

6

Human trafficking: The approach of the African Committee of Experts on the Rights and Welfare of the Child

Robert Nanim & Thoko Kaime

https://doi.org/10.29053/978-1-0672373-3-2_6

1	Introduction.....	88
2	Child trafficking.....	89
3	Child trafficking from a normative context	92
4	The institutional framework of the African Children's Committee concerning child trafficking.....	99
5	Emerging jurisprudence on child trafficking.....	101
6	Conclusion and recommendations.....	115

Abstract

This chapter examines the effectiveness of the African Children's Committee in addressing child trafficking through a balanced approach. To support this argument, the authors present three key sub-arguments. First, they contend that the Committee's normative framework provides sufficient guidance for tackling child trafficking. Second, they suggest that while the Committee's institutional framework shows promise, it requires further strengthening to ensure its adequacy in addressing child trafficking. Lastly, the authors propose that an analysis of the Committee's jurisprudential developments can inform future strategies for combating child trafficking. In passing, the approach of the African Children's Committee requires improvement to make it more effective. A conclusion and recommendations follow.

Key words: *African Children's Charter; child; Committee; communication; trafficking; rapporteur; mechanisms*

1 Introduction

The African Charter on the Rights and Welfare of the Child (African Children's Charter) lacks a clear definition of trafficking, including child trafficking, in its framework.¹ Instead, it adopts a child rights-based approach, emphasising its added value in promoting and protecting children's rights in Africa.² These two key considerations underpin any discussion on the African Children's Charter and its application to specific topics. This distinction is crucial, as it highlights the differences between the Charter's application and that of the Convention on the Rights of the Child (CRC).³ In this context, it is essential to re-examine the African Children's Charter's approach, the institutional framework of the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee), and the emerging jurisprudence to further inform discussions on human trafficking.

This chapter provides an in-depth examination of the African Children's Committee, arguing that it is balanced yet nuanced. It focuses on the Committee's normative guidance, its institutional capacity and its jurisprudential developments. The chapter aims to provide valuable insights for future initiatives aimed at combating child trafficking. The chapter analyses child trafficking, highlighting the African Children's Committee's role in promoting children's rights and welfare. It aims to

1 See the African Charter on the Rights and Welfare of the Child CAB/LEG/24.9/49 (1990) (African Children's Charter). The term 'trafficking' appears four times in the African Children's Charter, once in the table of contents and, as a consequence, the second time in sec 29. The third time is art 24(4) which calls on state parties to take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child. The fourth time is a clarion call under art 28 that states that are party to the African Children's Charter must take all necessary steps to safeguard children from the misuse of narcotics and psychotropic substances, as outlined in international treaties, and prevent children's involvement in the production and trafficking of these substances. All these instances do not point to a definition.

2 African Children's Charter (n 1) art 3 on non-discrimination; art 4(1) on the best interests principle; art 5 (right to life, survival and development); and arts 4(2) and 7 (on the consideration of the views of the child). For further insights, see, generally, BD Mezmur 'The African Children's Charter @ 30: A distinction without a difference?' (2020) 28 *International Journal of Children's Rights* 693-714.

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

inform policy, strengthen the Committee's response, and create a safer environment.

2 Child trafficking

Global detection of victims of trafficking has increased by 25 per cent, with a sharp decline during the pandemic.⁴ The number of children affected has risen significantly, with a sharper increase in girls. This trend varies geographically and reveals distinct patterns.⁵

2.1 Peaceful settings

In peaceful settings, instances of child trafficking frequently occur in contexts of child prostitution. The dangers of new technologies, particularly the internet, have impacted the sexual exploitation of women and children.⁶ It must be acknowledged that introducing new technologies into exploitative systems typically benefits those in positions of power. Most female victims are trafficked for sexual exploitation, and this also applies significantly to children.⁷ In certain cases, men and children are trafficked for forced labour, often as beggars or even soldiers.⁸ The focus of the anti-child trafficking agenda should be on combating the sexual exploitation of children. In situations involving prostitution, the most urgent issue in the trafficking sphere is the sexual exploitation of women and children.

4 UNDOC 2024 Report on Global Trafficking 10, https://www.unodc.org/documents/data-and-analysis/glotip/2024/GLOTIP2024_BOOK.pdf (accessed 21 January 2025).

5 UNDOC (n 4) 12.

6 World Health Organisation 'Child maltreatment: A global overview' (2018), <https://www.who.int/publications/i/item/9789241564912> (accessed 21 January 2025).

7 M Hossain and others 'The relationship of trauma to mental disorders among trafficked and sexually exploited girls and women' (2010) 100 *American Journal of Public Health* 2442.

8 See overview of the World Health Organisation, <https://www.ilo.org/topics-and-sectors/forced-labour-modern-slavery-and-trafficking-persons> (accessed 21 January 2025).

2.2 Children in transit (Mapping children on the move)

Children migrate both across borders and within countries in various ways. It is important to distinguish the different experiences and vulnerabilities each group may face.⁹ Children move for a range of reasons – sometimes voluntarily, other times involuntarily – within their country or across borders, and with or without their parents or primary caregivers.¹⁰ While migration may offer new opportunities, it can also increase children's risk of economic or sexual exploitation, abuse, neglect and violence.¹¹

Children on the move may travel in various configurations, including alone, with family members or with other adults or children they may or may not know previously. Understanding the diverse circumstances surrounding their migration is crucial.¹² They can be broadly categorised into four groups based on the reasons behind their migration.¹³ First, there are internally displaced persons who have been forced to flee their homes due to conflict, violence or natural disasters, but remain within their country's borders.¹⁴ Second, asylum seekers and refugees who have crossed international borders to escape persecution, war or natural disasters and are seeking protection in another country.¹⁵ The third category includes migrants who move voluntarily, often for economic reasons, due to climate change or other environmental factors, either within their own country or across borders.¹⁶ Lastly, there are trafficked persons who have been coerced, deceived or forced into migrating, often

9 Child and Young migrants, <https://www.migrationdataportal.org/themes/child-and-young-migrants> (accessed 25 June 2024).

10 Children on the Move IOM, https://publications.iom.int/system/files/pdf/children_on_the_move_15may.pdf (accessed 21 January 2025).

11 Y Rafferty 'Child trafficking and commercial sexual exploitation: A review of promising prevention policies and programmes' (2013) 83 *American Journal of Orthopsychiatry* 559.

12 UNICEF 'Children on the move', <https://data.unicef.org/wp-content/uploads/2023/08/COM-Terminology-Brief.pdf> (accessed 21 January 2025).

13 Population Education (2019), <https://populationeducation.org/why-do-people-migrate-the-4-most-common-types-of-migration/> (accessed 21 January 2024).

