

## Chapter 22

### Article 21

#### Protection against harmful social and cultural practices

*Usang Assim*

1. State parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:
  - (a) those customs and practices prejudicial to the health or life of the child; and
  - (b) those customs and practices discriminatory to the child on the grounds of sex or other status.
2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be eighteen years and make registration of all marriages in an official registry compulsory.

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# 1 Introduction

Article 21 of the African Charter on the Rights and Welfare of the Child (African Children's Charter) holds an important role in the protection of children's rights in Africa. This provision directly aims at eliminating harmful social and cultural practices that significantly and negatively affect the welfare, dignity, normal growth and development of children.<sup>1</sup> The article is a recognition that cultural traditions, while often essential to the identity and unity of communities, can sometimes perpetuate practices that harm the most vulnerable members of society, namely, children.<sup>2</sup> Practices such as child marriage and betrothal, which are specifically mentioned in article 21, continue to be widespread in various African countries despite global and regional efforts to abolish these.

The relevance of article 21 is underscored by the alarming statistics on child marriage and female genital mutilation (FGM) across Africa.<sup>3</sup> According to the United Nations Children's Fund (UNICEF), approximately 40 per cent of girls in sub-Saharan Africa are married before the age of 18 years.<sup>4</sup> This alarming statistic highlights the scale of the issue, with millions of young girls being subjected to early marriage, depriving them of their childhood, education, and other opportunities for personal growth.<sup>5</sup> Additionally, child marriage often results in early pregnancies, which pose severe health risks for both young mothers and their infants. These marriages also ensure that the cycle of poverty continues, as girls who marry early are less likely to complete their education and more likely to remain in poverty.<sup>6</sup>

The World Health Organisation (WHO) estimates that over 200 million girls and women alive today have undergone FGM, with a large number of these cases occurring in Africa.<sup>7</sup> FGM reflects deep-rooted gender inequality and is often seen as a way to be eligible for or as a prerequisite to marriage. However, the practice has been shown to offer no health benefits, but rather can lead to severe health complications, including chronic pain, infections, increased risk of childbirth complications, and psychological trauma.<sup>8</sup>

Intersecting with the African Children's Charter on the prohibition of harmful practices is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).<sup>9</sup> Article 5 of the Protocol specifically calls on states to prohibit and condemn all forms of harmful practices that negatively affect the human rights of women and girls, including FGM and child marriage. The Maputo Protocol provides a strong basis for advocacy and legal reform, reinforcing the commitments made under the African Children's Charter.<sup>10</sup> To this end, in November 2023 the African Committee of Experts on the Rights and Welfare of the Child (African Children's

1 J Sloth-Nielsen 'The African Charter on the Rights and Welfare of the Child' in T Boezaart (ed) *Child law in South Africa* (2017) 431.

2 As above.

3 UNICEF 'Towards ending harmful practices in Africa' 17 June 2022, <https://data.unicef.org/resources/harmful-practices-in-africa/> (accessed 27 June 2024).

4 UNICEF 'Child marriage in Eastern and Southern Africa: A statistical overview and reflections on ending the practice', <https://data.unicef.org/resources/child-marriage-in-eastern-and-southern-africa-a-statistical-overview-and-reflections-on-ending-the-practice/> (accessed 5 June 2024).

5 As above.

6 World Health Organisation 'Female genital mutilation' 5 February 2024, <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> (accessed 4 June 2024).

7 As above.

8 As above.

9 The 2003 Protocol of the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

10 S Nabaneh 'Elimination of harmful practices' in A Rudman, CN Musembi & TM Makunya (eds) *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: A commentary* (2023) 117.

Committee) launched a General Comment on FGM that was jointly developed with the African Commission on Human and Peoples' Rights (African Commission).<sup>11</sup> This is justified by the fact that FGM is 'both a child and women's rights issue'.<sup>12</sup>

While the African Children's Charter particularly mentions and strongly condemns child marriages, its scope is not limited to that; it also applies to other harmful practices affecting women and girls. Such practices include virginity testing; widowhood practices; accusations of witchcraft; extreme dietary restrictions; and more.<sup>13</sup> Despite legal prohibitions and domestication of article 21 of the African Children's Charter in the domestic laws of many African countries, these practices persist due to strong cultural beliefs, social pressures and economic factors.<sup>14</sup>

The African Union (AU) has shown a great commitment to the abolishment of harmful social and cultural practices through various programmes and initiatives that align with article 21. One of the AU's significant efforts is the Campaign to End Child Marriage in Africa, launched in 2014.<sup>15</sup> The campaign aims to speed up the end of child marriage by increasing awareness, advocating legal reforms, and mobilising action at all levels of society. These campaigns work in collaboration with governments, civil society organisations and international partners to address the root causes of child marriage and to support the implementation of effective strategies to protect children's rights.

These efforts are part of the broader AU Agenda 2063, which envisions an Africa free from all forms of discrimination and violence against women and children.<sup>16</sup> The Agenda underscores the importance of eliminating harmful practices as a crucial step toward achieving this goal.<sup>17</sup>

The AU also collaborates with international organisations, such as UNICEF and the United Nations Population Fund (UNFPA), to support programmes aimed at ending harmful practices. These partnerships enhance the capacity of member states to implement policies and programmes that protect children and promote their rights.<sup>18</sup>

## **2 Exploring key concepts: Definitions, interpretations, and links to other human rights treaties**

### **2.1 Defining key concepts**

The following sections provide an overview of some of the harmful practices prevalent across parts of Africa, beginning with highlighting those specifically mentioned in the African Children's Charter. Generally, 'harmful practices' refer to all behaviour, attitudes and/or practices that negatively affect the fundamental rights of persons, including children, women and girls, such as their rights to life, health, dignity, education and physical integrity.<sup>19</sup>

11 African Children's Committee and African Commission Joint General Comment on Female Genital Mutilation', <https://www.acerwc.africa/en/key-documents/general-comments> (accessed 16 June 2024).

12 As above.

13 K McLay 'Beading practice among the Samburu and its impact on girls' sexual and reproductive health: A critical overview of the literature' (2020) 1 *Publications and Scholarship* 1-52.

14 As above.

15 AU 'Campaign to end child marriage in Africa: Call to action' November 2013, [https://au.int/sites/default/files/pages/32905-file-campaign\\_to\\_end\\_child\\_marriage\\_in\\_africa\\_call\\_for\\_action-\\_english.pdf](https://au.int/sites/default/files/pages/32905-file-campaign_to_end_child_marriage_in_africa_call_for_action-_english.pdf) (accessed 6 June 2024).

