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THE EFFECTS OF STATE REPORTING ON THE RIGHTS OF THE CHILD IN SOUTHERN AFRICA: MADAGASCAR, MALAWI, MAURITIUS AND TANZANIA

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1 Introduction

State reporting is a minimum core obligation to most human rights treaty bodies. This is so because, reduced to its core, ratification of a human rights treaty requires states to give effect to its provisions. State reporting is aimed at assessing whether, and to what extent, states have adhered to their obligations. The analysis of state reports, therefore, remains the most important means of monitoring compliance with human rights instruments. Most treaty bodies provide for submission of initial and periodic reports. Initial reports ensure that a comprehensive review is undertaken with respect to national legislation, administrative rules and procedures, and practices in an effort to ensure the fullest possible conformity with treaty obligations, while periodic reports play a promotional and protective role.

Generally, the aim of a reporting process is to ensure introspection nationally and to facilitate an objective and impartial inspection internationally.¹ As a process of continuous constructive dialogue designed to identify problems and challenges to the realisation of rights, most treaty bodies usually adopt Concluding Observations pointing out positive developments, areas of concerns and recommendations arising from these concerns. Thus, the mechanism of reporting and its constructive rather than confrontational nature are designed to create at the national level an understanding and awareness of treaty standards, engender a process of reviewing of laws, policies and practices against those standards, facilitate planning of concrete actions to improve the shortfalls revealed, provide a platform for monitoring the implementation of those plans, and ensure reporting and feedback from a dialogue with the treaty bodies.

In the context of children's rights in Africa, state parties engage mainly with two treaty bodies: the UN Committee on the Rights of the Child (UN Children's Committee) and the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee), to which they report at given intervals on progress made in realising children's rights. As far as children's rights are concerned, the UN Convention on

1 F Viljoen *International human rights law in Africa* (2007) 309.

the Rights of the Child (CRC) reporting mechanism seems to be the most popular and sets the standard for other regional mechanisms.² Article 44 of the CRC places an obligation on state parties to submit reports 'within two years of the entry into force of the Convention for the State Party concerned; thereafter every five years'.³

Under article 43 of the African Children's Charter, state parties are expected to submit an initial report 'within two years of the entry into force of the Charter for the State Party concerned; and thereafter, every three years'.⁴ This chapter analyses the state reporting situation of four countries within Southern Africa, namely: Madagascar, Malawi, Mauritius and Tanzania, of which only Madagascar, Malawi and Tanzania have submitted their initial report to the African Children's Committee. In addition, Tanzania submitted a combined second, third and fourth periodic report to the same Committee. At the UN level, all four states under consideration have gone through three reporting cycles under the CRC reporting system. Madagascar,⁵ Malawi⁶ and Tanzania⁷ have also submitted reports under the first Optional Protocols to the CRC.

2 Human rights overview

There is a certain level of correlation between political and economic struggles of a state party, on the one hand, and the degree of realising children's rights, on the other hand. States facing such political, economic and social instability are less likely to prioritise children's rights, although children often represent the most vulnerable group under these dire circumstances. However, an evident common denominator for all the four countries under scrutiny is the persistent gap between theoretical

2 E Låftman 'International and regional child rights mechanisms: A guide to the monitoring mechanisms of the Child Rights Committee, the UN Universal Periodic Review and the regional child rights mechanisms' (2011) 22 file:///C:/Users/office%20/Desktop/Save_the_Children_Guide_Monitoring_Mechanisms_2011.pdf (accessed 2 March 2016). On file.

3 Convention on the Rights of the Child, art 44 1(a) & 1(b).

4 African Charter on the Rights and Welfare of the Child art 43: A proposal to amend this provision was submitted by the African Committee of Experts on the Rights and Welfare of the Child to the AU to align with the 5 years cycle under the CRC; Reporting procedure 1(a) & 1(b).

5 Madagascar has submitted a report each under the first two Optional Protocols to the CRC.

6 Malawi's reports under the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict were considered in early 2017.

7 Tanzania has submitted a report each under the first two Optional Protocols to the CRC.

framework and concrete implementation of children's rights. Things seem to look better on paper than on the ground.

2.1 Madagascar

The occurrence of multiple political crises in Madagascar, from 2009 to 2013, left a legacy of poverty, insecurity, poor governance, corruption and illicit sale of natural resources. Consequently, its citizens – children included – have experienced grave deprivations of their human rights. The country is plagued by high rates of maternal and child mortality; chronic malnutrition, affecting half of Malagasy children; lack of access to clean water and sanitation for more than half of the population;⁸ and a high cost of education, leading to illiteracy, especially in rural areas, and among children with disabilities. Children in Madagascar are also affected by child labour, child trafficking, child marriage, birth registration issues, sexual exploitation, a problematic juvenile justice system, child abandonment and illegal adoptions.⁹

Under the Constitution, international instruments are directly incorporated into domestic law.¹⁰ Although the rights of the child are enshrined both in the Constitution and in the domestic legislation on child protection, which has been harmonised in 2007 with the CRC, there is still a gap between theoretical framework and practical implementation. At the time of research, there is no National Plan of Action on child protection that has been put in place in Madagascar¹¹ and the inter-ministerial National Committee on Child Protection created in 2012 exists only on paper. The Ministry of the Population and Social Affairs,¹² responsible for the realisation of children's rights in Madagascar, is under-resourced, while the Directorate of Childhood has been recently reduced to a Service of Family and Children within the Directorate of Promotion of Rights and Equality.

8 See UNICEF 'Madagascar El Nino/Drought Situation Report' (December 2016) https://www.unicef.org/appeals/files/UNICEF_Madagascar_Humanitarian_SitRep_December_2016.pdf (accessed 20 August 2017).

9 UNICEF (n 8).

10 Article 137 of Decree 2010-994 of 11 December 2010 promulgating the Constitution of the IV Republic.

11 UNICEF (n 8).

12 Renamed the Ministry of Population, Gender Protection and Women Protection.

2.2 Malawi

In Malawi, the transition to multi-party democracy and the institutionalisation of human rights and freedoms took about two decades.¹³ The democratic dawn of 1994 has created an environment conducive for the development of a human rights culture. The Bill of Rights, enshrined in the Constitution of Malawi,¹⁴ contains an entire chapter dedicated to human rights.¹⁵

Like in many other African states, in Malawi children represent more than half of the country's population.¹⁶ Poor hygiene practices, malnutrition, high prevalence of HIV/AIDS and malaria, improper sanitation and lack of safe drinking water remain problematic, despite progress made in the provision of child health services.¹⁷

The right to education is provided for in section 25 of the Constitution and in the Education Act of 2013, which makes primary education compulsory for all. However, high costs, limited teaching and learning materials, poor infrastructure, high ratio of learners to teachers, high repetition rates, low completion rates, and high drop-out rates of the girl-child, mainly due to child marriage, impact negatively on the right to education of Malawian children.¹⁸

13 See Open Society Initiative for Southern Africa http://www.osisa.org/sites/default/files/afriamap_malawi_democracy_political_participation_0.pdf (accessed 20 August 2017).

14 Constitutional (Amendment 3) Act of 1993, as reported in MJ Nkhata 'Malawi country report' http://www.icla.up.ac.za/images/country_reports/malawi_country_report.pdf (accessed 20 August 2017).

15 Nkhata (n 14).

16 Gender, Equity and Rural Employment Division of FAO 'Malawi country profile: Gender inequalities in rural employment in Malawi – An overview' (2011) <http://www.fao.org/3/ap092e/ap092e00.pdf> (accessed 27 August 2017).

17 Child Rights Information and Documentation Centre 'Child rights' http://www.cridoc.info/key_child_rights.pdf (accessed 25 September 2014); UNDP 'Millennium development goals: Reduce child mortality' (2014) <http://www.mw.undp.org/content/malawi/en/home/mdgoverview/overview/mdg4/> (accessed 20 August 2017); World Vision 'Children's rights in Malawi' (2010) Stakeholder Report on Malawi – Submission by Word Vision for Universal Periodic Review, Ninth Cycle, November-December 2010 <http://lib.ohchr.org/HRBodies/UPR/Documents/session9/MW/WVI-WorldVisionInternational.pdf> (accessed 20 August 2017).

18 UNICEF 2012 Annual Report https://www.unicef.org/publications/index_69639.html (accessed 30 September 2014); UNICEF 2013 Annual Report https://www.unicef.org/publications/index_73682.html (accessed 30 September 2014); Human Rights Watch Child Marriage in Malawi (2014) <https://www.hrw.org/report/2014/03/06/ive-never-experienced-happiness/child-marriage-malawi> (accessed 30 September 2014).

Despite the existence of the Employment Act, which eliminates all forms of forced labour, it is estimated that about 30 per cent of the Malawian children engage in child labour.¹⁹ At the time of research, the government is yet to put in place relevant laws and policies for the protection of children against this harmful practice.²⁰

Despite the existence of the National Plan of Action for Orphans and Other Vulnerable Children, and an OVC Registration System,²¹ and despite efforts to strengthen the capacity of families and communities to deal with such children, their situation remains alarming.²² This is coupled with an increase in demographic figures, natural disasters, food insecurity, which predispose orphans and vulnerable children to abuse, violence, exploitation and neglect.²³

Malawi has signed and acceded to various international human rights instruments, which require domestication to become enforceable in the country. Section 11(2)(c) of the Constitution provides that, when interpreting constitutional provisions, the courts will consider international law standards and similar foreign case law. Despite this provision, a majority of international human rights standards have not been used in constitutional interpretations.²⁴

2.3 Mauritius

In Mauritius, chapter two of the 1968 Constitution – the supreme law of the country – is dedicated to the protection of fundamental human rights and freedoms. The Supreme Court of Mauritius has jurisdiction over cases concerning the infringement of the rights protected by the Constitution.²⁵ Although socio-economic and cultural rights are not protected by the Constitution, they are regulated by acts of parliament,²⁶ as

19 Every Child 'Malawi' <http://www.everychild.org.uk/where-we-work/malawi> (accessed 20 August 2017).

20 US Department of Labor 'Malawi: Moderate advancement – 2013 Findings on the worst forms of child labour' <http://www.dol.gov/ilab/reports/child-labour/findings/2013TDA/malawi.pdf> (accessed 20 August 2017).

21 See United States Department of State <https://www.pepfar.gov/documents/organization/272017.pdf> (accessed 20 August 2017); World Vision (n 17).

22 UNICEF 'Annual Report 2016 Malawi' https://www.unicef.org/about/annualreport/files/Malawi_2016_COAR.pdf (accessed 20 August 2017).

23 As above.

24 Nkhata (n 14).

25 Sec 17 of the Mauritius Constitution.

26 Sec 45(1) of the Mauritius Constitution: 'Subject to this Constitution, Parliament may make laws for the peace, order and good government of Mauritius'.

is the establishment of human rights institutions. Both the Ombudsperson for Children's Act 2003 and the Protection of Human Rights Act 1998 establish institutions for child protection. Several statutes, policies and institutions relate to the promotion and protection of children's rights such as the National Children's Council Act of 2003 (NCCA);²⁷ the National Children's Policy/National Plan of Action 2003-2015; the Child Development Unit set up in 1995 within the Ministry of Gender Equality, Child Development and Family Welfare; and the Ombudsperson for Children (2003).²⁸

The Child Protection Act of 1994 (CPA) defines a child as 'any unmarried person under the age of 18'.²⁹ The fundamental rights and freedoms of children are protected by the Constitution and, in case of violations, the legal guardians are entitled to initiate a case on their behalf. The Protection of Human Rights Act of 1998 (PHRA)³⁰ allows for the submission of a written complaint to the National Human Rights Commission in cases of violations of children's rights protected by chapter two of the Constitution, by 'a public officer, an employee of a public body or the police'.³¹

Being a dualist state, Mauritius must either ratify or accede to a treaty³² for international treaties to be applicable to the country. To elevate the level of protection of children's rights, Mauritius acceded to the CRC in 1990³³ and ratified the African Children's Charter in 1992.³⁴

2.4 Tanzania

Tanzania is a low-ranking country on a number of human rights indicators. In 2013 it was considered by the ACPF as one of the least child-friendly nations in East Africa, ranking 31st on the continent.³⁵

27 Act 5 of 2003.

28 Established by the Ombudsperson for Children Act 41 of 2003.

29 Sec 2 of the Child Protection Act (1994).

30 Act 19 of 1998.

31 Secs 4(1) & 4(1)(b) of the Protection of Human Rights Act.

32 *Matadeen v Pointu Privy Council* Appeal 14 of 1997 para 24; *Jordan v Jordan* 2000 SCJ 226; *Pulluk v Ramphul* 2005 SCJ 196; and *Ex Parte Hurnam Devendranath, a Barrister-at-Law* 2007 SCJ 289.

33 UN Treaty Collection <http://treaties.un.org/Pages/ViewDeatils.aspx?mtdsg> (accessed 20 August 2017).

34 African Commission on Human and Peoples' Rights 'Ratification table: African Charter on the Rights and Welfare of the Child' <http://www.achpr.org/instruments/chld/ratification/> (accessed 20 August 2017).

35 See African Child Policy Forum (ACPF) 'African report on child wellbeing 2013:

Physical violence, sexual abuse,³⁶ female genital mutilation, early child marriage,³⁷ persecution and brutal attacks of persons with albinism, particularly children, represent areas of great concern. These concerns have not improved significantly in 2016.³⁸

The United Republic of Tanzania has ratified various international and regional human rights instruments, including the CRC in 1991 and the African Children's Charter in 2006.³⁹ The fact that Tanzania is a dualist state – meaning that international law is not self-executing – impacts negatively on the effective implementation of international norms at domestic level.⁴⁰ However, international law forms part of the Tanzanian legal system and courts are supposed to take inspiration from it.⁴¹

Human rights, including children's rights, are guaranteed under the Constitution of the United Republic of Tanzania of 1977 (as amended),⁴² and the Zanzibar Constitution of 1984. In 2000, the government set up the Commission for Human Rights and Good Governance (CHRGG), which is an independent national human rights institution⁴³ primarily mandated

Towards greater accountability to Africa's children' <http://www.africanchildforum.org/africanreport/> (accessed 12 September 2017).

