

Chapter 13

Article 12

Leisure, recreation and cultural activities

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1. State parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. State parties shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

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1 Introduction

The right of the child to rest and leisure, to engage in age-appropriate play and recreational activities, and to freely participate in African cultural life and the arts is interrelated to the enjoyment of other children's rights. These rights are essential for the proper growth, cognitive development and socialisation of the child.¹ This is so because children are in the human life phase of continuous development, which requires engaging in free (unstructured) and structured play and recreational activities coupled with rest and leisure as well as participation in cultural life.

However, the situation of children's play, recreational activities, rest and leisure in Africa is dire with insufficient attention being given to the implementation of the provisions in article 12 of the African Charter on the Rights and Welfare of the Child (African Children's Charter).² The enjoyment of article 12 rights is often perceived as a luxury in comparison to the other rights of which the violations bear more cruel, visible and spectacular consequences.³ The luxurious perception towards the rights is relatively persistent, despite the wide recognition in and outside child development circles of the critical contribution that rest, play, leisure and culture have for the social, cognitive and personal growth of the child.⁴ Globally, the importance of play has been significantly elevated by the United

1 See N Lott *The right of the child to play: From conception to implementation* (2023) 16-36.

2 See, in general, the view of CRC Committee General Comment 7 Implementing child rights in early childhood (2005) para 34.

3 P David 'Article 31: The right to leisure, play and culture' in A Alen and others (eds) *A commentary on the United Nations Convention on the Rights of the Child* (2006) para 42.

4 UNICEF *Sports, recreation and play* (2004) 1-2; Lott (n 1) 16-36.

Nations (UN)'s adoption of a resolution declaring 11 June of 2024 the inaugural 'International Day of Play', and to be celebrated annually.

Africa is diverse, with a multiplicity of socio-economic, political and cultural dispositions, yet the continent faces a range of challenges that constrain the realisation and implementation of the right to play, rest and leisure. For example, the International Labour Organisation (ILO) and the United Nations Children's Fund (UNICEF) estimate that sub-Saharan Africa is experiencing the highest prevalence of child labour, with over 86,6 million children working in hazardous, risky and exploitative work environments such as the mining industry.⁵ Children in Africa are mostly engaged in child labour in the family context and are assigned domestic responsibilities such as subsistence farming. There is a gender dimension to this, wherein girls often take up domestic chores and responsibilities to support around the home, coupled with heavy domestic labour that deprives them of recreation and rest.⁶ More so, many children across the continent are engaged in commercial plantation, fisheries and forestry, among performing other extensively exhausting tasks that interfere with children's rights to play, leisure and rest.⁷ In addition, Africa is experiencing a rapid unplanned and unregulated urban sprawl, with significant spatial and environmental challenges. Consequently, children's rights in general and, specifically, the right to play, leisure and recreation are especially at risk in many urban environments where the spatial design of transport systems, density of housing, (in)accessibility of public spaces or facilities, poor waste management systems, pollution and all manner of dangers create a hazardous environment for children.

The general situation in most African states is that the right to play, leisure and recreation is weakly recognised at multiple levels of governance and policy interventions. Some have claimed that the right to play is a forgotten right under international law,⁸ and this is also true under African regional law. Article 12 rights perhaps are underinvested rights on the continent. There is evidence of low government budgetary allocation towards leisure and recreational activities and limited or inadequate funding towards play and recreational facilities.⁹ There is also a glaring exclusion of children with disabilities and marginalised girls from enjoying the right to play, leisure and recreation due a multiplicity of factors such as cultural norms that place girls in subservient positions in society. This is despite ample evidence that shows the positive impact of play and recreation on children's physical and psychological development, including social skills, negotiation, conflict resolution, self-control, and to facilitate social integration of all groups of children.¹⁰

This chapter explores the ways in which state parties to the African Children's Charter have implemented the right enshrined in article 12 of the Charter, specifically how it links to other rights, the domestication of the right, and investment in the implementation of the right. The first part highlights

5 ILO & UNICEF *Child labour: Global estimates 2020, trends and the road forward* (2021) 13, 22. A study conducted in Ghana, Niger and Tanzania highlights the gender dimension in the mining sector and how girls in small scale mining are reported to have experienced excessive exhaustion, general body pains or abdominal pains, arm pains, headaches, and dizziness due to deprivation of rest, leisure and recreation, thereby impacting on their well-being. See Bureau for Gender Equality and International Programme on the Elimination of Child Labour *Girls in mining: Research findings from Ghana, Niger, Peru and the United Republic of Tanzania* (2007) 3-14.

