

# Chapter 16

## Article 15

### Child labour

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1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.
2. State parties to the present Charter take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the International Labour Organisation's instruments relating to children, state parties shall in particular:
  - provide through legislation, minimum ages for admission to every employment;
  - (a) provide through legislation, minimum ages for admission to every employment;
  - (b) provide for appropriate regulation of hours and conditions of employment;
  - (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article;
  - (d) promote the dissemination of information on the hazards of child labour to all sectors of the community.

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## 1 Introduction

Article 15 of the African Charter on the Rights and Welfare of the Child (African Children's Charter) protects children from economic exploitation and prohibits work that is likely to be hazardous or to interfere with their development. However, the African Children's Charter does not categorically

prohibit children from working.<sup>1</sup> This subtle distinction is especially significant, given that child labour remains an issue of grave concern in Africa, with the region accounting for the highest number of child workers globally, with nearly half of these children engaged in hazardous work.<sup>2</sup>

In addition to the prohibition on work that is exploitative, hazardous or harmful to a child's development, the African Children's Charter recognises that children also have certain responsibilities, including contributing to their communities through forms of work that are appropriate to their age and conditions.<sup>3</sup> This approach acknowledges that not all forms of work are inherently harmful.<sup>4</sup> In some cases, work can positively contribute to a child's development and well-being, depending on factors such as the child's age, the nature of the work and the conditions under which it is performed.<sup>5</sup>

Article 15 also involves issues that straddle the boundaries between cultural practices, economic necessity and international human rights standards.<sup>6</sup> This highlights the challenges in addressing child labour in diverse cultural and socio-economic contexts.<sup>7</sup> Also, the emerging issues of child labour in the digital sphere cannot be ignored as they characterise some new forms of work that may be exploitative.<sup>8</sup> Understanding and conceptualising the parameters of article 15 is essential for states to effectively meet their obligations to promote and ensure the protection of children's rights.

## 2 Significance of article 15 of the African Children's Charter

Child labour is a complex issue that extends beyond human rights concerns alone.<sup>9</sup> It involves issues with economic, social and cultural dimensions. The issues around child labour have also with time

1 J Sloth-Nielsen & BD Mezmur 'A dutiful child: The implications of article 31 of the African Children's Charter' (2008) 52 *Journal of African Law* 178.

2 ILO 'Child labour: Global estimates 2020, trends and the road forward', <https://www.ilo.org/publications/major-publications/child-labour-global-estimates-2020-trends-and-road-forward> (accessed 19 August 2024). In this joint publication by the ILO and UNICEF, by 2020 global estimates, sub-Saharan Africa had the highest number of child workers at about 86,5 million, with about 38,5 million of the children engaged in work that is considered hazardous. The statistics also show an increase. In 2016, about 72 million children in Africa, translating to about one-fifth of African Children, were in child labour. see African Union 'African Union is committed to ending child labour and other forms of human exploitation', <https://au.int/en/articles/african-union-committed-ending-child-labour-and-other-forms-human-exploitation> (accessed 17 August 2024).

3 Art 31 African Children's Charter.

4 When concerns are raised about child labour and how it violates children's rights, the focus often centres on the unsuitability of the conditions for children. Attention is typically drawn to issues such as long working hours, exposure to harmful substances such as nicotine or pesticides and the consequent health risks. In the African context, this concern extends to children working in hazardous environments, such as artisanal mines, where the risk of mine collapses can lead to death or where exposure to dangerous substances such as mercury can cause brain damage and other severe health conditions. See Human Rights Watch 'Child labour,' <https://www.hrw.org/topic/childrens-rights/child-labor> (accessed 13 August 2024); M Kusemachibi 'Kadoma's small-scale miners turn to child labour' *The Standard* 20 August 2023, <https://www.newsday.co.zw/thestandard/standard-style/article/200015550/kadomas-small-scale-miners-turn-to-child-labour> (accessed 13 August 2024).

5 Sloth-Nielsen & Mezmur (n 1) 178.

6 TC Nhenga-Chakarisa 'Who does the law seek to protect and from what? The application of international law on child labour in an African context' (2010) 10 *African Human Rights Law Journal* 167-168. See also GK Batano and others 'Small-scale mining and child labour in Kolwezi, Democratic Republic of Congo' (2023) 54 *Journal of African Studies and Development* 69-83. Here the authors point out that in some circumstances the narrative of exploitation is not without contestation since children end up navigating poverty to fend for themselves and their families.

7 Batano and others (n 6).

8 BMS Freitas and others 'Between play and exploitation: What is the place of the rights of child YouTubers?' (2024) 14 *European Journal of Investigation in Health Psychology and Education* 1197-1213; R Hall & C Pilgrim 'Family vlogs can entertain, empower and exploit' *The Conversation* 27 September 2023, <https://theconversation.com/family-vlogs-can-entertain-empower-and-exploit-211093> (accessed 13 August 2023); S van der Hof and others 'The child's right to protection against economic exploitation in the digital world' (2020) 28 *International Journal of Children's Rights* 846-848.

9 T Buck *International child law* (2014) 227.

changed in form and scope, posing challenges to the implementation of the normative frameworks that seek to protect children's rights and welfare. While child labour is a global issue,<sup>10</sup> Africa remains a region that has the highest number of child workers, with a significant number involved in hazardous work.<sup>11</sup>

Protecting children from exploitation, hazardous work and work that may interfere with their development serves as a cornerstone in the broader framework of protecting children's rights. This chapter seeks to define the extent of article 15 and address emerging issues such as child labour in the digital sphere, which present new challenges to children's rights. By conceptualising the scope of article 15 and offering guidelines on prohibited practices, the chapter aims to strengthen the promotion and protection of children's rights as guaranteed by the African Children's Charter, especially in the context of child labour.

### 3 Child labour in context

Africa has witnessed multifaceted and often severe issues of child labour.<sup>12</sup> The region has dealt with child labour on a wide spectrum, which includes the most egregious forms such as child slavery and forced labour.<sup>13</sup> Regrettably, Africa has a high number of children in slavery.<sup>14</sup> Child labour in Africa includes the worst forms of child labour such as forced begging, impacting on other rights such as survival and development, education, leisure, recreation and cultural activities and health.<sup>15</sup> The region also has the highest number of children engaged in hazardous work.<sup>16</sup> In some states, children are subjected to harsh conditions in industries such as mining, especially in artisanal and small-scale operations where they are exposed to dangerous environments and exploitative practices.<sup>17</sup> Agriculture also remains a significant sector where child labour is prevalent.<sup>18</sup> Children often work long hours in hazardous conditions, depriving them of education and a safe childhood.<sup>19</sup> Further, in the African context, some forms of child labour are subtle and often go unnoticed, yet their impact is deep. For example, when girls are burdened with excessive domestic chores, it not only deprives them of their childhood but also hinders their development and growth.<sup>20</sup>

In addition to traditional forms of labour, the African Children's Charter must respond to emerging challenges brought about by technological advancements. The rise of digital platforms has introduced new avenues for child exploitation, such as some new forms of exploitative child labour.<sup>21</sup> Children

10 As above.

11 ILO (n 2). To illustrate the high prevalence of child labour in the region, the 2020 estimates show that while sub-Saharan Africa had about 86 million and 600 000 children engaged in child labour, the second highest region, namely, Asia Pacific, had about 48 700 children in child labour.

