

# Chapter 30

## Article 29

### Sale, trafficking and abduction

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State parties to the present Charter shall take appropriate measures to prevent:

- (a) the abduction, the sale of, or traffic in children for any purpose or in any form, by any person
- (b) including parents or legal guardians of the child; the use of children in all forms of begging.

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## 1 Introduction

Article 29 of the African Charter on the Rights and Welfare of the Child (African Children's Charter)<sup>1</sup> is important as it aims to protect children from abduction, sale, trafficking, and begging that put children at risk of various forms of exploitation. Many children in Africa are negatively affected by these activities, but it is difficult to obtain data due to the nature of these activities.<sup>2</sup> Based on what information is available, trafficking is a serious concern for children on the continent. The United Nations (UN) Office on Drugs and Crime (UNODC) reports that '[m]ost of the detected trafficking victims in sub-Saharan Africa continue to be children'.<sup>3</sup> Instances of child trafficking are more prevalent in West Africa.<sup>4</sup>

1 African Charter on the Rights and Welfare fo the Child 29 November 1999 CAB/LEG/153/Rev 2.

2 R Walker, S Mahati & I Magaya *Child trafficking in South Africa: Exploring myths and realities* (2020) 21.

3 United Nations Office on Drugs and Crime (UNODC) 'Global Report on Trafficking in Persons 2020' (January 2021) 165.

4 As above.

Looking at the trafficking on the continent as a whole, 85 per cent of trafficking is domestic, and foreign trafficking comes from other African sub-regions.<sup>5</sup> Individuals who are trafficked are primarily used for forced labour, including begging.<sup>6</sup> Sexual exploitation comprises approximately 48 per cent of detected trafficking cases in Southern Africa.<sup>7</sup> In contrast, Africa is the global region with the lowest level of conviction of traffickers.<sup>8</sup> Therefore, trafficking, begging and related activities are a cause for concern on the continent.

Violations of article 29 can occur in any context. However, there are children in circumstances that are more vulnerable to the activities prohibited by this provision. The African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) describes groups of vulnerable and marginalised children that 'include (but are not limited to) internally displaced or migrant and refugee children, including unaccompanied children, children with disabilities, girls, children affected by conflict or disaster, orphaned children, children with a disability or those belonging to a minority group'.<sup>9</sup>

Children in many of these situations are more susceptible to abduction, sale, trafficking and begging. Some examples include children abducted by armed groups for use in hostilities;<sup>10</sup> children on the move in situations of forced or irregular migration;<sup>11</sup> children living in street situations;<sup>12</sup> girl children who are married in exchange for a bride price;<sup>13</sup> and children who are forced to beg, such as the *talibés* in Senegal.<sup>14</sup> What is common among children in these situations is their invisibility as they are difficult to identify and account for.<sup>15</sup> Todres notes that there are root causes or 'underlying complex social, economic, and political conditions that foster child trafficking'.<sup>16</sup>

Organised crime<sup>17</sup> and the use of technology<sup>18</sup> are also factors that should not be overlooked. UNODC reports that the majority of individuals convicted of trafficking offences are members of

5 UNODC 'Global Report on Trafficking in Persons 2022' (January 2023) 90.

6 UNODC (n 5) 88 & 89.

7 UNODC (n 5) 88.

8 UNODC (n 5) 92.

9 African Children's Committee General Comment 5 on state party obligations under the African Charter on the Rights and Welfare of the Child (article 1) and systems strengthening for child protection' (2018) 32.

10 M Denov 'Girls soldiers and human rights: Lessons from Angola, Mozambique, Sierra Leone and Northern Uganda' (2008) 12 *International Journal of Human Rights* 816.

11 African Children's Committee 'Mapping children on the move within Africa' (2018) 75-77.

12 CRC Committee General Comment 21 (2017) on children in street situations' (21 June 2017) UN Doc CRC/C/GC/21 paras 58 & 59.

13 CEDAW Committee & CRC Committee 'Joint General Recommendation/Comment 31 of the Committee on the Elimination of Discrimination against Women and 18 of the Committee on the Rights of the Child on harmful practices' (4 November 2014) UN Doc CEDAW/C/GC/31-CRC/C/GC/18 (2014) para 23.

14 P Frankel *Long walk to nowhere: Human trafficking in post-Mandela South Africa* (2016) 58; AK Zoumanigui 'On the *tabilé* phenomenon: A look into the complex nature of forced child begging in Senegal' (2016) 24 *International Journal of Children's Rights* 185; African Children's Committee 'Concluding Observations and recommendations by the African Committee of Experts on the Rights and Welfare of the Child on the Republic of Senegal periodic report on the status of implementation of the African Charter on the Rights and Welfare of the Child' (July 2019) paras 41-44.

15 Frankel (n 14) 170; CRC Committee General Comment 21 (n 12) para 7; African Children's Committee (n 11) 88-89.

16 J Todres 'A child rights framework for addressing trafficking of children' (2014) 22 *Michigan State International Law Review* 557, 566-568 (footnote omitted).

17 Frankel (n 14) 55-77; UNODC (n 5) 50 & 51.

18 CRC Committee General Comment 25 (2021) on children's rights in relation to the digital environment' (2 March 2021) UN Doc CRC/C/GC25 paras 80-83, 112-116.

criminal organisations.<sup>19</sup> In addition, technology is used to facilitate trafficking.<sup>20</sup> Overall, article 29 is an important provision as it responds to a multifaceted problem that puts children already in difficult situations at even greater risk.

