survival, security physical and mental integrity, education and instruction in the conditions defined by law’.</td>
</tr>
<tr>
<td>Nigeria</td>
<td>Article 33 (1) of the 1999 Constitution states that ‘every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria’.</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>Section 23 of the Child Rights Act 2007 provides that every child has the right to life and maximum survival and development, and goes on to state that it should be ‘the primary responsibility of parents to provide support to their children in the enjoyment of the rights referred to in subsection (i), but they may be assisted by the state in case of need’.</td>
</tr>
<tr>
<td>Togo</td>
<td>Article 13 paragraph 2 of the Constitution, provides that no one can be arbitrarily deprived of his freedom or life. Article 7 of the Children’s Code 2007 states ‘the fundamental and essential right of the child is the right to life’.</td>
</tr>
</tbody>
</table>
### Table 5: Selected examples of policy and programmatic interventions on the right to life, survival, and development

<table>
<thead>
<tr>
<th>Country</th>
<th>Policy or programmatic interventions on life, survival and development</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cameroon</strong></td>
<td>The following programmes have been put in place in Cameroon for the implementation of the integrated management of child diseases.</td>
</tr>
<tr>
<td></td>
<td>• Extended Immunisation Programme</td>
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<tr>
<td></td>
<td>• National Programme for the Promotion of Breastfeeding</td>
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<tr>
<td></td>
<td>• Diarrhoeal Diseases Control Programme</td>
</tr>
<tr>
<td></td>
<td>In addition, the National AIDS Control Plan pays particular attention to the health of adolescents.</td>
</tr>
<tr>
<td><strong>Nigeria</strong></td>
<td>The Federal Government has put in place a number of sectoral and tailored health programmes for treatment, immunisation and prevention institutions. These include:</td>
</tr>
<tr>
<td></td>
<td>• The National Health Policy of 1988</td>
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<tr>
<td></td>
<td>• Maternal and Child Health (MCH) Policy (1994)</td>
</tr>
<tr>
<td></td>
<td>• National Immunisation Policy and Standards of Practice (1996), revised 2006</td>
</tr>
<tr>
<td></td>
<td>• National Acute Respiratory Infections Programme</td>
</tr>
<tr>
<td></td>
<td>• National Policy and Plan of Actions, 1991–1995</td>
</tr>
<tr>
<td></td>
<td>• Breastfeeding Policy (1999)</td>
</tr>
<tr>
<td></td>
<td>• National Reproductive Health Policy and Strategy (2001)</td>
</tr>
<tr>
<td></td>
<td>• National Reproductive Health Strategic Framework and Plan (2002-2006)</td>
</tr>
<tr>
<td></td>
<td>• National Policy on Population and Sustainable Development (2001)</td>
</tr>
<tr>
<td></td>
<td>• National Child Health Policy (May 2005)</td>
</tr>
<tr>
<td></td>
<td>• National Guidelines and Standards of Practice on Orphans and Vulnerable Children (2007)</td>
</tr>
<tr>
<td></td>
<td>• National Health Financing Policy (2007)</td>
</tr>
<tr>
<td></td>
<td>• The National Framework for Monitoring and Evaluation of Malaria Control in Nigeria (2007)</td>
</tr>
<tr>
<td></td>
<td>• A Water Supply and Sanitation Policy (2000)</td>
</tr>
<tr>
<td></td>
<td>• Fortification of Food with Vitamin A Policy</td>
</tr>
<tr>
<td></td>
<td>• National Programme of Action for the Survival, Protection, and Development of the Nigerian Child (1992)</td>
</tr>
<tr>
<td></td>
<td>• National Policy on Women (2000), which strives to enhance the status of women</td>
</tr>
<tr>
<td></td>
<td>• The maternal and child health (MCH) component of the National Primary Health Care Development Programme, aimed at improving the health status of women and children.</td>
</tr>
<tr>
<td><strong>Burkina Faso</strong></td>
<td>The Government of Burkina Faso has adopted and implemented a number of plans and policies that directly or indirectly relate to the right to life, survival and development of the Burkinabe child. These include:</td>
</tr>
<tr>
<td></td>
<td>• The text on sustainable human development policy for the period 1995 – 2005. Its purpose was to focus development on key areas such as access to education, training, medical care, basic food and drinking water.</td>
</tr>
</tbody>
</table>
Despite the above-mentioned interventions, West and Central Africa continues to have some of the highest infant and maternal morbidity and mortality rates in the world. Child survival in the region is threatened by nutritional deficiencies and illnesses, particularly malaria, diarrhoea (which remains one of the most common causes of infant deaths and the main cause of under-five mortality), acute respiratory infections (ARI) such as pneumonia, and vaccine-preventable diseases, which account for the majority of morbidity and mortality in childhood.

The charts below examine the under-five mortality rates in different sub-regions. The findings are compelling. Of the four African sub regions, West and Central Africa has made the least progress in reducing its numbers of under-five deaths since 1990. Burkina Faso, Mali, Niger, and Sierra Leone have among the highest rates of child mortality in West Africa and in the world.94

In Benin, with an infant population of 4.4 in 2004, only 33% of that population was using adequate sanitation. However, the National School Health Policy has translated the desire of government to enable children to enjoy the right to health and access to health services, as recommended by Articles 24 of CRC and 14 of the ACRWC. This policy was adopted in 2006, and undertakes to improve the health status of schoolchildren generally.

Within this framework, free systematic medical examination has been instituted for children in the fifth year in all state schools in the country. Those who are in the EDUCOM (a specific programme

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<table>
<thead>
<tr>
<th>Country</th>
<th>Policy or programmatic interventions on life, survival and development</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>• The National Plan of Action for the survival, protection and development of the Child.</td>
</tr>
<tr>
<td></td>
<td>• The creation of a children’s fund. (Ref. Decree No. 99-80 of 6 April 1999 on the organisation and operation of the fund). This fund is intended to help ensure the survival, protection and development of children whose life is in danger, such as: orphans; extremely poor children with disabilities; children of disabled parents who are extremely poor; children abandoned at birth; and children from extremely poor single-parent families.</td>
</tr>
<tr>
<td></td>
<td>• The adoption of Decree No. 96-412/PRES/PM/MAS/MEF of 13 December 1996, establishing a committee for monitoring and evaluating the National Plan of Action for the Protection and Development of the Child.</td>
</tr>
<tr>
<td></td>
<td>• The adoption of Decree No. 96-412/PRES/PM/MAS/MEF of 13 December 1996, establishing a committee for monitoring and evaluating the National Plan of Action for the Protection and Development of the Child.</td>
</tr>
<tr>
<td></td>
<td>• The Ten-Year Plan of Action for the Development of Basic Education 2001–2010</td>
</tr>
<tr>
<td></td>
<td>• The strategic framework for the care of orphans and other vulnerable children adopted in 2005 for the period 2006–2015.</td>
</tr>
</tbody>
</table>

To these policies and plans must be added the adoption of sectoral plans for education and health.
reserved for children in poor areas in Benin) have two medical examinations a year. One medical examination a year has also been instituted for teachers all over the country, to enable them to enjoy good health and to assume their responsibility of teaching. Annual vaccination campaigns against childhood diseases are also regularly organised in schools. However, improving medical coverage and access to quality health care remains a major challenge in the country. In many rural and remote areas of the country, many children have no access to schools, potable water or adequate nutrition. The lack of the requisite human and financial resources to implement government policies also has major implications on children’s rights to health and access to health services.

The CRC Committee has noted that the right to life, survival and development is unduly threatened by the difficult socio-economic realities of some of the countries in the West and Central African region. The Committee encourages States Parties to reinforce their efforts to provide greater protection and support to ensure the realisation of this right.

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Africa’s Declaration and Plan of Action for an Africa Fit for Children (2001) and the Call for Accelerated Action on the Implementation of the Plan of Action Towards an Africa Fit for Children (2008-2012) both make extensive reference to the survival and development of African children. The Declaration and Plan of Action sets out measures to ensure that every child in Africa has a good start to life, and can grow and develop in a ‘child friendly, nurturing environment of love, acceptance, peace, security and dignity’.

To enhance the life chances of Africa’s children, the Declaration and Plan of Action urges African governments to:

a) Strengthen health systems in order to provide good and quality maternal and child health services and develop health centres and hospitals that are child friendly, in line with the Africa Health Strategy

b) Scale up essential interventions to reduce maternal mobility and mortality as well as neonatal mortality

c) Scale up a minimum package of proven childhood interventions, based on successful strategies such as Accelerated Child Survival and Development (ACSD) and Integrated Management of Childhood and Neonatal Illnesses (IMNCI), as part of national health policies and plans, poverty reduction strategies and health sector reforms geared to meet the Millennium Development Goals (MDGs)

d) Support family and community-based actions that enhance children’s health, nutrition and wellbeing, including through provision of safe drinking water, improved sanitation and hygiene, as well as through the use of appropriate young feeding practices and food security measures.

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The HIV epidemic is a major threat to child survival in sub-Saharan Africa. Nearly 90 per cent of global paediatric cases of HIV infection and most deaths as a result of AIDS occur in this region.97 More than 400,000 children under 15 were newly infected with the virus in 2007, mostly through mother-to-child transmission (MTCT).98 Once a pregnant woman is infected, there is a 35 per cent chance that, without intervention, she will pass the virus on to her newborn during pregnancy, birth or breastfeeding. Preventing MTCT of HIV and identifying and providing treatment to infected mothers and children should be a key priority for all governments in Africa. Antiretroviral drug therapy can greatly reduce the chances that transmission will occur, and is essential to stemming the rise in child mortality in countries where AIDS has reached epidemic levels.

The Declaration and Call for Action advocates for measures to overcome HIV and AIDS, including scaling up universal access to HIV and AIDS prevention, treatment, care and support; programmes for the prevention of mother-to-child transmission; and support for initiatives to foster positive attitudes towards those affected by HIV/AIDS.

2.2.4 Children’s right to participation

Box 10: Children’s right to participation

**CRC – Articles 12 and 13**

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative of an appropriate body, in a manner consistent with procedural rules of national law.

**ACRWC – Article 7**

Every child who is capable of communicating his or her views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as prescribed by laws.

One of the most innovative features of the CRC, and a radical development in recent years, is the recognition of the child’s right to participate and be heard at all levels. This principle must be respected in matters affecting individual children, matters affecting specific groups of children, and matters of concern to children generally, as part of the community or society. Many African countries recognise that the right of children to be heard is a new concept, and that tradition and culture are obstacles to recognising this right.

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The Children’s Parliament remains a key initiative through which children can assemble and express their views. Nearly all the countries reviewed have established a children’s parliament, with the exceptions being CAR and Sierra Leone. Cameroon, the Gambia, and Niger have put in place youth parliaments. Meanwhile, in Ghana, a child parliament as such has not been established, but mock child parliaments are held under the auspices of the Ministry of Children and Women’s Affairs.

Cameroon, Ghana and Togo have instituted legislative mechanisms that recognise the right of children to be heard in legal and administrative matters in broad terms, without specifying a specific age that gives the competent authorities discretion to determine when the child is mature enough to be heard. The table below highlights examples of child participation mechanisms in the countries reviewed, and examples of children’s participation in civil and criminal proceedings.

### Table 6: Selected examples of child participation mechanisms

<table>
<thead>
<tr>
<th>Country</th>
<th>Mechanism</th>
</tr>
</thead>
</table>
| Benin      | In 2003, Benin instituted a Children’s Parliament in Porto Novo, with branches all over the country. Although it enjoys no autonomy, the Parliament enables children to participate in the assessment of their problems and find solutions, as well as to carry out actions to affect policy on issues concerning their rights.  
Benin also has an association of children and young workers with the task of defending the interests of young workers. During the last session of the second legislature in 2007, child parliamentarians issued an open letter affirming, amongst other things, their strong desire to constitute themselves into a ‘junior association’ on the basis of a 1905 law.  
In an open letter to government authorities, children declared that ‘...we want to be autonomous; capable of exercising in our institution, the children’s parliament, sovereignty without interference; [and to] succeed in our mission’. |
| Burkina Faso | A Children’s Parliament was set up in 1997. The Children’s Parliament is regularly consulted on decisions affecting children.  
Children in Burkina Faso are actively involved in certain activities organised for them, especially during high-level meetings on children’s rights, and during radio and television programmes in which they participate as stakeholders. While children do not participate in criminal proceedings, there are no cultural practices that prohibit the involvement of children.  
Apart from the limited resources allocated to the Children’s Parliament for its function, there are no financial resources allocated to support the involvement of the children in law reform processes that concern them. |
| Cameroon   | The government of Cameroon has established a free and democratic forum for integrating children in the process of reformation of children’s rights.  
In 1998 the Children’s Parliament was created. Child Parliamentarians produce their own periodic journals – *Le journal des juniors* (with the help of UNICEF) and *Among Youths* (funded by the Global Fund to Fight AIDS, Tuberculosis and Malaria) – through Care Cameroon, in which they discuss children’s rights and issues. |
<table>
<thead>
<tr>
<th>Country</th>
<th>Mechanism</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cameroon</td>
<td>A Cameroon Radio and Television (CRTV) campaign enables children to speak to other children and to members of their communities about what they think, feel and wish. The National Youth Forum was formed in April 2008, aimed at identifying issues affecting the youth and serving as a platform for dialogue with government in order to tackle problems thereby diagnosed. Freedom of association is enhanced in Cameroon by virtue of the 19 February 2001 decree on the organisation of public educational establishments and duties of school administrators. This decree makes provision for students’ clubs and associations that can be freely set up in schools, and for which membership is free. Cameroon hosted the TUNZA-UNEP African Regional Conference of Children on the Environment in 2007, which brought together about 300 children from 35 African countries and Norway, who exchanged ideas on the environment and planted 500 trees in Yaoundé. Children can also actively participate in civil and criminal proceedings in Cameroon. In criminal proceedings, children participate as much as possible in administration and judicial proceedings affecting them, as is provided for by the juvenile justice system. Under section 183 of the Evidence Act, a child can give evidence – but not in open court, only in the judges’ chambers, and the court must be satisfied that the child understands the questions put to him and can answer. However, the evidence of the child, by reason of his tender age, usually requires corroboration (as in sexual offences) in both civil and criminal cases. Children cannot sue by law, but their parents or some other adult can speak for them. Children’s governments and municipal councils of children and young people have been set up in places such as Douala, Yaoundé, Ngaoundéré and Bertoua, with the support of UNICEF.</td>
</tr>
<tr>
<td>The Gambia</td>
<td>The Constitution of the Gambia upholds the right of everyone, including children, to freedom of association and peaceful assembly. Children enjoy a wide range of youth clubs and associations, and participate in activities and gatherings of their choice. Many political parties in African countries have youth wings that promote the ideals of the various political parties, and responsible governance. Children have adopted the Constitution to set up a Children’s National Assembly of the Gambia. The National Youth Parliament, founded in 2002, meets twice a year to discuss issues of relevance to children. All schools – basic and secondary – have student councils or bodies that participate in school management and administration.</td>
</tr>
</tbody>
</table>

99 Articles 31 and 44.
### The Gambia

- The Gambia participates in the International Children’s Day of Broadcasting (ICDB), and children have publicly met with the president of The Gambia as part of the celebration, demonstrating high-level support for the importance of listening to children’s views.

- The Evidence Act 1994 allows children to testify in judiciary proceedings without being sworn on oath; however there is a precaution in safeguarding such testimony, by making such evidence admissible only if there is further evidence.

- Section 16 of the Children’s Act 2005 provides that ‘...a child has the right to participate in sports or in positive cultural and artistic activities or other leisure activities’. Section 17 of the Act states that a child capable of forming views has the right ‘to express an opinion, to be listened to, and to participate in decisions which affect his or her well-being’.

- Section 72 (1) (f) of the Children’s Act provides that a child has the right to legal representation and legal aid at the state’s expense. Under Section Sec 29 (5A) (c), the Criminal Procedure Act also provides that a child deprived of his liberty is entitled to legal representation and must be allowed to get it or be provided with it at the state’s expense.

### Ghana

- Section 11 of the Children’s Act 560 provides that ‘no person shall deprive a child capable of forming his or her views of the rights to express an opinion, to be listened to and to participate in decisions which affect his or her wellbeing, the opinion of the child being given due weight in accordance with the age and maturity of the child’.

- The Ministry of Women and Children’s Affairs periodically holds mock children’s parliament to discuss issues affecting children.

### Niger

- Niger has a Youth Parliament composed of four permanent General Commissions: the Commission on Education, Social and Cultural Affairs; the Commission on the Rights and the Protection of the Child; the Commission on Communication and New Technologies; and the Commission on the Protection of the Environment.

- The Youth Parliament can initiate laws in the form of draft laws which may be debated by the youth and later transmitted to the network of senior Parliamentarians, who may in turn transform it into a private member’s Bill and table it in Parliament. Since 2004, the Niger youth parliament has held many ordinary sessions during which a number of propositions have been made related to the rights and protection of the child on subjects such as reproductive health, HIV/AIDS and the rights of children with disabilities. One of the main challenges with the youth parliament is that it engages only with the best pupils from schools, thereby discriminating against children who do not go to school.

- Plan International Niger has helped in the institution of a Children’s Government in some villages, which meets and discusses children’s matters, and which has been able to sit in the village chief’s council.

- Niger hosts a regional cultural forum known as sukabé for children from seven West African countries including Niger (the others being Benin, Burkina Faso, Ghana, Mali, Nigeria and Togo). *Sukabé* has gone a long way towards enhancing children’s right to freedom of expression in the region. This festival is presided over by the First Lady of Niger. The festival
## Harmonising Laws on Children in West and Central Africa

### Country: Niger

<table>
<thead>
<tr>
<th>Mechanism</th>
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<tr>
<td>is held in any region of the country, and each year it brings together children aged between 10 and 18 from the seven participant countries. Sukabé serves a real setting for cultural exchanges to encourage regional integration, and constitutes an indispensable tool for ensuring children’s enjoyment of the right to freedom of expression. Every year a message is chosen, and a child from among the participants reads it before handing it to the first lady of Niger.</td>
</tr>
<tr>
<td>Children are also afforded an opportunity to express their views in legal proceedings in Niger. During divorce proceedings, for example, the judge must conduct a social investigation to gather information on the material and moral conditions of the parents before ruling on the matter of the child’s custody. During this investigation, the social worker gets the opinion of the child on his/her choice to live with one of the parents. Before ruling on the custody, the judge also has the ability to hear the child in chambers, to ascertain the child’s views with respect to custody.</td>
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### Country: Nigeria

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<tr>
<th>Mechanism</th>
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<tr>
<td>The Child Rights Act 2003 and the 1999 Constitution both make adequate provisions for children to express their views and participate in decision-making.</td>
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<tr>
<td>A Children’s Parliament is in place in Nigeria, and serves as a forum for children to express their views and present them to appropriate quarters for consideration. For example, during the last Children’s Day celebration, on May 27 2008, the Speaker of the Children’s Parliament led members of group in making a formal written presentation on the situation of the Nigerian child, along with recommendations for policy reforms. At the National Summit for Children, the children conducted affairs by themselves. Similarly, in the last Progress of the Nation Report in 2004, children were in charge, and their opinions were taken into consideration.</td>
</tr>
<tr>
<td>Children have also been involved in the following key activities: Children’s Day (May 27); National Youth Day (12 August); and the Day of the African Child (16 June). On such occasions, the media has been instrumental in enhancing children’s right to participation and expression.</td>
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<tr>
<td>In civil and criminal proceedings, the child has to be heard, and may even give evidence in court under examination or cross-examination if he/she is in a position to understand the nature of questions put to him/her by the judge or counsel.</td>
</tr>
<tr>
<td>Lodging complaints and seeking redress before the court or other relevant authority without parental consent is not culturally acceptable. A child cannot therefore sue at law, but either his/her parent or some other adult can speak on his/her behalf.</td>
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### Country: Mali

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<tr>
<td>In Mali, a 1959 law governing cultural associations and (religious) congregations places no restrictions on children’s associations; hence children have traditionally formed associations based on their age groups that have been instrumental in the lives of their village communities.</td>
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### Country: Togo

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<th>Mechanism</th>
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<tr>
<td>Article 32 of the Children’s Code 2007 recognises and guarantees children’s right to participation. In Togo the child has the right to be heard on every point concerning his education, religion and social life.</td>
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Continued to next page...
While commendable initiatives have been put in place to promote children’s participation in the region, cultural norms and traditions continuously hinder children’s effective participation in resolving the issues that affect them. Most of the countries under this review have registered laudable efforts towards participation and freedom of expression, especially via the introduction of Children’s Parliaments. However, in some countries, like Ghana, Mali, the Gambia and Togo, cultural or traditional dictates warrant that children should not have a say, and that they cannot tender an opinion in matters that concern them.

Children’s Parliaments can – in most cases – only make recommendations that do not invoke policy. Generally, there is no mechanism to follow up systematically the recommendations of Children’s Parliaments. Furthermore, the fact that these Parliaments’ resolutions are non-binding, and are, therefore, at the mercy of political will, means that children’s participation may be viewed as tokenism. In Niger however, the Youth Parliament has been instrumental in promoting children’s right to participation: it has a full process of initiating laws in the form of draft laws, which may be debated and later transmitted to the network of senior parliamentarians, who may in turn transform them into a Private Member’s Bill. In Cameroon, the proposals of the Children’s Parliament are studied very carefully by the relevant senior ministries. It is important to empower national children’s parliaments to make them veritable child-policy-triggering institutions.

The review also noted that countries such as Cameroon, Niger and Togo have put in place mechanisms to ensure that the voice of the child is heard in both civil and criminal proceedings, whether through giving evidence in courts, on issues of child custody in divorce proceedings, or in adoption procedures. The legislative framework provides no guidance, however, on how children’s views should be given adequate attention in accordance with their evolving capacities.

The CRC Committee advises states to amend their legislation to reflect fully Article 12 of the Convention, so that any child who is capable of forming his or her views can express those views freely, including in all administrative and judicial proceedings affecting them. The Declaration and Plan of Action on an Africa Fit for Children affirms the right of youth and children to participate, and to have their civil rights respected. Similarly, the African Youth Charter 2006 provides, among other things, the right of the youth to participate in the development of the continent and in decision-making.
There is a growing recognition that children and young people are important stakeholders in every society, and that their opinions and actions can determine our collective future. Children’s views are valued, yet are often undervalued in practice. As a group, children remain absent from many forums that affect their lives. The CrC and the ACrWC have served as important catalysts for a broad consensus that children’s opinions and observations must be taken seriously; yet children’s voices remain silent on many issues that affect them. This remains the case despite the proliferation of literature and a consensus that recognizes children’s capacities in multiple domains.

Commendable efforts have been made to incorporate children’s views in governance and political issues, with a high rise in the number of Children’s Parliaments in several countries on the African continent. On the other hand, though, concerns have arisen about the effectiveness of these structures and mechanisms to represent fully the views of children. There is growing concern that mechanisms such as Children’s Parliaments merely reinforce adult-centred models, and are implemented on behalf of children rather than with or by them. As a consequence, the failure to understand children’s perspectives may obscure critical child participation issues, resulting in many of these processes being viewed as tokenistic in nature. In addition, the elitist nature of, and varied social and cultural differences within, societies have resulted in heated debate on whether child parliamentarians are representative of the wider children’s group.

Empirical knowledge of the impact of children’s participation is still scarce. There is a lot more research that needs to be done to understand the meaningful ways in which children can engage in the public sphere, and how various power relationships can affect their level of participation. While many questions are left unanswered, it is clear that the expertise and experience from different disciplines across the continent and beyond can provide fresh opportunities to reflect and work together to develop new theories on meaningful child participation.
CHAPTER 3
SPECIFIC RIGHTS

PHOTO © JENNIFER RUSSELL I DREAMSTIME.COM
3.1 RIGHT TO A NAME, NATIONALITY AND TO KNOW PARENTS

Box 12: Right to a name, nationality and to know parents

**CRC – Article 7**

The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.

**ACRWC – Article 6**

Every child shall have the right from birth to a name. Every child shall be registered immediately after birth.

State parties to the present Charter shall undertake to ensure that their Constitutional legislations recognise the principles according to which a child shall acquire the nationality of the state in the territory which he has been born if, at the time of the child’s birth, he is not granted nationality by any other State in accordance with its laws.

The CRC and the ACRWC recognise a number of rights traditionally classified as ‘civil rights,’ such as the right to privacy, freedom of expression, and freedom of association and assembly. Unlike the CRC, the ACRWC enshrines the *ius soli* principle, according to which a child shall acquire the nationality of the country in which it is born. This must apply in those instances where no other state has granted nationality to the child. In this instance, the ACRWC imposes a concrete obligation on the state in which the child is born to grant nationality.