12 ILO (n 2).

13 J Sloth-Nielsen 'Remedies for child rights violations in African human rights systems' (2023) *De Jure Law Journal* 636-637.

14 African Children's Committee 'Thirtieth ordinary session of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC)', <https://www.acerwc.africa/sites/default/files/2022-07/30th-Session-Report-Eng.pdf> (accessed 19 August 2024).

15 Sloth-Nielsen (n 13) 663-634.

16 ILO (n 2).

17 Batano and others (n 6); Kusemachibi (n 4).

18 ILO 'Child labour in Africa', <https://www.ilo.org/resource/child-labour-africa#:~:text=In%20Africa%2C%20agriculture%20accounts%20for,million%20children%20in%20absolute%20terms.> (accessed 14 August 2024).

19 As above.

20 FAO 'Gender dimensions of child labour', <https://openknowledge.fao.org/server/api/core/bitstreams/d35a31ad-cb9e-4a01-a3dc-33f23095f7b9/content> (accessed 16 August 2024).

21 Hall & Pilgrim (n 8); JC Wong "'It's not play if you're making money': How Instagram and YouTube disrupted child labour laws' *The Guardian* 24 April 2019, <https://www.theguardian.com/media/2019/apr/24/its-not-play-if-youre-making-money-how-instagram-and-youtube-disrupted-child-labor-laws> (accessed 15 August 2024).

are increasingly becoming social media influencers or professional e-sport players, often at the behest of parents and companies, and this form of child labour is rarely regulated.<sup>22</sup> Literature presenting an African perspective on these developments is limited, yet these emerging forms of exploitative labour require comprehensive measures to ensure that children are protected from exploitation in the digital age.

## 4 Linking child labour to African Union programmes and priorities

### 4.1 Day of General Discussion, 2017

In recognition of the significance of child labour as a challenge to the attainment of children's rights, the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) collaborated with the International Labour Organisation (ILO) to host a Day of General Discussion with a focus on the situation of child labour in the region.<sup>23</sup> The Day of General Discussion highlighted the pervasive escalating issue of child labour, and deliberated on the high prevalence of child labour, especially in sub-Saharan Africa, with a significant portion of the children involved in hazardous work.<sup>24</sup> The discussion examined the intersection between child labour, modern slavery and poverty, highlighting the need for comprehensive legal frameworks and comprehensive social protection systems.<sup>25</sup> On its own end, the African Children's Committee highlighted its role in enforcing the African Children's Charter, including the possibility of a General Comment on article 15.<sup>26</sup> The General Comment was also suggested in the Draft Action Plan for eradicating child labour in Africa of the African Union (AU).<sup>27</sup> In its report to the AU's Executive Council, the African Children's Committee stated that it had decided to undertake a baseline study on child labour in Africa.<sup>28</sup> The study confirmed the extensive nature of child labour in Africa, and the need to strengthen the approach to the issue within the regional context, in order to enhance the implementation of article 15 of the African Children's Charter.<sup>29</sup>

### 4.2 Child labour in other African Union initiatives

With the continent having the largest number of child labourers, the AU has taken some steps to address the issue of child labour.<sup>30</sup> A cornerstone of these efforts is the plan to eradicate child labour and other forms of exploitation of children in Africa.<sup>31</sup> This plan outlines a roadmap for mobilising resources, coordinating efforts and accelerating progress towards eliminating child labour by 2025 in line with the Sustainable Development Goals (SDGs).<sup>32</sup> In addition to the SDG target, the AU has aligned its anti-child labour initiatives with the existing frameworks such as its Agenda 2063, the

22 Van der Hof and others (n 8) 846-847.

23 African Children's Committee (n 14).

24 African Children's Committee (n 14) 12.

25 African Children's Committee (n 14) 12-15.

26 African Children's Committee (n 14) 16.

27 As above.

28 Report of the African Committee of Experts on the Rights and Welfare of the Child, [https://archives.au.int/bitstream/handle/123456789/8912/EX%20CL%201091%20XXXIII\\_E.pdf?sequence=2&isAllowed=y](https://archives.au.int/bitstream/handle/123456789/8912/EX%20CL%201091%20XXXIII_E.pdf?sequence=2&isAllowed=y) (accessed 15 August 2024).

29 African Children's Committee 'Study on children's rights and business in Africa' (2023) [https://reporting.acerwc.africa/sites/default/files/2023-08/Study\\_Children%27s%20Rights%20and%20Business\\_English.pdf](https://reporting.acerwc.africa/sites/default/files/2023-08/Study_Children%27s%20Rights%20and%20Business_English.pdf) (accessed 15 November 2024).

30 African Union (n 2).

31 African Union 'Draft ten-year action plan on eradication of child labour, forced labour, human trafficking and modern slavery in Africa (2020-2030): Agenda 2063-SDG target 8.7', [https://au.int/sites/default/files/newsevents/workingdocuments/40112-wd-child\\_labour\\_action\\_plan-final-english.pdf](https://au.int/sites/default/files/newsevents/workingdocuments/40112-wd-child_labour_action_plan-final-english.pdf) (accessed 16 August 2024).

32 As above.

African Children's Charter, Agenda 2040 and the ILO Conventions.<sup>33</sup> There has also been reliance on the Regional Economic Communities (RECs) such as the Economic Community of West African States (ECOWAS).<sup>34</sup> The plan has eight key areas that include the improvement in the implementation of laws and also the development of a General Comment on article 15.<sup>35</sup> The AU's approach seems to be a mixture of both the human rights treaties and its broader developmental agendas, which may be useful in addressing the issue of child labour comprehensively, including the tackling of issues such as poverty, inequality and lack of access to education.