- 36 There is a legislation dealing with sexual offences to children, the Sexual Offences Special Provisions Act, commonly known as SOSPA, 1998 which is incorporated in the Penal Code. The SOSPA prohibits FGM, as sec 160 of the Penal Code states that: 'Any person who having custody, charges or causes to be carried out genital female mutilation ... commits the offence of cruelty to children.'
- 37 Tanzania has taken several measures to combat FGM. It has adopted the National Plan of Action to Combat FGM (2001-2015).
- 38 The African Child Policy Forum 'African report on Child Wellbeing 2016: Towards greater accountability to Africa's children' <https://app.box.com/s/kxtt0h2cwidgm23klwyisxu5avqoa2fl> (accessed 20 August 2017).
- 39 Tanzania is a signatory to a number of international legal and human rights instruments, which guarantee the protection of the rights of children, among which are the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000); and the Optional Protocol to the Convention on the Rights on the Child on Involvement of Children in Armed Conflict (2000).
- 40 L Mwalusanya 'The Bill of Rights and the protection of human rights: Tanzania's court experience' in H Bisimba & C Peter (eds) *Justice and rule of law in Tanzania: Selected judgments and writings of justice James Mwalusanya* (2005) 624-635.
- 41 *Paschal Makombanya Rufutu v Director of Public Prosecutions*, Miscellaneous Civil Case 3 of 1990 at 10-11.
- 42 The Bill of Rights is found under articles 12-29 of the Constitution. See also MKB Wambali 'The enforcement of basic rights and freedoms and the state of judicial activism in Tanzania' (2009) 53 *Journal of African law* 34.
- 43 The Commission for Human Rights and Good Governance (CHRGG) came into being through the 13th Amendment to the 1977 Constitution of Tanzania. It became operational in 2001 following the enactment and the coming into force of its founding

to promote, protect, and preserve human rights in both Zanzibar and Tanzania Mainland. In 2009 Tanzania enacted the Child Act, operational in Tanzania Mainland,⁴⁴ with the view of giving effect to international and regional treaties on the rights of the child.⁴⁵ Other instruments protecting children's rights in Tanzania are the Constitution of Zanzibar of 1984; the Penal Code; the Law of Marriage Act of 1971; and the Evidence Act Cap.6 (R.E 2002).

3 Status of reporting

The fact that all states considered for this study have ratified both the CRC and the African Children's Charter and have gone through more than one reporting cycle (under the CRC) should logically translate into a visible improvement of the situation of children on the ground. However, a closer analysis reveals the fact that there are still alarming issues affecting children in all four state parties under consideration. Insufficient resources and lack of political will have an adverse effect on the implementation of rights. Civil society, whose role is to step in when the government fails to uphold human rights, might also be frail and deficient in its capacity to advocate for those rights and hold the government to account on behalf of the rights holders. A common trend in all four countries under consideration vis-à-vis the reporting exercise is the late submission of state reports to treaty bodies, which was attributed to several causes ranging from political instability, lack of prioritisation and challenges related to data collection, insufficient resources and capacity deficit; or lack of coordination between various ministries involved in the reports preparation.

3.1 Madagascar

Madagascar ratified the CRC in 1991 and submitted its initial report the following year;⁴⁶ the second report in 2003;⁴⁷ and the third and fourth combined report in 2009.⁴⁸ The initial reports under the Optional Protocol

statute, the Commission for Human Rights and Good Governance Act, CAP 391 RE 2002.

44 The Child Act 21 of 2009.

45 C Murungu 'The place of international law in human rights litigation in Tanzania' in M Killander (ed) *International law and domestic human rights litigation in Africa* (2010) 59.

46 Initial reports of states parties due in 1993. Addendum: Madagascar, UN Committee on the Rights of the Child (13 September 1993) UN Doc CRC/C/8/Add.5 (1993).

47 Consideration of reports submitted by states parties pursuant to article 44 of the Convention: Second periodic reports of states parties due in 1998: Madagascar, UN Committee on the Rights of the Child (25 March 2003) UN Doc CRC/C/70/Add.18 (2003).

48 Concluding Observations: Madagascar, UN Committee on the Rights of the Child

on the Sale of Children, Child Prostitution and Child Pornography (OPSC)⁴⁹ and the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC),⁵⁰ both due in 2006, were submitted in 2012. Madagascar has signed the third Optional Protocol on a Communications Procedure but is yet to ratify it. At the regional level, Madagascar has ratified the African Children's Charter in 2005 and submitted its initial report to the African Children's Committee in 2014,⁵¹ with a delay of seven years.

3.2 Malawi

Malawi's poor record in submitting its due state party reports⁵² is gradually improving. The initial country report was submitted to the UN Children's Committee in 2000,⁵³ being seven years overdue. A second report was submitted in 2007,⁵⁴ with a considerable nine years delay. Its third to fifth combined state party report was submitted to the UN Children's Committee in 2015.⁵⁵ The understaffed reporting unit within the Ministry of Justice and Constitutional Affairs (MOJCA) operates solely with funds from donors and partners such as UNICEF. Malawi submitted its initial report to the African Children's Committee in 2015.⁵⁶

(8 March 2012) UN Doc CRC/C/MDG/CO/3-4 (2012).

49 Consideration of reports submitted by states parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography: Reports of states parties due in 2006: Madagascar, UN Committee on the Rights of the Child (5 November 2014) UN Doc CRC/C/OPSC/MDG/1 (2014).

50 As above.

51 Initial report on the implementation of the African Charter on the Rights and Welfare of the Child: Madagascar (2014).

52 Nkhata (n 14).

53 Consideration of reports submitted by states parties under article 44 of the Convention: Initial reports of states parties due in 1993: Malawi, UN Commission on the Rights of the Child (26 June 2001) UN Doc CRC/C/8/Add.43 (2001).

54 Consideration of reports submitted by states parties under article 44 of the Convention: Second periodic reports of states parties due in 1998: Malawi, UN Committee on the Rights of the Child (17 July 2008) UN Doc CRC/C/MWI/2 (2008).

55 Consideration of reports submitted by states parties under article 44 of the Convention: Third to fifth periodic reports of states parties due in 2013: Malawi, UN Committee on the Rights of the Child (21 June 2016) UN Doc CRC/C/MWI/3-5 (2016).

56 Republic of Malawi Initial report pursuant to art 43 of the African Charter on the Rights and Welfare of the Child (December 2014).

3.3 Mauritius

Mauritius has submitted three state party reports to the UN Children's Committee. The initial⁵⁷ and the second periodic report⁵⁸ were both overdue; the combined third, fourth and fifth report was also submitted late, in 2011.⁵⁹ These reports are prepared by officials at the Attorney General's Office, mostly when the courts are not in session. No report has been submitted under the Optional Protocols to the CRC.⁶⁰ On the regional level, Mauritius has not submitted its initial report.

3.4 Tanzania

After its initial report to the UN Children's Committee was rejected in 1993 for non-compliance with the Reporting Guidelines, Tanzania managed to successfully re-submit it six years later.⁶¹ The second periodic report was submitted to the same Committee in 2004,⁶² being six years overdue. A combined report comprising of its third, fourth and fifth periodic reports was submitted to the UN Children's Committee in 2012.⁶³

Tanzania submitted its initial report under the CRC Optional Protocol on the Involvement of Children in Armed Conflict in 2007, with a negligible delay of only one year. At stake was the recruitment process at the National Defence Force. Although, under certain circumstances, the National Defence Act and Regulations allows for the recruitment of minors,⁶⁴ such cases have not been reported. The report on the CRC

57 Submitted on 25 July 1995, but due on 1 September 1992.

58 Submitted on 7 May 2004, but due on 1 September 1997.

59 Consideration of reports submitted by states parties under article 44 of the Convention: Third to fifth report of states parties due in 2011: Mauritius UN Committee on the Rights of the Child (5 September 2011) UN Doc CRC/C/MUS/3-5 (2011).

60 Office of the High Commissioner for Human Rights 'Ratification, reporting and documentation for Mauritius' <http://tbinternet.ohchr.org/layouts/TreatyBodyExternal/Countries.aspx> (accessed 20 August 2017).

61 Consideration of reports submitted by states parties under article 44 of the Convention: Initial reports of states parties due in 1993. Addendum: United Republic of Tanzania, UN Committee on the Rights of the Child (20 October 1999) UN Doc CRC/C/8/Add.14/Rev.1 (1999) 2.

62 Consideration of reports submitted by states parties under article 44 of the Convention: Second periodic reports of states parties due in 2004: United Republic of Tanzania, UN Committee on the Rights of the Child (24 August 2005) UN Doc CRC/C/70/Add.26 (2005) 3.

63 Consideration of reports submitted by states parties under article 44 of the Convention: Third to fifth periodic reports of states parties due in 2012: Tanzania, UN Committee on the Rights of the Child (4 November 2013) UN Doc CRC/C/TZA/3-5 (2013).

64 Section 29(4) of the National Defence Act, Cap 192 (RE 2002).

Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography was submitted in 2007, being two years overdue.

With respect to the African Children's Charter, Tanzania has submitted its initial report in 2006, three years after ratifying the treaty. This report is highly similar to the second periodic report presented by Tanzania to the UN Children's Committee in 2004. Consequently, the Concluding Observations issued by the two treaty bodies to these country reports share close similarities. Tanzania submitted its combined second, third and fourth periodic report to the African Children's Committee in 2016.⁶⁵

4 Preparation of reports

Ideally, state party reports should be the product of sustained and combined efforts of many participants such as ministries, governments departments, civil society, national human rights institutions, academia, the citizenry and the children. Such reports must capture children's rights realities from different angles, to submit a comprehensive document to a treaty body. Concerning the state parties considered for this analysis, it seems that the main actor in report preparation was the government through its ministries and departments in charge of promoting and protecting children's rights, supported somewhat by the input of a few NGOs. The involvement of children in the preparation of reports was either marginal, as in the case of Malawi, Mauritius and Tanzania, or lacking altogether, like in Madagascar. The general population was not engaged at any stage of the preparation process, due partly to linguistic challenges, partly to a lack of political will. The contribution of the media and academia were not substantial.⁶⁶

4.1 Madagascar

In Madagascar, the process of drafting and presenting of state party reports to various international human rights treaty bodies was overseen by an inter-ministerial Reporting Committee⁶⁷ created in 2003 under the Ministry of Justice and the Ministry of Foreign Affairs, with support from UNICEF and the EU. The 2009 combined report mentions the existence of a national consultative process during the drafting stage, which

65 The Government of the United Republic of Tanzania 'Initial Tanzania Report to the African Committee of Experts on the African Charter on the Rights and Welfare of the Child' (December 2006).

66 See Malawi country report; Madagascar country report; Mauritius country report; Tanzania country report (copies on file with the author).

67 Inter-ministerial Order 186000 of 30 October 2003.

benefitted from the participation of several NGOs.⁶⁸ Although thematic workshops were also organised by the Malagasy government, interviews with members of the Reporting Committee reveal that they took place only in the capital city, two years before submitting the report. The report was not made available to the citizenry at any stage and no child-friendly version of it was created either.⁶⁹

4.2 Malawi

The reporting process in Malawi was more inclusive than the one in Madagascar. The preparation of state party reports submitted to the UN Children's Committee was coordinated by the Ministry of Children, Gender, Disability and Social Welfare as well as the Ministry of Justice and Constitutional Affairs, with support from the Ministry of Education and the Ministry of Labour. A Technical Working Group on Child Protection, comprising of NGOs dealing with children's rights as well as relevant government departments was created for the preparation of the state party report to the African Children's Committee. Media participation, however, was weak. The Child Rights Directorate of the Malawi Human Rights Commission (MHRC) actively participated in the task force meetings together with the Law Faculty of the University of Malawi, which was also involved in data collection.⁷⁰

Although children – excluding those belonging to marginalised groups – were involved, to some extent, during the data collection stage and consultative forums, their input was minimal.⁷¹ Drafting of the reports in accordance with reporting guidelines is usually done by an international consultant. The fact that the reports are written in English represents an impediment to their dissemination among the population, considering that English is not generally spoken across the country especially in the rural areas.⁷²

68 Consideration of reports submitted by states parties under article 44 of the Convention: Third and fourth periodic report of states parties due in 2008: Madagascar, UN Committee on the Rights of the Child (17 April 2009) UN Doc CRC/C/MDG/3-4 (2009) para 8.

69 Madagascar country report 5 (copy on file with the author).

70 Malawi country report 6-8 (copy on file with the author).

71 Malawi country report (n 70) 7.

72 Malawi country report (n 70) 9.

4.3 Mauritius

The state party reporting process in Mauritius is inter-ministerial, being led by the Ministry of Gender Equality, Child Development and Family Welfare, with the support of other ministries and government departments such as the Attorney General's Office; the Ministry of Social Security, National Solidarity and Reform Institutions; the Ministry of Education; the Ministry of Health; and the Human Rights Desk of the Office of the Prime Minister. Several NGOs as well as the media participated in the workshops organised during the preparation of the last report, which was drafted by a consultant. The public was not given the opportunity to express its views vis-à-vis the reporting process. Children's involvement was limited to a Skype session with only three participants. Drafting the reports in English or in French impacts negatively on their awareness, given the fact that the population is speaking Mauritian Creole.⁷³

4.4 Tanzania

In Tanzania, the Ministry of Community Development, Gender and Children (MCDGC), supported by the Ministry of Social Welfare, Youth, Women and Children Development is responsible for the preparation of country reports. The process of preparing the initial country report to the UN Children's Committee was inter-ministerial and multi-sectorial,⁷⁴ and benefitted from the involvement of several NGOs.⁷⁵

The MCDGC and the Ministry of Youth, Employment, Women and Children Development (MYEWD) in Zanzibar were responsible for the preparation of the second periodic report submitted in 2004 to the UN Children's Committee, with support from the Ministry of Justice and Constitutional Affairs, the Ministry of Home Affairs, particularly the Departments of Prison and Refugees as well as certain international

73 Mauritius country report 6 & 7 (copy on file with the author).

74 It is acknowledged that the Ministry of Education and Culture, Ministry of Justice and Constitutional Affairs, Ministry of State, Women and Children (MSWC), Zanzibar, Ministry of Planning, Zanzibar, Ministry of Labour and Youth Development, particularly the Departments of Youth and Social Welfare, Ministry of Health, Ministry of Home Affairs, and Ministry of Defences and National Service were involved in preparing the report.