6 ILO & UNICEF (n 5) 6.

7 ILO & UNICEF (n 5) 37.

8 N Lott 'Understanding forgotten rights' in J Hohmann & B Goldblatt (eds) *The right to the continuous improvement of living conditions: Responding to complex global challenges* (2021) 131-138; R Hodgkin & P Newell *Implementation handbook for the Convention on the Rights of the Child* (2007) 469; Lott (n 1) 1.

9 See combined 1st, 2nd, 3rd, 4th, 5th, 6th and 7th report submitted by the Republic of Botswana to the African Children's Committee on the implementation of the African Charter on the Rights and Welfare of the Child (2003-2021) para 172. See also Concluding Recommendations by the African Children's Committee on the Republic of Cameroon's Report on the Status of Implementation of the African Charter on the Rights and Welfare of the Child (2017) para 21.

10 See S Lester & W Russell *Children's right to play: An examination of the importance of play in the lives of children worldwide* (2010) 1-53.

the indivisibility of the right and how it is connected to the realisation of the other rights in the African Children's Charter. In part 2 the chapter discusses how the rights contained in article 12 are protected and provided for in other global and African regional instruments, demonstrating the significance of the right. This is followed, in the third part, with an extensive exploration of what the content of the right is and how it could be interpreted to ensure the holistic interpretation of the right. Part 4 provides a synopsis of the domestication of the right in member states, and the last part concludes the chapter.

2 Links to other Charter articles

The right to play and recreation, rest and leisure is interdependent and interrelated with other rights in the African Children's Charter. Within the continuum of rights, the right to rest and leisure stands out as an enabling right towards the realisation of other rights in the Charter. Some of the central rights implicated include the right to education, survival and development, health, freedom of association and expression. The right to play, recreation, rest and leisure lays the foundation for the harmonious development of the child,¹¹ such as physical, mental, emotional and social cognitive development, as well as being a preparatory pillar towards school readiness for younger children. The deprivation of the right to rest, leisure, play and recreation has a domino effect towards the realisation of all other rights. For purposes of demonstrating the indivisibility of rights, a few examples are provided below.

First, the rights to play and recreation, rest and leisure are predominately associated with the right to education. This approach is partly informed by the Reporting Guidelines of the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee), which require states to report on these rights under 'education, leisure and cultural activities'.¹² Informed by this guidance, states submit their reports to the African Children's Committee categorising the rights enshrined under article 12 in the educational context. Like the right to education, the rights contained in article 12 of the African Children's Charter open the door for the 'development of the child's personality, talents and mental and physical abilities'.¹³ For example, without enough rest children cannot perform well in school, thereby undermining the right to education. In many countries, children's play and recreation activities are individually and collectively realised in a school set-up because schools provide the infrastructure and safe spaces for play. The African Children's Committee's draft General Comment on the right to education draw the linkages between article 12 rights and article 11 on the right to education. While it is yet to be adopted by the Committee, it is worth noting that the draft General Comment omits to clarify on and spell out the duties, responsibilities and facilitative role of educational systems in ensuring access to play and recreation, rest and leisure and cultural activities in a structured manner.¹⁴

Play and recreation are essential to children's survival and development, enabling them to discover and live to the fullest of their potential. It is noted that the rights in article 12 of the African Children's Charter are essential to children's health and well-being, for the promotion of creativity, imagination, self-confidence, self-efficacy, and physical, social, cognitive as well as emotional development. In its General Comment on article 31 regarding the responsibilities of the child, the African Children's Committee notes that the right to play is useful in helping children to learn and manage their

11 Eg, see the combined (initial and periodic) report of the Republic of Benin on the Implementation of the African Charter on the Rights and Welfare of the Child for the period 1997-2015 para 279.

12 Guidelines for Initial Reports of State Parties (prepared by the African Children's Committee pursuant to the provision of article 43 of the African Charter on the Rights and Welfare of the Child) Cmttee/ACRWC/2 II. Rev2 para 19. See also African Children's Committee Guidelines on the Form and Content of Periodic State Party Reports to be Submitted Pursuant to Article 43(1)(b) of the African Charter on the Rights and Welfare of the Child para 24(b).

13 See art 11(2)(a) of the African Children's Charter. For an extensive discussion on the right to education, see ch 12 above in this *Commentary*.

