

## Chapter 9

### Article 8

# Freedom of association and peaceful assembly

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Every child shall have the right to free association and freedom of peaceful assembly in conformity with the law.

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## 1 Introduction

The right to freedom of association and peaceful assembly, on the face of it, may sound unnecessary for children. This is because, generally, this right seeks to empower and enable people to organise and take part in peaceful meetings, marches and demonstrations. Further, it protects anyone's right to be part of 'associations' such as clubs, societies, cultural gatherings, political parties, religious organisations and trade unions.<sup>1</sup> Most of these, primarily, are not immediately attributed to children because the objectives of such gatherings are largely not child-centric. Adults gather for specific political, cultural, religious or societal objectives and children in most cases would gather to study, and for play and leisure.

Nevertheless, the right to freedom of association and peaceful assembly was first articulated as a legally-binding right under article 21 (peaceful assembly) and article 22 (freedom of association) of the International Covenant on Civil and Political Rights (ICCPR)<sup>2</sup> to protect the rights of adult citizens to participate in the political life of a member state. Indeed, it is common knowledge that from its genesis, this right was not designed to benefit children.<sup>3</sup> However, after the adoption of the Convention on the Rights of the Child (CRC) in 1989 and the African Charter on the Rights and Welfare of the Child (African Children's Charter) in 1990, children are assigned this right and consequently enjoy the freedom of association and of peaceful assembly, albeit in a limited context. The limitation on this right for

1 See eg the Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association A/78/246 issued on 27 July 2023 on the Importance of the rights to freedom of peaceful assembly and of association in advancing sustainable peace and democratic transitions.

2 Adopted 16 December 1966, entered into force 23 March 1976, 999 UNTS 171.

3 A Dar & J Wall 'Children's political representation: The right to make a difference' (2011) 19 *International Journal of Children's Rights* 595-612.

children, as elaborated further below, is based on certain characteristics of the right as a whole to which children do not subscribe, principally because of their age – for example, joining a trade union.<sup>4</sup> A trade union is commonly known as an organisation of workers whose purpose is to maintain or improve the conditions of their employment. The ‘work’ that children are allowed to perform, as elaborated in chapter 16 of this volume, is work that is not hazardous. Article 15 of the African Children’s Charter does not entirely prohibit child labour. Therefore, where children are involved in non-hazardous work such as teaching or coaching a sports team, such working children can also associate and assemble by joining or establishing a union with a common objective. This notwithstanding, the extent to which children are allowed to enjoy their right and freedom to association and peaceful assembly still is not clear. It is for this reason that it is not surprising to notice the elaborate nature under which the right to freedom of association and peaceful assembly is protected under ICCPR and, contrastingly, the brevity of the respective provisions under CRC (article 15) and, particularly, the African Children’s Charter (article 8).

The aim of this chapter is to provide indepth analysis of article 8. To attend to the intricate components of this article, this chapter is divided into six major parts, ranging from the introduction to the conclusion. After the introduction, the chapter analyses the links between the freedom of association and peaceful assembly with other African Children’s Charter articles and with those in other human rights treaties, including CRC. The chapter also analyses national exemplars, laws and African Committee of Experts on the Rights and Welfare of the Child (African Children’s Committee) initiatives that enable or restrict children’s enjoyment of these rights.

## 2 Links to other Charter articles

Akin to all the rights in the African Children’s Charter discussed in this chapter, article 8 relates, collectively and separately, with the general principles of children’s rights interpretation protected under article 3 (non-discrimination); article 4(1) (best interests of the child); article 4(2) (the respect of the views of the child and child participation); and article 5 (survival and development). Indeed, it could be argued, for example, that it is always in the best interests of children to associate and peacefully assemble, and to freely participate in all matters that concern them and beyond. Children can associate and assemble, to assert their survival and development or to speak out against any form of discrimination on all matters. Over the years, for example, in 2016 and 2024, children, especially girls in varied secondary schools in South Africa, have associated and peacefully assembled with their peers to protest against discriminatory hairstyles and the use of African languages in school.<sup>5</sup>

It is critical to note that despite this collective link to the general principles, a child’s right to freedom of association and peaceful assembly also enjoys a strong bond with children’s rights to freedom of expression (article 7) on two bases. First, because, as demonstrated under the right to freedom of expression in this *Commentary*, it is a right that falls under the same family tree of the elements of a progressive democratic society as the right to freedom of expression. Second, it is the right with the strongest potential of gathering or grouping children with similar concerns, demands, beliefs and needs, to enable them to express their collective opinions on all matters and their well-being. Succinctly, it is a right that allows children to associate and peacefully express themselves on issues in which they have an interest.