16 AU 'Agenda 2063: The Africa we want', <https://au.int/en/agenda2063/overview> (accessed 6 June 2024).

17 As above.

18 UNICEF-UNFPA Joint Evaluation of the UNFPA-UNICEF *Joint programme on the elimination of female genital mutilation: Accelerating change* Phase III (2018-2021).

19 African Children's Committee and African Commission (n 11).

According to the Joint General Comment of the African Commission and the African Children's Committee on ending child marriage, 'marriage' means formal and informal unions between men and women recognised under any system of law, custom, society or religion. It reiterates the Charter's definition of 'child' to mean a human being aged below 18 years of age, even if majority is attained earlier under national law,<sup>20</sup> while 'child marriage' is defined as marriage in which either one of the parties, or both, is or was a child under the age of 18 at the time of union.<sup>21</sup> 'Betrothal' means an engagement or a promise to marry. It can also refer to the act of promising or offering a child or young person in marriage, whether by a parent, guardian or family member and elder.<sup>22</sup> The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) also prohibits child marriage and betrothal, declaring that they 'shall have no legal effect'.<sup>23</sup>

## 2.2 Current context: Some prevalent forms of harmful practices

### 2.2.1 Child marriage

Child marriage remains a significant issue across Africa, with a prevalence higher than the global average. If current trends continue, Africa is projected to have the largest number of child marriages by 2050.<sup>24</sup> In West and Central Africa, 40 per cent of women aged 20 to 24 years were married before the age of 18. The prevalence varies by country and region, with notable rates observed in Cameroon, the Democratic Republic of the Congo (DRC), The Gambia, Kenya, Malawi, Mali, Mauritania, Mozambique, South Africa and Uganda. For instance, in Mali, 55 per cent of girls are married before they turn 18, with the highest rates in the Kayes region. In Malawi, 50 per cent of women aged 20 to 24 were married before the age of 18, with the highest prevalence in central Malawi. Similarly, Mozambique has a high prevalence of child marriage at 48 per cent, with the highest rates in Cabo Delgado.<sup>25</sup>

The causes of child marriage are complex and have many different aspects, often intertwined with social, economic and cultural factors. Consequently, there is no single theory that fully explains the practice.<sup>26</sup> Common causes include economic concerns and challenges; gender norms; educational gaps; the significance of marriage in certain cultures; and societal vulnerabilities. Social norms and poverty are core drivers, underpinning issues such as lack of agency, opportunity and fear of pregnancy outside of marriage. These factors operate at the community, household and individual levels.<sup>27</sup>

Child marriage significantly disrupts the attainment of education and health outcomes, as early marriage is strongly correlated with low school enrolment and retention.<sup>28</sup> When girls marry young, they are often removed from school, leading to lower educational attainment. For example, in The Gambia, 59 per cent of girls with no formal education marry before 18, compared to 15 per cent with

20 As above.

21 Art 16(1) 1948 Universal Declaration of Human Rights.

22 African Children's Committee and African Commission (n 11).

23 Art 16(2) CEDAW.

24 UNICEF 'Profile of child marriage in Africa' November 2015, [https://www.unicef.org/wca/media/1001/file/A\\_per\\_cent20Profile\\_per\\_cent20of\\_per\\_cent20Child\\_per\\_cent20Marriage\\_per\\_cent20in\\_per\\_cent20Africa.pdf](https://www.unicef.org/wca/media/1001/file/A_per_cent20Profile_per_cent20of_per_cent20Child_per_cent20Marriage_per_cent20in_per_cent20Africa.pdf) (accessed 29 June 2024). See also Centre for Human Rights, the African Commission and the Special Rapporteur on the Rights of Women in Africa 'A report on child marriage in Africa' 2018, [https://www.chr.up.ac.za/images/researchunits/wru/news/files/2018\\_child\\_marriage\\_report\\_en.pdf](https://www.chr.up.ac.za/images/researchunits/wru/news/files/2018_child_marriage_report_en.pdf) (accessed 29 June 2024).

25 UNICEF (n 24); and Centre for Human Rights and others (n 24) 23.

26 SR Psaki and others 'What are the drivers of child marriage? A conceptual framework to guide policies and programmes' (2021) 69 *Journal of Adolescent Health* S13-S22.

27 As above.

28 ICRW 'Too young to wed: The lives, rights and health of young married girls' (2003), <https://www.icrw.org/wp-content/uploads/2016/10/Too-Young-to-Wed-the-Lives-Rights-and-Health-of-Young-Married-Girls.pdf> (accessed 29 June 2024).

secondary education.<sup>29</sup> This educational disruption is compounded by severe health consequences, as young brides often lack access to contraceptives and quickly fall pregnant, increasing the risk of childbirth complications and maternal mortality.<sup>30</sup>

While child marriage and other harmful practices disproportionately affect girls, it must be noted that there are instances where the boy child is also a victim. For instance, research findings reveal that Africa has the highest number of child grooms globally.<sup>31</sup>

### 2.2.2 *Ukuthwala*

*Ukuthwala* is a traditional South African practice where young girls, sometimes as young as 12 years, are abducted and forced into marriage, often with parental consent.<sup>32</sup> Originating from the Xhosa-speaking tribes, the practice has spread to other ethnic groups such as the Mpondo and Sotho. The term *ukuthwala* means 'to carry' and involves a man abducting a girl to initiate marriage negotiations. While this may seem violent, it is sometimes done with the girl's prior knowledge and consent. Her consent is necessary for the customary marriage to be valid. If her parents later refuse consent, the marriage is not legally recognised.<sup>33</sup>

However, in other cases *ukuthwala* happens without the girl's knowledge but with the agreement of her family. This often occurs when a girl might otherwise reject the marriage or if she holds a high rank but lacks suitors.<sup>34</sup> Another form of *ukuthwala* is when the girl is taken forcibly to the man's home, and representatives are sent to her family to begin marriage negotiations.<sup>35</sup> If the family refuses, an amount is payable, and the girl is returned. This form of *ukuthwala* can expose the girl to rape and violence, making it a forced marriage and leading to severe human rights violations, including infringements on bodily integrity, dignity and personal freedoms.<sup>36</sup>

### 2.2.3 *Female genital mutilation*

Female genital mutilation (FGM) is another harmful practice affecting females of all ages but often performed on young girls. In some instances, adult women are subjected to FGM at marriage, during the marriage, or at childbirth.<sup>37</sup> FGM falls within the parameters of article 21(1) due to its severe health risks and discriminatory nature.