14 See draft General Comment on Article 11 – The right to education of the African Charter on the Rights and Welfare of the Child (2024).

responsibilities.¹⁵ In addition, the rights contained in article 12 are interlinked to the enjoyment of the rights of children with disabilities. For instance, article 13(2) of the African Children's Charter provides that children with disabilities should be enabled to enjoy their full potential, including the provision of 'recreation opportunities'.¹⁶ Further, article 12 rights are linked to freedom of expression, freedom of association, the right to access information, access to the media, and to identity, among other rights contained in the Children's Charter. More so, the child's right to participate has a significant role in planning more creative and stimulating cultural activities.¹⁷

Climate change poses a great risk to children's play and recreation. Children often play outside, and may be exposed to extreme climatic events, which may be intensified by rising global temperatures and heat waves. Scientifically, children have a high vulnerability to extremely high temperatures and heat waves, as this may result in increased child mortality and consequently undermine the right to life, survival and development. From a health rights perspective,¹⁸ this could result in child-related health conditions that are caused by heat waves and atmospheric pollution, such as asthma and other respiratory tract infections.¹⁹ It should be noted that the majority of children in sub-Saharan Africa play outside and not indoors. While the African Children's Charter makes no express mention of children's environmental rights in the context of climate change, it does not absolve state parties from promoting the right to a healthy, clean and safe environment.²⁰ Climate change, environmental degradation, and unsafe and hazardous environments undermine the enjoyment of the rights contained in article 12 of the African Children's Charter and are risk factors for children's health, safety and development.²¹ In the context of the climate crisis, the Committee on the Rights of the Child (CRC Committee) has declared the need for states to ensure that in public developmental planning, priority should be given to the creation of environments that promote the well-being of children such as parks and playgrounds. It notes that consideration should be given to providing access to safe, affordable and accessible transportation, to green areas, large open spaces and nature for play and recreation; creating safe local environments that is for free play, free from pollution, hazardous chemicals and waste, and undertaking road traffic measures to reduce pollution levels near households, schools and playgrounds, including through the design of zones in which children that are playing, walking and cycling have priority.²²

It is mandatory for states, in their reporting to the African Children's Committee, to provide the relevant information, including the principal legislative, judicial, administrative or other measures such as projects and programmes; the institutional infrastructure for implementing policy in this area, particularly monitoring strategies and mechanisms; and factors and difficulties encountered and progress achieved in implementing the relevant provisions of the African Children's Charter, in respect of leisure, recreation and cultural activities.²³

15 African Children's Committee General Comment on Article 31 of the African Charter on the Rights and Welfare of the Child on 'The Responsibilities of the Child' para 37.

16 For an extensive discussion of children with disabilities, see the chapter on article 13 of the Charter in this *Commentary*.

17 Hodgkin & Newell (n 8) 473.

18 See art 14(1) African Children's Charter.

19 M Franchini & PM Mannucci 'Impact on human health of climate changes' (2015) 26 *European Journal of Internal Medicine* 1-5.

20 See R Fambasayi & M Addaney 'Cascading impacts of climate change and the rights of children in Africa: A reflection on the principle of intergenerational equity' (2021) 21 *African Human Rights Law Journal* 29-51.

21 CRC Committee General Comment 26 (2023) on children's rights and the environment, with a special focus on climate change para 60.

22 CRC Committee General Comment 26 (n 21) para 61.

23 Guidelines for Initial Reports of State Parties (n 12) para 19.

3 Leisure, recreation and cultural activities under international law

Under international law, the rights of children to rest and leisure, to engage in play and recreational activities are enshrined in article 31 of CRC. Article 12 of the African Children's Charter mirrors article 31 of CRC *verbatim*, which demonstrates the complementarity of the two legal instruments. Without the *travaux préparatoires* of the African Children's Charter on the article 12 rights, the mirroring of the provision in the Charter and CRC explains the origins of the right by linking it to the *travaux préparatoires* of CRC. It is important to note that the right received recognition as far back as 1959 in the Declaration of the Rights of the Child, which declared that the 'child shall have full opportunity for play and recreation' with an emphasis that 'society and the public authorities shall endeavour to promote the enjoyment of this right'.²⁴

In relation to article 31 of CRC, the Committee on the Rights of the Child issued General Comment 17 in 2013 that focuses on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts.²⁵ The General Comment stands as the only global normative guidance, so far, in relation to the right to rest, leisure, play and recreational activities. More so, the CRC Committee has continuously elaborated how the rights in article 31 of CRC are connected to the realisation of all other rights of the child. For example, in its General Comment 7 on implementing child rights in early childhood, the CRC Committee underscored that play is one of the most distinctive features of early childhood development in that it opens a door for self-awareness, creative play and exploratory learning.²⁶

Rest and leisure are also recognised under other international human rights instruments. The rights to rest and leisure were originally incorporated in article 24 of the Universal Declaration of Human Rights (Universal Declaration) in the context of work, with a view to ensuring that employees should take a break from work, regain strength and enjoy leisure activities. Similarly, article 7(d) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides for rest and leisure in the context of work exclusively. Yet, the right to play in CRC and the African Children's Charter does not explicitly link to a specific situation, context or setting. This enables the linkages to be forged between play, leisure, artistic and cultural life to education, protection from exploitation and labour, survival and development, among other rights.