14 E Jafer and others 'Post conflict-induced displacement: Human security challenges of internally displaced persons in Oromia special zone surrounding Finfinne, Ethiopia' (2022) 8 *Cogent Social Sciences* 1-20.

15 Refugees, Asylum Seekers and Migrants, <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/> (accessed 21 January 2025).

16 As above.

for exploitation.¹⁷ Recognising these distinct categories is essential for providing targeted support and protection to children on the move.

2.3 Children in humanitarian situations

Humanitarian crises, particularly those triggered by conflict, substantially heighten the risk of human trafficking.¹⁸ The devastation wrought by conflict often renders families and communities incapable of fulfilling their fundamental needs, leaving affected individuals with scant options for seeking safety.¹⁹ In desperation, they may resort to harmful coping strategies, which further undermine the rule of law and social cohesion.

In these unstable environments, criminal networks often exploit displaced individuals, taking advantage of weak legal systems and a lack of protective services.²⁰ This can lead to the development of a culture of criminality, where criminals exploit the humanitarian crisis with impunity, allowing abuse and corruption to flourish.²¹ These factors contribute to child trafficking, as families who have lost their livelihoods may resort to negative coping strategies, increasing their exposure to trafficking risks.

Individuals seeking international protection may be forced to undertake unsafe journeys, relying on smuggling networks and criminals.²² This can lead to further challenges, such as lack of security, inadequate livelihoods and the absence of protection mechanisms, which can result in forced or early marriage, survival sex or child labour.²³ Once displaced, refugees, asylum seekers or migrants face heightened trafficking risks, as traffickers may approach them in transit or other displacement settings, offering fake employment or educational opportunities to exploit them.

17 UNODC (2019), https://www.unodc.org/documents/data-and-analysis/glotip/Glotip16_Chapter_2.pdf (accessed 21 January 2025).

18 African Children's Committee General Comment on art 22 paras 8-9.

19 For further insights, see RD Naniwa 'Article 22 armed conflicts' in J Sloth-Nielsen and others *The African Charter on the Rights and Welfare of the Child: A commentary* (2024) 318.

20 Save the Children (2023) Stop the War on Children: Let Children Live in Peace 27, <https://resourcecentre.savethechildren.net/document/stop-the-war-on-children-let-children-live-in-peace/> (accessed 22 January 2025).

21 Save the Children (n 20) 36.

22 Mapping Children on the Move in Africa, https://www.acerwc.africa/sites/default/files/2023-08/2019%20Sudy%20Children%20on%20the%20Move%20ENG2_0.pdf (accessed 21 January 2025).

23 As above.

Migrants in conflict zones are particularly vulnerable to trafficking due to limited access to humanitarian assistance, national protection, social networks and other support systems.²⁴ Women and girls are especially targeted for sexual exploitation and slavery during conflicts.²⁵ State or armed groups may also abduct women and girls for trafficking, whether for sexual exploitation, domestic servitude, or children's early and forced marriages.

3 Child trafficking from a normative context

Child trafficking in the normative context is provided for in the African Children's Charter. Specifically, the African Children Charter provides:

Article 29: Sale, trafficking and abduction

State Parties to the present Charter shall take appropriate measures to prevent:

- (a) the abduction, the sale of, or trafficking of children for any purpose or in any form, by any person including parents or legal guardians of the child;

- (b) the use of children in all forms of begging.

In essence, article 29 seeks to protect children from exploitation and abuse by outlawing child trafficking, sale, abduction and forced begging. The African Children's Charter advocates a proactive approach to prevent these harms. However, a closer examination of the Children's Charter reveals that its primary role is to oversee the promotion and protection of children's rights, raising questions about its preventive capacity.

Furthermore, the Charter's provisions apply broadly to all individuals, including parents and legal guardians. This means that, unlike some jurisdictions that presume parents cannot harm their children, the African Children's Committee can hold anyone accountable for ensuring a child's safety and well-being.

This provision presents three main implications that pan out instead of state responsibility, protection of children's rights and the call on states to criminalise the acts of abduction, sale, trafficking, and use of

24 UNDOC (n 4) 12.

25 See the statistics in part 2 above.

children in begging, and hold perpetrators accountable. It connects with state responsibility under the African Children's Charter. Under article 1, all members of the African Union (AU) that have ratified this Charter are required to recognise the rights, freedoms and duties outlined therein.²⁶ They must take the necessary steps through their constitutional processes to implement the Charter's provisions, with article 29 being no exception. Concerning article 29, five guiding principles are proposed to shape the relationship between the two provisions.

First, state parties have a mandatory obligation to acknowledge the rights, freedoms and duties contained in the African Children's Charter and to commit to taking necessary actions to ensure their enjoyment.²⁷ Second, this recognition encompasses all rights, freedoms and duties without differentiating between civil and political rights and socio-economic rights.²⁸ Thus, the protection of children affected by trafficking includes all rights specified in the Charter. Third, state parties are expected to implement necessary measures to guarantee the enjoyment of the rights and obligations under the Charter.²⁹ State parties must protect children affected by trafficking and address separation issues. They must locate and reunite children with their parents or relatives when separations occur. This approach prioritises child protection in various environments, including conflict zones and peaceful communities. Lastly, states must also facilitate the return of children to a family setting through necessary measures.

It is also important to note that article 29 aims to safeguard children from exploitation and abuse by prohibiting the sale, trafficking and abduction of children, as well as their use in begging. This provision is crucial in ensuring the protection of children's rights and preventing harm. As will be shown, article 29 outlines several key obligations for state parties.³⁰ First, they must take measures to prevent the abduction, sale or trafficking of children for any purpose or in any form.³¹ Second, they must prevent the use of children in all forms of begging.³² Finally,

26 Art 1 African Children's Charter.

27 As above.

28 As above.

29 As above.

30 As above.

31 See discussion in 5.2.1.

32 As above.

the provision applies to any person, including parents or legal guardians, who may be involved in the abduction, sale, trafficking or use of children in begging.³³

Despite the importance of article 29, several gaps and challenges need to be addressed. Effective implementation and enforcement of the provision remain a challenge, requiring state parties to establish and strengthen laws, policies and institutions.³⁴ The current approach reflects an emphasis on the conventional approach of receiving state party reports and providing guidelines in response. While this is appreciated, an opportunity to deliberately deal with trafficking in a pro-active context is jettisoned to the winds. As a consequence, the provision's scope and definitions may require clarification and standardisation to ensure consistent application across state parties. Finally, the provision focuses on preventing symptoms rather than addressing the root causes of child exploitation, such as poverty, inequality and social exclusion.