FGM is categorised into four types. Type 1 involves the partial or total removal of the clitoral glans and/or the prepuce. Type 2 involves the partial or total removal of the clitoral glans and the labia minora, with or without removal of the labia majora. Type 3, known as infibulation, involves narrowing the vaginal opening by creating a covering seal formed by cutting and repositioning the labia minora or labia majora, sometimes through stitching, with or without removal of the clitoral prepuce and glans.

29 As above.

30 R Mutyaba 'Early marriage: A violation of girls' fundamental human rights in Africa' (2011) 19 *International Journal of Children's Rights* 339-355. See also Centre for Human Rights and others (n 24) 43.

31 RD Nanima 'The ACHPR and ACERWC on ending child marriage: Revisiting the prohibition as a legislative measure' (2019) 20 *ESR Review* 11.

32 L Mwambene & J Sloth-Nielsen 'Benign accommodation? *Ukuthwala*, "forced marriage" and the South African Children's Act' (2011) 11 *African Human Rights Law Journal* 2.

33 Mwambene & Sloth-Nielsen (n 32) 6.

34 Mwambene & Sloth-Nielsen (n 32) 7.

35 Mwambene and Sloth-Nielsen (n 32) 3.

36 E Curran & E Bonthuys 'Customary law and domestic violence in rural South African communities' (2005) 21 *South African Journal on Human Rights* 607, 615.

37 WHO (n 7).



Type 4 includes all other harmful procedures to the female genitalia for non-medical purposes, such as pricking, piercing, incising, scraping, and cauterising the genital area.<sup>38</sup>

Although traditional (customary) male circumcision cannot necessarily be regarded as an egregious breach of article 21, there are, for instance, South African examples of such circumcision leading to the deaths of initiates, including those aged below 18 years. It can therefore (partially) be considered a harmful cultural practice when it is unregulated and performed in unhygienic conditions.

#### 2.2.4 *Breast ironing*

Breast ironing, also known as breast flattening, is a harmful practice where the breasts of adolescent girls are pounded, pressed, ironed, rubbed or massaged to stop or delay their growth.<sup>39</sup> This can involve heated objects such as grinding stones, cast iron pans, electric irons, and other items such as plantain peels or certain leaves. The practice is typically carried out by female relatives and sometimes by traditional healers.<sup>40</sup> To date, there has been a significant lack of data and empirical studies on breast ironing. Nevertheless, a 2006 press release by UNFPA identified breast ironing as one of the 'five under-reported stories relating to gender-based violence'.<sup>41</sup> This practice is reported to occur in several countries, including Benin, Burkina Faso, Cameroon, the Central African Republic, Chad, Côte d'Ivoire, Guinea-Bissau, Guinea-Conakry, Kenya, Nigeria, Togo, South Africa and Zimbabwe.<sup>42</sup> Notably, a 2005 nationwide study in Cameroon revealed that approximately 25 per cent of girls and women had experienced breast ironing.<sup>43</sup> The primary motivations for breast ironing include protecting girls from sexual harassment and child marriage. It is believed that by disguising puberty, girls are less likely to attract male attention and be forced into early marriages. Additionally, the practice is rooted in traditional norms and gender inequality, aimed at controlling female sexuality and upholding cultural ideals about modesty and chastity.<sup>44</sup>

#### 2.2.5 *Children accused of witchcraft*

Witchcraft accusations and related violence against children, driven by superstition and belief in evil spirits, are increasing in visibility across several African countries, including Angola, Cameroon, Central African Republic (CAR), DRC, Liberia, Nigeria and Sierra Leone.<sup>45</sup> Vulnerable children, particularly those with disabilities, albinism or special talents, are often targeted. These children are accused of causing harm, such as illness or misfortune, through contact with the invisible world.<sup>46</sup> In 2002, the WHO identified various forms of violence linked to child abuse, particularly highlighting the severe physical and psychological abuse faced by children accused of witchcraft.<sup>47</sup> These children endure brutal torture, including cuts, burns, beatings, and the pouring of petrol into their eyes and ears, or

38 As above.

39 F Amahazion 'Breast ironing: A brief overview of an underreported harmful practice' (2021) 11 *Journal of Global Health* 03055.

40 BR Ngunshi 'Breast ironing: A harmful practice that has been silenced for too long' (2011) *Gender Empowerment and Development* 3-9.

41 UNFPA 'Violence against women: Stories you rarely hear about' 23 November 2006, <https://www.unfpa.org/press/violence-against-women-stories-you-rarely-hear-about> (accessed 2 July 2024).

42 NV Pemunta 'The social context of breast ironing in Cameroon' (2016) 3 *Athens Journal of Health* 335-360.

43 As above.

44 Amahazion (n 39).

45 A Cimpric 'Children accused of witchcraft. An anthropological study of contemporary practices in Africa Dakar' (2010) *UNICEF* 1.

46 Cimpric (n 45) 1-2.

47 EG Krug and others 'World report on violence and health' (2002) *The Lancet* 1083-1088.

being forced to ingest harmful substances for ‘cleansing’.<sup>48</sup> These children face extreme discrimination, neglect, abandonment and even murder. For instance, in 2008 numerous deaths occurred in Tanzania’s Lake Victoria regions, and in Burundi, several individuals with albinism were killed or threatened. In Zimbabwe, women with albinism were raped due to a belief that intercourse with them could cure HIV.<sup>49</sup>

### 2.2.6 Force-feeding

Force-feeding, otherwise termed *leblouh* or *gavage*, is another notable harmful practice against children in which parents force feed their female children, from as young as 5 to 10 years of age, to make them plump for early marriage.<sup>50</sup> The practice involves feeding the girls large quantities of food, such as milk, couscous, peanuts, oil and animal fat, resulting in a daily caloric intake far exceeding healthy recommendations. Mauritania is one of the only nations today that systematically practises force-feeding of young girls. Unfortunately, no law specifically prohibits or condemns the force-feeding of children in these countries.

Girls undergoing *leblouh* consume 14 000 to 16 000 calories daily, much higher than the 1 500 calories recommended for a healthy 12 year-old.<sup>51</sup> Methods of force-feeding include physical torture, such as rolling sticks on thighs, bending fingers, pinching, and even forcing the girls to eat their own vomit.<sup>52</sup> The practice leaves lasting physical damage, with many women reporting broken fingers, toes, and split skin due to overeating.<sup>53</sup> Despite its cultural roots, the practice severely impacts children’s well-being, contradicting protections under article 21 of the African Children’s Charter.