75 The report mentions the United Nations Children's Fund (UNICEF – Tanzania), the International Labour Organization (ILO) and non-governmental organisations, namely: Tanzania Women Lawyer's Association (TAWLA), Tanzania Media Women's Association (TAMWA), Kuleana, African Network for Prevention and Protection Against Child Abuse and Neglect (ANPPCAN – Tanzania), and Save the Children Fund (UK – Tanzania).

organisations.⁷⁶ Various stakeholders working on protection of children's rights⁷⁷ as well as some NGOs were also involved. Consultative meetings were organised as well.

5 Issues covered by the reports

A plethora of alarming areas of concern affecting children in the region can be identified based on the state party reports and the list of issues generated by the two treaty bodies. These challenges range from child labour, child marriage, corporal punishment, to juvenile justice inconsistencies, lack or restricted access to quality and inclusive education, discrimination, especially of children with disability, sexual exploitation, birth registration irregularities, and insufficient budget allocated for realising children's rights, among others.

5.1 Madagascar

Madagascar's third and fourth combined report submitted in 2009 to the UN Children's Committee does not sufficiently portray the concrete measures taken by the government and the impediments to the implementation of the previous Concluding Observations.⁷⁸ Some of the projects and plans of action on children's rights mentioned in the report as achievements were not even brought to fruition due to recurrent political crisis and lack of resource allocation.⁷⁹

Not surprisingly, the list of issues identified by the UN Children's Committee was extensive⁸⁰ and referred to issues such as child labour, child prostitution, sexual exploitation, children with disabilities, malnutrition, immunisation, administration of juvenile justice, birth registration, adolescent reproductive health, education, among others (in Part I); new bills or laws, new institutions and institutional reforms, recently introduced policies, programmes and action plans, including the action

76 The United Nations Children's Fund (UNICEF) and International Labour Organisation (ILO) are being acknowledged in the report.

77 Second periodic reports of states parties due in 2004: United Republic of Tanzania (n 62) 3.

78 Third and fourth periodic report of states parties due in 2008: Madagascar (n 68).

79 Such projects include the National Plan of Action on Violence against Children (2008-2012) and the National Strategy for Preventing Abandonment, Deinstitutionalisation and Community Care of Children in Madagascar (2011-2015). Concluding Observations: Madagascar (n 48) paras 11 & 12.

80 List of issues concerning additional and updated information related to the third and fourth combined periodic report of Madagascar, UN Committee on the Rights of the Child (5 July 2011) UN Doc CRC/C/MDG/Q/3-4 (2011).

plan on violence against children, and the development of a strategy for preventing abandonment, deinstitutionalisation and community care of children, as well as recent ratifications of human rights instruments (in Part II); additional information was requested (in Part III) on disaggregated data on children's health, education, child marriage and child labour; and statistics concerning the administration of juvenile justice, as well as budgetary allocations for realising children's rights.

5.2 Malawi

Malawi's initial report submitted to the UN Children's Committee in 2000⁸¹ reflects a disconnect between adoption of laws, policies and programmes in line with treaty provisions, on the one hand, and the dire situation of children in the country, on the other. The rights of children are provided for in the Bill of Rights, under section 23 of the Constitution.⁸² The absence of a uniform definition of the child leads to discrepancies between the Constitution, where children are referred to as persons under 16 years,⁸³ and other pieces of legislation, such as the Employment of Women, Young Persons and Children Act, which defines a child as a person under the age of 12 years.⁸⁴ Not surprisingly, children are exposed to hazardous labour.⁸⁵ The report also mentions discrepancies between the minimum age of sexual consent for girls (13 years) and boys (12 years).⁸⁶

Although the Constitution allows children of 15 to 18 years to marry with parental consent, the report notes the discriminatory rural practice of marrying girls even younger than 15 years.⁸⁷ Despite high rates of immunisation, infant and under-five mortality remain extremely high, due to malaria, malnutrition and preventable waterborne diseases.⁸⁸ Birth registration is compulsory only for non-African children, however, the government has put in place a Vital Registration System in 1997, but only in three districts.⁸⁹ Corporal punishment is still practiced in the home, in schools and in the justice system.⁹⁰ Increased enrolment, untrained

81 Initial reports of states parties due in 1993: Malawi (n 53).

82 Initial reports of states parties due in 1993: Malawi (n 53) paras 24 & 25.

83 Initial reports of states parties due in 1993: Malawi (n 53) para 53.

84 Initial reports of states parties due in 1993: Malawi (n 53) para 61.

85 Initial reports of states parties due in 1993: Malawi (n 53) para 337.

86 Initial reports of states parties due in 1993: Malawi (n 53) para 57.

87 Initial reports of states parties due in 1993: Malawi (n 53) paras 64 & 66.

88 Initial reports of states parties due in 1993: Malawi (n 53) paras 101 & 102.

89 Initial reports of states parties due in 1993: Malawi (n 53) para 120.

90 Initial reports of states parties due in 1993: Malawi (n 53) paras 152-154.

teachers, dilapidated structures, lack of materials and high pupil-teacher ratios have led to poor quality of primary education.⁹¹ Despite the adoption of various programmes and policies, some of them were negatively impacted by political and economic instability.⁹² It is difficult to assess, based on this country report, which contains some outdated information, to what extent the theory translated into substantive improvement of children's lives.

After submitting its second report,⁹³ the UN Children's Committee requested the Malagasy government to provide additional information⁹⁴ concerning legislative processes and status of constitutional review, Bills awaiting enactment, especially the Child (Care, Protection and Justice) Bill, the National Registration Bill and the Education Act Review; progress made towards adopting the National Action Plan for Children; utilising the CRC in domestic courts;⁹⁵ measures taken towards eliminating harmful practices such as child marriages, and initiation ceremonies;⁹⁶ budget allocated for implementing the CRC; birth registration system; sexual exploitation; and social reintegration services.⁹⁷ Issues related to non-discrimination, especially of children living in poverty, children with disabilities, child participation and administration of juvenile justice were also of interest to the CRC treaty body.

In response, the Malawian government stated that the constitutional review process and the Child Care, Protection and Justice Act (then a bill) were in line with the CRC provisions and that the National Registration Bill, as well as the Education Bill (now Acts) were awaiting enactment. The government started working in 2008 on a Child Protection Policy, which will incorporate the 2004 draft National Action Plan for Children

91 Initial reports of states parties due in 1993: Malawi (n 53) paras 271 & 272.

92 Initial reports of states parties due in 1993: Malawi (n 53) para 35. Some of the programmes and policies adopted by Malawi include the National Programme of Action for the Survival and Development of Children (1993); the Policy Framework for Poverty Alleviation Programme; the National Platform of Action (1996); and 'Vision 2020' (1998).

93 Second periodic reports of states parties due in 1998: Malawi (n 54).

94 List of issues to be taken up in connection with the consideration of the second periodic report of the Malawi, UN Committee on the Rights of the Child (22 October 2008) UN Doc CRC/C/MWI/Q/2 (2008).

95 List of issues to be taken up in connection with the consideration of the second periodic report of the Malawi (n 94) paras 1-3.

96 List of issues to be taken up in connection with the consideration of the second periodic report of the Malawi (n 94) para 4.

97 List of issues to be taken up in connection with the consideration of the second periodic report of the Malawi (n 94) paras 1, 2 & 3 of part II.

(NAPC). The government reassured the UN Children's Committee on the use of the treaty provisions in domestic courts, especially in adoption cases. Although the 'best interests' principle was frequently invoked by the Malawian courts, one of the impediments of its usage consisted in inadequate training of lower courts' magistrates.⁹⁸

Although the government provided, to some extent, data and statistics on budgetary allocations for children's rights, the state is yet to create a system of data collection on children issues. In the absence of clear child rights indicators, monitoring the implementation of Concluding Observations by the government and civil society remains challenging.⁹⁹

Malawi's third to fifth combined report was received by the UN Children's Committee in early 2015.¹⁰⁰ The report, prepared by an all-inclusive Task Force led by the Ministry responsible for Children,¹⁰¹ exposes discrepancies between national legislation and the CRC with regards to the definition of the child; section 23 of the Constitution of Malawi defines a child as a person under the age of 16 years.¹⁰² However, in the Trafficking in Persons Bill a child is defined as a person under the age of 18 years.¹⁰³

Although the Marriage, Divorce and Family Relations Bill raises the minimum age for marriage to 18 years, section 22 of the Constitution still allows for persons between 15 and 18 years to marry, with parental consent.¹⁰⁴ Also, the Penal Code, amended in 2010, raises the age for sexual debut from 13 to 16 years, which creates a conflict with section 22 of the Constitution. The age of criminal responsibility was raised from seven to ten years in 2010.

Although the Constitution does not provide specifically for the right of children to freedom of expression, the Child Care Justice Act provides for

98 See Written replies by the Government of Malawi to the list of issues (CRC/C/MWI/Q/2) prepared by the Committee on the Rights of the Child in connection with the consideration of the second periodic report of Malawi (CRC/C/MWI/2), UN Committee on the Rights of the Child (9 January 2009) UN Doc CRC/C/MWI/Q/2/Add.1 (2009).

99 Written replies by the Government of Malawi to the list of issues (CRC/C/MWI/Q/2) prepared by the Committee on the Rights of the Child in connection with the consideration of the second periodic report of Malawi (n 98) para 7.

100 Third to fifths periodic reports of states parties due in 2013: Malawi (n 55).

101 Third to fifths periodic reports of states parties due in 2013: Malawi (n 55) para 1.

102 Third to fifths periodic reports of states parties due in 2013: Malawi (n 55) para 2.

103 Third to fifths periodic reports of states parties due in 2013: Malawi (n 55) para 17.

104 Third to fifths periodic reports of states parties due in 2013: Malawi (n 55) para 6.

the views of the child to be taken into account by the court in determining custody, placement in foster care or access of a child.¹⁰⁵ Legislative reforms were also proposed with regards to adoption.¹⁰⁶ Concerning healthcare, the report mentions high immunisation rates¹⁰⁷ and a significant decrease in infant, under-five and maternal mortality rates from 2004 to 2011.¹⁰⁸ However, malnutrition remains a challenge, leading to alarming stunting rates as high as 47 per cent.¹⁰⁹ Although there is no legislation on social security, the government has adopted in 2013 the National Social Support Policy (NSSP) for the poor and vulnerable population and has put in place a Social Cash Transfer Scheme.¹¹⁰ The state party continues to experience numerous challenges in the area of education.¹¹¹

According to the list of issues generated by the UN Children's Committee in 2016, the state report failed to provide adequate information concerning constitutional review for child protection, domestication of the CRC, policy development on children's rights, a data collection system, resource usage, Malawi Human Rights Commission and birth registration, among other issues. The state party was requested to provide information concerning measures taken to improve birth registration, to curb violence against children, to upgrade the juvenile justice system, and to address concerns related to the health sector, unaccompanied migrant children and child labour. Disaggregated statistical data were requested by the UN Children's Committee in various areas.¹¹²

5.3 Mauritius

Mauritius' initial report submitted to the UN Children's Committee in 1995¹¹³ covered a variety of issues pertaining to family environment, health and welfare, education, vocational training and cultural activities. Special protection measures refer to children in armed conflict, refugee children, children in conflict with the law and children in situations of exploitation.

105 Third to fifths periodic reports of states parties due in 2013: Malawi (n 55) para 38.

106 Third to fifths periodic reports of states parties due in 2013: Malawi (n 55) para 53.

107 Third to fifths periodic reports of states parties due in 2013: Malawi (n 55) para 61.

108 Third to fifths periodic reports of states parties due in 2013: Malawi (n 55) para 70.

109 Third to fifths periodic reports of states parties due in 2013: Malawi (n 55) para 68.

110 Third to fifths periodic reports of states parties due in 2013: Malawi (n 55) paras 73 & 75.

111 Third to fifths periodic reports of states parties due in 2013: Malawi (n 55) paras 78-97.

112 Third to fifths periodic reports of states parties due in 2013: Malawi (n 55).

113 Consideration of reports submitted by states parties under article 44 of the Convention. Initial report of states parties due in 1992: Mauritius, UN Committee on the Rights of the Child (2 October 1995) UN Doc CRC/C/3/Add.36 (1995).

However, according to the summary of records, the report failed to mention several problematic issues such as teenage pregnancy and a remedial education system,¹¹⁴ and suffered from an uneven representation of all Mauritius islands.¹¹⁵

The second periodic report submitted by the state party in 2004¹¹⁶ mentions, among other issues, the measures taken by the government to ameliorate the situation of children who are victims of abuse, born out of wedlock, abandoned, children living with disabilities, and those living in poverty. Based on this second periodic report, the UN Children's Committee elaborated in 2005 a list of issues,¹¹⁷ which focused mainly on general measures of implementation; data and statistics on budget allocation; children deprived of family environment; children living with disability; abduction; use of drugs, alcohol and tobacco; child abuse; education; children in conflict with the law; and special protection measures. The government's reply¹¹⁸ provided for the data and statistics in accordance with the information from the 2000 Population Census, and mentioned the progress registered by Mauritius concerning adoption or review of laws and policies in line with the treaty.

The combined third to fifth report submitted in 2011¹¹⁹ contains the withdrawal of the reservation to article 22 of the CRC with respect to children seeking refuge or having refugee status in Mauritius,¹²⁰ in line with the UN Children's Committee's previous recommendations. Worth mentioning are also a deeper collaboration between stakeholders dealing with children's rights,¹²¹ more funds towards realising children's rights,¹²²

114 Summary Record of 4 October 1996 file:///C:/Users/User.CREATEK2012/Downloads/G9618501.pdf (accessed 20 August 2017) paras 5 & 6.

115 Summary Record of 2 October 1996 file:///C:/Users/User.CREATEK2012/Downloads/G9618466.pdf (accessed 20 August 2017) para 12.

116 Second periodic reports of states parties due in 1997: Mauritius, UN Committee on the Rights of the Child (19 July 2005) UN Doc CRC/C/65/Add.35 (2005).

117 List of issues to be taken in connection with the consideration of the second periodic report of the Republic of Mauritius, UN Committee on the Rights of the Child (7 November 2005) UN Doc CRC/C/65/Add.35 (2005).