## 5 Child labour and other articles of the African Children's Charter

A number of the African Children's Charter's provisions are related to article 15. These include non-discrimination (article 3); the right to have the best interests of the child prioritised (article 4); the right to survival and development (article 5); the right to education (article 11); the right to health (article 14); the right to leisure and recreation (article 12); the right to be protected from abuse (article 16); the right to be protected from sexual exploitation (article 27); as well as protection from trafficking (article 29).

Child labour often is a cause, consequence or factor of discrimination. The identity of some children affects their risk for recruitment into child labour. For instance, rurality increases the risk of recruitment to agricultural and mining labour, girls are disproportionately predisposed to domestic labour, and children with disabilities to working on the streets.<sup>36</sup> Poverty also worsens the vulnerability of children to exploitative labour conditions. Cases such as the exploitation of *Talibés* children and instances of slavery in Mauritania discussed in detail below illustrate how the worst forms of child labour may disproportionately affect marginalised children.<sup>37</sup> In some instances, poverty also leads to children having to fend for themselves and to them enduring exploitation, thereby perpetuating cycles of discrimination and inequality.<sup>38</sup> Responses to child labour, therefore, must be context-specific and reinforce the need for a comprehensive approach that underlies discriminatory practices.

The right of every child to the best attainable standard of health, as enshrined in the African Children's Charter, is directly compromised by child labour.<sup>39</sup> Indeed, effects on health is the primary benchmark on which the hazardousness of labour is based. Engaging in hazardous work, such as exposure to pesticides in agriculture or cyanide in artisanal mining, can have direct, severe and long-lasting effects on a child's health.<sup>40</sup> These conditions not only jeopardise their immediate well-being, but also have potential for lifelong consequences, including chronic illnesses and developmental impairments for children.<sup>41</sup> Any kind of work that may be acceptable should not expose a child to any health risks.

33 African Children's Committee (n 14) 16.

34 As above; 'ECOWAS regional action plan for the elimination of child labour especially the worst forms', [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@africa/documents/publication/wcms\\_227737.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@africa/documents/publication/wcms_227737.pdf) (accessed 26 August 2024).

35 African Children's Committee (n 14) 16. The development of a future General Comment, however, falls exclusively within the mandate of the African Children's Committee, as outlined in art 45(2) of the African Children's Charter.

36 FAO 'Gender dimensions of child labour', <https://openknowledge.fao.org/server/api/core/bitstreams/d35a31ad-cb9e-4a01-a3dc-33f23095f7b9/content> (accessed 16 August 2024).

37 *Centre for Human Rights (University of Pretoria) and La Rencontre Africaine pour la Defense des Droits de l'Homme v Senegal*, No 3/Com/001/2012, decided 15 April 2014 (*Senegalese Talibés*); *Minority Group International and SOS-Esclaves on behalf of Said Ould Salem and Yarg Ould Salem v Mauritania*, No 7/Com/003/2015, decided December 2017 AHRLR (ACERWC 2017) (*Mauritanian Enslaved Brothers*).

38 Batano and others (n 6).

39 Art 14(1) African Children's Charter.

40 Human Rights Watch (n 4).

41 As above. Exposure to mercury, for example, may lead to brain damage and other serious health risks.



Education is key to a child's development. While work can provide children with opportunities to learn practical skills and trades that contribute to personal development, it can also interfere with their education when it is exploitative and interferes with their development. In the context of patriarchal and gendered societies, the majority of girls in Africa perform domestic tasks that affect their opportunities for school and socialising.<sup>42</sup> Child labour can also lead to reduced school attendance, higher drop-out rates and a diminished capacity to benefit from educational opportunities. Article 15 of the African Children's Charter, therefore, imposes an obligation on state parties to regulate child labour to ensure that work does not hinder a child's educational opportunities but rather complements the overall development and well-being of the child.<sup>43</sup> Similarly, the minimum age of employment ought to coincide with the end of free and compulsory basic education.<sup>44</sup>

The Preamble to the African Children's Charter acknowledges that the situation of many African children remains critical due to some unique factors that include exploitation. While it is not clear what forms of exploitation are referred to, other factors mentioned include socio-economic, cultural, traditional and developmental circumstances. Looking at these factors inclusively, underscores the importance of protecting children from exploitation, which is at the core of article 15. While article 15 primarily focuses on protecting children from economic exploitation, particularly child labour, its scope extends beyond this to include other forms of economic exploitation.<sup>45</sup> Additionally, article 15 is closely linked to article 27,<sup>46</sup> which addresses the sexual exploitation of children, including child prostitution which is considered to be one of the worst forms of child labour.<sup>47</sup> Together with the Preamble, these articles form a comprehensive framework for safeguarding children from all forms of exploitation.

## 6 Links to other human rights treaties

### 6.1 The ILO Conventions

The issue of child labour has a long history, deeply rooted in various economic systems through different periods where children were exploited for their labour, often in hazardous and inhumane conditions.<sup>48</sup> This may have been different in the African context, where societies had a different concept of childhood and regarded childhood as a period of training and transition into adulthood.<sup>49</sup> The approach was collectivist and inter-dependent, characterised by support and reciprocity.<sup>50</sup> This, however, seems to have changed with the advent of colonialism and colonial practices.<sup>51</sup>

From its inception in 1919, the ILO aimed to abolish child labour as one of its objectives.<sup>52</sup> More specifically, the principle and objective was 'the abolition of child labour and the imposition of such

42 Art 15(1) African Children's Charter; FAO (n 36).

43 Especially as read with art 31 of the African Children's Charter.

44 ILO Convention on the Minimum Age of Employment.

45 Van der Hof and others (n 8) 834.

46 See ch 28 in this *Commentary*.

47 Art 27 African Children's Charter; African Children's Committee General Comment 7 para 18.

48 'Children and chimneys', <https://www.parliament.uk/about/living-heritage/transformingsociety/livinglearning/19thcentury/overview/childrenchimneys/> (accessed 26 August 2024).

49 Nhenga-Chakarisa (n 6) 175.

50 As above.

51 D Norman & B Bowman 'Educational aspirations, child labour imperatives and structural inequality in the South African agricultural sector' (2008) 26 *Perspectives in Education* 41. The authors, e.g., identify South Africa's apartheid as one of the key drivers of child labour.