Further, article 8 also relates with article 9 on freedom of thought, conscience and religion analysed under chapter 10 of this volume. This is a highly-contentious relationship. This is because the combination of articles 8 and 9 grants children the opportunity to assemble with other children to

4 This aspect of the right to freedom of association and freedom of assembly is crucial but is reserved for adults only as, generally, children do not have a right to work.

5 For details on this, see eg <https://www.bbc.com/news/world-africa-37219471> (accessed 30 August 2024).

think, participate in the artistic, cultural and religious life of their community and to express themselves in those activities.<sup>6</sup> However, in practice, the link to article 9 exposes children to a potential clash with parental authority and control. As protected under articles 19 and 20 of the African Children's Charter and elucidated in chapters 20 and 21 of this volume, parents and guardians have a responsibility to provide direction to a child in choosing a religion – this includes direction to a method of worship. Therefore, any alternative opinion, garnered through their associations and assemblies to the direction parents have opted for, would require a great deal of religious and cultural compromise from parents and guardians – which is very unlikely, without fallout, in most African families. For example, in the South African case of *Kotze v Kotze* the Court refused to approve a provision in a settlement agreement between parties on the religion of their three-year-old son, to a divorce action that provided as follows: 'Both parties undertake to educate the minor child in the Apostolic Church and undertake that he will fully participate in all the religious activities of the Apostolic Church.'<sup>7</sup> In its decision the Court amended the agreement in this regard and stated that because the clause denies the child his freedom to religion, it would not be in his best interests that such clause be inserted which pre-determined his future and placed constraints in this right to religion of the child. The decision, if fully implemented, will no doubt put the child at odds with their parents. This decision, read together with article 8, is indicative of an intent to ensure that participation in religious activities takes place only on a voluntary basis, predicated on a choice and will, which a child at the age of three years does not have and cannot make because the child is too young. Generally, a child's religious identity is determined from birth or, in most cases, even before the child is born.<sup>8</sup>

Another provision of the African Children's Charter that also enjoys a strong link to article 8 is article 11 on the right to education, also analysed in this *Commentary* in chapter 12. The right to education of children, with the exclusion of home schooling of an individual child, establishes a natural and legal assembly of children with the basic objective to attain the right to education.<sup>9</sup> It is one of the few rights that legally authorises a child the right to association and assembly with no parental or guardian's interference. Moreover, the right to education, especially basic education,<sup>10</sup> is compulsory. This means that parents and guardians are obliged to allow their child to associate and assemble with other children in order to acquire an education.

However, this is not a blanket obligation for parents, especially in the context of a child associating with school clubs or societies. Here, parents and guardians have a responsibility to give consent and that could be, for example, rejecting the association of their child with school clubs that they do not find congruent with their family ethos and spirit. The link between articles 8 and 11 requires that when children gather to attain their right to education, among other things, what they study should enhance, promote and develop the child's personality, talents and mental and physical abilities to their fullest potential.

Article 8 also enjoys a compatible relationship with article 12 (leisure, recreation and cultural activities) of the African Children's Charter. Article 12, as analysed in chapter 13 of this volume, is a right that allows children the opportunity to unleash their creativity, talent, emotions, to rest and

6 R Hart 'Children's right to participate: Some tools to stimulate discussion on the issue in different cultures' in E Verhellen (ed) *Understanding children's rights: Collected papers presented at the second international interdisciplinary course on children's rights* (1997) 227.

7 *Kotze v Kotze* 2003 (3) SA 628 (T). See also S de Freitas 'Freedom to agreed-upon religious upbringing of the child on dissolution of a marriage: A critique of *Kotze v Kotze*' (2021) 54 *De Jure Law Journal* 533-548.

8 A Scolnicov 'The Child's Right to Religious Freedom and Formation of Identity' (2007) 15 *International Journal of Children's Rights* 251-267.

9 K Bhagat 'Right to education: Education as a human right' (2020) 3 *International Journal of Law, Management and Humanities* 836-844.

10 Basic education is composed of early childhood education, primary, secondary and high school education.

recoup their strength.<sup>11</sup> Objectively, a child can attain their right to play and rest alone especially when they play with their toys and they can decide to rest alone when they feel they are exhausted. However, the link between articles 8 and 12 allows a child to also play with other children as a group. This is commonly realised in collective games and sports such as football, netball and rugby, among others.