The implementation of article 29 also contributes to some of the programmes and priorities of the African Union (AU), such as the 2006 Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children (Ouagadougou Action Plan).<sup>21</sup> The aim of this Action Plan is to support the implementation of the UN Convention against Transnational Organised Crime (UN Organised Crime Convention) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol).<sup>22</sup> The Plan aims at preventing trafficking and raising awareness about this issue, providing protection and assistance to victims, implementing a legal, policy and law enforcement framework, and enhancing cooperation and coordination between Africa and Europe on the issue.<sup>23</sup> The 2014 Khartoum Declaration on AU-Horn of Africa Initiative on Human Trafficking and Smuggling of Migrants<sup>24</sup> is an AU initiative that supports the Ouagadougou Action Plan, but it includes specific countries.<sup>25</sup>

Specifically focused on children, the African Children's Committee adopted Africa's Agenda for Children 2040 in 2016.<sup>26</sup> This agenda 'elaborates on the vision of Agenda 2063 in respect of children'.<sup>27</sup> Protecting children from abduction, sale, trafficking and begging is particularly relevant to Agenda 2040's Aspiration 7: 'Every child is protected against violence, exploitation, neglect and abuse'.<sup>28</sup> It calls for the elimination of sex trafficking and trafficking for forced labour.<sup>29</sup> The fulfilment of this aspiration will lead to compliance with obligations placed on states under article 29. Notably, the implementation of article 29 contributes specifically to target 16.2 of the Sustainable Development Goals (SDGs), which is to '[e]nd abuse, exploitation, trafficking and all forms of violence against and torture of children'.<sup>30</sup>

The aim of this contribution is to provide commentary on article 29 that supports its effective interpretation and implementation. This commentary examines how article 29 links to and reinforces the protections provided by various other articles in the African Children's Charter. Article 29 is itself supported by the implementation of other articles.<sup>31</sup> The discussion subsequently looks beyond the Charter and highlights where there are parallels between article 29 and provisions in other human rights treaties at both the global and regional levels. The central focus of the commentary is the legal analysis of article 29, which includes an examination of scope and the nature of state obligations it creates and the key concepts and terms included in this provision. To provide an overview of the current implementation of article 29, the commentary evaluates how this provision has been domesticated and

19 UNODC (n 5) 91 & 92.

20 UNODC (n 5) 70-72.

21 Adopted by the Ministerial Conference on Migration and Development, Tripoli, 22-23 November 2006.

22 Ouagadougou Action Plan (n 21) 2.

23 Ouagadougou Action Plan (n 21) 2-7.

24 Adopted at Khartoum, 16 October 2014.

25 The core states include Egypt, Eritrea, Ethiopia and Sudan. It also includes neighbouring countries, invited partner countries, and partner organisations. See AU 'Terms of reference for the AU-HOA Initiative on Human Trafficking and Smuggling of Migrants' (undated) 2.

26 African Children's Committee 'Africa's Agenda for Children 2040: Fostering a world fit for children' (2016).

27 African Children's Committee (n 26) 9.

28 African Children's Committee (n 26) 37.

29 African Children's Committee (n 26) 38 & 39.

30 United Nations General Assembly (UNGA) 'Transforming our world: The 2030 Agenda for Sustainable Development' 21 October 2015 UN Doc A/RES/70/1 25.

31 Eg, the child's right to a name and nationality. See African Children's Charter art 6.

applied in national contexts. The commentary concludes with an assessment of the developments regarding the application of article 29 and provides some high-level recommendations aimed at its effective implementation.

## 2 Links to other Charter articles

While several articles in the African Children's Charter can be linked to article 29, there are articles that are particularly relevant to this provision. These articles include article 15, child labour; article 16, protection against abuse and torture; article 27, sexual exploitation; and article 28, drug abuse, all of which are analysed in this *Commentary*. There is a link between article 29 and articles 15, 16, 27 and 28 as sale, abduction and trafficking are activities that often precede these forms of exploitation.<sup>32</sup> Additionally, article 21, protection against harmful, social and cultural practices, and article 22, armed conflict, can be linked to article 29 as children can be abducted and subjected to harmful practices and abducted to be forced to take part in hostilities.<sup>33</sup> Therefore, the implementation of article 29 has the potential to support the protections provided under these articles.

Similarly, links can be drawn between article 6 and article 29. Article 6 provides the African child with the right to a name and a nationality. The administrative process of birth registration, which operationalises this right, enables a child to be visible by providing them with an official identity. Where a child is deprived of a name or nationality, this increases the probability that the child is invisible, and invisibility increases vulnerability to sale, abduction, trafficking, and begging.<sup>34</sup> Todres writes that [t]he illicit trafficking of children, whether for the purpose of inter-country adoption, child labour, or child prostitution, often thrives in areas where birth registration rates are low. Thus birth registration plays an important role in a government's efforts to protect children from all forms of exploitation.<sup>35</sup> Therefore, article 6 provides children with foundational rights that support the protections provided under article 29.

There are also provisions in the African Children's Charter that can be highlighted in relation to article 29 due to their content. For instance, article 24 requires states to protect children from potential sale and trafficking in the context of intercountry adoption.<sup>36</sup> Another related provision is article 20 of the Charter, which outlines parental responsibilities. This article is relevant as article 29 highlights that parents also have the potential to subject their children to abduction, sale and trafficking. In situations of forced migration, such as internal displacement, some parents have resorted to negative coping strategies that include these prohibited activities.<sup>37</sup> One example is the act of subjecting their girl child to marriage for financial gain; therefore, simultaneously engaging in the sale of a child constituting a harmful practice.<sup>38</sup> Actions of this nature by parents also violate the responsibility to 'ensure the best interests of the child' pursuant to article 20 of the Children's Charter.<sup>39</sup>

32 See commentaries on these articles in this *Commentary*.

33 Denov (n 10) 816-821. See also commentaries in this *Commentary*.

34 See discussion in part 1.

35 J Todres 'Birth registration: An essential first step towards ensuring the rights of children' (2003) 10 *Human Rights Brief* 33.

36 African Children's Charter art 24(4). See commentary of art 24 in this *Commentary*.

37 United Nations Children's Fund (UNICEF) 'Lost at home: The risks and challenges for internally displaced children and the urgent actions needed to protect them' (2020) 2, 14 & 15.

38 CEDAW & CRC Committee 'Joint General Comment' (n 13) para 23.

39 African Children's Charter art 20(1)(a). A related provision is art 20(2)(a). Situations where the need for a negative coping mechanism of this nature arises could be a result of the failure on the part of the state to provide support for parents as required under art 20.