118 See Written replies by the Government of Mauritius concerning the list of issues (CRC/C/MUS/Q/2) received by the Committee on the Rights of the Child relating to the consideration of the second periodic report of Mauritius (CRC/C/65/Add.35), UN Committee on the Rights of the Child (21 December 2005) UN Doc CRC/C/MUS/Q/2/Add. 1 (2005).

119 Third to fifth report of states parties due in 2011: Mauritius (n 59).

120 Third to fifth report of states parties due in 2011: Mauritius (n 59) para 6.

121 Third to fifth report of states parties due in 2011: Mauritius (n 59) paras 7-11.

122 Third to fifth report of states parties due in 2011: Mauritius (n 59) paras 13-17.

data collection¹²³ and the adoption of new legislation reflecting CRC aspirations.

Concerning general measures of implementation, notable are the legislative and policy measures in support of victims of trafficking; the role of the Ombudsperson for Children; the National Human Rights Commission and the Data Protection Office in promoting and protecting children's rights. The third section contains the definition of the child in Mauritius, while the fourth section provides information on the four principles of the CRC.¹²⁴

The list of issues identified by the UN Children's Committee, based on the combined report, was issued in June 2014¹²⁵ and highlights an inadequate collaboration between stakeholders; the role of the Human Rights Action Plan in implementing the treaty; insufficient independence of the Ombudsperson for Children; the status of Children's Bill and the Equal Opportunities Act; training programmes; the right of children to express their views in judicial proceedings; prohibition of corporal punishment; reintegration of child victims of abuse, neglect and violence, measures taken towards preventing sexual exploitation of children; financial support for families; children separated from their parents; inclusive education; maternal and new born healthcare; harmonising the rights of children from rural and urban settings; child labour; street children; and children in conflict with the law.

5.4 Tanzania

In the case of Tanzania, one of the key issues contained in the initial report to the UN Children's Committee concerned the definition of the child and its implications in domestic legislation and practice.¹²⁶ Harmonising the definition of the child in Tanzania is problematic due to the co-existence of statutory, customary and Islamic laws.¹²⁷ Other relevant issues covered

123 Third to fifth report of states parties due in 2011: Mauritius (n 59) paras 18-20.

124 Third to fifth report of states parties due in 2011: Mauritius (n 59) paras 287-320.

125 See List of issues in relation to the combined third to fifth periodic reports of Mauritius, UN Committee on the Rights of the Child (18 July 2014) UN Doc CRC/C/MUS/Q/3-5 (2014).

126 Initial reports of states parties due in 1993. Addendum: United Republic of Tanzania (n 61) sec 2.

127 Under Islamic law, for instance, puberty, which normally occurs around age 15, is considered the right age to define childhood. Under the Constitution, only persons who are 18 years and above can vote and be elected, implying any one below the age of 18 years is presumed to be a child. With respect to marriage, the minimum age for marriage is 15 years for girls and 18 years for boys as per the Law of Marriage Act

by this report were: domestication of the CRC;¹²⁸ education; birth registration; healthcare; and children with disability. The summary of records reveals the UN Children's Committee's concerns with respect to harmonisation of national legislation and customary law with the CRC,¹²⁹ as well as the collaboration between the government of Tanzania Mainland and Zanzibar, and its impact on treaty implementation.¹³⁰

A major improvement mentioned in the second periodic report of Tanzania to the UN Children's Committee is the process of drafting a law for providing a uniform definition of the child. The government also revised its Child Development Policy of 1996 and inaugurated the Policy for Child Survival, Protection and Development (CSPD) in Zanzibar. A national campaign against corporal punishment was organised by the government in 2000 and guidelines were created for its administration in schools and juvenile courts.

The UN Children's Committee requested in the list of issues additional information concerning the definition of the child; corporal punishment; the juvenile justice system; and the use of treaty provisions in domestic courts.¹³¹ In its reply, the government of Tanzania recognised the need to harmonise its national laws with the treaty provisions,¹³² and created a committee dealing with the amendment or repeal of discriminatory laws.¹³³

1971. The same Act states that a married woman of 15 years old and above is no longer a child.

128 Initial reports of states parties due in 1993. Addendum: United Republic of Tanzania (n 61) sec 2.

129 Summary records of the 71st Meeting of the Committee on the Rights of the Child (1 June 2001) para 10 file:///C:/Users/User/Downloads/G0142530.pdf (accessed 20 August 2017).

130 Tanzania is made up of Tanzania Mainland, which government operates within the government of the United Republic of Tanzania, and Zanzibar, which govern all non-union matters in Zanzibar.

131 See List of issues to be taken up in connection with the consideration of the second periodic report of the United Republic of Tanzania (CRC/C/70/Add.26), UN Committee on the Rights of the Child (16 February 2006) UN Doc CRC/C/TZA/Q/2 (2006) 4.

132 See Written replies by the Government of the United Republic of Tanzania concerning the List of issues (CRC/C/TZA/Q/2) received by the Committee on the Rights of the Child relating to the consideration of the second periodic report of Tanzania (CRC/C/70/Add.26) (20 April 2006) UN Doc CRC/C/TZA/Q/2 Add.1 (2006) 24.

133 Among the laws which are to be amended or repealed are: the Law of Marriage Act of 1971, the Adoption Ordinance Cap 375, the Succession and Inheritance Laws, the Affiliation Ordinance Cap 278, the Children and Young Persons Ordinance Cap 13, the Customary Law (Declaration Order) of 1963, and the Probate and Administration Ordinance Cap 445.

Tanzania's combined third to fifth report to the UN Children's Committee¹³⁴ mentioned the adoption of two important laws in line with the treaty: the Law of the Child Act¹³⁵ (in Tanzania Mainland) and the Children's Act¹³⁶ (in Zanzibar). Both acts define a child as a person below 18 years,¹³⁷ and prohibit any act that might subject a child to 'torture, or other cruel, inhuman punishment or degrading treatment including any cultural practice which dehumanizes or is injurious to the physical and mental well-being of a child'.¹³⁸ However, the Zanzibar Children's Act allows for parental discipline which does not lead to physical or mental injury of the child,¹³⁹ while the Law of the Child Act allows for corporal punishment within reasonable limits in accordance with the 'age, physical and mental condition of the child'.¹⁴⁰

The list of issues highlights a few areas on which the UN Children's Committee needed additional information such as implementation of adopted legislation; and establishment of coordination mechanisms between stakeholders.

6 Alternative reports

The alternative reports submitted by civil society are designed to enrich and consolidate the picture treaty bodies receive concerning the children's rights situation in a particular state party. Apart from Malawi, alternative reports have been submitted to the treaty bodies by the civil society in Madagascar, Mauritius and Tanzania, highlighting irregularities affecting children, somehow overlooked by the state party reports.

6.1 Madagascar

In Madagascar, a complementary report was submitted to the UN Children's Committee in 2011 by the National Confederation of Human Rights Platform, supported by UNICEF.¹⁴¹ The process of drafting

134 Third to fifth periodic reports of states parties due in 2012: Tanzania (n 63).

135 The Law of the Child Act 21 of 2009. This law was passed by Parliament on 4 November 2011.

136 Act 6 of 2011. This law was passed by the Zanzibar House of Representatives on 30 March 2011.

137 See sec 4 of the Law of the Child Act; sec 2 of the Zanzibar Children's Act of 2011.

138 See sec 13(1) of the Law of the Child Act; sec 14(1) of the Children's Act of Zanzibar.

139 See sec 14(2) of the Children's Act of Zanzibar.

140 Sec 13(2) of the Law of the Child Act.

141 *Confédération Nationale des Plateformes en Droits Humains (CNPFDH)* 'Alternative report on the implementation of the Convention on the Rights of the Child 2003-2011'

this alternative report involved consultations and national validation workshops, as well as the engagement of children across the country.¹⁴² In comparison to the state party report, this alternative report highlighted the absence of a monitoring and evaluation mechanism for the birth registration rehabilitation programme; corruption related to cases of sexual abuse by foreigners; illegal adoptions; sale of alcohol, drugs and tobacco to minors; and unqualified teachers. Several international NGOs also submitted independent alternative reports, according to their respective areas of activity: corporal punishment; children with disabilities; and breastfeeding.¹⁴³ The first complementary report to the African Children's Committee was submitted in September 2014¹⁴⁴ by a civil society Consortium.

6.2 Malawi

An alternative report to the second state party report was submitted in 2008 to the UN Children's Committee by the Human Rights Consultative Committee (HRCC) in partnership with Plan International, Malawi.¹⁴⁵ On a general note, the report highlights high levels of poverty and a harsh family environment, leading to widespread child rights violations.¹⁴⁶ Lack of political will causes delays with regards to the Constitutional review and the enactment of several Bills for the promotion and protection of children's rights.¹⁴⁷ Children suffer the consequences of harmful customary practices related to initiation ceremonies and inheritance.¹⁴⁸ Sexual abuse,

(2011).

142 Interview with A Rasamoely, President of the NGO CNFPDH, former expert of the African Children's Committee, and main key informant.

143 Global Initiative to End All Corporal Punishment of Children 'Briefing for the Committee on the Rights of the Child pre-sessional working group' (2011); Save the Children/Handicap International 'Sexual violence against children with disabilities, Submission to the Committee on the Rights of the Child's pre-sessional working group for the list of issues of Madagascar' (2011); International Disability Alliance (IDA) 'Suggestions for disability-relevant questions to be included in the list of issues for Pre-sessional Working Group, CRC 58th Session' (2011); International Baby Food Action Network (IBFAN) 'Report of the situation of infant and young child feeding in Madagascar' (2011) <https://www.yumpu.com/en/document/read/22438040/madagascar-ibfan> (accessed 20 August 2017).

144 Civil Society Consortium on Children's Rights 'Alternative report on the application of the African Charter on the Rights and Welfare of the Child' 2005-2014 (2014).

145 NGOs 'Alternative report on the Convention on the Rights of the Child (CRC) Malawi' (NGO report) (September 2008).

146 NGO Report (n 145) 5.

147 NGO Report (n 145) 12, 13 & 15.

148 NGO Report (n 145) 14.

sexual harassment and incest are rampant, especially against the girl child.¹⁴⁹

Child labour is widespread, despite compliance of domestic legislation with international standards (the Employment Act of 2000 and Labour Laws).¹⁵⁰ The outdated Education Act for Malawi (1964) does not provide for compulsory education.¹⁵¹ Children with disabilities and those with special needs and the OVCs are discriminated against and marginalised.¹⁵² In the health sector, maternal mortality is one of the highest globally.¹⁵³ The definition of the child needs to be harmonised with the CRC provisions and across national laws. Children in conflict with the law are not separated from adults in detention facilities partly due to the absence of birth certificates.¹⁵⁴ On a positive note, the establishment of the Children's Parliament and the Children's Courts give effect to their right to freedom of expression,¹⁵⁵ which tends to be suppressed by cultural beliefs.

6.3 Mauritius

In Mauritius, three alternative reports were submitted to the UN Children's Committee in 2014 by a national coalition of members of civil society,¹⁵⁶ by Global Initiative to End All Corporal Punishment of Children,¹⁵⁷ and by the ISS,¹⁵⁸ respectively. The complementary report submitted by the national coalition of members of civil society revealed a disconnect between laws/policies and their concrete implementation.¹⁵⁹ It also mentions several problematic issues such as the lack of coordination between institutions dealing with children; the use of outdated data and

149 As above.

150 NGO Report (n 145) 15.

151 NGO Report (n 145) 35.

152 NGO Report (n 145) 17 & 25.

153 NGO Report (n 145) 19.

154 NGO Report (n 145) 29.

155 NGO Report (n 145) 27.

156 Convention on the Rights of the Child Alternative Report for Mauritius (March 2014) https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/MUS/INT_CRC_NGO_MUS_18011_E.pdf (accessed 30 September 2017).

157 Global Initiative to End All Corporal Punishment of Children Briefing on Mauritius for the Committee on the Rights of the Child, Professional Working Group, June 2014 https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/MUS/INT_CRC_NGO_MUS_18013_E.pdf (accessed 30 September 2014).

158 ISS Country Fact sheet for the CRC (Mauritius) https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/MUS/INT_CRC_NGO_MUS_18010_E.pdf (accessed 30 September 2014).

159 National coalition 3.

statistics; discrimination against children living in poverty, with HIV/AIDS or with disability; children in conflict with the law or using drugs; limited freedom of expression for children; corporal punishment and violence against children; lack or inadequate sexual education, which contributes to the high prevalence of HIV/AIDS and teenage pregnancy; and non-inclusion of children with disability in the mainstream education system.

The National Plan of Action has not yet been translated into reality, the Children's Bill was yet to be enacted and, generally, domestic legislation was not aligned with the CRC. Despite the existence of training programmes for lawyers and police officers, teachers were not included in such programmes. Children were still used for unskilled labour and not treated adequately in the juvenile justice system. All these observations are accompanied by pertinent recommendations.

The alternative report prepared by Global Initiative to End All Corporal Punishment of Children highlighted the fact that in Mauritius corporal punishment is still allowed in the home, as well as in alternative and day care settings, and recommended the prohibition of this abusive practice in all settings, in accordance with article 8 of the CRC. The ISS Country Fact Sheet for the UN Children's Committee focussed on the need of harmonising national legislation dealing with protection of children's rights and also mentioned the issue of street children and the devastating consequences which derive from their status.

6.4 Tanzania

Several NGOs¹⁶⁰ have submitted independent alternative reports to Tanzania's combined (third to fifth) periodic report before the UN Children's Committee. Among the problematic aspects highlighted were the legal age for marriage; inclusiveness of children with disability in the mainstream education system; and corporal punishment.

7 Concluding observations

The recommendations generated by treaty bodies after consideration of state party reports encapsulate the way forward towards improving the lives of millions of children. It is the government's responsibility, as the duty bearer, to act on these recommendations and ameliorate the situation of children's rights in its jurisdiction. Great similarities can be

160 Center for Reproductive Health, Child Reach International, Tanzania Child Rights Forum and Under the Same Sun.

easily identified between the recommendations issued in response of the state parties reports under consideration; such similarities pertain to birth registration, corporal punishment, children with disability, child labour, administration of juvenile justice, education, abuse and violence against children. Issues such as discrimination and harmful traditional practices are also mentioned. Malawi and Tanzania share the need to further work on the definition of the child, and to raise the age of criminal responsibility in accordance with international norms. The need to develop a solid system for collecting disaggregated data, the necessity of setting a mechanism for Concluding Observations' implementation and to review domestic legislation is reiterated by the UN Children's Committee in response to state party reports of Madagascar, Malawi and Mauritius.