The right to freely participate in cultural life and the arts, also, is anchored in international human rights law, specifically article 27 of the Universal Declaration and article 15 of ICESCR. In particular, article 27(1) of the Universal Declaration specifies that the right to freely participate in cultural life is related to 'the community', whereas neither the African Children's Charter nor CRC provides any such specifications.²⁷ Also, the Universal Declaration and ICESCR recognise the right to share in scientific advancement (or progress) and its benefits (or applications) – which are not recognised in CRC and the Children's Charter.

Children in vulnerable situations and circumstances require tailor-made and special support to ensure access to the rights contained in article 12 of the African Children's Charter. For instance, children with disabilities require particular assistance to access play, recreational facilities and cultural life, with the need to ensure inclusive forms of recreation. Article 25 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, 2018,

24 Art 7 the Declaration of the Rights of the Child, 1959.

25 See CRC Committee General Comment 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art 31).

26 CRC Committee General Comment 7 (n 2) para 34.

27 David (n 3) para 19.

provides for the rights of persons with disabilities to recreation, sports and cultural activities. Similarly, article 30(5) of the Convention on the Rights of Persons with Disabilities (CRPD) provides that persons with disabilities should be enabled to participate on an equal basis with others in recreational, leisure and sporting activities. Specifically, it declares that children with disabilities must be provided with equal access with other children to participation in play, recreation and leisure and sport.²⁸ Also, it provides that persons with disabilities are entitled to take part on an equal basis with others in cultural life, and states shall take all appropriate measures to ensure that persons with disabilities enjoy access to cultural materials in accessible formats, and access to television programmes, films, theatre and other cultural activities.

In addition, the rights in article 12 of the African Children's Charter should be enjoyed in all contexts, including by children in institutions, such as hospitals or in other forms of detention. For instance, the UN Rules for the Protection of Juveniles Deprived of their Liberty declare that child offenders deprived of their liberty should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.²⁹ Further, child offenders in detention are entitled to appropriate recreational and physical exercise, to participate in sports, as well as arts and leisure-time activities.³⁰ In addition, recreational services should also be provided for and to children of imprisoned mothers, who are living in detention facilities.³¹ While the African Children's Committee's General Comment 1 on article 30 of the African Children's Charter relating to children of incarcerated and imprisoned parents and primary care givers is silent on the rights of children in detention with their care givers, it is imperative to highlight how detention facilities should ensure the right to play in the context of early childhood learning and development. It has to be noted, however, that the African Children's Committee has on numerous occasions recommended the need to ensure that state parties create more play and recreational spaces that are accessible to children with disabilities.³²

4 Interpreting article 12 of the African Children's Charter

Article 12(1) consists of the rights to rest and leisure, to engage in play and recreational activities appropriate to the age of the child, and to freely participate in cultural life and the arts. This part provides key concepts, the scope of the rights and the nature of the obligation of states towards the realisation and implementation of these rights. It is imperative to provide the definitions of what these rights entail. The African Children's Committee has not had an opportunity to clarify the normative basis of the right on the continent. However, given the complementing role that CRC plays towards the interpretation of the African Children's Charter, reference in this part will be made to the normative guidance of the CRC Committee.

4.1 Rest and leisure

Rest and leisure are closely linked and affirm the importance of respite in children's lives when there is no expectation of activity or responsibility.³³ According to the CRC Committee, the right to rest demands that children are

28 Art 30(5)(d) CRPD.

29 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (1990) para 18(c).

30 See CRC Committee General Comment 24 (2019) on children's rights in the child justice system para 95(b); *United Nations Rules* (n 29) para 47.

31 See, eg, the recommendation of the African Children's Committee in Concluding Observations and recommendations of the African Children's Committee on the Initial Report of the Republic of Burundi on the status of the implementation of the African Charter on the Rights and Welfare of the Child (2018) para 42.

32 See Concluding Observations by the African Children's Committee on the Republic of Ghana initial report on the status of implementation of the African Charter on the Rights and Welfare of the Child (2016) para 28.