52 E van Daalen & K Hanson 'The ILO's shifts in child labour policy: Regulation and abolition', <https://journals.openedition.org/poldev/3056> (accessed 26 August 2024).

limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development'.<sup>53</sup>

From 1919 onwards, the ILO began establishing standards on the minimum age for employment by adopting sector-specific conventions to address some forms of child labour.<sup>54</sup> One of the significant changes was brought in by ILO Convention 138, adopted in 1973 (Minimum Age Convention, 1973), which addresses the issue of child labour by setting the minimum age for employment. Its Preamble states that it seeks to 'establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour'.<sup>55</sup> The Minimum Age Convention, 1973 establishes a minimum age that 'shall not be less than the age of completion of compulsory schooling' and shall not be less than 15 years, in any case.<sup>56</sup> The framework, therefore, prioritises and seeks to prohibit work that may interfere with a child's education. The Minimum Age Convention, 1973 also aims to protect children from engaging in work that might interfere with their development.<sup>57</sup>

Further, the Minimum Age Convention, 1973 prohibits, without qualification, the employment of a person under the age of 18 years which is likely to jeopardise their health, safety or morals.<sup>58</sup> The Minimum Age Convention, 1973, however, provides that employment of children from the ages of 13 to 15 may be permitted provided that the work is light and not likely to be harmful to their health and development and not prejudicial to their school attendance or vocational training.<sup>59</sup> Again, the Minimum Age Convention, 1973 emphasises the prioritisation of a child's rights to education. By setting these standards, the aim was to ensure that children can enjoy their right to education and healthy development without the encroachment of harmful labour practices.

Adopted in 1999, ILO Convention 182 (Worst Forms of Child Labour Convention, 1999) seeks to urgently secure the prohibition and elimination of the worst forms of child labour.<sup>60</sup> The Worst Forms of Child Labour Convention defines a child as someone who is below the age of 18, without qualification – as in the African Children's Charter.<sup>61</sup> It represents a more focused effort to combat the recurring challenge of worst forms of child labour, which include slavery, the recruitment of children in armed conflict, trafficking, forced or compulsory labour, sexual exploitation of children and the involvement of children in illicit activities.<sup>62</sup> Ultimately the aim is to protect children from work that is likely to harm their 'health, safety or morals'.<sup>63</sup> By targeting the most egregious forms of exploitation, the Worst Forms of Child Labour Convention complements the broader framework established by the

53 Art 247 Versailles Treaty; A Fyfe *The worldwide movement against child labour – Progress and future directions* (2007) 8.

54 As above. These were Minimum Age (Industry) Convention, 1919; Minimum Age (Sea) Convention, 1920; Minimum Age (Agriculture) Convention, 1921; Minimum Age (Trimmers and Stokers) Convention, 1921; Minimum Age (Non-Industrial Employment) Convention, 1932; Minimum Age (Sea) Convention (Revised), 1936; Minimum Age (Industry) Convention (Revised), 1937; Minimum Age (Non-Industrial Employment) Convention (Revised), 1937; Minimum Age (Fishermen) Convention, 1959; and Minimum Age (Underground Work) Convention, 1965.

55 As above.

56 Art 2(3) Minimum Age Convention, 1973.

57 Art 1 of the Minimum Age Convention, 1973 urges members to ensure the effective abolition of child labour and to progressively raise the minimum age for admission to employment or work to a level consistent with the fullest development of young persons.

58 Art 3(1) Minimum Age Convention, 1973. In terms of art 3(3) of the Minimum Age Convention, 1973, persons from the age of 16 may be employed on condition that their health, safety and morals are fully protected and that they have 'received adequate specific instruction or vocational training in the relevant branch of activity'.

59 Art 7(1) Minimum Age Convention, 1973.

60 Art 1 Worst Forms of Child Labour Convention, 1999.

61 Art 2 Worst Forms of Child Labour Convention. See also art 2 of the African Children's Charter.

62 Art 2 Worst Forms of Child Labour Convention.

63 Art 3(d) Worst Forms of Child Labour Convention.

Minimum Age Convention, 1973, in reinforcing the normative framework of protecting children from exploitative and hazardous work that is likely to interfere with their development.

## 6.2 Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) is predicated by the Geneva Declaration of the Rights of the Child (Geneva Declaration) initiated by Save the Children International and later adopted by the League of Nations in 1924.<sup>64</sup> The Geneva Declaration made a subtle reference to child labour by providing that children were to be put in a position 'to earn a livelihood' while also being protected from 'every form of exploitation'.<sup>65</sup> The 1959 Declaration of the Rights of the Child, ostensibly an improvement on the Geneva Declaration, set out 10 principles, including the 'right to protection against all forms of neglect, cruelty and exploitation'.<sup>66</sup> CRC complements the child labour standards established by the ILO,<sup>67</sup> and affirms the rights including education, health, protection from economic exploitation, protection from violence and abuse and other articles that are relevant to child labour.<sup>68</sup>

Article 15 of the African Children's Charter is heavily inspired by and nearly identical to article 32 of CRC. Both aim to protect children from economic exploitation and harmful work. There are, however, minor variations in scope, specificity and regional focus. In contrast to CRC, the African Children's Charter tailors its provisions to the African context, explicitly addressing both the formal and informal sectors of employment, an approach that may be more relevant to Africa with its significant informal sector.<sup>69</sup> As estimates show, 99% of all working children in sub-Saharan Africa aged 10 to 14 years are engaged in the informal sector.<sup>70</sup> In this way, the African Children's Charter widens its scope to explicitly include children in the informal sector.

However, while CRC imposes the requirement of 'legislative, administrative, social and educational measures'<sup>71</sup> to ensure the implementation of article 32, the African Children's Charter requires states to take 'legislative and administrative' measures to ensure the implementation of article 15.<sup>72</sup> In addition to this, CRC refers to 'having regard to international instruments in regulating the conditions of work for children', while the African Children's Charter specifically aligns with the ILO's standards.<sup>73</sup> This seems to have been a deliberate move to illustrate that the article 15 was intended to align with the ILO standards in terms of regulating the minimum age for employment of children and other conditions. Also, while CRC requires state parties to provide for minimum age or ages for employment,<sup>74</sup> the African Children's Charter specifically provides that the minimum age for employment must be provided through legislation.<sup>75</sup> This is a slightly firmer requirement than that of CRC.

Lastly, in contrast to CRC, the African Children's Charter imposes a fourth obligation on the state parties, that is, to disseminate information on the hazards of child labour to all sectors of the

<sup>64</sup> Fyfe (n 53) 18.

<sup>65</sup> Art 4 Geneva Declaration.

<sup>66</sup> Principle 9 of the 1959 Declaration of the Rights of the Child.

<sup>67</sup> Fyfe (n 53) 18.

<sup>68</sup> As above.

<sup>69</sup> Art 32 CRC and art 15 African Children's Charter.

<sup>70</sup> These are mostly in agriculture, see African Children's Committee (n 29) 131.

<sup>71</sup> Art 32 (2) CRC.