3.1 State parties as the duty bearers

Article 29 starts by referring to a specific entity – the state party as the duty bearer. The terms 'state party' and 'states parties' are used; while the former refers to a singular or individual state, the latter refers to a collective of state parties. This must not be taken for granted, as it may be conflated with another term in the African Children's Charter, such as a 'member state'.³⁵

The term 'state party' is used 13 times in the African Children's Charter and a close look reveals that it is contextually used seven times.³⁶ A contextualisation of the latter instances is done to get guidance on the understanding of the concept. The term is not defined but is used to give descriptions in both objective and subjective instances. The first time it is used, the African Children's Charter calls on states to embrace

33 As above.

34 See CE Fawole 'Article 29 sale, trafficking and abduction' in Sloth-Nielsen and others (n 19) 419.

35 For a discussion of this position, refer to RD Naniama 'The communications' procedure of the African Charter on the Rights and Welfare of the Child: Some anecdotal reflections on possible applicants' (2024), <https://africanlegalstudies.blog/author/robert-naniama/> (accessed 11 January 2025).

36 The author refers to two instances to present the import of the singular and descriptive use of the term 'state party'.

provisions in their national legislation that are more conducive to the realisation of the rights and welfare of a child than in any other applicable international convention or agreement.³⁷ The second time it is used, it relates to parental care and protection.³⁸ In instances of the separation of parents, an obligation is placed on the state party to provide essential information regarding the whereabouts of the absent parent to members of the family without any repercussions to a member seeking such information.³⁹ In addition, when a state party apprehends a child, their parents or guardians have to be notified as soon as possible.⁴⁰ This means that separation of the children on account of a child conflicting with the law places an obligation on the state party to provide the parents or guardians with the necessary information. The other instances where the term 'state party' is used is the obligation to nominate candidates to the African Children's Committee requests by a state party to the African Children's Committee to interpret the African Children's Charter.⁴¹ Other instances include the obligation to submit state reports,⁴² and the recognition of the authority of the African Children's Committee to investigate activities of the state party⁴³ and to request amendments to the African Children's Charter.⁴⁴

With regard to state parties, the terms are used 42 times in the African Children's Charter and they refer to the collective responsibilities of state parties as a whole.⁴⁵ It is argued that although there are no *travaux préparatoires* on the African Children's Charter, its wording may be used to offer guidance. The import of this provision is argued that the African Children's Charter requires states parties to take on their obligations; first as individual states, but, second, as a collective of states. This implies that the obligation is both specific and a collective mandate.

Regarding article 29; there is a collective mandate on state parties, and this is not limited to dealing with trafficking, but sale, abduction of

37 Art 1(2) African Children's Charter.

38 Arts 19(3) & (4) African Children's Charter.

39 Art 19(3) African Children's Charter.

40 Art 19(4) African Children's Charter.

41 Art 42(iii)(c) African Children's Charter.

42 Arts 43(1) & (3) African Children's Charter.

43 Art 45(1) African Children's Charter.

44 Art 48 African Children's Charter.

45 Arts 1, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 34, 35, 36 & 48 African Children's Charter.

and begging by children. It is argued further that the collective mandate on the three aspects requires a deliberate engagement by states to individually and collectively deal with the three vices as a whole.

3.2 Mandatory nature of the obligation

It is widely acknowledged that the word 'shall' is often used in the African Children's Charter. About article 29, it is used once and it is situated before the clauses (a) and (b). It is argued that this is not by default but by design to the end that the effect of the obligation affects what the state party is expected to do.

From a bird's eye viewpoint, the wording in article 29 starts from the vantage point that states parties are mandated to take appropriate measures to prevent the four issues of sale, trafficking, abduction and begging. It is argued that the wording of article 29 places the agency on the state to ensure that there are measures in place to deal with the four issues above. It would be important to establish the basis on which the term is used. It is critical to evaluate the literature regarding the use of the word 'shall' in statutes and/or treaties in light of the various positions on the use of this term in law.

It is argued that the use of the term 'shall' creates much ambiguity, and it should be discontinued for more appropriate wording such as 'may', 'must' and 'will'. Various instructive examples to show the ambiguity include the wrongful declaration of a legal result,⁴⁶ the misuse of a conditional or relative clause,⁴⁷ the creation of a false imperative,⁴⁸ and the use of the term 'shall' with no clarity on where the duty falls.⁴⁹ To establish the relation of these ambiguities to article 29, a reflection of the foregoing on the wording of the article is important. As such, the questions to be posed include (i) the existence of a wrongful declaration of legal result; (ii) misuse in a conditional clause; (iii) the creation of a false imperative; and (iv) the use of the term with no clarity on where the duty falls.

46 Eg, a law that states that '[i]t *shall* be [is] unlawful to commit theft'.

47 Eg, a law that states that '[i]f the tenant *shall* [does] not pay the rent on time, the landlord may charge a late fee'.

48 Eg, a law that states that '[t]here *shall* be [is] created a Department of Legal Studies'.

49 Eg, a law that states that '[a]ll lions *shall* be kept in a cage'.

Concerning the use of the term 'shall' in the article, the following obligations are created on the part of the state. The article provides that '[s]tate [p]arties to the present Charter shall take appropriate measures to prevent ...'⁵⁰ It is argued that the part of the provision neither refers to existing rights nor creates the same. Conversely, there is neither a precatory suggestion nor a conflation of the use of the term 'shall' to refer to another term such as 'should',⁵¹ 'will' or 'may'.⁵² This leads to the logical conclusion that the interpretation of article 29 is based on the mandatory obligation of the state parties.⁵³ It is also clear that the provision does not have a conditional or relative clause for its application as far as the obligation remains squarely on the state without any condition on any other person or entity.⁵⁴ In addition, this provision does not envision the creation of any false imperative or fails to offer clarity concerning the entity that is the duty bearer – in this case, the state.⁵⁵ It is clear that the use of the term 'shall' is not a conditional or relative clause for its application – the obligation remains on the state with a resultant qualification that the child is protected. In juxtaposition, it is argued that there is no condition on any other person or entity but rather the protection of the child as a consequence of the state's engagement of its obligations.⁵⁶ Clarity also remains on the state as the duty bearer concerning the rights of the child.⁵⁷ The mandatory obligation relates to abduction, the sale of or trafficking of children for any purpose or in any form, and begging.

As noted above, the African Children's Charter neither defines nor describes trafficking in children. It is argued (as shown above) that the African Children's Charter creates an enabling environment for the implementation of article 29. It is therefore crucial to examine the instruments that guide the implementation of article 29. To this end, the Protocol to Prevent, Suppress and Punish Trafficking in Persons

50 Art 29 African Children's Charter.

51 Compare with this example, a law that states that '[i]t shall be [is] unlawful to commit theft'

52 CW Richard *Plain English for Lawyers* (2005) 63-64; see also J Kimble 'The many misuses of shall' (1992) 3 *Scribes Journal of Legal Writing* 70.