33 G Lansdown 'Article 31: The rights to rest, play, recreation, and cultural and artistic activities' in Z Vaghri and others (eds)

afforded sufficient respite from work, education or exertion of any kind, to ensure their optimum health and well-being. It also requires that they are provided with the opportunity for adequate sleep. In fulfilling the right to both respite from activity and adequate sleep, regard must be afforded to children's evolving capacities and their developmental needs.³⁴

Rest is almost as important to children's development as the fundamental basic rights such as nutrition, housing, health care and education.³⁵ In fact, a plethora of rights are interdependent on the child's right to rest. For example, a well-rested child who has had enough sleep time has the potential to perform better in school and is less at risk of physical and psychosocial health problems.³⁶ Indeed, over-tired children may be unable to learn and are more susceptible to illness. Rest includes relaxation and sleep. A primary responsibility of member states, therefore, is to ensure that there are adequate regulatory mechanisms to guarantee children enough time for sleep, rest and relaxation.³⁷ The African Children's Committee has noted, in respect of rest, that sleep is a fundamental ingredient for physical, mental and other forms of growth, especially for children who generally require more sleep than adults.³⁸ As a matter of fact, it has underscored that

[d]evelopmentally, children who are weak or tired due to lack of or inadequate sleep or rest cannot focus on other activities or experiences and cannot participate actively or effectively in them. This is the case whether in relation to education, cultural life, arts or any other activity. Tired children cannot engage in any activity however exciting it may be, and very little learning, if any, will be the outcome. Tired children are also more likely to exhibit inappropriate social behaviours if forced to participate in any activity rather than being encouraged and allowed to sleep or rest.³⁹

Second, the right to leisure is considered to refer to time in which play or recreation can take place. The CRC Committee defines this as free or unobligated time that does not involve formal education, work, home responsibilities, performance of other life-sustaining functions or engaging in activity directed from outside the individual.⁴⁰ An important element is that the right to leisure is largely discretionary, and the time should be used as the child chooses. Hodgkin and Newell argue that the right to leisure encompasses more than just having sufficient time to sleep at night, and serves as a necessary reminder that children need some respite time for themselves.⁴¹

4.2 Play and recreation

The right to play is broadly defined by scholars,⁴² as well as in the jurisprudence of the CRC Committee. Play is free, unstructured and, in some instances, controlled engagement of children in exciting activities. The CRC Committee defines play to be any

behaviour, activity or process initiated, controlled and structured by children themselves; it takes place whenever and wherever opportunities arise. Caregivers may contribute to the creation of environments in which play takes place, but play itself is non-compulsory, driven by intrinsic motivation and undertaken

Monitoring state compliance with the UN Convention on the Rights of the Child (2022) 285.

34 CRC Committee General Comment 17 (n 25) para 14(a).

35 P David *Human rights in youth sports. A critical review of children's rights in competitive sports* (2005) 61.

36 See David (n 3) para 46.

37 See Hodgkin & Newell (n 8) 470.

38 African Children's Committee General Comment on article 31 (n 15) para 37.

39 African Children's Committee General Comment on article 31 (n 15) para 38.

40 CRC Committee General Comment 17 (n 25) para 14(b).

41 Hodgkin & Newell (n 8) 471.

42 Lott (n 1) 4-13; Lansdown (n 33) 281-290.

for its own sake, rather than as a means to an end. Play involves the exercise of autonomy, physical, mental or emotional activity, and has the potential to take infinite forms, either in groups or alone ... The key characteristics of play are fun, uncertainty, challenge, flexibility, and non-productivity. Together, these factors contribute to the enjoyment it produces and the consequent incentive to continue to play.⁴³

In Africa, the Children's Charter is the first and only legally-binding continental human rights instrument that recognises the right to engage in play and recreation. The rights to freely play and recreational activities are only recognised for children. The right to play is different from the right to recreation activities, as 'play' refers to unstructured informal activities of children that are not controlled by adults, although they may be supervised and facilitated by them, and which do not necessarily conform to any rules. One of the conditions is that play should remain based on spontaneity, freedom and informality.⁴⁴

It is noted that recreation is an umbrella term used to describe a very broad range of activities, including, participation in music, art, crafts, community engagement, clubs, sports, games, hiking, camping, and pursuing other hobbies.⁴⁵ What this entails is that children are free and entitled to engage in online and offline activities. An essential element is to emphasise that the activities should be freely and voluntarily chosen by children. While many recreational activities are organised and managed by adults because they often take place in spaces specifically designed for it, the role of adults is facilitative and supervisory. David argues that both play and recreation activities need to be undertaken under 'competent supervision' and in conformity 'with the standards established by competent authorities, particularly in the areas of safety and health'.⁴⁶ This is in line with the requirement in article 12(1) that play and recreational activities need to be 'appropriate to the age of the child'. Age appropriateness stipulates the need to consider the child's age in determining the amount of time to be provided, the nature of spaces and environments available, the forms of stimulation and diversity required and the degree of adult supervision to ensure safety and security.⁴⁷

Recreational activities imply a more organised and formal form of activities that in some instances can be framed by precise rules. They can be related to the school curriculum, such as sports, performing and creative arts, culture, and so forth. A similarity of both rights is that they cover activities that are based on free choice and are in no way compulsory; they generally take place outside the formal school settings.⁴⁸ States thus are obliged to take effective legislative, administrative and other measures to ensure that all children have access to safe, clean and healthy environments to play and engage in recreational activities, including parks and playgrounds. This also entails ensuring that provision is made for recreation, leisure and play for children with disabilities within learning and educational environments, through responsible authorities (ministries and departments) at all levels,⁴⁹ including in the local government spheres.