Furthermore, article 29 may be linked to the guiding principles of the Charter,<sup>40</sup> but a guiding principle that can be highlighted in relation to this provision is article 5, the right to life, survival and development, as abuse and exploitation place the life and survival of a child at risk. For example, a child trafficked for the purpose of sexual exploitation is exposed to violence, abuse, exposure to illicit substances and health risks.<sup>41</sup> The type of action prohibited by article 29 negatively affects a child's development in the holistic sense of 'the child's physical, mental, spiritual, moral, psychological and social development'.<sup>42</sup> A child forced to beg, for instance, is not able to realise their right to development as their physical and mental health could be put at risk,<sup>43</sup> and opportunities for positive social interaction may be limited, especially if the child is unable to attend school.<sup>44</sup>

### 3 Links to other human rights treaties

#### 3.1 United Nations human rights system

Several treaties at the global and regional levels contain provisions that are related to the protections provided by article 29. At the global level, the Convention on the Rights of the Child (CRC) is a relevant treaty as article 35 of CRC incorporates a provision that is similar to article 29(1)(a) of the African Children's Charter. Article 35 states that '[state] parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or the traffic in children for any purpose or in any form'.<sup>45</sup> One notable omission in CRC is a provision prohibiting the use of a child for begging.<sup>46</sup> The inclusion of begging in the African Children's Charter is an example of where the Charter augments the protections provided by CRC as well as responding to specific challenges encountered by African children.<sup>47</sup> A benefit to having such a provision is that it reinforces the obligations of states that are parties to both CRC and the African Children's Charter.

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)<sup>48</sup> are two other examples of legal instruments that can be linked to article 29 as they contain provisions that are relevant for developing a working definition of key terms such as sale and trafficking respectively.<sup>49</sup> Both instruments require states to criminalise the activities of sale and trafficking of children,<sup>50</sup> which reinforces the obligation to prevent these activities.

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which brings attention to the specific rights of women, including girls, incorporates a provision on trafficking. Similar to article 29, it does not provide a definition of this activity, but requires states 'to

40 African Children's Committee General Comment 5 (n 9) 9-14.

41 SK Okunade & LS Shulika 'The dynamics of child trafficking in West Africa' (2021) 7 *African Human Mobility Review* 125; M Okorie & U Okeja 'Child trafficking in Africa: Reimagining the problem' (2023) 7 *Genealogy* 3.

42 CRC Committee General Comment 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6) (27 November 2003) UN Doc CRC/GC/2003/5 para 12.

43 Okunade & Shulika (n 41) 125.

44 *Centre for Human Rights (University of Pretoria) and La Rencontre Africaine pour la Defense des Droits de l'Homme v Senegal*, No 3/Com/001/2012 (*Senegalese Talibés*) para 50; Okunade & Shulika (n 41) 120.

45 CRC art 35.

46 The CRC Committee's General Comment on children in street situations (n 12) does refer to the need to decriminalise begging, para 58.

47 African Children's Charter Preamble.

48 This is the Protocol to the United Nations Convention Against Transnational Organised Crime.

49 OPSC art 2; Palermo Protocol art 31. Also see the discussion of the terms below.

50 OPSC art 3(1)(a); Palermo Protocol art 5.

take all appropriate measures, including legislation, to suppress all forms of traffick in women'.<sup>51</sup> It places an obligation on states to implement measures that protect women from trafficking. It should be also highlighted that the International Labour Organisation (ILO) Convention 182 Worst Forms of Child Labour Convention (ILO Convention 182) includes trafficking in its definition of the worst forms of child labour.<sup>52</sup>

The Hague Convention on the Civil Aspects of International Child Abduction (Hague Child Abduction Convention) can also be linked to article 29 regarding the prohibition of abduction.<sup>53</sup> However, this treaty has a limited scope of application as it applies within a family law context to ensure custody and access for parents and guardians by ensuring 'the prompt return of children wrongly removed to or retained in any Contracting State'.<sup>54</sup> It is only applicable in situations where a child is taken from and brought to states that are parties to the Convention or contracting states.<sup>55</sup> The Convention does not provide a specific definition of abduction, but rather outlines situations in which 'removal and retention of a child is to be considered wrongful'.<sup>56</sup> The Convention responds to situations where parents abduct their children, which links to article 29 of the Children's Charter as it identifies parents and guardians as potential abductors.

### 3.2 African human rights system

There are also provisions in treaties under the African human rights system that are applicable to article 29. The prohibited activities described not only cause harm but speak to the commodification of the child, the use of a child as an object for the benefit of another. The activities of sale and trafficking, in particular, are an affront to the dignity of the child as a human being.<sup>57</sup> From this perspective, the provisions of the African Charter on Human and Peoples' Rights (African Charter) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), which require respect for an individual's dignity, provide a foundational obligation of states to prevent these activities.<sup>58</sup>

The Maputo Protocol directly prohibits trafficking. It requires states to '[p]revent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk'.<sup>59</sup> Girl children are at enhanced risk of abduction, sale and trafficking due to their age and gender. For example, girl children are the target of these activities for sexual exploitation, child marriage and use during hostilities.<sup>60</sup> The Maputo Protocol requires states to protect women from violence and sexual exploitation and provides protections for specific groups of women, such as women in situations

51 CEDAW art 6.

52 ILO Convention 182 art 3(a).

53 The African states that are parties to the Hague Child Abduction Convention include Botswana, Burkina Faso, Gabon, Guinea, Lesotho, Mauritius, Morocco, Seychelles, South Africa, Tunisia, Zambia and Zimbabwe. See Hague Conference on Private International Law – Conférence de La Haye de droit international privé (HCCH) 'Status table: 28: Convention of 25 October 1980 on the Civil Aspects of International Child Abduction', <https://www.hcch.net/en/instruments/conventions/status-table/?cid=24> (accessed 9 July 2024).

54 Hague Child Abduction Convention art 1.

55 Hague Child Abduction Convention art 35.

56 Hague Abduction Convention art 3.

57 Eg, the use of children trafficking into slave-like conditions. See J Gallinetti & D Kassan 'Trafficking of children in Africa: An overview of research, international obligations and existing legal provisions' in J Sloth-Nielsen (ed) *Children's rights in Africa: A legal perspective* (2008) 240. See also Okorie & Okeja (n 41) 6.

58 African Charter art 5; Maputo Protocol art 3.

59 Maputo Protocol art 4(2)(g); R Nekura 'Article 4: The right to life, integrity and security of the person' 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) 101.

60 Denov (n 10) 816-820.

of forced migration, elderly women, and women with disabilities.<sup>61</sup> It complements the protections provided under article 29 of the African Children's Charter by requiring marriage to be voluntary and between persons over the age of 18 years.<sup>62</sup> Also, the Protocol provides 'that no child, especially girls under 18 years of age, take a direct part in hostilities and that no child is recruited as a soldier'.<sup>63</sup> These provisions, like the relevant provisions of the African Children's Charter, prohibit activities that are the impetus for abduction, sale and trafficking.

