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AN OVERVIEW OF THE COUNTRY STUDIES

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1   Background

Prior to the 20th century, children were regarded as inferior to adults and childhood was construed as a distinct but brief stage of life preceding the transition to adulthood.[1] However, the lower status accorded to children did not take away the value placed on them as integral members of the society.[2] In African tradition, for example, children are regarded as gifts from God and the vehicle for preserving the ancestral line.[3] From this perspective, a man's wealth and social status can be measured by the size of his family and the number of children (especially male) that he has.[4] A family unit without children not only suffered social sigma but also stood the risk of becoming moribund.[5]

The legal status of children has evolved over the years, moving from an era in which children were considered as beneficiaries to an era in which they became rights holders,[6] and had their rights protected under international and domestic law.[7] In this regard, the African region is quite unique, in that it is the only continent in the world that has a regional

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1   G Van Bueren *The international law on the rights of the child* (1998) 6.

2   T Kaime *The African Charter on the Rights and Welfare of the Child: A socio-legal perspective* (2009) 39.

3   TU Onyemachi 'Children, status and the law in Nigeria' (2010) *African Research Review* https://www.ajol.info/index.php/afrrev/article/view/60201 (accessed 15 November 2017).

4   SJ Dyer 'The value of children in African countries – Insights from studies on infertility' (2007) 28 *Journal of Psychosomatic Obstetrics & Gynaecology* 69 at 73-74.

5   Kaime (n 2).

6   NV Sahovic *et al The rights of the child in international law* (2012) 14-15.

7   O Ekundayo 'Does the African Charter on the Rights and Welfare of the Child (ACRWC) only underline and repeat the Convention on the Rights of the Child (CRC)'s provisions? Examining the similarities and the differences between the ACRWC and the CRC' (2015) 5 *International Journal of Humanities and Social Science* 143; Van Bueren (n 1) 8.

treaty on children's rights, designed to address the peculiarities of the African child.[8]

Nonetheless, children in Africa still grapple with many challenges in enjoying their rights. According to a recent report by the African Child Policy Forum, a significant number of children in Africa do not have access to basic needs and services such as clean water, education, health and sanitation.[9] This is exacerbated by conflicts, poverty and other developmental challenges that the region is facing.[10]

The country studies focus on two human rights treaties that speak specifically to children's rights, namely the United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (African Children's Charter). It assesses the impact of state reporting on the realisation of children rights in Africa through specific country studies.

State reporting is the system through which treaty bodies monitor the extent of states' compliance with their human rights obligations.[11] This process is not peculiar to the CRC or the African Children's Charter. It is indeed a key monitoring component of international and regional human rights treaties. It is a platform for states to provide information on measures they have taken to fulfil their obligations under a treaty they have ratified and challenges they are facing in implementing the treaty provisions. It also serves as a forum for exchange between treaty monitoring bodies and states. Furthermore, it provides an opportunity for treaty bodies to give concrete recommendations to states on how best to address the issues raised in their reports.

Although states take the lead in the reporting process, the involvement of other stakeholders is important for the success of the reporting process. As this book reveals, the reporting process for the states reviewed has been quite collaborative and multi-sectoral, but the level of involvement of relevant stakeholders vary from one region to another. The objective of the study therefore is to gain insights into child rights issues on the continent while at the same time assessing whether the reporting process

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8   C Himonga 'African customary law and children's rights: Intersections and domains in a new era' in J Sloth-Nielsen (ed) *Children's rights in Africa: A legal perspective* (1998) 75.

9   African Child Policy Forum 'The African report on child wellbeing' (2016) 3 http:// www.africanchild.report/ (accessed 5 December 2017).

10   Onyemachi (n 3) 390.

11   The United Nations Human Rights Treaties *How to complain about human rights treaty violations*. The state reporting system available at http://www.bayefsky.com/ complain/47_state_reporting.php (accessed 5 December 2017).

on the CRC and African Children's Charter has led to improvements in children's rights in Africa.

The CRC is the foremost binding international instrument containing principles and standards pertaining to children's rights. It was adopted by the United Nations General Assembly on 20 November 1989 and came into force in 1990. It is reputed as the most widely ratified treaty in the world.[12] The CRC is based on four cardinal principles: non-discrimination; the best interests of the child; the right to life, survival and development; and the right to be heard.[13] These principles serve as a yardstick for interpreting all other rights in the CRC. The CRC sets out the civil, political, economic, social and cultural rights to which all children are entitled.[14] All African states have ratified the CRC.

The Committee on the Rights of the Child (UN Children's Committee) is the treaty monitoring body of the CRC. The UN Children's Committee derives its mandate from the CRC and is responsible for monitoring the implementation of the CRC and its three Optional Protocols.[15] It consists of 18 independent experts elected by member states[16] and is empowered to consider state party reports on the implementation of the CRC and to issue recommendations. States are obliged to submit initial reports after two years of ratifying the CRC and, subsequently, every five years.[17] The UN Children's Committee has received several state reports including from all the countries reviewed, and issued Concluding Observations.

As the treaty monitoring body, the UN Children's Committee is also empowered to consider communications alleging violations of children's rights by virtue of the third Optional Protocol to the CRC on a Communications Procedure. Although this Protocol allows individuals

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12 Only the United States of America has not ratified the treaty.

13 Arts 2, 3, 6 and 12, respectively.

14 The Convention benefits immensely from the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights.

15 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, UN GA (25 May 2000) UN Doc A/RES/54/263 (2000), entered into force on 12 February 2002; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, UN GA (16 March 2001) UN Doc A/RES/54/263 (2001), entered into force on 18 January 2002; Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, HRC (14 July 2011) UN Doc A/HRC/Res/17/18 (2011), entered into force on 14 April 2014 https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/467/10/PDF/N1146710.pdf?OpenElement (accessed 5 February 2020).

