

## Chapter 29

### Article 28

#### Drug abuse

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State parties to the present Charter shall take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the production and trafficking of such substances.

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## 1 Introduction

The use and abuse of drugs by children and adolescents is on the rise worldwide.<sup>1</sup> Africa is no exception from this trend, with children's substance abuse being described as an 'epidemic'.<sup>2</sup> Despite this, there is a lack of harmonised and reliable data on substance use by children.<sup>3</sup> Acknowledging this problem facing children in Africa, at its forty-first session, the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) held a day of general discussion focusing on the protection of children from substance use. In its outcome statement, the Children's Committee noted that it was deeply concerned at the 'proliferation of harmful substances that are easily accessible by young people, the alarming number of young people in Africa who develop substance use problems and seek treatment, and the grossly inadequate availability of substance use prevention and treatment services for children'.<sup>4</sup> As will be discussed below, state obligations under article 28 of the African Charter on the Rights and Welfare of the Child (African Children's Charter) are much wider than the issues discussed during the Children's Committee's day of general discussion.

1 African Children's Committee 'Day of General Discussion: Protection of Children from Drug Use' 27 April 2023, <https://www.acerwc.africa/en/article/activity/day-general-discussion-protection-children-drug-use> (accessed 13 August 2024).

2 As above.

3 African Children's Committee 'ACERWC Day of General Discussion on the Protection of Children From Substance Use Outcome Statement' (2023) 1.

4 As above.

Article 28 is further referenced in the African Children's Committee's Agenda 2040, under Aspiration 7.<sup>5</sup> Aspiration 7 seeks to ensure that every child is protected against violence, exploitation, neglect and abuse, and calls on states, among others, to protect children from drug abuse.

The duty to protect and prevent children from the use of drugs forms but one part of the state party obligations under article 28 of the African Children's Charter. Article 28 further places an obligation on states to prevent children from becoming involved in the drug supply chain, as well as assist those already involved in the drug trade. However, these other obligations have yet to receive substantive attention from the African Children's Committee.

This chapter seeks to interpret article 28 of the Children's Charter, including what amounts to 'appropriate measures', to which narcotic and psychotropic substances the article is referring, from whose drug abuse children must be protected, and what the obligation to prevent children being used in the drug supply chain entails. Prior to embarking on this interpretation, the links between article 28 and other Charter articles and other treaties will be explored. This chapter further looks at how the article has been domesticated by select state parties to the Charter, with a focus on good practice examples.

## 2 Links to other Charter articles

The African Children's Committee has endorsed the view that all rights contained in the African Children's Charter are interdependent, indivisible and mutually reinforcing.<sup>6</sup> Furthermore, the Committee has identified the following articles as not only rights, but general principles, which must inform the implementation of the Charter as a whole: non-discrimination (article 3); the best interests of the child (article 4(1)); the right to survival, development and protection (article 5); and participation (articles 4(2) and 7).<sup>7</sup> Thus, the implementation of article 28 must be in accordance with, and take into account, these general principles.

Additionally, the right to non-discrimination and the right to survival, development and protection are inextricably linked to article 28. Children must not be discriminated against on the basis of their or their parents' drug use, nor their participation in the trafficking of the substances defined in article 28, and neither drug use nor trafficking should be a bar to their exercise of any other rights under the Children's Charter. Furthermore, drug use, being in the presence of drug use and being involved in the drug trade will have an impact on the child's physical, emotional, spiritual, social, moral and psychological development, thus violating the child's right to development and protection. Thus, to protect a child from the use of narcotics and illicit psychotropic substances also gives effect to their right to development and protection.

Article 28 is further linked to article 14, the right to health and health services. Article 14 states that 'every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health' and that 'states parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care'.<sup>8</sup> Although the

5 African Children's Committee 'Agenda 2040: 10 Aspirations for an Africa Fit for Children' (2022) 29.

6 General Comment 2 on art 6 of the African Children's Charter: The Right to a Name, Registration at Birth, and to Acquire a Nationality African Children's Committee (8 November 2013) ACERWC/GC/02 (2014) para 25; General Comment 5 of the African Children's Committee on State Party Obligation under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection), African Children's Committee (1 October 2018) ACERWC/GC/05 (2018) para 6.