This linkage is also highlighted in the AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).<sup>64</sup> The Convention prohibits members of armed groups from engaging in abduction and trafficking. It states that '[m]embers of armed groups shall be prohibited from ... [f]orcibly recruiting persons, kidnapping, abduction or hostage taking, engaging in sexual slavery and trafficking in persons, especially women and children'.<sup>65</sup> This provision underscores the importance of protecting internally-displaced children from abduction and trafficking perpetrated by non-state actors such as armed groups. States are also required to prevent abduction and human trafficking in addition to forms of harm, abuse and exploitation that follow from these activities.<sup>66</sup> The provisions of the Kampala Convention reinforce the protections provided to children in situations of internal displacement.

Overall, the treaties under the UN and AU systems provide complementary protection regarding the prevention of abduction, sale and trafficking of children in various contexts. International human rights instruments, however, are silent regarding the prohibition of the use of children for begging. Thus, article 29(b) stands out as a unique protection available to children in the African context.

## 4 Legal interpretation

Turning to the legal analysis of article 29, the scope, nature, construction and key concepts incorporated in the provision provide a basis for understanding how it should be interpreted and applied. A plain reading of the provision indicates that its scope of application is not limited. However, there are situations and groups of children who require special consideration as they are more susceptible to the activities of abduction, sale, trafficking and begging.<sup>67</sup> Regarding the nature of this provision, its focus is on prevention and protection. Requiring states to prevent prohibited activities provides children with protection.<sup>68</sup>

An important observation regarding article 29 is its construction. The provision is split into two parts. The activities of abduction, sale and trafficking are separated from begging. Each of these terms are discussed below, yet the separation at least gives the impression that the drafters determined that it is preferable to group abduction, sale and trafficking together, and then have a provision that specifically addresses begging. One plausible interpretation is that there are links between abduction, sale and trafficking,<sup>69</sup> and that begging, while a separate activity, can also be linked to the aforementioned

61 Maputo Protocol arts 3(4), 11(3), 22(b) & 23(b).

62 Maputo Protocol arts 6(a) & (b); CN Musembi 'Article 6: Marriage' in Rudman and others (n 59) 140-141.

63 Maputo Protocol art 11(4); TM Makunya & JM Abelungu 'Article 11: Protection of women in armed conflicts' in Rudman and others (n 59) 248-249.

64 Adopted 23 October 2009 and entered into force 6 December 2012.

65 Kampala Convention art 5(f).

66 See the forms of exploitation discussed above. See Kampala Convention arts 9(1)(c) & (d).

67 African Children's Committee General Comment 5' (n 9) 32.

68 Prevention and protection are two of three 'Ps' of international children's rights law. The final 'P' is participation. See A Parkes *Children and international human rights law: The right of the child to be heard* (2013) 6.

69 Palermo Protocol art 3. See also discussion of the definition of trafficking in part 4.2.3.

activities. This also provides an explanation for why the provision was not included under article 15 of the African Children's Charter regarding child labour.

The African Children's Committee's decision in *Senegalese Talibés*<sup>70</sup> provides an appropriate backdrop to discuss the legal interpretation of article 29 as it addresses the alleged violation of this provision in relation to both trafficking and begging.<sup>71</sup> It is alleged in this case that *talibés*, children enrolled in Qur'anic educational facilities, were forced by their instructors or *marabouts* to beg and obtain a daily quota or face punishment such as beating.<sup>72</sup> The African Children's Committee found that the government of Senegal violated article 29 despite having legislation that prohibits trafficking.<sup>73</sup> In this decision, the Committee outlines how subjecting the *talibés* to forced begging was a form of trafficking and violated article 29(b), which specifically prohibits the use of children in begging, highlighting the link between these activities. This point can be further demonstrated by an examination of the definition of trafficking.<sup>74</sup> To further engage in an analysis of article 29 of the African Children's Charter, the next part of the discussion will examine key terms and concepts in this provision. It includes developing working definitions of the terms abduction, sale and trafficking as they are not defined in the Charter.

#### 4.1 Appropriate measures to prevent

The obligation to prevent provides the point of departure for the implementation of article 29. Regarding the implementation of the African Children's Charter overall under article 1(1), the African Children's Committee identifies 'child protection ... as the lens through which the implementation of the Charter should be pursued'.<sup>75</sup> When taking a child protection approach, it is necessary to ensure that children that are particularly vulnerable to abduction, sale, trafficking and begging are given special consideration in the implementation of this provision.<sup>76</sup> One method to implement article 29 and to prevent abduction, sale, trafficking and begging is to enact legislation. The OPSC and Palermo Protocol require states to criminalise sale and trafficking, respectively.<sup>77</sup> However, the legislative response does not have to be confined to the criminal law, but protections could be included in child-specific legislation.<sup>78</sup> The African Children's Committee suggests child protection legislation for the implementation of article 16 and related articles such as article 29.<sup>79</sup>

Appropriate measures indicate that compliance with the obligations arising from article 29 will require more than legislation. To prevent and respond to instances of abduction, sale, trafficking and begging will require a holistic response. Physical and mental health, basic needs, and access to education and rehabilitation and reintegration are also considerations.<sup>80</sup> Appropriate measures should engage and coordinate the relevant actors.<sup>81</sup> The approach to prevention should address the root causes that allow activities prohibited by article 29 of the African Children's Charter to thrive. Todres

70 *Senegalese Talibés* (n 44).

71 *Senegalese Talibés* (n 44) paras 74-81.

72 *Senegalese Talibés* (n 44) paras 2, 3, 4 & 9. See also Zoumanigui (n 14) 187.

73 *Senegalese Talibés* (n 44) paras 3 & 81.

74 See discussion in part 4.2.3.

75 African Children's Committee General Comment 5 (n 9) 3-4. See also the commentary on art 1 in this *Commentary*.

76 African Children's Committee General Comment 5 (n 9) 32.

77 OPSC art 3(1)(a); Palermo Protocol art 5.

78 Eg, South Africa's Children's Act incorporates provisions regarding abduction, under the Hague Abduction Convention and trafficking. See Children's Act 38 of 2005 secs 274-291.

79 African Children's Committee General Comment 5 (n 9) 20.

80 OPSC arts 8 & 9(3); Gallinetti & Kassan (n 57) 251 & 252; African Children's Committee General Comment 5 (n 9) 36-38; Todres (n 16) 563 & 564.