Lastly, article 8 further enjoys a compatible link to article 18, protection of the family. The family, as analysed in chapter 19 of this volume, is a group of persons united by the ties of marriage, blood, or adoption. An African family generally contains parents, children and members of the extended family.<sup>12</sup> So, a child naturally enjoys their right to freedom of association and peaceful assembly, by being part of a family and engaging in family gatherings and activities such as birth celebrations and others. Within family spaces, they could raise and share their thoughts on all matters and to get the family to realise their rights. Concisely, a child's right to belong to a family activates associational bonds.

### 3 Links to other human right treaties

It is safe to hold the Universal Declaration of Human Rights (Universal Declaration) as the principal source of a child's right to freedom of association and peaceful assembly. This is particularly because article 20 of the Universal Declaration represents the first time this right was mentioned, albeit that the Declaration is not a binding instrument. Under Universal Declaration, the categorical pronouncement under article 20(1), that everyone has the right to freedom of peaceful assembly and association, article 20(2) is a caution that no one (children inclusive) 'may be compelled to belong to an association'. Such a remark, understandably, does not feature under either article 15 of CRC or article 8 of the African Children's Charter. This is intentional because if it did, it would have conflicted, frequently, with the thrust of parental responsibilities, mentioned in both CRC and the African Children's Charter. One of these is the responsibility to provide direction to the child in the exercise of their rights, particularly a child's right to freedom of thought, conscience and religion. Notwithstanding, CRC and the African Children's Charter do include claw-backs in their protection of a child's right to freedom of association and peaceful assembly. This claw-back is explained below, under the legal interpretation of article 8.

Besides the obvious and direct link to article 20 of the Universal Declaration, the following provisions of the Declaration also have a relationship with article 8, albeit that these are implicit. These include articles 7 (non-discrimination); 19 (freedom of opinion and expression); 21 (the right to take part in the government of their country, directly or through freely-chosen representatives);<sup>13</sup> and 27 (the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits).

Perhaps the strongest link the article has with any other human rights treaty is the relationship it enjoys with the Freedom of Association and Protection of the Right to Organise Convention (FAPROC).<sup>14</sup> This Convention provides the most elaborated content of the right to freedom of association. Though strongly worded to protect the rights of workers and employees, FAPROC, to a large extent justifies the fact that a child's right to freedom of association and peaceful assembly is a passive right in CRC

11 KR Ginsburg 'The importance of play in promoting healthy child development and maintaining strong parent-child bonds' (2007) 119 *Pediatrics* 182-191.

12 L Khaemba 'Protection of the family under Kenyan employment law' (2023) 133 *Journal of Law, Policy and Globalisation* 37-48.

13 Regrettably, children, in all African countries, do not yet have the right to vote, especially in national elections. However, to some extent, like in South Africa, children can associate and peacefully assemble to express their opinion on who they would prefer as their president or leader.

14 Convention 87, adopted in 1948 by the General Conference of the International Labour Organisation at its 31st session, entered into force on 4 July 1950.

and the African Children's Charter, as children are only allowed to associate and assemble for activities that strengthen their socio-cultural welfare. The reasoning here is based on the fact that, besides the mentioning and protection of a child's right and freedom to association and peaceful assembly in children's treaties, both the United Nations (UN) and the African Union (AU) have seen no interest to develop supporting documentation, such as FAPROC or even a General Comment, that expands on what exactly these rights entail for children. As such, it remains unexplained, unexpanded and, thus, comes across as though these rights were added in CRC and the African Children's Charter to fill up space, which clearly is not the case, as demonstrated in this chapter.

Furthermore, article 8 also enjoys a close relationship with provisions of ICCPR. It is worth mentioning that even though article 8 has its roots in the Universal Declaration, it owes its binding basis to two provisions of ICCPR – articles 21 and 22. The right to freedom of association and peaceful assembly is grouped under the human rights discourse as a civil and political right. As a child's civil and political right, it ensures that every child is free to organise and to form and participate in groups, either formally or informally. This provision, in the same light as article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) (which protects workers' rights to freedom of association and peaceful assembly for the promotion and protection of their economic and social interests), makes a strong link between this right to labour rights under FAPROC.