### 2.2.7 Sexual slavery

*Trokosi* is a traditional practice in West African countries,<sup>54</sup> and is most prevalent in Ghana, where young virgin girls are sent to religious shrines to atone for crimes allegedly committed by their male relatives.<sup>55</sup> This practice is considered a form of sexual slavery and violence against children. The girls are kept at the shrines under the control of priests, who determine when they have sufficiently atoned. If a girl dies while in *trokosi*, her family is required to replace her with another virgin girl. Failure to comply is believed to bring misfortune to the family.<sup>56</sup> Ghana’s Constitution and laws, including the Criminal Code (Amendment) Act of 1998, prohibit *trokosi* and aim to protect the rights of women and children by criminalising any form of ritual or customary servitude and forced labour related to such practices.<sup>57</sup>

48 Y Ally & L Yew-Siong ‘Religio-cultural beliefs, and children accused of witchcraft: Describing the child-witch phenomenon’ (2020) 21 *Child Abuse Research in South Africa* 51-60.

49 Cimpric (n 45) 24-30.

50 LA Guerrero ‘The force-feeding of young girls: Mauritania’s failure to enforce preventative measures and comply with the Convention on the Elimination of All Forms of Discrimination against Women’ (2012) 21 *Transnational Law and Contemporary Problems* 880-881.

51 Harvard International Review ‘Force-feeding and drug abuse: The steep price of beauty in Mauritania’ 25 April 2022, <https://hir.harvard.edu/force-feeding-and-drug-abuse-the-steep-price-of-beauty-in-mauritania/> (accessed 2 July 2024).

52 As above. See also Guerrero (n 50) 881-882.

53 NBC News ‘Force-fed women fight the fat in Africa’, <https://www.nbcnews.com/id/wbna9490454> (accessed 2 July 2024).

54 E Dovlo & SK Kufogbe ‘The distribution of Trokosi shrines (female ritual bondage in Ghana)’ (1998) *Bulletin of the Ghana Geographical Association* 143-156.

55 JA Agyei ‘African women: Championing their own development and empowerment – Case study, Ghana’ (2000) 21 *Women’s Rights Law Reporter* 117-124.

56 As above.

57 Criminal Code (Amendment) Act 314 (A) 1998.

### 2.2.8 Forced begging

Another harmful social practice that significantly affects the well-being of children is forced begging. In various cities worldwide, children are frequently seen begging in public places due to poverty, often exploited by adults for monetary gain.<sup>58</sup> A notable example is in some African countries where Koranic teachers known as *marabouts* compel young boys known as *talibés* to beg on the streets.<sup>59</sup> Human Rights Watch estimates that over 100 000 *talibés* residing in Daaras throughout Senegal are compelled by their Quranic teachers to beg each day for money, food, rice or sugar.<sup>60</sup> These children, typically aged around 10 years of age, come from impoverished backgrounds and are poorly dressed. Additionally, they beg full-time and are deprived of education, including Koranic schooling.<sup>61</sup> This practice is a severe form of exploitation, constitutes a worst form of child labour, and has drawn attention for its detrimental impact on the welfare and development of these children.

### 2.2.9 Virginity testing

Virginity testing, particularly prevalent in Southern Africa, is conducted to support premarital chastity and reduce HIV infection.<sup>62</sup> The practice involves a 'gynaecological' examination to determine if the hymen of unmarried young women, aged 7 to 26, is intact. Known as *ukuhlolwakwezintombi* in Zulu, this practice has historical roots in pre-colonial Zulu culture to ascertain a bride's chastity and determine the bride price.<sup>63</sup> Furthermore, during the procedure, girls lie on their backs, part their legs, and have their genitalia inspected by elderly women. If the hymen is intact, they receive certificates and white clay marks on their forehead; if not, they face interrogation and stigma.<sup>64</sup> Cultural relativists are in favour of the practice as they claim it promotes moral values and prevents HIV by deterring premarital sex.<sup>65</sup>

In South Africa, the Children's Act 38 of 2005 prohibits virginity testing on children under 16 years of age, with specific safeguards for those aged 16 to 18.<sup>66</sup> This legal framework aligns with constitutional protections, which guarantee reproductive autonomy and the security of persons.<sup>67</sup> However, opponents of virginity testing argue that the practice raises human rights concerns, violating privacy, sexual autonomy and bodily integrity. It perpetuates gender inequality, targeting girls and upholding stereotypes of female sexual passivity.<sup>68</sup>

58 E Delap 'Begging for change: Research findings and recommendations on forced child begging in Albania/Greece, India and Senegal' (2009) *Anti-Slavery International* 2.

59 A report issued by Human Rights Watch in April 2010 estimated 50 000 child beggars in Senegal. 'Off the backs of the children: Forced begging and other abuses against Talibés in Senegal' 2010, <http://www.hrw.org/reports/2010/04/15/back-children-0> (accessed 2 July 2024). In Nigeria these children are termed *Almanjiri*.

60 Human Rights Watch *There is enormous suffering: Serious abuses against Talibé children in Senegal, 2017-2018* (2019) 1-19.

61 Delap (n 58).

62 E Durojaye 'The human rights implications of virginity testing in South Africa' (2016) 16 *International Journal of Discrimination and the Law* 228-246.

63 Durojaye (n 62) 229-230.

64 S Leclerc-Madlala 'Virginity testing: Managing sexuality in a maturing HIV/AIDS epidemic' (2001) 15 *Medical Anthropology Quarterly* 533-553.

65 As above.

66 Act 38 of 2005.

67 The Constitution of the Republic of South Africa, 1996.

68 Durojaye (n 62) 229-230. See also KG Behrens 'Virginity testing in South Africa: A cultural concession taken too far?' (2014) 33 *South African Journal of Philosophy* 177-187.



### 2.3 Interconnected African Children's Charter provisions

Article 21 does not exist in isolation but is linked with other provisions in the African Children's Charter. For instance, article 1(3) of the Charter requires state parties to discourage any custom, cultural or religious practice that is inconsistent with the rights, duties and obligations outlined in the Charter.

Article 3 guarantees that every child is entitled to the rights and freedoms outlined in the Charter without discrimination of any kind. This provision is fundamentally linked to article 21 as harmful social and cultural practices often affect certain groups of children based on their sex, ethnicity or social status. For instance, FGM, virginity testing and child marriage, among others, predominantly target girls, thereby violating the principle of non-discrimination. The intersection of these two articles shows the need for states to adopt comprehensive anti-discrimination policies that specifically address the vulnerabilities of children – girls in particular – subjected to harmful practices.