7 General Comment 5.

8 Arts 14(1) & 14(2)(b).

Charter places an emphasis on primary health care, to deny children access to rehabilitative services for drug abuse would be to deny the child the right to attain the best state of physical, mental and spiritual health and the provision of necessary medical attention and health care. Moreover, the prevalence of drug addiction in a country prevents the realisation of article 14. Therefore, while the emphasis of article 14 may be on primary health care, it does not exclude obligations on states to provide other necessary health care to children where necessary, and means that states must provide drug rehabilitation services for children. This interpretation is in accordance with that of the African Commission on Human and Peoples' Rights (African Commission) that stated that, in terms of the right to health, states have an obligation 'to take concrete and targeted steps, while taking full advantage of its available resources, to ensure that the right to health is fully realised in all its aspects without discrimination of any kind'.<sup>9</sup> Moreover, in its Concluding Observations the African Children's Committee has recommended the provision of rehabilitative services and medical support to children addicted to drugs.<sup>10</sup>

The use of children in the production and trafficking of narcotic drugs and psychotropic substances amounts to economic exploitation. In fact, using children in the trafficking of drugs has been classified as one of the worst forms of child labour.<sup>11</sup> Therefore, the obligation to prevent the use of children in the production and trafficking of drugs and psychotropic substances is interlinked with the child's article 15 right to 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'.

Lastly, article 17, the administration of juvenile justice, is relevant for the purposes of article 28. Where a child is charged for or convicted of a drug-related offence, whether that be possession, selling or trafficking, states must ensure that the child's rights in the child justice system are upheld.

### 3 Links to other human rights treaties

Article 28 of the African Children's Charter 'closely reflects' article 33 of the Convention on the Rights of the Child (CRC).<sup>12</sup> Article 33 of CRC states that '[s]tates parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties and to prevent the use of children in the illicit production and trafficking of such substances'. However, while both article 28 and article 33 place an obligation on state parties to protect children from the use of drugs as defined in international treaties, the word 'illicit' is only used in reference to psychotropic substances in article 28, whereas article 33 of CRC uses the word 'illicit' for both psychotropic substances and narcotics. Consequently, while some forms of licit use by children of both psychotropic substances and narcotics are envisioned under CRC, and which are permissible for use by children, the African Children's Charter appears to place an obligation on states to protect children from all forms of narcotic drugs defined in the international treaties, whether licit (for example, morphine or attention deficit hyperactivity disorder (ADHD) medication administered or prescribed by a doctor) or illicit. Furthermore, the word 'illicit' is also excluded from the segment related to production and trafficking under article 28. This would infer that children should be prevented from the production

9 *Purohit & Another v The Gambia* (2003) AHRLR 96 (ACHPR 2003) para 84.

10 See Concluding Observations and Recommendations of the African Children's Committee on the Initial Report of the Republic of Burundi on the Status of the Implementation of the African Charter on the Rights and Welfare of the Child para 46; Concluding Observations and recommendations of the African Children's Committee to the Government of the Republic of South Africa on its Second Periodic Report on the Implementation of the African Charter on the Rights and Welfare of the Child (September 2023) para 53.

11 Art 3(c) Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 2133 UNTS161 entered into force 19 November 2000.

12 D Barrett & PE Veerman *A commentary on the United Nations Convention on the Rights of the Child, article 33: Protection from narcotic drugs and psychotropic substances* (2012) 18.

and trafficking of narcotics and psychotropic substances, whether that production and trafficking is licit or illicit.

Furthermore, article 28 refers to narcotics and illicit psychotropic substances ‘as defined in the relevant international treaties’. While neither the African Children’s Charter nor the African Children’s Committee has made explicit reference to the international treaties that are relevant in this regard, due to the close connection between article 28 and article 33, it may be presumed that those treaties relevant for article 33 of CRC are equally relevant for defining narcotic drugs and psychotropic substances for the purposes of article 28 of the African Children’s Charter. Thus, recourse should be had to the three main international treaties on drug control, namely, the Single Convention on Narcotic Drugs 1961 (as amended by the 1972 Protocol on the Single Convention);<sup>13</sup> the Convention on Psychotropic Substances 1971;<sup>14</sup> and the Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.<sup>15</sup> Substances that are under drug control are listed in the schedules to these conventions. The Single Convention controls substances such as cannabis, coca leaf, opium poppy and their derivatives, such as morphine, cocaine and heroin.<sup>16</sup> The Convention on Psychotropic Substances deals with synthetic and pharmaceutical substances, for example MDMA (ecstasy), LSD, DMT and THC.<sup>17</sup> The Trafficking Convention lists ‘precursors and chemicals frequently used in the illicit manufacture of narcotic drugs and psychotropic substances under international control’.<sup>18</sup> Further, the World Health Organisation (WHO) Framework Convention on Tobacco Control is relevant for article 28.<sup>19</sup> The African Children’s Committee has often commented on the use of tobacco products by children in Concluding Observations under article 28.<sup>20</sup> The Convention on Tobacco Control prohibits the sale of tobacco products to persons under the age of 18 years or the age set by national law. Thus, states have a duty to protect children from the use of tobacco products under article 28.