16 Art 43(2) of the Convention on the Rights of the Child.

17 Art 44(1)(a)(b) of the Convention on the Rights of the Child.

to bring communications before the UN Children's Committee, such communications can only be brought against states.

1.1   The African Charter on the Rights and Welfare of the Child

The African Children's Charter was adopted by the African Union Heads of State in 1990 and came into force in 1999. The African Children's Charter is a regional binding instrument that builds on and complements the CRC, but incorporates an African perspective designed to promote African traditional values.[18] For example, unlike the CRC, the African Children's Charter provides for the duties and responsibilities of the child.[19] Consequently, the African Children's Charter is said to be unique in that it takes into account the socio-cultural and economic realities peculiar to the African child.[20]

The Preamble makes the case that African children require protection from all, government and individuals alike. Like the CRC, the African Children's Charter is premised on the four cardinal principles and rights stated above. Unlike the CRC, which enjoys near universal ratification, the African Children's Charter is yet to be ratified by some states in Africa.[21] The African Children's Charter obliges state parties to submit reports on the measures they have adopted which give effect to its provisions and on the progress made in the enjoyment of the rights contained in the African Children's Charter.

The African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) is the treaty monitoring body which oversees the implementation of the African Children's Charter and ensures the protection of the rights and welfare of the African child.[22] It is made up of 11 experts elected by the Assembly of the Heads of State of the African Union.[23] The African Children's Committee derives its mandate from the African Children's Charter and has the overall responsibility of

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18   F Viljoen 'Supra-national human rights instruments for the protection of children in Africa: The Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child' (1998) 31 *The Comparative and International Law Journal of Southern Africa* 211.

19   Art 31 of the African Children's Charter.

20   Kaime (n 2) 23.

21   These countries are: Central African Republic, Democratic Republic of Congo, Tunisia, Sao Tome and Principe, Somalia and Sahrawi.

22   Art 42 of the African Children's Charter.

23   Art 22 of the African Children's Charter.

promoting and protecting the rights enunciated therein. In furtherance of its mandate, the African Children's Committee is empowered to document and assess child-related issues, formulate principles and rules, monitor implementation of and interpret the African Children's Charter. As part of its monitoring mandate, the African Children's Committee is empowered to consider state party reports regarding the situation of children's rights in their country.[24]

It is important to note that states are due to submit initial reports within two years of ratifying the African Children's Charter and, subsequently, every three years.[25] As at November 2017, the African Children's Committee had considered 33 initial state party reports and had issued 31 Concluding Observations.[26] Furthermore, the African Children's Committee is empowered under article 44 of the African Children's Charter to receive communications from any person, group or non-governmental organisation relating to any matter covered by the African Children's Charter. As at November 2017, the African Children's Committee had received ten communications and made decisions on five of them.[27]

Given the international and regional legal framework in place, certain critical questions arise regarding the status and the rights of children in Africa. Of key concern is the implementation of human rights treaties, especially those relevant for children in a manner that improves the situation of children. It is in this regard that treaty monitoring mechanisms, at the regional and international levels, serve as platforms to evaluate how states have complied with their human rights obligations and, more importantly, ensure accountability of states in promoting and protecting human rights. As noted above, treaty monitoring mechanisms have an important role in considering state party reports on human rights compliance through the reporting process. The reporting process is designed to be a dynamic and continuous one, affording treaty monitoring mechanisms the opportunity

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24   Art 43 of the African Children's Charter.

25   Art 43(1) of the African Children's Charter.

26   See African Committee of Experts on the Rights and Welfare of the Child 'Periodic reports' https://www.acerwc.africa/state-reports/ (accessed 30 November 2017).

27   Some of the concluded cases include: *Michelo Hunsungule & Others (On Behalf Of Children in Northern Uganda) v The Government of Uganda Communication* 1/2005, African Children's Committee Twenty First Ordinary Session 15-19 April 2013; *The Centre for Human Rights (University of Pretoria) and La Rencontre Africaine Pour La Défense Des Droits De L'Homme (Senegal) v the Government of Senegal* Communication Com/001/2012, African Children's Committee, 15 April 2014; *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on Behalf of Children of Nubian Descent in Kenya v The Government of Kenya* Communication Com/002/2009, African Children's Committee, 22 March 2011.

to evaluate the human rights situation, as well as the laws and policies of state parties while advising them on ways to achieve better compliance with their human rights obligations.[28]

The observations and recommendations of treaty bodies make for early warning and provide further guidance and clarity in implementing human rights treaties.[29] Similarly, the process affords states the opportunity to fully appreciate and improve their human rights compliance at the domestic level. Therefore, for the reporting process to be effective, it must involve broad-based participation by relevant stakeholders at all stages including in the processes leading up to the preparation of the report, consideration by treaty bodies and implementation/follow up of recommendations. Thus, the reporting process as well as the state party reports must accurately capture the realities on the ground at the country level, given that the yardstick for evaluating the success or otherwise of international human rights norms is largely dependent on the impact they have at domestic level.[30]

It is against this background that this book examines the impact of the reporting process on the realisation of children's rights in Africa. Two categories of states have been reviewed: the all-round reporters, that is state parties that have submitted two or more state party reports to the UN Children's Committee and one or more reports to the African Children's Committee;[31] and the selective reporters, that is state parties that have submitted two or more reports to the UN Children's Committee, but have not yet submitted a report to the African Children's Committee.[32] Each category of states has submitted at least two reports to the CRC. This indicates a preference and/or popularity of the UN reporting process over the African one. The reason for this may not be farfetched, given that the UN process pre-existed the African one, and also because the former receives support from, and is somewhat influenced by the United Nations Children's Fund (UNICEF). More so, the African process is highly

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28 N Pillay 'Strengthening the United Nations human rights treaty body system' (2012) http://www2.ohchr.org/english/bodies/HRTD/docs/HCReportTBStrengthening. pdf (accessed 27 July 2016) 8.