Furthermore, article 4 of the Children's Charter contains the principle that the best interests of the child should be *the* primary consideration in all actions concerning children. This principle is at the heart of article 21, which mandates the elimination of harmful practices that jeopardise the well-being of children. In addressing child marriage, states must consider the profound impact such marriages have on the health, education and future opportunities of children. Thus, through the enforcement of laws and policies that prevent child marriage, states can uphold the best interests of the child, ensuring that children have the opportunity to grow and develop in a supportive environment.

Furthermore, article 5 requires states to ensure the survival, protection and development of children. Thus, the harms perpetuated by these practices directly infringe on these fundamental rights by causing physical and psychological harm and hindering development opportunities. The focus of article 21 to eliminate such practices is a direct extension of the commitment to safeguard children's survival and development.<sup>69</sup> Additionally, article 14 of the Charter asserts that children have the right to the best possible standard of health and obligates states to take steps to lower infant and child mortality rates, fight diseases, and guarantee access to health care services. Harmful practices such as FGM and child marriage, among others, pose serious health risks, including a higher chance of infections, childbirth complications, and enduring physical and emotional trauma.

Article 16 stipulates that children must be shielded from all forms of torture, inhuman or degrading treatment and abuse. Harmful cultural practices, such as FGM and certain initiation rites, fall under this category of abuse and inhumane treatment. Additionally, article 27 requires states to protect children from all forms of sexual exploitation and abuse. Child marriage often involves sexual exploitation, as young girls are forced into marriage and subjected to sexual relations before they are physically or emotionally prepared. Therefore, article 21's emphasis on eliminating child marriage is vital for safeguarding children from sexual exploitation.

### 2.4 Links to other human rights treaties

Article 21 is closely aligned with various other international human rights treaties. These treaties collectively reinforce principles and mandates aimed at eliminating harmful social and cultural practices affecting children. The first of these is the Convention on the Rights of the Child (CRC).<sup>70</sup> Several

<sup>69</sup> African Children's Committee & African Commission (n 11).

<sup>70</sup> UNICEF 'What is the UN Convention on Child Rights?' <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/#:~:text=What%20is%20in%20the%20UNCRC,every%20child%20to%20claim%20them> (accessed 8 June 2024). 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 *Southern African Public Law* 1.

provisions in CRC align closely with the objectives of article 21 of the African Children's Charter. For instance, article 19 of CRC mandates that states protect children from all forms of physical or mental violence, injury, abuse, neglect, maltreatment or exploitation.<sup>71</sup>

Furthermore, article 24(3) of CRC specifically calls on states to take all effective and appropriate measures to abolish traditional practices that are harmful to the health of children. The African Children's Charter provision is broader than this, insofar as it includes practices that infringe dignity and those that result in discrimination on the basis of sex or other status. Additionally, article 34 of CRC obligates states to protect children from all forms of sexual exploitation and abuse, which implicates child marriage

CEDAW<sup>72</sup> addresses issues closely related to the harmful practices targeted by article 21 of the African Children's Charter. For instance, article 2(f) of CEDAW requires states to take all necessary measures to modify or abolish existing laws, regulations, customs, and practices that constitute discrimination against women.<sup>73</sup> Additionally, article 5(a) of CEDAW mandates that states take all appropriate measures to change social and cultural patterns of conduct of men and women to eliminate prejudices and customary practices based on the idea of the inferiority or superiority of either sex. This provision directly supports efforts to challenge and transform the cultural norms that sustain harmful practices against children.<sup>74</sup>

The Maputo Protocol,<sup>75</sup> as earlier indicated, is a pivotal regional instrument that complements the African Children's Charter. Article 5 specifically addresses the elimination of harmful practices, urging states to prohibit and condemn all forms of practices that negatively impact the human rights of women and girls, including FGM. It further calls for legislative measures backed by sanctions to eradicate such practices. Article 6 of the Maputo Protocol focuses on marriage, highlighting that no marriage shall take place without the free and full consent of both parties, and setting the minimum age of marriage for women at 18 years. This provision reinforces the content of article 21.

Article 24 of the International Covenant on Civil and Political Rights (ICCPR) provides that every child has the right to the necessary measures of protection required by their status as a minor, provided by their family, society and the state. This general protection framework underscores the state's obligation to safeguard children from harmful practices that compromise their development and well-being.<sup>76</sup> Additionally, article 7 of the ICCPR prohibits torture or cruel, inhuman or degrading treatment or punishment. The harmful practices described above can be considered as falling under the prohibitions of this article.<sup>77</sup>

Article 12 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) recognises the right of everyone to the highest attainable standard of physical and mental health. It obligates states to take necessary steps for the prevention, treatment, and control of diseases, including the elimination of harmful practices that jeopardise children's health. Furthermore, article 10 of the ICESCR acknowledges that special protection should be accorded to mothers and children, supporting efforts to combat practices that specifically endanger the health and well-being of girls.

71 Art 19(1) CRC.

72 CEDAW, 1979.

73 UNICEF (n 24).

74 HMT Holtmaat 'Article 5 CEDAW' in MA Freeman, C Chinkin & B Rudolf (eds) *The UN Convention on the Elimination of All Forms of Discrimination against Women: A commentary* (2012) 141-167.

75 See in general Rudman and others (n 10).

76 African Children's Committee General Comment on Article 21 (n 11).

77 UNICEF (n 24).

### 3 Nature and scope of state obligations

Article 21 of the African Children's Charter underscores the state's obligation to prohibit harmful social and cultural practices against children. Specifically, article 21(2) mandates that state parties take legislative measures to prohibit child marriage, and establishes the minimum age of marriage at 18 years. This means that state parties must enact, amend, repeal or supplement legislation as necessary to ensure that the betrothal and marriage of children under the age of 18 years is strictly prohibited. In terms of the Joint General Comment on Ending Child Marriage of the African Children's Committee and the African Commission (as well as the CEDAW Committee) there are various measures that states can undertake to ensure that they meet their obligations under article 21 to eradicate child marriages.

#### 3.1 Ensuring personal, full and free consent to marry

Legislation should mandate that both parties entering into marriage freely consent. Individuals under the age of 18 years cannot provide such consent for marriage or similar unions. This requirement of full consent must apply universally to all types of marriages, without exception.<sup>78</sup> Although parental consent may be required in some cases, it cannot substitute for the personal, complete and voluntary consent of the individuals marrying. Furthermore, marriage officers must ensure that such consent is genuine. Failure to provide personal, complete and voluntary consent should constitute grounds for legally annulling a presumed marriage. Consent here does not cover proxy consent to marriage for a child, that is, consent to the marriage given by male or other relatives on behalf or instead of the girl (or boy) who is expected or forced to contract the marriage.<sup>79</sup>

#### 3.2 Undertaking constitutional reforms

For states to fully meet their obligations under article 21, constitutional reforms should include non-derogable clauses that firmly entrench equality within marriage and specify a minimum age of 18 years for marriage. These clauses should be crafted to prevent any restrictions, exemptions or deviations based on tradition, religion or other rationale as required by article 1(3) of the African Children's Charter, and should be applicable to all harmful practices.