4.3 Free participation in cultural life and the arts

The rights contained in article 12 of the African Children's Charter also include the right to freely participate in African cultural life and the arts. The meaning of the right is two-fold and needs to be child-oriented and specific. It encompasses, on one hand, the child's right to join adults in their cultural

43 CRC Committee General Comment 17 (n 25) para 14(c).

44 David (n 3) para 58.

45 Lansdown (n 33) 286.

46 David (n 3) para 58.

47 CRC Committee General Comment 17 (n 25) para 14(e).

48 David (n 3) para 56.

49 Committee on the Rights of the Child General Comment 9, 2006, CRC/C/GC/9 paras 44-46.

and artistic pursuits and, on the other, the right to child-centred cultural and artistic engagements.⁵⁰ Simply put, children have the right to be both consumers and producers of arts and culture. Thus, in ensuring the realisation of the right, recognition must be afforded to the extent to which children are not merely passive recipients of an inherited culture but play a significant role in maintaining and transforming cultural life through imaginative play, songs and stories, and increasingly in the online environment.⁵¹ Any cultural and artistic activities that are or potentially are an affront to the provisions in the African Children's Charter are condemned and should be avoided, discouraged and outlawed.

Hodgkin and Newell note that children should not be barred from adults' events or performances without good reason (for example, because the child might be psychologically harmed or because young infants might disrupt the performance). In addition, children should be given opportunities to participate in all forms of cultural and artistic activity as well as being able to enjoy performances and exhibitions specifically for their pleasure.⁵² In other words, the right to freely participate in cultural life and arts, like any other child right, is on the one hand identical to the right recognised for adults, but on the other hand its child-specific dimension needs to be acknowledged, especially in relation to the protection and participation rights.

4.4 Obligations emanating from article 12

Article 12 declares that states 'recognise' the rights contained in this provision, they 'shall respect and promote' the enjoyment of these rights and 'shall encourage' the provision of appropriate and equal opportunities for the realisation of the rights. The reference to 'recognise' in paragraph 1 depicts that there is no doubt that the right is well acknowledged by member states. In paragraph 2 the terms 'respect and promote' are used, though not related to the rights to play and rest in the earlier paragraph. A possible explanation could be that the drafters of the African Children's Charter, guided by the provisions of CRC, considered that the right to play is covered by the right to recreational activities. These obligations must be read together with article 1 of the African Children's Charter, and the requirement for states to 'undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Charter'. It could be argued that article 12 of the African Children's Charter requires states to take all measures to ensure as immediately as is feasible the full realisation of rights recognised in the provision.⁵³

The nature of the rights in article 12 entails that some elements could be taken up by the private non-state actors with the financial ability to invest in play, leisure and recreational infrastructure. However, this does not absolve states from their obligations and the responsibility of ensuring that the rights of children are respected and also that the regulatory standards are in line with the African Children's Charter.⁵⁴ Private infrastructure investments in the sector complements the efforts by government to ensure service provision, only if it is properly regulated to ensure accessibility and public safety. For example, a greater percentage of technological infrastructure in many African countries benefited from investments from the private sector, including in the digital environment. There is no doubt that digital interaction is beneficial for children. A child's online digital presence supports their development through learning, socialisation and play.⁵⁵ More so, play, leisure and recreational activities have evolved into the digital space. In its General Comment 25 on children's rights in relation to the digital environment, the CRC Committee took note that children experience pleasure, interest and

50 David (n 3) para 77; Hodgkin & Newell (n 8) 473.

51 Lansdown (n 33) 287.

52 Hodgkin & Newell (n 8) 470.

53 See similar argument in the context of art 31 of CRC; David (n 3) para 31.

54 See, eg, CRC Committee Report of the thirty-first session (UN Doc CRC/C/121, 2002) para 653.

55 See UNICEF 'COVID-19 and its implications for protecting children online', <https://www.unicef.org/sites/default/files/2020-04/COVID-19-and-Its-Implicationsfor-Protecting-Children-Online.pdf> (accessed 11 March 2024).

relaxation through engaging with a wide range of digital products and services of their choice, noting that children express the concern that adults might not understand the importance of digital play.⁵⁶ The CRC Committee underscored that