Article 10 of the African Charter on Human and Peoples' Rights (African Charter) also relates with article 8 of the African Children's Charter in that it protects the same right, albeit with a unique twist. Among the mainstream human rights treaties mentioned in this chapter, the African Charter is the only treaty that seems to expand on and explicitly mention the ground on which this right can be limited beyond the generic claw-back phrase 'no restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law'.<sup>15</sup>

## 4 Legal interpretation

The rights to freedom of association and peaceful assembly (article 8) and to participate (article 4(2)) and freedom of expression (article 7) are enabling rights. They enable children to express their desire and opinion to claim and enjoy other children's rights. Unlike ICCPR, the African Children's Charter protects freedom of association and peaceful assembly under one provision, while ICCPR splits them under articles 21 (assembly) and 22 (association). This suggests that although they are related as essential components of a participatory democratic society, they are also different in character and objective. For example, while the right to freedom of assembly protects the ability of anyone to exercise individual autonomy in solidarity with others, the right to freedom of association contains the right of individuals to interact with and organise among themselves to collectively express, promote, pursue and defend common interests.<sup>16</sup>

15 Art 29 states: 'The individual shall also have the duty: (1) to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need; (2) to serve his national community by placing his physical and intellectual abilities at its service; (3) not to compromise the security of the state whose national or resident he is; (4) to preserve and strengthen social and national solidarity, particularly when the latter is threatened; (5) to preserve and strengthen social and national independence and the territorial integrity of his country and to contribute to its defence and in accordance with the law; (6) to work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society; (7) to preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well-being of society; (8) to contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.'

16 CN Voule (UN Special Rapporteur) 'Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association' paras 1-7, <https://documents.un.org/doc/undoc/gen/n23/221/52/pdf/n2322152.pdf?token=zNUSevlWesNSC7BTAR&fe=true> (accessed 5 June 2024).



Article 8 is a combination of two rights that are largely conditional rights, which have to be exercised in conformity with the domestic law. An overarching requirement of the African Children's Charter, the evolving capacity of the child, protected under articles 9(2) and 11(4), establishes that all Charter rights, freedom of association and peaceful assembly included, differ from the rights accorded to adults under article 22 of ICCPR. This is the case because articles 9(2) and 11(4) tacitly require that parents and, in some instances the extended family or community in which a child grows up, retain the right and duty to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise of their right to freedom of association and peaceful assembly. Therefore, implicitly, in addition to the explicit claw-back clause, which is a limitation to article 8, the evolving capacity of child also is an intrinsic limitation, which only allows a child to enjoy their article 8 rights after attaining certain capacities and having been emancipated from parental guidance. Understandably, parental guidance diminishes and eventually falls away over a period of time as a child grows and matures.

Article 8 recognises and grants children the opportunity to be part of a forum within which they can freely express their views and interact with other children and/or members of their community. This right encourages children to also form tangible relations out of the biological or legal family environment with their peers both at, for example, schools and in their neighbourhood. Indeed, this right does give children the chance to express political opinions and/or engage in political processes and participate in decision-making processes with their peers or with adults in community meetings to raise their concerns on matters of interest to them. In an educational setting, through this right, children are allowed to form or join existing associations that advocate and expose them to prospective careers, such as debates, journalism activities, first aid courses, dress making, sports and reading clubs. The right also allows children to form or join an assembly that advocates rights and a better schooling environment. Undeniably, a school, the church and village and family gatherings are classic fora that effortlessly trigger a child's enjoyment of their right to freedom of association and peaceful assembly. However, in political and democratic terms, which are the central existential reasons why these rights even exist, children's freedom to associate and peaceful assembly is limited in most African countries. As further elucidated below, in these fora and others highlighted in this chapter, children enjoy both their individual right to freedom of assembly and their collective right to associate with others to pursue a common goal.

#### 4.1 The concept of association

As indicated earlier, associations are a key concept that reflect how individuals organise themselves into groups to achieve common objectives. These objectives can range from professional or skills development, cultural promotion, religious activity, charity, to social activism. According to Zimmer, the defining characteristic of an association is its organised structure, often with a set of rules or bylaws, a designated leadership, and a clear membership system.<sup>17</sup> This is different from spontaneous social gatherings<sup>18</sup> as associations are deliberate, structured, sustainable over a period of time, with a strong spirit and commitment of continuity, reflecting the intentional efforts of individuals to collaborate and pursue shared interests.<sup>19</sup>

For example, the Human Rights Committee in *Farah v Djibouti*<sup>20</sup> has affirmed that for the purposes of article 22 of the ICCPR, a political party is an 'association'. This is possible because

17 A Zimmer 'Associations, definitions and history' in HK Anheier & S Toepler (eds) *International encyclopedia of civil society* (2010) 40-47.