#### 3.3 Implement verification procedures: Birth registration, age verification and marriage registration

There are, furthermore, institutional measures to combat child marriage, emphasising the importance of mandatory, accessible and free birth registration. Birth certificates are deemed crucial for age verification during marriage procedures, ensuring that individuals under 18 cannot legally marry.<sup>80</sup> Marriage officers are responsible for verifying the age requirement using birth certificates or, if unavailable, alternative objective evidence such as school or hospital records.<sup>81</sup> While community knowledge and interviews can aid this process, they must be supported by documented evidence,

<sup>78</sup> Art 21(2) African Children's Charter; arts 6(a),(b) & 1(b) Maputo Protocol; African Children's Committee (n 11).

<sup>79</sup> Per Principle 1(b) of the United Nations High Commissioner: 'Marriage by proxy shall be permitted only when the competent authorities are satisfied that each party has, before a competent authority and in such manner as may be prescribed by law, fully and freely expressed consent before witnesses and not withdrawn such consent.' As per the relevant law, valid marriages can only be legally contracted by men and women of full age, which in terms of the African Children's Charter is 18 years and above. See United Nations Office of the High Commissioner for Human Rights Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, adopted 1 November 1965 by General Assembly Resolution 2018 (XX).

<sup>80</sup> Arts 6(2) & 21(2) African Children's Charter.

<sup>81</sup> African Children's Committee (n 11); African Children's Committee General Comment on Article 6 on 'Right to Birth Registration, Name, and Nationality'.

avoiding sole reliance on parental statements.<sup>82</sup> In case of age disputes or inconclusive evidence, the presumption should favour that the individual is under 18.<sup>83</sup> All types of unions, civil, customary or religious must be officially registered, with systems designed to be both accessible and affordable.<sup>84</sup>

### **3.4 Enforcement of laws, penalties and sanctions**

To effectively enforce the prohibition against child marriage and other harmful practices, penalties and sanctions must be imposed, and with references to child marriage, in cases where marriages occur without verifying age and consent requirements. However, these penalties must not target the children involved.<sup>85</sup> Typically, sanctions are directed towards marriage officers or unauthorised individuals who conduct marriages. In cases involving public servants, their involvement should be seen as an aggravating factor, warranting both criminal and administrative penalties, such as revocation of a marriage licence.<sup>86</sup> Penalties may also extend to those who promote or facilitate child marriage, although penalising parents is not advisable, as it could drive the practice underground. The focus should be on prevention and deterrence, with safeguards in place to protect whistle blowers who report suspected cases of child marriages and other harmful practices against children.

### **3.5 Measures in education and access to justice**

Keeping children, especially girls, in school is pivotal for preventing child marriage and other harmful practices. States must enact policies to ensure equal access to education for both genders. These measures should encourage pregnant girls to continue their education, offer alternative schooling options, and provide incentives for parents to prioritise their daughters' education. Schools should have resources in place to support and safeguard girls, including protection from violence.<sup>87</sup> School policies should empower teachers to intervene if they suspect a girl is at risk of marriage withdrawal. Girls who become mothers should receive assistance in registering their children's birth.<sup>88</sup> States must address systemic issues in the justice system, such as resource shortages and corruption, to ensure access to justice for girls vulnerable to child marriage and other harmful practices.<sup>89</sup> Awareness campaigns about harmful practices, including child marriage laws, toll-free helplines and free legal aid should be available. Specialised police units and training for judicial personnel on gender-sensitive approaches are advisable. States should ensure appropriate remedies for violated rights, as determined by competent authorities.

### **3.6 Support for those victims of harmful practices and capacity building**

States should provide comprehensive support to children already impacted by harmful practices such as child marriage, including social protection, healthcare services, educational assistance and legal rights information. They should be empowered to seek assistance for any further rights infringements, particularly instances of domestic violence, and aided in their roles as parents. Furthermore, states should organise training sessions and capacity-building workshops for government officials and other stakeholders involved in marriage and birth registration. This includes educators, healthcare professionals, judicial officers, law enforcement, community leaders, human rights institutions and

<sup>82</sup> As above.

<sup>83</sup> Para 26 African Children's Committee (n 11); as above.

<sup>84</sup> Art 6(d) Maputo Protocol & art 21(2) African Children's Charter.

<sup>85</sup> African Children's Committee (n 11).

<sup>86</sup> As above.

<sup>87</sup> Art 11(1)(3) African Children's Charter; art 12(c) Maputo Protocol; art 17(1) African Charter.

<sup>88</sup> Arts 11(3)(d) & 11(6) African Children's Charter.

<sup>89</sup> African Children's Committee (n 11).

civil society organisations. These training programmes should prioritise raising awareness about the prohibition of child marriage and other harmful practices as well as the rights of children and women.<sup>90</sup>

### 3.7 Data collection and resource allocation

States must set up robust data collection mechanisms to pinpoint areas where efforts to combat child marriage and the prevalence of other particular harmful practices require bolstering. Data on school enrolment, attendance, completion and drop-out rates, as well as the utilisation of health and social services, should be gathered and categorised by age, gender, region and other pertinent factors. These data systems should be integrated with national Civil Registration and Vital Statistics (CRVS) systems. To fulfil their obligations, states must allocate ample budgetary and other resources to end child marriage and harmful practices generally. This encompasses funding for programmes, awareness campaigns, CRVS systems, legislative reforms, law enforcement and training initiatives.<sup>91</sup>

### 3.8 Addressing the root causes of child marriage and other harmful practices

States must implement comprehensive measures to tackle the underlying causes of all harmful practices such as child marriage, with a primary emphasis on alleviating poverty. Addressing poverty entails augmenting national budgets for essential social services such as education, health care and adequate housing. A failure to provide these fundamental services not only violates legal obligations but also fosters conditions conducive to child marriage and other harmful practices.<sup>92</sup> Child marriage often stems from various cultural roots and practical needs such as families wishing to receive a bride wealth or dowry as a poverty alleviation measure – with one mouth less to feed. Girls often end up on the receiving end of this rationale with limited or no formal education provided to them since *they will be married off anyway*.<sup>93</sup> States should adopt policies to alleviate poverty, especially in regions where child marriage is prevalent, and expand assistance programmes to aid families and children, paying particular attention to vulnerable groups such as children in child-headed households, those with disabilities, and those affected by homelessness, internal displacement and conflict.<sup>94</sup>