7.1 Madagascar

Out of the three sets of Concluding Observations generated by the UN Children's Committee in response to Madagascar's reports (in 1994,¹⁶¹ 2003¹⁶² and 2012,¹⁶³ respectively), this report focuses on the last set, in which the Committee noted with concern that its previous recommendations had not been satisfactorily implemented and recommended the creation of a special institution and a National Plan of Action for implementing existing policies and programmes.¹⁶⁴ In the same vein, the National Council for Human Rights needed to be made operational and the mandate of the Ombudsman Office reviewed and made more accessible to children.¹⁶⁵ Notwithstanding the dire political situation, resources should be made available for realising children's rights, especially in vital areas such as healthcare and education.¹⁶⁶

The UN Children's Committee recommended that Madagascar adopts measures to eradicate discrimination, especially against the girl child, twins, and children with disabilities or living with HIV/AIDS; and

161 See Concluding Observations: Madagascar, UN Committee on the Rights of the Child (14 October 1994) UN Doc CRC/C/15/Add.26 (1994).

162 See Concluding Observations: Madagascar, UN Committee on the Rights of the Child (27 October 2003) UN Doc CRC/C/15/Add.218 (2003).

163 Concluding Observations: Madagascar, UN Committee on the Rights of the Child (8 March 2012) UN Doc CRC/C/MDG/CO3-4 (2012).

164 The National Plan of Action on Violence against Children (2008-2012) & The National Strategy for Preventing Abandonment, Deinstitutionalisation and Community Care of Children in Madagascar (2011-2015).

165 Concluding Observations: Madagascar (n 163) para 15.

166 Concluding Observations: Madagascar (n 163) paras 17-18.

develops policies and programmes aimed at preventing discrimination in accessing education and healthcare services.¹⁶⁷

The state party was urged to create a conducive environment where children could express their views in matters affecting them in schools, at home, in judicial matters and administrative proceedings, according to General Comment 12 (2009) on the right of the child to be heard. With respect to freedom of expression and access to information, the government should encourage children to express ideas in whatever form they may find appropriate.¹⁶⁸

Madagascar was expected to finalise the legislative reform concerning the nationality of children born out of wedlock and children born of a Malagasy mother and of a father of foreign nationality and to adopt measures to grant all children free and compulsory registration at birth, including those in rural areas, making use, if necessary, of mobile registration centres.¹⁶⁹

Legislation prohibiting corporal punishment in all settings, including the home, should be enacted and legal action should be taken against perpetrators; educating the population concerning this harmful practice, in line with General Comment 8 (2008) on the right of the child to protection from corporal punishment is a required action towards meaningful change in this regard. Violence against children, including abuse and neglect, was another issue of concern for the UN Children's Committee, who urged the state party to address the problem by prosecuting perpetrators of such practices; setting the minimum age for sexual consent; providing trainings of officers dealing with child victims; expanding the use of help-line services and community based mutual-help groups; offering financial support and counselling to struggling families; creating awareness about violence against children; and providing remedies to victims.¹⁷⁰

The state party should facilitate access to social services and sustainable income opportunities by developing policies and programmes; as well as fund and implement the National Strategy for Preventing Abandonment, Deinstitutionalisation and Community Care of Children. There was a need to ensure that placements in foster homes and alternative care are periodically reviewed, in accordance with the UN Guidelines for the Alternative Care of Children. Madagascar is expected to prevent illegal

167 Concluding Observations: Madagascar (n 163) para 24.

168 Concluding Observations: Madagascar (n 163) para 30.

169 Concluding Observations: Madagascar (n 163) para 34.

170 Concluding Observations: Madagascar (n 163) para 38.

adoptions by supporting fragile families and by strengthening the Central Authority for Adoption.¹⁷¹

The Committee urged Madagascar to ensure that children with disability have access to education and healthcare services; that perpetrators of abuses against them should be prosecuted and sentenced accordingly; and discrimination against children with disabilities is eliminated by raising awareness among communities. Another step in the right direction would be the ratification of the Convention on the Rights of People with Disabilities by Madagascar.¹⁷²

Sufficient funds should be allocated to the health system, and issues such as malnutrition, malaria and HIV/AIDS should be properly addressed; maternity healthcare services needed improvement; family planning and reproductive health services needed to be made accessible to adolescents, and sexual education should be taught in schools.¹⁷³ The state party was also urged to raise awareness about the consequences of harmful traditional practices, to investigate and prosecute their perpetrators.¹⁷⁴ Madagascar was also expected to provide an adequate standard of living for children, even in rural areas, and support families in the area of nutrition, clothing, housing and access to clean water.¹⁷⁵

On special protection measures, the UN Children's Committee recommended that Madagascar deals with child labour by facilitating access to education and improving socio-economic conditions for children.¹⁷⁶ Madagascar was urged to enforce laws and policies regarding sexual exploitation of children, to amend and supplement provisions in the Penal Code to fight against trafficking in persons and in children, as well as against sex tourism; to create awareness concerning sexual exploitation; and to ensure that child victims are offered special protection. Perpetrators should be prosecuted, and relevant professionals should receive appropriate training.¹⁷⁷ There was a need for Madagascar to ratify all relevant human rights treaties¹⁷⁸ and submit its initial report

171 Concluding Observations: Madagascar (n 163) para 44.

172 Concluding Observations: Madagascar (n 163) para 48.

173 Concluding Observations: Madagascar (n 163) para 50.

174 Concluding Observations: Madagascar (n 163) para 54.

175 Concluding Observations: Madagascar (n 163) para 56.

176 Concluding Observations: Madagascar (n 163) para 60.

177 Concluding Observations: Madagascar (n 163) para 62.

178 Accession to the First Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; Second Optional Protocol to the International Covenant on Civil and Political Rights; Optional Protocol to the CEDAW; Optional Protocol to

to the Optional Protocol under the CRC on the Sale of Children, Child Prostitution and Child Pornography, due 2006. Madagascar should also consider the recommendations with respect to trafficking of the Committee on the Elimination of Discrimination against Women (CEDAW/C/MDG/CO/5 para 21) and the Committee on Economic, Social and Cultural Rights (E/C.12/MDG/CO/2 para 24).

The administration of juvenile justice needed to be harmonised with the CRC, the Committee's General Comment 10 (2007) on children's rights in juvenile justice and other international standards;¹⁷⁹ there was a need for Madagascar to create child-friendly courts, to separate children from adults in prisons, to use child-friendly procedures in line with the 'best interests' principle, to train relevant professionals, to facilitate access of imprisoned children to education, health services and proper nutrition, and to establish reintegration programmes for children upon release. In line with the CRC and the Guidelines on Justice in Matters Involving Children Victims and Witnesses of Crime, Madagascar was expected to protect and offer remedial measures for children victims or witnesses of crimes.¹⁸⁰

The state party must disseminate the present Concluding Observations and translate them in local languages together with the third and fourth periodic report to the UN Children's Committee. Data collected should be disaggregated by age, gender, geographic location, ethnicity and socio-economic background to facilitate analysis of children's situation.¹⁸¹

7.2 Malawi

With respect to Malawi, the UN Children's Committee issued three sets of Concluding Observations: in 2002, 2009 and 2017, respectively. In the first set, the Committee commended Malawi on various achievements in the area of human rights such as section 23 of the Constitution, which upholds the rights of the child; the adoption of various policies and programmes;¹⁸² the establishment of the Child Rights Unit within the

the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families; Convention on the Rights of Persons with Disabilities; Optional Protocol for the Protection of All Persons from Enforced Disappearance.

179 The Beijing Rules, the Riyadh Guidelines, the Havana Rules and the Guidelines for Action on Children in the Criminal Justice System.

180 Concluding Observations: Madagascar (n 163) paras 66-68.

181 Concluding Observations: Madagascar (n 163) para 73.

182 Programme of Action for the Survival and Development of Children (1993), National

Malawi Human Rights Commission; the Children Affairs Division within the Ministry of Gender, Youth and Community Services; the creation of the Children's Parliament and the Young Voices Movement; and the ratification of ILO CRC 182 on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.¹⁸³

However, the UN Children's Committee identified the need for Malawi to review its domestic legislation, policies and programmes, in line with the treaty,¹⁸⁴ and to develop a closer collaboration between various stakeholders dealing with children's rights.¹⁸⁵ Malawi must also develop a system of data collection, reflecting all clusters of rights covered by the CRC.

The UN Children's Committee noted the inefficiency of the Malawi Human Rights Commission in the advancement of children's rights, due to insufficient funds, limited awareness and confusion with respect to its role.¹⁸⁶ As in the case of Madagascar, the UN Children's Committee noted that despite obvious economic challenges, Malawi should prioritise children's issues and allocate a higher budget for realising their rights;¹⁸⁷ this initiative might require international cooperation.¹⁸⁸ The state party is expected to intensify efforts to popularise the treaty by translating it in local languages, engaging with traditional leaders, leading sensitisation campaigns and educating the public.¹⁸⁹

Irregularities were identified with respect to the definition of the child and the minimum age for marriage, the age of criminal responsibility should also be increased, and a minimum age for employment set, in agreement with international standards.¹⁹⁰ Concerning civil rights and freedoms, the UN Children's Committee noted that birth registration was compulsory only for children whose parents are non-Africans, and that corporal punishment is still practiced in schools, in the home and in the justice system.¹⁹¹ The UN Children's Committee recommended the

Youth Council Act (1996) and National Early Childhood Development Policy (1998).

183 Concluding Observations: Malawi, UN Committee on the Rights of the Child (2 April 2002) UN Doc CRC/C/15/Add.174 (2002) para 4.

184 Concluding Observations: Malawi (n 183) paras 6 & 7.

185 Concluding Observations: Malawi (n 183) para 8.

186 Concluding Observations: Malawi (n 183) para 11.

187 Art 4 of the CRC.

188 Concluding Observations: Malawi (n 183) paras 14 & 15.

189 Concluding Observations: Malawi (n 183) paras 16 & 17.

190 Concluding Observations: Malawi (n 183) paras 18 & 19.

191 Concluding Observations: Malawi (n 183) paras 31 & 34.

adoption of a Plan of Action to protect children from violence in all its forms,¹⁹² and the adoption of the Bill on Family Violence.¹⁹³

Malawi was urged to also adopt progressive legislation and policies¹⁹⁴ for protecting the rights (especially to education and healthcare) of specific categories of children such as refugees, unaccompanied minors, asylum-seekers, those who are internally displaced, economically or sexually exploited, street children, and child victims of sale, trafficking and abduction.¹⁹⁵ The Concluding Observations of 2009 highlighted the ratification by Malawi of the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, the signing of the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict and the adoption of laws and policies in line with the CRC.¹⁹⁶ Malawi also ratified or acceded to various international instruments¹⁹⁷ and worked towards realising the rights of vulnerable children.

However, weak implementation concerning legislation reform; inadequate coordination between stakeholders dealing with children's rights; lack of a system for data collection; irregularities concerning the definition of the child and administration of juvenile justice; numerous Bills awaiting enactment; and the persistence of child labour were still elements of great concern.¹⁹⁸ There was a need for a review of domestic legislation, including the Constitution, in line with the CRC. The UN Children's Committee mentioned the National Action Plan for Children (NAPC), which has not yet been finalised, and recommended that Malawi adopts a comprehensive policy on children's rights, in line with the treaty.¹⁹⁹ Despite the creation of the National Technical Working Groups and networks on children's rights, the coordination between these

192 As above.

193 Concluding Observations: Malawi (n 183) paras 39 & 42.

194 Concluding Observations: Malawi (n 183) paras 43 & 56.

195 Concluding Observations: Malawi (n 183) paras 57-66.

196 Prevention of Domestic Violence Act (2006), National Plan of Action for Orphans and Other Vulnerable Children (2005-2009) and National Early Childhood Development Policy (2004).

197 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2005), supplementing the UN Convention against Transnational Organised Crime; Rome Statute of the International Criminal Court (2002) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2005).

198 Concluding Observations: Malawi, UN Committee on the Rights of the Child (27 March 2009) UN Doc CRC/C/MWI/CO/2 (2009) para 6.

199 Concluding Observations: Malawi (n 198) paras 12 & 13.

groups was still challenging;²⁰⁰ the Committee recommended a higher investment of human and financial resources towards this initiative. Commendable was the work of the Malawi Human Rights Commission on children's rights²⁰¹ and the development of the National Policy on Equalisation of Opportunities for Persons with Disabilities. However, the Ministry responsible for People with Disabilities suffered from insufficient resources resulting in children with mental disabilities not being taken into consideration.

There was a need to develop comprehensive data on children with disabilities as well.²⁰² The UN Children's Committee reiterated the necessity to align the definition of the child with the CRC standards²⁰³ and recommended that Malawi applies the four general principles of the CRC when enacting laws, adopting policies and programmes to fight against corporal punishment, violence against children, child labour, and harmful practices.²⁰⁴ The UN Children's Committee recommended that Malawi ensures that all births are registered, that healthcare and nutritional interventions are available, that primary education is free, compulsory and accessible even in rural areas.²⁰⁵

In the Concluding Observations of 2017, the UN Children's Committee acknowledged the adoption by Malawi of various legislative acts and policies related to children's rights.²⁰⁶ However, urgent measures were required in connection to birth registration, abuse and neglect, sexual exploitation, harmful practices, children with albinism and adolescent health.²⁰⁷ Malawi was expected to finalise its constitutional review and domesticate the CRC, increase the budget allocation for realising children's rights, provide disaggregated data concerning children and train all professionals working with or for children.²⁰⁸ The definition of the

200 Concluding Observations: Malawi (n 198) paras 10 & 11.

201 Concluding Observations: Malawi (n 198) paras 14 & 15.

202 Concluding Observations: Malawi (n 198) para 49.

203 Concluding Observations: Malawi (n 198) paras 26 & 27.

204 Concluding Observations: Malawi (n 198) paras 38, 39, 40, 57 & 67.

205 Concluding Observations: Malawi (n 198) paras 36, 37, 52 & 63.

206 The Childcare Protection and Justice Act (2010); the Disability Act (2012); the Gender Equality Act (2013); the Marriage, Divorce and Family Relation Act (2015); the Trafficking in Persons Act (2015); the National Plan of Action for Vulnerable Children 2015-2019; the Early Childhood Development Policy; and the Orphans and Other Vulnerable Children Policy.