The right to a name is critical for the protection and promotion of children’s rights. Birth registration is important for the following reasons:

- It formally confers upon the child a legal personality, and provides the child with the possibility to access services from health and education to protection rights in the law, especially in circumstances where their age is a critical factor
- It enables protection from practices such as early marriage, abuse and exploitation, as the child has legal proof of age that stems from registration
- It constitutes proof of age in proceedings involving children when they are in conflict with the law, or otherwise before a judge
- It confers proof of lineage that is important in regard to inheriting property, particularly for orphans and children born out of wedlock
- It is associated with the child’s right to know and be cared for by their parents.
**Table 7: Selected legal and policy measures on the right to a name, nationality and parental care**

<table>
<thead>
<tr>
<th>Country</th>
<th>Legal or policy measures</th>
<th>Comment</th>
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<tbody>
<tr>
<td>Benin</td>
<td>The <strong>Family and Persons Code</strong> of Benin obliges parents to declare their children at birth.</td>
<td>This facilitates in ensuring the child’s identification with a name, family and nationality.</td>
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<td><strong>Article 60</strong> ‘Every birth shall be declared at the registry office nearest to the place in a time limit of ten (10) days, not including the delivery day. If the time limit expires on a holiday, the declaration shall be validly received on the first following working day…the time limit is three (3) months until the decentralised organs are effectively set up’.</td>
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<td><strong>Article 66</strong> provides that any person who finds a new born child is liable to declare it to the registrar of the place of this discovery.</td>
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<tr>
<td>Burkina Faso</td>
<td><strong>Art. 134 of the Personal Status and Family Code</strong> determines which persons, at birth, have original Burkinabe nationality. Nationality can be acquired or lost after birth, by effect of legislation or through a decision of the authorities taken under conditions fixed by the law.</td>
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<td><strong>Articles 31 to 47 of the Family Code</strong> provide that a child is entitled at his birth to a name or surname and one or more first names enshrined in customs, tradition or religion.</td>
<td><strong>Article 402 of the Family Code</strong> provides that custody of children born in wedlock is given to either of the parents, taking into account the interest of the children.</td>
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<td>Registration is governed by <strong>Articles 55 to 133 of the Family Code</strong>. The child should be declared and registered at the birth registry within two months. If the birth is not declared within the specified period, it will only be registered by virtue of a judgment delivered by a civil status court of the place of birth.</td>
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<td>The number of birth certificates issued to children has declined despite the reduction of costs over the years. The main obstacles continue to be:</td>
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<td>• Distance to and from health centres</td>
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<td></td>
<td>• High number of births outside health facilities</td>
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<td></td>
<td>• Illiteracy</td>
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<td></td>
<td>• Poverty</td>
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<tr>
<th>Country</th>
<th>Legal or policy measures</th>
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<tr>
<td>Cameroon</td>
<td>Article 43(1) 1981 Ordinance on Civil Status Registration allows recognition of children</td>
<td>The 1981 Ordinance on Civil Status Registration does not allow the recognition of a child born as a result of rape and is silent when it comes to children born of an incestuous relationship.</td>
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<td>of the republic of the Republic of Cameroon with a natural father.</td>
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<td>Article 43 (2) allows recognition of a child born of an adulterous relationship of the</td>
<td>Article 46 of the 1981 Ordinance on Civil Status Registration states the mother of the child may bring an action before a competent court in search of the child’s father within two years of delivery or from the time the father ceases to maintain the child. The major obstacle under this section is that the action can be rejected if during the woman’s pregnancy she has sexual relations with, or flirts with, another man, or if the alleged father was deemed not to be in a position to be the father.</td>
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<td>mother after rejection by her husband.</td>
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<td>The 1981 Ordinance on Civil Status Registration provides that the name of a child is</td>
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<td>freely chosen by the parents. In cases where a child has been abandoned, the person who</td>
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<td>finds the child or the civil status registrar who receives the declaration may choose a</td>
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<td>name for the child. Article 35, 1981 Ordinance on Civil Status Registration provides that,</td>
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<td>any name that offends public policy or morals is rejected and the person making the</td>
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<td>declaration must suggest another name.</td>
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<tr>
<td>Central African</td>
<td>Articles 69 and 70 of the Central African Family Code ensure that the Central African</td>
<td>The law does not recognise children born of incestuous or adulterous relationships.</td>
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<tr>
<td>Republic</td>
<td>child has the right to the parents’ name.</td>
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<tr>
<td>The Gambia</td>
<td>Sections 9 (1) of the 1997 Constitution of the Republic of the Gambia provides that every</td>
<td>Islam treats children born in and out of wedlock differently. Under Islamic law, children born out of wedlock are generally considered the responsibility of their mother.</td>
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<td>person born in the Gambia after the coming into force of this Constitution shall be</td>
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<td>presumed to be a citizen of the Gambia by birth.</td>
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<td>Section 4(1) of the Nationality and Citizenship Act Cap: 16:01 of the Laws of the</td>
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<td></td>
<td>Gambia empowers the Secretary of State to register the minor child of any citizen of the</td>
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<thead>
<tr>
<th>Country</th>
<th>Legal or policy measures</th>
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<tbody>
<tr>
<td>The Gambia</td>
<td>Gambia upon application by a parent or guardian. Section 4 (2) also empowers the Minister in special circumstances, as he thinks fit, to register any minor as a citizen of the Gambia. As at that time, a minor was defined as a person who has not attained the age of 21 years for the purpose of that Act.</td>
<td>These provisions on birth registration are not widely used, particularly in rural areas. Furthermore, birth certification does not guarantee citizenship to children born in the Gambia if one or both parents do not possess Gambian citizenship at the time of the child’s birth.</td>
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<td></td>
<td><strong>The Children’s Act 2005, Section 7(1),</strong> provides that ‘every child has the right to a name and accordingly, shall be given a name on his or her birth or on such other dates as is dictated by the culture of his or her parents or guardians.’ Section 7(1), also provides that ‘the birth of every child shall be registered in accordance with the provisions of the relevant law.’</td>
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<td><strong>Section 7(2) provides that the birth of every child shall be registered in accordance with the provisions of the relevant law and Section 8 of the Children’s Act 2005 provides that “every child has a right to acquire a nationality.’</strong></td>
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<td></td>
<td><strong>Section 11 of The Children’s Act 2005 guarantees the right to parental care, protection and maintenance.</strong></td>
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<td></td>
<td>The Birth, Death and Marriage Registration Act, Cap: 41:0 makes provision for the registration of births and death.</td>
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<tr>
<td>Ghana</td>
<td><strong>The Children’s Act 560, Section 4</strong> provides that no person shall deprive a child of the right to a name, the right to acquire a nationality or the right as far as possible to know his natural parents and the extended family.</td>
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<td><strong>Section (8) (1) of the Registration Act</strong> stipulates that the birth of every child shall be registered in the district in which the child was born.</td>
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<td>In situations where a newborn child is found deserted, and no information as to birthplace is available, the birth is registered by the Registrar for the district where the child was found. (Section (80) (2)).</td>
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<td>The registration law empowers the Registrar to summon the parents of a child who may not have registered the birth of the child to attend personally at the Births and Deaths Registry to furnish the prescribed particulars for registration within a prescribed time (section 8 (5)).</td>
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<td></td>
<td>Children who are born to refugee parents, asylum seekers and displaced persons are eligible to be registered in Ghana so long as they are born within the borders of the country. Under the Citizenship Act 2000, (Act 591) such children can either opt for Ghanaian nationality or that of their parent when they reach a mature age.</td>
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<tr>
<th>Country</th>
<th>Legal or policy measures</th>
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<tbody>
<tr>
<td>Sierra Leone</td>
<td>Section 24 of the Child Rights Act 2007 provides for the right for a name and nationality to be given to a child. This section states that no person has the right to deprive a child of a name, of acquiring nationality, or of the right, as far as possible, to know his or her natural parents and extended family.</td>
<td></td>
</tr>
<tr>
<td>Mali</td>
<td>Under the Persons and Family Code every Malian has the right to a name. Under Malian law, a name has the object of identifying members of the same family. A name can be acquired as a result of recognition (affiliation) or by a decision of an administrative or judicial authority. Children with unknown parents are given names by the Civil Status Registrar. The choice of name should not infringe on the rights of the child.</td>
<td>An illegitimate child acquires the name of the mother but may alternatively acquire the name of the father in the event of affiliation with the latter. Malian law does provide different rules for children born out of incestuous relationships. Children born out of wedlock may be legalised by subsequent marriages and recognition before or during the marriage by the parents.</td>
</tr>
<tr>
<td>Togo</td>
<td>Article 10 of the Children’s Code stipulates that: ‘Every child has a right to a patronymic or matronymic name given to him according to the lawful conditions’.</td>
<td>Under Togolese law, nationality is accorded to children as long as one parent is a Togolese national.</td>
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</tbody>
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### 3.1.1 Challenges to children's rights to a name, nationality and knowing their parents

Complex administrative systems and high costs remain the principal factors impeding universal birth registration. The main constraints that have hindered birth registration in the countries reviewed include:

- **Geographical distance to registration facilities.** In the Gambia, for example, one of the reasons for low records of registration was the limited number of hospital births in the country due to high travel costs for mothers living in rural areas.

- **Lack of awareness among families and communities of the importance and obligatory nature of birth registration**

- **High birth registration costs.** These include the actual cost of registering and obtaining an official certificate, and related costs, such as travel and medical expenses in the hospital where birth notification is available.

- **Weak decentralised registration systems**

- **Weak mechanisms of formal cooperation between health services and government**

- **Discriminatory practices and laws against certain groups of children,** such as children born out of wedlock or of incestuous relationships. Under the law in CAR, Cameroon, the Gambia and Mali, children born out of wedlock or from incestuous marriages are discriminated against.
Some of the abovementioned obstacles continue to have a negative impact on registration levels. These negative impacts also contribute towards disparity in the levels of birth registration coverage between urban and rural areas, as highlighted in the chart below.

**Chart 6: Percentage of birth registration (2000-2009)**

3.1.2 Risk of statelessness

Gaps in countries’ laws create a risk for children of being rendered stateless. The African Children’s Charter confers a positive obligation on States Parties to include provisions in their national legislation that afford children the nationality of the country in which they are born, which must apply to those instances where no other State has guaranteed nationality to the child.

While most of the countries under review have laws on nationality and citizenship, many of the laws are silent where the child is a refugee, with regards to children born out of wedlock, or where neither parents is a citizen of the country where the child is born. Ghana is the only country that affords citizenship to refugee children as long as they are born within the borders of the country. The CRC Committee has recommended that states consider acceding to the Convention Relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961).

Birth registration is not only of interest to the individual but to States as well. Without accurate birth registration, it is practically impossible for governments to:

- Establish good governance practices
- Gather accurate data on the social, economic and demographic situation of a country
- Establish and develop, among other things, well functioning health, education and employment facilities
- Govern according to democratic principles.

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102 See, for instance, CRC Committee, Concluding Observations, Sudan, (2010), para 71(c).
3.1.3 Recommended steps to ensure and accelerate birth registration

Governments need to adopt innovative approaches to ensure birth registration, including:

- Mobile registration (particularly in rural areas where registration is extremely low)
- Retrospective registration, especially for the nomadic and marginalised and hard-to-reach communities
- Abolition of registration fees
- Public awareness campaigns on birth registration involving children

3.2 RIGHT TO HEALTH AND HEALTH SERVICES

**Box 13: The right to health**

*CRC – Article 24*

1. States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of the illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right to access such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall, take appropriate measures:
   a) To diminish infant and child mortality;
   b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
   c) To combat diseases and malnutrition, including within the framework of primary health care, though, inter alia, the application of readily available drinking water, taking into consideration the dangers and risks of environmental pollution;
   d) To ensure appropriate parental and postnatal health care for mothers;
   e) To ensure that all segments of society, in particular parents and children, are informed, have access to education, and are supported in the use of basic knowledge of health and nutrition, the advantages of breastfeeding, hygiene; and environmental sanitation and the prevention of accidents;
   f) To develop preventative care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures to abolish traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the rights recognised in the present article. In this regard, particular account shall be taken of the needs of developing countries.

*ACRWC - Article 14*

1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.

2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:
   a) To reduce infant and child mortality rates;
The obligation to ensure the highest attainable standard of health, including the corresponding duty of the state to strive to ensure that no child is deprived of his or her right of access to health care services, builds on and develops the right to life, survival and development as set out in Article 6 of the CRC and Article 5 of the ACRWC. A number of specific obligations are outlined, including those relating to maternal health, health education, primary health care and family planning. A number of other articles also touch on health related issues, including Article 23 on children with disabilities, Article 25 on children in healthcare facilities, and Article 39 on the right to physical and psychological rehabilitation.

The notion of the highest attainable standard of health takes into the individual’s biological and socio-economic preconditions as well as a state’s available resources.
Table 8: Selected examples of legislative and policy mechanisms on the right to health and health services

<table>
<thead>
<tr>
<th>Country</th>
<th>Legislative or policy provision</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benin</td>
<td>The Constitution consecrates the highest attainable standard of physical and mental health. Articles 8 and 26 provide that the State secures to its citizens ‘equal access to health’ education, culture, information, professional training and employment’ and that ‘the State secures to all equality before the law without distinction of origin, race, gender, religion, political opinion or social position.’</td>
<td>All Beninese citizens, including children, have the right to equal access to health care.</td>
</tr>
</tbody>
</table>

To address numerous challenges with respect to the right to health and access to health services, the government of Benin introduced sectoral policies. Key amongst these is the School and University National Health Policy. The objectives of this policy are:

- To improve the institutional and organisational framework of school and university health service delivery
- To improve the health coverage of school children and students and of every person working in the school and university settings
- To improve the quality of medical care offered to school children and students and other personnel in the school and university communities
- To promote primary, secondary and tertiary prevention of transmissible and non-transmissible infections.

Within this framework, a systematic medical examination has been instituted for children in the fifth year in all state schools in the country. In addition, annual vaccination campaigns are organised for children between 0 to 5 years.
<table>
<thead>
<tr>
<th>Country</th>
<th>Legislative or policy provision</th>
<th>Comment</th>
</tr>
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<tbody>
<tr>
<td>CAR</td>
<td><strong>Article 6 of the Constitution</strong> of CAR recognises the right to health and the right of children to health care. The Constitution states that the state and its public services have the duty to protect the physical and mental health of the family by putting in place appropriate institutions.</td>
<td>The socio economical realities of the CAR do not always enable this country to fulfil its duties. For instance, access to health care is not free in the CAR. Moreover, there are numerous problems with regard to accessing health services in the countryside, notably in rural areas and/or armed conflict zones, where ongoing insecurity, as well as heavy seasonal rains and lack of infrastructure, render access to health care virtually impossible for many. Child mortality rates in CAR remain among the highest in the region.</td>
</tr>
<tr>
<td>The Gambia</td>
<td>The <strong>1997 Constitution</strong> of the Republic of The Gambia clearly and unequivocally guarantees the right of every child to basic health services. &lt;br&gt; <strong>The National Health Policy</strong> and <strong>the Health Action Plan 1999 to 2003</strong> prioritize maternal and child healthcare. &lt;br&gt; <strong>The National Environment Agency</strong> seeks to strengthen health care and preventive measures for disease control. &lt;br&gt; <strong>The Children’s Act 2005</strong> provides that every child has the right to enjoy the best attainable state of physical and mental health. The Act further provides that ‘every government, parent, guardian, institution, service, agency, organization or body responsible for the care of a child shall endeavour to provide for the child the best attainable state of health’.</td>
<td>The enjoyment of children’s right to health and health services is accorded high priority within the health sector. Although access to social services such as health has improved (70% access to primary health care services), insufficient resources have undermined the quality of these services. The vulnerable and the underserved, notably rural children, the urban poor and refugees, are primarily affected.</td>
</tr>
</tbody>
</table>

104 Ibid.  
105 Ibid.
<table>
<thead>
<tr>
<th>Country</th>
<th>Legislative or policy provision</th>
<th>Comment</th>
</tr>
</thead>
</table>
| Ghana   | The Children’s Act of Ghana Act 560 provides that no person shall deny a child medical treatment by virtue of their religious beliefs. The policy frameworks include a National Health Insurance Scheme (NHIS). Under this scheme, children in Ghana below the age of five years, as well as pregnant and lactating mothers, receive free medical attention. Free medical care is also offered to pregnant women before birth, and three months after birth. At government policy level, there is extensive coverage for children’s healthcare and services in Ghana. | The UNDP Ghana Development Report (2008) notes that opportunities for accessing the NHIS have been limited due to the following factors:  
• Many eligible beneficiaries are ignorant of their eligibility and of how to access the scheme  
• Many participating hospitals do not have the facilities for screening applicants. As a result many women and children are excluded from realising their right to access health services  
• Slow rates of reimbursement by the Ministry of Health have discouraged many hospitals and private health providers from accepting poor patients. |
| Niger   | Article 11 of the 9 August Constitution recognises the right to health. A number of legislative provisions have been put in place to deal specifically with the high rates of infant and maternal mortality in the country. These include:  
• Law n°2006-16 of 21 June 2006 on reproductive health  
• Decree n°2005-316/prn/msp/lce of 11/11/2005 granting women free caesarean interventions by public health services  
• Decree n°2007-26/PRN/MSP related to free treatment of cancer in women  
• Bill n°079/MSP/LLE/ME/F of 26th April 2006 on the gratuity of prenatal consultation and treatment of children from zero to five years  
• Bill n°65/MSP/LCE/DGPS/DPHL/MT on the gratuity of contraceptives  
• The special programme of the President of the Republic [construction of health centres and rehabilitation of many integrated healthcare centres, the adoption of a plan of sanitary development (PDS 2005-2009)]  
• The development of an accelerated strategy of poverty reduction in 2012  
• Declaration of a national health policy  
• A road map to accelerate the reduction of maternal and neonatal mortality in Niger 2006-2015. | While the system of free treatment has the merit of encouraging the attendance at healthcare services of children aged from zero to five years, thus increasing overall health services attendance, it must be noted that children aged 6 to 18 are excluded. |

Continued to next page...
The Child’s Rights Act 2003 provides in Section 13(1) that every child is entitled to enjoy the best attainable state of physical, mental and spiritual health. Section 13(2) states that every government, parent, guardian, institution, service, agency, organisation or body responsible for the care of a child must endeavour to provide for the child the best attainable state of health.

A number of other legislation and policies have been put in place at the federal and state levels that directly or indirectly address children’s right to health and health services. These include:

- National Health Policy of 1988 (revised 1996)
- National Immunization Policy and Standards of Practice (1996), revised 2006
- The National Acute Respiratory Infections Programme
- Breastfeeding Policy (1999)
- Essential Drug Policy
- National Reproductive Health Policy and Strategy (2001)
- National Reproductive Health Strategic Framework and Plan (2002-2006)
- National Child Health Policy (May 2005)

In addition, other such institutional programmes are:

- National Guidelines and Standards of Practice on Orphans and Vulnerable Children (2007)
- National Health Financing Policy (2007)
- Water Supply and Sanitation Policy in 2000 and another policy on Fortification of Food with Vitamin A

Despite these legislative and policy interventions, child survival in Nigeria is threatened by:

- Nutritional deficiencies and illnesses, particularly malaria
- Diarrhoea (second most common cause of infant deaths and the third main cause of under-five mortality)
- Acute respiratory infections (ARI) (pneumonia, cough, fever and rapid breathing)
- Vaccine preventable diseases (VPD), which account for the majority of morbidity and mortality in childhood.

Other threats include high maternal morbidity and mortality.
In Sierra Leone, there is no specific legislation that promotes the right of children to health care and health services. UNICEF’s series of reports on *The State of the World’s Children* (for instance, the 2005 report) provide graphic health indicators that continue to place Sierra Leone as one of the least developed countries in the world. The Sierra Leone government reported in 2006 that:

...[the] current Health Policy of the Government embraces an all-inclusive child survival strategy which targets safe motherhood, improved quality of and access to health services, free basic education, safe water and sanitation in schools, communities and peripheral health units, as well as community participation and outreach services.  

As a result, Government has reported that:

...[the] child survival strategy of the Government is yielding fruits: since 2001, there has been no confirmed case of polio within Sierra Leone; there is also an increased immunisation rate of 50 per cent in 2005 compared to 25 per cent in 2001; while access to health facilities has generally increased'.  

The major challenge in implementing the right to access to health for children in Sierra Leone is the fact that the economy is donor driven, and there is a shortage of finances for government to grant free medical care to children. On a positive note, however, there is a great deal of advocacy work being done in the country to promote child health care.

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107 Ibid, para 223.
3.2.1 Challenges to implementing the right to access to health

Despite legal and policy provisions related to realising the right to health, countries face numerous challenges and issues that need to be addressed.

a. High infant and maternal mortality rates

The number of under-five deaths worldwide has fallen consistently from around 13 million in 1990 to 9.2 million in 2007.\textsuperscript{108} Similarly, maternal deaths have decreased over the years, although the rates are still very high in Africa when compared to other regions.\textsuperscript{109} Maternal mortality rates reflect the overall effectiveness of health systems.\textsuperscript{110} In many of the countries reviewed, health systems suffer from weak administrative, technical and logistical capacity, inadequate financial investment, and a lack of skilled health personnel.

\begin{figure}
\centering
\includegraphics[width=\textwidth]{chart7.png}
\caption{Maternal mortality ratios (Number of deaths per 1,000 live births), 2008\textsuperscript{111}}
\end{figure}

\textsuperscript{109} Ibid, 7. According to UNICEF, maternal mortality is defined as the death of a woman while pregnant or within 42 days of termination of pregnancy, regardless of the site or duration of pregnancy, from any cause related to or aggravated by the pregnancy or its management.
\textsuperscript{110} Ibid.
b. Payment of user fees

Of the countries reviewed, Ghana is the only country that provides free access to medical services for children. User fees in all the other countries were identified as a major barrier to access to health services for children and their families.

c. Insufficient budgetary support

Budgets for health are below 15% of the national budget in all the countries in this review. The commitment of governments in the region to increase expenditure for health to at least 15% is yet to be realised. The graph below shows the level of implementation of this commitment.

Niger and Burkina Faso have the highest expenditure on health in the region. Insufficient budgetary allocations mean insufficient infrastructure and resources, including shortages of trained personnel, which are manifested in high rates of maternal and infant mortality. Governments’ financial investments in health services have direct impacts on the wellbeing of children and the enjoyment of those children’s right to health. Governments are encouraged to provide long-term and predictable financing to achieve MDGs 4 and 5, and to meet the agreed African Union (AU) target (set out in the Abuja Declaration) that every African government will commit a minimum 15% of their national budget to the health sector. National governments must also develop clear plans, with interim targets, benchmarks and resources, for rolling out proven interventions across the continuum of care, with a particular focus on the poorest communities.

Chart 8: General government expenditure on health as per cent of total government expenditure (2008)¹¹³

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In May 2009, the African Union launched the Campaign for Accelerated Reduction of Maternal Mortality in Africa (CArmmA), which aims to cut maternal mortality in countries with high rates. Following this campaign, in April 2010, all medical treatment and medicines for pregnant women, lactating mothers and children under 5 became free of charge in all government health facilities in Sierra Leone. The programme is expected to assist at least one million children in the country.114

d. Impact of HIV and AIDS

HIV and AIDS have had a negative impact on children’s right to health. A number of policies and programmes have been put in place to reduce mother-to-child transmission, reduce HIV infections, and provide assistance to orphaned and vulnerable children. In Benin, for example, in order to control the spread of HIV/AIDS, the Government of Benin has adopted strategic frameworks. The last of these strategic frameworks concerns the period 2006-2010. These frameworks are operational through annual multi-sectoral action plans. These plans include programmes for the prevention of MTCT of HIV and the provision of paediatric care for HIV/AIDS led by the Ministry of Health. The number of pilot health districts has risen from 3 in 2002 to 37 in 2005, covering 55 districts. There is a policy for caring for children living with HIV mainly through the administration of ARVs. The National AIDS Control Council, chaired by the Head of State, is responsible for the central coordination of all anti-AIDS activities. Within the council, a fund to care for the sick and orphans living with AIDS has been set up, which helps to alleviate the impact on children of the death of close relatives. This fund supports the Ministry of Social Welfare in taking care of orphans and other vulnerable children. The strong involvement of technical and financial partners and of numerous associations (about 1,000) is commendable. However, despite all these policies and programmes, HIV/AIDS has a negative impact on access to medical care, because of the high number of orphans and children affected and the widespread poverty caused thereby.

In Cameroon, tuberculosis drugs and Antiretrovirals (ARVs) are currently provided free of charge. The 2007 Action Plan of the National AIDS Control Committee envisaged providing 43,000 persons living with HIV/AIDS with ARVs by the end of that year, with the aim of attaining national coverage of 75% of all cases by 2010. Success here has been dramatic.115

The rate of HIV infection in many of the countries in this review is on the rise, placing huge strain on national health systems. Despite this, there is limited free or affordable access to anti-retroviral treatment for children living with HIV/AIDS. Similarly, the number of children orphaned by HIV/AIDS has increased in the region, placing an enormous burden on extended families.

The UN Committee on the Rights of the Child, in its General Comment No. 3 on Children and HIV/AIDS, provides extensive guidance on understanding the human rights of children in the context of HIV/AIDS, and on the formulation and promotion of child-orientated programmes to combat the spread, and mitigate the impact, of HIV/AIDS at national and international level.116 The AU, in its Call for Accelerated Action on an Africa Fit for Children, also addresses HIV/AIDS. The Declaration acknowledges that the magnitude of the epidemic and its effects on children can hardly

be exaggerated, and calls for the following actions to overcome HIV and AIDS on the continent:

i. Scale up programmes for prevention of mother-to-child transmission of HIV
ii. Support measures that will assure primary prevention and protection, as well those that will address the social context of HIV and AIDS that makes young girls, adolescents and children more vulnerable
iii. Scale up universal access to HIV and AIDS prevention, treatment, care and support (linking with other health measures on promoting reproductive health and reducing tuberculosis, malaria and other related diseases), with an emphasis on adolescents, young girls, women and children living with HIV and AIDS, and the most vulnerable sections of society
iv. Support initiatives to foster positive attitudes towards those affected, and to address stigma and exclusion.

e. Harmful traditional practices

Harmful traditional practices, such as early marriage and female genital mutilation (FGM), violate girls’ and women’s human rights, denying them their physical and mental integrity and their right to freedom from violence and discrimination.

Child marriage is also a violation of children’s rights, compromising the development of girls and often resulting in premature pregnancy and social isolation. The rate of child marriage in Central and West Africa is the second highest in the world at 44 per cent (South Asia remains the highest, at 49 per cent). Child marriage increases the risk of maternal death in pregnancy and childbirth, and the risk that adolescent girls will drop out of school. The latter contributes in turn to a vicious cycle of gender discrimination, with poorer families more willing to permit the premature marriage of their daughters.

Chart 9: Child marriage (Percentage of women aged 20-24 who were married before the age of 18), (2006-2008)\(^{117}\)

Source: http://www.childinfo.org/marriage_countrydata.php (DHS and MICS data):

\(^{117}\) http://www.childinfo.org/marriage_countrydata.php
Article 21(2) of the ACrWC explicitly prohibits child marriages and the betrothal of girls and boys. The Charter obliges States Parties to take effective action to specify the minimum age of marriage as eighteen years for both boys and girls. States Parties are furthermore under the obligation to register all marriages in an official registry.

While child marriage is not explicitly addressed in the CRC, it is linked to other rights and can be recognised in the Universal Declaration on Human Rights as the right to freely consent to marriage.\textsuperscript{118}

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states that the betrothal and marriage of a child shall have no legal effect, and calls upon States Parties to set legal minimum ages for marriage and to make marriage registration compulsory.\textsuperscript{119}

Article 21 of the ACrWC makes specific reference to harmful traditional practices and takes into account the African context with regard to the rights of the child. It reinforces the concept of an obligation on States Parties to discourage any custom, tradition, cultural or religious practice that is inconsistent with the Charter. Furthermore, Article 21 mandates States Parties to eliminate social and cultural practices affecting the welfare, dignity, normal growth and development of a child. Female genital mutilation and other harmful practices, such as the custom of virgin fetish slavery (\textit{trokosi}) practiced in Ghana, fall within the ambit of this provision.

\begin{center}
\textbf{Chart 10: Female genital mutilation: Percentage of FGM in women aged 15-49 (2004-2008)}\textsuperscript{120}
\end{center}

\begin{table}[h]
\centering
\begin{tabular}{lcccc}
\hline
 & Sierra Leone & Mali & Gambia & Burkina Faso & CAR \\
\hline
Urban & 85 & 81 & 72 & 71 & 21 \\
Rural & 95 & 87 & 83 & 76 & 29 \\
\hline
\end{tabular}
\end{table}

\textsuperscript{118} Article 16 of UDHR.
\textsuperscript{119} Article 16 of CEDAW.
\textsuperscript{120} http://www.childinfo.org/fgmc_prevalence.php (accessed 20 July 2011)
Apart from being a human rights violation, FGM has long-term psychological and physical ramifications on girls’ rights to health. Long-term effects can include obstructed labour, painful intercourse, psychological complications, chronic urinary tract infections, and repeated reproductive tract infections. As shown below, Burkina Faso, the Gambia, Mali and Sierra Leone have over 70 percent prevalence of FGM, the highest percentages of in the world. In Nigeria, women in urban areas are more prone to undergo excision than those in rural areas.