29 As above.

30 CH Heyns & F Viljoen 'The impact of the United Nations treaties at the domestic level' (2001) 23 *Human Rights Quarterly* 483.

31 Chad; Congo; Nigeria; Mali; Nigeria; Senegal; Togo; Eritrea; Kenya; Rwanda; Madagascar; Malawi; Tanzania; and Algeria.

32 These are Morocco, DRC and Mauritius.

dependent on the UN process as a number of state party reports to the African Children's Committee draw substantially from the UN reports.

2 Methodology

The findings in the book are the result of individual country studies conducted by human rights scholars and practitioners who are experts in the area of children's rights. A total of 17 countries, spread across the five geo-political regions in Africa, were reviewed. The results of the country studies were further condensed into regional reports reflecting the five sub-regional chapters. The book seeks to answer the following research questions: Are reporting processes in Africa consultative and participatory? Do the reports represent and reflect the actual situation of children in Africa? How accurate, relevant and functional are the Concluding Observations issued by treaty bodies? What implementation and follow up mechanisms have been put in place by states and treaty bodies to ensure the implementation of the recommendations? Have the reports resulted in progress on the ground for children in the reporting country? What practical steps should be taken to maximise the impact of reporting on the realisation of children's rights in Africa?

2.1 Overview of the country studies

The next five chapters discuss the utility and relevance of child rights reporting using case studies from five regions of the continent. The goal of the project is to empirically test the effectiveness of United Nations (hereinafter UN) and African Union (hereinafter AU) child rights reporting mechanisms about promoting and protecting the rights of children in African countries.

As described in chapter one, the two child rights monitoring and reporting mechanisms of interest are: the Committee on the Rights of the Child (UN Children's Committee), which monitors implementation of the UN Convention on the Rights of the Child (CRC, 1989), together with its Optional Protocols, by state parties; and the African Committee of Experts on the Rights and Welfare of the Child (hereinafter African Children's Committee), which monitors the African Charter on the Rights and Welfare of the Child (1990) (African Children's Charter). A project framework was developed from the outset, which dictated that for each overall African region (defined for this project by geographical locations – North, South, East and West), two categories of states would be reviewed: state parties that have submitted two or more state party reports to the UN Children's Committee and one or more reports to the African Children's Committee; and state parties that have submitted two or more reports

to the UN Children's Committee, but have not submitted a report to the African Children's Committee. Of the states reviewed in this report, Egypt and Algeria fall into the former category, and Morocco falls into the latter category.

A team of researchers (the authors of the various chapters) were recruited to undertake a desk review to document information regarding the procedures associated with the preparation of reports at state level and to identify and document key thematic issues arising in and from the state reports, civil society alternative reports or in the Concluding Observations and comments of the relevant AU and UN treaty bodies. While the initial objective of the project was to document impact of these reporting processes and bodies on children's rights – and in particular on policy making and public scrutiny – limitations associated with data availability and logistical arrangements at the data collection stage meant that conclusive findings in that regard were not achievable. However, the report does draw attention to aspects of procedure and report content that demonstrate the inconsistencies in reporting across time and place.

Ultimately, this book intends to initiate further conversation and deeper study on a range of issues around child rights reporting procedures, accountability structures (domestic and international) and state response to child rights violations over time. The content below is based on the observations of the three authors, who reviewed one country each, using a literature review and limited qualitative data collection. The content focuses predominantly on the state parties reports to the two committees, the observations published by those committees and the available alternative reports.

The findings are derived from primary and secondary sources. Primary data were obtained from interviews with relevant government agencies, child rights organisations, civil society and independent experts. Secondary data were obtained from sources including legislation, policy documents, books, state reports. Reports submitted by state parties to the CRC and African Children's Charter as well as complementary reports of NGOs and Concluding Observations of the UN Children's Committee and African Children's Committee were carefully reviewed and analysed to assess the reporting process, progress made between reporting periods and gaps in the reporting process. This information was complemented by

key informant interviews with government officials, CSOs, academics and child rights experts.

Africa : Map showing countries reviewed
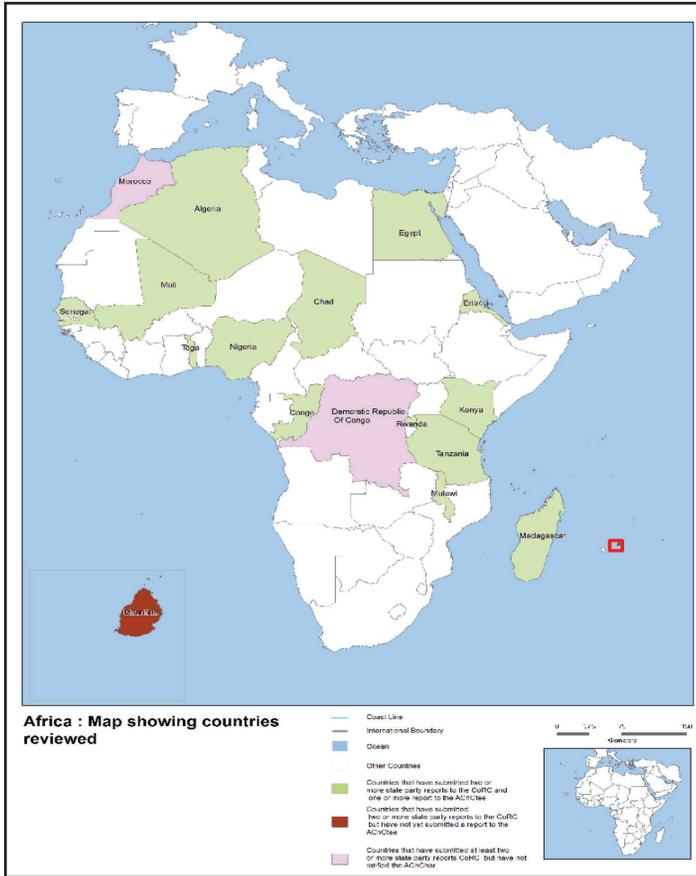
The scope of the country studies is limited to the reporting status as of 2017. Chapters 3-7 are based on research undertaken over the period 2014 to 2017. The purpose is to gain insights into the child rights issues on the continent and the impact of the reporting process in addressing these issues. The study does not include state parties' reports to other treaty bodies on issues affecting children. There are five substantive chapters tat provide the findings from countries in the five sub-regions. The first substantive chapter examines the Central African region, the second focuses on East Africa, the third on Northern Africa, while the fourth and fifth discuss the findings from Southern and West Africa, respectively.