However, those substances not defined in the above treaties are not subject to article 28. This means that khat, a leaf commonly chewed in the Horn of Africa,<sup>21</sup> and solvents such as glue and aerosols, are excluded from the ambit of article 28, despite the danger they both pose to children in Africa. The status of alcohol under article 28 of the African Children’s Charter is discussed in part 4.2 below.

Moreover, relevant to the second obligation on states, namely, to prevent the use of children in the trafficking of drugs and psychotropic substances, is the Convention Concerning the Prohibition

13 Single Convention on Narcotic Drugs, 1961, 30 March 1961, 520 UNTS 204; Protocol Amending the Single Convention on Narcotic Drugs, 25 March 1972, TIAS 8118, 976 UNTS 3.

14 Convention on Psychotropic Substances, 1971 32 UST 543, TIAS 9725, 1019 UNTS 175.

15 Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, UN Doc E/CONF.82/15 (1988), reprinted in 28 ILM 493.

16 INCB ‘List of Narcotic Drugs Under International Control: Yellow List,’ [https://www.incb.org/documents/Narcotic-Drugs/Yellow\\_List/63rd\\_edition/Yellow\\_List\\_63\\_edition\\_EN.pdf](https://www.incb.org/documents/Narcotic-Drugs/Yellow_List/63rd_edition/Yellow_List_63_edition_EN.pdf) (accessed 8 August 2024).

17 INCB ‘List of Psychotropic Substances under International Control: Green List’, <https://www.incb.org/documents/Psychotropics/forms/greenlist/2024/2311984E.pdf> (accessed 8 August 2024).

18 INCB ‘List of Precursors and Chemicals Frequently Used in the Illicit Manufacture of Narcotic Drugs and Psychotropic Substances Under International Control: Red List’, [https://www.incb.org/documents/PRECURSORS/RED\\_LIST/RedList\\_16thEd\\_Jan2018\\_E.pdf](https://www.incb.org/documents/PRECURSORS/RED_LIST/RedList_16thEd_Jan2018_E.pdf) (accessed 8 August 2024).

19 WHO Framework Convention on Tobacco Control adopted 23 May 2003, entered into force 27 February 2005 2302 UNTS 166.

20 See Concluding Observations and Recommendations by the African Children’s Committee on the Second Periodic Report of the Republic of Kenya on the Status of the Implementation of the African Charter on the Rights and Welfare of the Child (November 2020) para 65.

21 K Nigussie and others ‘Khat chewing and associated factors among public secondary school students in Harar town, Eastern Ethiopia: A multicentre cross-sectional study’ (2023) 14 *Frontiers in Psychiatry* 1, 2. The main psychoactive ingredient found in khat, including cathinone, is listed under schedule I of the the Convention on Psychotropic Substances. However, the plant itself is not. For more on khat and khat addiction, see M Odenwald and others ‘Khat addiction’ in N el-Guebaly and others (eds) *Textbook of addiction treatment: International perspectives* (2021) 455.

and Immediate Action for the Elimination of the Worst Forms of Child Labour.<sup>22</sup> Article 3(c) of that Convention defines ‘the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties’ as a worst form of child labour.

## 4 Legal interpretation

### 4.1 Obligation to take all appropriate measures

The words to ‘take all appropriate measures’ frames state party obligations in respect to both protecting children from the use of narcotics and illicit psychotropic substances and preventing them from use in the trafficking of such substances. It thus is necessary to first determine what amounts to ‘appropriate measures’.