207 Concluding Observations on the combined third to fifth periodic reports of Malawi, UN Committee on the Rights of the Child (6 March 2017) UN Doc CRC/C/MWI/CO/3-5 (2017) para 4.

208 Concluding Observations on the combined third to fifth periodic reports of Malawi

child and the minimum age for marriage should be harmonised with the CRC and be uniform in all domestic legislation.²⁰⁹ Children participation must be strengthened.²¹⁰ Malawi was expected to make birth registration compulsory and universal.²¹¹

Measures must be taken to reduce violence against children, including those with albinism, and to curb harmful practices such as child marriage, betrothal, sexual cleansing and abduction.²¹² The state party should review its adoption laws and ratify the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (1993).²¹³ Efforts must be intensified to increase immunisation rates, reduce malnutrition, stunting and child mortality due to malaria and other preventable diseases.²¹⁴ A policy on sexual and reproductive adolescent health must be adopted and abortions must be decriminalised.²¹⁵ Comprehensive measures must be taken with the view of improving education for all, including pregnant girls and children with disabilities and with albinism.²¹⁶

A lot remains to be done concerning the administration of juvenile justice, child labour and children in street situations.²¹⁷ The treaty body recommended that Malawi ratifies a number of core human rights treaties and withdraws its reservations to the Convention relating to the Status of Refugees (1951) in order to give effect to the rights of children under its jurisdiction.²¹⁸

(n 207) paras 5-12.

209 Concluding Observations on the combined third to fifth periodic reports of Malawi (n 207) para 13.

210 Concluding Observations on the combined third to fifth periodic reports of Malawi (n 207) para 16.

211 Concluding Observations on the combined third to fifth periodic reports of Malawi (n 207) para 18.

212 Concluding Observations on the combined third to fifth periodic reports of Malawi (n 207) paras 21-27.

213 Concluding Observations on the combined third to fifth periodic reports of Malawi (n 207) para 30.

214 Concluding Observations on the combined third to fifth periodic reports of Malawi (n 207) para 33.

215 Concluding Observations on the combined third to fifth periodic reports of Malawi (n 207) para 35.

216 Concluding Observations on the combined third to fifth periodic reports of Malawi (n 207) para 37.

217 Concluding Observations on the combined third to fifth periodic reports of Malawi (n 207) paras 40-43.

218 Concluding Observations on the combined third to fifth periodic reports of Malawi

7.3 Mauritius

In the case of Mauritius, this report will focus on the two sets of Concluding Observations issued by the UN Children's Committee in 1996 to the initial report²¹⁹ and in 2006 to the second periodic report,²²⁰ respectively. Among the positive aspects, the UN Children's Committee mentioned the state party's commitment to withdraw its reservation to article 22 of the CRC, to adopt laws and policies, and to create institutions reflecting the CRC aspirations.

There was a need for Mauritius to domesticate the CRC²²¹ and to create a monitoring mechanism on treaty implementation,²²² to allocate sufficient human and financial resources towards realising the rights of vulnerable children;²²³ to disseminate the CRC principles;²²⁴ to decrease the level of illiteracy; to facilitate access to education for children with disabilities;²²⁵ to curb child labour, especially in Rodrigues;²²⁶ to deal with the issue of abuse against children and provide recovery services for the victims;²²⁷ to strengthen the mandate of the National Adoption Council in order to reduce the number of illegal adoptions;²²⁸ and to align the juvenile justice system with the CRC provisions.²²⁹

Therefore, the UN Children's Committee recommended that Mauritius withdraws its reservation to article 22 of the treaty, ensures a better coordination between mechanisms dealing with children and creates an Ombudsperson for the protection of children's rights.²³⁰ Mauritius should create a system of data collection and set indicators for assessing the level of implementation of the CRC.²³¹ Sufficient funds should be allocated

(n 207) paras 39, 44 & 45.

219 See Concluding Observations: Mauritius, UN Committee on the Rights of the Child (30 October 1996) UN Doc CRC/C/15/Add. 64 (1996).

220 See Concluding Observations: Mauritius, UN Committee on the Rights of the Child (17 March 2006) UN Doc CRC/C/MUS/CO/2 (2006).

221 Concluding Observations: Mauritius (n 219) paras 10 & 13.

222 Concluding Observations: Mauritius (n 219) para 11.

223 Concluding Observations: Mauritius (n 219) para 12.

224 Concluding Observations: Mauritius (n 219) para 14.

225 Concluding Observations: Mauritius (n 219) para 15.

226 Concluding Observations: Mauritius (n 219) para 17.

227 Concluding Observations: Mauritius (n 219) para 18.

228 Concluding Observations: Mauritius (n 219) para 19.

229 Concluding Observations: Mauritius (n 219) para 20.

230 Concluding Observations: Mauritius (n 219) paras 21-25.

231 Concluding Observations: Mauritius (n 219) para 24.

for realising economic, social and cultural rights of children;²³² and more training programmes for professionals dealing with children should be organised and campaigns of treaty popularisation should be conducted.²³³ The UN Children's Committee also recommended that Mauritius undertakes a comprehensive study on the impact of malnutrition on child development and ameliorates the situation.²³⁴

The Concluding Observations of 2006 highlighted the adoption by Mauritius of new laws and the ratification of additional treaties.²³⁵ However, the recommendations with regard to reservations and rehabilitation of child victims of abuse were still outstanding.²³⁶ The UN Children's Committee reiterated its previous recommendation with respect to harmonising domestic legislation with the CRC provisions²³⁷ and recommended that the National Plan of Action must reflect the treaty and must involve both the Ombudsman and civil society.²³⁸ The coordination between various ministries and institutions charged with promotion and protection of children's rights was still frail.²³⁹

There was a need for increased human and financial resources to strengthen the Ombudsperson for Children's Office.²⁴⁰ The government needed to put in place a system of data collection on children's rights; improve the training programmes and dissemination methods concerning the treaty provisions;²⁴¹ and provide NGOs with necessary resources so that they can discharge successfully on their mandate.²⁴² The Committee expressed concern with regard to the four general principles, which have not been sufficiently realised in Mauritius.²⁴³

Issues such as late birth registration, corporal punishment and family care remained problematic.²⁴⁴ Children with disabilities, teenage pregnancy

232 Concluding Observations: Mauritius (n 219) para 26.

233 As above.

234 Concluding Observations: Mauritius (n 219) para 28.

235 Concluding Observations: Mauritius (n 220) paras 4 & 5.

236 Concluding Observations: Mauritius (n 220) paras 6 -8.

237 Concluding Observations: Mauritius (n 220) paras 10 & 11.

238 Concluding Observations: Mauritius (n 220) paras 14 & 15.

239 Concluding Observations: Mauritius (n 220) paras 12 & 13.

240 Concluding Observations: Mauritius (n 220) paras 16 & 17.

241 Concluding Observations: Mauritius (n 220) paras 20 & 23.

242 Concluding Observations: Mauritius (n 220) paras 24 & 25.

243 Concluding Observations: Mauritius (n 220) paras 26 & 32.

244 Concluding Observations: Mauritius (n 220) paras 33 & 49.

and HIV/AIDS represented areas of great concern.²⁴⁵ The Committee focused on the need to introduce human rights education in the school curricula, and to use Mauritian Creole as a medium of instruction.²⁴⁶ The Committee mentioned drug abuse, sexual exploitation and juvenile justice as areas in which children need special protection measures,²⁴⁷ and recommended that Mauritius ratifies the first and the second Optional Protocols under the CRC.²⁴⁸ Civil society made use of the Concluding Observations in their programmes, while the media and the academia did not get involved.

7.4 Tanzania

The Concluding Observations of 2001 in response to Tanzania's initial report to the UN Children's Committee focused on Tanzania's domestic legislation (statutory, Islamic and customary), which was not fully aligned with the treaty provisions.²⁴⁹ The UN Children's Committee encouraged Tanzania to adopt a comprehensive children's rights document in line with the CRC, in order to elevate their level of protection.²⁵⁰ The definition of the child, education, birth registration, healthcare, particularly for children with disabilities were identified as major areas of concern.²⁵¹ The UN Children's Committee noted that corporal punishment was permitted by domestic legislation in the context of juvenile justice, in schools and in the home,²⁵² and recommended that the practice be abolished in all settings.²⁵³ The UN Children's Committee also pointed out irregularities in the juvenile justice system and recommended that Tanzania increases the age of criminal responsibility.²⁵⁴

In the Concluding Observations of 2006 to the Second Periodic Report of Tanzania, the UN Children's Committee commended the government

245 Concluding Observations: Mauritius (n 220) paras 50 & 59.

246 Concluding Observations: Mauritius (n 220) paras 60 & 61.

247 Concluding Observations: Mauritius (n 220) paras 62-67.

248 Concluding Observations: Mauritius (n 220) paras 68 & 69.

249 Concluding Observations: United Republic of Tanzania, UN Committee on the Rights of the Child (9 July 2001) UN Doc CRC/C/15/Add.156 (2001) para 10.

250 Concluding Observations: Tanzania (n 249) para 11.

251 At the time, Tanzania had no comprehensive legislation for the protection of the rights of people with disabilities, including children.

252 Concluding Observations: Tanzania (n 249) para 38.

253 Concluding Observations: Tanzania (n 249) para 39.

254 Concluding Observations (n 249) para 23(a) & (b).

of Tanzania for adopting policies²⁵⁵ and ratifying treaties²⁵⁶ for the protection of children's rights.²⁵⁷ However, some of the recommendations of the previous Concluding Observations have not been fully realised, such as harmonising domestic laws with CRC principles, coordination between stakeholders, corporal punishment, child labour and juvenile justice system.²⁵⁸ The UN Children's Committee urged the state party to enact the Children's Act in both Tanzania Mainland and Zanzibar.²⁵⁹

Concerns related to corporal punishment, administration of juvenile justice, birth registration, harmful practices, data collection and resource allocation to children's rights were reiterated by the UN Children's Committee in its third set of recommendations to the state party.²⁶⁰

Concerning the African Children's Committee, the Concluding Observations of the African Children's Committee to the Initial Report of Tanzania are similar to the Concluding Observations of the UN Children's Committee to Tanzania's second periodic report.

8 Effects of Concluding Observations

8.1 Madagascar

Although the recommendations issued in response to Madagascar's reports captured problematic children's issues, they were rather vague about implementation measures. The absence of a follow-up mechanism for implementing concluding recommendations under the CRC impacts negatively on state parties' accountability. A collaboration between the UN CRC treaty body and African Children's Committee was ignited with the view to improving treaty implementation in Madagascar; the African human rights system has been harmonised with the CRC reporting

255 National Refugee Policy (2003); National Disability Policy (2004); Policy for Child Survival, Protection and Development (CSPD) in Zanzibar (2001); and National Policy on HIV/AIDS (2001).

256 First and second Optional Protocols to the CRC, the African Children's Charter and the ILO Convention 182 of 1999.

257 Concluding Observations: United Republic of Tanzania, UN Committee on the Rights of the Child (21 June 2006) UN Doc CRC/C/TZA/CO/2 (2006) para 3.

258 Concluding Observations: Tanzania (n 257) para 6.

259 Concluding Observations: Tanzania (n 257) para 9.

260 See Concluding Observations on the combined third to fifth periodic reports of the United Republic of Tanzania, UN Committee on the Rights of the Child (3 March 2015) UN Doc CRC/C/TZA/CO/3-5 (2015).

mechanism and could serve as a follow-up to the Concluding Observations of the UN Children's Committee.²⁶¹

The recommendations issued by the UN Children's Committee to Madagascar require political will, advocacy strategies, public consultations and resources. A Plan of Implementation of these recommendations was initiated in 2012 by the Ministry of Foreign Affairs in collaboration with other relevant ministries, but lack of political will led to the project's abandonment. Noteworthy are the efforts made by the Directorate on Human Rights within the Ministry of Justice, which has incorporated the concluding recommendations into its annual work plan and proposed the adoption and reform of the Code of Nationality as well as the Anti-Trafficking Bill.²⁶²

The Concluding Observations included concerns raised by NGOs in their alternative reports such as the issue of children with disabilities, corporal punishment and exclusive breastfeeding for the first six months.²⁶³ However, they have not been disseminated among the population and children were not involved in their implementation.²⁶⁴

Although the CNPFDH disseminated the Concluding Observations to local NGOs and conducted oral presentations of the recommendations in Parliament,²⁶⁵ their use by civil society was ineffective. The CNPFDH also intended to establish provincial committees to follow-up on implementation but lack of resources put an end to this initiative.²⁶⁶ Several NGOs started working on specific aspects of the recommendations.²⁶⁷ An international NGO, Humanium, made reference to the Concluding

261 African Committee of Experts on the Rights and Welfare of the Child 'State Parties Reporting Guidelines' para 25.

262 Interview with Fanja Rajoelison, Chief of Service of Human Rights and International Relations, Ministry of Justice.

263 Concluding Observations: Madagascar (n 163) paras 50 & 38.

264 Madagascar country report 22 (copy on file with the author).

265 *Confédération Nationale des Plateformes en Droits Humains* (CNPFDH) 'Report on the restitution of the UN Children's Committee's Concluding Observations to the Transitional Parliament (*Congrès de la Transition*): Madagascar' (2012). See also *Confédération Nationale des Plateformes en Droits Humains* (CNPFDH) 'Report of the regional workshops on the dissemination of the UN Children's Committee's Concluding Observations' (2012), conducted in the regions of Fianarantsoa, Tulear, Antsiranana, Mahajunga, Toamasina and Antananarivo.

266 Madagascar country report 23 (copy on file with the author).

267 Interview with Ms Marie Mardayan, ECPAT Country Representative in Antananarivo on 24 September 2014 <http://www.humanium.org/fr/madagascar/> (accessed 15 October 2017).