53 As above.

54 As above.

55 As above.

56 Art 29 African Children's Charter.

57 As above.

Especially in Women and Children (Trafficking Protocol)⁵⁸ defines trafficking in persons as

the recruitment, transportation, transfer, harbouring or receipt of persons, using the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁵⁹

From this definition, three critical points inform trafficking; thus, the act leading to the movement of the subject, methods or means used to carry out the act, and the purpose of the exploitation. First, the act leading to the movement of the subject may be in any form such as of recruitment, followed by either transportation, transfer, harbouring or receipt thereof. Second, specific means or methods have to be employed such as threats, force, coercion or abuse of power. Third, the use of these foregoing methods is to inform the exploitation of the subject. A non-conclusive list of examples of exploitation includes prostitution, forced labour, slavery, servitude and the removal of body organs.

A question that arises is the place of consent in this narrative. One may argue that the victim's consent neither deters the existence of human trafficking nor ousts the criminal conduct of the perpetrator. This is because the consent may be obtained by deceptive means. It is argued that where the exploitation is fulfilled, especially where a person who cannot legally consent, such as a minor, is involved.⁶⁰

Although the African Children's Charter does not define or describe child trafficking, the Palermo Protocol solves the predicament and receives validation by the African Children's Committee through the actual and implied application of article 46 on the use of persuasive jurisprudence. Furthermore, it is argued that the African Children's Charter's child rights-based approach, added value, and tools are instructive. However, it is premature to conclude that the African Children's Charter is sufficient in addressing human trafficking or child trafficking until a comprehensive

58 Entered into force 25 December 2003 and has been ratified by 178 jurisdictions.

59 Art 3(a) Trafficking Convention.

60 UNTOC (2004) Annex II 43.

evaluation of the institution of the African Children's Committee and its jurisprudence is conducted. To set the stage for this evaluation, it is essential to establish the institutional and jurisprudential aspects of the African Children's Committee in dealing with child trafficking, which will be explored in the following discussion.

4 Institutional framework of the African Children's Committee concerning child trafficking

The African Children's Charter utilises a child rights-based approach, which is founded on four interconnected principles: non-discrimination; the best interests principle; the right to life, survival and development; and consideration of the child's views. These principles underpin a child rights-based approach that not only upholds human rights but also prioritises the unique needs of children.

Furthermore, the African Children's Charter provides added value in promoting and protecting child rights. Notably, it defines a child as anyone under the age of 18 years, acknowledges the lived realities of African children, and addresses specific issues affecting them, such as harmful traditional practices, female genital mutilation and child marriages. The Charter's child rights-based approach and added value are crucial in discussions around child rights in Africa, as they differentiate it from CRC, which has a lower threshold of protection.

Article 42 of the African Children's Charter provides for the African Children's Committee with the mandate to monitor the promotion and protection of children's rights in Africa.⁶¹ It should be noted that the engagement of the mandate of the Committee is within expressly determined parameters as provided for in the Children's Charter.⁶² This mandate includes the consideration of state party reports and the handing down of Concluding Observations,⁶³ the consideration of communications from state parties and the handing down of recommendations.⁶⁴ In addition, the African Children's Committee is empowered to undertake missions to state parties, carry out research and

61 Art 42 African Children's Charter.

62 As above.

63 Arts 32-45 African Children's Charter.

64 As above.

collaborate with state parties, civil society and other stakeholders with regard to the matters concerning children's rights.⁶⁵

Furthermore, the African Children's Committee as an institution has mechanisms in place to aid the execution of its mandate. These are broadly provided for as three areas, which include the use of country rapporteurs,⁶⁶ Special Rapporteurs⁶⁷ and working groups.⁶⁸ The African Children's Charter allows the African Children's Committee to set up its own rules of procedure.⁶⁹ Concerning the procedures that have to be set up, the Revised Rules of Procedure that allow the appointment of country rapporteurs,⁷⁰ Special Rapporteurs⁷¹ and working groups, among others.⁷² At present, the African Children's Committee allows for the appointment of country rapporteurs, with each committee member covering five countries.⁷³ From an institutional perspective, country rapporteurs play a critical role in ensuring that issues concerning children that arise in these countries are dealt with.⁷⁴ As such, where issues of child trafficking arise in a specific state party to the African Children's Charter, the country rapporteur becomes the focal person to take lead.

The challenge to this approach is the ever-increasing aspect of thematic aspects that may arise in one state.⁷⁵ This predicament is solved by the involvement of Special Rapporteurs who guide to this end. The African Children's Committee has 11 thematic areas led by the 11 experts as Special Rapporteurs.⁷⁶ The thematic areas are an evolving space that currently includes children affected by armed conflict; violence against children; birth registration; name and nationality; child marriage and

65 As above.

66 Country Rapporteurs, <https://www.acerwc.africa/en/page/country-rapportuers> (accessed 22 January 2025).

67 Thematic Rapporteurs, https://www.Country_Rapporteurs, <https://acerwc.africa/en/page/about-thematic-rapporteurs> (accessed 22 January 2025).

68 Working Groups, <https://www.acerwc.africa/en/page/about-working-groups> (accessed 22 January 2024).

69 Art 38(1) African Children's Charter.

70 Country Rapporteurs (n 66).

71 Thematic Rapporteurs (n 67).

72 Working Groups (n 68).

73 Relate this to the discussion on the jurisprudential perspective.

74 Read the details on Country Rapporteurs (n66).

75 Eg, at the 40th session of the African Children's Committee, the expert members sought to revisit the thematic areas.

76 Thematic Rapporteurs (n 67).

other harmful practices; and child participation.⁷⁷ Others include children in vulnerable situations, health, welfare and development children on the move, children in conflict with the law, and children without parental care and education.⁷⁸

The lack of a Special Rapporteur on Child Trafficking is a missed opportunity to tackle this issue from a thematic perspective. While the United Nations (UN) has made efforts to address trafficking, including a global treaty and special mechanisms, more needs to be done, especially in Africa. Africa would benefit from having a specific rapporteur focused on trafficking to guide regional solutions. Deeper engagement with the United Nations Office on Drugs and Crime could also be beneficial. Some reports highlight child trafficking as a significant problem in Africa, affecting many children. The key question now is how effective existing frameworks have been in developing jurisprudence on trafficking, despite the lack of thematic guidance. To make progress, it is essential to assess the current state of normative and institutional frameworks in addressing child trafficking.