18 Spontaneous social gatherings such as school reunions also have objectives but lack sustained structures.

19 PM Taylor 'Article 22: Freedom of association' in PM Taylor *A commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's monitoring of ICCPR rights* (2020) 610-629.

20 *Farah v Djibouti* Human Rights Committee, UN Doc CCPR/C/130/D/3593/2019, 4 November 2020.

political parties are a voluntary structured group of people governed by a set of rules and driven by a set of common objectives. In this communication, the Human Rights Committee considered the dissolution of a political party as an interference with the right to freedom of association when it stated:<sup>21</sup>

Given that political parties are a form of association essential to the proper functioning of democracy, and in the light of the serious consequences that arise for the author in this case, the Committee concludes that the dissolution of the Movement amounts to interference with his right to freedom of association.

In most African countries, children do not have the right to vote in presidential elections (voting typically is one of the most important activities of political parties) and thus are not eligible to join political parties. This notwithstanding, children can voluntarily join any association that meets their common interest, such as recreational associations, and vote within such groups to elect the leaders of the group. Indeed, there is a clear distinction between involuntary associations such as kin groups, castes or communities, and voluntary associations such as trade unions, churches and schools. For children, both are important and bear same relevance in them attaining their right to association and peaceful assembly. Indeed, legally, the importance of involuntary groupings and voluntary association has been made possible by the evolution and recognition in law of the concept of freedom of association. The concept, which credits its origins to the Universal Declaration, now constitutes an integral part of the majority of the constitutions, including laws designed to protect children, in Africa.

#### 4.2 The concept of peaceful assembly

According to Taylor, the right of peaceful assembly is ‘a fundamental human right, which is essential for the public expression of one’s views and opinions and indispensable in a democratic society’.<sup>22</sup> According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), the right of peaceful assembly includes the right to hold meetings, sit-ins, strikes, rallies, events or protests, both offline and online.<sup>23</sup> A classic example is the youth-led protest in Kenya that started online and later spilled over into the streets of Nairobi on Tuesday 18 June 2024, with the objective to force the government to abandon its proposed finance bill.<sup>24</sup> Worth noting, article 8 of the African Children’s Charter

protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash-mobs [this includes] whether they are stationary, such as pickets, or mobile, such as processions or marches.<sup>25</sup>

21 *Farah v Djibouti* (n 20) para 7.2.

22 PM Taylor ‘Article 21: Freedom of assembly’ in Taylor (n 19) 591-609.

23 OHCHR and the right of peaceful assembly, <https://www.ohchr.org/en/peaceful-assembly#:~:text=The%20right%20of%20peaceful%20assembly%20includes%20the%20right,form%20the%20basis%20for%20participating%20in%20peaceful%20protests> (accessed 20 June 2024).

24 For details on this peaceful protest, see *Africanews* ‘Kenya’s finance bill: This is what led to the protest’, <https://www.africanews.com/2024/06/26/kenyas-finance-bill-this-is-what-led-to-the-protest/#:~:text=A%20youth-led%20protest%20Young%20Kenyans%20have%20been%20organizing,bill%20was%20made%20public%20for%20the%20first%20time> (accessed 16 June 2024). It is worth noting that their demands were met, and the Bill has been repealed.

25 UN Human Rights Committee General Comment 37 on article 21 (the right of peaceful assembly) para 6.

For children, the right to freedom of peaceful assembly, akin to their rights to freedom of expression and association, serves as a vehicle for the exercise of many other child rights guaranteed under international children's law (including the African Children's Charter).<sup>26</sup>

The recognition of the right to peaceful assembly under article 8 imposes a corresponding obligation on state parties to respect and ensure its exercise, and to protect peaceful demonstration without discrimination. For example, besides the hairstyle discrimination protest mentioned above, another significant example of a child-led protest was the well-known 1976 student language protests in Soweto, South Africa.<sup>27</sup> The protests were a key moment in the fight against apartheid both in South Africa, domestically and internationally. In remembrance of this day, 16 June is memorialised in South Africa as National Youth Day and by the AU as the Day of the African Child.<sup>28</sup> Article 8 has no caveats based on who could peacefully assemble; it accords this right to all children, including foreign nationals, migrant children (documented or undocumented), refugee children, and stateless children. Article 8 mandates state parties to allow such assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants.