3   Overview of study results: Trends, findings and cross cutting issues

The study findings show mixed trends and practices in the various regions. Some states within a region demonstrated strength in areas where others were weak, for example Kenya and Morocco showed good practices in terms of government and civil society participation in their respective regions. In the same vein, some regions performed better in terms of their reporting cycles compared to others. The North African region has submitted the highest number of reports with fewer delays between reporting cycles. However, some transversal issues regarding child rights violations, quality of reports and level of child participation were observed across the regions. The findings further reveal that children, across the regions, face serious challenges in the realisation of their rights. Issues such as harmful traditional practices, in particular, female genital mutilation and early marriage, the recruitment and use of children in armed conflict, corporal punishment, discrimination against children with disabilities, street children, violence against children, child labour, juvenile justice, lack of access to education and adequate healthcare are some of the recurring human rights challenges across the various regions.

## 3.1   Status of submission of reports
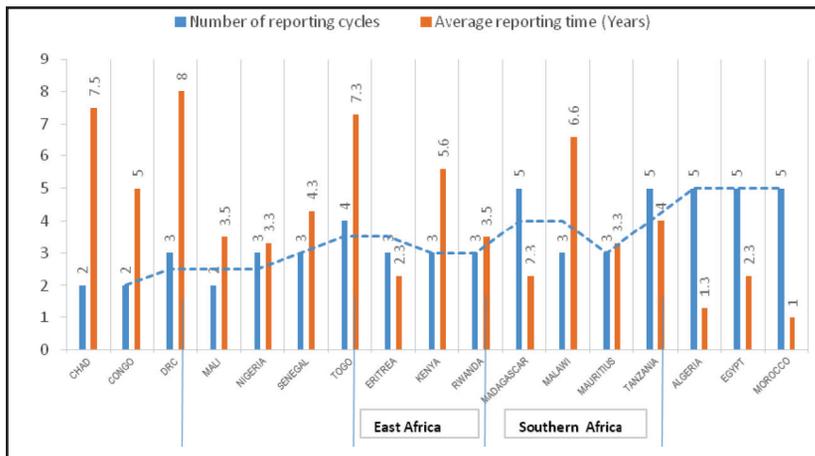
Figure 1: Number of reporting cycles to the UN Children's Committee and average reporting time on the CRC
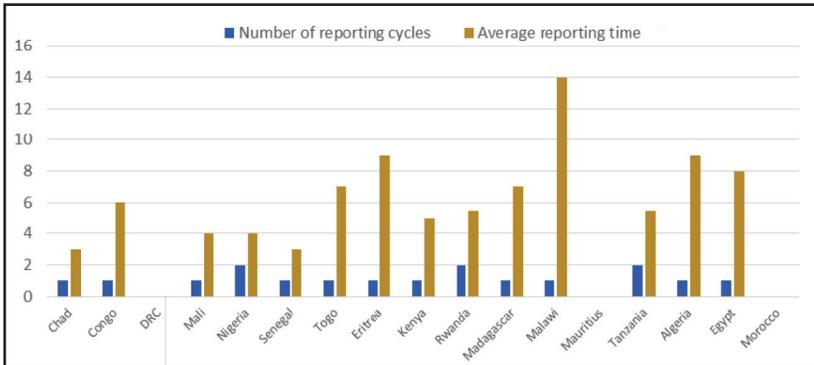
Figure 2: Number of reporting cycles to the African Children's Committee and average reporting time (in years) on the African Children's Charter

All the states reviewed have gone through at least two reporting cycles with the UN Children's Committee and most of them have reported to the African Children's Committee. The states with the highest number of reporting cycles have submitted at least three reports on the CRC and two on the Optional Protocols, while states with the least number of reporting cycles have submitted two reports on the CRC and none on the Optional Protocols. In addition, states with the highest reporting cycles had fewer delays between reporting cycles compared to states with fewer reporting cycles.

Late submissions, mainly due to technical challenges such as poor data collection, inadequate human or financial resources and unavailability of appropriate guidelines and procedures for reporting, characterised the reporting process. Some initial state party reports were up to ten years late for submission. The reasons for late submissions ranged from inadequate data, lack of coordination and political instability. In respect of the reviewed states, late submissions are not peculiar to the child rights reporting process. Most of the countries under review have also been found wanting in submitting reports to other treaty bodies.