5 Emerging jurisprudence on child trafficking

By design, this part will look at specific jurisprudence of the African Children's Committee in light of research that has been done in light of Concluding Observations that have been handed down in state party reports and concluded communications on child trafficking, among others. This will inform the extent to which the African Children's Committee has or has not developed.

5.1 Concluding Observations

The authors deliberately focus on the African Children's Committee's Concluding Observations. The search reveals that 11 Concluding Observations deal with aspects of child exploitation. A more detailed examination reduces the number of Concluding Observations in which the African Children's Committee addressed this issue to ten,

77 As above.

78 The Thematic or Special Rapporteurs also get to guide conversation about studies, development of soft law, among others. Eg, the study on teenage pregnancies in Africa was guided by the Special Rapporteur on Health.

spanning the period between 2016 and 2023.⁷⁹ To these ten, the authors establish the contextual approach of the African Children Committee, emphasising three specific aspects: first, how they reflect the child rights-based approach; second, how they reflect on the added value of the African Children's Committee; third, the evident trend in the Concluding Observations in light of the recommendations on the implementation of the African Children's Committee.

5.1.1 *Concluding Observations on the initial report of Zimbabwe (2016)*

The Observations followed Zimbabwe's submission of its initial report to the African Children's Committee. The Committee was concerned by the scarcity of reliable data on child trafficking and sale in Zimbabwe.⁸⁰ Reports indicated that sexual abuse was rampant, disproportionately affecting females, with a staggering 25 per cent of victims being children under the age of five years.⁸¹ Furthermore, despite 24 per cent of cases being reported between 2008 and 2010, only 8 per cent were brought to court, highlighting a glaring gap in justice.⁸² To address these concerns, the Committee highlighted six aspects for Zimbabwe to deal with about trafficking, including (i) gathering accurate and reliable data on child trafficking and sale to inform effective policies and interventions; and (ii) creating safe and accessible channels for children to report abuse and exploitation. Other aspects included (iii) the use of public awareness campaigns to educate communities about the risks of child trafficking and exploitation; (iv) prosecution of perpetrators to ensure that justice is done and that there is accountability. In addition, the Committee called for (v) the provision of rehabilitation services in rehabilitation centres to support survivors of child trafficking and exploitation; and (vi) collaboration with neighbouring countries to share intelligence,

⁷⁹ This includes the Concluding Observations on the 10 states of Zimbabwe, Sierra Leone, Botswana, Ethiopia, Kenya, Eswatini, Burundi, Congo, Eritrea and South Africa.

⁸⁰ Concluding Observations and Recommendations by the African Committee of Experts on the Rights and Welfare of the Child on the Republic of Zimbabwe report on the status of implementation of the African Charter on the Rights and Welfare of the Child para 48.

⁸¹ As above.

⁸² As above.

coordinate efforts, and protect children from cross-border trafficking and exploitation.

5.1.2 *Concluding Observations on the initial report of Sierra Leone (2017)*

The Observations followed Sierra Leone's submission of its initial report to the African Children's Committee. The Committee noted that despite enacting the Child Rights Act, legislative gaps remained, hindering the full realisation of children's rights.⁸³ These gaps included discriminatory clauses, a lack of provisions for trafficking victims and inadequate procedures for children in conflict with the law.⁸⁴ The Committee recommended revising the Child Rights Act and Constitution to align with the African Children's Charter and fill these gaps.⁸⁵

5.1.3 *Concluding Observations on the initial report of Eritrea (2017)*

The African Children's Committee acknowledged the state party's efforts to criminalise child trafficking, sale and abduction. However, it expressed concern that the state party's report lacked crucial data, including the number of trafficked children, traffickers caught, prosecution and conviction rates, as well as information on psychological, financial and rehabilitative measures.⁸⁶

Furthermore, the Committee noted the alarming number of unaccompanied Eritrean refugee children who fell victim to trafficking, particularly in the Sinai desert and neighbouring countries. To address these issues, the Committee recommended that the state party take on three critical actions: first, to implement health and trauma measures about

83 Concluding Recommendations by the African Committee of Experts on the Rights and Welfare of the Child on the initial report of the Republic of Sierra Leone on the status of implementation of the African Charter on the Rights and Welfare of the Child paras 32-33.

84 As above.

85 As above.

86 Concluding Recommendations by the African Committee of Experts on the Rights and Welfare of the Child on the status of Eritrea report on the status of implementation of the African Charter on the rights and Welfare of the Child para 25.

aspects of child victims of trafficking;⁸⁷ second, to undertake measures to address the underlying causes of child trafficking, abduction and sale;⁸⁸ third, to ratify the Palermo Protocol to inform the establishment of a comprehensive framework for assisting victims of trafficking and holding traffickers accountable.⁸⁹ Fourth, it also recommended that the state party establishes two key legislation frameworks; one on promoting and protecting children's rights, and another specifically addressing human trafficking issues.⁹⁰ Additionally, the Committee suggested setting up a ministerial institution dedicated to coordinating children's rights, ensuring a cohesive and effective approach to protecting vulnerable populations.⁹¹ All these initiatives are in tandem with the use of the child rights-based approach and the added value of the African Children's Charter.

5.1.4 *Concluding Observations on the initial report of Congo (2017)*

The Observation followed the conclusion of the consideration of Congo's initial report at the twenty-sixth ordinary session of the African Children's Committee. The Committee commended the state party for its efforts to combat human trafficking, which included implementing the Palermo Protocol, drafting a Human Trafficking Bill and creating an Action Plan.⁹² However, the Committee remained concerned about the persistence of trafficking in central Africa.⁹³ To address this issue, the Committee recommended strengthening anti-trafficking efforts, including the inspection of tourist destinations at regular intervals to prevent trafficking; to ensure that the perpetrators are brought to justice to ensure that responsible were brought to justice; and raising awareness through education of families, communities and the private sector on

87 As above.

88 As above.

89 As above.

90 As above.

91 As above.

92 Concluding Observations and Recommendations by the African Committee of Experts on the Rights and Welfare of the Child on the Republic of Congo report on the status of implementation of the African Charter on the Rights and Welfare of the Child para 54.

93 As above.

the dangers of child trafficking.⁹⁴ The approach by the African Children's Committee to extend the need for protection to external spaces such as tourism is an opportunity to ensure that protection is not only done but is seen to be done.