### 4.3 Conformity with the law

Akin to several provisions in the African Children's Charter, article 8 also contains a claw-back. The inclusion of 'in conformity with the law' provides grounds for potential restriction of a child's right to freedom of association and peaceful assembly. There are, in effect, limits on the restrictions that may be imposed by the state or any of its organs, including schools. Where children assemble or join associations to protest discriminatory laws, such protest cannot be restricted. This is further supported by the fact that non-discrimination is a cardinal principle of children's rights jurisprudence that is non-derogable, especially if such discrimination is not in the best interests of children. Indeed, this part of article 8, read jointly with other Charter rights, suggests that, where there are restrictions to a child's freedom of association and peaceful assembly, such restrictions should be lower and less stringent where the motives for association and assembly are in the best interests of the children. They are more stringently viewed where the motives and objectives are not in the children's best interests. In determining what is in the best interests of the children in relation to the *raison d'être* for restricting associating and assembly, the state has an obligation under article 8 to measure and understand the extent to which their demands are necessary to enhance their rights and well-being.

### 4.5 Regional interpretation

It is not surprising that the African Children's Committee to date has not expansively provided guidelines on article 8. This silence probably is because these rights (freedom of association and freedom of assembly), as indicated at the beginning of this chapter, are passive rights for children, borrowed from mainstream adult-centric treaties such as the ICCPR. It is correct to adapt the rights for children. However, in reality, the extent to which children exercise their claim for these rights is different from adults' approach to claiming the same rights. The best attempt the African Children's Committee has made so far is to provide guidelines for child participation, discussed in this *Commentary*

26 See eg the peaceful protest held at a girl's school in South Africa, against discriminatory school policy. For more on this, see S Lawrence, 'Pretoria Girls High School's discriminatory hair policy sparks protests', <https://www.teenvogue.com/story/pretoria-girls-high-school-students-protest-natural-hair-ban> (accessed 18 July 2024).

27 'Students from various schools began to protest in the streets of the Soweto township in response to the introduction of Afrikaans, considered by many blacks as the "language of the oppressor", as the medium of instruction in black schools.' For more on this, see South African History Online, <https://www.sahistory.org.za/article/june-16-soweto-youth-uprising> (accessed 30 August 2024).

28 See eg the African Children's Committee's 2024 concept note on the Day of the African Child, [https://www.acerwc.africa/sites/default/files/2024-03/Concept-Note\\_Day-of-the-African-Child\\_2024\\_ENG.pdf](https://www.acerwc.africa/sites/default/files/2024-03/Concept-Note_Day-of-the-African-Child_2024_ENG.pdf) (accessed 30 August 2024).



in combination with the right to freedom of expression. In the Guidelines on child participation, the African Children's Committee states that

[t]he Committee may call on child-led initiatives or child participation structures in a State Party to provide information on the implementation of its recommendations following its investigation mission, during its session or its engagement with the respective State Party or any of its activities that raise the issues observed during the mission.<sup>29</sup>

The recognition of 'child-led initiatives and child participation structures' at the national level is a strong signal that the African Children's Committee recognises that children have a right to, and should be allowed to, freely associate and peacefully assemble, as it may rely on such structures to enrich its monitoring of the implementation of the African Children's Charter. Further, though not meant for children, the African Commission on Human and Peoples' Rights (African Commission) has provided guidelines<sup>30</sup> on the right to freedom of association and peaceful assembly which, broadly, are applicable to children. In it, the African Commission adopts a similar tone and scope to General Comment 37 on freedom of assembly of the Human Rights Committee.<sup>31</sup> Under paragraphs 9 and 10 of the Guidelines the African Commission provides that

[e]very person [including children] has the right to establish an association together with another, free from limitations violating the right to equality and the guarantee of non-discrimination. No more than two people shall be required in order to found an association. The fact of past criminal conviction alone shall not prevent an individual from founding an association.<sup>32</sup>

Central to children is the inclusion of the requirement of the legal personality of associations. Under it, the African Commission states that '[s]tates shall not compel associations to register in order to be allowed to exist and to operate freely. Informal (*de facto*) associations shall not be punished or criminalised under the law or in practice on the basis of their lack of formal (*de jure*) status.'<sup>33</sup>

This is crucial for children because in most instances children do not have the capacity and money required to access all information to comply with the registration of an association. The African Commission confirms this link to children in its footnote 6 of the Guidelines when it explicitly states 'including inter alia children and non-nationals'. The Commission in its affirmation of children as beneficiaries of the right to freedom of association references CRC and the African Children's Charter as follows:

Article 15 of the Convention on the Rights of the Child and article 8 of the African Charter on the Rights and Welfare of the Child. Children's right to found associations shall be interpreted in accordance with their evolving capacities and the principle of the best interests of the child, in accordance with the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The two categories

29 African Children's Committee Guidelines on Child Participation, [https://www.acerwc.africa/sites/default/files/2022-10/ACERWC%20Guidelines%20on%20Child%20Participation\\_English.pdf](https://www.acerwc.africa/sites/default/files/2022-10/ACERWC%20Guidelines%20on%20Child%20Participation_English.pdf) (accessed 19 July 2024).

30 African Commission Guidelines on Freedom of Association and Assembly in Africa, <https://achpr.au.int/en/special-mechanisms-reports/guidelines-freedom-association-and-assembly-africa/> (accessed 20 July 2024).

31 General Comment 37 (n 25).

32 To clarify its extension of the right to a person with a criminal record, the African Commission explains that '[p]ast criminal conviction shall only potentially limit an individual's ability to found an association where the nature of that conviction directly raises concern relative to the true purpose of the association. Direct reason for concern would be raised, for instance, where an individual seeking to set up an association has previously been convicted of fraud and there is well-founded reason to believe the association is not being set up in good faith.' See n 7 of the African Commission Guidelines.

33 African Commission Guidelines (n 30) para 9.

are mentioned specifically here due to the fact many national laws specifically exclude such categories of persons.

This direct reference to children's rights treaties is a strong recognition of the fact that everyone has the right to freedom of association and peaceful assembly.

## 5 Domestication of article 8 in national legal systems

Akin to several provisions of the African Children's Charter, several African countries have domesticated children's rights to freedom of association and peaceful assembly. These rights in most instances give life to the right to freedom of expression and facilitate the opportunity for children to collectively claim their rights. Beside the provisions of law discussed later, one of the first exemplars of the domestication of this right is the institutionalisation of children's parliaments in several African countries. A children's parliament is a formal structure for children's participation that meets on a regular or semi-regular basis to discuss matters that concern children.<sup>34</sup> It essentially is a child-friendly space created to allow children to participate in the national, regional and continental (political or semi-political) decision-making processes.

Almost every African country, including some AU organs, has hosted a children's forum or parliament session. In Zambia, for example, the National Assembly of Zambia hosted the African Children's Parliament on 15 and 16 July 2022, under the theme 'Creating an Africa fit for children'. The 2022 Children's Parliament was attended by child parliamentarians from, Zambia, Zimbabwe, Mozambique, Kenya, Malawi, Angola, Eswatini, Tanzania, South Africa, Niger, Sierra Leone and South Sudan. The children parliamentarians developed resolutions on food and nutrition security; climate change and resilience; child protection; child participation and social protection.<sup>35</sup> In June 2024 Zimbabwe held its thirty-second junior parliament in the presence of the President of the Republic. This parliament plays a crucial role in empowering the youth of Zimbabwe to voice their opinions, engage in political matters and contribute to political outcomes on matters that concern them in Zimbabwe.<sup>36</sup> In Ethiopia, a children's parliament was established in September 2006. Since then, children's parliaments have been established throughout Ethiopia to facilitate broader engagements among children in family, societal, community and government affairs and to enable them to voice their concerns.<sup>37</sup>

At the regional level, the African Children's Committee, for example, has repeatedly invited children to associate with the Committee during its ordinary sessions. Most of this has been referred to and discussed in the chapter on freedom of expression in this *Commentary*. This initiative is necessary for the Committee to meet its 2040 goals for an Africa fit for children. Under Aspiration 10 of these goals, the Committee aspires that by 2040, '[d]edicated processes for children's participation are in

34 D Ponet and others 'A handbook on child participation in parliament', <https://www.ipu.org/resources/publications/handbooks/2016-07/handbook-child-participation-in-parliament> (accessed 20 July 2024).

35 For more on the African Children's Parliament, see <https://www.parliament.gov.zm/node/10262> (accessed 22 July 2024).

36 For more on the 32nd session, see <https://www.herald.co.zw/junior-parliament-a-leadership-development-platform/> (accessed 20 July 2024). For more examples, see Nigeria: E Delamónica and others 'Child participation in Nigeria: Three examples of dialogue with children and adolescents' in G Tonon (ed) *Re-defining children's participation in the countries of the south* (2022) 33-52.