<sup>72</sup> Art 15(2) African Children's Charter. See also BD Mezmur 'The African Children's Charter versus the UN Convention on the Rights of the Child: A zero-sum game?' (2008) 23 *SA Public Law* 10.

<sup>73</sup> Art 15(2) African Children's Charter.

<sup>74</sup> Art 32(2)(a) CRC.

<sup>75</sup> Art 15(2)(a) African Children's Charter.



community.<sup>76</sup> It may be argued that the African Children's Charter took the provisions of CRC, refined them and slightly widened the scope of the state obligations and also gave it a regional context by explicitly including the informal sector.

### 6.3 The Sustainable Development Goals and Agenda 2040

The Sustainable Development Goals (SDGs) also provide an important framework about the future of child labour.<sup>77</sup> SDG 8 focuses on the urgent need to eradicate forced labour, end modern slavery and human trafficking and eliminate the worst forms of child labour, including the recruitment and use of child soldiers.<sup>78</sup> The recruitment of child soldiers, however, is already prohibited by the African Children's Charter, without exception.<sup>79</sup>

While Africa's Agenda for Children 2040 (Agenda 2040) encourages states to ratify the ILO Worst Forms of Child Labour Convention and Minimum Age Convention, 1973,<sup>80</sup> it offers only a limited focus on child labour, merely stating that by 2040, '[h]armful child labour practices and child trafficking for forced labour is eliminated'.<sup>81</sup> Given the deliberate and refined focus on article 15 in contrast to CRC and considering the pervasive nature of child labour in Africa, Agenda 2040 could have adopted stronger, more assertive language to address the issue of child labour more contextually and effectively.

## 7 Key concepts

### 7.1 Child labour

It is important to clearly distinguish between general child labour and its worst forms, as the African Children's Charter, like other international instruments, does not outrightly proscribe all child labour.<sup>82</sup> The African Children's Charter seeks to protect children from economic exploitation, from work that is hazardous to children or work that may interfere with a child's 'physical, mental, spiritual, moral, or social development'.<sup>83</sup> This means that any work that does not fall under this category is permissible because this delineation seeks to draw the line and highlight the African Children's Charter's focus on protecting children from work that could harm their well-being, rather than banning all forms of child work. Child labour lies on a spectrum between work that is beneficial, on the one hand, and work that is exploitative, hazardous and detrimental to children, on the other.<sup>84</sup> To conceptualise what the African Children's Charter prohibits, it must be read together with article 31 on the responsibilities of the child.

### 7.2 Child labour as distinct from child work, and responsibilities of the child

The African Children's Charter draws inspiration from other international treaties, such as the Universal Declaration of Human Rights (Universal Declaration) and the African Charter on Human and Peoples' Rights (African Charter), by emphasising responsibilities alongside rights.<sup>85</sup> The individual

<sup>76</sup> Art 15(2)(d) African Children's Charter.

<sup>77</sup> SDG 8.

<sup>78</sup> SDG 8.7.

<sup>79</sup> Art 22(2) African Children's Charter.

<sup>80</sup> Agenda 2040 5.

<sup>81</sup> Agenda 2040 16.

<sup>82</sup> Sloth-Nielsen & Mezmur (n 1) 178.

<sup>83</sup> Art 15(1) African Children's Charter

<sup>84</sup> Buck (n 9) 228.

<sup>85</sup> Art 29(1) of the Universal Declaration provides that everyone has responsibilities to the community, which is important for

duties are more specified in the latter, raising arguments about the meaning of individual duties and responsibilities under international law, which has been a point of contention among scholars.<sup>86</sup> The African Children's Charter builds upon the foundational principles on duties in the African Charter by explicitly outlining the responsibilities of children.<sup>87</sup> It is explicitly imposing a range of responsibilities of children, recognising their integral role in the development of the African continent. These are discussed further in chapter 32 of this volume, along with the General Comment on article 31 issued by the African Children's Committee.

The African Children's Charter outlines children's responsibilities to their family, society, state and the international community, according to their age and ability.<sup>88</sup> It states that every child, according to their age and ability, has the responsibility to contribute to family cohesion, to respect elders, to assist in times of need, and to serve their community with their physical and intellectual skills.<sup>89</sup> In addition, the African Children's Charter states that every child has a duty to uphold social and national solidarity, preserve cultural values and promote African unity.<sup>90</sup> The African Children's Charter further adds that children have a responsibility to preserve and strengthen the independence of their respective countries and contribute to the achievement of African unity.<sup>91</sup> In the context of child labour, these provisions help in distinguishing between harmful economic exploitation and hazardous work that is detrimental to children and general child labour that may be beneficial to the upbringing of a child.<sup>92</sup> This suggests that tasks aligned with a child's responsibilities in terms of article 31 of the African Children's Charter can positively contribute to a child's upbringing, as long as these tasks do not interfere with a child's education or well-being.<sup>93</sup>

The addition of a provision on the responsibilities of the child aids the conceptualisation of which child labour is permissible or not permissible under the African Children's Charter. The African Children's Charter envisages that children have a duty to contribute to their national community, and this presupposes that some form of work is required.<sup>94</sup> A child's responsibilities involve placing their physical and intellectual abilities at the service of their community, representing a form of child labour.<sup>95</sup> In this way, the African Children's Charter, therefore, recognises the value of child labour in fostering a sense of responsibility and community engagement in children. By implication, it is also not the form of child labour that is hazardous or exploitative because it seems that the aim is for the development of the child.

Non-harmful child labour, as envisaged by the African Children's Charter, therefore, encompasses tasks that are safe and appropriate to the child's age and development. Such work allows children to gain skills, contribute to their families and communities, and develop a strong work ethic without

the full and free development of their personality. This seems to have inspired both the International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights to realise that an individual has duties to other individuals and the community to which they belong. The African Charter arts 27-29 provide for duties of individuals. Art 29 of the African Charter is fundamentally similar to art 31 of the African Children's Charter, both of which have the common theme of highlighting the importance of individuals, both adults and children, contributing positively to their families, communities and the state.