5.1.5 *Concluding Observations on the initial report of Burundi (2018)*

Following Burundi's submission of its initial report, the African Children's Committee handed down some recommendations. First, it appreciated the fact that the state party had criminalised the sale, abduction and trafficking of children and adopted an Anti-Trafficking Act in 2014.⁹⁵ However, the Committee remained concerned that reports indicated inadequate investigation and prosecution of child trafficking cases, and perpetrators were not held accountable.⁹⁶ It also noted that girls were trafficked for economic and sexual purposes within the country and to the Middle East. To address these issues, the Committee recommended that the state party engage in four critical steps; thus, to fully implement the Anti-Trafficking Act and establish a Consultation and Monitoring Committee to coordinate anti-trafficking efforts and train personnel to identify trends in child trafficking and provide care services for victims.⁹⁷ The African Children's Committee recommended that this training be extended to law enforcement agencies and the judiciary to effectively prosecute and sentence perpetrators.⁹⁸ The African Children's Committee also called for a regulation of migration to prevent child trafficking and to use collaboration with other countries to return trafficked children.

⁹⁴ As above.

⁹⁵ Concluding Observations and Recommendations by the African Committee of Experts on the Rights and Welfare of the Child on the initial report of the Republic of Burundi report on the status of implementation of the African Charter on the Rights and Welfare of the Child para 45.

⁹⁶ As above.

⁹⁷ As above.

⁹⁸ As above.

5.1.6 *Concluding Observations on the initial report of Eswatini (2019)*

The Committee appreciated the legislative and institutional measures taken to protect children on the move, including the Immigration Act and the People Trafficking and People Smuggling Act. However, more efforts were needed to safeguard refugee and migrant children's rights and welfare. The Committee recommended that the state party provide education and health care to refugee children and support their community reintegration; ensure that children of migrant and refugee parents receive equal protection as those of Swazi parents; protect displaced children from abuse and exploitation, offering rehabilitation and psychosocial support; provide birth registration and identification services for migrant and refugee children; establish family reunification programmes for separated children; ensure that unaccompanied children receive alternative care.

5.1.7 *Concluding Observations on the second periodic report of Kenya (2020)*

The African Children's Committee acknowledged the state party's efforts to protect children from exploitation by issuing a moratorium on inter-country adoption. Additionally, the state party has continued to implement the Counter-Trafficking in Persons Act 8 of 2010. However, the Committee expressed concern over reports of increasing human trafficking cases, particularly involving children, within and outside the country, mainly in Middle Eastern countries.

To address this issue, the Committee recommended that the state party take measures to track down traffickers and smugglers and identify and support trafficked children. The Committee emphasised the importance of holding perpetrators accountable and providing medical, psychological and economic support to victims, rather than treating them as criminals.

Furthermore, the Committee encouraged the state party to collaborate with neighbouring countries to combat cross-border child trafficking and ensure the reunification of victims with their families. The Committee also appreciated the state party's development of a data collection mechanism to track anti-trafficking efforts across 47 counties

and recommended effective use of this data to address trafficking issues in Kenya.

5.1.8 *Concluding Observations on the second periodic report of Ethiopia (2022)*

The African Children’s Committee commended the state party’s efforts to combat human trafficking, particularly the revision of the Anti-Trafficking Law in 2020, the establishment of a national committee and task force, and the adoption of a directive for victims’ referral and reintegration in 2018. The state party’s bilateral efforts to bring back trafficking victims from other countries were also appreciated.

However, the Committee expressed concern over the persistent issue of child trafficking within and outside the country, exacerbated by conflict, displacement, and other factors. To address this, the Committee recommended that the state party strengthen its laws and policies, specifically by, first, intensifying investigations and prosecutions; conducting thorough investigations and prosecutions of trafficking, smuggling, abduction and sale of children; second, enhancing victim support: allocating sufficient resources for victim rehabilitation, reintegration and services, including establishing shelters with necessary facilities and services; third, improving coordination and cooperation: establishing a coordination mechanism among stakeholders and cooperating with the private sector to prevent child trafficking; fourth, strengthening international efforts: enhancing efforts to trace and return trafficked children through bilateral and multilateral agreements.

5.1.9 *Concluding Observations on the initial report of Botswana (2023)*

The African Children’s Committee applauded Botswana’s efforts to combat human trafficking, specifically the enactment of the Anti-Human Trafficking Act, the adoption of the Anti-Human Trafficking National Action Plan (2018-2022) and the provision of safe houses for victims. To further strengthen these efforts, the Committee recommended that the government renew the National Action Plan, assessing its implementation and addressing any gaps or challenges. The Committee also emphasised the need for adequate financial and human resources to support the Human Trafficking (Prohibition) Committee

in preventing child trafficking. This includes addressing the root causes of internal and external child trafficking, as well as providing specialised support for children at risk. Additionally, the Committee recommended providing free legal aid to child survivors of trafficking and establishing child-friendly reporting mechanisms, comprehensive investigation, and victim support systems. Reparations to victims and short and long-term care, psychosocial assistance, rehabilitation, and reintegration services are also essential for promoting full recovery. Key recommendations included renewing the National Action Plan: assessing implementation, addressing gaps, and taking measures to improve effectiveness; allocating resources: providing adequate financial and human resources to support the Human Trafficking (Prohibition) Committee; supporting child survivors: offering free legal aid, child-friendly reporting mechanisms and comprehensive support systems; providing care and rehabilitation: ensuring short and long-term care, psychosocial assistance, rehabilitation and reintegration services for victims.

5.1.10 *Concluding Observations on the second report of South Africa (2023)*

The African Children's Committee acknowledged the state party's efforts to criminalise child trafficking, sale and abduction. However, it expressed concern over the lack of data on trafficking rates, trafficker arrests, prosecution and conviction rates, as well as psychological, financial and rehabilitative measures in the state party's report. The Committee also noted the alarming number of unaccompanied Eritrean refugee children falling victim to trafficking, particularly in the Sinai desert and neighbouring countries. To address this issue, the Committee recommended that the state party implement measures to address the health and trauma aspects of child trafficking victims, in addition to enforcing legal mechanisms. Furthermore, the Committee advised the state party to tackle the root causes of child trafficking, abduction and sale. It also encouraged the state party to ratify the Palermo Protocol, which would provide a comprehensive framework to support trafficking victims and hold traffickers accountable.

In the interim, the ten Concluding Observations from the African Children's Committee reveal interesting snapshots. They highlight concerns and recommendations for each country to improve their efforts in combating child trafficking and protecting children's rights.

Common concerns across the countries include inadequate data on child trafficking, insufficient investigation and prosecution of perpetrators and a lack of support services for victims. The Committee emphasises the need for countries to strengthen their laws and policies, enhance victim support, and improve coordination and cooperation among stakeholders. While Concluding Observations are very subjective to the nuances of the challenges of each state; there are common themes that from an inclusionary point allude to (i) the implementation and enforcement of anti-trafficking laws and policies; (ii) the provision of training for law enforcement, judiciary and social workers; (iii) the need to establish child-friendly reporting mechanisms and support services. Other recommendations include (iv) the conduct of public awareness campaigns to prevent child trafficking; (v) collaborating with neighbouring countries to combat cross-border trafficking; and (vi) the provision of reparations and support services to victims.