Observations and drew attention to various issues of concern.²⁶⁸ NGOs with external funding and headquarters abroad are more likely to make use of the Concluding Observations in their work. ECPAT is working on the Concluding Observations related to sexual exploitation of children.²⁶⁹ The media contribution towards disseminating the Concluding Observations was minimal and refers to publishing several articles on children's rights issues (including on the Concluding Observations of the UN Children's Committee) during the month of June, which was declared by the Malagasy government 'the month of children'.²⁷⁰

8.2 Malawi

With respect to Malawi, the Concluding Observations issued by the UN Children's Committee were relevant, clear and concise, incorporating concerns voiced by several NGOs, as they were reflected in the alternative reports, as well as some of the children's views. Some recommendations such as the enactment of various Bills²⁷¹ require political will rather than allocation of resources.²⁷² However, political instability has been responsible for delays in enactment of those Bills into law.²⁷³

However, in the absence of a plan of action concerning their translation, dissemination and implementation; without clear indicators for assessing progress; without involving children in the implementation process, it will be extremely difficult to achieve their implementation. Although civil society organisations do not have an implementation plan in this regard, they do make use of the Concluding Observations in their programmes. Children were not involved in the implementation of the Concluding Observations.²⁷⁴

8.3 Mauritius

In its Concluding Observations to the Initial Report, the UN Children's Committee welcomed an improved legislative framework. It, however,

268 As above.

269 As above.

270 Madagascar country report 24 (copy on file with the author).

271 The Child, Care, Protection and Justice Bill; the National Registration Bill; the Deceased Estates (Wills, Inheritance and Protection) Bill; the Marriage, Divorce and Family Relations Bill; the Revised Penal Code Bill; the Criminal Procedure and Evidence Bill; and the Education Act Review.

272 Malawi country report 20 (copy on file with the author).

273 Concluding Observations: Malawi (n 198) para 8.

274 Concluding Observations: Malawi (n 198) 21.

remained concerned that the CRC was not yet an integral part of the national legislation in Mauritius. In addition, the Committee remained worried that national laws and regulations were not fully consistent with the principles and provisions of the CRC. Furthermore, the UN Children's Committee expressed concerns about insufficient data collection mechanism.²⁷⁵

In its Concluding Observations to the second periodic report, after commending the state for improvement in the legislative framework, the UN Children's Committee expressed concerns about the fact that issues such as reservations, insufficient facilities for the rehabilitation of child victims of abuse and inadequate research on critical areas concerning children had not been given sufficient follow-up. In addition, the UN Children's Committee was worried about insufficient coordination among different entities dealing with children's rights. With respect to data collection, the UN Children's Committee was concerned about the lack of qualitative and quantitative data disaggregated by sex, age and region in some areas of the CRC.²⁷⁶

Responding to the third to fifth periodic report, the UN Children's Committee in its Concluding Observations welcomed developments in laws, policies and institutions. However, the UN Children's Committee remained concerned that some of its previous recommendations were not (or not sufficiently) implemented, particularly those relating to the absence of a children's act, children with disabilities, sexual exploitation and juvenile justice. Related to data collection, the UN Children's Committee remained concerned about the availability of and the access to up-to-date and disaggregated statistics, especially on certain categories of children, reports and studies on children's rights, which are very limited.²⁷⁷ CSOs have used the Concluding Observations to better define their mandate and to focus on areas of concern. Nevertheless, the Concluding Observations were not widely used by the academia and the media.²⁷⁸

8.4 Tanzania

In its Concluding Observations to the Initial Report of Tanzania, the UN Children's Committee welcomed improvements in the legal and

275 See Concluding Observations: Mauritius (n 219).

276 See Concluding Observations: Mauritius (n 220).

277 See Concluding Observations on the combined third to fifth periodic reports of Mauritius, UN Committee on the Rights of the Child (27 February 2015) UN Doc CRC/C/MUS/CO/3-5 (2015).

278 Mauritius country report 19 (copy on file with the author).

policy frameworks related to children while, at the same time, expressing concerns that domestic, applied Islamic and customary law still do not fully comply with the provisions and principles of the CRC. On data collection, the UN Children's Committee noted that the state party did not ensure the adequate collection of disaggregated data on all aspects of the CRC, monitor and evaluate progress achieved, and assess the impact of policies adopted with respect to children.²⁷⁹

In its Concluding Observations to the second periodic report, the UN Children's Committee, while welcoming improvements in policies and programmes targeting children as well as implementation of some of its previous recommendations, was concerned that recommendations about legislation, coordination, corporal punishment, child labour and juvenile justice had not been given sufficient follow-up. On data collection, the UN Children's Committee remained concerned by the lack of a centralised data collection system.²⁸⁰

In its Concluding Observations to the third to fifth periodic report, the UN Children's Committee noted with satisfaction many legislative and other measures taken by the state party. However, the UN Children's Committee was worried that some of its previous recommendations had not yet been sufficiently implemented, in particular those relating to resources for children, birth registration, corporal punishment, harmful practices and juvenile justice. On coordination, the UN Children's Committee expressed concerns that there is no single coordinating body in the state party, that children's rights are not Union matters and that the approach to the implementation of the CRC is not uniform in the two parts of the Union. On data collection, the UN Children's Committee reiterated its concerns over the absence of a centralised data collection system as well as over the deficiencies in compiling, analysing and processing data relating to the rights of the child.²⁸¹

The picture emerging from the different countries is that while countries are willing and able to implement recommendations related to laws, policies and institutions, they still have persistent challenges relating to resource allocation, effective data collection and coordination

279 See Concluding Observations: United Republic of Tanzania, UN Committee on the Rights of the Child (9 July 2001) UN Doc CRC/C/15/Add/156 (2001).

280 See Concluding Observations: Tanzania (n 257).

281 See Committee on the Rights of the Child Concluding Observations on the combined third to fifth periodic reports: Tanzania (3 March 2015) UN Doc CRC/C/TZA/CO/3-5 (2015).

or substantive alterations to laws that might impact on culture, traditions and religion.

9 Progress between reports

Great strides have been noticed in the countries under consideration regarding adoption of domestic legislation, policies and programmes reflecting treaty provisions and the creation of various institutions for the protection of children's rights. Improvements have been registered concerning corporal punishment, birth registration, education, children living with disability, data collection and juvenile justice.

9.1 Madagascar

Despite the progress registered with respect to children's rights in Madagascar from the submission of the initial report to the UN Children's Committee as of November 2017, it is difficult to attribute this progress to the reporting mechanism entirely.²⁸² However, it is worth mentioning that improvement of children's rights has been noticed in the same issues highlighted by the UN Children's Committee as areas of concern in its recommendations. Madagascar has created the Review Commission on the Rights of the Child (2005) and the Directorate of Human Rights and International Relations (2008), and has adopted legislation on child protection, marriage, education and nationality²⁸³ in response to the UN Children's Committee recommendations of 1994²⁸⁴ and 2003.²⁸⁵ The CRC was translated into Malagasy and widely disseminated. Training on children's rights was done for relevant professionals involved with children. Human rights, in general, including children's rights have been introduced in the curricula at university level.

Despite the creation of a National Committee on Child Protection in 2012 under the Ministry of Population and Social Affairs, its efficiency is rather questionable. Although no plan of action was put in place at the time of research, the state party has drafted, since 1994, various documents for child protection such as the National Strategy for Preventing Abandonment, Deinstitutionalisation and Community Care

282 Save the Children 'What happened? A study on the impact of the Convention on the Rights of the Child in five countries: Estonia, Nepal, Peru, Uganda and Yemen' (2009) <https://resourcecentre.savethechildren.net/node/2910/pdf/2910.pdf> (accessed 15 December 2016) 40.

283 See African Child Policy Forum (ACPF) 'Harmonization of children's laws in Madagascar' (2011).

284 Concluding Observations: Madagascar (n 161) para 18.

285 Concluding Observations: Madagascar (n 162) para 8.

of Children in Madagascar. A national human rights institution existed theoretically from 1996 to 2008, but lack of resources negatively impacted on its effectiveness. In 2014 the government adopted the Law on the Creation of the National Independent Commission on Human Rights and the Marriage and Matrimonial Property Act of 2007, which eliminates the discrimination between girls and boys concerning the minimum age for marriage, set at 18 years.

A progressive development is represented by the change in the general attitude towards twins, who are becoming more accepted by communities,²⁸⁶ with the support of traditional leaders. Madagascar also made progress with respect to the situation of children born out of wedlock or born to a Malagasy mother and a foreign father. This was corrected through a new Act.²⁸⁷

The Malagasy government initiated in 2004 a national programme for reducing the number of children unregistered at birth, especially in rural areas, with marked progress: from 2004 to 2012 the number of children under five unregistered at birth has decreased from 25 per cent to 17 per cent.²⁸⁸ Under-five child mortality has decreased considerably from 166/1000 in the 1990s to 62/1000 in 2012,²⁸⁹ although the figures remain high.

The Central Authority responsible for monitoring adoption is operational and the state party has adopted new laws that regulate adoption and foster care;²⁹⁰ and has put in place hundreds of child protection networks between 2000 and 2014, with the mandate of collecting data, monitoring and protecting children's rights. The government also provided a toll-free number for reporting cases of abuse.

Concerning children with disabilities, the government adopted legislative measures in 1998, which recognise their right to education, even if inclusive education for such children is yet to be realised. A new

286 UNICEF 'The Twins of Mananjary: Between abandonment and protection' (2010).

287 Citizenship Rights in Africa Initiative 'Loi n°2016-038 modifiant et complétant certaines dispositions de l'Ordonnance n° 60-064 du 22 juillet 1960 portant Code de la nationalité malagasy' (15 December 2016) <http://citizenshiprightsfrance.org/loi-n2016-038-modifiant-et-complétant-certaines-dispositions-de-lordonnance-n-60-064-du-22-juillet-1960-portant-code-de-la-nationalite-malagasy/> (accessed 20 August 2017).

288 National Institute of Statistics 'National Survey on the MDG follow-up' (2013).

289 African Child Policy Forum (ACPF) 'The African Report on Child Wellbeing' (2013) 12.

290 Act 2005-014 (2005) and Decree 2006-596 (2006).

law²⁹¹ was adopted in 2004 providing for compulsory education for all, starting from age six; hence, the number of enrolments in primary school has greatly increased. However, by 2012 about half a million children between six and ten years old were still not enrolled in school due to political instability.

To eliminate economic exploitation of children, Madagascar has ratified the ILO Convention 138 on Minimum Age (2000) and the ILO Convention 182 on the Worst Forms of Labour (2001); has adopted a law, in 2004, raising the minimum age for employment to 15 years, in line with the UN Children's Committee's recommendations;²⁹² and has issued a decree, in 2007, which established a list of hazardous work activities prohibited to children under 18 years. 2004 marked the creation of a National Plan to Combat Child Labour, monitored by a National Committee²⁹³ and 11 Regional Committees.²⁹⁴

With a view to combating trafficking in persons and sex tourism, Madagascar adopted legal measures in 2008, which amend and supplement the Penal Code. An inter-ministerial committee against trafficking has been established. The government also established the National Strategy against sexual tourism involving children,²⁹⁵ and an inter-ministerial committee.²⁹⁶

9.2 Malawi

In Malawi, despite significant progress registered in realising children's rights since 2000, the absence of a monitoring mechanism for Concluding Observations' implementation makes it difficult to attribute this progress to the reporting mechanism. The enactment of the Child Care, Protection and Justice Act in 2010 by the Malawian government could be seen as a response to the UN Children's Committee's first set of recommendations. With support from UNICEF,²⁹⁷ Malawi has also made significant progress on birth registration and has put in place measures to facilitate access to

291 Law 2004-004 establishing compulsory primary education.

292 Concluding Observations: Madagascar (n 162) para 60.

293 Established by Decree 2004-985 of 2004.

294 Decree 2005-523 of 2005.

295 Decree 013-2012/MINTOUR (2012).

296 Ministerial Decision 005-2012/MINTOUR/SG/DGN/DNC (2012).

297 UNICEF 'One in three children under five do not officially exist' (11 December 2013) <http://www.unicef.org/esaro5440/malawi/birth-registration.html> (accessed 20 August 2017).

justice for vulnerable groups, including children,²⁹⁸ in line with article 39 of the CRC, which provides for the recovery and reintegration of child victims.

Several laws and policies have been adopted to eliminate corporal punishment in schools. The Child Care, Protection and Justice Act of 2010 stipulates that parents are responsible for the protection of children from 'neglect, discrimination, violence, abuse, exploitation, oppression and exposure to physical, mental, social and moral hazards'.²⁹⁹ Corporal punishment is presumably included here as well.

In line with article 20 of the CRC and through the Malawi Human Rights Commission and the ministry responsible for children, the government also ensured that child care institutions comply with the UN Guidelines on Alternative Care and the Malawi Minimum Rules on the Establishment of Children's Homes.

Malawi also made some progress in the development of a system of disaggregated data collection, especially concerning healthcare and education, as required by article 24 of the CRC.³⁰⁰

The Concluding Observations generated by the UN Children's Committee in 2009 upon consideration of the second state party report, mention progress made by Malawi in adopting laws, policies and plans for the promotion and protection of children's rights,³⁰¹ as well as in ratifying various international treaties such as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.³⁰² However, no comprehensive Children's Policy based on the CRC has been developed by the state party.³⁰³ However, the treaty body notes that previous recommendations in connection to coordination, data collection, definition of the child, juvenile justice and child labour have not been sufficiently addressed by Malawi.³⁰⁴

298 These strategies include Police Victim Support Units, Community Victim Support Units, One Stop Centres and diversion programmes.

299 Art 3 of the Child Care, Protection and Justice Act (2010).

300 Malawi country report (on file with the author).

301 The Prevention of Domestic Violence Act (2006), National Plan of Action for Orphans and Other Vulnerable Children (2005-2009) and National Early Childhood Development Policy (2004).