### 3.9 Prohibiting harmful practices and addressing gender inequality

States are obligated to prohibit and denounce all harmful practices that perpetuate child marriage or violate the rights of women and children. While it is crucial to prohibit harmful practices, it is also important to respect the rights of women and girls to live in a positive cultural context, and for states to promote such contexts. Furthermore, the practice of dowry payment increases girls' vulnerability and undermines their ability to provide free consent. States should, therefore, take steps to outlaw and condemn dowry payments concerning children.<sup>95</sup> States are obligated to eliminate all forms of

90 As above.

91 As above.

92 Office of the High Commission for Human Rights 'Preventing and eliminating child, early and forced marriage,' <http://www.ohchr.org/EN/Issues/Children/ThematicReports/Pages/ThematicreportsonchildrenIndex.aspx> (accessed 10 June 2024).

93 UNFPA & UNICEF 'Evidence review: Child marriage interventions and research from 2020 to 2022' January 2023, <https://www.unicef.org/media/136646/file/CRANK-Evidence-Review-Child-Marriage-2023.pdf> (accessed 12 July 2024).

94 As above; African Children's Committee (n 11).

95 The practice of dowry payments may incentivise parents to consent to their child's marriage in exchange for financial gain or reward. See CEDAW Committee and CRC Committee Joint General Recommendation 31 and General Comment 18 (2019) on harmful practices' para 24.



discrimination against women, necessitating measures to eradicate systemic gender inequality and integrate a gender perspective into all policies, plans and programmes.<sup>96</sup>

### 3.10 Special measures for high-risk children

Special measures should be crafted to safeguard children who are particularly vulnerable to child marriage and other harmful practices, such as those affected by conflict, children with disabilities, children in child-headed households and displaced children. Every effort should be made to secure the safe return of children abducted or coerced into marriage. For children with disabilities, states should provide reasonable accommodations to ensure that they can access and utilise educational, health care and other social services on an equal basis. Children in child-headed households should receive the necessary social assistance and protection against child marriage. States are obligated to shield children who are asylum seekers, refugees, migrants, returnees or internally displaced from all forms of violence, guaranteeing their physical, psychological, social and legal protection. Special measures should be implemented to safeguard displaced children, particularly girls, from child marriage.<sup>97</sup>

### 3.11 Reparation and support for victims

States have a responsibility to offer adequate, effective and comprehensive reparations to victims of child marriage and other harmful practices. When state acts or omissions are responsible, reparations should encompass compensation, satisfaction and assurances of non-repetition. States must ensure that all victims receive restitution and rehabilitation, aiming to restore them to their pre-marital or 'pre-harm' status and reinstate their independence and participation in society. While the primary responsibility for reparations lies with states, an enabling environment should be created for civil society and grassroots organisations to offer services. National laws and policies should guarantee immediate temporary protection for child victims and establish clear reporting mechanisms that prompt a response, providing services and support.<sup>98</sup>

## 4 Domestication of article 21 of the African Children's Charter

Many African countries have made significant progress in enacting laws and policies that align with the provisions to combat child marriage and other harmful practices. For instance, in Chad, President Idriss Deby issued an ordinance on 14 March 2015 prohibiting the marriage of minors under the age of 18. This ordinance imposes a prison sentence of five to 10 years and a fine ranging from CFA 500 000 to 5 million (approximately US \$1 000 to \$10 000) on anyone who forces a minor into marriage.<sup>99</sup> Additionally, section 109 of Ghana's Criminal Code states that coercing a child into marriage is a crime, and that anyone who forces another to marry against their will is guilty of a misdemeanour.<sup>100</sup> In Malawi, both the Constitution and the Marriage, Divorce and Family Relations Act<sup>101</sup> establish 18 years as the minimum legal age for marriage without exceptions. In 2017 Parliament amended the Constitution to eliminate provisions that permitted marriage at 15 with parental consent.<sup>102</sup> This occurred in compliance with the Malawian Friendly Settlement communication before the African Children's Committee.<sup>103</sup>

96 UNFPA & UNICEF (n 93); African Children's Committee (n 11).

97 Art 10(2)(c) & 11(3) Maputo Protocol; art 32 African Children's Charter.

98 African Children's Committee (n 11).

99 C Nyamutata 'Decolonising and decriminalising child marriage in Africa' (2023) 17 *Sociology Compass* 13131.

100 Criminal Offences Act 29 of 1960.

101 Marriage, Divorce and Family Relations Act 2015.

102 Nyamutata (n 99).

103 <https://www.acerwc.africa/en/communications/institute-human-right-and-development-africa-v-government-malawi> (accessed 14 October 2024).

In Ethiopia the revised Family Code 2000 and its Criminal Code set the minimum legal age of marriage at 18 and criminalised child and forced marriages.<sup>104</sup> Similarly, Rwanda's Penal Code defines a child as anyone under 18 and criminalises sexual acts with a child and living with a child as a spouse. Amendments in 2016 to Rwanda's Law 32/2016 established the minimum legal age of marriage at 21 years, with no exceptions.<sup>105</sup> Eswatini's Children's Protection and Welfare Act of 2012 states that children have the right to refuse any custom or traditional practice that negatively affects them, and penalises parents and guardians who collude in orchestrating child marriages, with offenders facing up to 20 years' imprisonment.<sup>106</sup>

Furthermore, in Tanzania the Law of Marriage Act of 1971 makes it a crime to marry someone below the minimum age for marriage or participate in a marriage ceremony where the intended spouse is under 18 and has not given consent.<sup>107</sup> In the notable case of *Attorney General v Rebeca Gyumi* the Tanzanian High Court declared sections 13 and 17 of the Law of Marriage Act,<sup>108</sup> which set a different minimum age for marriage for boys and girls, as discriminatory and unconstitutional, thus prohibiting girls under 18 from marrying.