86 Sloth-Nielsen & Mezmur (n 1) 178; Nhenga-Chakarisa (n 6) 166-167.

87 Art 31 African Children's Charter.

88 As above.

89 Arts 31(a) & 31(b) African Children's Charter.

90 Art 31(c) African Children's Charter.

91 Arts 31(e) & 31(f) African Children's Charter.

92 Buck (n 9) 228.

93 Nhenga-Chakarisa (n 6) 166-167.

94 Art 31 African Children's Charter

95 As above.

compromising their education or well-being.<sup>96</sup> This perspective aligns with communal values prevalent in many African societies, where children's participation in certain types of work is seen as integral to their upbringing and socialisation.<sup>97</sup>

## 8 Nature and scope of state obligations

Article 15 of the African Children's Charter is an operational clause that sets out the nature and scope of state obligations in concrete terms, detailing steps that are required for compliance and enforcement. First, the state obligations under article 15 of the African Children's Charter require comprehensive measures to protect children from all forms of economic exploitation, hazardous work and work that is likely to interfere with the child's development, encompassing physical, moral, spiritual and social development.<sup>98</sup> Second, states must enact and enforce laws to ensure the full implementation of article 15 in both the formal and informal sectors, establish minimum age for employment, regulating the time and conditions of employment of children, and promote the dissemination of information on the hazards of child labour to all sectors of the community.<sup>99</sup> Furthermore, these conditions must be aligned with the ILO standards.<sup>100</sup>

As has been already highlighted, article 15 has received significant attention in the African Children's Committee's work. In terms of implementation of the African Children's Charter, the Children's Committee has highlighted the importance of state parties enacting legislation that clearly defines the minimum age for entering the work force, and the specific conditions under which children may engage in light work.<sup>101</sup> Child protection systems in this regard must be strengthened and businesses monitored to ensure that they 'do not use child labour'.<sup>102</sup> In addition to these conditions, the African Children's Committee interprets article 15 to mean that state parties are also obligated to identify and prohibit forms of hazardous work to safeguard children.<sup>103</sup> The underlying theme, consistent with General Comment 3 (discussed next), is that while children may engage in work, such work must be strictly regulated in order to safeguard children's rights.<sup>104</sup> Children must be protected from any form of exploitative, hazardous, or harmful labour.

## 9 Child labour in the jurisprudence of the African Children's Committee

### 9.1 Child labour in the General Comments of the African Children's Committee

Thus far, and despite a mandate to develop one as noted earlier, there is no General Comment specifically focused on child labour. Nevertheless, the African Children's Committee through its General Comment 3 on the responsibilities of the child addressed some significant aspects of child labour. The African Children's Committee has highlighted that the African Children's Charter protects children against various harmful practices, including child labour.<sup>105</sup> Despite the African Children's Charter envisaging that children have to work as part of their responsibilities, the African Children's Committee has stated that responsibilities that perpetuate any conduct that is exploitative or harmful

<sup>96</sup> As above.

<sup>97</sup> Nhenga-Chakarisa (n 6) 166-167.

<sup>98</sup> Art 15(1) African Children's Charter.

<sup>99</sup> Art 15(2) African Children's Charter.

<sup>100</sup> As above.

<sup>101</sup> General Comment 5 on General measures of implementation and systems strengthening for child protection para 30.

<sup>102</sup> As above.

<sup>103</sup> As above.

<sup>104</sup> General Comment 5 (n 101) para 20.

<sup>105</sup> African Children's Committee General Comment 3 para 23.

and prohibited by the African Children's Charter would be contrary to article 15 and other related articles.<sup>106</sup> This understanding of both article 31 and article 15 of the African Children's Charter by the African Children's Committee reinforces the protective intent against any form of exploitation or harmful labour under the guise of responsibilities. It also assists in conceptualising article 15 – children may work, but any work that is exploitative, hazardous and harmful is prohibited.

The African Children's Committee clarifies its understanding of child labour by aligning with international law, and identifies it as a severe form of exploitation detrimental to a child's well-being.<sup>107</sup> The African Children's Committee states that this position is 'reaffirmed' by instruments such as CRC and the ILO Conventions.<sup>108</sup> To this end, the African Children's Committee states that article 15 of the African Children's Charter 'enjoins' state parties to the Charter to adopt laws establishing minimum age for admission to all forms of employment and to regulate the hours and conditions of work.<sup>109</sup> However, this reiteration does not provide new insights into the interpretation of article 15, as the Charter already compels states to implement these measures. In addition to this, the African Children's Committee states that state parties are 'requested' to disseminate relevant information pertaining to the dangers of child labour in their respective jurisdictions, which is another pre-existing obligation under the African Children's Charter.<sup>110</sup> The lack of detailed guidance in this context is understandable, as General Comment 3 does not primarily focus on child labour, but addresses it as one of several issues within the context of children's responsibilities.

The African Children's Committee further reinforces that no state party should impose work on children that constitutes child labour, even under the guise of responsibilities, as it violates the essence of article 31.<sup>111</sup> This position is consistent with that of some scholars, namely, that what the African Children's Charter prohibits are worst forms of child labour and not general work *per se*.<sup>112</sup> In this context, responsibilities that are detrimental to the child are therefore discouraged even when they are imposed by a parent or care giver as they are contrary to the intent and purpose of what the responsibilities of the child should entail under the African Children's Charter.<sup>113</sup>

The African Children's Committee essentially provides a nuanced understanding that some responsibilities of the child entail the provision of some kind of work or service towards their communities or countries.<sup>114</sup> The African Children's Committee further reiterates that the 'African Children's Charter does not completely prohibit the involvement of children in work or work-related activities', but such work should be distinguished from economic exploitation or work that is harmful to a child's well-being.<sup>115</sup> The African Children's Committee goes on to further give examples of work that may be undertaken by children, which includes voluntary work for public service.<sup>116</sup> The Children's Committee explicitly points out that what is outlawed as 'child labour' is work that is 'harmful to the well-being and development of children'.<sup>117</sup> It further adds that work that is neither harmful nor

106 As above. These include arts 16, 27, 28 & 29.

107 African Children's Committee General Comment 3 para 25.

108 As above. It specifically mentions International Labour Organisation (ILO) Convention 182 on the Minimum Age of Admission to Employment (ILO Convention 182).