81 Gallinetti & Kassan (n 57) 251 & 252; African Children's Committee General Comment 5 (n 9) 36-38.

advocates a proactive rather than a reactive approach.<sup>82</sup> Furthermore, Todres outlines ‘a three-pronged approach (prosecution, protection, and prevention)’<sup>83</sup> that can be used to respond to instances of child trafficking.<sup>84</sup>

The measures should consider victims and potential victims or at-risk children, which is consistent with the African Children’s Committee’s approach to prevention. The OPSC, for example, lists several appropriate measures that states are required to adopt to assist child victims.<sup>85</sup>

All of these measures also require sufficient resources.<sup>86</sup> Regarding implementation, it is important to address the various parts of the three-pronged approach to provide a holistic response, yet the focus on prevention under article 29 provides an effective approach to responding to children at risk of the enumerated prohibited activities.<sup>87</sup> Effective prevention provides the solution to end the cycle of abuse and exploitation of children.

A child protection lens can also be augmented by a children’s rights approach.<sup>88</sup> This approach includes children being involved in the realisation of their rights.<sup>89</sup> In situations relevant to article 29, child victims and at-risk children could be consulted when determining solutions.<sup>90</sup>

The African Children’s Committee further highlights due diligence as the standard that should be used to assess the implementation of the African Children’s Charter.<sup>91</sup> The Committee provides guidance on the implementation of this standard in *Mauritanian Enslaved Brothers*.<sup>92</sup> The five factors of the due diligence standard are prevention, investigation, prosecution, punishment and the provision of remedies for violations of human rights.<sup>93</sup> The onus is on the state to demonstrate that it acted with due diligence.<sup>94</sup> Due diligence is described as an obligation of result; thus, it is assessed based on the outcome of actions on the part of the state and, more specifically, ‘the legislative and other measures it has taken in relation to the respective issues’.<sup>95</sup> These measures can be linked to legislative measures that promote child protection that is prescribed by the African Children’s Committee for the overall implementation of the African Children’s Charter.

The due diligence standard provides guidance on how to assess the obligation to prevent in article 29. The African Children’s Committee states in *Mauritanian Enslaved Brothers* that ‘[s]tates must therefore identify vulnerable groups prone to abuse and take special measures to prevent violence from

82 Todres (n 16) 566-568 (footnote omitted).

83 Todres (n 16) 574.

84 As above.

85 OPSC art 8(1).

86 African Children’s Committee General Comment 5 (n 9) 36, 38-42.

87 Todres (n 16) 593.

88 CRC Committee General Comment 13 (2011) The right of the child to freedom from all forms of violence (18 April 2011) UN Doc CRC/C/GC/13 para 59.

89 As above.

90 African Children’s Committee General Comment 5 (n 9) 34, 48 & 49.

91 African Children’s Committee General Comment 5 (n 9) 15.

92 *Minority Group International and SOS-Esclaves on behalf of Said Ould Salem and Yarg Ould Salem v Mauritania* 7/Com/003/2015, decided December 2017 AHRLR (ACERWC 2017) paras 52-54 (*Mauritanian Enslaved Brothers*).

93 *Velásques-Rodríguez v Honduras* IACHR (29 July 1988) Ser C No 4, para 174 (*Velásques-Rodríguez*); *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006) para 146 (*Zimbabwe Human Rights*); *Mauritanian Enslaved Brothers* (n 92) para 52.

94 *Mauritanian Enslaved Brothers* (n 92) para 54.

95 As above.

occurring'.<sup>96</sup> Therefore, an important aspect of prevention under this provision is to identify groups of children that are particularly vulnerable to abduction, sale, trafficking and begging. Another aspect of prevention is that it 'includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts'.<sup>97</sup> The due diligence standard, therefore, supports the legal interpretation of the meaning of 'appropriate measures to prevent'<sup>98</sup> as one that includes a broad range of measures designed to effectively counter the prohibited activities under article 29.

Regarding the application of the due diligence standard in the context of article 29, the African Children's Committee, in its first communication, considered this issue in *Northern Ugandan Children*.<sup>99</sup> While the Ugandan government was not able to prevent the abduction of children in Northern Uganda by the Lord's Resistance Army (LRA), the African Children's Committee found that it did not violate its obligation under article 29. It acknowledged that this was 'due to the prevailing conflict and the inhumane methods of operation of the rebels which rendered the Ugandan government's efforts toward the protection of children not entirely successful until 2006, when the enemy forces lost sway'.<sup>100</sup> In this decision the Committee took note of the conditions in which the state was required to fulfil its obligations. However, it may be prudent to be circumspect regarding the Committee's application of the due diligence standard in *Northern Ugandan Children* as the Committee has since evolved in its application of this standard.<sup>101</sup>

## 4.2 Abduction, sale of or trafficking in children

The activities of abduction, sale and trafficking are grouped together in the first paragraph of article 29. This is a similar construction to article 35 of CRC. The use of the word 'or' indicates that each of the activities is individually prohibited. While linked to various forms of exploitation, a violation of the article requires an act that falls within the definition of one of the enumerated prohibited actions. The African Children's Committee, for example, found a violation of article 15 but not article 29 in *Mauritanian Enslaved Brothers*.<sup>102</sup> In this decision the two boys were born into slavery and worked as slaves for an individual in Mauritania.<sup>103</sup> Despite the linkages between trafficking and modern day slavery,<sup>104</sup> the African Children's Committee found 'that the complainants failed to establish the relevance of the provision on sale, trafficking and abduction to the facts of the case'.<sup>105</sup> For this reason, a violation of article 29 could not be established.

A notable challenge with the implementation of article 29(a) is that the African Children's Charter does not define the prohibited activities. The plain meaning of each of the terms provides a starting point for understanding the nature of this group of activities. A legal understanding of these terms, however, can be developed through engaging with the definitions provided in other instruments, in domestic legislation and the interpretation of the African Children's Committee. The definitions of abduction, sale and trafficking, therefore, are therefore considered in turn.

96 *Mauritanian Enslaved Brothers* (n 92) para 52.

97 *Velásques-Rodríguez* (n 94) para 175.

98 African Children's Charter art 29(1)(a).

99 *Hansungule and Others (on behalf of Children in Northern Uganda) v Uganda* No 1/Com/001/2005 (*Northern Ugandan Children*) para 80.

100 As above.

101 C Fawole 'Michelo Hansungule and Others (on behalf of the children of Morthern Uganda) v Uganda: A case commentary' (2020) 4 *African Human Rights Yearbook* 415, 432 & 433.

102 *Mauritanian Enslaved Brothers* (n 92) para 96.