5.2 Selected communications

It is widely acknowledged that the word 'shall' is often used in the African Children's Charter. In article 29, it is used once and it is situated before clauses (a) and (b). It is argued that this is not by default but by design to the end that the effect of the obligation affects what the state party is expected to do.

A look at the communications shows that only two communications engage in matters of trafficking. In *Mauritanian Enslaved Brothers*, the African Children's Committee dealt with child trafficking as an aspect of article 29.⁹⁹ A similar stance was followed in *Senegalese Talibés*.¹⁰⁰ The conversation below latches on trafficking.

99 See part 5.2 below; *Minority Group International and SOS-Esclaves on behalf of Said Ould Salem and Yarg Ould Salem v Mauritania*, No 7/Com/003/2015, decided December 2017 AHRLR (ACERWC 2017) (*Mauritanian Enslaved Brothers*).

100 *Centre for Human Rights (University of Pretoria) and La Rencontre Africaine pour la Défense des Droits de l'Homme v Senegal*, No 3/Com/001/2012, decided 15 April 2014 (*Senegalese Talibés*).

5.2.1 *Senegalese Talibés*

In *Senegalese Talibés* the African Children's Committee dealt with various facets of article 29. The Committee noted that children are a vulnerable group that may be targeted for the trafficking of human beings.¹⁰¹ The recognition of children's rights emphasises the need to acknowledge children as autonomous rights holders. This perspective is in line with the stance taken by certain states, which prioritise the protection of children. For instance, in South Africa, the Court's decision in *S v M* underscored the importance of recognising children as independent rights holders. The Court held that children are not merely extensions of their parents, but rather individuals with their rights that must be respected and protected.

The African Children's Committee reiterated the dispensability of the children in terms of trafficking with which children are trafficked – because they are easily recruited and quickly replaced.¹⁰² The exploitation of children is a severe human rights violation, depriving them of a safe and nurturing childhood, education, playtime and protection from harm. This exploitation is particularly egregious due to the degree of vulnerability and dispensability that children often face. Furthermore, child trafficking is a devastating form of exploitation that involves recruiting, transporting, transferring and harbouring children for exploitative purposes. Notably, coercion, violence or threats are not required elements in child trafficking cases, as children are incapable of providing informed consent. The issue of dispensability reiterates the fact that a child should first be looked at as a victim in need of protection of their rights. In addition, children are trafficked for various purposes, mirroring those of adult trafficking victims. These purposes include sexual exploitation, labour exploitation and forced participation in criminal activities, such as begging. It is essential to recognise and address these forms of exploitation to protect children's rights and ensure their safety and well-being.

The Africa Children's Charter explicitly prohibits the use of children in all forms of begging under article 29(b).¹⁰³ Furthermore, article

101 *Senegalese Talibés* (n 100) para 75.

102 As above.

103 *Senegalese Talibés* (n 100) para 76.

29(a) strictly forbids the trafficking of children for any purpose or in any form. In interpreting these provisions, the Committee references the definition of trafficking provided by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. According to article 3 of the Protocol, trafficking is defined as

the recruitment, transportation, transfer, harbouring or receipt of persons, using the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.¹⁰⁴

In engaging this definition, it is argued that the African Children's Committee by implication alludes to the elements that constitute the offence, the forms of exploitation, and two critical aspects on vulnerability. To this end, the position of the African Children's Committee reiterates that the definition of trafficking involves recruitment, transportation, transfer, harbouring or receipt of persons. It suffices to note that the traffickers employ a range of tactics to carry out their actions, including the use of threat or force, coercion, abduction and fraudulent or deceptive means. Additionally, they may exploit vulnerabilities, abuse their power or position, or use other forms of manipulation to achieve their goals.

With regard to the forms of exploitation, these present in various forms such as sexual exploitation presented in prostitution, sexual slavery or other forms of sexual exploitation. Another form is forced labour or services, where children are forced to work against their will, often in hazardous or exploitative conditions. Other forms include slavery, servitude and the removal of organs. While slavery refers to the treatment of persons as property and the restriction of their freedom, or forcing them to work in deplorable conditions, servitude involves forcing individuals to work in a state of dependence or bondage.

The two critical aspects of vulnerability involve the stance on consent and vulnerability. It should be noted that consent is irrelevant in cases of trafficking especially where it is obtained through coercion, deception or exploitation of vulnerability. Furthermore, vulnerability is a key factor in

104 As above.

trafficking as traffickers often target individuals who are vulnerable due to factors such as poverty, lack of education, or social isolation.

The African Children's Committee recognises the importance of the Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children.¹⁰⁵ In doing so, it amplifies the position that trafficking in persons occurs both within and across national borders, and calls on states to take proactive measures to eradicate harmful customs and traditional practices, such as forced child begging, which can ultimately lead to human trafficking, including the trafficking of children.¹⁰⁶

In light of the above, the African Children's Committee carefully examined the situation and found that the *talibés* are forcibly exploited for economic gain through forced labour. Additionally, they are compelled to beg by the marabouts.¹⁰⁷ Considering the stance of the International Labour Organisation (ILO) on forced begging, the Committee concluded that marabouts who transport *talibés* with the primary intention of exploiting their labour are engaging in child trafficking.

From a geographical perspective, the African Children's Committee learns from reports that only about half the *talibés* in Senegal are Senegalese.¹⁰⁸ This is an indication that despite confirmed reports, children are trafficked from neighbouring countries, including Guinea Bissau and Mali, where poor families are promised their sons will be remunerated as they will receive 'a proper' Islamic education under the care of a *marabout* at the *daaras*.¹⁰⁹ The boys often have no contact with their families once they leave home.

With the aid of jurisprudence from the African Commission on Human and Peoples' Rights (African Commission), the African Children's Committee was of the view that laws alone cannot fully protect children's rights – thus the need for the state party to take administrative and other measures to prevent child begging and trafficking, as outlined in article 1 of the African Children's Charter.¹¹⁰

105 *Senegalese Talibés* (n 100) para 77.

106 As above.

107 *Senegalese Talibés* (n 100) para 78.

108 As above.

109 As above.

110 *Senegalese Talibés* (n 100) para 80.

In the interim, *Senegalese Talibés* showcases an application of the best interests principle with regard to the affected children. From a normative perspective, the reference to the Palermo Protocol and the Ouagadougou Declaration shows the implicit application of article 44 in using persuasive instruments to ensure the development of jurisprudence that promotes and protects the rights of child affected by trafficking.