<table>
<thead>
<tr>
<th>Country</th>
<th>Harmful traditional practice</th>
<th>Legal, policy or judicial response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benin</td>
<td>FGM, infanticide and early marriage of girls</td>
<td>The government has introduced the following laws which prohibit these practices:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Act N° 2003 – 03 of 03 / 03 / 03 Repression of female genital mutilation practice in the Republic of Benin</td>
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<td></td>
<td>• Act N° 2006 – 1 of 05 / 09 / 06 Repression of sexual harassment and protection of victims in the Republic of Benin</td>
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<tr>
<td></td>
<td></td>
<td>• Act N° 2003-04 of 03/03/ 2003 relating to sexual and reproductive health.</td>
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<tr>
<td>Burkina Faso</td>
<td>FGM and early marriage</td>
<td>The Penal Code, amended in 1996, criminalises the following harmful traditional practices:</td>
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<td></td>
<td></td>
<td>• Forced marriage (Article 376, paragraph 2)</td>
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<tr>
<td></td>
<td></td>
<td>• Female genital mutilation (Articles 380 to 382)</td>
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<tr>
<td></td>
<td></td>
<td>• Rape committed on a particularly vulnerable person, such as a minor, is an aggravating circumstance (Article 417).</td>
</tr>
<tr>
<td>CAR</td>
<td>FGM, abduction and infanticide</td>
<td>The Penal Code criminalises the following harmful traditional practices:</td>
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<td></td>
<td>• Infanticide, which is punishable by death (Article 176)</td>
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<td>• The abduction of minors, (Article 213), punishable by hard labour for a specific period if the child is under 12 years of age. The fact of the child being a girl or the abduction being accompanied by a demand for ransom constitutes an aggravating circumstance.</td>
</tr>
</tbody>
</table>

Benin, Burkina Faso, Ghana, Nigeria and Togo have legislated against FGM. Despite legal measures, as seen in the table below, harmful traditional practices are still widely prevalent. A key obstacle in abolishing harmful traditional practices has to do with prevailing traditional and customary attitudes towards these harmful practices. Challenging these prevailing attitudes also requires addressing gender inequality.
### Harmonising Laws on Children in West and Central Africa

<table>
<thead>
<tr>
<th>Country</th>
<th>Harmful traditional practice</th>
<th>Legal, policy or judicial response</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Gambia</td>
<td>FGM, betrothal and early marriage</td>
<td>The <strong>Children’s Act 2005</strong> provides extensive provisions that protect children from harmful traditional practices.</td>
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<td></td>
<td></td>
<td><strong>Section 24</strong> provides that subject to the provisions of any applicable personal law, no child is capable of contracting a valid marriage, and a marriage so contracted is void.</td>
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<td><strong>Section 25 (1)</strong> further states that no parent, guardian or any other person shall:</td>
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<td>• Betroth a child to any person</td>
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<td></td>
<td></td>
<td>• Make a child subject to a dowry transaction or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Give out a child in marriage.</td>
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<td></td>
<td></td>
<td><strong>Section 19</strong> provides that no child shall be subjected to any social and cultural practices that affect the welfare, dignity, moral growth and development of the child, and, in particular, those customs and practices that are:</td>
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<tr>
<td></td>
<td></td>
<td>• Prejudicial to the health and life of the child and</td>
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<tr>
<td></td>
<td></td>
<td>• Discriminatory to the child on the grounds of sex or other status.</td>
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<tr>
<td></td>
<td></td>
<td>The term ‘any applicable personal law’ includes Sharia law, which permits marriage upon physical maturity, which can occur as early as nine years. Since approximately 95 per cent of the population falls under Sharia law, child marriage remains a common practice in the Gambia.</td>
</tr>
<tr>
<td>Ghana</td>
<td>FGM, trokosi system and early marriage</td>
<td>The <strong>Children’s Act 560</strong> prohibits child marriage in <strong>section 14 (1), where it</strong> states that no person shall force a child to be betrothed, to be the subject of a dowry transaction, or to be married.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other harmful practices are prohibited in <strong>Section 13 (1)</strong> of the Act, which states that, ‘no person shall subject a child to torture or other cruel, inhuman or degrading treatment or punishment, including any cultural practice which dehumanises or is injurious to the physical and mental wellbeing of a child’.</td>
</tr>
<tr>
<td>Country</td>
<td>Harmful traditional practice</td>
<td>Legal, policy or judicial response</td>
</tr>
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<td>---------</td>
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<td>----------------------------------</td>
</tr>
</tbody>
</table>
| Nigeria | FGM and early marriage       | The Child’s Rights Act 2003 has specific provisions that address early marriage and other forms of harmful traditional practices:  
  - Section 21: Prohibition of child marriage  
  - Section 22: Prohibition of child betrothal  
  - Section 23: Punishment for child marriage and betrothal.  
  At the state level, a number of laws have been put in place. These include  
  - The Ebonyi State Law on the Abolition of Harmful Traditional Practices Affecting the Health of Women and Children (2001)  
  - Edo State Female Genital Mutilation Prohibition Law (2000)  
  - A Kebbi State law banning street hawking by girls of school age  
  - A Sokoto State law that bans begging  
  - A Rivers State task force to get children off the street during school hours  
  - A Rivers State bill abolishing female circumcision and practices connected to it. |
| Togo    | FGM                         | In Togo, the Children’s Code provides that no child can be subjected to harmful traditional or modern practices that are prejudicial to his or her welfare. The Children’s Code and a specific law of November 1998 relating to FGM assimilate FGM into voluntary violence. In case of mutilation with death of the victim, the culprits will be punished with a penalty of from five to a maximum of ten years imprisonment. Any person who having known of a previous excision or suspected that the culprits were about to practice FGM, but failed immediately to inform the public authorities in order to prevent the practice, is also punishable under the law. Public authorities in charge must be informed without delay by the health authorities in institutions responsible for the reception of the victims, in order to follow up the health situation of the victim, as well as to institute legal proceedings against the culprits. |

121 They are punished with a penalty of 2-5 years imprisonment and a fine of XAF 100,000, to XAF 1,000,000 or any of these penalties.
3.3  RIGHT TO EDUCATION

Box 14: The right to education

**CRC – Articles 28 and 29**

State parties recognise the right of the child to education and with a view to achieving the right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available to all;
(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need.

**ACRWC- Article 11**

Every child shall have the right to education.

The education of a child shall be directed to the promotion and development of the child’s personality, talents and mental and physical abilities to their fullest potential.

States Parties to the present Charter shall take all appropriate measures with the view to achieving the full realisation of this right and shall in particular:

(a) Provide free and compulsory basic education;
(b) Encourage the development of secondary education in its different forms and progressively make it free and accessible for all.

**3.3.1 The status of education in the countries under review**

Education is a human right, and intrinsic to the MDGs. It is critical in eliminating economic exploitation, and key to ensuring an economy that can lift people out of poverty, as envisaged in MDG 1. MDG 2 focuses on achieving universal primary education, and implies that quality education is a right and that it must be free and compulsory at least at the primary level, and a major part of national budgets. MDG 3 aims to promote gender equality and empower women, and education is essential to eliminating discrimination and transforming social attitudes and power relations.

All the countries under review have included provisions in national law to address the right to education as outlined in Articles 28 and 29 of the CRC and Article 11 of the ACRWC. Most countries in this review have either Constitutional provisions or policy directives on free and/or compulsory education.

In Benin, constitutionally, education is a right, and is both free and compulsory. The Constitution (Article 13) nonetheless adopts the progressive standard for realisation of socio-economic rights,
contained in the 1966 Covenant on Economic, Social and Cultural Rights, even though this may create an opportunity for government to ignore its positive obligation to realise these rights. Since 1994, girls in rural areas (sub divisions) have been exonerated from paying school fees, and this exoneration has been extended to all schoolgirls in both rural and urban areas. The object of this policy is to enable girls to enjoy the right to education and to eliminate gender discrimination. A ten-year Development Plan for the education sector (2006-2015) has been adopted that takes into account all aspects of the right to education (pre-school, primary and secondary). The implementation of this plan will progressively see the building and equipment of classrooms and the recruitment of qualified teachers. In April 2007, the government also adopted a new national training and education policy for girls, and launched a campaign in 2008 to motivate parents to enrol their school-age children in public educational institutions. Many parents responded to the government’s call; but when schools resumed, they were overcrowded, with inadequate classrooms and/or teachers.

In Burkina Faso, the government’s policy on education is contained in a 2007 law on educational orientation. This law provides that education is the priority of the state local councils, which develop informal education for young persons. Basic education in public institutions is free, but no clarity is given as to whether it is compulsory. However, the Government of Burkina Faso is committed to taking all necessary measures to ensure the effectiveness of free primary education, and to bridging formal and informal education by 2015. For example, the government has striven to increase school enrolment and to improve on quality education, and has adopted a 10-year development plan for basic education (Plan Décennal de Développement de l’Education de Base (PDDEB)). Under this plan, education is a priority. To ensure equality of opportunity and to ensure a school attendance rate of 70% and a literacy rate of 40% by 2010 (which has been successfully achieved in practice), children who do not attend school are not covered by the law on education, even though theoretically they are subject to compulsory education to the age of 16. The right to education is still not a reality for every Burkinabe child. Parents are allowed to provide religious, moral or traditional education to their children following their convictions, but must remain in strict respect of the law. According to the 2007 law on educational orientation, Koranic schools can dispense informal education. The state does not control the teaching methods or the means of imparting the content of lessons.

The status of the right to education in CAR is unclear. The Constitution recognises the right of everyone to access to knowledge, and education is free in public schools. The Constitution mandates the state to play a central role in guaranteeing children’s access to education, culture and professional training. Parents have the obligation under the Constitution to ensure that their children participate in education and training until the age of 16 years.

In Cameroon, the Constitution enshrines only one right for children – the right to education, which it guarantees and mandates at primary level only. The Constitution bestows a duty on regional and local authorities to promote health and education. Primary education is free and compulsory.122 There

122 The 1998 law on educational orientation.
are numerous legal instruments (laws, decrees, and circulars) dealing with education in general and the educational rights of children in particular. The Constitution states:

...the State shall guarantee the child’s right to education. Primary education shall be compulsory. The organisation and supervision of education at all levels shall be the bounded duty of the State.

A 1998 law (No. 98/004 of 24 April 1998) largely incorporates the scope of the right to education as incorporated in the ACRWC. In reality, however, public primary school authorities often charge arbitrary registration fees, class exam fees, book fees, and forced extra teaching fees, which vary from one school to another. These tendencies affect the level of primary school enrolment, which currently stands at 70.2%. This means that about 22% of children of primary school age are out of school. The same situation prevails in pre-primary education. Even though Cameroon’s Poverty Reduction Strategy Paper (PRSP) recommends a wide coverage of primary education to include rural populations, especially the most unprivileged areas, this achievement largely remains illusory. Current statistics show that percentage enrolment into pre-primary education is just 17.1%, whereas in 2001 the Committee on the Rights of the Child raised concern at the low education levels among children in Cameroon, as well as at gender, rural/urban and regional disparities in school attendance and limited access of children with disabilities to formal or vocational educational opportunities. In 2004, the Cameroonian government adopted a sector development strategy involving a number of programmes designed to meet the MDGs. With respect to education, one of these programmes was geared at adopting a strategy to accelerate education of the girl child, and another on the drafting of a national educational project for children in need of special protection measures. The government has also launched a programme to improve professional training via employment through the Programme for the Improvement of Vocational Training for Employment (PAMOFPE). The main objective of the Programme is to increase demand for vocational training in order to prepare job-seekers for the labour market. The Programme targets children from primary schools, secondary schools and higher institutions of learning (estimated at over 150,000 annually), as well as children aged between 15 and 25 years who have dropped out of school.

In the Gambia, basic education is free and compulsory. The Constitution specifically guarantees the right to free and compulsory basic primary education for children aged 9 to 12. The Children’s Act echoes this by stating that:

...every child has a right to free and compulsory basic education and it shall be the duty of the Government to provide the education.

The Act also provides that:

...every parent or guardian shall ensure that his or her child or ward attends and completes basic education.
Children under the age of 16 years of age are entitled to be protected from economic exploitation, and from work that is likely to be harmful to or to interfere with their education. The law promises to ensure that secondary education, including technical and vocational education, shall be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education. Wheelchair-bound disability does not prevent disabled children from enrolling in the school system and pursuing various careers of their choice. The school for the visually impaired and the hearing impaired was established with the primary objective of providing special needs education for children. The Education Policy (1988–2003) of the Government of the Gambia recognises the right of disabled persons to have equal access to educational opportunities available in the country. The law stresses that the State should encourage regular attendance at schools and promote the reduction of dropout rates. An area where the education system has not made significant inroads has to do with a form of confessional education called the *dara* system. The *dara* is an informal ‘school’ for Muslims, and learners in such centres are taught to memorise the Holy Quran in addition to other Islamic teachings. Vocational training is available for children in the Gambia, and was also available for refugees, but is limited by available funding.

The 1992 Ghanian Constitution states that **basic education is free, compulsory and available to all**, while secondary education in its various forms, including technical and vocational education, is to be made generally available, accessible and progressively free. Even though the minimum age of completion of compulsory education is 15, children above the stipulated age who have not completed basic school can still enjoy the right to education\(^{127}\). The Education Act 1961 (Act 87) provides free compulsory primary education for all children of school going age, while section 8 of the Children’s Act provides for the right of the child to education. The Act also spells out regulations on formal education and apprenticeship in the informal sector.\(^{128}\) Section 10 of the Children’s Act 1998 (Act 560) has special provision for the treatment of disabled children. Children with physical disabilities are integrated into regular schools. There are two schools for the visually impaired, eight schools for the hearing impaired located in eight regions, and five special schools for the mentally challenged situated in various parts of the country. However, most of these institutions lack adequate facilities. In adequate funds to purchase special equipment, teaching aids and educational materials limit the educational attainment of disabled children. The disabled child is likely also to face rejection, discrimination and abandonment in the family and the community. A series of national actions have been carried out targeted at encouraging children from poor households to attend school. These include a capitation grant at the basic level (class one - class six); the School Feeding Programme; and free buses for school children.

The right to education in **Mali** is unclear. The Constitution recognises the right of everyone to have access to knowledge, and that education is free in public schools. The state is therefore meant to play a central role in guaranteeing children’s access to education, culture and professional

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\(^{127}\) UN Committee on the Rights of the Child Concluding observations on Ghana’s Second Periodic Report, CRC/C/GHA/CO/2, 17 March 2006.

\(^{128}\) Ibid.
training. Parents have the obligation under the Constitution to provide education and training to their children until the age of 16 years. Mali introduced compulsory education via the 1999 law on educational orientation – as in CAR, parents have an obligation to enrol their children in school; but Mali goes further in that such compulsory enrolment must continue up to the completion of basic education, which lasts until the age of 15 years.

In Niger, the state guarantees the right to education. According to the law, this guarantee covers education of children from 4 to 18 years. Related to this are two questions on which legislative and policy frameworks remain unclear: what is the rationale of guaranteeing the right to education to this age bracket? And does this merely recognise the right to education for this age range or does it mean that education is free and compulsory for this age bracket?

The Nigerian Constitution of 1999 and Section 15 of the Child Rights Act 2003 guarantee the right to free and compulsory education. A Universal Basic Education (UBE) Act was also enacted in 2004 to promote free and compulsory primary and lower secondary education. The UBE Act 2004 (which repealed the earlier National Primary Education Commission Act (L.F.N. 2004 Cap N68) was intended to promote and protect early childhood care and education, nine years of formal schooling, adult literacy and non-formal education, skills acquisition programmes, and the education of special groups such as nomads and migrants, girl-children and women, Almajiris, street children and disabled groups. Item 2(a) of the Fourth Schedule of the 1999 Constitution empowers local government administrations to participate in the provision and maintenance of primary, adult and vocational education – while item 30, Part II of the Second Schedule of the Constitution mandates the State Houses of Assembly to:

...make laws for the State with respect to technical, vocational, post-primary, primary or other forms of education, including the establishment of institutions for the pursuit of such education...

The UBE Act goes further in Section 2, affirming the right of every child to compulsory, free universal basic education, and in Section 3 it states clearly that services in public primary and junior secondary schools must be provided free of charge. In order to realise the goal of effective reintegration of juveniles into their communities after release, the Borstal Institution Law provides for vocational and educational training and the reformation of juvenile offenders. There are provisions for vocational training in tailoring, photography, welding, building (masonry or bricklaying), electrical installation, etc., as well as formal educational instruction up to General Certificate of Education (Ordinary Level).

The Education Act 2004 of Sierra Leone requires all children to complete basic education: six years of primary school and three years of junior secondary school (JSS). In keeping with the policy framework articulated in the Sierra Leone Poverty Reduction Strategy Paper and other documents that set education as one of the country’s priorities, the government abolished school fees for all children in primary schools and for girls in JSS in the Northern and Eastern regions. In addition, a substantial share of government expenditure has been allocated to the education sector. For example, from 2000 to 2004 the share of current expenditure allocated to education stabilised at about 20%, a far larger share than for any other single sector. However, despite great progress made in increasing access to education, the goal of all children completing primary education is still not a reality. About 25-30% of primary school aged children (more than 240,000) are currently not in school. Children (particularly girls) from the poorest
households and those from rural areas and the Northern Region are lagging behind. The government thus introduced the Education for All (EFA) initiative, which aims to achieve universal basic education. While the government has abolished school fees, primary education is still not completely free, because many schools independently impose a variety of charges on their students.

Much like Benin, Ghana and the Gambia, Togo has opted for the progressive realisation of free public education, due to limited resources. However, the right to education and to quality education is guaranteed: every child has a right to education that is sound and worthy. Parents and family members are bound to choose the type of education they want for their children, and the schools they would like them to attend. They are required to give the children moral education according to their convictions in the best interests of the child, and to counsel and guide them pursuant to their mental needs. They have the right to subject children to family discipline, but in strict respect of their dignity and their rights as human beings. In the 2008/09 academic year, school fees were abolished for primary education. Vocational training, recognised as a form of professional training, takes place within an enterprise or a training centre that enables the child to acquire the skills necessary for the exercise of a profession. For children outside the conventional school system, training in functional literacy is associated with the vocational training. The law of 16 May 1984 on the protection of girls and boys regularly enrolled in a learning establishment or in a professional training centre prohibits sexual relations between teachers and the pupils. To have frequent sexual relations in this manner or thereby to occasion a pregnancy is punishable under this law. As elsewhere, lack of appropriate and adequate infrastructure is a serious setback to educational reform in Togo.

3.3.2 Major challenges and gaps in implementing free and compulsory education

a. Financial and physical resource constraints

In Ghana, major challenges are experienced in enforcing compulsory education. Since the introduction of the capitation grant, though enrolment has increased by 16%, over 800,000 children remain out of school. This is due to a lack of monitoring activities by government, and a consequent failure to enforce children’s compulsory rights. Though it is a Constitutional mandate that education be made free and compulsory and available to all, the capitation grant only covers children in public schools. There are not enough classrooms to accommodate the rate of enrolment in the country, and this has not only led to overcrowding in the classroom, but has also affected the teacher/student ratio in the country, which stands at 1:75 on average but in certain parts of the country is as high as 1:120 in a single class. This has compromised the quality of education in the country. Inclusivity of education in the country is also very weak, especially as regards promoting the right to education of children with disabilities. There are no structures in place to ensure proper integration of children with disabilities in an inclusive education system in Ghana.

Despite the Constitutional and legal guarantees of free and compulsory universal education, it is in reality largely unavailable in many parts of Nigeria. Factors impeding access to free education include

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129 Article 257, Child Code.
high illiteracy, particularly among girls and women; a generally low quality of education in many of the existing educational institutions; regional disparities with regard to resources, facilities and the level of teaching; gender and regional disparities in school enrolment; high levels of absenteeism and school dropout rates, in part due to ‘municipal’ charges which constitute a burden to parents in sending children to school; mandatory requirements by law in some states of segregation of boys and girls in schools; and segregation of refugees and displaced children by placing them in separate schools away from other children.

b. Hidden costs

This review identified hidden costs as a major constraint in realising the right to education. Even where school fees have been abolished, many schools continue to impose a variety of charges on their students. Widespread poverty also makes it difficult for guardians to afford school-associated costs, particularly in poor and urban families.

Chart 11: Percent of central government expenditure allocated to education (1998-2008)\textsuperscript{130}

The median value for government investment in education, according to UNICEF indicators, is approximately 14.5% of central government expenditure. Cameroon, the Gambia, Mali, Nigeria, and Sierra Leone are all below this threshold. Benin has invested 31% of central government expenditure in education. In order to achieve free universal education, it is imperative that countries invest more resources, particularly financial, technical and infrastructural resources, to get children enrolled in schools.

c. Gener disparities in education

In Cameroon, girls in rural communities are subjected to early marriage, which has a negative effect on their education.\textsuperscript{131} Discrimination against girls who fall pregnant is also a contributing factor to the dropout rates of girls.


In Nigeria, discrimination against girls with regard to education remains a major source of concern as regards girls’ rights to education and wellbeing. Harmful traditional practices, such as early marriage and the discriminatory cultural practice of preference of boys, underline the need for proactive community engagement in order to promote the education of girls.

In fact, gender discrimination against girls is pervasive in almost all the countries in this review, with boys accounting for higher overall primary school enrolment compared to girls. In the Gambia, for example, only 38% of girls were enrolled in primary school in 2000 to 2007, compared to 53% of boys.

None of the countries in this review have achieved universal primary education, a failure that has a direct bearing on realising the right of both boys and girls to education.

d. **Lack of teachers**

In Niger the major concern remains a lack of qualified teachers. Unqualified teachers employed on a precarious contractual basis and poor educational infrastructure hamper the quality of education.

In order to realise children’s right to education, the CRC Committee recommends that countries:132

- Increase public expenditure on education, in particular pre-primary, primary and secondary education
- Include the children’s rights that are provided for in the CRC in school curricula
- Be alert to the introduction of levies and other fees that act as barriers to accessing education, even where education within public schools is free
- Make an effort to ensure access to informal education by vulnerable groups – including children living on the streets, orphans, children with disabilities, child domestic workers and children in conflict areas and camps – by eliminating the indirect costs of school education, among other strategies.

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132 It is possible to see these views of the CRC Committee in its General Comment No. 1 on the Aims of Education, CRC/GC/2001/1, 17 April 2001; and also in many of its Concluding Observations both on countries from the developing and the developed world, as elaborated in In the Best Interests of the Child: Harmonising Laws on Children in Eastern and Southern Africa, ACPF (2007) 56.
3.4 RIGHT TO A FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Box 15: The right to a family

**CRC – Preamble, Articles 5, 18 and 27**

**Preamble**
The child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding...

**Article 5**
States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

**Article 18**
1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

**Article 27**
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development.

**ACRW – Article 18 and 19**

**Article 18**
1. The family shall be the natural unit and basis of society. It shall enjoy the protection and support of the State for its establishment and development.
2. States Parties to the present Charter shall take appropriate steps to ensure equality of rights and responsibilities of spouses with regard to children during marriage and in the event of its dissolution. In case of the dissolution, provision shall be made for the necessary protection of the child.

**Article 19**
1. Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determines in accordance with the appropriate law that such separation is in the best interest of the child.
The CRC and the ACRWC contain many important provisions concerning the family and its primary role in the development of the child.

Article 5 of the CRC describes on the one hand the delicate balance between a child’s capacity to exercise his or her rights and the responsibilities of parents to provide guidance and protection, and, on the other hand, the balance between the duty of the State to respect the privacy of the family and the need for it to protect the rights of children. Article 18 of the Convention provides that parents have the primary responsibility for raising children, and Article 27 adds the primary responsibility of providing them with conditions favourable to their development. Both of these Articles recognise the role of the State in providing assistance to meet these obligations. Article 18 also promulgates the principle that ‘both parents have common responsibilities for the upbringing and development of the child’, while Article 27 recognises the state’s duty to help custodial parents obtain child maintenance from absent parents. Other relevant provisions of the CRC include the Preamble, which affirms a child’s right to the full and harmonious development of his or her personality within the family environment and in an atmosphere of happiness, love and understanding. Articles 7 through 10 also recognise different aspects of the principle of family unity, including the imperative that children shall not be removed from their families except as a last resort, and children’s right to maintain regular and personal contact with their parents in case of separation.

Article 18 of the ACRWC is quite unique and original, and has no counterpart in the CRC. This Article establishes that the family shall enjoy the special protection of the state, by recognising the important role the family plays in the society. This special protection is echoed in the Africa Fit for Children Declaration and Plan of Action, which urges governments to provide assistance and protection of family units and the extended family system. However, Article 18 does not contain the express right of the child to a family, but rather a ‘right of the family’. Article 18(2) provides for the equality of rights and responsibilities with regard to children, and aims at safeguarding the child’s wellbeing even in the case of a dissolution of marriage. However, the ACRWC is silent on the rights and responsibilities of unmarried parents. Article 18(3) addresses the specific needs of children born out of wedlock, in that it provides for a special maintenance clause that protects against discrimination on the grounds of marital status. Related to the family environment is the right to parental care and protection contained in Article 19. The ACRWC expressly provides that no child shall be separated from his/her parents against his/her will. Article 19(3) of the ACRWC provides for the right of the child, the parents, or another member of the family to information in the case of a separation caused by an action of the state.

### 3.4.1 Legislative recognition of the right to a family environment

Most of the legislative instruments of the countries in this review recognise the right to a family and to protection as a basic human right. For instance, the Constitutions of some of these countries proclaim the family as the basic unit of society, and recognise the duty of the state to protect families, as well as the duty of parents to raise and educate their children.\(^{133}\)

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\(^{133}\) See, for instance, the Constitutions of Burkina Faso and Togo.
The Nigerian Child’s Rights Act contains the following article with regard to family unity:

Every child has the right to parental care and protection and accordingly, no child shall be separated from his parents against the wish of the child except: (a) for the purpose of his education and welfare; or (b) in the exercise of judicial determination in accordance with the provisions of this Act, in the best interests of the child.  

In Togo, the family is considered the primary arena for the protection of the child. Legislation therefore requires that every child should be brought up by his or her parents, except where a child’s security, health and morality are in danger.

Section 11 of the Gambian Children’s Act 2005 has extensive provisions relating to children’s right to a family environment and alternative care. Section 11 provides that every child has a right to enjoy parental care and protection and shall, whenever possible, have the right to reside with his or her parents, and that:

...no child shall be separated from his or her parents against the will of the child except when a judicial authority determines in accordance with the provisions of this Act or other law that the separation is in the best interest of the child.