The obligation to take appropriate measures requires action by the state.<sup>23</sup> While states have a certain degree of discretion in determining which measures they take, the proviso that these measures be appropriate means that they must not be disproportionate, that they must be informed by other relevant articles in the Charter and international law, be effective and guided by a child’s rights-based approach.<sup>24</sup>

Barrett and Veerman, in their commentary on article 33 of CRC, identify five core principles of appropriateness in relation to measures taken in respect of children. These principles are equally applicable in relation to article 28 and many other provisions in the African Children’s Charter where states have an obligation to take appropriate measures to protect, respect, promote or fulfil a right in the Charter. The identified principles have been edited to refer to the Charter, and not CRC, where necessary.

- (1) Appropriate measures must be interpreted in accordance with the other provisions in the Charter, including its guiding principles, to ensure a child rights-based approach.<sup>25</sup>
- (2) Appropriate measures must, in accordance with article 1(2) of the Charter, take into account ‘any provisions that are more conducive to the realisation of the rights’ as found in state law of International law.<sup>26</sup>
- (3) Appropriate measures must take into account patterns of vulnerability, including gender and poverty.<sup>27</sup>
- (4) Appropriate measures must be based on evidence and not be arbitrary. Thus, they must be based on data, be targeted and effective. It should be noted that effectiveness alone is not enough. What is effective is not always appropriate. Here, any measure must be both effective and appropriate.<sup>28</sup>
- (5) Appropriate measures must be proportionate.<sup>29</sup>

These core principles are reflected in the outcome statement for the African Children’s Committee’s day of general discussion on the protection of children from substance abuse. The outcome statement urges states to, among others, ensure that the four guiding principles of the Children’s Charter are used

22 Convention on the Worst Forms of Child Labour (n 11).

23 Barrett & Veerman (n 12) 37.

24 As above; D Barrett & J Tobin ‘Art 33 Protection from narcotic drugs and psychotropic substances’ in J Tobin (ed) *The UN Convention of the Rights of the Child: A commentary* (2019) 1277.

25 Barrett & Veerman (n 12) 38.

26 As above.

27 As above.

28 Barrett & Veerman (n 12) 37-38.

29 Barrett & Veerman (n 12) 38.



in the development of any programmes or policies, ensure child participation in the development and implementation of policies, and that prevention and treatment of substance abuse be evidence-based.<sup>30</sup>

In its Concluding Observations the African Children's Committee has made suggestions to state parties as to which appropriate measures should be taken to combat drug abuse by children. These include monitoring school areas to act against persons who provide drugs to children;<sup>31</sup> increasing education efforts to teach children about the dangers of using drugs;<sup>32</sup> increased legislative controls;<sup>33</sup> and providing drug rehabilitation and other psychosocial support to children affected by or addicted to drugs.<sup>34</sup> The Children's Committee, however, to date has been silent on appropriate measures to prevent the use of children in the trafficking and manufacturing of narcotics and psychotropic substances.

#### **4.2 '[T]o protect children from the use of narcotics and illicit psychotropic substances as defined in international treaties'**

The first obligation placed on state parties under article 28 is to protect children from the use of narcotics and illicit psychotropic substances as defined in international treaties. The measures that have been recommended by the African Children's Committee in their Concluding Observations make it clear that article 28 applies to both preventing children from using narcotics and illicit psychotropic substances (that is, through the use of educational measures) as well as protecting children who are currently using drugs (that is, by providing rehabilitative resources). What is less clear, however, is whether the provision applies to children who are affected by other people's drug use, for instance, children whose care givers use drugs or children who reside in communities where there is drug use. However, as article 28 does not state whose drug use children should be protected from, it must be assumed that a broad interpretation of article 28 should be preferred. This means that article 28 places an obligation on states not only to prevent drug use by children and protect those currently using drugs, but also to protect children from other persons' drug use, whether that be drug use in the family or in the community.<sup>35</sup> Taking into account the African Children's Committee's emphasis on child protection measures as set out in General Comment 5,<sup>36</sup> it would be nonsensical for the provision not to apply to children directly or indirectly affected by drug abuse either at home or in the community. The interpretation that article 28 applies to children affected by drug abuse at home or in the family is further reinforced by other Charter provisions, such as the right to development,<sup>37</sup> the status of the family unit in the Charter,<sup>38</sup> and the best interests of the child.<sup>39</sup> This interpretation thus is consistent with a child rights-based approach to article 28.

30 African Children's Committee 'African Children's Committee Day of General Discussion Outcome Statement' (n 3) 2-3.

31 Concluding Observations and Recommendations of the African Children's Committee on the First Periodic Report of the Federal Democratic Republic of Ethiopia on the Status of the Implementation of the African Charter on the Rights and Welfare of the Child (February 2022) para 39.