109 African Children's Committee General Comment 3 para 25.

110 As above.

111 African Children's Committee General Comment 3 para 26.

112 Buck (n 9) 228; Sloth-Nielsen & Mezmur (n 1) 178.

113 African Children's Committee General Comment 3 para 26.

114 African Children's Committee General Comment 3 paras 67-69.

115 African Children's Committee General Comment 3 para 68.

116 African Children's Committee General Comment 3 para 67.

117 African Children's Committee General Comment 3 para 68.

prejudicial to the child should be encouraged.<sup>118</sup> To illustrate this, the African Children's Committee says that work that violates a child's right to education or leisure and recreation is inconsistent with the responsibilities of the child as envisaged by the African Children's Charter.<sup>119</sup> This distinction is important in also conceptualising what article 15 entails, while at the same time allowing for the recognition of positive contributions that children can make to their families and communities, particularly in contexts where communal participation is valued.<sup>120</sup> This is especially so since the African Children's Committee further points out that the work-related responsibilities of the child may be beneficial to their individual development and growth and, therefore, linked to their survival in the future.<sup>121</sup>

In the context of sexual exploitation of children, the African Children's Committee has highlighted that the sexual exploitation of children, including exploitation in prostitution, is recognised as one of the worst forms of child labour.<sup>122</sup> Aside from being a form of exploitation, this is one of the acts that article 15 of the African Children's Charter prohibits.<sup>123</sup> This is in line with the ILO's Worst Forms of Child Labour Convention.<sup>124</sup>

## 9.2 Studies and resolutions

Over and above the General Comments, the African Children's Committee has been actively addressing the issue of child labour through various initiatives and resolutions. In 2020 the Children's Committee established a working group on children's rights and business to promote the integration of a child rights-based approach in business practices, focusing on tackling business-related child rights challenges across Africa.<sup>125</sup> This working group has consistently marked the World Day against Child Labour by issuing statements in 2022, 2023 and 2024.<sup>126</sup> This highlights the urgency of the issue and the attention that the African Children's Committee is paying to it. In 2023 a comprehensive study on children's rights and business, which includes an in-depth examination of child labour in different sectors, highlighting the increase in the number of working children as pointed out above, was published.<sup>127</sup>

In 2024 the African Children's Committee adopted Resolution 21 of 2024, aimed at regulating the informal business sector to enhance the protection of children's rights. Additionally, Resolution 20 of 2024 was passed to promote the integration of a child rights-based approach in the implementation and monitoring of the African Continental Free Trade Area (AfCFTA), indirectly addressing issues related

118 As above

119 As above.

120 Nhenga-Chakarisa (n 6).

121 African Children's Committee General Comment 3 para 69.

122 African Children's Committee General Comment 7 para 19. In this regard, the African Children's Committee draws inspiration from ILO Convention 182.

123 African Children's Committee General Comment 7 para 19.

124 Art 3 Worst Forms of Child Labour Convention, 1999.

125 African Children's Committee 'About working groups', <https://www.acerwc.africa/en/page/about-working-groups> (accessed 15 August 2024).

126 African Children's Committee 'Statements/Open letters', <https://www.acerwc.africa/en/key-documents/statements-open-letters> (accessed 15 August 2024).

127 African Children's Committee (n 29); art 32 CRC.



to child labour.<sup>128</sup> Through these efforts, the African Children's Committee continues to reinforce its commitment to combating child labour and ensuring the protection of children's rights across the continent, in line with the provisions of article 15 of the African Children's Charter.

### 9.3 Child labour in the Concluding Observations of the African Children's Committee

The African Children's Committee has issued several Concluding Observations regarding article 15, providing guidelines on implementation by state parties. In these Concluding Observations the African Children's Committee highlighted the need for legal frameworks and effective enforcement to combat child labour. It emphasised, among others, the importance of enforcing existing laws, prosecuting offenders and ensuring that the minimum age for child labour is respected.<sup>129</sup> It has also recommended the implementation of the relevant laws strengthening inspection mechanisms and promoting corporate social responsibility within the private sector to scale up the implementation of social welfare programmes in order to alleviate child labour.<sup>130</sup> To strengthen the enforcement efforts, for instance, in Benin, the African Children's Committee urged the state to establish a directorate focused on child labour.<sup>131</sup>

Another key issue recommended by the African Children's Committee to states is the need for capacity building and to increase the number of labour inspectors. The Children's Committee has stressed that without adequate inspection and monitoring, efforts to combat child labour will be ineffective. For Kenya, for instance, the African Children's Committee recommended regular labour inspections and enhancing the capacity of inspectors to identify and withdraw children from hazardous labour situations and to comprehensively address the root causes of labour.<sup>132</sup> Similarly, for Benin, the African Children's Committee called for building the capacity of labour inspectors to ensure they are well-equipped to effectively address child labour issues.<sup>133</sup>

The African Children's Committee was concerned with the Kenyan legal framework which permits the employment of children between the ages of 13 and 16 for light work, despite the fact that the minimum age of employment was 16.<sup>134</sup> The African Children's Committee recommended that Kenya ensure that children below the age of 16 do not do 'heavy work' that may interfere with their education.<sup>135</sup> It is not clear whether the Children's Committee was establishing its own particular standards, since employment of children from 13 to 15 years is permissible under ILO's Minimum Age Convention, 1973, as long as the work is light, not harmful and not interfering with their school attendance.<sup>136</sup>

128 Resolution 20/2024 of the African Children's Committee working group on children's rights and business on the integration of a child rights-based approach in the implementation and monitoring of the African continental free trade area agreement, <https://www.acerwc.africa/en/article/activity/resolution-no-202024-acerwc-working-group-childrens-rights-and-business> (accessed 15 August 2024).

129 The African Children's Committee has also flagged some states such as Benin for having very high rates of child labour; Concluding Observations Benin (2019) para 43, [https://www.acerwc.africa/sites/default/files/2022-06/CO\\_Initial\\_Report\\_Benin\\_Sep\\_2019\\_English.pdf](https://www.acerwc.africa/sites/default/files/2022-06/CO_Initial_Report_Benin_Sep_2019_English.pdf) (accessed 15 August 2024).

130 Concluding Observations Zimbabwe para 47, [https://www.acerwc.africa/sites/default/files/2022-06/Concluding\\_Observations\\_Zimbabwe.pdf](https://www.acerwc.africa/sites/default/files/2022-06/Concluding_Observations_Zimbabwe.pdf) (accessed 15 August 2024).

131 Concluding Observations Benin (n 129) para 43.

132 Concluding Observations Kenya (2020) para 57, [https://www.acerwc.africa/sites/default/files/2022-06/Concluding\\_Observation\\_on\\_Kenya\\_2nd\\_Periodic\\_Report\\_to\\_the\\_ACERWC.pdf](https://www.acerwc.africa/sites/default/files/2022-06/Concluding_Observation_on_Kenya_2nd_Periodic_Report_to_the_ACERWC.pdf) (accessed 15 August 2024).