The Child Care and Protection Act of Namibia provides that a person who subjects a child to social, cultural and religious practices that can negatively affect a child's well-being commits a crime punishable by a fine of up to N\$50 000 or imprisonment for up to ten years, or both. According to section 226(2) of the Child Care and Protection Act,<sup>109</sup> '[a] person may not give a child out in marriage or engagement if such child does not consent to the marriage or engagement or is below the minimum age for marriage contemplated in section 24 of the Marriage Act'.<sup>110</sup>

The landmark judgment in *Mudzuru & Another v The Minister of Justice, Legal and Parliamentary Affairs & 2 Others* in Zimbabwe furthermore addresses the domestic practice of child marriage.<sup>111</sup> Two young women challenged the constitutionality of child marriage, arguing that the Marriage Act, which allowed girls to marry at 16 while boys could marry at 18, was discriminatory and violated their rights under Zimbabwe's Constitution.<sup>112</sup> They claimed that this disparity infringed upon their rights to equal protection, dignity, education and health.<sup>113</sup>

The judgment in *Mudzuru* is particularly important for its jurisprudential contributions. One significant aspect of the ruling is its interpretation of *locus standi*, which marks a considerable expansion of public interest litigation.<sup>114</sup> Traditionally, standing to bring a case required a direct personal interest in the matter. However, the *Mudzuru* judgment broadens this scope, allowing individuals or groups to bring cases in the public interest even if they are not directly affected. This liberalised approach enhances the judiciary's ability to protect fundamental rights and freedoms, ensuring that issues of public concern can be addressed through the legal system.

104 Ethiopia, Revised Family Code, Proclamation 213/2000 and The Criminal Code of the Federal Democratic Republic of Ethiopia 2004.

105 Rwanda's Law 32/2016 Governing Persons and Family.

106 Children's Protection and Welfare Act 2012 sec 15.

107 Law of Marriage Act 1971, secs 13 & 17.

108 *Attorney General v Rebeca Z Gyumi* Civil Appeal 204 of 2017 [2019] TZCA 348 (23 October 2019).

109 Sec 226(2) of the Child Care and Protection Act 3 of 2015.

110 Child Care and Protection Act sec 226(2) read together with sec 24 of the Marriage Act 25 of 1961.

111 *Mudzuru & Another v The Minister of Justice, Legal and Parliamentary Affairs & 2 Others* CCZ 12/2015, <http://www.lrfzim.com/wp-content/uploads/2016/01/Landmarkruling-on-child-marriages.pdf> (accessed 2 July 2024).

112 As above.

113 As above.

114 J Sloth-Nielsen & K Hove 'Mudzuru & Another v The Minister of Justice, Legal and Parliamentary Affairs & 2 Others: A review' (2015) 15 *African Human Rights Law Journal* 554-568.

Another key contribution of the judgment is its incorporation of international treaty law and foreign case law, which underscores Zimbabwe's commitment to upholding international human rights standards. The Court's reliance on treaties such as CRC and the African Children's Charter aligns its reasoning with global norms and reinforces the binding nature of these treaties in domestic law.<sup>115</sup>

Further examples of states enacting laws and policies that align with the provisions of the African Children's Charter can be seen in Ghana in addressing the harmful practice of *trokosi*. The Ghanaian Constitution prohibits slavery and servitude, explicitly including *trokosi*.<sup>116</sup> The Criminal Code (Amendment) Act of 1998 further strengthens these protections by criminalising any form of ritual or customary servitude, including forced labour related to religious practices. Offenders face imprisonment for a minimum of three years upon conviction.<sup>117</sup>

Additionally, article 3 of Law 2005-06 in Senegal prohibits the practice of forced begging and imposes penalties on those who organise, hire, lead or deceive children into begging. Offenders face imprisonment ranging from two to five years and fines between 500 000 and 2 000 000 francs.<sup>118</sup> Furthermore, according to UN Women, approximately 20 per cent of countries globally explicitly ban FGM. Among the 28 countries where FGM is practised, only 19, including South Africa and Zimbabwe, have national laws against FGM.<sup>119</sup> The form of legislation varies in some countries, such as in Ethiopia, where it is part of general criminal law, while in others, such as Benin and Eritrea, there are specific laws on FGM. Most anti-FGM laws include statutory penalties. For instance, in Tanzania, performing FGM on girls under 18 results in five to 15 years' imprisonment, a fine of 300 000 TZS (\$188), or both. In Niger, despite FGM being illegal and punishable by six months to three years in prison, aggravating circumstances such as the victim's death can lead to sentences of 10 to 20 years.<sup>120</sup>

## 5 Conclusion

The evolution of jurisprudence regarding harmful social and cultural practices against children in Africa, particularly child marriage, reflects significant progress in both legal frameworks and societal perspectives. The African Children's Charter, notably article 21, serves as a sturdy basis for advocating for children's rights and shielding them from such practices. Over the years, several African nations have adopted these provisions into their national laws and policies.

Despite the progress in legal measures, the continued prevalence of child marriage, FGM and other harmful practices against children highlights the need for further action to fully implement article 21 of the African Children's Charter. A crucial recommendation for state actors is to rigorously enforce existing laws and continuously update legal frameworks to eliminate any loopholes enabling harmful practices. This entails ensuring constitutional reforms that firmly establish marital equality and stipulate a minimum marriage age of 18 without exceptions. Moreover, states should implement comprehensive institutional measures, such as enhancing birth registration systems, facilitating affordable marriage registration, and instituting verification processes to prevent child marriages.

Non-state actors, comprising civil society groups, international allies and grassroots movements, play a pivotal role in supplementing state initiatives. Employing educational campaigns, community dialogues and partnerships with traditional, community and religious leaders are crucial methods for

115 Sloth-Nielsen & Hove (n 113). It also accords with art 1(2) of the African Children's Charter.

116 Constitution of Ghana art 16(1).

117 Criminal Code (Amendment) Act 314 (A) (1998).

118 Art 3 of Law 2005-06.

119 Office of the Special Representative of the Secretary-General on Violence against Children and Plan International *Protecting children from harmful practices in plural legal systems with a special emphasis on Africa* (2012) 25.

120 As above.

altering societal norms that perpetuate child marriage, FGM and other harmful practices. Additionally, providing support programmes for girls at risk or already impacted by these practices – including educational aid, healthcare services, legal assistance and psychosocial support – is essential for mitigating adverse consequences and empowering these individuals.

Both state and non-state actors must tackle the underlying causes of harmful practices, including poverty, gender inequality and limited education. Policies targeting poverty reduction, enhancing educational opportunities and advancing gender equality are essential elements of a comprehensive strategy to eliminate child marriage and other harmful practices. Moreover, prioritising data collection and resource distribution is crucial for identifying areas needing heightened attention and ensuring the successful implementation of policies and initiatives. In light of the above, while significant progress has been made in the jurisprudence surrounding harmful social and cultural practices against children in Africa, ongoing commitment and collaborative efforts are essential to fully realise the protections envisioned by article 21.