32 Concluding Observations, Second Periodic Report: Kenya para 65.

33 Concluding Observations and Recommendations of the African Children's Committee on the Initial Report of the Republic of Benin on the Status of the Implementation of the African Charter on The Rights and Welfare of the Child (September 2019) para 45.

34 Concluding Observations and Recommendations of the African Children's Committee to the Republic of Botswana on its Initial Report on the Implementation of the African Charter on the Rights and Welfare of the Child (September 2023) para 57.

35 See Barrett & Veerman (n 12) 42-43.

36 General Comment 5 (n 6).

37 Art 5.

38 See arts 18, 19 & 20.

39 Art 4.

Article 28 dictates the protection from ‘the use of narcotic drugs and illicit psychotropic substances as defined in the relevant international treaties’. As stated above, unlike article 33 of CRC, article 28 seems to dictate that children must be protected from the use of narcotic drugs, whether that use is illicit or licit, while, as with article 33 of CRC, protection is only required from psychotropic substance use where the use is illicit. This means that the licit use of psychotropic substances by children is permissible, while any use of narcotic drugs by children is prohibited by the Charter. This interpretation, however, that children are to be protected from both the licit and illicit use of narcotic drugs, is nonsensical. For instance, morphine and fentanyl, drugs scheduled under the Single Convention, are routinely used in Africa for pain management for children in hospital settings. When administered and used correctly, these narcotic drugs offer benefits to children, are in their best interests, uphold their rights to health and health services and their right to survival and development. To oblige states to protect children from the licit use of these narcotic drugs would be contrary to the purpose of the African Children’s Charter.

A further comment must be made as to the status of alcohol under article 28. There is yet to be an international treaty on alcohol production, consumption, sale or trafficking. An ordinary reading of article 28 would thus presume that alcohol is not included in its scope. However, the African Children’s Committee has often made reference to children’s alcohol use in its Concluding Observations under article 28. The Committee has recommended that state parties strengthen legislation prohibiting the sale of alcohol to children and ensure that laws relating to the sale of alcohol are effective.<sup>40</sup> The Committee has further recommended that states ensure that places where alcohol is served or sold are not situated near schools,<sup>41</sup> and that ‘measures be taken against those who supply tobacco, alcohol and drugs to children’.<sup>42</sup> Thus, despite not being defined in any international treaty, article 28 can be read to include a duty on states to protect children from the use of alcohol.

### 4.3 Obligation to take all appropriate measures to prevent the use of children in the production of and trafficking in such substances

The second obligation contained in article 28 is the prevention of the use of children in the production and trafficking of narcotics and psychotropic substances as defined in international treaties. As article 28 is predominantly concerned with the *use* of children, it is directed mainly at the exploitation of children. To date, the African Children’s Committee has made little reference to this obligation in its Concluding Observations. Where the Committee has made reference to children involved in the drug trade, they have viewed the children as victims, recommending detention in rehabilitation facilities or detoxification measures for children involved in the drug supply chain.<sup>43</sup> This view, of children as innocent victims subject to exploitation, aligns with that found in the Convention on the Worst Forms of Child Labour, which identifies ‘the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties’ as one of the worst forms of child labour.<sup>44</sup>

40 Recommendations and Observations to the Government of Kenya by the African Children’s Committee Concerning the Initial Report on the Implementation of the African Charter on the Rights and Welfare of the Child paras 36-37; Concluding Observations, Second Periodic Report: South Africa (n 10) paras 53-54; Concluding Observations Benin (n 33) para 45.

41 Concluding Observations Benin (n 28) para 45; Concluding Observations, Second Periodic Report: Kenya (n 16) para 65.

42 Concluding Observations, Second Periodic Report: Kenya (n 16) para 65.

43 Concluding Observations Burundi (n 10) para 46; Concluding Recommendations by the African Children’s Committee on the Arab Republic of Egypt Report on the Status of Implementation of the African Charter on the Rights and Welfare of the Child para 9.