In general, states appear to be late in submitting their reports to human rights treaty bodies. This view is supported by a study on state reporting in the United Nations human rights treaty body system from 2010-2011 which revealed that only 16 per cent of state parties reported on time during that period.[33] As illustrated below, some regions have performed better than others in reporting to the UN Children's Committee. The Southern and North African regions are more frequent reporters, with relatively fewer

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33   Pillay (n 28) 9.

delays between reporting cycles. The North African region has generally fared better in meeting up with reporting deadlines with an average one to two years delay in reporting to the UN Children's Committee (see Figure 1). In addition, all countries in the region have reported at least twice on the Optional Protocols.
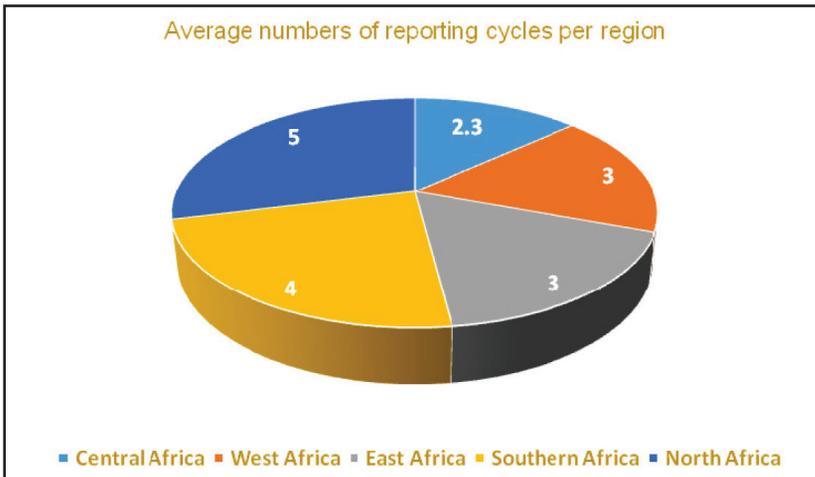

Chart 1: Average numbers of reporting cycles to the UN Children's Committee by/per region

3.2   Preparation of reports

Although technical difficulties marred the substance and form of initial reports, over time, the quality of the reports improved as the process became more collaborative and allowed for a range of experts and stakeholders to contribute to the reports. The findings reveal a general trend towards a multi-stakeholder approach involving relevant government agencies, civil society organisations (CSOs), international organisations and children in preparing state party reports. The reporting process is typically led by the government agency responsible for women affairs, gender, children or social development or, in some cases, by government appointed consultants.

In some countries, certain stakeholders such as the media, academia, children with disabilities and non-governmental organisations (NGOs) were sometimes excluded from the preparatory process. This is the case in Eritrea, Egypt and Algeria, where civil society space is closed or highly restricted. In Algeria, for example, the UN Children's Committee noted that inadequate NGO participation can be traced to harassments and threats of intimidation from state authorities. The practice of clamping down on NGO space through laws and regulations further excludes

NGOs from participating in the reporting process and implementation of child rights laws. Even when NGOs are included in the reports prepared by government, some NGOs, for example in Rwanda, lack technical skills to effectively engage on child rights issues, while others, like Nigeria, lack the coordination for meaningful participation in the process. Nevertheless, it is expected that NGOs will build their capacity to be able to effectively take the lead in preparing complementary reports as well as effectively participating in reports prepared by states.

The reports generally did not reflect the actual situation on the ground, instead they were highly descriptive of legal and policy measures taken by states. The information contained in most reports failed to provide a clear picture of the situation of children's rights or changes that have occurred as a result of the legal and policy framework. Alternate reports prepared by NGOs helped to fill the gaps in state party reports by supplementing the data and information provided by the states. Morocco sets a good example in terms of the number of NGOs involved in preparing alternate reports.

3.3   Child participation

The reporting process has certainly raised awareness on the need for participation of children in issues affecting them and has also prompted states to consult with children when preparing the reports. In most of the recommendations, the UN Children's Committee and the African Children's Committee stressed the importance of child participation in the reporting process. In this regard, it should be noted that child participation goes beyond involving children in the reporting process. It is a core principle as well as a right that underlines the legal framework on children's rights. The principle guarantees the right of children and young people to be heard, to freely express their views and to have those views taken into account by states. It obliges states to listen to the views of children and facilitate their participation in all matters affecting them including in decision making.[34] Furthermore, as the UN Children's Committee notes, the obligation means that states are to 'ensure appropriate conditions for supporting and encouraging children to express their views, and make sure that these views are given due weight'.[35] Genuine participation demands that children are well informed and that they understand the consequences and the impact of their views and opinions.[36] In addition, children should

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34   World Vision International 'Child Participation' http://www.wvi.org/child-participation (accessed 28 July 2016).

35   Committee on the Rights of the Child General Comment 12: The right of the child to be heard (2009) UN Doc CRC/C/GC/12 dated 20 July 2009, para 49.

36   United Nations Children's Fund (UNICEF) 'Fact sheet: The right to participation'

be involved in the decision-making process in matters that affect them and in a manner consistent with their evolving capacities.[37]

Based on the criterion highlighted above, the general trend on child participation in the countries reviewed shows that children are hardly involved in a meaningful way during the reporting process. Although some states recorded the 'presence' of children during preparation and presentation of reports, their level of engagement and participation was tacit and tokenistic. However, a good example of child participation can be found in Kenya where children were encouraged to select their own representatives, comprising different categories of children and presented their views directly to policy makers. In contrast to Kenya, children's voices were not included during the preparation of the reports in Algeria. Other countries like Rwanda and Eritrea have also performed very poorly in terms of child participation.

Children attending reporting workshops or even accompanying government delegations to present reports do not make for meaningful participation if they were not given an opportunity to air their views or if those views never made it into the final report. The lack of meaningful child participation is not only in relation to the reporting process, but a trend that permeates all issues related to children at the country level. The study revealed poor child participation practices among the states beyond the reporting cycles and across the various regions. Cultural and traditional views about children have been a major hindrance to children expressing their views on matters affecting them and having those views taken into account. In Egypt, for example, in spite of legislation aiming to improve child participation, children are still considered to be beneficiaries rather than rights holders and this has affected the level of child participation.