In addition:

...every child who is separated from one or both parents has the right to maintain personal relations and direct contact with both parents on a regular basis...

[including] the right to maintenance by his or her parents or guardians in accordance with the extent of their means.

Additionally, the child has the right to stay with his or her parents as provided. It is also the duty of the parent or guardian having custody of the child to maintain that child and, in particular, to guarantee the child the right to: education and guidance; immunisation; adequate diet according to the means of the parent, guardian or other person; clothing; shelter; and medical attention.

Section 24 of the Sierra Leone Children’s Act provides that no person may deprive a child of the right to know his natural parents and extended family. Section 25 of the Children’s Act further provides that ‘no person shall deny a child the right to live with his parents and family and grow up in a caring and peaceful environment’, unless it is proved in court that living with his parents would lead to significant harm to the child, subject the child to serious abuse, or not be in the best interests of the child.

3.4.2 Custody

The CRC provides that decisions concerning the custody of children whose parents do not live together shall be based on the best interest of the child, and that such children have the right to regular contact with both parents, unless such contact would be contrary to their best interests. This is a principle that enunciates that separation from parents and prohibition of regular contact should be taken as a measure of last resort. Based on this premise, for instance, the Gambian

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134 Section 1.
135 Article 153 of the Child Code.
136 Section 11(1) Children’s Act 2005.
137 Ibid, section 11(2).
138 Ibid, section 11(3).
139 Ibid, section 11(4).
140 Article 9 of the CRC.
Children’s Act provides that ‘every child who is separated from one or both parents has the right to maintain personal relations and direct contact with both parents on a regular basis’. 141

With respect to determining the custody of a child during divorce proceedings, the CRC requires this to be done in the best interests of the child, and stipulates that children have the right to air their views on issues that affect them. In a pending divorce case in Niger, the judge is obliged to order a social investigation to determine the material and moral situation of both parents before pronouncing the decree of divorce. A social worker is appointed to seek the child’s opinion. The judge listens to the child’s opinion in the presence of the parents as regards the child’s choice in respect to custody after the divorce. The same procedure applies in Cameroon. In Mali, the 2002 Child Protection code requires that decisions concerning the child should be geared towards maintaining the child in his or her family environment, and every child separated from one or both of his or her parents has the right to maintain regular contact with the parents and with other family members, save where a competent court considers this not to be in the best interest of the child. In Ghana, a Family Tribunal is mandated to consider ‘the best interest of the child and the importance of a young child to remain with his mother when making an order for custody or access’. When considering custody, the Family Tribunal will also examine the following:

a) Age of the child
b) That it is preferable for the child to be with his parents, except when the child’s rights are persistently being abused by his parents
c) The views of the child if the views have been independently given
d) That it is desirable to keep siblings together
e) The need for continuity in the care and control of the child, and
f) Any other matter that the Family Tribunal may consider relevant. 142

In some of the study countries, the best interest of the child is not always the paramount consideration in custody, divorce or maintenance proceedings. In the Gambia, for example, a male child below the age of seven years and a female child below the age of nine years are almost invariably left in the custody of the mother. Once they attain the abovementioned age, custody shifts to the father.

3.4.3 Child support or maintenance

The CRC confers a duty on the state to take all appropriate measures to secure the recovery and maintenance of the child from the parents, or from other persons having financial responsibility for the child. 143

The Nigerian Child’s Right’s Act 2003 144 makes provision for maintenance of a child where the parents or other caregivers are unable, or refuse, to provide the necessary care. The affected child is placed under protection or under the care of the person responsible for his or her maintenance. In cases where the person is able to maintain the child but wilfully refuses to do so, the court can order such a person responsible for the child to pay a specified monthly sum for the child’s

141 Children’s Act 2005, section 11(3).
142 Article 45(2)(a-f).
143 Article 27(4) of the CRC.
144 Child’s Rights Act 2003, sections 51 and 52.
maintenance while under placement. The Child’s Rights Act further mandates parents, guardians, institutions, persons and authorities to provide care, maintenance and good upbringing for all children within the normal home setting. Administrative measures are also in place where government, in collaboration with CSOs, CBOs, FBOs, NGOs and the private sector, provides institutional care and maintenance for children living outside the home setting and in institutions. Special vocational programmes have been developed to assist children of low socio-economic status, and for other disadvantaged and vulnerable children.

In Cameroon, there is no national legislation on payment of alimony in the case of a divorce or judicial separation. Section 301 of the French Civil Code and section 76 of the 1981 ordinance in Cameroon both recognise the right of a deserted mother and her children to alimony for herself and for the children. However, widespread ignorance of the law and the lack of legal provisions with respect to children born out of wedlock remain major setbacks to their right to survival and development. The law as it stands does not allow children born out of wedlock to establish affiliations with their biological father and stipulates that any action for maintenance from the father is unfounded. In addition, discriminatory practices preclude children born of incestuous and adulterous relationships from claiming any succession rights other than through their mothers. This discriminatory effect is compounded by the fact that legal action for alimony by a woman deserted with minor children is open only to married women.145

Under Islamic law, children born out of wedlock or incestuous relations are precluded from establishing relations with their fathers, and custody and maintenance is therefore the primary duty of mothers. The 2005 Children’s Act of the Gambia has attempted to bridge this discriminatory practice by providing children with the right to contact with both parents. Section 11(4) of the Gambian Children’s Act 2005 provides that ‘every child has the right to maintenance by his or her parents or guardians in accordance to the extent of their means’.

Section 26(3)(b) of the Children’s Act 2007 of Sierra Leone provides as follows:

Except where the parent has surrendered his rights and responsibilities in accordance with the law, every parent has the rights and responsibilities whether imposed by law or otherwise towards the child which include the duty to provide good guidance, care, assistance and maintenance for the child and assurance of the child’s survival and development.

The Children’s Act of Ghana (Act 560) of 1998 also has extensive provisions for the maintenance of children. Section 47(1) imposes a legal duty on:

...a parent or any other person who is legally liable to maintain a child or contribute towards the maintenance of the child... to supply the necessaries of health, life, education146 and reasonable shelter for the child.

145 Article 76 of 1981 Ordinance on Civil Status. The same discrimination applies in the case of legal aid (Article 19(c)) and 22(b) of Decree no 76 of 9 November 1976 on legal aid.

146 For the purpose of this section, education means basic education.
A parent, guardian of a child or any other person can apply to a Family Tribunal for a maintenance order. The Act also enables a child, via a friend, probation officer, social worker, or the Commissioner on Human Rights and Administrative Justice, to apply to a Family Tribunal for a maintenance order. The Family Tribunal considers the following when making a maintenance order:

a) The income and wealth of both parents of the child or the person legally liable to maintain the child
b) Any impairment of the earning capacity of the person with the duty to maintain the child
c) The financial responsibility of the person with respect to the maintenance of the child
d) The cost of living in the area where the child is resident
e) The rights of the child under this Act
f) Any other matter which the Family Tribunal considers relevant.

There is no specific law relating to maintenance or the payment of alimony during divorce or judicial separation in Benin, Burkina Faso, CAR, Niger and Togo. However, in the absence of legislation, civil society organizations have played an active role in pressuring parents, particularly fathers, to pay maintenance. For instance, the Association of Female Lawyers in Central Africa (Association des Femmes Juristes de Centrafrique) led a campaign which called upon ex-husbands or partners to pay child maintenance in order to contribute financially to their children’s upkeep.

This review found that in most of the countries there are neither legal provisions nor policies pertaining to the following issues: family reunion; illicit transfer of a child and non-return; and deprivation of a family environment. While most countries have legal provisions on child maintenance, and this is reasonably well elaborated in recent child rights statutes, implementation is of course a challenge, and must be seen against the backdrop of endemic poverty.

### 3.5 RIGHT TO SPECIAL PROTECTION, ASSISTANCE, AND ALTERNATIVE CARE

Article 20 of the CRC sets forth the right of children who have no family, who have been abandoned or who cannot be cared for by their parents, to ‘special protection and assistance’ and ‘alternative care’. Four particular forms of alternative care are mentioned: foster care, adoption, institutional care and kafala. Article 20 emphasizes that the obligation to ensure that such children receive appropriate care lies with the state, and indicates that continuity of upbringing and environment should be taken into account in choosing the appropriate placement, and that placement in institutional structures such as orphanages should be a measure of last resort.

The Nigerian Child’s Rights Act provides that institutionalisation of children in need shall be a last resort, and obliges state governments to assist such children to return to their families. The Act also recognises that placement and care does not

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147 Article 48(1).
148 Article 48(2).
149 Article 49.
151 Section 50(3) and schedule 7 para 10.
imply permanent separation of a child from his or her family. Sections 55 and 56 provide that the authorities shall allow contact between the child and his or her family, and especially that placement does not entitle any person to change the child’s name or consent to the child’s adoption.

The Gambian Children’s Act of 2005 stipulates in section 66(5) that it is the duty of the Department of Social Welfare to:

...keep a register of children in need of special protection and measures within its area of jurisdiction and give assistance to them whenever possible in order to enable those children grow up in dignity among other children and to develop their potential and self reliance.

In addition:

...the Department shall provide assistance and accommodation for any child in need who appears to it to require assistance and accommodation as a result of his or her having been lost or abandoned or seeking refuge. 152

Part X of the Children’s Act provides for residential care homes which provide alternative family care for children until such a time as their parents are able to provide care to meet the children’s basic needs, or until the children attain the age of 18 years, whichever comes earlier. 153 In Ghana the government can also put in place residential homes for the care of children. 154

3.5.1 Adoption

Adoption is one of the four types of alternative care options expressly recognised by the CRC. Article 21 contains a series of standards specifically designed to ensure that adoption is guided by the best interest of the child. These include the requirement that all adoptions be authorised by competent authorities, and that all concerned persons, including birth parents, give informed consent (unless consent is impossible or not required for some other reason).

The Gambian Children’s Act contains provisions on adoption, and provides that an application for an adoption order must be made to the Children’s Court, and must be subject to the provisions of the Adoption Act. 155 While these laws have the best interests of children in the adoption system at heart, some violations of children’s rights continue to take place.

In Burkina Faso, adoption is allowed, 156 although Burkinabes rarely resort to formal adoption. Instead, there is a traditional form of adoption known as ‘confiage’. This consists of parents entrusting children to a near relative to educate them, without following formal legal procedures. It should be remarked that children entrusted under the ‘confiage’ system are sometimes used in the receiving families to carry out difficult chores. They may receive no education, and may be subjected to ill-treatment and violence. Until recently, no measures had been taken to control the system.

152 Section 66(6).
153 Section 126 (1).
155 In the case of children with an existing court-issued adoption order, the court acting with the supervision of a Social Welfare Officer will ensure that the transfer is in the best interests of the child and that due consideration has been given to the wishes of the child.
156 The State decreed a set of arrangements permitting control and a regular follow-up by social services to ensure that the child is treated properly in the adopting family. The controls remain insufficient.
Under the French civil law system in Cameroon, adoption can only take place in the best interests of the child. The French Civil Code, promulgated by the Order of 5 November 1830, provides that ‘no adoption shall take place unless for just motives and is of advantage to the adopted child’. The law applicable to adoption in Anglophone Cameroon is the English Children’s Act of 1975. Section 3 of the Act provides as follows:

In reaching any decision relating to the adoption of a child, the court or adoption agency shall have regard to all the circumstances, first consideration being given to the need to safeguard and promote the welfare of the child through his childhood; and shall ascertain the wishes and feelings of the child regarding the decision to give consideration to them, having regard on his age and understanding.

The above principle addresses the best interest of the child in adoption proceedings.

The draft Child Protection Code of Cameroon also introduces a new concept known as ‘customary placement,’ which is similar to *confiage* in Burkina Faso. Under the Code, customary placement refers to custody intended for children aimed at ensuring better living conditions for the child that are more conducive to the child’s growth. According to the Code, customary placement refers to:

...a legal act by which a mother and father or parent to which the child shall be affiliated, shall request to confine the child to a member of the extended family or a friendly family, who shall consent to receive and raise the child without any discrimination.

While the customary placement resembles *confiage* in Burkina Faso, unlike the latter, the former is a legal process that takes into account children’s right to appropriate alternative care mechanisms.

In addition to the Child Protection Code, Cameroonian legislature has also drafted the Family and Persons Code. This Code, once adopted, will also address the rights of the child, notably in the area of adoption, affiliation and succession. Adoption will have particular prominence in this Code because of previous loopholes in the law that saw a huge rise in adoption of children by foreigners. The Family and Persons Code is therefore expected to reinforce adoption procedures in Cameroon in order to avoid child trafficking.

Nigeria has put in place measures adopted to ensure that states recognise or permit adoption only with the best interest of the child being the paramount consideration. There are adoption laws in all southern states, as well as fostering laws in all northern states. The Child Rights Act 2003 provides for adoption, with the establishment of adoption services nationally. Clear specifications for the mechanisms and procedures for adoption, including an inbuilt monitoring mechanism which has led to restrictions on inter-country adoptions, are also included in the Act. Adopted children are given the rights of biological children, including inheritance rights. A child may therefore be adopted if the parent or guardian consent to the
adoption, or if the child is abandoned, neglected or persistently abused or ill treated, and there are compelling reasons in the interest of the child why he/she should be adopted. A court order allowing the adoption of a child may be granted to any of the following persons:

- A married couple, where each of them has attained the age of 25 years, and they are jointly authorised by the order to adopt the child
- A married person who has obtained the consent of his or her spouse
- A single person of 35 years old provided that the child to be adopted is of the same sex as the person adopting.

In all the above cases, the adopter(s) shall be person(s) found by the appropriate investigation officers to be suitable to adopt the child in question.

In Mali, the provisions of the Kinship Code and the Marriage and Guardianship Code afford protection to adopted children and enable them to maintain ties with their biological families. The Kinship Code, which was adopted by Ordinance No. 73-036 of 31 July 1973, deals with the issues of names, acquisition of filiation by birth, adoption for protection, adoption for filiation, the effects of kinship and the obligation to provide children with food. Pursuant to the Kinship Code, adoption for filiation establishes between adoptive parents and their adopted children the same rights and duties as exist between biological parents and their children, and gives adoptive parents the powers that biological parents have over their children. Only children aged less than five years who have been abandoned or whose parents are unknown or have died without leaving relatives capable of taking in their offspring are eligible for adoption for filiation. The adoption will only be authorised if it is beneficial to the child and takes account of the child’s best interests.\(^\text{161}\)

Adoption for protection\(^\text{162}\) is subject to customary and religious rules. The main condition is that the adopter takes the children into his or her care. Children are eligible for such adoption whether or not they are orphans and regardless of filiation, race, religion or nationality. Adoption for protection imposes on the adopter the obligation to feed, maintain and raise the children, and to prepare them to be independent. For a decision on either kind of adoption to be valid, it must be given in open court following an investigation and discussion in chambers, and after hearing the opinion of a representative of the Public Prosecutor’s Office.

Under Islamic Law, the principal forms of alternative care are the extended family sometimes referred to as guardianship, kafala, and institutional care. Kafala is an institution of Islamic law that has been described as follows:

Islam advocates the system of kafala, a form of tutorship in accordance with the provisions of Sharia. Islam also advocates charity and aid for the needy. In this way, children deprived of a family environment can be reared, maintained, sheltered and cared for, enjoying the status of natural children without being adopted and subject to the condition that they must retain their original lineage without being linked to that of the tutor so that, by law, they are not entitled to inheritance or maintenance-related rights that his natural children would enjoy.\(^\text{163}\)

Official adoption is rare in Niger because of cultural and religious difficulties, and many opt to enforce the system of Kafala.

\(^{161}\) Kinship Code, Article 68.
\(^{162}\) Ibid, Article 58.
\(^{163}\) Initial Report of Jordan to the UN Committee on the Rights of the Child, UN Doc, CRC/C/70/Add.4, 13 September 1999, para 64.
3.5.2 Inter-country adoption

The CRC also contains a series of requirements regarding inter-country adoption. The CRC calls for the enforcement of inter-country adoption only as a last resort, and stipulates that children adopted by parents from another country enjoy at least the same rights they would in their country of origin, and that improper financial or other gain through adoption be prohibited. 164

In 1993, guided by the CRC, the Hague Conference on Private International Law adopted a new Convention to address the specific reality of inter-country adoption, referred to as the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (The Hague Convention on Inter-country Adoption).

### Table 10: Status of ratification or accession to the Hague Convention on Intercountry Adoption

<table>
<thead>
<tr>
<th>Country</th>
<th>Signature</th>
<th>Ratification/Accession</th>
<th>Type</th>
<th>Entry into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burkina Faso</td>
<td>19/04/94</td>
<td>11/01/96</td>
<td>Ratification</td>
<td>01/05/96</td>
</tr>
<tr>
<td>Mali</td>
<td>-</td>
<td>02/05/06</td>
<td>Accession</td>
<td>01/09/06</td>
</tr>
<tr>
<td>Togo</td>
<td>-</td>
<td>12/10/09</td>
<td>Accession</td>
<td>01/02/210</td>
</tr>
</tbody>
</table>

Only 11 African countries are parties to the Hague Convention on Adoption, three of which (Burkina Faso, Mali and Togo) are countries covered by this review. 165 Due to a lack of data, it is also unclear whether any of the countries in this review have signed a bilateral treaty with other states on the subject. As a result, in all the study countries other than Burkina Faso, Mali and Togo, only national adoption laws are applicable, subject to the presence of any bilateral treaty.

As the table above indicates, Togo is one of the African countries that ratified the Hague Convention on Adoption. Under Togolese law, adoption of children is based on the best interest of the child. No adoption of a child can take place if it is not in the best interest of the child. In the event of an improper refusal by one parent or family member to consent, the prospective adopter may file a petition to the president of the court of first instance to waive the consent and authorise the adoption. The compulsory probation period of one year that the adoptee has to spend in the home of the adopter may also be waived. To reduce incidents of child trafficking, the legislature has strictly based adoption on the child’s best interests. As a result, inter-country adoption can only take place when it is impossible at national level to find a decent family life for the child. 166

Inter-country adoption is prohibited in Nigeria. The adoption laws of the various states provide that persons adopting or fostering a child should come from the community or locality of the child. Therefore, a Nigerian child cannot be validly adopted outside the country by a foreigner. Section 116 of the Child Rights Act 2003 prohibits the taking or transfer of a child outside Nigeria.

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164 Article 21.
166 Children’s Code, Article 102.
3.6 RIGHT TO PROTECTION FROM VIOLENCE, TORTURE OR OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT

Box 16: The right to protection from violence

**CRC - Article 19**

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse and neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

**ACRWC - Articles 16 and 21**

**Article 16**

States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of a parent, legal guardian or school authority or any other person who has the care of the child.

**Article 21**

States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of a child and in particular those customs and practices:

(a) Prejudicial to the health or life of a child
(b) Discriminatory to the child on the grounds of sex or other status.

The right of children to be protected against violence, abuse and neglect is recognised by various CRC provisions, including Articles 19, 28(2) and 37(a). Article 19 obliges states to protect children from ‘all forms of physical or mental violence, injury or abuse, neglect or negligent maltreatment or exploitation, including sexual abuse’ while in the care of parents, guardians or other persons responsible for their care. Article 39 recognises the right of children to rehabilitation following neglect, exploitation or abuse.

Similarly, Article 16 of the ACRWC provides for the child’s protection from torture, inhuman or degrading treatment. Article 21 goes further, calling upon states to eliminate harmful social and cultural practices affecting the welfare, dignity and proper development of the child.

In the recently adopted General Comment No. 13 of the Committee on the Rights of the Child, the right of children to freedom from all forms of violence has also been expounded.167

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167 Committee on the Rights of the Child, General Comment No. 13, The Right of the Child to Freedom from All Forms of Violence, CRC/C/GC/13, 18 April 2011.
Most of the countries in this review have incorporated provisions against forms of physical and mental violence and injuries against persons including children in Constitutions and other national legislation. The problem of child abuse is primarily addressed by criminal law and legislation concerning the removal of children from abusive parents. In fact, several forms of punishment are aggravated when the offence is committed against a minor. However, various forms of violence detrimental to the health and wellbeing of children are still sanctioned by law in many of the countries under this review.

**Table 11: Selected Constitutional provisions protecting children from violence, torture and other inhuman and degrading treatment**

<table>
<thead>
<tr>
<th>Country</th>
<th>Constitutional Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benin</td>
<td><strong>Article 18 of the Constitution of 11 December 1990</strong> provides that no one shall be submitted to torture, physical violence or cruel, inhuman and degrading treatment.</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td><strong>Article 2 of the Constitution</strong> states that ‘slavery and similar practices, cruel, inhuman and degrading treatment, physical or moral torture, abuse and ill-treatment meted out to a child and all forms of degradation by man are prohibited and punishable by law’.</td>
</tr>
<tr>
<td>Cameroon</td>
<td>The <strong>preamble of the Constitution</strong> states that every person has the right ‘to physical and moral integrity and to humane treatment in all circumstances. Under no circumstances shall any person be subjected to torture, or to cruel, inhumane or degrading treatment’.</td>
</tr>
<tr>
<td>The Gambia</td>
<td><strong>Constitution of 1997, section 21,</strong> provides that no person shall be subjected to torture, inhumane or degrading treatment.</td>
</tr>
<tr>
<td>Ghana</td>
<td><strong>The 1992 Constitution of the Republic of Ghana, Article 28(3),</strong> states that ‘a child shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment’.</td>
</tr>
<tr>
<td>Mali</td>
<td><strong>Article 3 of the 1992 Constitution</strong> provides that ‘no one shall be subjected to torture or inhuman, degrading or humiliating treatment or punishment. Any person and any government official guilty of such acts, whether committed on his or her own initiative or on orders, shall be punished in accordance with the law’.</td>
</tr>
<tr>
<td>Nigeria</td>
<td>The Constitution of the Federal Republic of Nigeria states in section 34(1) that every individual is entitled to respect for the dignity of his person, and that no person shall be subjected to torture, inhuman or degrading treatment, or be held in slavery or servitude, or be required to perform forced or compulsory labour.</td>
</tr>
<tr>
<td>Togo</td>
<td>Under <strong>Article 21 of the Constitution,</strong> no one can be submitted to torture or to other forms of cruel, inhuman and degrading treatment.</td>
</tr>
</tbody>
</table>

In **Togo,** the Constitution provides that no one may be subjected to torture and other forms of cruel, inhuman and degrading treatment. The criminal law punishes various acts of physical violence against children, including wilful violence, and is deemed to be an aggravating circumstance. Even where the child himself/herself is the
offender, he/she should be treated with dignity. The state protects the child against all forms of violence, including sexual exploitation, physical or mental brutality, abandonment or negligence and ill treatment perpetrated by parents or by any other person having authority over the child.

In order to avoid disgrace and to maintain family cohesion, however, many cases of sexual abuse and incest are dealt with within the family setting. Cases of infanticide, sexual violence in marriage, incest, sexual abuse in the family and corporal punishment at home are often not reported to the authorities. The reason often given is that there is a family relationship between the perpetrator of the act and the victim; therefore, the violations are settled within the family.

As early as the beginning of the 1980s, legislation abolished cruel punishments in schools, vocational training centres and other child institutions. Perpetrators of such acts are punished under the Penal Code. In 1980 an Ordinance was passed to this effect, and a 1983 manual on school legislation and administration clearly states that punishment should be rare, occasional, moderate, inflicted in a serene and dignifying manner, and proportionate to the age and the sensibility of the child and the gravity of the offending act.

Children who are victims of abuse and violence may report to the General Directorate for Child Protection (Direction Généralé de la Protection de l’Enfant), the organisation in charge of child matters; or lodge a complaint before the National Human Rights Commission, the Police, or the Gendarmes; or file a legal suit. Under Togolese law, any person with an interest in the matter (notably the father, guardian or probation officer) may file a complaint before the competent court to obtain a criminal sanction and to claim damages. The reintegration and rehabilitation of children who are victims of abuse and violence is taken care of by the General Directorate for Child Protection.

Protection from violence or torture is covered by several instruments applicable in Nigeria, including the Constitution, the Child’s Rights Act and the Penal and Criminal Codes. However, various laws endorse corporal punishment in various settings. Article 18 of the Criminal Code (South) states that wherever a male person who in the opinion of the court has not attained 17 years of age has been found guilty of any offence the court may, in its discretion, order him to be whipped in addition to or in substitution for any other punishments to which he is liable. Notwithstanding international opposition and concerns expressed by all human rights NGOs, the Sharia Legal Code is implemented in the Northern states of Nigeria. This has added another complicated dimension to the problem. Legislative provisions in line with Sharia Law prescribe penalties and corporal punishment taken literally from the Koran, such as flogging, whipping, and stoning. These provisions negate the provisions of the CRC and ACRWC.

Similarly, legal provisions concerning violence, ill-treatment and corporal punishment at home are vague, and leave children without protection. Article 55(1)(a) of the Penal Code (North) stipulates that ‘nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done by a parent or guardian for the purpose of correcting his child or ward’ who is under 18 years of age. Article 295 of

168 By ‘institution,’ the Togolese legislator refers to an orphanage, centre for disabled children, welcome and social reinsertion centre, hospital, re-education centre or any other centre that receives children on a temporary or permanent basis (See Togolese Country Report, 39)
the Criminal Code (South) also prescribes corporal punishment as a measure for the education of a child by stating that:

...a blow or other force, not in any case extending to a wound or grievous harm, may be justified for the purpose of correction as follows: (1) a father or mother may correct his or her legitimate or illegitimate child, being under sixteen years of age, or any guardian or person acting as a guardian, his ward, being under 16 years of age, for misconduct or disobedience to any lawful command.

The article goes on to state in subsection (2) that ‘a master may correct his servant or apprentice, being under 16 years of age, for misconduct or default in his duty as such servant or apprentice’ and in subsection (4) it states that:

...a father or mother or guardian, or a person acting as a guardian, may delegate to any person whom he or she entrusts permanently or temporarily with the governance or custody of his or her child or ward all his or her own authority for correction, including the power to determine in what cases correction ought to be inflicted; and such a delegation shall be presumed, except in so far as it may be expressly withheld, in the case of a schoolmaster or a person acting as a schoolmaster, in respect of a child or ward.

Because of these provisions law enforcement officers do not take cases of corporal punishment at home and at school seriously, which explains why many such cases are never prosecuted. Rather, they are seen as ‘family matters.’ In addition, the provisions consider only the physical dimension of corporal punishment and fail to take into account the mental and emotional damage caused by corporal punishment.

The pluralist legal system that exists in Nigeria further complicates the provisions, and provides varied definitions and applications of laws and policies relating to violence and abuse of children. In sum, while the Child Rights Act explicitly prohibits the imposition of corporal punishment or imprisonment, existing Penal and Criminal Codes operative in all States in Nigeria provide for capital punishment as sentences for crimes committed by any person in Nigeria, based on the order of a competent court of law. As a result, Criminal and Penal Codes are yet to be harmonised in line with the Child Rights Act.