44 Art 3(c) Convention on the Worst Forms of Child Labour (n 11).

The Children's Committee's comments further make it clear that article 28 applies not only to preventing children from becoming involved in the drug trade, but that it equally applies to children already involved in the drug trade. This interpretation is consistent with a purposive interpretation of article 28, in line with the African Children's Charter as a whole. However, it would be wrong to assume that all children who become involved in the drug supply chain are coerced by another person or persons. Children can become involved in the drug trade for a myriad of reasons, including social and economic factors.<sup>45</sup>

Where the child's involvement in the drug trade results in criminal sanctions, the child's article 17 rights in the administration of juvenile justice must be respected. However, if the use of children in the production and trafficking of narcotics and illicit psychotropic substances is viewed as a form of exploitation, it must be carefully considered whether the use of criminal sanctions is appropriate. In its Concluding Observations to Burundi, the African Children's Committee stated that '[i]n cases where children are involved in the drug supply chain, the Committee encourages that such children are detained in rehabilitation facilities'.<sup>46</sup> This seems to suggest that the Committee favours a rehabilitative approach to children involved in the drug trade over a retributive approach.

Due to the Committee's limited engagement with the obligation to prevent the use of children in the production and trafficking of narcotics and psychotropic substances, there is not much guidance as to what appropriate measures states should take. However, it is suggested that in relation to preventing children from becoming involved in the drug chain, social and educational measures would be appropriate. States should take into account the reasons why children become involved in the drug supply chain, addressing the root causes of child involvement.<sup>47</sup> This measure is related to articles 11, 18(1) and 20(2). With children involved in the drug trade, as stated above, any measures must be in accordance with the child's article 17 rights.

## **5 Domestication of this provision in national legal systems, national courts' interpretations, and scholarly literature**

Article 28 of the African Children's Charter requires action by states. Having legislation that prohibits and limits the sale and use of drugs and other substances is not sufficient to meet this obligation. Instead, programmes and policies, based on evidence and which are effective, are needed to fulfil state obligations under article 28 to take appropriate measures to protect children from the use of narcotics and illicit psychotropic substances and to prevent the use of children in the production and trafficking of these substances. This part will outline some actions various states have taken to meet their obligations under article 28.

States, including Ethiopia,<sup>48</sup> Botswana,<sup>49</sup> Nigeria<sup>50</sup> and South Africa,<sup>51</sup> have reported instituting drug and alcohol awareness and education programmes in educational institutions. Furthermore, the

<sup>45</sup> See, eg, Barrett & Veerman (n 12) 70-71.

<sup>46</sup> Concluding Observations Burundi (n 10) para 46.

<sup>47</sup> Barrett & Veerman (n 12) 69.

<sup>48</sup> Combined 4th and 5th Periodic Reports of the Federal Democratic Republic of Ethiopia to the African Children's Committee (2014-2019) 68.

<sup>49</sup> Combined 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Report Submitted by the Republic of Botswana to the African Children's Committee on the Implementation of the African Charter on the Rights and Welfare of the Child (2003-2021) para 250.

<sup>50</sup> Combined 2nd and 3rd Country Periodic Report of the Federal Republic of Nigeria on the Implementation of the African Charter on the Rights and Welfare of the Child, February 2014, 145.

<sup>51</sup> South Africa's Third Periodic Country Report to the African Committee of Experts on the Rights and Welfare of the Child: Implementation of the African Charter on the Rights and Welfare of the Child for the reporting period 2015-2021 paras 214, 430.



availability of medical treatment and rehabilitation facilities for children actively using narcotic and psychotropic substances has been reported by several state parties, including those mentioned above, in their country reports to the African Children's Committee.<sup>52</sup>

In Nigeria, sports-based life skills training programmes are available for at-risk children through the 'line up, live up' programme.<sup>53</sup> Nigeria has also implemented harm-reduction initiatives, such as supplying intravenous drug users with clean needles, providing medically-assisted treatment and distributing naloxone, a drug that rapidly reduces opioid overdose, to the community.<sup>54</sup> These measures can mitigate against children who are abusing drugs experiencing further harm, such as contracting HIV from infected needles.

In Kenya, the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) was established by an Act of Parliament by the same name.<sup>55</sup> The functions of NACADA include carrying out public education on drugs and alcohol abuse; providing and facilitating the operation of rehabilitation facilities; facilitating and conducting research on drug abuse; and submitting bi-annual reports on the status of drug and alcohol control to government.<sup>56</sup> Many of these functions are to be carried out in collaboration with other agencies. The Act thus envisages a multi-sectoral and multi-agency approach to the issue of drug and alcohol abuse.