Although many of the states reviewed have established a children's parliament, the findings show that the parliaments are not usually representative of all the classes of children in the society, in particular, rural, minority and other vulnerable children are not represented. In addition, views expressed by children are in some cases not their own. For example, the Egyptian children's parliament has been criticised by NGOs for preparing the text used by children during their parliamentary programmes. It is in the best interests of children that they are heard and their views taken into account in all matters concerning them. Recognising the importance of child participation as an integral component of the best interests of the child, the UN Children's Committee has maintained that

http://www.unicef.org/crc/files/Right-to-Participation.pdf (accessed 28 July 2016).

37   General Comment 12 (n 35) para 100.

there can be no correct application of the best interests of the child if the components of the child's right to be heard are not respected.[38]

3.4 Data collection and analysis

Statistical data on implementation of children's rights remains a huge challenge on the continent. Both treaty bodies have repeatedly averted the attention of the states to this problem in their list of issues as well as in their Concluding Observations. Specifically, state party reports did not capture data on budgetary allocation, infant mortality and immunisation. In other instances, data was obsolete, meaning that the reports were not representative of the realities on the ground. This issue appears to be a common thread across the regions.

This challenge concerning data collection is critical in two respects: First, inadequate and unreliable data means that states do not present the true situation of children's rights and this negatively impacts on the treaty body's ability to adequately assess progress and proffer pragmatic recommendations. Second, the states are in a weak position to implement effective programmes and policies if they cannot generate or rely on their own adequate data. Furthermore, the challenge with respect to data has implications on budgeting and interventions in critical areas of need and it is difficult to measure progress when data is inaccurate.

3.5 Progress between reporting periods

The study shows that states have made some progress between reporting periods, some of which are directly linked to the recommendations made by the treaty bodies. However, it is important to note that some progress made during the reporting process can be linked to other factors such as change in regime as was the case in the Central African region. Inherent in the question of the impact of the reporting process is the justification for the process itself. On the one hand, it could be argued that in the absence of the reporting process, states would nevertheless make some progress, however little, in realising children's rights. On the other hand, it appears that in the absence of the reporting process it would be difficult to measure any progress made by states. This is because the reporting process provides a benchmark that states must adhere to regarding children's rights.

The CRC and the African Children's Charter as well as the reporting guidelines provide a set of rules that must be taken into account in evaluating state party obligations. To say the least, the quality of the

38   General Comment 12 (n 35) para 74.

reports and consultations improved over time in analysis and outcome. While this may appear superficial, it also goes to show that states have paid more attention to the reporting process. What is sure is that, in the absence of the reporting process, it would be very difficult to harmonise the standard of human rights compliance as every state will set its own standard of evaluation. However, in spite of the progress made by virtue of the reporting process, there are still a lot of concerns regarding the realisation of children's rights across the countries.

States have made visible progress in some of the areas that both treaty bodies have highlighted in their Concluding Observations and recommendations. This demonstrates that there is a causal link between the reporting process and progress in realising children's rights especially in the areas flagged by the treaty bodies. Some specific examples are summarised below:

- Reforms of domestic laws to reflect international standards on the protection of children, for example:
  - Morocco amended the Nationality Code (Act 62-06 of 23 March of 2007) to allow children to obtain the nationality of their mother.
  - Mali adopted a National Strategy for Child Protection aimed at improving the living conditions of children across the country.
  - Togo adopted the Children's Code of 2007 in furtherance of the UN Children's Committee's recommendation in its Concluding Observations.
  - Tanzania adopted two pieces of legislation on children's rights, namely: the Law of the Child Act (in Tanzania Mainland) and the Children's Act (in Zanzibar) to reflect the provisions of the CRC.
  - Madagascar adopted a law on compulsory education for all children above six years.
- Togo abolished the death penalty and adopted labour and anti-trafficking laws. In a similar manner, Algeria outlawed (in principle) corporal punishment, psychological ill-treatment and all forms of bullying in schools.
- In Senegal, pregnant girls can now return to school after delivery, contrary to the previous practice where pregnant school girls dropped out of school.
- Algeria also made some progress in ensuring the right to education of the girl child. In particular, Algeria enacted the Education Act (2008) which provides for compulsory education for all girls and boys between the age of six and 16 years.
- In Nigeria, the reporting process led to an increase in reporting and documentation of violations of human rights, particularly with respect

to violence against children. It also led to the adoption of a multi-sectoral approach to child rights programming by the government.

- Morocco established the Office of the Ombudsman and the National Human Rights Council, thus creating more avenues to access remedies for child rights violations.
- Egypt withdrew its reservations to articles 20 and 21 of the CRC on adoption and children separated from their families as well as its reservation to article 21(2) of the African Children's Charter, which places the minimum legal age for marriage at 18.
- Mauritius also withdrew its reservation to article 22 of the CRC relating to children seeking refuge or having refugee status in Mauritius.
- Madagascar translated the CRC into the local language (Malagasy), thus raising awareness on the rights in the CRC.
- Malawi ratified the first and second Optional Protocols to the CRC.
- Remarkable progress has been made in reducing mortality rates and increasing primary school enrolment rate in the Republic of Congo. Similarly, significant progress was recorded in reducing infant, under five and maternal mortality rates in Kenya and Madagascar.

Noteworthy is the fact that in spite of the progress in enacting legal frameworks or reviewing domestic legislation to afford better protection to children, a few states still lag behind and the challenge of implementation persists; for example, Eritrea and Mauritius still do not have comprehensive legislation on children's rights. In addition to the progress made, the following best practices also contributed positively to the realisation of children's rights:

- A multi-sectoral and inclusive approach adopted by Kenya in preparing reports. In addition, Kenya translated its Children Act 2001 and the CRC into Braille for children with disabilities.
- Madagascar raised the minimum age for employment to 15 years and issued a law which contains a list of hazardous work prohibited for children below 18 years.
- Egypt established a Child Rights Observatory in 2009 to improve data collection.
- The existence of a vibrant civil society and a strong partnership between government and civil society in Morocco. The government delegation allocated seats for NGOs on the government delegation.