5.2.2 Mauritanian Enslaved Brothers

In this communication, the African Children's Committee hinted at the trafficking, though it did not find a violation of article 29. It is important to evaluate the approach of the African Children's Committee in this communication to showcase the wisdom of the Committee in developing its jurisprudence. As such, the wisdom is not in the denial of the prayers in the communication but a reiteration of the concept of trafficking. It recognised that state parties are obligated to prevent child abduction, sale and trafficking, as well as the use of children in begging.¹¹¹ It recognised the definition of trafficking the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, defines trafficking as the recruitment, transportation or receipt of persons through force, coercion or deception for exploitative purposes.¹¹² This pointed to the use of article 44 as a tool to aid the engagement of issues before the African Children's Committee with reference to other international and regional laws.¹¹³

The complainants argued that trafficking was a form of slavery or slavery-like practice, prohibited under international human rights law. They claimed that article 29 of the African Children's Charter should be interpreted to include all forms of traditional and modern slavery, putting the respondent state under obligation to prevent such practices.¹¹⁴ However, the Committee noted that the issue of slavery had already been addressed under article 15 of the Children's Charter, which prohibits child labour, including slavery in all its forms.¹¹⁵ The Committee concluded that the complainants failed to establish the relevance of article 29 to the

¹¹¹ *Mauritanian Enslaved Brothers* (n 99) para 93.

¹¹² As above.

¹¹³ *Mauritanian Enslaved Brothers* (n 99) para 94.

¹¹⁴ *Mauritanian Enslaved Brothers* (n 99) para 95.

¹¹⁵ As above.

case and, therefore, no sufficient grounds were established to hold the respondent state in violation of its obligations.

In this communication, the African Children's Committee did not find a violation of article 29. However, by implicit application of article 44 of the African Children Charter, it acknowledged the definition of trafficking as outlined in the Palermo Protocol. In addition, it found a violation of article 1 and reiterated the state party's obligation to prevent child abduction, sale and trafficking. The complainants argued that trafficking was a form of slavery or slavery-like practice, but the Committee noted that article 15 of the Charter already prohibits child labour, including slavery in all its forms.

The African Children's Committee is developing its jurisprudence on child trafficking, recognising the importance of international and regional laws. Its nuanced approach to addressing child trafficking, considering the specific contexts and circumstances of each case builds on the normative perspective as far as it highlights the importance of the child rights-based approach, emphasising the need to recognise children as autonomous rights holders and to prioritise their protection and well-being.

5.3 Studies by the Africa Children's Committee

The African Children's Committee has also conducted some studies that give insights into child trafficking. For instance, about child trafficking in Africa, the study on Mapping Children on the Move in Africa indicates that vices such as trafficking, smuggling and various forms of exploitation are prevalent issues with attendant challenges for unaccompanied children, who are exposed to numerous risks during their transit.¹¹⁶ It offers instances where children are vulnerable to the whims of the smuggler and may face abduction, leading to violations of their rights.¹¹⁷

In addition, the study adds that numerous migrant, asylum-seeking, refugee, and internally displaced children, as well as victims of child trafficking, are at times unjustly detained and face discriminatory and

¹¹⁶ Mapping Children on the Move in Africa 75, https://www.acerwc.africa/sites/default/files/2023-08/2019%20Sudy%20Children%20on%20the%20Move%20ENG2_0.pdf (accessed 21 January 2025).

¹¹⁷ As above.

ineffective judicial systems.¹¹⁸ As of 2019, the report indicated that in Africa, approximately 28 000 children are either in detention or deprived of their liberty and, in some instances, they endure inhumane punishments.¹¹⁹ This adds value to the normative and institutional aspects of the African Children's Charter and its Committee.

6 Conclusion and recommendations

There are various pointers from the foregoing discussion. From a normative perspective, while the failure to define child trafficking in the African Children's Charter seems critical, the African Children's Committee's recognition of the definition in the Palermo Protocol solves this impasse. In addition, this is an indirect application of article 46 that allows the application of persuasive jurisprudence from other human rights-monitoring bodies.¹²⁰ Concerning the current jurisprudence, various gaps are imminent. The first is the lack of reliable data in the Concluding Observations. As a consequence, this hinders the deliberate and targeted development of effective policies and interventions. This lack of accountability perpetuates a culture of impunity, allowing child trafficking to continue unchecked. Second, the insufficient investigation and prosecution of child trafficking cases leads to the non-punishment of perpetrators, and the lack of required support to victims in the form of a lack of access to justice, counselling, psychosocial support and health care. Third, the Concluding Observations show a general lack of laws and policies at the national level to adequately address child trafficking. Where some laws are evident, enforcement is often weak, and perpetrators exploit these loopholes to continue their illicit activities. Additionally, limited coordination and cooperation among stakeholders, including government agencies, non-governmental organisations (NGOs) and community groups, hinder efforts to combat child trafficking. Fourth, it is clear that public awareness about child trafficking is also limited in many communities – creating a challenge in preventing child trafficking,

118 As above.

119 Mapping Children on the Move in Africa (n 116) 80-81; see also Defence for Children International 'Spotlighting the invisible: Continental conference on Access to Justice for Children in Africa, Addis Ababa, Ethiopia, 8-10 May 2018, <https://www.childjusticeinafrica.info/> (accessed 28 December 2024).

120 For a detailed discussion on the application of art 46, see RD Nanima & E Fokala 'Article 46 sources of inspiration' in Sloth-Nielsen and others (n 19) 584.

as communities are not equipped to identify the risks and warning signs. The foregoing challenges are exacerbated by the lack of a specific thematic special rapporteur on this matter, which makes it challenging to appreciate the scope of the problem.

To effectively address these gaps, the African Children's Committee's recommendations should be embraced as workplans by state parties, civil society organisations to guide the implementation of the same. To this end, the implementation and enforcement of anti-trafficking laws and policies, providing training for law enforcement, the judiciary and social workers, and establishing child-friendly reporting mechanisms and support services, should take centre stage. Additionally, conducting public awareness campaigns, collaborating with neighbouring states to combat cross-border trafficking, and providing reparations and support services to victims are crucial steps towards combating child trafficking. It is concluded that a deliberate attempt by the African Children's Committee to engage aspects of a Special Rapporteur with a dedicated team of focal persons to deal with the factual aspects of child trafficking is important. This will go a long way in creating the much-desired balanced approach that amplifies the use of article 46 to guide the normative guidance and the need for a dedicated Special Rapporteur to guide the institutional and jurisprudential perspectives of child trafficking.