Côte d'Ivoire has reported that children found in possession of narcotic substances are treated as victims rather than offenders, with there being a focus on rehabilitation of children involved with drugs.<sup>57</sup> Children thus are referred to medical treatment, with social welfare officers submitting observation reports to prosecutors and magistrates setting out recommendations for how the child in question should be treated by the justice system.<sup>58</sup>

As to the prevention of the use of children in the drug supply chain, Niger's Order 99-42 of 23 September 1999, relating to the fight against drugs, classifies the use of a minor in the international trafficking, trafficking, supplying, holding or surrendering of drugs as an aggravating factor, doubling the proscribed penalty.

## 6 Conclusion

Drug abuse and drug trafficking is a problem facing all African states. Not only is there an increase in children using narcotics and psychotropic substances, but where adults are using drugs, the children around them and in their communities will suffer as a result. Furthermore, it has been reported that children, especially those in situations of vulnerability, such as street children, are used in the drug supply chain.<sup>59</sup>

52 See further Republic of Mozambique Fourth Periodic Report on the Implementation of the African Charter on the Rights and Wellbeing of the Child (2015-2018) para 397; the Republic of Uganda Periodic Report to the African Children's Committee on the Implementation of the African Charter on the Rights and Welfare of the Child (2020) 47; Republic of Zambia Initial Report on the Implementation of the African Charter on the Rights and Welfare of the Child for the Reporting Period 2008-2017 para 148.

53 Report of the 41st session of the African Children's Committee 26 April-6 May 2023 ACERWC/RPT (XLI) para 68. See further <https://arc-p.gov.ng/about-us/> (accessed 13 August 2024).

54 Report of the 41st session of the African Children's Committee (n 53) para 68.

55 National Authority for the Campaign Against Alcohol and Drug Abuse Act CAP 121B.

56 National Authority for the Campaign Against Alcohol and Drug Abuse Act (n 55) sec 5.

57 Report of the 41st session of the African Children's Committee (n 53) para 66.

58 As above.

59 See '2024 Trafficking in Persons Report: Côte d'Ivoire', <https://www.state.gov/reports/2024-trafficking-in-persons-report/cote-divoire/> (accessed 14 August 2024); '2024 Trafficking in Persons Report: Egypt', <https://www.state.gov/reports/2024-trafficking-in-persons-report/egypt/> (accessed 14 August 2024); '2024 Trafficking in Persons Report: Kenya',

The obligation placed on states by article 28 not only protects those rights under article 28, but also helps ensure that children's article 4, 5, 11 and 14 rights are realised. However, there is a noticeable lack of data on both children and substance use and children involved in the drug supply chain, as well as the effectiveness of measures taken by states. This impedes the implementation of measures that are appropriate, effective and proportionate, and which target those children who are at risk or currently involved in drug use or drug production or trafficking. For, if there is no evidence, it is not possible for policies and measures based on evidence to be implemented, nor for their effectiveness to be determined. There further is a demonstrable lack of measures implemented by states that target specific vulnerable groups, including gender-sensitive measures.

In order to ensure that state parties fulfil their article 28 obligations and that the rights of children thereunder are guaranteed, states must endeavour to conduct research on child drug abuse and trafficking, in order for targeted and effective measures to be put in place. Children must also participate in the formulation and implementation of policies and frameworks. States must further ensure the availability of rehabilitation centres for children who abuse narcotics. These facilities should be separate from those for adults. Where children are charged with a drug-related offence, state parties must ensure that the rights contained in article 17 of the African Children's Charter are guaranteed. It is further recommended that rehabilitation programmes be used for children in conflict with the law on drug-related charges.

<https://www.state.gov/reports/2024-trafficking-in-persons-report/kenya/> (accessed 14 August 2024); '2024 Trafficking in Persons Report: Liberia', <https://www.state.gov/reports/2024-trafficking-in-persons-report/liberia/> (accessed 14 August 2024); '2024 Trafficking in Persons Report: Mauritius', <https://www.state.gov/reports/2024-trafficking-in-persons-report/mauritius/> (accessed 14 August 2024); '2024 Trafficking in Persons Report: South Africa', <https://www.state.gov/reports/2024-trafficking-in-persons-report/south-africa/> (accessed 14 August 2024); '2024 Trafficking in Persons Report: Zimbabwe', <https://www.state.gov/reports/2024-trafficking-in-persons-report/zimbabwe/> (accessed 14 August 2024).