103 *Mauritanian Enslaved Brothers* (n 92) para 5.

104 Palermo Protocol art 3(a).

105 *Mauritanian Enslaved Brothers* (n 92) para 96.

#### 4.2.1 Abduction

One approach to developing a definition of abduction is to consider the context in which a violation of this right can occur. Abduction could occur in the context of armed conflict where armed groups such as the LRA abduct children and force them to take part in situations of armed conflict.<sup>106</sup> Children, including ‘many girls, are abducted into armed groups’.<sup>107</sup> The abduction of hundreds of school children, in particular, girls in Northern Nigeria, is another example.<sup>108</sup> UNODC explains that the meanings of abduction and kidnapping often overlap in some jurisdictions, and kidnapping may be defined as the unlawful restriction of a person’s liberty that could include the use of force.<sup>109</sup>

In the South African context, abduction is a common law offence. It is defined as

a person, either male or female, commits abduction if he or she unlawfully and intentionally removes an unmarried person below the age of 18 years, who may likewise be either male or female, from the control of his or her parents or guardian and without the consent of such parents or guardians, intending that he or she or somebody else may marry or have sexual intercourse with the minor.<sup>110</sup>

This offence involves the taking of a child for the purposes of marriage or sexual intercourse. The crime, however, is perpetrated by the parent or guardian of the child. Abduction has also been linked to a cultural practice in South Africa. The practice of *ukuthwala* is described as follows:<sup>111</sup>

The intending bridegroom, with one or two friends, will waylay the intended bride in the neighbourhood of her own home, quite often late in the day, towards sunset or at early dusk, and they will ‘forcibly’ take her to the young man’s home. Sometimes the girl is caught unawares, but in many instances she is ‘caught’ according to plan and agreement. In either case, she will put up a show of resistance to suggest to onlookers that it is all against her will when, in fact, it is hardly ever so.

Mwambene and Sloth-Nielsen outline three different forms that this practice can take, namely, one instance where the young woman or girl is a colluding party; another where the family has consented but the young woman or girl has not consented; and, finally, a situation where the young woman or girl is taken against her will.<sup>112</sup> There are some forms of this practice that have been deemed harmful

106 *Northern Ugandan Children* (n 99) paras 2 & 3.

107 Denov (n 10) 816.

108 AC Okoli ‘Hundreds of Nigerian children are being kidnapped – The government must change its security strategy’ *Conversation* 22 March 2024, <https://theconversation.com/hundreds-of-nigerian-children-are-being-kidnapped-the-government-must-change-its-security-strategy-226032> (accessed 20 April 2024); Human Rights Watch ‘Nigeria: 10 years after Chibok, schoolchildren still at risk’ 11 April 2024, <https://www.hrw.org/news/2024/04/11/nigeria-10-years-after-chibok-schoolchildren-still-risk> (accessed 22 April 2024).

109 UNODC ‘Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women, Children, Supplementing the United Nations Convention against Transnational Organised Crime’ (2020) para 100.

110 CR Snyman & SV Hoorcor (updated by SV Hoorcor) *Snyman’s criminal law* (2020) 351 (footnote omitted).

111 DS Koyana & JC Bekker ‘The indomitable *ukuthwala* custom’ (2007) 40 *De Jure* 139. See also South African Law Reform Commission (SALRC) ‘Report Project 138: The practice of *ukuthwala*’ (March 2022) 30-38.

112 L Mwambene & J Sloth-Nielsen ‘Benign accommodation? *Ukuthwala*, “forced marriage” and the South African Children’s Act’ (2011) 11 *African Human Rights Law Journal* 6-8.

or have been distorted and violate the rights of girls.<sup>113</sup> This practice, where non-consensual on the part of the girl or young woman and which would fall under article 29, is also compared to the offence of abduction under the common law due to the act of 'taking'.<sup>114</sup>

International child abduction, as considered under the Hague Child Abduction Convention, provides yet another context where a child is improperly removed from their state of habitual residence and the custody rights of one of the parents are violated.<sup>115</sup> The focus on the custody rights of parents is similar to the common law offence of abduction as articulated in the South African context.<sup>116</sup>

#### 4.2.2 Sale

OPSC provides a definition of sale applicable in the context of article 29. It states that '[s]ale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration'.<sup>117</sup> The Protocol further outlines various purposes for the sale, which include sexual exploitation, transfer of organs, forced labour and illegal adoption.<sup>118</sup> Sale can occur where a girl child is given in marriage in exchange for '[t]he payment of a dowry or a bride price'.<sup>119</sup> The African Children's Committee calls on states to 'prohibit and condemn the payment of dowry in respect of children'.<sup>120</sup> The concept of sale denotes that the child is not considered a human being but a commodity or an object. Therefore, one method to prevent sale is to take steps to discourage or interfere with the exchange of money or consideration; which in part can engage legislation.<sup>121</sup>

#### 4.2.3 Trafficking

Article 29 requires states to prevent trafficking, yet it does not define this activity. A factor relevant to defining trafficking is to ensure that it is differentiated from smuggling, which 'occurs when a person voluntarily enters into an agreement with a smuggler to gain illegal entry into a foreign country and is moved across an international border'.<sup>122</sup>

In contrast, the ILO Convention 182 describes trafficking as one of the worst forms of child labour and a form of slavery.<sup>123</sup> The Palermo Protocol provides the first comprehensive definition of

113 SALRC 'Revised Discussion Paper 138: Project 138 the practice of *ukuthwala*' (October 2015) paras 3.19 & 6.1; M Jokani, E Knoetze & D Erasmus 'A criminal law response to the harmful practices of *ukuthwala*' (2018) 39 *Obiter* 766-767.

114 Jokani and others (n 113) 750-752. See also Mwambene & Sloth-Nielsen (n 112) 22.

115 Hague Abduction Convention art 3.

116 As above. See also FM Mahlobogwane 'Parental child abduction cases: Prevention is better than cure' (2018) 39 *Obiter* 113 & 114.

117 OPSC art 2(a).

118 OPSC arts 3(1)(a)(i) & (ii).

119 CEDAW & CRC Committee Joint General Comment (n 13) para 23.

120 African Commission on Human and Peoples' Rights & African Children's Committee 'Joint General Comment of the African Commission on Human and Peoples' Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on ending child marriage' (2017) 27.

121 A discussion of this topic is beyond the scope of this contribution. In the context of organised crime, anti-money laundering provisions could be used. See United Nations Convention against Transnational Organised Crime arts 5-7 & 12.