[d]igital forms of culture, recreation and play [must] support and benefit children and reflect and promote children's differing identities, in particular their cultural identities, languages and heritage. They can facilitate children's social skills, learning, expression, creative activities, such as music and art, and sense of belonging and a shared culture. Participation in cultural life online contributes to creativity, identity, social cohesiveness and cultural diversity. States parties should ensure that children have the opportunity to use their free time to experiment with information and communications technologies, express themselves and participate in cultural life online.⁵⁷

The obligations extend beyond state parties to the business sector, to ensure that as children access article 12 rights in the digital environment, they are protected from online harm. The challenges for internet regulation, data governance and online presence for children is exacerbated by the fact that some countries such as Zimbabwe have limited available data on internet usage by children, thereby hampering proper monitoring.⁵⁸ To ensure safe digital play and recreation, states and the business sector must provide guidance, age ratings and labelling or certification regarding the form and opportunities for children's leisure and development.⁵⁹

In addition, as states promote opportunities for online culture, leisure and play, it has to be balanced with attractive offline alternatives in neighbourhoods and communities. There is evidence that engaging children in physical play, movement and direct face-to-face interaction with other people is essential for young people's language development, coordination, social skills and emotional intelligence.⁶⁰ As such, parents, care givers and other professionals must, within the confines of their duties, contribute to ensuring that children do not indulge in excessive digital play, but it has to be properly balanced for the holistic development of the child. In the spirit of international cooperation as inspired by article 4 of CRC, development partners and the business sectors play a significant role in the investment towards the construction of playgrounds in schools and communities.⁶¹ However, the challenge of development partner-driven investments is that they are confined to their funded programmatic areas and are often not based on the deprivations and needs of the communities in question.

5 Domestication of article 12 in national legal systems

The right to rest, leisure, play and recreation is incorporated in national legal and policy frameworks of African states, albeit in various forms. In many countries, rest and leisure, as well as play and recreation are an integral part of the public school system. For instance, countries such as Ghana,⁶² Botswana,⁶³

56 CRC Committee General Comment 25 (2021) on children's rights in relation to the digital environment para 106.

57 CRC Committee General Comment 25 (n 56) para 107.

58 O Sibanda 'Protection of children's rights to privacy and freedom from online exploitation and abuse in Southern Africa. A case study of South Africa and Zimbabwe' (2020) 12, <https://repository.gchumanrights.org/items/34767633-af23-400c-b4d9-fd58f8712564> (accessed 11 March 2024).

59 Such obligations should be viewed in light of the state duty to protect children's rights and the cooperate responsibility to protect the rights of children. See, eg, the UN Guiding Principles on Business and Human Rights (2011); and CRC Committee General Comment 16 (2013) on State obligations regarding the impact of the business sector on children's rights.

60 CRC Committee General Comment 25 (n 56) para 109.

61 See, eg, initial report of the Republic of Guinea to the African Children's Committee on the implementation of the African Children's Charter 73.

62 Concluding Observations Ghana (n 32).

63 Combined reports Botswana (n 9).

Guinea⁶⁴ and others have placed the mandate for the realisation of these rights within the various ministries and departments responsible for education, sports and children. However, although some private schools have playgrounds and recreational areas, most public and private schools (nursery, primary and secondary) do not have such facilities.

Article 12 of the African Children's Charter is domesticated in national legislation in one way or another. For instance, the Children Act of Kenya provides that the right to leisure, play and participate in non-harmful cultural and artistic activities is every child's entitlement.⁶⁵ More so, it places the responsibility upon the government (at all levels) and parents to ensure the realisation of the rights, including instructing that every county government shall designate accessible public areas for children's play and recreational facilities.⁶⁶ The Zanzibar Children's Act protects the right to play in the context of rights relating to living conditions, imposing the duty upon parents, care givers and other public authorities towards children in general and specifically to take 'all appropriate measures within their means to support the right to participate in play, sports, cultural and artistic activities and other constructive leisure activities which are relevant to his [or her] age'.⁶⁷ The Children's Acts of Ghana,⁶⁸ Uganda⁶⁹ and The Gambia,⁷⁰ respectively, provide that every child has a right to leisure, to participate in sports, and in positive cultural and artistic activities. The Children's Act of South Africa domesticates the right under 'general principles' and notes that in all proceedings, actions or decisions in a matter concerning a child there has to be recognition the child needs to 'engage in play and other recreational activities appropriate to the child's age' as part of their development.⁷¹ Angola's Child Code acknowledges that every child has the right to entertainment and the right to enjoy rest.⁷²