In Ghana, as highlighted in the table above, any form of violence against children is unacceptable under the law on fundamental human rights. For instance, the Children’s Act states that:

...no person shall subject a child to torture or other cruel, inhuman or degrading treatment or punishment including any cultural practice which dehumanises or is injurious to the physical and mental wellbeing of a child.

The Children’s Act provides that no correction of a child is justifiable which is unreasonable in kind or degree according to the age or physical and mental condition of the child and no correction is justifiable if the child by reason of tender age or

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169 Nigeria has two separate codes, one applying to Southern Nigeria (Criminal Code) and the other applying to Northern Nigeria (Penal Code), leading to varied interpretations of legal provisions. Despite the abolition of corporal punishment in the Child’s Rights Act, the criminal law sanctions the use of corporal punishment in the school, home and community. In addition, under the Nigerian Legal System there is no specific provision on the punishment of those who administer corporal punishment to children. However in light of the Child’s Rights Act, such an act now constitutes an assault of battery or causing grievous bodily harm to a child.
otherwise is incapable of understanding the purpose of the correction. However corporal punishment within the school environment is not forbidden, though it has to be done in the presence of the Headmaster or the Headmistress, who determines the number of strokes, which must not exceed six. There are other forms of punishment meted out to children in schools of which the degree and psychological effect cannot be measured, such as weeding and carrying stones from one point to another.

In Niger, acts constituting violence and abuse are common within the family and in school. Within the family environment they are usually in the form of early forced marriages and customary coitus. In schools, violent and abusive acts are often in the form of sexual harassment. According to a study conducted in February 2004 on violence against female students in secondary schools and universities of the urban county of Niamey, 87.5% of young girls (pupils and students) and 81.1% of boys (pupils and students) acknowledged the existence of such violence. Moreover, the perception of this violence increased from the first cycle (81%) to the university level (100%). This violence results in a high rate of school dropout, because of unwanted pregnancies or forced or early marriages. However, in June 2003, Niger adopted a law against sexual harassment. This law provides that harassment by giving orders, through threats and through coercion in a bid to have sexual satisfaction is punishable by imprisonment for 3 to 6 months and a fine. The law also punishes indecent assault without violence on a child of either sex aged less than 13 years, whether actual or attempted, with imprisonment of between 2 and 10 years and a fine. If the indecent assault is committed on a child aged less than 13 years, it is deemed to be an aggravating circumstance and the sentence is increased (10 to 20 years).

The legal situation in Mali is similar to that of Niger in respect of indecent assault, save for the fact that the child should be less than 15 years and the term of imprisonment is between 5 and 10 years. Also, any attempted customary sexual act on a girl of less than 15 is punishable with a prison term of 1 to 5 years. The criminal law also protects the child against torture, ill treatment and other acts that endanger the child’s health.

In Sierra Leone, Article 33(1) of the Child Rights Act of 2007 provides that:

...no person shall subject a child to torture or other cruel, inhuman or degrading treatment or punishment including any cultural practice which dehumanises or is injurious to the physical and mental welfare of a child.

Section 33 (3) also repeals the Corporal Punishment Act. The Child Rights Act sets the minimum age of marriage at 18 years and prohibits child betrothal, dowry transactions and forced marriage (section 34). The prescribed penalty for contravention for the above offences is a fine not exceeding 30 Million Leones, or a term of imprisonment not exceeding two years, or both a fine and imprisonment.

In Burkina Faso, acts such as forced marriages, abandonment and rape are outlawed and are punishable under criminal law, just like FGM. The Constitution generally prohibits and punishes: slavery; inhuman and cruel, degrading and humiliating treatment; physical or emotional torture; violence; ill treatment inflicted upon children; and all kinds of degradation of the human being.
In CAR, it would appear that the country is not yet in a position to realise its obligations regarding the protection of the child against violence. This conclusion is informed by the country’s present state of political instability, whereby children are enrolled by warring factions as child soldiers and girls used as sex slaves. The lack of specific provisions for children, coupled with the lack of punitive measures and policies (e.g. against armed bandits and armed groups), prevents the country from establishing social, cultural and educational programmes for children at risk as recommended by the CRC and the ACWRC.

In the Gambia it is believed that corporal punishment is not illegal, and it continues to be practised. In some cases, it is seen as a natural way of disciplining children; and, under common law, parents and guardians can ‘reasonably chastise’ their children. At school, procedures restrict corporal punishment in that it is to be administered only by or in the presence of the head teacher, and to female pupils only in exceptional circumstances. It must be logged in a designated book (section 15 of the Education Regulations of Education Act Cap 46 of the revised laws of Gambia, 1990). The Department of State for Basic and Secondary Education also developed and distributed guidelines for maintaining discipline in schools without using corporal punishment. In 2006, UNICEF and the Government of the Gambia produced a guide for teachers, Promoting Alternative Discipline. A 2005 Survey of Corporal Punishment in the Gambia funded by Save the Children Sweden in collaboration with Child Protection Alliance (CPA) revealed that, according to children surveyed, 69.7% of schools use corporal punishment. There was no sex difference in reporting, and this figure was consistent at each educational level and location. Only 10.2% of students reported not being beaten or subjected to other punishments by their teacher. More boys (21.9%) than girls (15.6%) reported being beaten by teachers very often. 80.8% of teachers think that corporal punishment is an effective or very effective discipline strategy, although only 57.9% reported that they would use it.

In Benin, the Constitution prohibits any form of torture, physical violence or cruel, inhuman and degrading treatment. The Bounevet Criminal Code, dating from the colonial period but still in force in Benin, states in Article 312, Clause 2 that:

...anybody who shall willingly injure or knock a child fully aged fifteen, or who shall willingly deprive him of food or health care to the extent of endangering his health, shall be punished...

The punishment is aggravated depending on whether there has been premeditation, whether the perpetrators are parents or tutors, and whether the assault or deprivation of food or health care were followed by mutilation, imputation, or deprivation from using a limb, and whether these acts were committed with the intent of provoking death. The code further punishes anybody who in the case of consummation of a marriage celebrated in the local custom, between citizens who have kept their particular status, shall have made sexual act or attempted to make sexual act on the person of a child less than 13 years old. In addition where serious injuries have resulted for the child, even a temporary infirmity or the intercourse resulted in the death of the child or were accompanied with violence, a sentence of forced labour applies.

Unfortunately, the type of treatment punishable by the old Bouvenet Code continues in Benin, where children are victims of the ‘vidomegon’ practice. Based on inter-family help, vidomegon results in the placement of the girl child in a receiving family, supposedly in her interest. However, in reality this can result in the child’s subjection to violence, torture and other cruel, inhuman and degrading
treatment (e.g. physical and mental assault, deprivation of food, beatings and chastisements and sexual abuse).

Corporal punishment is strictly forbidden in Benin, whether in schools or penitentiaries, but the reality is very different. Since 2003 the law has punished various forms of child abuse, including but not limited to FGM, forced prostitution, sexual abuse, forced marriage and paedophilia. In 2006, other instruments were established that prohibited sexual harassment. A 1969 law on offences committed by minors further protects child offenders against violence and other cruel, inhuman and degrading treatment. The Constitution rejects any form of human trafficking on its territory for purposes of slavery in other countries. The efforts of NGOs in Benin have been commendable in enhancing the promotion of children’s rights in the training of magistrates, lawyers, security officers, social workers, teachers and civil society organisations in – on one hand– lobbying and advocacy, and– on the other – action and research on children’s rights.

The law in Cameroon largely punishes various forms of violence, torture and cruel, inhuman or degrading treatment. Torture is expressly punished under section 132 of the Penal Code. Other forms of cruel, inhuman and degrading treatment are punished under section 350 relating to assault on children. In addition, the administration of toxic substances, deprivation of food and care, and desertion are all addressed under Sections 80 and 285 of the Penal Code. With respect to children, the law is particularly severe if any such acts were perpetrated against them. A variety of acts or omissions under the Penal Code are described under appropriate offences, a measure directly or indirectly aimed at protecting the child.

FGM is carried out in isolated areas in three of the 10 regions of Cameroon, including some areas of the Far North, East, and South-West regions, although it is a fast-dying practice. The Association of Women against Violence continues to implement a programme in Maroua to assist victims of FGM and their families, and to educate local populations of the dangers of the practice. The draft Child Protection Code has addressed this concern, classifying it – alongside other forms of treatment – as cruel, inhuman or degrading treatment.

The most common form of violence observed in Cameroon takes place in homes, and, to some extent, in schools. The Ministry of Social Affairs has initiated an investigation on violence at school and within the family. The NGO Plan Cameroon has taken steps to raise awareness of the ills of violence and corporal punishment in schools, thus

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170 For instance, the Preamble of the Constitution states that every person has the right ‘...to physical and moral integrity and to humane treatment in all circumstances. Under no circumstances shall any person be subjected to torture, to cruel, inhumane or degrading treatment’.
171 EDS-III 2004 statistics: 1.4% of women underwent FGM including a 0.4% proportion of young girls aged between 15 and 19 years. The Extreme North Region accounted for 5.4%, North 2.2%, South West 2.4% and East 1.6%.
giving impetus to section 35 of the 1998 Law on Educational Orientation, which bans corporal punishment in schools.\footnote{173} Plan Cameroon carried out a sensitisation campaign on the protection of the child in Cameroon and in the West African region under the theme ‘Violence against children at school: Learn without fear’. The campaign, which consisted of sampling children’s opinions, revealed that the school was the ideal place for violence against children. Violence, according to the findings, includes bullying, sexual aggression, corporal punishment and gang influence.\footnote{174} It is estimated that three-fifths of schoolgirls are victims of violence.\footnote{175}

Most of the countries in this review have legal and policy provisions, either in Constitutions or in Criminal Law, that prohibit violence, torture or other cruel or inhuman degrading treatment. However, in most of these countries there are no appropriate complaint procedures for handling cases of violence against children, whether in schools, prisons, disabled persons’ establishments, the work place, or the community. Despite Constitutional and legislative provisions, various forms of violence, including physical, physiological and sexual abuse, are still being perpetrated on children. Corporal punishment remains a serious issue of concern, particularly within the home, school and community settings. Despite some restrictions in law in some of the countries, most African parents and guardians still believe that the best way of correcting a child for bad behaviour is through some form of corporal punishment.

The CRC Committee has repeatedly made clear in its concluding observations that the use of corporal punishment does not respect the inherent dignity of a child, nor is it permitted as a form of school discipline.\footnote{176} Most importantly, the CRC Committee prohibits corporal punishment in its General Comment No. 8 of 2006, which covers:\footnote{177}

- **Complete prohibition of corporal punishment**
- **Raising awareness about alternative forms of discipline** to reinforce the message that corporal punishment is abusive and violent, and that discipline should not be equated with violence. The CRC Committee advises that states should take due account of CRC General Comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment\footnote{178}
- **Addressing violence against a child by state actors**: governments should provide child rights training programmes to police and detention officials. States should also consider compensation for victims of torture and other acts\footnote{179}
- **Using the outcomes of regional consultations and findings from the UN Secretary General’s Global Study on Violence against Children to develop strategies to combat violence against children.\footnote{180}**

\footnote{173} Section 35 provides that ‘the physical and moral integrity of the child shall be guaranteed within the educational establishment. The following shall be prohibited, (a) corporal punishment and all other forms of violence...’
\footnote{175} Tetchiada S., ‘Report Paints Bleak Picture of Women’s lives’, Inter Press Service (12 March, 2004).
\footnote{176} CRC Committee, General Comment No. 1.
\footnote{177} Committee on the Rights of the Child, General Comment No. 8, The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment, CRC/C/GC/8, 2 March 2007.
\footnote{178} UN Committee on the Rights of the Child, Concluding Observations on Tanzania’s Second Periodic Report, CRC/C/TZA/CO/2, 21 June 2006, para 34(c).
The 2006 UN Secretary General’s Study on Violence against Children specifically recommends that states prohibit all forms of violence against children, including:

- Early and forced marriage
- Strengthening national and local commitment and action, prioritising prevention, promoting non-violent values and awareness-raising
- Enhancing the capacity of all those who work with children, providing recovery and social integration programmes

- Ensuring the participation of children
- Creating accessible and child-friendly reporting systems and services
- Ensuring accountability and ending impunity
- Addressing the gender dimension of violence against children
- Developing and implementing systematic national data collection and research efforts and strengthening international commitment.

3.7 RIGHT TO PROTECTION FROM SEXUAL EXPOITATION, TRAFFICKING AND PORNOGRAPHY

Box 17: The right to protection from sexual exploitation

**CRC – Articles 34-36**

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For those purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent;

(a) The inducement or coercion of a child to engage in any unlawful sexual activity
(b) The exploitative use of children in prostitution or other unlawful sexual activity
(c) The exploitative use of children in pornographic performances and material.

**ACRWC – Articles 16, 27 & 29**

States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and abuse.
States Parties to the present Charter shall take appropriate measures to prevent:

(a) The abduction, the sale of, or traffic in children for any purpose or in any form, by any person including parents or legal guardians of the child.

Articles 19, 34 and 36 recognise the right of children to protection against abuse and exploitation while in the home or in the care of other persons having responsibility over them. Article 34 specifically prohibits all sexual exploitation and abuse and specifically obliges states to prevent child prostitution and pornography. Articles 16, 27 and 29 of the ACRWC also provide protection to children from sexual exploitation and abuse.

The review found that all the countries studied have laws in place to protect children from all forms of abuse and exploitation, such as sexual abuse,
exploitation or trafficking. Some protective measures are found within Constitutions, others within child-specific legislation, and others within criminal law protecting children against sexual abuse and domestic violence. However, such legal provisions are shown generally to be insufficient for protection due to poor implementation, including lack of treatment and rehabilitation of survivors, inadequate access to child friendly justice procedures at police stations and courts, and ineffective sanctions for perpetrators.

3.7.1 Child prostitution

There is extensive international human rights law prohibiting child prostitution. The CRC requires States Parties to protect children from exploitation in prostitution, but does not provide a definition of child prostitution. Other international standards include ILO Convention 182, which includes prostitution as one of the worst forms of child labour, and calls upon States Parties to prioritise its elimination. The ILO Convention requires States Parties to condemn child prostitution and adopt penal sanctions to eliminate it. Similarly, the Trafficking Protocol calls for the elimination of the exploitation of the prostitution of others and other forms of sexual exploitation. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography defines prostitution as follows:

Child prostitution means the use of a child in sexual activities for sexual activities for remuneration or any other form of consideration.  

The Optional Protocol requires states to prohibit and criminalise child prostitution and to ensure as a minimum offering, obtaining, procuring, or providing a child for child prostitution is fully covered under criminal and penal laws. A number of countries in this review, such as Benin, Cameroon, the Gambia, Ghana and Nigeria, have legal provisions that specifically address the issue of child trafficking. The rest of the countries do not have adequate provisions that address the issue of prostitution. However even in the study countries that do criminalise child prostitution, the legal provisions are not broad enough to encompass the whole range of acts contemplated in the Optional Protocol. As such, the following gaps exist:

1. While laws prohibit child prostitution, the laws only criminalise the prostitute and the intermediary, but leave out those purchasing sexual services. In Cameroon, for example, the Penal Code prohibits acts that directly or indirectly constitute either sexual exploitation or sexual abuse against a child, but fails to criminalise the acts of clients who receive sexual services from children. This has a negative effect on efforts to curtail the demand for child prostitution. On an encouraging note, countries such as the Gambia, Ghana and Nigeria have laws that specifically target the client, imposing harsh penalties for anyone who pays for and engages in sexual activity with a person aged below 18 years.

2. Children involved in prostitution or other forms of sexual exploitation may end up in justice systems designed for adults, where they are treated as criminals rather than victims. In countries where the minimum age of criminal responsibility is very low, children become even more vulnerable to prosecution.

The following legal reform checklist is recommended to ensure the protection of children from prostitution:

- National legislation has adopted a clear definition of ‘child prostitution’
- The use of children in prostitution is defined as an offence distinct from adult prostitution, and the penalties are stringent to reflect the gravity and impact of the crime on the lives of child victims
- If adult prostitution has been decriminalised or legalised, the use of children in prostitution remains a criminal offence
- Children are protected from exploitation until the age of 18 years
- In the context of child prostitution, ‘sexual activities’ are defined broadly to include any sexual conduct with a child involving any form of consideration, whether monetary or not. Activities covered include not only sexual intercourse but also sexual touching, masturbation, and sexual posing, without distinction of the sex of the perpetrator
- The law criminalises all acts of offering, obtaining, procuring and providing a child for prostitution, so as to capture the whole spectrum of child exploiters
- The client or exploiter is subject to the criminal law and any form of compensation in order to obtain sexual services from a minor is a criminal transaction
- Recruiters and those who own, lease or manage premises where prostitution of children occurs are criminalised, and that there is a duty to report the use of premises for child prostitution
- Criminal or administrative measures applicable to a child found in prostitution are reviewed
- Administrative or criminal codes addressing ‘delinquency’ or ‘anti-social behaviour’ on the part of children are reviewed

Legal provisions that result in administrative or other punishment of the victims are abolished
Guidelines or rules are available to the police and judicial authorities to deal with children found in prostitution.

### 3.7.2 Child trafficking

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), a supplement to the UN Convention against Transnational Organised Crime, defines trafficking in children as:

...the recruitment, transportation, transfer, harbouring or receipt of a person under 18 years of age for the purpose of exploitation, such as, but not limited to, prostitution, forced labour or slavery.

The Trafficking Protocol obliges States Parties to establish criminal responsibility under national law for these acts. The Trafficking Protocol expressly mentions a range of activities in the chain of trafficking, which must be made criminal under national law, and of which the ultimate purpose is exploitation. These activities include recruitment, transportation, transfer, harbouring and receipt of adults or children.

Despite several awareness campaigns, trafficking in children continues to occur frequently in Central and West Africa. In Nigeria, for example, it is said that after economic crimes and the drug trade, human trafficking is the third largest crime in the country. Cameroon, the Gambia and Togo are seen as a source and transit stations for the trafficking of children in West Africa towards other destinations, prompting a number of countries in

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Central and West Africa to sign bilateral and multi-lateral agreements to deal with the surge of child trafficking in the region. These have included:

- The Libreville Common Platform for Action (2000), signed by 21 West and Central African Nations. This agreement sets out several strategies to combat trafficking in children, such as advocacy and awareness raising, strengthening legal and institutional frameworks, and better cooperation among countries.
- Declaration on the Fight against Trafficking in Persons (2002-2003) adopted by the Economic Community of West African States (ECOWAS). Countries party to this Declaration include Benin, Ghana, the Gambia, Burkina Faso, Cote D’Ivoire, Guinea, Mali, Niger and Togo.
- In June 2001, the Governments of Benin and Nigeria signed a Cooperation Agreement to Prevent, Suppress and Punish Trafficking in Women and Children. The agreement seeks to protect, rehabilitate and reintegrate victims of trafficking into their original environment, and to promote friendly cooperation between both countries to reach these objectives. The agreement provides for a joint security surveillance team that patrols the borders of both countries, and has led to the creation of an annual joint action plan as well as regular meetings between concerned authorities and other stakeholders to evaluate progress and challenges in implementing it.
- In 2005, Burkina Faso signed a bilateral agreement with Mali in the fight against cross-border trafficking in children.

3.7.3 Child pornography

Child pornography, including sexual imagery of children, is a severe violation of children’s rights. It involves sexual abuse and the exploitation of children and is linked to the prostitution of children, child sex tourism and the trafficking of children for sexual purposes. Child pornography is often produced and distributed using information and communication technologies (ICT) and the internet. New technologies and the growth of the internet are creating more commercial opportunities for child exploiters and child pornography users, facilitating the development and extending the reach of distribution networks. The use of ICT also facilitates organised sexual abuse and violence against children by networks of commercial buyers, sex tourists, paedophiles and traffickers, as well as various forms of prostitution of children and young people. Children who use ICT in their daily lives are at risk of sexual exploitation.

Article 34 of the CRC mandates states to prevent ‘the exploitative use of children in pornographic performances and materials’. The Optional Protocol on the sale of children, child prostitution and child pornography, expands on this to offer a general description of child pornography, as:

...any representation, by whatever means, of a child engaged in real or stimulated explicit sexual activities or any representation of the sexual parts of a child for sexual purposes.

The Optional Protocol requires States Parties to criminalise and penalise a number of activities in relation to child pornography, namely producing child pornography and offering, distribution and

183 ILO Convention 182 provides that ‘the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performance’ constitutes one of the worst forms of child labour. Article 7(1) obliges governments to apply ‘all necessary measures... including the provision and application of penal sanctions’ to enforce the Convention, in order to eliminate child pornography.
dissemination and/or possession of pornography. It is up to countries to define these terms within their laws, but harmonisation should be sought.

Some of the countries in this review have made some concerted effort to address the issue of child pornography within their national laws on trafficking and prostitution or penal and criminal codes; however many do not address the areas outlined above, and therefore fail adequately to protect their children.

In Benin, the 2006 trafficking law mentioned above prohibits trafficking in children for the purpose of sexual exploitation, including the production of pornographic materials and performances. However, there is no specific legislation defining and prohibiting the production, distribution and possession of child pornography. Access to pornographic materials by children is covered by the Penal Code, and falls under the jurisdiction of the Ministry of Communications and the Ministry of Youth.

The Gambian Children’s Act prohibits the importation, printing, publication, and sale of harmful publications defined as

...any book, magazine, film, picture, video or audiotape, print or other medium which is... targeted at or likely to fall into the hand of a child and which...contains pictures or stories that portray harmful information. 184

A person who prints, publishes, sells or lets on hire any harmful publication, or who has in his or her possession for the purpose of selling or letting on hire any harmful publication, commits an offence and is liable on conviction to a fine of fifty thousand Dalasi or imprisonment for a term not exceeding 3 years, or both.

While the Children’s Act prohibits the exposure of children to pornographic materials, it does not sufficiently protect children from pornography. Section 31 of the Children’s Act prohibits the procurement, use or offer of a child for the production of pornography, but the section does not offer a definition of child pornography. Under the Tourism Offences Act, a tourist or any other person who takes indecent photographs of a child;185 distributes or shows an indecent photograph of a child, whether or not with a view to its being distributed or shown by that person or any other person;186 or publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows indecent photographs of children or intends to do so, commits an offence and is liable, on conviction, to imprisonment for a term of 5 years.187 A person is to be regarded as distributing an indecent photograph if that person gives up the photograph, exposes or offers it for acquisition to another person.188

The law in Ghana merely seeks to limit children’s access to pornographic or inappropriate material, but does not criminalise any activities related to child pornographic materials. The Cinematography Act prohibits exposing children to unsuitable material, particularly via state-owned media.

184 The Children’s Act 2005, section 60.
185 Tourism Offences Act, Article 8(a).
186 Ibid, Article 8(b).
187 Ibid, Article 8(c).
188 Ibid, Article 8(2).
Nigeria’s Trafficking Law addresses child pornography and makes it illegal to procure, use, or offer a person for producing pornographic materials or a pornographic performance. Violators may be punished with 14 years imprisonment.\textsuperscript{189} Attempts are also punishable with 12 months imprisonment or a fine.\textsuperscript{190} The Nigerian Criminal Code also prohibits distributing or projecting obscene articles and offenders may be punished with up to three years’ imprisonment, a fine of up to 400 Naira, or both.\textsuperscript{191} The law broadly defines an obscene article as one that, as a whole, tends to deprave corrupt people who read, see or hear it. An “article” includes anything that is likely to be looked at or read, including film, a record of a picture or pictures, and sound recordings.\textsuperscript{192} This law does not apply to exhibitions in private homes to which the public is not admitted, or to television or sound broadcasting.\textsuperscript{193} The law also extends the obligation of tour operators and travel agents to notify their clients of their obligation not to aid, abet, facilitate, or promote the involvement of persons in the creation of pornographic material.\textsuperscript{194} While the Nigerian Trafficking Law offers some protection against child pornography, it falls short of international standards. The law does not define child pornography, so it is unclear whether Nigerian law is as broad as the Optional Protocol, which defines child pornography as the engagement of a child in real or stimulated sexual purposes. The Trafficking Law only prohibits procuring, using or offering a person for the purpose of producing pornography, but contains no explicit ban on distributing, dissemination, importing, exporting, offering, or selling child pornography as required under the Optional Protocol. The law also fails to criminalise possession of child pornography.

The remaining countries in this study have no legislation addressing the issue of child pornography, and thus offer no protection to children. According to the CRC Committee, while the use of child pornography may be prohibited under children’s acts, states should nevertheless specifically criminalise the production, distribution, importation, exportation, offer, sale, and possession of child pornography as it is defined in the Optional Protocol on the sale of children.\textsuperscript{195}

\begin{itemize}
  \item \textsuperscript{189} Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, Article 15.
  \item \textsuperscript{190} Ibid, Article 27.
  \item \textsuperscript{191} Criminal Code, section 233(d)(1).
  \item \textsuperscript{192} Ibid, section 233(b).
  \item \textsuperscript{193} Ibid, section 233(c)(2).
  \item \textsuperscript{194} Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, Article 30
  \item \textsuperscript{195} UN Committee on the Rights of the Child, Concluding Observations on Sudan’s Report, CRC/C/15/Add.190, 9 October 2002.
\end{itemize}
3.8 RIGHT TO PROTECTION FROM ECONOMIC EXPLOITATION

Box 18: The right to protection from economic exploitation

**CRC – Article 32**

States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s health, physical, mental, spiritual, moral or social development.

**ACRWC – Article 15**

Every child shall be protected from all forms of economic exploitation and from performing any work that exposes him/her to possible danger, or is likely to interfere with the child’s education or compromise his/her health or physical, mental, spiritual, moral or social development.

States Parties to the present Charter shall take all appropriate legislative and administrative measures to ensure the full implementation of this article which covers both the formal and informal sectors of employment having regard to the relevant provisions of the International Labour Organization’s instruments relating to children. States Parties shall in particular, provide through legislation, minimum ages for admission to every employment.

The CRC and the ACRWC both provide that children have a right to protection against work that interferes with education, or which is dangerous or potentially harmful to their health and normal development. Moreover, both legal instruments indicate that these standards should be interpreted in light of the ILO Convention concerning the Minimum Age for Admission to Employment (Convention No. 138), which provides that the minimum age for light work that does not interfere with schooling should be 13, and the minimum age for full time work outside the family that is not dangerous should be 15, provided that the minimum age that a child can leave school is not higher than 15 years. The ILO Convention allows countries whose economies and educational systems are insufficiently developed to set the age limits at 12 and 14 years respectively until such time as social conditions improve.