122 Walker and others (n 2) 13; Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime art 3(a).

123 ILO Convention 182 art 3(a).

trafficking.<sup>124</sup> The African Children's Committee relied upon this definition when adjudicating alleged violations of article 29.<sup>125</sup> The Palermo Protocol states:<sup>126</sup>

'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Regarding children, it states that '[t]he recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article'.<sup>127</sup>

The definition of trafficking under the Protocol is composed of three elements, namely, the act, means and purpose of exploitation.<sup>128</sup> First, trafficking requires at least one of five actions, specifically 'recruitment, transportation, transfer, harbouring or receipt of persons'.<sup>129</sup> The definition of trafficking does not require movement to satisfy the act element.<sup>130</sup> Second, there are means that traffickers use to exercise control over or manipulate persons.<sup>131</sup> Abduction and sale are means that are included in the definition.<sup>132</sup> In the case of children, the means element is not required to comply with the definition of trafficking.<sup>133</sup> Also, children do not have the capacity to consent to be trafficked.<sup>134</sup> Third, the element of purpose requires that trafficking is conducted for the purpose of exploitation. Exploitive purposes include sexual exploitation, forced labour or the removal of organs, although this is not an exhaustive list.<sup>135</sup>

Despite providing a working definition of trafficking, there are challenges in applying this definition. Establishing the exploitive purpose is challenging as exploitation has not been defined in the Protocol, and it may be difficult to prove.<sup>136</sup> This is an issue that could be addressed in the domestication of the Protocol.<sup>137</sup>

The definition offered by the Palermo Protocol, while not without fault, provides a basis to understand and implement article 29 regarding trafficking. It also recognises the vulnerability of children and reflects this realisation in its definition.<sup>138</sup>

124 Gallinetti & Kassan (n 57) 244.

125 *Mauritanian Enslaved Brothers* (n 92) para 94; *Senegalese Talibés* (n 44) paras 75-76.

126 Palermo Protocol art 3(a).

127 Palermo Protocol art 3(c).

128 UNODC 'Legislative guide' (n 109) para 87.

129 Palermo Protocol art 3(c).

130 UNODC 'Legislative guide' (n 109) para 90.

131 UNODC 'Legislative guide' (n 109) para 97.

132 Art 3(c) of Palermo Protocol.

133 As above; UNODC 'Legislative guide' (n 109) para 150.

134 UNODC 'Legislative guide' (n 109) para 148.

135 UNODC 'Legislative guide' (n 109) para 115.

136 UNICEF 'Trafficking in human beings, especially women and children in Africa' (2005) UNICEF Innocenti Research Centre 3; Walker and others (n 2) 22; UNODC 'Legislative guide' (n 109) paras 116-118.

137 UNODC 'Legislative guide' (n 109) paras 117 & 118.

138 UNODC 'Legislative guide' (n 109) paras 149-151.

### 4.3 Any purpose or in any form, by any person

The scope of application of article 29 is not limited by the purpose for which the prohibited activities are undertaken. It could be for the purpose of exploitation for financial gain, negative coping strategies, desperation or being duped.<sup>139</sup> Perhaps a more unnerving reason is the perception of children in some contexts as expendable.<sup>140</sup>

Article 29 has a wide scope of application, precisely because it does not focus on the motivation for the action. However, it should be noted that there are purpose requirements attached to some definitions of abduction, sale and trafficking.<sup>141</sup> These purposes are relevant for determining which prohibited activity or activities have been engaged. However, it may be argued that since this provision does not require a specific purpose, a violation of article 29 may be avoided due to the purpose of the actors or lack thereof. For instance, a purpose for the abduction of children by armed groups could be that 'they are perceived as highly obedient and easily manipulated; they can swell the ranks if there is a shortage of adults; and ensure a constant pool of forced and compliant labour'.<sup>142</sup> There will be a reason for an actor to engage in one or more of the prohibited activities under article 29, but there is no specific intent or purpose requirement to determine whether there has been a violation of this provision

It is also worth noting that article 29 mentions parents and legal guardians. It can be assumed that parents and guardians would not engage in activities that would cause children in their care harm, or exploit them. Looking at the root causes of sale, abduction, trafficking and begging, socio-economic and other factors can push parents and guardians to take actions that are not in the best interests of the child. As discussed above, this is a violation of article 20 of the African Children's Charter generally, but parents or guardians could use child marriage as a negative coping strategy and essentially sell their girl children into marriage at a time of what they may perceive as dire financial need.<sup>143</sup>

A final comment regarding the persons or actors identified by article 29 is that the responsibility of prevention, regardless of the actor, rests with the state. Linking back to the due diligence standard, states have an obligation to ensure that private persons do not interfere with the rights of their citizens.<sup>144</sup> In the context of article 29, this includes parents and not only organised crime syndicates.

### 4.4 Use of children

The term 'use' denotes the conceptualisation of the child as an object for the benefit of another person or persons. While a child's consent is not a factor to consider,<sup>145</sup> conceptualising a child as an object links to this idea of abuse and exploitation common to the definition of the prohibited acts in the first part of this provision and the related provisions of the African Children's Charter and other treaties. However, it is important to note that this phrase is connected to the specific activity of begging.

139 Okunade & Shulika (n 41) 118-121.

140 Okorie & Okeja (n 41) 6-7.

141 See discussion in part 4.2.

142 Denov (n 10) 816.

143 See discussion in part 4.2.2.

144 *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) para 57; *Mauritanian Enslaved Brothers* (n 92) para 52.

145 Palermo Protocol art 3(c).

## 4.5 All forms of begging

The provision regarding begging is an example of where the African Children's Charter improved upon CRC and provided additional protection that responds to the challenges experienced by African children.<sup>146</sup> It is not uncommon to see a mother and her children begging on the streets of cities across the continent. The ubiquitous nature of begging underscores the need for measures to respond to this problem.