However, the reporting process has raised some concerns around recurring challenges on the substantive issues discussed immediately below.

4   Thematic consideration

4.1 Education

Many of the states reviewed have adopted policies or laws to realise universal basic education. However, there are still challenges in realising the right to education. Globally most of the children who are out of school belong to the African continent, with Nigeria ranking in second position in the world.[39] In Chad, displacements and recruitment of children in armed conflicts have resulted in high illiteracy levels and school dropouts.

Children with disabilities face a lot of discrimination and stigma in accessing education and domestic laws do not fully protect their rights. Many states still struggle with social inclusion and have not yet adopted a rights-based approach to disability. The bulk of the UN Children's Committee's recurring recommendations in this regard has been for states to adopt inclusiveness in all sectors, particularly in education. This is because state practice reveals that children with disabilities are either left in special schools or are made to 'fit' into mainstream schools. This is contrary to the inclusive education system which is designed to proactively respond to the diverse needs of all learners through increased participation in learning. Consequently, states are obliged to ensure that the mainstream educational system caters for the needs of all children, taking cognisance of persons who are susceptible to marginalisation and exclusion.[40]

4.2 Conflict and its impact on children's rights

A number of the countries under review have experienced or are currently experiencing armed conflict, resulting in gross violations of rights and weak protection for children. Displacements, abduction, child soldiers and refugee children abound across the regions. Many children have been separated from their families and the whereabouts of those who have gone missing as a result of conflict remain unknown. It is very important for states to maintain up-to-date data for these categories of children to enable tracing and family reunifications. Thus, this is another strong reason for

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39   UNESCO 'EFA Global Monitoring Report' (2014) 54 http://unesdoc.unesco.org/ images/ 0022/002256/225660e.pdf (accessed 29 July 2016).

40   See art 24 of the UN Convention on the Rights of Persons with Disabilities (2006) UN Doc A/Res/61/106, Annex 1 dated 13 December 2006, entered into force in 2008; UNESCO *The Salamanca statement and framework for action on special needs education* (1994) 11.

states, especially those experiencing armed conflicts or other situations of violence to develop effective data collection and management systems.

4.3 Health

The health sector in most of the countries reviewed is underfunded and access to healthcare remains a huge challenge. This trend resonates strongly across the regions, particularly in Eritrea, Algeria, Nigeria, Chad and Madagascar. In addition, quite a number of states are yet to address issues related to malnutrition as well as infant, under-five and maternal mortality. States like Kenya, which have made some progress in reducing infant mortality, still grapple with increasing mortality rates.

4.4 Juvenile justice

The justice system should be designed to protect children who come into conflict with the law, ensuring that their rights, including fair trial rights, are respected and protected. However, the reality on the ground from the country studies shows that the criminal justice systems in most states under consideration do not adequately protect children, are very punitive and still retain the use of corporal punishment. The Concluding Observations of the UN Children's Committee and the African Children's Committee revealed that domestic legislation still does not conform to international standards and best practices on juvenile justice.

5   Concluding Observations

After considering state party reports, the treaty bodies issue Concluding Observations or recommendations as in the case of the African Children's Committee. Concluding Observations are an evaluation of the extent of implementation of a treaty and suggestions on areas of improvement.[41] The relevance, accuracy, quality and timeliness of the recommendations of treaty bodies are critical if they are to be used effectively by all stakeholders to ensure improvements at the domestic level. The Concluding Observations provide guidance on how states can address the issues raised in their reports. The study results reveal that some countries found the concluding recommendations from the African Children's Committee to be too general and sometimes vague, such that it was difficult to make use of them. Recommendations requiring states to take measures (as was the case of Egypt, where the African Children's Committee asked Egypt

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41   Office of the United Nations High Commissioner for Human Rights 'Glossary of treaty body terminology' http://www2.ohchr.org/english/bodies/treaty/glossary. htm (accessed 3 December 2017).

to take measures to curb corporal punishment) are not only general but difficult to assess.

However, recommendations have improved over time and have led to changes at the national level, as highlighted above. The Concluding Observations revealed a lot of gaps in theory and practice in terms of the realisation of the rights of children on the ground. Moreover, states, and NGOs, are yet to take full advantage of the Concluding Observations. In all the regions surveyed, Concluding Observations are not fully implemented and are not widely disseminated to the general public. The challenge with implementing recommendations across the regions is mainly due to lack of political will, resource gaps and lack of adequate follow up mechanisms to monitor progress. In addition, some states in the different regions do not have national action plans for implementing Concluding Observations.

5.1 Summary of recommendations

As noted above, many of the issues identified in the different regions are transversal and thus it is no surprise that the recommendations hold true for most of the states. Some of these recommendations are evident from the treaty body's Concluding Observations to the various country reports. The following recommendations resonate strongly across the reviewed states:

- Harmonisation of various domestic laws on children in line with the standards of the CRC and African Children's Charter. In this regard, the two treaty bodies pointed out some discriminatory laws and policies which still hinder the full realisation of children's rights.
- The need for strong political will backed up by proper institutional capacity that is able to respond to the needs of children across the region.
- States need to reconsider budgetary allocation on children's issues if they are committed to fulfilling their obligations to protect, respect and fulfil the rights of the child. Many child protection issues have been raised in the course of the report and addressing these needs demands adequate budgetary allocation. The time is right for states to prioritise children in budgeting. This makes for good investment in the future.
- Data collection systems must be improved to adequately give a true representation of the issues presented in the report. Reliable and accurate data would also assist the treaty bodies in better understanding the reality of the situation on children and proffer more concrete recommendations that speak to these realities.
- CSOs have a key role to play in the reporting process, particularly with regard to developing alternative reports and actively participating in the

reporting process. The limited capacity and difficult environment in which civil society operates continues to be a major challenge.