This study found that all countries in the region have provisions within their Constitutions or in legislation that protect children from economic exploitation and work that is hazardous to their health or likely to affect their education. All the countries reviewed have ratified the two main international instruments concerning child labour, namely ILO Conventions No. 132 and No.182, respectively concerning the Prohibition of and Immediate Action for the Elimination of Child Labour.

**3.8.1 Provisions on child labour in specific countries**

Benin, CAR, Mali, and Niger have the lowest minimum employment age of the study countries at 14 years, and Sierra Leone has the highest at 18 years. The Gambia has a minimum age of 16 years while Burkina Faso, Ghana, Sierra Leone and
Togo set the minimum age at 15 years. The Labour Act of Sierra Leone makes a distinction, however, between light work, where the minimum age is set at 13 years, and hazardous work, where it is set at 18 years. Cameroon’s Labour Code leaves open the possibility for the Minister in charge of Labour to allow a child below 14 years to work.

The Beninese Code of Labour of 27 January 1998 sets the minimum age of employment at 14 years in Article 166. The same code, in Article 66, gives further detail: 'no-one can be an apprentice if s/he is not over 14 years of age'.

The Burkina Faso labour code of 2008 raised the minimum age of employment from 15 to 16 years (Law No. 028-AN of 13 May 2008 relating the Labour Code).

In Cameroon, a number of legal provisions protect children from child labour and exploitative economic practices. Despite these legislative strides, the worst forms of child labour have been recorded in the country, in different economic sectors: agriculture, mining, factory work, street hawking, etc. The economic exploitation of children as domestic servants under poor working and wage conditions is also common, as is internal trafficking of girls from rural or semi-urban areas of the country to cities to serve as domestic servants in extended or foreign families.

According to a 2000 report by the ILO on a study carried out in the three major cities, Yaounde, Douala and Bamenda, thousands of Cameroonian children fall victim to trafficking every year. The survey revealed that children from Chad, the Central African Republic, and Nigeria were paid as little as XAF 3,000 per month to perform chores sometimes lasting 18 hours a day. The children often suffered from malnourishment and sexual abuse.

The ILO study reported that trafficking accounted for 84 percent of child labourers in those three cities. Of these, 40% of employed children were girls, including 7% who were under 12 years old and 60% who had dropped out of primary school.

The CAR Labour Code Law No. 61/221 of 2 June 1961, Article 125, states that children may not be employed in any enterprise as apprentices before reaching the age of 14, except on the basis of a derogation issued by the Minister of Labour in the light of local circumstances and the work that may be required of them. The Labour Code allows the Minister of Labour to derogate from this minimum age. The Committee on the rights of the Child

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196 These include: Section 86(1) of Law No. 92/007 of 14 August 1992 on the Labour Code which provides that ‘no child shall be employed in an enterprise even as an apprentice before the age of 14 (fourteen) years, except as otherwise authorised by order of the minister in charge of labour, taking account of local conditions and the jobs which the children may be asked to do’; The 1992 Labour Code, Decree No 68/DF/253 of 10 July 1968 fixing general employment conditions of servants and house employees; Decree No. 69/DF/287 of 30 July 1969 relating to apprenticeship contracts (especially concerning Article 42 which sets 14 years as the maximum age of admission into apprenticeship and prohibits any unmarried master from housing a female apprentice worker (Article 2); Decree No. 16/MTLS/DEGRE of 27 May 1969 relating to the labour of women comprising an annex on prohibited labour for women and children; and Decree No. 17/MTLS/DEGRE of 27 May 1969 relating to child labour. With respect to the conditions of work, a May 1969 Order relating to child labour fixes the maximum duration of work in industrial establishments at 8 hours per day with an interval of at least an hour for children under 16 years. The 2005 law on traffic, slavery, and exploitation provides that the exploitation of children for prostitution or any form of sexual abuse, child labour or forced labour, enslavement or related practices, servitude or removal of body organs, comprises child abuse. This law also punishes the subjection of a child to debt bondage – that is, using a child as collateral security for a loan or debt, to be exploited in due course.


expressed concern that child labour in the CAR was widespread and that children may be working long hours at young ages, with a negative effect on their development and school attendance.\textsuperscript{199}

In the Gambia, section 43(1) of the Children’s Act 2006 sets the minimum age of employment at 16 years. Sections 42 and 43 provide that children 16 to 18 years can only engage in light work and are not permitted to work at night. The Labour Act 2007 prohibits children from working in public or private agriculture, industries or non-industrial undertakings, except for vocational or technical schools or other training institutions that are approved and supervised by public authorities. It also prohibits children from working in hazardous conditions harmful to their health, safety, education, morals or development.

A Multiple Indicator Cluster Survey (MICS) was conducted in the Gambia in 2005-6 and published in 2007 in collaboration with the Department of State for Basic and Secondary Education, the Department of State for Health and Social Welfare, the Women’s Bureau, the National Nutrition Agency, the Department of Community Development, the Department of Water Resources and the Department of Social Welfare, with financial and technical support from UNICEF and the World Bank.

The 2007 MICS survey indicates that 20.4\% of male children and 28.7\% of female children aged 5-14 worked, with the greatest number involved in a family business. A higher percentage of rural children worked than urban children, and younger children (ages 5-9) worked in greater numbers than older children (ages 10-14). The less educated the mother and the poorer the family, the more likely children were to work.

Economic exploitation in children is mainly seen in the Almudu (street children), who engage in menial jobs such as shoe shining, car washing and other undignified chores for their survival. Most children are aged less than 18, spend most or part of the day on the streets, and do not attend formal schools.

The Department of Labour, under the Department of State for Trade, Industry and Employment, is responsible for implementing provisions on the Worst Forms of Child Labour. The Government of the Gambia has implemented its 2004 to 2008 National Policy for Children in the Gambia, which includes components addressing child economic and sexual exploitation. To educate hotel personnel about child sexual tourism, the Child Protection Alliance (CPA), a consortium of government agencies and NGOs, has conducted several awareness campaigns.

In Ghana, the minimum age of formal and informal employment under section 89 of the Children’s Act 560 is 15 years.\textsuperscript{200} In Ghana, children aged between 13 and 15 are permitted to engage in ‘light work’ that is not likely to be harmful to the health or development of the child, and which equally does not affect the child’s participation and attendance in school.\textsuperscript{201} The following forms of labour are prohibited under the Children’s Act:

- ‘Exploitative labour,’ which is defined as any form of work that deprives children of their health, education or development

\textsuperscript{199} UN Committee on the Rights of the Child, Concluding Observations on CAR’s Initial Report, CRC/C/15/Add.138,18 October 2000, para 78.
\textsuperscript{200} The Children’s Act 560, section 89.
\textsuperscript{201} Ibid, section 90 (1)
• ‘Hazardous labour,’ which is defined as work which poses a danger to children’s health, safety or morals
• ‘Night work,’ which is work carried out between 8pm and 6 am.

Article 28 of the 1992 Constitution of Ghana also guarantees protection to children against exploitative labour. The Government has put in place a number of policies to combat child labour and other forms of exploitation, including a Legislative Instrument (L.I. 1705), Child Rights Regulations passed in 2002 to put the Children’s Act into operation, and the establishment of multi-disciplinary Child Rights Committees.

In Mali, Decree No. 96-278/P-RM sets the minimum age for admission to employment at 14 years.

Child labour in Mali is also governed by the following legal instruments:

- Order No. 02-062/P-RM of 5 June 2002 establishing the Child Protection Code.

Article L.185 of the Labour Code in Mali stipulates that:

...in any type of establishment... it is prohibited to employ children under 18 years of age of either sex for work that is beyond their strength, that may be dangerous or that, by its very nature and the conditions in which it is performed, is likely to corrupt their morals.

The Labour Code also prohibits:

- Night work by children in industry
- The employment of children for more than eight hours a day
- Night work by children under 18 years of age between 9 pm and 5 am
- The employment of children on legally recognised holidays, even for workshop arrangements
- Work on Sundays by children of either sex who are in apprenticeship.

Mali’s economic situation makes application of the minimum age of employment very difficult. The provisions of the Labour Code are applicable only in the formal sector of the national economy, while most children who work do so in the informal sector, which explains the lack of appropriate sanctions in this area. The CRC Committee has expressed concern at the large number of working children in Mali, which includes those who work in agriculture and domestic servants who may be subjected to violence including sexual abuse. The Committee recommended that Mali:

a) Strengthen its efforts to combat child labour, in particular by addressing the root causes of child economic exploitation through poverty eradication and access to education
b) Take measures to ensure effective implementation of the ILO Conventions No. 138 and No. 182, which the State Party has ratified
c) Develop complaint and protection mechanisms, also by raising the number of inspectors and adopting legal measures to punish those responsible
d) Seek technical cooperation from ILO and UNICEF.

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203 UN Committee on the Rights of the Child, Concluding observations on Mali’s Second Periodic Report, CRC/C/MLI/C0/2, 3 May 2007, paras 64-65.
In **Niger**, the minimum age of employment is 14 years according to Act No. 96-039 of June 29 1996 of the Labour Code. The National Plan of Action for the Prevention of Child Labour was adopted in 2000 (currently under revision) in order to incorporate new data and reflect developments in the fight against child labour.

The main obstacle encountered in the fight against child labour is the extreme poverty of a large proportion of the population and a widespread lack of awareness of the concept of child labour. 74% of children aged less than 15 years work, many of them in hazardous conditions in mines and quarries that may expose them to mercury, and where they are tasked with crushing and hoisting ore.

The Committee recommended that Niger:

- a) Adopt and implement a national plan of action to prevent and combat child labour
- b) Provide adequate human and other resources and training to the labour inspectorate and other law enforcement agencies in order to strengthen further their capacity to monitor effectively the implementation of child labour legislation and relevant ILO Conventions
- c) Eliminate the worst forms of child labour, and raise awareness among the population on this issue, involving traditional leaders;
- d) Seek innovative approaches, such as alternative education or non-formal education, to give educational opportunities to children who are older and have to work
- e) Seek assistance from ILO.


Section 59(1) (a) of the Labour Act provides that ‘no child shall be employed or work in any capacity except where he is employed by a member of his family on light work...’ Subsection (2) of the same provision stipulates that ‘no young person under the age of 15 years shall be employed or work in any industrial undertaking’, while subsection (3) states that a young person under the age of 14 years may be employed only (a) on a daily wage; (b) on a day-to-day basis; and (c) so long as he returns each night to the place of residence of his parents or guardian.

In addition, Subsection (4) provides that:

...no young person under the age of 16 years shall be employed in circumstances in which it is not reasonably possible for him to return each day to the place of residence of his parents or guardian.

Besides these legislative provisions, not much has been reflected in the lives of children as a significant number of children in Nigeria work as domestic servants, in plantations, in the mining and quarrying sector, and as beggars on the streets. Cases of exploitation and abuse commonly take place in the context of extended family fostering and apprenticeship.

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205 UN Committee on the Rights of the Child Concluding observations on Niger’s Second Periodic Report, CRC/C/NER/CO/2, 18 June 2009, para 74.
206 Ibid, para 75.
There are widespread reports of forced child labour taking place in many States in Nigeria, especially in the South-Eastern region. There does not seem to be a concrete structural and institutional effort to eliminate child labour in Nigeria, in particular with a view to addressing the root causes of child economic exploitation through poverty eradication, and to developing a comprehensive child labour monitoring system. Children who are able to work do so in conditions far below the recommended international standards, working in inhumane situations that are harmful to them, receiving exploitative wages, and remaining deprived of access to formal education and other developmental opportunities by virtue of their work engagement.

In Sierra Leone, the Child Rights Act 2007 contains extensive provisions on child labour. Section 125 sets 15 as the age at which the compulsory primary education of a child shall end, and also as the minimum age for the engagement of a child in full-time employment. Section 126 further provides that no person shall employ a child in night work, which constitutes work between the hours of 8pm and 6am. The minimum age of the engagement of a child in light work shall be 13 years, as per section 127(1). Light work is defined as work which is not likely to be harmful to the health or development of the child, and which does not affect the child’s attendance at school or the capacity of the child to benefit from school work. The minimum age of the engagement of a person in hazardous work is 18 years as set out by Section 128(1). Work is hazardous when it poses a danger to the health, safety or morals of a person. Hazardous work includes:

- Going to sea
- Mining and quarrying
- Porterage of heavy loads
- Working in manufacturing industries where chemicals are produced or used

- Work in places where machines are used
- Work in places such as bars, hotels and places of entertainment where a person may be exposed to immoral behaviour.

In Togo, the minimum age required for employment or admission to labour is 15 years as set out by the Labour Code of 16 December 2005. According to Article 150 of the code:

...children of one sex or other cannot be employed in any kind of enterprise, or accomplish any kind of labour, even for their own account, before the age of 15, except with the derogation provided for in the order of the ministry in charge of labour, on the advice of the National Council of Labour according to the local conditions and the tasks which can be asked.

Article 262 of the Code of the Child of 06 July 2007 further provides that:

...children of both sexes cannot be employed in any enterprise, nor accomplish any kind of labour, even for themselves before the age of 15, except with the derogation provided for in the order of the ministry in charge, regarding the local circumstances and the tasks that can be requested.

3.8.2 Linkages between child labour and free and compulsory education

Free and compulsory education, particularly primary education, can play an important role in ending exploitative child labour and securing children’s future livelihoods. Children at school are less likely to be in full-time employment, while children with no access to education have little alternative but to enter the labour market, often exposing them to work that is dangerous and exploitative.
Education and skills training help prevent and reduce child labour, because:

- Children with basic education and skills have better chances in the labour market; they are aware of their rights and are less likely to accept hazardous work and exploitative working conditions
- Education opportunities could wean working children away from hazardous and exploitative work, and help them find better alternatives.

When comparing the minimum ages of admission into employment and the age at which children complete basic education where it is compulsory, it is noted that only Cameroon, Burkina Faso, Togo and Benin have no gap between these ages. Nigeria, Mali and Ghana have a gap of one year between the age of completion of compulsory education and the minimum age of admission into employment.

The CRC Committee has indicated the need to align the age at which compulsory education ends with the age of access to full-time employment. In addition, countries that are serious about eliminating child labour must make concerted efforts to provide quality education that is relevant, accessible and free for all children. However, ILO experience shows that even in countries where substantial progress has been made and average school enrolment ratios are high, there are still children from poor population groups who do not benefit from this progress. It is therefore noted that apart from general improvements in the education system, special measures are often necessary to increase access to education for children who are especially vulnerable (such as children at risk of working who are not able to continue with formal education and training), so that they do not re-enter the labour market as unskilled workers.

3.8.3 Why legal provisions fail to protect children from exploitation

There is a clear disparity between legal and policy provisions and the situation on the ground. This review has found that despite legislative measures against child labour, exploitation and abuse remains rampant, with children working as domestic servants, in plantations, in the mining and quarrying sector, and as beggars on the streets. In the Republic of Benin, cultural practices such as vidomégon, a practice akin to domestic servitude, remain a major challenge to ensuring children’s rights and wellbeing. In addition, the internal trafficking of girls throughout the region from rural to semi-urban areas to cities, where they serve as domestic servants, is an area of grave concern. According to a 2000 report by the ILO on a study carried out in three major cities in Cameroon (Yaoundé, Doula and Bamenda), thousands of Cameroonian children fall victim to trafficking every year. The survey also revealed that children in Chad, the Central African Republic and Nigeria were paid as little as CFA 3000 per month to perform tasks and chores sometimes lasting 18 hours a day. The children often suffered from malnourishment and sexual abuse.

Such a disconnect between formal protection and reality on the ground can be attributed to several reasons:

- **Inadequate and ineffective institutional monitoring mechanisms:** mechanisms for monitoring and reporting adherence to stipulated legal and policy regulations are either lacking or ineffective
- **Failure to regulate informal sectors of work,** where most child labour is found. Laws fail specifically to cover subsistence agriculture and self-employment including domestic labour, hard manual labour, herding, commercial sex, drug trafficking and street vending
In an encouraging step, most of the countries in this review have laws relating to child labour that have often been reviewed over time to reflect international obligations regarding labour practices.

### 3.8.4 National policies on child labour

Apart from legal frameworks, international instruments on child labour encourage States Parties that have ratified these instruments also to put in place policies that regulate and monitor child labour. ILO Convention No. 138 and ILO Recommendation No. 146 mandate States Parties to put in place policies that give practical effect to the laws that countries have implemented on child labour.

#### Box 19: Commitments of states under ILO Convention 138

**The principal commitments of a State which ratifies Convention No. 138 are to:**

- pursue a national policy designed to ensure the effective abolition of child labour; and
- raise progressively the minimum age for admission of employment or work to a level consistent with the fullest physical and mental development of young persons.

ILO Recommendation No. 146 (R146) contains the broad policy frameworks and measures for the prevention and elimination of child labour. To ensure the success of the national policy provided for in Convention 138, the Recommendation states that:

#### Box 20: Best possible conditions for children’s growth (ILO R146)

*High priority should be given to planning for and meeting the needs of children and youth in national development policies and programmes and to the progressive extension of the inter-related measures necessary to provide the best possible conditions of physical and mental growth for children and young persons.*

The Recommendation provides that special protection should be given to developing policies in the field of:

- Employment promotion
- Income generation and alleviation of poverty
- Social security and family welfare
- Education and training.

Particular attention should be given to the needs of children without families, and migrant workers. The benefit of having a national policy is that it articulates commitments and, if pursued faithfully,
provides a coherent framework for an associated programme of action. A complete and implementable national policy and programme of action will contain the following key elements:

- A definition of national objectives regarding child labour
- A description of the nature and context of the problem
- Identification and description of the priority target groups
- Description of the main programme areas and types of intervention
- Designation of the institutional actors to be involved.

Many of the countries in this review do not have a national policy that specifically addresses the issue of child labour. Niger was the only country in the review to put in place a National Plan of Action for the Prevention of Child Labour aimed at incorporating new data and reflecting current developments in the fight against child labour.

### 3.9 RIGHT TO APPROPRIATE JUSTICE PROCEDURES

**Box 21: Child Justice**

**CRC – Article 40**

States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.

**ACRWC- Article 17**

Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child’s sense of dignity and worth which reinforces the child’s respect for human rights and fundamental freedoms and others.

States Parties to the present Charter shall in particular:

(a) ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;
(b) ensure that children are separated from adults in their place of detention or imprisonment.

The essential aim of treatment of every child during the trial and also if found guilty of infringement of the penal code shall be his or her reformation, reintegration into his or her family and social rehabilitation.

There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.
3.9.1 Child Justice

The need to promote a distinctive system of justice for children is set in the CRC and the ACRWC. Article 40 of the CRC provides for the need to accord special protection for all children alleged as, accused of, or recognised as having infringed the penal law. States Parties should provide measures for dealing with children who may have infringed the penal law without resorting to judicial proceedings and should provide a variety of alternative dispositions to institutional care.207 The special treatment should cover all stages, from the time the allegation is made, through investigation, arrest, charge, pre-trial period, trial and sentencing.208

Article 40 also details minimum guarantees for the child.209 Article 40(3) first encourages States Parties to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged to have infringed the law. This provision underlines the need for the separation of children within the penal procedural system and the need for separate legal provisions for children. Secondly, section 40(3)(a) requires states to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal code. Thirdly, Article 40(3)(b) encourages states, wherever appropriate and desirable, to encourage measures for dealing with the law without resorting to judicial proceedings, provided that human rights and legal safeguards are fully respected in doing so. This provision lays the basis for diversion, which entails channelling cases away from courts to a variety of programmes and other alternative courses of action. Human rights and legal safeguards must also be protected where children are diverted away from judicial proceedings. This refers not only to the need to protect children’s dignity during diversionary activities, but also means that where a child intends admitting an offence, he/she qualifies to be considered for diversion. A child who does not admit to the offence retains the right to have his or her innocence established in court proceedings.210

The ACRWC also contains provisions in relation to child justice. Article 17(1) of the Charter provides that:

...every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child’s sense of dignity and worth and which reinforces the child’s respect for human rights and the fundamental freedom of others.

Article 17(3) defines the essential aim of the special treatment as being the child’s ‘reformation, reintegration into his or her family and social rehabilitation’. Underlying the notion of treatment, therefore, is the ideal of restoring the child to his or her family and society, a key African value as well as part of the founding ideology of restorative justice.211

The review demonstrates that there are several positive initiatives related to justice for children in conflict with the law, as well as to victims and witnesses. However, in most countries judicial
proceedings (including detention) for children who have infringed the penal law are not the last resort: some countries have no alternatives to the formal criminal justice system for children who have infringed the law. Instead, those countries have criminal laws that simply provide that the sentence imposed on younger criminals shall be less than that imposed on adults. Where some form of a child justice system exists, institutional and administrative frameworks are ill-equipped to exercise them and are barely functional. In Togo, for example, the government has recognised that detention prior to trial is obligatory, that lengthy delays in adjudication are common, that specialised judges are lacking in many regions, that legal aid services have not been funded for years, that there are no rehabilitation facilities for girls, and that conditions in facilities for boys are seriously deficient. 212

A number of countries have separate detention centres for children. However there are still instances of children being detained with adults even where the children’s detention centres exist. In addition, it was found that rehabilitation and reform centres across the study countries tended to be more punitive than rehabilitative and restorative.

3.9.2 Children’s courts

All the countries in this review apart from Cameroon have specific and institutionalised children’s courts that deal with juvenile justice. Such courts are not necessarily separate physical facilities for children, but rather a combination of accommodation of physical facilities, systems and procedures that take into account the need to accommodate children’s special needs before the justice system.

The laws establishing these courts enshrine the basic safeguards contained in the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), as well as the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty. These include the presumption of innocence, the right to be notified of charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross examine the witness, and the right to appeal to a higher authority.

3.9.3 Diversion

Diversion involves the referral of cases away from formal criminal court procedures.213 Article 40(3)(b) of the CRC promotes the establishment of laws and procedures providing for measures to deal with children accused of crimes without resorting to judicial procedures. Through diversion, ‘a child accused of committing a crime is given the opportunity to take responsibility for his or her conduct and make good for the wrongful action’.214 Diversion may involve conditional or unconditional referral away from the criminal courts. Conditional diversion may involve referring a child away from the formal justice procedure on the condition that he/she attends a programme or undergoes a restorative justice process – such as a family group conference, for example – which may result in referring the child to a particular programme, such as a life skills programme.

212 Second Periodic Report of Togo to the UN Committee on the Rights of the Child, UN Doc, CRC/C/65/Add.27, 11 May 2004, paras 74-78.
214 Ibid.
The benefits of diversion are numerous and they include the following:

- A child may gain insight into the consequence of his/her actions
- A child may take responsibility for his or her actions and make good the harm caused (for example, by compensating the victim or performing some sort of community service or service to the victim)
- It may facilitate victim participation where appropriate, which may have a positive effect in the healing process for both the victim and for the child in conflict with the law
- It ensures that the child does not obtain a criminal record, thereby granting him/her the opportunity to forge a future unburdened by stigma of a criminal conviction.

Despite the abovementioned benefits, diversion may have certain dangers. These have to do with the accused person’s right to a fair trial and due process. Diversion should not be allowed where:

- The child indicates that he or she intends to plead not guilty to the charge
- The child has not understood his or her right to remain silent and/or has been unduly influenced in acknowledging responsibility
- There is insufficient evidence to prosecute
- The child and his or her parents or guardians do not consent to diversion or the diversion option.

3.9.4 Restorative justice

Restorative Justice emanates from traditional justice systems that highlight the way in which crime hurts relationships between people who live in a community. Restorative justice gives crime victims more opportunities to state their own needs, and enables offenders to take personal responsibility for their actions and work actively to repair the harm they have caused to their victims and communities. A number of restorative justice processes have been practiced around the world. These have included:

- **Mediation.** Mediation offers victims and offenders the opportunity to meet one another with the assistance of a trained mediator, to talk about the crime in question and come to an agreement on steps toward justice. This type of programme can be used in cases where the parties are in dispute over a matter that is not necessarily a criminal matter.

- **Conferencing (family group conference or victim-offender conferencing).** Conference participation includes not only the victim and offender, but also their families or support groups, with facilitators to support them. Victim-offender conferencing reflects the principles of restorative justice which focus on the harms that have been done and the resulting implications. They also emphasise the collaboration of key stakeholders – namely the victim, the offender, and the community. This kind of programme can be used for child protection and suitable criminal cases.

- **Circles** are facilitated community meetings attended by offenders, victims, their friends and families, interested members of the community and representatives from the justice system.

- **Impact Panels (victim-offender panels)** are made up of groups of victims and offenders who are linked by a common kind of crime, but are not each other’s victims or offenders.

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216 Ibid, 36.
217 Ibid, 37.
Box 22: Restorative Justice Indicators

- There is a recognition that crime affects victims, communities and offenders and creates an obligation to put things right as far as is possible
- All affected parties should be part of the response to the crime, including the victim if he or she wishes
- The victim’s perspective is very important in deciding how to put right the harm
- The community ensures that decisions and outcomes are carried out in a way that is sensitive to culture
- Crime is seen as an act against another person, rather than act against the state. The state requires that the problem be resolved, but leaves the primary responsibility for resolving it to the directly affected party
- Restoring relationships or repairing harm becomes the primary goal of criminal justice, rather than punishment for its own sake
- Controlling crime is done mainly by the community and its members.