37 For more on this, see F Getachew 'Aspiring young leader advocating for a better life for every child in Ethiopia', <https://www.unicef.org/ethiopia/stories/aspiring-young-leader-advocating-better-life-every-child-ethiopia#:~:text=Children%27s%20parliaments%20have%20been%20established%20throughout%20Ethiopia%20to,was%20inaugurated%20and%20became%20operational%20in%20September%202006> (accessed 22 July 2024).

place, such as a permanent and dedicated forum in the form of a child parliament, or *ad hoc* forum in the form of a child caucus aimed at bringing forward the voices of children in these processes’.

## 5.1 National laws

There is no lack of national laws or legislation that protects children’s right and freedom of association and peaceful assembly in Africa. However, some are very limited, contradictory and do not progressively recognise children as fully discerning of this right. In Cameroon, for example, the right to freedom of association is governed by the Act on Freedom of Association 90/53 of December 1990. Regrettably, the Act makes no mention of children and includes a provision that contradicts the position of the African Commission on the impact of the registration of associations. Section 20(1) of the Act provides that ‘[w]hoever, in whatever capacity, administers or continues to administer a foreign association or an establishment which operates without authorisation shall be punished with imprisonment for from fifteen days to six months or with fine of from 100 000 to 1 000 000 francs, or with both such imprisonment and fine’. The law adds, under section 20(2) that ‘[a]ny other person who participates in the functioning of such association or its establishment shall be punished with imprisonment for from ten days to three months or with fine of from 50 000 to 500 000 francs, or with both such imprisonment and fine’. This provision makes it impossible for children to even imagine the idea of freely associating and forming an assembly because they will be prosecuted.<sup>38</sup>

Another country with a major limitation on the extent to which children could exercise their freedom of association and peaceful assembly is Rwanda, in its 2018 Law Relating to the Protection of the Child.<sup>39</sup> Article 10 of this law states that ‘[a] child has the right to freedom of association and of peaceful assembly upon advice and guidance by his/her parents or guardian in accordance with the law’. This provision has two major limitations. First, it limits a child to obtain parental ‘advice’ and ‘guidance’ before exercising this right. Second, even if such advice and guidance is obtained, it must be in accordance with the law. This is regressive and contrary to the spirit of the word ‘freedom’ and, further, partly contrary to article 8 of the African Children’s Charter.

In Ghana no authorisation is needed. According to article 21(1)(d) of Ghana’s 1992 Constitution (as amended), ‘[a]ll persons shall have the right to freedom of assembly, including freedom to take part in processions and demonstrations’. Under section 1(1) of the 1994 Public Order Act (Act 491) ‘any person wishing to hold an assembly in a public place must notify the police not less than five days in advance. The notification must be in writing and signed by or on behalf of the organisers of the assembly, specifying the date, place, and timings of the assembly; its nature; and the proposed route and destination, if any.’ Though restrictive, it is doable for children as some of them can write and should write on of behalf of other children. What the government of Ghana, should not do, in its interpretation of this provision, is require a certain standard and style of writing. This is crucial because, these measures mentioned under the Act 491 are routine and standard procedures to maintain public order and safety.

## 6 Conclusion

There is an identified need for the African Children’s Committee to interpret and provide guidance on what these rights (freedom of association and peaceful assembly) really mean for children in Africa and how and why they are important for the attainment and enjoyment of their other rights. This is also crucial because it will amplify and speed up the fulfilment of Aspiration 10 of the AU’s 2040

<sup>38</sup> See also Egypt, where Law 70/2017 imposes draconian restrictions on civic activity contravening the Constitution and Egypt’s international obligations under ICCPR. The law gives the government unlimited authority to control the operation of civic associations and imposes custodial sentences and hefty fines for infractions of any of its strict provisions.

<sup>39</sup> Law 71 of 2018.

Agenda for an Africa fit for children. In most children's rights discourses, the rights to freedom of association and peaceful assembly are being overtaken by the rights to participation and freedom of expression. Indeed, even though they are key elements of a participatory democratic society, they are qualitatively different. As indicated earlier in chapter 8 of this volume, freedom of expression includes the freedom to hold, share and explore opinions and ideas. Specifically, for children, freedom of association and peaceful assembly also allows them to form child-led gatherings to participate in promoting their common interests. Indeed, the current increase in child-led political protests across Africa indicates a growing demonstration of children's utilisation and enjoyment of their rights to freedom of association and peaceful assembly.