- States must put in place adequate infrastructure to serve the needs of children, particularly in the areas of health and education.
- The reporting process still needs to be more participatory and consultative, reflective of the interest, concerns and voices of all relevant stakeholders including children. Child participation should be practiced in principle and in action.
- States that are yet to fully domesticate the treaties are urged to do so, in order to enjoy the full benefits of the treaties and accord better protection to children.
- States need to take more measures towards proper dissemination of the Concluding Observations. This includes translating them into local languages and ensuring that difficult to reach populations have access to them. Beyond periodic reports and Concluding Observations, effective and adequate dissemination on issues pertaining to children is essential to promote accountability and transparency on the part of the states.
- Concluding Observations and recommendations by the African Children's Committee need to be more specific, taking into account the particularities of each state and providing concrete directions on steps that states can take to fulfil their child rights obligations.

6   Conclusion

The reporting process provides a non-adversarial and advisory system of monitoring implementation and compliance with international norms regarding children's rights by state parties, who have the obligation to uphold the rights of the child. The process also presents a unique opportunity for 'constructive dialogue' between treaty bodies and state parties. Since there is no such thing as international police to ensure enforcement, the reporting process provides a veritable platform for enforcement, howbeit not backed up by sanctions in case of violations. It is also a period of introspection for states to reflect on how far they have come and what lies ahead in meeting their commitments to children. Thus,

an impact assessment is necessary in evaluating the success or otherwise of the reporting process. The key findings from this review are as follows:

- States have made progressive attempts to involve stakeholders in the reporting process, however, there are still gaps in coordination within government agencies and between the government and civil society.
- Many states have adopted the recommendations and do have a promising legal and institutional framework, but lack political will, resources and capacity to implement them.
- The impact of conflict in the region has adversely affected the situation of children especially in the areas of education and protection from violence and exploitation.
- The reporting process has resulted in some tangible progress in realising children's rights.

The studies done in this review reveal that the reporting process has evolved and so have states in their reporting obligations as well as in their efforts to realise children's rights. Some states have moved from non-ratification to total/partial ratification or domestication. Others have gone ahead to harmonise national laws to conform to the principles of the CRC and the African Children's Charter. While states have made significant legislative progress in the course of the reporting process, the gap between theory and practice vis-à-vis the implementation of laws is still very glaring. Several challenges abound and some substantive issues highlighted above still need to be addressed by the states. The practice amongst the 17 states reviewed tends towards fulfilling their reporting obligations, albeit late. In addition, state party reports have been largely descriptive of the legal framework, policies and institutions, but do not paint an accurate picture of the situation of children or demonstrate specific measures taken to implement previous recommendations and challenges encountered. This is partly due to inaccurate or inadequate data or lack of participation by relevant stakeholders.

Regarding the question of whether the reporting process has had any impact on the rights of the child, it would be safe to answer in the affirmative. As shown above, some tangible improvements can be directly traceable to feedback from treaty bodies. In particular, the reporting process has been directly linked to improvements in legislation regarding children's rights. Many of the countries reviewed including Nigeria, Madagascar, Tanzania, and Togo enacted child rights laws and related laws to safeguard the rights of the child. Other countries like Malawi, Congo, DRC and Chad ratified child rights treaties in compliance with the recommendations and Concluding Observations of the two Committees. However, these strides in enacting domestic legislation did not result in

absolute progress in implementing these laws. The real question, however, appears to be whether this impact sufficiently justifies the reporting process. To put it in another way: Is the reporting process being fully maximised? The answer is in the negative. There are some underlining issues that must be addressed going forward, prominent among which are data collection, proper coordination, political will and capacity building.

Another way to consider the impact of the reporting process is to examine the situation of children in countries that have reported the most. Is it the case that the frequent reporters have better child rights records, given that they have had the highest contact with the treaty bodies as well as more opportunities to evaluate themselves and leverage on recommendations and lessons learnt? Again, the answer is in the negative. The child rights situation in the North African region, which hosts the highest number of frequent reporters among the countries reviewed, is comparable to the Central African region with the lowest reporting states. Both regions still grapple with significant child rights challenges. In Algeria, for example, the study shows that the reporting process has not necessarily improved the situation of children. Tanzania, which also falls in the category of frequent reporters, has been ranked as one of the least child-friendly nations in the continent. What this reveals is that the reporting process has proven relevant in drawing attention to the plight of children in the region, while at the same time bringing some tangible improvements, however, it has not resulted in substantial progress in the realisation of children's rights in Africa. This shows that adherence to the reporting process alone, without adding implementation of its outcomes, will not lead to the full realisation of children's rights. States need to take concrete steps in addition to reporting, to fully realise children's rights. However, state reporting is a key driver for these steps to be taken, if the political will exists.

Indeed, the reporting process is crucial to monitoring and evaluating the realisation of children's rights by state parties. However, this study has revealed a number of gaps in many areas including in education, health, child participation, harmful traditional practices and juvenile justice. Although African states have made commendable efforts to alleviate the plight of children, there is more to be done. The litmus test lies in the ability to deliver on the most basic needs of children such as in areas of health, education and social security. Yet, it is in these very important areas that states have consistently been found wanting. This requires much more than political will. It requires huge budgetary allocations and an effective follow up system. These are essential if states must fulfil their obligations to protect and promote the rights of children in Africa and invest in building a world fit for them.