Table 12: Mechanisms for diversion and restorative justice

<table>
<thead>
<tr>
<th>Country</th>
<th>Legal mechanisms for diversion and restorative justice</th>
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<tbody>
<tr>
<td>Ghana</td>
<td><strong>The Children’s Act 560</strong> has put in place diversion mechanisms in the form of Child Panels and Family Tribunals. Other diversion mechanisms include the Women and Juvenile Unit (WAJU).</td>
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<tr>
<td></td>
<td>The Children’s Act mandates local government to establish Child Panels at the district level as quasi-judicial processes to handle issues that affect children in Ghana. In 138 districts in Ghana, and since the enactment of the Act 10 years ago, only 46 child panels have been established.</td>
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<td></td>
<td><strong>Section 28</strong> provides that a Child Panel shall have non-judicial functions to mediate in criminal and civil matters that concern a child as prescribed by the Act.</td>
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<td></td>
<td>With regard to civil matters a Child Panel may mediate in any civil matter concerned with the rights of the child and parental duties. With respect to criminal matters, ‘a Child Panel shall assist in victim-offender mediation in minor criminal matters involving a child where the circumstances of the offence are not aggravated’.</td>
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<td></td>
<td>A Child Panel should seek to facilitate reconciliation between the child and any person offended by the action of the child.</td>
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219 Ibid, section 32(1).
220 Ibid, section 32(2).
<table>
<thead>
<tr>
<th>Country</th>
<th>Legal mechanisms for diversion and restorative justice</th>
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<tbody>
<tr>
<td></td>
<td>In addition, ‘a child appearing before a Child Panel shall be cautioned as to the implications of their action and their similar behaviour may subject them to the juvenile justice system’.</td>
</tr>
<tr>
<td></td>
<td><strong>The Women and Juvenile Unit (WAJU)</strong> was first established in October 1998 in Accra. The unit has been opened in all ten administrative regions of the country. WAJU is a unique Police unit and the first of its kind in West Africa. The WAJU offices are not new Police Stations. These units are to serve as information, support and co-ordination centres, apart from providing basic counter services, and are supported by a team of civilian support staff made up of clinical psychologists, social workers, counsellors and legal advisers. WAJU is mandated by the Police Administration to work with the <strong>Federacion Internacional De Abogadas</strong> (FIDA), the Commission for Human Rights and Administrative Justice (CHRAJ), the Legal Aid Board, and other stakeholders. The main objectives of WAJU are to prevent, protect, investigate and prosecute crimes against women and children.</td>
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<tr>
<td>Sierra Leone</td>
<td><strong>The Child Rights Act 2007, Section 71 (1)</strong> establishes Child Panels in each district as the district council considers necessary. <strong>Section 71(2)</strong> states that a Child Panel shall have non-judicial functions to mediate in criminal and civil matters that concern a child as may be prescribed under this Act. The Child Panels may mediate in any civil matter concerned with the rights of the child or any person offended by the actions of a child. With regards to criminal matters, a Child Panel shall seek to facilitate reconciliation between the child and the person offended by the action of the child. A child appearing before a Child Panel shall be cautioned as to the implications of his/her action, and made to understand that similar behaviour in future may subject him/her to the juvenile justice system. In addition, the Child Panel may decide to impose a community guidance order, with the consent of the parties concerned. A community guidance order means placing the child under the guidance and supervision of a person of good standing in the local community for a period not exceeding six months for the purpose of his reform. A Child Panel may also in the course of mediation propose an apology, restitution to the offended person, or service by the child to the offended person.</td>
</tr>
</tbody>
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221 The Child Rights Act 2007, section 74.  
222 Ibid, section 75.  
223 Ibid, section 75(2).  
224 Ibid, section 75(3).  
225 Ibid, section 75(4).  
226 Ibid, section 75(5).
Box 23: Traditional child protection mechanism in Sierra Leone

The Sierra Leonean Child Rights Act 2007 makes provisions for the establishment of Village Welfare Committees (section 47(1)) and Chiefdom Welfare Committees (section 49). The act provides for each head of a village, assisted by a social welfare officer and other members of the village, to make up the composition of a Village Welfare Committee. The Child Welfare Committee also consists of the following: (a) a social welfare officer nominated by the Minister; (b) a traditional leader and a man and woman representing parents; (c) one female child or young person representing young people and children; (d) one male child or young person nominated by a specially convened children’s and youth forum facilitated by a social welfare officer; (e) three service providers nominated by the basic social services ministries; (f) two representatives (both sexes represented) of community based organisations elected by a specially convened forum of representatives; and (g) three members from the religious community elected by a specially convened forum facilitated by a social worker, with the stipulation that all three representatives cannot either belong to the same religion or be of the same sex. The objective of the Village Child Welfare Committee is to advance the enjoyment of the rights of the child at the village level. Key activities include:

- Promoting child rights and awareness
- Monitoring the enjoyment of children’s rights
- Submitting regular observations, reports and concerns on child welfare to the Chiefdom Welfare Committee and the Ministry
- Monitoring the advancement of the education of the girl child
- Determining the suitability of a person to foster a child and monitoring all foster placements within a village
- Preventing domestic violence and all forms of gender based violence
- Providing advice to children alleged to have committed minor misdemeanours
- Providing advice to children, parents and other community members in promoting the best interest of the child
- Issuing recommendations and instructions on the maintenance and support of a particular child or children within the village
- Referring to a Chiefdom Child Welfare Committee any matters that the Village Child Welfare Committee is unable to handle
- Undertaking any other functions that may advance the enjoyment of children’s rights within the Committee’s jurisdiction.

The Chiefdom Child Welfare Committee compromises the same members as the Village Child Welfare Committee, its main mandate being to render advice to the Village Child Welfare Committee (section 50).
3.9.5 Sentencing for children

Detention is not a last resort in countries in West and Central Africa. Children in conflict with the law are in reality more likely to be detained than to be diverted to alternative and rehabilitation centres. Minimum ages of imprisonment in Benin, Cameroon, CAR, the Gambia, Ghana, Sierra Leone and Togo are below 18. For Burkina Faso, Niger and Nigeria the minimum age of imprisonment is 18 years. While a number of concerted efforts have been made to ensure reform in child justice mechanisms in the region, such as the establishment of child justice courts and alternative sentencing measures, these mechanisms lack the financial support and technical expertise necessary to ensure their effectiveness.

In the Gambia, for example, the Kanifing Children’s Court was established in January 2006 in the Kanifing Municipality. However, since the coming into effect of the Children’s Act in 2005 and the establishment of the Kanifing Children’s Court, no other children’s courts have been established in the Gambia.

Similarly, in Niger, while juvenile courts have been established by legislation, the qualifications of the judges presiding over them have not been enhanced. Since the establishment of the courts, only ten judges have benefited from specific training. Juvenile judges tend to give priority to the punitive dimension of their task and neglect the goal of protection of minors. For example, 82 minors brought before the juvenile court at Niamey regional court in 2005 were all ordered by the judge concerned to stand trial. The same applies to the 83 minors brought before the court in 2006. This issue is further exacerbated by the lack of specialised training for staff and the virtual non-existence of state placement facilities. For example, the Niamey regional court, Niger’s largest court, employs only two social workers. It has only three placement facilities in its area of jurisdiction, one of which is public while the other two are run by NGOs.

The effectiveness of the juvenile courts is further limited by the lack of synergy between the different stakeholders, especially at the central level; the lack of minors brigades in most police and gendarmerie squads; the shortage of specialized education workers and placement centres; and the inadequate capacity of the police force and gendarmerie when it comes to listening to children and, in general, familiarising themselves with the legislation and procedures applicable to children.

The CRC Committee recommends that states consider deprivation of liberty only as a measure of last resort, and for the shortest possible period of time. The CRC Committee urges States Parties to limit by law the length of pre-trial detention, and to ensure that the lawfulness of this detention is reviewed by a judge without delay and at regular intervals. Article 37(a) of the CRC requires that states ensure that no person under the age of 18 years at the time of the commission of the offence is subjected to the death penalty or a sentence of life imprisonment without the possibility of release. This was confirmed by recommendations in the report of the UN Secretary-General’s Study on Violence against Children and CRC General Comment No. 11. The UN Standard Minimum Rules for Non-custodial Measures list the following minimum rules for non-custodial sanctions:

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228 Ibid, para 370.
229 Ibid, para 53.
While some countries in the review have taken laudable steps in trying to realise appropriate justice systems for children, the following are areas of concern that need to be addressed:

1. Inadequate facilities and staffing resources, including access to child friendly police stations and judicial infrastructure. Even where legislation details the proper treatment of children in conflict with the law, there are often insufficient resources to implement the measures – for example, specially trained judges, police officers, social workers, psychologists and legal officers.

2. Most of the study countries have inadequate children’s courts to deal with a large number of cases involving children. Niger, for example, has very few judges to adjudicate and execute sentences; this has a direct bearing on the effectiveness of the child justice system.

3. Detention of children with adults, both in police cells and in jails, in spite of legislation that specifically prohibits it. Police facilities are often cramped, so there are no alternatives to incarcerating children together with adult offenders, where they are exposed to violent criminals and are subjected to physical, sexual and psychological abuse.

4. Failure to apply diversion at all stages of the criminal justice system means that many children are caught up in the formal justice system. There is need for training and awareness-raising amongst the police regarding existing laws that call for diversion of children from formal justice procedures.

5. Lack of adequate alternative detention centres for children. The review found that existing facilities are overstretched; that they house more children than they should; that they are often located in capital cities; and that they are inadequately staffed and resourced. They are sometimes more retributive and abusive than rehabilitative in nature.

### Box 24: UN rules for non-custodial measures

The UN standard minimum rules for non-custodial measures include:

- Verbal sanctions such as admonition, reprimand, caution
- Conditional discharge
- Status penalties
- Economic sanctions and monetary penalties, such as fines and day-fines
- Confiscation and an expropriation order
- Suspended or deferred sentence
- Probation and judicial supervision
- Community service order
- Referral to an attendance centre.
6. There is a need to pay attention to the rights and needs of child victims and witnesses of crimes in line with CRC General Comment No. 10 and the UN Guidelines in Matters Involving Child Victims and Witnesses of Crime 2005. In most of the countries reviewed, the predominant focus and attention is on children in conflict with the law, so countries must take the opportunity to review their child justice laws and procedures in line with the guidelines.

7. There is a need for adequate data collection and mechanisms to ensure that states know how many children are convicted and sentenced, and how many are deprived of their liberty.

3.10 RIGHTS OF CHILDREN WITH DISABILITIES

Despite Constitutional provisions on non-discrimination in all the study countries, there is still discrimination and stigma against children with disabilities throughout the region, influenced by negative cultural perceptions and a lack of awareness. However, the Constitutions of Cameroon, the Gambia and Ghana clearly stipulate entitlements for persons with disabilities. Section 29(1) of the Ghana Constitution states that ‘disabled persons have the right to live with their families or with foster parents and to participate in social, creative or recreational activities’, and Section 29(4) states that ‘disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature’.

Some countries have Constitutional and national laws and policies to address issues of disabilities in their countries. For example, Benin has a draft law on Rights of the Disabled Persons (2006) and a new policy document on children with disabilities; both are pending government ratification at time of writing. Cameroon’s Law No. 83/013 on the protection of persons with disabilities, Sections 5 and 6, specifically addresses the rights of children with disabilities, and establishes a Sub-Department for the Protection of Disabled Persons within the Ministry of Social Affairs. It is notable that this law was established in 1983, even before the coming into force of the Convention on the Rights of the Child. The Cameroon government has also prepared a draft National Policy on the Promotion and Protection of Disabled Persons (2007), a draft instrument to amend the 1983 law on the Protection of Disabled Persons, and a Bill to institute a law to ratify the UN Convention on the Rights of Disabled Persons. Through a National Plan of Action on Orphans and Vulnerable Children (2006-2010) and a National Economic Empowerment and Development Strategy (NEEDS), Nigeria seeks to address issues that impact on children with disabilities. In articulating the right to dignity for people with disabilities, the Togolese law – in the Child Code, Art.242 – states that:

...every child living with a mental or physical handicap...has the right to benefit from special care corresponding to his needs and conditions which preserves his dignity and is in favour of his autonomy and participation to active life in the community.

Furthermore, the Togo Directorate for Persons with Disabilities has developed national strategies for the social inclusion of persons with disabilities and the implementation of new legislation on people with disabilities.

231 Also refer to the section on the right to non-discrimination in Chapter 2, above.
Other policy measures that governments have undertaken to promote the rights of children with disabilities include waivers on the enrolment age rules for children with disabilities; promotion of special pedagogic support by teachers; and provision of financial care to increase access to education for children with disabilities (Cameroon). Special education is an integral part of the basic education programme, and there is promotion of the educational integration of children with disabilities in several countries in the region, such as the Gambia and Ghana. Where these students are integrated, teachers have also been trained in the special skills needed to include them. Other measures adopted by some study countries include subsidies or other assistance towards the cost of education, apprenticeship and professional training, as is the case in Togo.

Across most of the study countries, however, there is a lack of statistical data on children with disabilities, and, in particular, on the (limited) specialised health care, education and employment possibilities available for them. Gambia undertook a National Disability Study in 1998, and its findings appeared in their CRC State Reports; but this gap in data in other countries in the region has been noted by the CRC Committee in their Concluding Observations to State Reports (such as in 2001 for Cameroon, where they expressed concern at the lack of statistical data on children with disabilities).

Despite laws and a limited number of policy initiatives to address the rights of people with disability, and particularly children, a majority of the study countries are failing adequately to deliver on the entitlements of children with disabilities. They have limited specialised health care, education and other service provision structures and institutions, and where these do exist, they are often situated in capital cities or major urban centres. In Ghana, there are two schools for the visually disabled, eight schools for the hearing impaired located in eight regions, and five special schools for the mentally challenged situated in various parts of the country; while Togo has six centres for the rehabilitation of people with disabilities.

Finally, negative cultural attitudes and perceptions and limited financial and material resources appear to be common challenges across all the countries that hinder the implementation, and hence realisation, of the rights enshrined in their respective laws.

### 3.11 Rights of Children in Armed Conflict

Article 38 of the CRC prohibits the recruitment of children under the age of 15 into the armed forces, and obliges states to protect and care for children affected by armed conflict. Children who are victims of armed conflict also have the right to physical, psychological and social assistance under Article 39 of the CRC. Moreover, the Optional Protocol to the CRC on the involvement of children in armed conflict obliges States Parties to establish a minimum age of voluntary recruitment higher than 15 years of age, not to engage in compulsory recruitment of any person under the age of 18, and to prevent the participation of persons under the age of 18 years in armed conflict.

Article 22 of the ACRWC deals with the rights of children in armed conflict and provides in full that:

1. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.

2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular from recruiting any child.
3. States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.

As a result, no child (by definition a person below the age of 18) is allowed to take direct part in hostilities. This, however, raises the question about supposedly legitimate situations in which children can take an indirect part in hostilities. Since the nature of the obligation under Article 22(2) is to ‘ensure that no child shall take a direct part in hostilities’, states have to ensure than non-state actors or armed groups, such as rebel groups, do not recruit children. A number of African countries in the study region have experienced armed conflict in recent years. However, the adoption of legislation concerning children in armed conflict has received relatively little attention. Benin, Mali, Sierra Leone and Togo have ratified the Optional Protocol to the CRC on the involvement of children in armed conflict. Through the draft Code of Child Protection, Cameroon has incorporated the provision of the Optional Protocol into its laws. This draft law classifies children affected by armed conflict together with a host of children with special needs. The Code states that children are not allowed to be exposed to armed conflict or to be enrolled into the army, or to be used in the armed forces or by armed groups.232 Further, the minimum enlistment age into the Combined Military Academy is 18 years, and applicants under 21 years can only apply with parental authorisation.

### Table 13: Ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

<table>
<thead>
<tr>
<th>Country</th>
<th>Signature</th>
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<tr>
<td>Benin</td>
<td>February 2001</td>
<td>January 2005</td>
</tr>
<tr>
<td>Cameroon</td>
<td>October 2001</td>
<td>-</td>
</tr>
<tr>
<td>Central African Republic</td>
<td>September 2010</td>
<td>-</td>
</tr>
<tr>
<td>The Gambia</td>
<td>December 2000</td>
<td>-</td>
</tr>
<tr>
<td>Ghana</td>
<td>September 2003</td>
<td>-</td>
</tr>
<tr>
<td>Mali</td>
<td>September 2000</td>
<td>May 2002</td>
</tr>
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<td>Niger</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Nigeria</td>
<td>September 2000</td>
<td>-</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>September 2000</td>
<td>May 2002</td>
</tr>
<tr>
<td>Togo</td>
<td>November 2001</td>
<td>November 2005</td>
</tr>
</tbody>
</table>

232 Article 53(g).
233 Article 132(3).
The Children’s Act of the Gambia also prohibits the involvement of children in armed conflict: no-one under 18 years can be enlisted in the armed forces. In Togo the law also provides protection to children in regard to prohibiting their involvement in armed conflict. Furthermore, any children affected by an armed conflict have a priority right to the actions of impartial humanitarian rescue in regard to the provision of food, medication, psychological support, clothes, sleeping kit, emergency accommodation and other non-food items.

The non-ratification of the Optional Protocol as outlined in Table 13 is of concern and constitutes a great threat to children, particularly in the Central African Republic, where the use of child soldiers is prevalent. This is particularly the case in CAR’s north-western region, where more than 75% of children remain out of school, and are at risk of abduction for forced conscription into the army, or of being trafficked and exploited. Conflict also displaces children from their parents and caregivers, and this displacement contributes to preventing CAR from providing access to basic education across the country. It is estimated that several hundred children have been enrolled by non-state armed groups across CAR; in this context, in June 2007 a Tripartite Action Plan for the Reduction and Elimination of Under-age Recruitment and Utilisation, their Demobilisation and Reintegration was signed by the CAR Government, the Assembly of the Union of Democratic Forces (UFDR) rebel group, and UNICEF. This was to allow children associated with armed groups to be reintegrated and returned to their families wherever possible.234

It is critical that CAR puts in place measures to stop conscription of children into the armed forces and forced conscription by non-state armed groups. Furthermore, children involved in this conflict must be demobilised and rehabilitated so that they can have opportunity to enjoy their childhood.

Niger also needs to sign and ratify the Optional Protocol on the involvement of children in armed conflict, as do the countries under this review that have only signed the Optional Protocol – namely Cameroon, the Gambia, Ghana and Nigeria.

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CHAPTER 4
CONCLUSION AND RECOMMENDATIONS
4.1 APPROACHES TO LAW REFORM IN WEST AND CENTRAL AFRICA

Most of the countries in this review have made substantial changes to their legislation in order better to protect the rights of children. These changes have been adopted in varying ways. Countries such as Cameroon, the Gambia, Ghana, Nigeria and Sierra Leone have enacted new ‘comprehensive laws’ on children, while others such as Benin, Burkina Faso, Central African Republic and Togo have taken a more ‘sectoral approach’ to law reform that involves gradually examining legislation in different areas in order to identify and make changes in laws concerning children. A few countries, such as Mali and Niger, have emphasised the adoption of decrees rather than fully fledged legislation.

Each of these approaches has its merits. However, none is sufficient in and of itself. The gradual reform of existing legislation tends to focus on specific areas, such as child protection, the family or child justice. As a result, some rights recognised in the CRC and the ACrWC are omitted in the law reform process. Civil rights, such as the right to privacy, freedom of thought, association and religion, are often overlooked when there is sectoral approach to law reform. The adoption of codes, on the other hand, without an effort to identify and modify conflicting provisions of existing legislation, and without the adoption of regulations to provide guidance to duty bearers on how the law should be applied in practice, can undermine the effectiveness of a new code. Reliance on decrees may be useful or necessary in certain circumstances – for example, where there are serious situations that need to be urgently resolved or when the ordinary legislative processes are in crisis. Although decrees are legally binding for public authorities, excessive reliance on them has disadvantages, as they do not normally create justiciable rights that can be claimed by private persons and enforced by a court. Excessive reliance on decrees also implies reliance on a single branch of the state.

This review highlights the fact that where a comprehensive review of children’s laws has been adopted, law reform tends to cover nearly all the rights and principles contained in the CRC and the ACRWC. Where the sectoral approach has prevailed, it covers specific thematic areas such as education, child abuse, neglect, sexual exploitation and child justice. Therefore, even though generally sectoral approaches are indispensable, it appears that they promote and protect children’s rights better in the presence of a comprehensive Children’s Act or Code. In addition, civil law countries are more likely than common law countries to incorporate the CRC and the ACRWC directly into national law. Furthermore, countries in the civil law system are more likely to entrench social rights through legislation.

4.2 EMERGING KEY ISSUES

The following section highlights some emerging key issues identified in the review.

4.2.1 Continuing progress; but a long way to go

Reforms on child law have been proposed across the study region and are under consideration in many legal areas including the minimum age of criminal responsibility, the minimum age of marriage for girls, the protection of girls (including prohibition of female genital mutilation), children in conflict with the law, the separation of children from parents, child prostitution and pornography and child justice – to name just some. These legal reform initiatives show an interest and commitment on the part of political leadership to implement the CRC and the ACRWC.
Despite the above important steps in some of the countries in this review, the full realisation of children’s rights and wellbeing remains distant for many children in Central and West Africa. The Committee on the Rights of the Child has continuously expressed concern about the gaps between laws and practice at national level. Bridging this gap poses a significant challenge for countries in this review, as gaps still exist within national law, between national law and regional or international legal instruments, in relation to the implementation of national, regional and international instruments where they do apply.

While the main objective of child laws is to create a protective environment for children, it is evident from the prevailing situation in the countries reviewed that, while laws are greatly important, by themselves they are not necessarily sufficient to create a child-friendly environment that protects the rights and wellbeing of children.

All the countries in this review ratified the CRC, and all but one ratified the ACRWC; but significant gaps exist in their state reporting obligations to the CRC Committee and the African Committee of Experts. State reporting under the African Committee of Experts has been particularly weak, with only a few countries submitting the required reports.

4.2.2 Building on the harmonisation momentum – the need for a holistic approach

There is a complex patchwork of existing legislation relating to children’s rights across Central and West Africa. This poses a significant barrier to the effective harmonisation of laws and the legal protection of children. Provisions relating to children are found in a broad range of laws, including penal codes and specific legislation for adoption, education, health, social welfare, maintenance, child justice, and divorce and separation proceedings. The pluralist and federal nature of legal systems in the region, where common law and civil law co-exist with customary and religious laws, further compounds this problem. In Cameroon, for example, the dual legal system inherited from a colonial past – with French civil law and English common law – is partially responsible for disparities in age limits and gaps between national laws applicable under both systems, and gaps between national law and international law. The existence of customary law as an adjunct to the legal system is also a source of conflict and inconsistencies. As long as child-centred provisions remain in this fragmented and complex state, legislation relating to children will continue to suffer from inconsistency and will not contribute to a child-friendly environment that effectively protects the rights and well being of children.

On the positive side, the review shows that five out of the eleven countries surveyed – Cameroon, Gambia, Ghana, Nigeria, Sierra Leone and Togo – have undertaken comprehensive reviews of their legal systems. As a result they have either enacted or drafted a comprehensive Children’s Act or grouped their rights into thematic legislation. While this is a significant development, it is important that such reviews should not be seen as a one-off exercise. Law reform is not an end in itself, and the extent to which legislation has the desired effect on the lives of children depends on many variables. Law reform must therefore be part of a broader, holistic strategy for promoting and protecting children’s rights.

While some of the difficulties that states have encountered in putting new legislation into effect have to do with defects in the laws themselves, or conflicts between new laws and older ones, most of the obstacles point to the need for better coordination, more awareness, training and education, allocation of resources, and participation of civil society. This highlights the
need to monitor the impact of new laws and the interrelationship of the various general measures of implementation of children’s rights highlighted in this review, and the extent to which they are mutually reinforcing. Fragmented law reform, such as the adoption of new legislation without making the necessary changes in related laws, not only limits the effectiveness of new legislation, but can also throw existing systems into chaos. Similarly, the enactment of new legislation that presumes the existence of certain infrastructure and services is of little use. The absence of resources needed to implement new approaches successfully can cause a backlash that may have negative consequences for law reform.

This review therefore highlights the need for a careful, thorough approach to law reform, and the danger of expecting a single law, no matter how clear and comprehensive, to transform the way in which complex legal systems work into meaningful rights for children. In addition, it points out the importance of coordination mechanisms that are able effectively to ensure that the various agencies and services responsible for implementation of new law cooperate in overcoming any difficulties that may arise.

While a comprehensive and consultative review of existing legislation seems the most common and effective way to begin the harmonisation process, this review highlights the fact that, apart from putting the law in place, measures and structures are necessary to ensure the reform is effectively implemented. These include, but are not limited to, regulations, institutions, policies, and budget allocations.

4.2.3 The need for clarity on the definition of a child

According to both the CRC and the ACRWC, the term ‘child’ refers to every human being below the age of 18. Most countries do follow this definition in principle by implementing and applying children’s rights for all persons below the age of 18; but when it comes to setting specific minimum ages for certain activities or statuses of children, many countries seem to struggle. For instance, there are differences and inconsistencies in setting minimum ages for sexual consent and marriage, criminal responsibility, employment, and compulsory education. As a result, children continue to suffer from inconsistent and ineffective legal protection.

a) Some of the countries surveyed have set the age of criminal responsibility very low, and lack any special measures to recognize the child’s ability for discernment. In Cameroon, for example, children as young as ten can be held legally accountable for their acts under the penal law. In Nigeria, there are discrepancies in the application of the minimum age of criminal responsibility in various states across the country. For example, in the south-east, the minimum age of criminal responsibility is between 7 and 12 years; in the north-central region it is 12 to 18 years; and in the north-west it is between 14 and 21 years.

b) In many of the countries no specific minimum age of sexual consent – the minimum age at which a person can voluntarily agree to sexual acts with full knowledge of the consequences of the risk involved – has been set, and where this has been done, it is too low or is inconsistent with other legislation, such as that which takes into account the evolving capacity of the child. Benin, Burkina-Faso, Cameroon, Gambia, Mali, Niger and Sierra Leone all have no definite minimum age of sexual consent. Under these circumstances minimum age may only be deduced from signs of puberty.

c) There is considerable variation in the ages at which people are allowed to marry. In most of the countries reviewed, there were
gender variations between the minimum ages of marriage for boys and girls. In Cameroon, it is 15 years for girls and 16 for boys; in Burkina Faso it is 17 years for girls and 21 years for boys. The above discrepancies are also found in Niger and Mali, where the age of marriage under customary law is inconsistent with other laws.

d) While all the countries in the review had a minimum age of employment, only six countries – CAR, Nigeria, Benin, Togo, Ghana, Burkina Faso and Mali – had a minimum period prescribed for compulsory education. This gap compounded the risk of child-exploitative labour.

4.2.4 Discrimination remains pervasive

Discrimination against groups of children still exists under the law, particularly on the grounds of parentage, as well as sex, ethnicity and disability. Discrimination is prominent between boys and girls in some communities where, as a result of cultural influences, schooling is provided to boys, while girls are given or forced into early marriage in return for gain or to meet family needs.

Discrimination against girls with respect to inheritance and education is particularly prominent in a number of countries in the region. In the Gambia, Mali and Niger, for example, girls are not allowed to inherit under Muslim laws. In education, girls still largely suffer discrimination – although in some countries, like Nigeria, Benin and Togo, commendable efforts have been taken to ensure and encourage education for girls, such as waivering of school fees for girls. Discrimination is also evident against children with disabilities, as well as against children of minorities, ethnic or indigenous peoples, because a number of the study countries had no legislative or policy provisions addressing the rights of these vulnerable groups. As a result, vulnerable groups of children remain unprovided for by policy and legislative frameworks.

4.2.5 Children in conflict with the law are vulnerable

While there has been progress in developing appropriate measures for children, there are still significant gaps in dealing with children in the criminal justice system. Low age limits mean that children as young as 10 can be held criminally responsible. Poor procedures and the absence of child courts or judges specialising in child matters do not guarantee fair treatment of children in conflict with the law, or of victims.

International law indicates that the child must be guaranteed legal or other appropriate assistance in the preparation and presentation of his/her defence. The CRC does require under Article 40(2)(b) (ii) that the child be provided with assistance that must be appropriate (although not necessarily in all legal circumstances). The extent to which the countries in this review comply with this requirement is not clear.