The use of children in begging is a form of child labour and an exploitive practice.<sup>147</sup> Therefore, where there is a violation of article 29(b), there most likely is a violation of article 15 dealing with child labour.<sup>148</sup> It occurs in several contexts. Children living in poverty or in street situations are vulnerable to begging, including children with disabilities.<sup>149</sup> Children may be used to beg or as guides for adults.<sup>150</sup> Okunade and Shulika explain that due to 'the non-existent welfare support system in most African countries ... makes it difficult for parents to adequately meet the economic and welfare needs of their families'.<sup>151</sup> This relates to the obligations of states under the African Children's Charter to support parents in their responsibilities.<sup>152</sup>

There are examples of children in Africa being trafficked for the purpose of begging,<sup>153</sup> including in the specific context of the *talibés*. A similar practice occurs in Northern Nigeria among children called *Almajiris*.<sup>154</sup> In *Senegalese Talibés* the African Children's Committee, using the definition of trafficking under the Palermo Protocol, highlighted the link between trafficking and begging.<sup>155</sup> In this instance, the *marabouts* received the *talibés* to exploit them to beg.<sup>156</sup> Also, the African Children's Committee outlined that approximately half of the *talibés* were from Senegal and that the others were from the neighbouring states of Guinea Bissau and Mali.<sup>157</sup>

## 5 Domestication

There are examples of states that have domesticated their obligations under article 29. Nigeria, for example, has enacted legislation that prohibits all the activities included in article 29. Its Child's Rights Act prohibits the sale and trafficking of children, and their use for begging.<sup>158</sup> Under Kenya's Children's Act<sup>159</sup> a child that is found begging is deemed to be a child that is in need of care and protection.<sup>160</sup> There is a similar provision incorporated in South Africa's Children's Act.<sup>161</sup> South Africa has also

146 African Children's Charter Preamble.

147 UNODC 'Legislative guide' (n 109) para 156.

148 *Senegalese Talibés* (n 44) para 60, 61 & 78.

149 CRC Committee General Comment 21 (n 12) paras 52 & 59.

150 T Fuseini & M Daniel 'Child begging, as a manifestation of child labour in Dagbon of Northern Ghana, the perspectives of *mallams* and parents' (2020) 111 *Child and Youth Services Review* 2 (reference omitted).

151 Okunade & Shulika (n 41) 120 (reference omitted).

152 African Children's Charter art 20(2).

153 Okunade & Shulika (n 41) 120 & 121; Okorie & Okeja (n 41) 4.

154 Okorie & Okeja (n 41) 7.

155 *Senegalese Talibés* (n 44) paras 76-79.

156 *Senegalese Talibés* (n 44) para 78.

157 *Senegalese Talibés* (n 44) para 79.

158 Nigeria's Child's Rights Act 26 of 2003 sec 30.

159 Act 29 of 2022.

160 Kenya's Children's Act sec 144(c). Also, sec 18(3) of the Act prohibits slavery and the use of a child in begging is included in the definition of slavery.

161 Children's Act 38 of 2005 sec 150(1)(c).

domesticated the definition of trafficking as per the Palermo Protocol in its Criminal Law (Sexual Offences and Related Matters Amendment Act)<sup>162</sup> and by enacting the Prevention and Combating of Trafficking in Persons Act.<sup>163</sup>

There are several other states with anti-trafficking legislation.<sup>164</sup> At this time, efforts to domesticate article 29 by way of legislation have overall been accomplished. Okunade and Shulika emphasise this point when they state that '[w]hile most African countries now have proper laws in place, some do not enforce them, report no investigations or prosecutions'.<sup>165</sup> Senegal is an example where legislation alone was an inadequate measure to implement article 29.<sup>166</sup> It is classified as a Tier 2 on the United States Department Trafficking in Persons Report as it 'does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so'.<sup>167</sup> The African Children's Committee, after the decision in *Senegalese Talibés*, has found that the practice of *talibés* continues and has recommended to the government of Senegal to improve its enforcement.<sup>168</sup> The Committee made a similar recommendation regarding the situation of *Almajiris* in Nigeria.<sup>169</sup>

## 6 Conclusion

Article 29 is an all-encompassing provision in the African Children's Charter. There is a clear link between the activities of abduction, sale, trafficking and begging, which are prohibited by this provision. Its implementation will also go a long way to support compliance with other provisions in the Children's Charter that relate to exploitation. Also, its implementation is dependent upon the implementation of other provisions of the Charter, such as articles 6 and 20, as the lack of birth registration and support for parents contribute to factors that drive trafficking and other prohibited activities. Furthermore, article 29 applies in any situation, but consideration should be given to children living in poverty, irregular or forced migration, armed conflict, and street situations. Areas of violation also relate to harmful practices such as child marriage and the use of *talibés*. Overall, there is a need to effectively implement appropriate measures that are holistic and go beyond the enactment of legislation.

162 Act 32 of 2007 secs 70-71.

163 Act 7 of 2013.

164 Eg, Benin, Burkina Faso, Côte d'Ivoire, Mali and Togo. See Okundade & Shulika (n 41) 127, 129-132.

165 Okunade & Shulika (n 41) 128. See, generally, UNODC 'Global report on trafficking in persons 2020: Country profile sub-Saharan Africa' (2020).

166 *Senegalese Talibés* (n 44) paras 3-6, 80 & 81.

167 United States Department of State '2024 trafficking in persons report: Senegal', [https://www.state.gov/reports/2024-trafficking-in-persons-report/senegal/#:~:text=in%20six%20regions.,PROTECTION,583\)%20of%20whom%20were%20children](https://www.state.gov/reports/2024-trafficking-in-persons-report/senegal/#:~:text=in%20six%20regions.,PROTECTION,583)%20of%20whom%20were%20children) (accessed 9 June 2024). There are four tiers used to classify states. Tier 1 refers to states that are in full compliance. Tier 2 refers to states that are not in full compliance, but are making significant efforts to be compliant. Tier 2 watch list refers to states that are not in full compliance the standards and are making significant efforts to be compliant; however, there are increasing numbers of estimated numbers of trafficked persons and there is no evidence of the state making efforts to combat severe forms of trafficking. Tier 3 refers to states that are not in compliance with the standards and are not making significant efforts to be compliant. See United States Department of State '2024 trafficking in persons report', <https://www.state.gov/reports/2024-trafficking-in-persons-report/#:~:text=The%20United%20States%20recognizes%20two,all%20forms%20of%20human%20trafficking> (accessed 9 July 2024).

168 African Children's Committee 'Concluding Observations of Senegal' (n 14) paras 41, 42 & 44.

169 African Children's Committee 'Concluding Observations and recommendations by the African Committee of Experts on the Rights and Welfare of the Child to the government of the Federal Republic of Nigeria on its periodic report on the status of implementation of the African Charter on the Rights and Welfare of the Child' (December 2019) para 43.