302 Concluding Observations: Malawi (n 198) para 4.

303 Concluding Observations: Malawi (n 198) para 12.

304 Concluding Observations: Malawi (n 198) para 6.

An increase in the number of children's rights violations reported to the Malawi Human Rights Commission speaks of a greater awareness of its mandate.³⁰⁵ Training programmes were provided to professionals involved in children's rights.³⁰⁶ Despite progress made in reducing infant and child mortality, malnutrition rates are still alarming.³⁰⁷

The UN Children's Committee welcomes the adoption of the National HIV/AIDS Policy in 2003 and the National HIV/AIDS Action Framework (2005-209), but notes with concern the low quality of the healthcare system, in general, as well as the scarcity of antiretroviral treatment for children and pregnant women, in particular.³⁰⁸ Discrimination against the girl child and vulnerable groups of children still persists.³⁰⁹ With regards to education, improvements have been made in the area of early childhood education, gender parity, pregnant learners, schools established in refugee camps, among other issues;³¹⁰ however, education is still substandard, not compulsory and the school environment remains a place of abuse and violence.³¹¹ Child labour still persists, especially in the tobacco and tea sector.³¹² Another concerning issue relates to street children, some of whom are kept in facilities meant for children in conflict with the law.³¹³ A number of children have been trafficked abroad.³¹⁴ The age of criminal responsibility remains concerningly low and children are not separated from adults in detention facilities.³¹⁵ The absence or scarcity of data with regards to all aspects of the CRC is an issue of great concern to the UN Children's Committee.³¹⁶

9.3 Mauritius

Although the CRC has not been fully domesticated in Mauritius, the government has adopted laws, policies and programmes reflecting the treaty aspirations and has also created institutions for the protection

305 Concluding Observations: Malawi (n 198) para 14.

306 Concluding Observations: Malawi (n 198) para 22.

307 Concluding Observations: Malawi (n 198) para 51.

308 Concluding Observations: Malawi (n 198) para 58.

309 Concluding Observations: Malawi (n 198) para 28.

310 Concluding Observations: Malawi (n 198) para 64.

311 Concluding Observations: Malawi (n 198) para 62.

312 Concluding Observations: Malawi (n 198) para 66.

313 Concluding Observations: Malawi (n 198) para 67.

314 Concluding Observations: Malawi (n 198) para 72.

315 Concluding Observations: Malawi (n 198) para 75.

316 Concluding Observations: Malawi (n 198).

of children's rights.³¹⁷ Noteworthy is the withdrawal of the reservation to article 22 of the CRC.³¹⁸ The 'Working Together Concept' has been developed as a remedial initiative in response to concerns raised by the UN Children's Committee concerning insufficient coordination between stakeholders dealing with children. The absence of a comprehensive legal instrument for the protections of children's rights in Mauritius is still an area of concern.

Progress has been registered concerning the legal minimum age for employment by the adoption of the Employment Rights Act of 2008, which differentiates between children and young persons with respect to employment, and confers different levels of protection upon these categories.³¹⁹ Special protection measures have been taken by Mauritius with respect to employment of young persons in certain circumstances.³²⁰

A differentiation has been made as well with respect to young persons and juvenile offenders.³²¹ The state party also adopted the Community Service Order (Amendment) Act stipulating that a minor 16 years and above could be given a community service order instead of imprisonment. The Equal Opportunities Act of 2008 and the HIV and AIDS Act of 2006 have been adopted and children with disabilities benefited from special healthcare services. However, the UN Children's Committee expressed concern with respect to the discrimination still faced by children with disabilities in Mauritius.

Concerning civil rights and freedoms, children have the opportunity to express themselves through the Indian Ocean Child Rights Observatory.³²² The Office of the Ombudsperson for Children has put in place a network for the interaction of different children's clubs.³²³ However, the views of the child are still not considered in cases of divorce and judicial separation. Concerning family environment and alternative care, Mauritius developed residential care institutions as well as foster care, a concept which was strange to the population at the time of submitting the initial report to the UN Children's Committee. A number of initiatives have been promoted in this area: the National Parental Empowerment Programme; a training

317 The Ombudsperson for the Children's Office; the Data Protection Office; and the Child Development Unit.

318 Combined third to fifth reports of States parties due in 2011: Mauritius (n 59) para 140.

319 Combined third to fifth reports of states parties due in 2011: Mauritius (n 59) para 278.

320 Combined third to fifth reports of states parties due in 2011: Mauritius (n 59) para 519.

321 Combined third to fifth reports of states parties due in 2011: Mauritius (n 59) para 533.

322 Combined third to fifth reports of states parties due in 2011: Mauritius (n 59) para 324.

323 Combined third to fifth reports of states parties due in 2011: Mauritius (n 59) para 323.

for caregivers in Rodrigues; the Community Child Protection Programme; family life education programmes; and progressive procedures for international adoption. Assistance of children between ten and 16 years in situations of neglect, abuse, distress or social integration difficulties was also made available. Children who have been sexually exploited are taken care of by the Ministry of Gender Equality, Child Development and Family Welfare through its Drop-in Centre.

Education was made compulsory up to 16 years. Mauritian Creole is used as the medium of instruction at primary level. The state party has put in place the Early Childhood Care and Education Authority for monitoring government and private pre-primary schools.³²⁴ The creation of the Mauritius Institute of Training and Development represents a step forward in the education system.

9.4 Tanzania

From the overview of the Concluding Observations above, Tanzania has made some progress, but has failed to implement some of the recommendations of the two treaty bodies. While the government adopted laws, put in place plans of actions and coordinating mechanisms as recommended by the two Committees it, nevertheless, insufficiently implemented the recommendations on harmonising cultural, traditional and religious norms with the CRC, on effective coordination, improved resources allocation, effective data collection and reporting system, among others.

Worth noting is the fact that following the first set of Concluding Observations issued by the UN Children's Committee, Tanzania ratified the ILO Convention 182 on the Elimination of the Worst Forms of Child Labour in June 2001, the African Children's Charter in March 2003, the Optional Protocol on the Involvement of Children in Armed Conflict and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

Also, in Tanzania, in order to establish common standards in protecting children's rights, the Child Development Policy of 1996 was revised, while in Zanzibar the Policy for Child Survival, Protection and Development (CSPD) was inaugurated in 2001.³²⁵ Concerning mechanisms for implementation of the CRC, the governments of Tanzania and

324 Combined third to fifth reports of states parties due in 2011: Mauritius (n 59) para 472.

325 The Policy attempts to provide a broad framework for the protection of children's rights in Zanzibar.

Zanzibar, respectively, established various institutions and departments for compliance with the CRC. However, the budget allocation to such institutions remains a challenge.

A national campaign against corporal punishment was launched in Tanzania in 2000. The Ministry for Community Development, Gender and Children took the lead in the campaign, along with different NGOs and other relevant stakeholders. According to the guidelines that were developed, only headmasters of schools were allowed to administer corporal punishment. Additionally, the number of strokes was reduced from six to four. In juvenile courts, the sentence of corporal punishment should not exceed 12 strokes.³²⁶

In the reply to the list of issues raised by the UN Children's Committee after considering Tanzania's second periodic report, with respect to legislation discrepancies, the government of Tanzania pointed out that it had established a committee to solicit public views on the amendment or repeal of all discriminatory, statutory or customary laws.³²⁷

The UN Children's Committee also welcomed the establishment of the Special Desk for Children's Affairs within the Commission for Human Rights and Good Governance.³²⁸ The most tangible achievement was the adoption of the Law of the Child Act,³²⁹ applicable to Tanzania Mainland, and the Children's Act,³³⁰ applicable in Zanzibar.³³¹ The two pieces of legislation reflect principles enshrined in the CRC. Significantly, the Law of the Child Act constructs a common definition of a child as any person below the age of 18 years.³³² Similarly, the Children's Act defines a child

326 Global Initiative to End All Corporal Punishment of Children United Republic of Tanzania, Briefing for the Human Rights Council, Universal Periodic Review, 12th session (2011) 2.

327 Among the laws which were to be amended or repealed are: the Law of Marriage Act of 1971; the Adoption Ordinance Cap 375; the Succession and Inheritance Laws; the Affiliation Ordinance Cap 278; the Children and Young Persons Ordinance Cap 13; the Customary Law (Declaration Order) of 1963; and the Probate and Administration Ordinance Cap 445. See Written replies by the Government of the United Republic of Tanzania concerning the list of issues received by the Committee on the Rights of the Child relating to the consideration of the second periodic report on Tanzania (n 132) B. General measures of implementation.

328 The Commission for Human Rights and Good Governance was established in 2001 by arts 129-131 of the 1977 Constitution of the United Republic of Tanzania and the CHRG Act, Chap 391 of 2001.

329 The Law of the Child Act 21 of 2009 was passed by Parliament on 4 November 2011.

330 Act 6 of 2011 was passed by the Zanzibar House of Representatives on 30 March 2011.

331 Third to fifth periodic reports of States parties due in 2012: Tanzania (n 63) para 6.

332 Sec 4 of the Child Act.

as any person below 18 years.³³³ The reporting process under the CRC led to great improvements in the legal and policy framework concerning children's rights.

It also contributed to an increased level of cooperation between various government institutions as well as between the government and civil society. Due to the recommendations of the UN Children's Committee, the number of NGOs involved in the reporting process has increased from the first to the combined state report. International organisations such as the International Labour Organisation (ILO), UNICEF, Save the Children, Tanzania Child Rights Forum (TCRF), Legal and Human Rights Centre (LHRC), the National Organisation for Legal Assistance (NOLA), the International Committee of the Red Cross and the International Organisation for Migration were specifically mentioned to be consulted in preparing the report.³³⁴

10 Conclusion and recommendations

It would be fair to acknowledge the fact that all four countries considered for this study have registered a certain degree of progress in realising children's rights from the first reporting cycle under the CRC or the African Children's Charter. Although it is difficult to quantify to what extent the change was induced by the reporting mechanism, as such, its impact is considerable. However, considering the concrete situation of children on the ground, as reflected in state party reports, alternative reports and treaty bodies' recommendations, the need for improvement remains evident.

Despite the adoption of laws, policies and programmes in line with the aspirations encapsulated in the CRC and the African Children's Charter, these treaties have not yet been domesticated in the countries under consideration in this study. The lives of millions of children in these countries could be changed by implementing the theoretical frameworks that are formally adhered to by their respective governments.

Political and economic instability (as in the case of Madagascar and Malawi), a two-tier type of government (such as the one of Tanzania), lack of political will (in all states considered for this study), insufficient collaboration between stakeholders (in Mauritius) are detrimental to realising children's rights. This negative impact could manifest itself in the government's non-compliance with its reporting obligations; reluctance to adopt or review domestic legislation; refusal to allocate adequate

333 Sec 2 of the Zanzibar Children's Act.

334 Third to fifth periodic reports of states parties due in 2012: Tanzania (n 63) para 3.

resources to ministries, NGOs, NHRIs or other institutions dealing with children's rights; lack of or inadequate dissemination of the Concluding Observations issued/generated by treaty bodies; reluctance to translate the state party reports and the Concluding Observations into local languages; and reluctance to make the reporting process an inclusive and participatory exercise.

An issue for further consideration is the uneven representation of all islands, in the case of Mauritius and Tanzania, when it comes to state party and complementary reports. Islands such as Rodrigues and Zanzibar are at times minimally/marginally represented, or not represented at all.

10.1 General recommendations

Therefore, it is recommended that the efficacy and efficiency of the reporting process should be enhanced by a more consultative and participatory approach and it should always include children's views. There is a need to establish a well-resourced (in terms of finances, human and technical potential) system of collecting disaggregated data so that the country reports contain accurate and up to date information. Despite the challenging economic situation, all four countries under scrutiny should prioritise children's issues and allocate more funds towards the realisation of children's rights.

Concerning Concluding Observations, there is a need to translate them into local languages in order to make them accessible to the population; they should also be made available in a child-friendly format. Media, academia and various NGOs should disseminate and make use of the Concluding Observations in holding the government accountable. Still, Concluding Observations could guide civil society in their programmes and activities and could also represent an advocacy tool. The recommendations could also be better used by governments towards advancing children's rights by adopting a comprehensive Plan of Action for their implementation. There is a need to create a national coordinating mechanism to monitor the implementation by governments of the Concluding Observations generated by treaty bodies.

10.2 Specific recommendations

In the case of Madagascar, in order to maximise the impact of the reporting process, it is recommended that the Reporting Committee should also follow up on the implementation of the Concluding Observations and should benefit from sufficient resource allocation. Academia, media and civil society should intensify their efforts towards dissemination and

implementation of the Concluding Observations and should engage in a continuous dialogue with the government pertaining to children's rights issues. Local NGOs should engage in dialogue with international NGOs for support and guidance and should conduct awareness-raising campaigns among communities in order to bring about positive change concerning children's rights.

There is a need to identify clear child rights indicators and key actors in various ministries dealing with children for the purpose of drafting a concrete Implementation Plan of the Concluding Observations. Creating a national database on child protection will ensure continuity in case of change of government. There is a need as well to conduct capacity strengthening training of staff dealing with children's rights at all levels. The government should allocate sufficient resources (human, technical and financial) to support positive initiatives aimed at advancing children's rights in Madagascar, such as the Central Authority for adoptions and the National Plan of Action combatting violence against children. Furthermore, the country is still struggling in various areas such as corporal punishment, child marriage, inclusive education for children with disabilities, child participation and relevance of child's views. It is, therefore, recommended that Madagascar prioritises these issues.

In Malawi, NGOs dealing with children should submit complementary reports that would provide insight into the situation of children in the country. Drafting of state party reports should be done by a local consultant who has first-hand knowledge of the situation of children, assisted by an international consultant who would bring objectivity to the process.

With respect to Mauritius, it is recommended that the Concluding Observations of the UN Children's Committee should be more realistic and should take into account the country's particularities. A deeper collaboration between various actors involved in realising children's rights could lead to better results.

In respect of Tanzania, collaboration between the government of Tanzania and that of Zanzibar in the reporting exercise as well as in the implementation process could create a more conducive environment for realising children's rights. Outstanding issues yet to be appropriately addressed by Tanzania are corporal punishment, legal age for marriage, inclusiveness of children with disabilities, and the right of children born out of wedlock to inheritance. It is recommended that the state party address these issues as a matter of priority.

The reporting mechanism to treaty bodies is definitely a useful and necessary tool towards advancing children's rights on the continent. However, this initiative could be more profitable for children if state parties would prioritise it by investing more financial, technical and human resources in it.