On the other hand, some countries incorporate rights contained in article 12 of the African Children's Charter in policy frameworks. These are either in early childhood policies and strategies, or in national child policies. The South African National Integrated Early Childhood Development (ECD) Policy, 2015 recognises the right to play as an integral part of learning from childhood, and reinforces the importance of toy groups, toy libraries and other facilities at the community level to ensure that every child has access to and enjoy the right.⁷³ The Ethiopian National Child Policy, 2017 clearly stipulates children's rights to play, leisure, recreation, and cultural and artistic activities as a major policy direction.⁷⁴ In addition, its draft Early Childhood Development and Education Policy, 2019 also promotes children's rights to leisure and cultural activities. Furthermore, in light of urbanisation, the government of Ethiopia has embraced the UNICEF child-friendly cities initiative with the aim to create conducive urban environments for children to learn, play and entertain themselves with sports, artistic and cultural activities.

The domestication of laws and policies relating to the right to rest, leisure, play, creation and cultural activities is commendable. However, there is a need for governments to invest in the realisation of the rights contained in article 12 of the African Children's Charter. In South Africa, the National

64 See the initial report of the Republic of Guinea to the African Children's Committee on the implementation of the African Children's Charter.

65 Art 14(1) Kenya's Children Act 29 of 2022.

66 Arts 14(2)-(3) Kenya's Children Act.

67 Art 10(7) Zanzibar Children's Act 6 of 2011.

68 Sect 9 Children's Act of Ghana 560 of 1998.

69 Art 4(1)(h) Children's (Amendment) Act of Uganda, 2016.

70 Sec 16 Children's Act of Gambia, 2005.

71 Sec 6(2)(e) Children's Act 38 of 2005.

72 See arts 124-125 of the Angola Child Code, 2011.

73 South Africa's National Integrated Early Childhood Development Policy (2015).

74 Sec 3(5) National Children's Policy of the Federal Democratic Republic of Ethiopia (2017).

Integrated ECD Policy notes the importance of investing and allocation of adequate resources for the realisation of play, recreation and cultural facilities for young children in town/city planning processes and spatial upgrading.⁷⁵ It notes that the support should also extend to parents and care givers because their understanding of the importance of play in a child's early learning and development is a huge investment in the future of children. The government of Ethiopia, through the Addis Ababa City Administration, has committed to the establishment of public parks with children's playing grounds,⁷⁶ as well investment into constructing playgrounds for children in government-led housing programmes particularly in Addis Ababa.⁷⁷ There is notable investment by development partners and humanitarian actors in the right to play across the African continent. Initiatives such as the 'learning through play', mostly funded by the LEGO Foundation and other initiatives by actors working in communities, schools, and humanitarian settings, are supporting and complementing government efforts to ensure the realisation of the right on the continent.⁷⁸ However, while there is significant investment in urban areas, it is noted that children in rural areas have enough space to play and yet with limited access to play facilities, whereas children in urban areas have access to play facilities without the space required to enjoy the right.⁷⁹

6 Conclusion

Based on the above, it could be argued that the rights contained in article 12 of the African Children's Charter have been subject to low government commitment manifesting in limited investment towards the realisation of these rights. To a greater extent, most African children are deprived of the rights due to socio-economic and cultural factors. The gender dimension, in particular, deprives girls from enjoying the right to rest and leisure, play and recreation. There is a need for states to be deliberate about investing and ensuring that girls, specifically, who are often overburdened with domestic chores, are given ample and equal opportunities to enjoy the article 12 rights. The chapter has noted that the right to play is not systematically canvassed in various governance levels, which has the potential for the right to receive less investment and advocacy from both governments, businesses and other stakeholders.

It is commendable that the African Children's Committee has been consistent in demanding from states to report on how the article 12 rights are being implemented – with an indication of the progress and challenges encountered. While notable progress is being made through state party reporting, there is a need for the African Children's Committee to elevate the status of the right to play and rest and to require states to be more detailed in their reports, as these rights are critical to enjoyment of other rights. Also, the Children's Committee, in light of Africa's deprivations and unique challenges to article 12 rights, could provide normative guidance on how states ought to fully invest and implement provisions of article 12 of the African Children's Charter.

75 South Africa's National Integrated Early Childhood Development Policy (n 73) 27.

76 Eg, children's play, recreational and cultural centres were established in the Unity Park at the National Palace in Addis Ababa, Ethiopia.

77 Combined 4th and 5th periodic reports of the Federal Democratic Republic of Ethiopia to the African Children's Committee (2014-2019) 48.

78 Some of the organisations include Play Africa Children's Museum, Play Action International, Right to Play, among others, that have operations across different countries.

79 See, eg, Republic of Ghana's initial, 1st and 2nd consolidated report to the African Children's Committee (2005-2013) para 253.