133 Concluding Observations Benin (n 128) 43.

134 Concluding Observations Kenya (n 132) para 58.

135 As above.

136 Art 7(1) Minimum Age Convention.

The African Children's Committee has recognised that factors such as poverty, insecurity, displacement and lack of access to education are significant contributors to the prevalence of child labour. In the Concluding Observations for Kenya, the African Children's Committee emphasised the importance of addressing these underlying issues to break the cycle of exploitation.<sup>137</sup> Similarly, for Zimbabwe, the Children's Committee recommended reviewing existing programmes aimed at addressing child labour and economic exploitation, urging the state to scale up social welfare initiatives in collaboration with development partners to tackle the root causes of child labour.<sup>138</sup>

#### 9.4 Child labour in communications before the African Children's Committee

The African Children's Committee has addressed the question of child labour in two cases thus far: *Senegalese Talibés* and *Mauritanian Enslaved Brothers*.

In *Senegalese Talibés*, the systematic exploitation of children under the guise of religious education in Senegal was brought to light.<sup>139</sup> The case centred on the plight of approximately 100 000 Talibé children in Senegal, who were sent to Qur'anic schools for religious education but ended up being forced to beg on the streets by their religious instructors known as *marabouts*.<sup>140</sup> The African Children's Committee found that Senegal scantily enforced the laws against the worst forms of child labour, such as forced begging, despite its obligations under international instruments, including the African Children's Charter.<sup>141</sup> One main significance of the case is the recognition of forced begging as a worst form of child labour in line with ILO's definition, since the children were sent to beg with the aim of exploitation of those children.<sup>142</sup>

*Mauritanian Enslaved Brothers* focused on the class-based abuse and enslavement of children in Mauritania.<sup>143</sup> In its interpretation of article 15 of the African Children's Charter, the African Children's Committee reiterated that the African Children's Charter protects children all forms of economic exploitation and work that is hazardous and harmful to children in both informal and formal settings.<sup>144</sup> In this instance, work in the form of herding and domestic chores without rest seven days a week was seen as a form of exploitation that amounted to slavery or a slavery-like practice that impacted on children's rights to survival and development.<sup>145</sup>

The African Children's Committee spelt out measures to be taken by Mauritania that included providing a minimum age of admission to employment, through legislation, providing for regulation of hours of employment, providing for penalties to ensure compliance and the promotion of the dissemination of information on the hazards of child labour.<sup>146</sup> The African Children's Committee went further and pointed out that under the circumstances, the adoption of legislative measures without other measures to ensure the implementation of article 15 of the African Children's was insufficient, signalling that state obligations with regard to article 15 are required to be comprehensive and robust.<sup>147</sup>

137 Concluding Observations Kenya (n 132) para 57.

138 Concluding Observations Zimbabwe (n 130) para 47.

139 *Senegalese Talibés* (n 37).

140 As above; Summary of the proceedings concerning *Senegalese Talibés*, <https://www.chr.up.ac.za/news-archive/2014/1002-summary-of-the-proceedings-concerning-the-talibes-case> (accessed 14 August 2024); Sloth-Nielsen (n 13) 633.

141 *Senegalese Talibés* (n 37) para 59.

142 *Senegalese Talibés* (n 37) para 61.

143 *Mauritanian Enslaved Brothers* (n 37).

144 *Mauritanian Enslaved Brothers* (n 37) para 79.

145 *Mauritanian Enslaved Brothers* (n 37) paras 80, 81 & 82.

146 *Mauritanian Enslaved Brothers* (n 37) para 79.

147 *Mauritanian Enslaved Brothers* (n 37) para 84.

## 10 Domestication of article 15

Child labour is to some extent regulated through national legislation in most African countries, with laws typically providing for the minimum age for admission into employment and prohibiting of hazardous work for children.<sup>148</sup> However, it is difficult to specifically attribute such legislation to either article 15 of the African Children's Charter or article 32 of CRC, as both share similar objectives and provisions focused on protecting children's rights in the labour context. Additionally, these legislative frameworks could also be influenced by the ILO Conventions, which served as an inspiration for article 15 of the African Children's Charter. It may be much clearer in monist states that are bound to directly apply international law.<sup>149</sup>

There are also references to article 15 in national courts, although an in-depth exploration in this regard is beyond the scope of this research. One such example is a case in Zimbabwe where the Court emphasised that when children are compelled to enter the labour market due to circumstances such as vulnerability or harsh economic conditions, their rights must be safeguarded under article 15 and other international law standards.<sup>150</sup> In this way, the article has a direct impact on national level jurisprudence.

## 11 Conclusion

Child labour was a pervasive reality at the time of the adoption of the African Children's Charter, and while there has been significant progress in recognising its impact on the well-being and rights of children, it remains a formidable challenge today. In its current iteration, the article still provides a solid and relevant basis for a responsive framework for the protection of children in Africa from the perils of child labour.

As noted in this chapter, article 15 imposes obligations on state parties to protect children from work that is economically exploitative, hazardous or that is likely to interfere with their development. The article strikes a balance between prohibiting exploitative, hazardous and harmful work while acknowledging the realities where certain types of child work can contribute positively to a child's development.<sup>151</sup> States are required to take legislative and administrative measures to comprehensively implement this provision, ensuring protection for children across both formal and informal sectors.<sup>152</sup>

To achieve the protections envisaged in article 15, it is imperative that domestic legislative and administrative frameworks are adopted, aligned with treaty standards, and enforced. Additionally, emerging forms of labour, such as those related to digital platforms, must be scrutinised and regulated to prevent exploitation in modern contexts, which may significantly add to an already-existing challenge.<sup>153</sup> Considering that significant gaps remain in the protection of children from child labour, and emerging challenges in the evolving context, the African Children's Committee ought to prioritise

148 Eg, secs 52-65 of the Employment Act Ch 226 of Kenya deals comprehensively with child labour; sec 11 of the Labour Act Ch 28:01 of Zimbabwe; sec 10A of the Children's Act Ch 5:06 of Zimbabwe; secs 21-23 of the Employment Act Malawi Ch 55:01; sec 141 of the Children's Act 38 of 2005; secs 3-4 of the Basic Conditions of Employment Amendment Act 20 of 2013.

149 M Killander & H Adjolohoun 'International law and domestic human rights litigation in Africa: An introduction' in M Killander (ed) *International law and domestic human rights litigation in Africa* (2010) 5-11.

150 *S v RM (a Juvenile)* HB 92 2006 ZWHC. A striking feature of this case is that the Court independently made this reference to art 15 of the African Children's Charter on its own, in a matter brought before it by way of automatic review.

151 As per the responsibilities of the child in art 31 of the African Children's Charter. See also Sloth-Nielsen & Mezmur (n 1) 178.

152 Art 15(2) African Children's Charter.

153 Van der Hof and others (n 8) 846-847.

the development of a General Comment on article 15 to clarify its scope and application, especially in the African context, and in accordance with its own commitments in 2018.