In an encouraging step, seven of the 11 countries reviewed have established Children’s Courts: Benin, Burkina Faso, Central African Republic, Gambia, Ghana, Niger and Nigeria. A number of concerns remain, however, that in the majority of the countries these courts are limited in number within the mainstream judicial system. Furthermore, Children’s Courts are hampered in the effective administration of justice for children on several grounds, including the lack of alternative care centres for diversion of children from the formal justice system.

Nine of the eleven study countries do not have alternative care centres for children, so children are regularly detained alongside adults in formal prisons. Diversion from the criminal system was only available in two countries, Ghana and Sierra Leone. Diversion from the formal criminal system is not an option of first resort in the majority of countries, even where provisions have been made for it. In Cameroon and Mali the death penalty does
not apply to juvenile offenders. Alarmingly, a distinction is made in Burkina Faso that children between 16 and 18 years can be subjected to the death penalty for capital offences.

In some of the study countries, corporal punishment is legally sanctioned within the penal system, and alternative care institutions, particularly for boys.

4.2.6 Children are still subjected to violence

The United Nations Secretary General’s global study on violence against children highlighted the extent to which violence prevents the realisation of children’s rights. A positive finding of the study is the fact that all the countries studied have laws that confer protection on all citizens in general, or on children in particular, against abuse, inhuman and cruel treatment, and torture. Apart from Togo, there is no country in the study with an absolute prohibition of corporal punishment in all spheres, and children in the study region are still subjected to violence in homes, schools and other institutions, as well as within the justice system. Corporal punishment is still a legal penal sanction in some of the countries, and is legal in the home in ten of the eleven countries reviewed (often under the defence of reasonable chastisement). In some of the countries reviewed, corporal punishment is not only allowed but recommended by written or customary law. In Nigeria for example, whipping is still prescribed for juvenile offenders under the Children and Young People’s Act. In Ghana, flogging is allowed in schools when carried out in the presence of the head teacher. In Cameroon and Sierra Leone, there are meagre legislative efforts to address corporal punishment. In Sierra Leone the Domestic Violence Act 2007 prohibits all forms of violence against individuals, including children, in schools and child institutions, but practical implementation remains absent. In Cameroon the 1998 law on Educational Orientation bans corporal punishment and all forms of violence in schools, and the draft Child Protection Code incorporates the same provision in its Article 33(a); but the law is weakened by poor implementation, especially in rural areas.

In countries such as Burkina Faso, CAR, the Gambia and Mali, where harmful traditional practices – like FGM, early and forced marriage and the trokosi system – are still prevalent, specific legislation exists prohibiting such practices, but there is a lack of awareness among duty bearers and communities about the implementation of these laws. Action against harmful traditional practices is often met with severe resistance from the communities that practice them, and it is therefore common to find that traditional and customary laws are followed rather than written rules. This creates serious setbacks to legislative and policy efforts to curb harmful traditional practices. Child rights education is essential in order to challenge attitudes and behaviour toward such practices.

4.2.7 Lack of adequate budgetary commitment to enforce children’s rights

Ideally, the best indicator for measuring governments’ budgetary commitment to children would be the proportion of government resources that went into specific child-related programmes and projects. A number of countries in the review have put in place legal and policy provisions relating to Health and Education, but these provisions are not supplemented with the budgetary commitment necessary to ensure effective implementation. For example, budgets for health are below 10% of the total national budget in all the countries in this review, and Sierra Leone was the only country that invested 10% of its expenditure on health. Insufficient budgetary allocations mean insufficient infrastructure and
resources, including shortages of trained personnel, which are manifested by high rates of maternal and infant mortality. Governments’ financial investments in health services have a direct impact on the wellbeing of children and their enjoyment of the right to health.

This review highlights the need for child-friendly budgeting in West and Central Africa. States have to give priority to issues affecting children when allocating resources: unless this is done, the wellbeing of children will continue to suffer.

4.2.8 Children’s voices largely remain unheard

Most of the countries in this review have made laudable efforts towards encouraging participation and freedom of expression, especially via the institution of Children’s Parliaments. Eight of the eleven countries (Benin, Burkina Faso, Cameroon, the Gambia, Ghana, Niger, Nigeria and Togo) have put in place Children’s Parliaments. Furthermore, the Constitutions of the majority of the study countries include the right to freedom of expression and opinion of all citizens including children.

On the other hand, Children’s Parliaments are primarily viewed as tokenistic in nature, and cultural and traditional dictates warrant limited child participation in communities. Where Children’s Parliaments exist, they simply make recommendations that hardly provoke policy or legislative drive. There are some notable initiatives – as witnessed in Cameroon, where the use of anti-personnel landmines was banned and education made free within months of a proposal by the Children’s Parliament – but no mechanisms exist for systematic following-up of recommendations made by Children’s Parliaments.

Niger and Cameroon provide good examples of institutionalisation of child participation via Youth Parliaments: these parliaments have a process of initiating laws in the form of draft laws that may be debated and later transmitted to the network of senior parliamentarians, which may in turn transform the laws into Private Members’ Bills. In Cameroon, proposals by the Children’s Parliament are studied carefully by the relevant ministries, and may eventually inform child law and policy. The review also noted that countries such as Cameroon, Niger and Togo have put in place mechanisms in both civil and criminal proceedings for giving evidence in courts in issues of child custody, divorce proceedings, or adoption.
4.3 RECOMMENDATIONS

This review demonstrates that, despite some progress, gaps continue to exist between the standards set in the CRC and the ACRWC and the realities of children’s lives and the state of legal protection in West and Central Africa. There is a need to share strategies that will bring about the harmonisation of national laws with the provisions of the CRC and the ACRWC, and the effective implementation of these instruments for the realisation of children’s rights. Reforms in Cameroon, the Gambia, Ghana, Nigeria, Sierra Leone and Togo are encouraging, and can serve as examples for other countries that have yet to start or complete the process of harmonisation.

The law does not operate in a vacuum: having a comprehensive legal framework on children’s rights will not lead automatically to the full observance of these rights. There must be accompanying political, economic, social and financial support for their effective implementation and realisation. Governments must keep the promises they made when they ratified the CRC and the ACRWC, and citizens and stakeholders must keep those governments accountable for their promises.

The following recommendations cover the most pressing steps that need to be taken to bring about major changes for children’s rights in the region:

1. **Audit and review existing legislation.** Where audits of laws relating to children have not been undertaken, the first step should be a holistic, multi-sectoral and inclusive review. Where comprehensive assessments have been undertaken, there is need for continuous revision of laws. All processes must entrench the principles of non-discrimination, the best interests of the child, and participation of children in accordance with their evolving capacities. Ensuing legislation may either be in a consolidated statute or in several thematic statutes.

2. **Adopt and enact on a priority basis pending bills relating to children’s rights** that have been submitted in parliament. Pending draft legislation in Cameroon, for example, cost time and resources in undertaking the review and drafting the draft codes, and is worthy of being seen to fruition.

3. **Ensure mechanisms and bodies,** with wide spread representation from government and civil society, to promote and own the processes of national harmonisation, including coordination and monitoring. These could be existing bodies with the institutional mandate to review and revise laws, such as Attorney Generals’ Offices or Law Commissions. Statutory human rights commissions, ombudspersons and child rights commissioners often have a mandate to make recommendations regarding law reform. The development of ombudsperson institutions for children, and independent national human rights institutions in general, can have a positive impact on law reform concerning children. This is one important reason to support their establishment and effective mandate.

4. **Adopt a standard definition of a child.** Countries should explicitly, by law, define a child as any person below the age of 18 years. This is particularly important because it ensures that children’s rights as enshrined in the CRC and the ACRWC are applicable to all persons under the age of 18 years. When countries set specific minimum ages – for instance for marriage, for criminal responsibility, for admission to employment, and for the recruitment and use of children
in armed conflict – they should do so in full compliance with international standards and ensure that there is no discrimination in ages set (for instance through different ages for boys and girls). In other legislation where age limits may be set in regard to children – for example, regarding consent for a medical procedure – the principle consideration should be the best interests of the children and their participation in accordance with their evolving capacities.

5. Implement laws on non-discrimination and ensure equal protection and enjoyment for all children within state jurisdictions. Repeal all provisions that discriminate against children, particularly on the grounds of parentage, sex, disability, religion, ethnicity and other terms. There is need to raise awareness on the fact that, in line with Article 3 of the ACRWC, the duty of non-discrimination rests with all actors, including communities, and not just with the state.

6. Review the age of sexual consent and the age of marriage for both genders. The age of sexual consent should not be too low. The age of marriage should also be 18 years for both boys and girls. The best interest of the child requires that children are protected from early or forced marriage. In line with Article 21 of the ACRWC and the recommendations of the CRC Committee, the minimum age of marriage should be set at 18 years for both genders, irrespective of whether the marriage is concluded under civil, customary or religious law.

7. Review the minimum age of criminal responsibility, and if necessary raise it to 12 years.

8. Ensure that universal free and compulsory primary education is enshrined in the law, and ensure progressive access to and completion of secondary education.

9. In order to combat child death and improve and expand access to primary health care, nutrition and improved water and sanitation, governments need to increase the budgets they allocate to health progressively, to as high as 20% of GDP.

10. Ensure zero tolerance for violence, especially against children, and ensure that concrete action is taken against such violence. Abolish any legal provisions that permit or excuse corporal punishment, by putting in place legislative provisions that: (i) prohibit corporal punishment at home, in institutions and in school; and (ii) prohibit and criminalise female genital mutilation, early or forced marriage, child prostitution, trafficking and pornography. States must take into account the provisions of the newly adopted General Comment No. 13 of the CRC Committee, on violence against children.


12. Reform child justice administration, in particular:

(a) Adopt and encourage restorative justice and rehabilitation schemes for children in conflict with the law, focusing on
diversion from the criminal justice system at all stages. In addition to the CRC and the ACRWC, states should implement the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990), while fully taking into account CRC General Comment No. 10 on Children’s Rights in the Juvenile Justice System and the UN Guidelines on Justice on Matters Involving Child Victims and Witnesses of Crime (2005). States should adjust laws and policies accordingly to include child victims and witnesses of crime.

(b) Legislate for the right to free legal representation for child victims and offenders and ensure access to this right.

(c) Apply the principle of the best interests of the child and the child’s right to be heard in adjudicating cases involving children.

(d) Establish children’s courts with trained judges on children’s rights in both urban and rural areas around the country, to adjudicate on all cases relating to children, with closed proceedings and quick adjudication timelines.

(e) Apply stiff and effective sanctions and penalties for perpetrators of abuse against children.

(f) Establish proper data collection systems concerning children in conflict with the law, to enable monitoring and measuring over time of improvements in juvenile justice.

(g) In line with the CRC and General Comment No. 10, ensure an effective complaints system is established for addressing violations of the rights of children deprived of liberty.

13. Report, on a timely basis and in a comprehensive manner, on the application of laws to the treaty committees, and ensure children’s participation in the reporting process.

14. Strengthen regional monitoring and (peer) accountability under the African Union, through the African Committee of Experts on the Rights and Welfare of the Child, the pan-African Parliament, the New Partnership for Africa’s Development (NEPAD), the African Commission on Human and Peoples’ Rights and the African Court of Human Rights, so they can be better acknowledged and supported in their role as agents for reviewing and monitoring children’s rights on the African continent. With the moral and political standing it commands, the AU has a duty to use its leverage to make states accountable to their children.
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ANNEXES
### ANNEX 1: CONTRIBUTORS’ DETAILS

<table>
<thead>
<tr>
<th>Country</th>
<th>Researcher</th>
<th>Researcher’s Profile</th>
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<tbody>
<tr>
<td>Benin</td>
<td>Yao Anani Paul-Martial Agbobli</td>
<td>Yao Anani Paul-Martial Agbobli is is the Director of the Sub-Regional Cabinet COOP Consult and Principal of the Institute of Technical Education in Lomé. He is a lawyer and economist and he has lectured in the Masters Programme at the Regional Centre of Cultural Action (CRAC) in Lomé. An expert and training specialist in entrepreneurship and local development, Paul-Martial Agboli has done numerous consulting assignments in the development, implementation and evaluation of children’s rights, local development, education and training, entrepreneurship and prospective studies for various UN agencies, the World Bank, CIDA, The Secour Catholic France, PLAN Togo, SOS Children’s Villages and Bornefonden. He has also carried out missions for the governments of Togo, Benin, CAR, Burundi and Sao Tome and Principe. In addition, he is a development volunteer for some religious associations, the FeNoG, AIESEC Togo and the Young Economic Chamber of Togo. Email: <a href="mailto:pagbobli@yahoo.fr">pagbobli@yahoo.fr</a></td>
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<td>Burkina Faso</td>
<td>Jean Emile Somda</td>
<td>Jean Emile Somda is currently the Legal Adviser at the Office of the Special Representative of the Facilitator of the Direct Inter-Ivorian Talks in Abidjan, Côte d’Ivoire. He holds a Masters Degree in Private Law, and in 1983 he became a Magistrate after undergoing training at the Ecole Nationale de Magistrature of Paris, France. Prior to that, he attended several specialised training courses, including on human rights at the Institut René Cassin of Strasbourg, and at the UN Human Rights Institute in Geneva. He has occupied other judicial and political positions in his country, such as being a Member of the Constitutional Council, and was at one time Minister of the Civil Service. He also worked as a Judge at the African Court of Human and Peoples’ Rights in Arusha, Tanzania from 2006 to 2008. This study was jointly conducted with Sita Traore Bamba, Adviser to the Court of Appeals of Burkina Faso, and Member of the Association of Female Lawyers of Burkina Faso. Email: <a href="mailto:jemilson@yahoo.fr">jemilson@yahoo.fr</a></td>
</tr>
<tr>
<td>Cameroon</td>
<td>Dr. Atangcho Nji Akonumbo</td>
<td>Dr. Atangcho Akonumbo is an Associate Professor of Law at the Catholic University of Central Africa in Yaounde and at the University of Yaounde II, where he is also the Deputy Coordinator of the Doctoral School of the Department of Common Law Studies. He is a visiting Professor at the Regional War College (CSID), Yaounde, and at the Centre for Human Rights, University of Pretoria, South Africa (where is also the Permanent Representative of the Catholic University on the Council of Directors of the Partnership between the</td>
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<tr>
<td>Country</td>
<td>Researcher</td>
<td>Researcher’s Profile</td>
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<tr>
<td>Central African Republic</td>
<td>Sonia Vohito</td>
<td>Sonia Vohito is currently the Africa Project Coordinator of the Global Initiative to End All Corporal Punishment of Children. She promotes law reforms and supports national campaigns for the prohibition of corporal punishment of children in Africa. Sonia was trained in France and the United Kingdom and holds post-graduate qualifications in International Law and Charity Management. She has extensive advocacy and management experience in the non-governmental sector at international level. For several years, she worked for women’s and human rights organisations in the United Kingdom, including Amnesty International, Women Living Under Muslim Laws and Women’s Aid. Email: <a href="mailto:vohito@yahoo.co.uk">vohito@yahoo.co.uk</a></td>
</tr>
<tr>
<td>The Gambia</td>
<td>Justice Amie Joof-Conteh</td>
<td>Justice Amie Joof-Conteh is a Judge of the High Court of the Gambia and Acting Judge of Appeal of the Gambia Court of Appeal. She was first appointed Judge of the High Court under the Department for International Development (DFID) through the Legal Capacity Building Project Phase II (LCBP II). Justice Joof-Conteh has been a board Member of the Public Utilities Regulatory Authority (PURA) since 2007, and is a member of the National Council for Law Reporting and The Legal Aid Agency. Before joining the Bench, Justice Joof-Conteh worked for private firms, then set up her own practice in February 2002, litigating in all areas of law. She holds an LLB (Hons)</td>
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<th>Country</th>
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<tbody>
<tr>
<td>Ghana</td>
<td>Bright Kweku Appiah</td>
<td>Bright Kweku Appiah is the Executive Director of Child’s Rights International in Ghana. He holds an MA in Human Rights Education. Bright was assisted in this research by Prof. Jophus Anamuah-Mensah and Sylvester Kyei-Gyamfi. Email: <a href="mailto:Info@Cri-Ghana.org">Info@Cri-Ghana.org</a></td>
</tr>
<tr>
<td>Mali</td>
<td>Mohamadou Lamine Cissé</td>
<td>Mohamadou Lamine Cissé is the head of Socio-Juriste/SécrétaireExécutif/AfriqueEnvarts SOS Désérité International, the umbrella grouping of 78 Malian and foreign non-governmental organisations.</td>
</tr>
<tr>
<td>Niger</td>
<td>Alichina Amadou</td>
<td>Alichina Amadou is a Magistrate in Niger. Email: <a href="mailto:alichinaamadou@yahoo.com">alichinaamadou@yahoo.com</a></td>
</tr>
<tr>
<td>Nigeria</td>
<td>Kenneth Abotsi</td>
<td>Kenneth Abotsi works for the Regional Secretariat of the West African Civil Society Forum (WACSOFF), the official platform for civil society engagement with the Economic Community of West African States (ECOWAS), where he heads the Democracy, Governance and Electoral Assistance Unit. Having previously led the Teacher Trainees Association of Ghana (TTAG) and the National Union of Ghana Students (NUGS), and having initiated the revival of the West African Students Union (WASU), he has extensive local and international exposure in student and youth activism. He has also consulted for the Canadian Parliamentary Centre (PC) and the ECOWAS Parliament, the Ghana National Education Campaign Coalition (GNECC), and the Kofi Annan Peacekeeping Training Centre (KAIPTC). Before joining WACSOFF, he worked for the Integrated Social Development Centre (ISODEC), the Ghana National Education Campaign Coalition (GNECC), the Peasant Farmers Association of Ghana (PFAG) and The Institute of Economic Affairs (IEA), Ghana.</td>
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<tr>
<td></td>
<td>O’Seun Odewale</td>
<td>O’Seun Odewale is a human rights crusader who works for the West African Bar Association (WABA), where he is in charge of Governance and Human Rights programmes. He holds two degrees, in Chemical Engineering Technology and Chemistry (with Polymer Science), from the Federal Polytechnic, Bida and Federal University of Technology, Minna respectively. Among others, he has had professional training opportunities in community local participation under UNICEF, in international election observation under WACSOF and the KAIPTC, in mentoring young leaders under the CDD Kwame Nkrumah emerging leaders training series, and through the African Contingency Operations and Training Assistance (ACOTA) towards the establishment of the ECOWAS Standby Force. He has local and international experience in social and development work, especially in the West African sub-region. He has also consulted for the African Regional Programme of the Commonwealth Youth Forum and the Control Risks Group, UK. Before joining WABA, O’Seun worked for the West African Civil Society Forum (WACSOF), where he was in charge of the Youth Development Programme.</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>Melron Nicol-Wilson</td>
<td>Melron Nicol-Wilson is a Barrister and Solicitor in Sierra Leone. He is currently the Director of The Centre for Legal Assistance in Sierra Leone. Email: <a href="mailto:mnwlaw@yahoo.co.uk">mnwlaw@yahoo.co.uk</a></td>
</tr>
<tr>
<td>Togo</td>
<td>Tikpi Atchadam</td>
<td>Tikpi Atchadam is a Consultant for Bureau d’Organisation et de Gestion (BOG). He holds Masters’ degrees in Private Law and Anthropology and African Studies from the University of Lomé, and he is a specialist in child rights and an expert in project evaluation. After a 6 month internship in the law office in Lomé, he served as Secretary General to Tchaoudjo’ Prefecture. He subsequently worked for 10 years (1996-2006) at the Ministry of Human Rights in the Division of Women and Child Rights, which he ultimately managed. This experience in work on the Rights of the Child led him to CARE International, where he devoted himself for over three years to projects in the field of child rights. His consulting missions have been with Plan Togo, the Bornefonden, WAO Afrique, Programme d’Appui à la Femme et à l’Enfance Déséritée (PAFED), SOS Villages d’Enfants, and Agence Régionale de Coopération de Développement Champagne Ardenne (ARCOD-CA). In addition, he worked as part of the study to establish legal aid in Togo on behalf of the Projetd’Appui à la Reforme de la Justice et à la Promotion des Droits de l’Homme (PAJDH). Email: <a href="mailto:atchadam@yahoo.fr">atchadam@yahoo.fr</a></td>
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Annex 2: Treaty Reporting Obligations

Reporting to the Committees

International law lacks adequate direct enforcement means and therefore relies heavily on the principle of *pacta sunt servanda*\(^{235}\), which is heavily dependent on states’ good will. Both the CRC and the ACrWC have established Committees\(^{236}\) charged with monitoring their implementation via examination of state reports. The Committees are made up of independent experts with recognised competence in the field covered by the CRC\(^{237}\) or in matters of rights and welfare of children,\(^{238}\) and from various legal systems. The CRC Committee meets three times a year in Geneva and considers periodic reports of the implementation of the CRC and its Optional Protocols. The African Committee meetings take place a minimum of twice a year.

<table>
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<tr>
<th>Country</th>
<th>CRC Committee reports</th>
<th>ACERWC reports</th>
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<tbody>
<tr>
<td></td>
<td>Initial</td>
<td>2nd</td>
</tr>
<tr>
<td>Benin</td>
<td>1997</td>
<td>2005</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td>1993</td>
<td>1999</td>
</tr>
<tr>
<td>Cameroon</td>
<td>2000</td>
<td>2008</td>
</tr>
<tr>
<td>Central African Republic</td>
<td>1998</td>
<td>-</td>
</tr>
<tr>
<td>The Gambia</td>
<td>1999</td>
<td>-</td>
</tr>
<tr>
<td>Ghana</td>
<td>1995</td>
<td>2005</td>
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<tr>
<td>Mali</td>
<td>1997</td>
<td>2005</td>
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<tr>
<td>Niger</td>
<td>1994 and 2000</td>
<td>2007</td>
</tr>
<tr>
<td>Nigeria</td>
<td>1994</td>
<td>2003</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>1996</td>
<td>2006</td>
</tr>
<tr>
<td>Togo</td>
<td>1996</td>
<td>2003</td>
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\(^{235}\) Which roughly translates into ‘agreements must be kept’.
\(^{236}\) Articles 43 & 33 of the CRC and the ACrWC respectively.
\(^{237}\) Article 43, CRC.
\(^{238}\) Article 33, ACrWC.
The consideration of state party reports, which is done in the spirit of ‘constructive dialogue’, is intended to look into progress, challenges and ways forward for the implementation of children’s rights in the state concerned. After a discussion between the Committee and the state delegation, the Committee issues a concluding observation that highlights the strong points, concerns, and recommendations of the Committee, which the State Party is expected to follow up and implement.

Once states have ratified the treaties, they are obliged to submit regular reports to the monitoring committees detailing the implementation of the rights to which they have committed themselves through legislative and other measures. The CRC Committee should receive the initial report 2 years after ratification and every 5 years thereafter. In terms of Article 43(1) of the ACRWC, the African Committee of Experts should receive the initial report within 2 years of entry into force and every 3 years thereafter.

For both Committees, the reporting process is public and involves dialogue and discussion between the delegation of the government and members. Both committees welcome additional sources in reviewing the reports, including alternative reports from NGOs/CSOs and UN agencies. After the review both Committees issue concluding recommendations or observations. The next periodic report should contain information on the measures taken to implement the last set of recommendations. The review and reporting process should facilitate public awareness of the situation of children’s rights in the country.

**The CRC reporting process**

The CRC Committee has developed its own procedure through which it examines state reports, which is as follows:

1. All members are invited to a **pre-sessional meeting**, in which the Committee meets with NGOs/CSOs, UNICEF and other UN agencies to discuss the reports they have submitted that are complementary to the State Party’s report. After the meeting a ‘List of Issues’ is sent to the country concerned, with requests for further information.

2. In the next session of the committee, about three months after the pre-sessional meeting, the **State Party’s report is presented by a representative of the state** and discussed with the Committee.

3. On completion of reporting and discussion of issues in the report, the Committee prepares a formal written document, known as the **Concluding Observations**, in which it details positive aspects of the report and the factors impeding the implementation of the CRC, together with concerns, suggestions and recommendations to be addressed by the State Party.

4. The Committee has developed **general guidelines regarding the form and contents of initial reports and periodic reports**, detailing how to prepare reports and the points that should be addressed in them.

5. The Committee urges states to **ensure wide availability of all reports, as obliged by Article 44 (6)**, together with additional information submitted to the Committee, a summary of discussions with the Committee, and the Committee’s concluding observations.

Under the CRC, there is currently no communications procedure, but a draft Optional Protocol to the CRC on a communications
procedure was adopted by the Human Rights Council on 17 June 2011 and is expected to be endorsed and adopted by the UN General Assembly in December 2011. The new Optional Protocol establishes an individual communications procedure in which complaints can be brought to the Committee on the Rights of the Child regarding violations of children’s rights for an identified child or children. Efforts are underway also to include a collective communications procedure that will allow complaints to be brought on behalf of children without having to identify them.

The ACRWC reporting process

The African Committee of Experts started its meetings in 2001, but has only received 14 State Party reports to date. The Committee’s General Rules of Procedure state that it should meet twice a year in ordinary sessions lasting no more than two weeks (the meetings usually last four to five days, including pre-sessions). The Chairperson of the Committee can also convene extraordinary sessions at the request of the Committee or of a State Party to the Charter. Sessions generally take place at the Headquarters of the AU in Addis Ababa, Ethiopia, but can be held elsewhere at the Committee’s request. Between Committee sessions, some activities take place, such as promotional or fact-finding missions to African countries, organising or participating in studies and seminars, and participating in international, regional or national meetings and activities relevant to human rights.

The African Committee can also entertain individual and collective complaints in the form of ‘Communications’ from ‘any person’ in matters relating to the Charter.\footnote{Article 44(1) of the ACRWC.} A Communication is the name given to a complaint made to the Committee of a violation of one or more rights under the Children’s Charter. Communications are treated as confidential and are a measure of last resort when a domestic justice system has failed to provide a remedy for a violation of a right under the Charter. The Committee is the only international child rights protection mechanism with such a communications procedure, and this opportunity should be seized as a way of strengthening its protection mandate, developing valuable jurisprudence on the rights of the child, and giving the protection mandate greater visibility through popularising the decisions it makes on Communications.\footnote{It is important to note that there is currently a process at the UN level to adopt an Optional Protocol to establish a complaints procedure under the CRC.}

As of September 2011, only Burkina Faso, Cameroon, Egypt, Kenya, Libya, Mali, Niger, Nigeria, Rwanda, Senegal, Sudan, Tanzania, Togo, and Uganda had submitted an initial report to the African Committee. Nigeria’s report was one of the first to be considered by the committee. For their State Party reports, most countries held consultations with key people in the ministries, with technical advice from CSOs/NGOs working in the area of child rights as well as from UNICEF and other UN agencies. The Nigeria report is a good example of this participatory process.
HARMONISING LAWS ON CHILDREN IN WEST AND CENTRAL AFRICA

IN THE BEST INTERESTS OF THE CHILD

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