

# Children's Rights and COVID-19 Responses under the African Union: Recent Developments and Challenges

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## Abstract

There is little doubt that children are at risk of being seriously affected by the socio-economic impact and the response measures to the COVID-19 pandemic that may inadvertently affect their rights, interests and well-being. UNICEF has declared that unless states act together, globally and regionally, to address this, it is possible that the pandemic will permanently cause damage to children and our shared future. The pandemic poses real challenges for children around the world, particularly the developing countries in Africa. Most African countries are already bedevilled by socio-economic frailties, corruption, conflict and institutional problems. In this article we explore responses to COVID-19 from the African Union (AU), to ascertain how regional responses have integrated the protection of the rights and interests of children. With the African Children's Charter as a guide, it is argued that institutions at the AU continental and sub-regional levels are increasingly becoming aware of the importance of children's rights as a distinct issue rather than being part of women's concerns. The AU celebrated the thirtieth anniversary of the African Children's Charter in 2020, and this occasion provides a timely opportunity to reflect on how regional institutions are integrating the principles of children's rights in regional governance processes and decision-making.

**Keywords:** children's rights; COVID-19 responses; African Union law; regional governance

## Introduction\*

Children are generally recognised as the most vulnerable group in any crisis, especially the Coronavirus (COVID-19) pandemic currently experienced world-wide. Children are disproportionately impacted by the pandemic's socio-economic effects and their vulnerability is stated explicitly in the preamble of the African Charter on the Rights and Welfare of the Child, 1990 (African Children's Charter) which states that 'on account of the child's physical and mental immaturity he or she needs special safeguards.' The need to provide special protection is a legal requirement to ensure that the dignity of children is upheld, even in emergency health crises. In recent years, public health threats like the HIV pandemic, Ebola crisis in Africa and currently COVID-19, have had a severe impact on the lives of children. The Executive Director of the United Nations Children's Fund (UNICEF) proclaimed that 'without urgent action, this [COVID-19] health crisis risks becoming a child rights crisis.'<sup>1</sup>

While COVID-19 affects individuals globally, this article examines the extent to which the African Union's COVID-19 responses have integrated special protection for children and whether the best interests of children are being taken into account. Existing and emerging literature on the COVID-19 pandemic, legal instruments and policy documents were consulted to ascertain how the rights and interests of children are protected. We acknowledge that the discourse on COVID-19 is relatively new and still developing in many disciplines, including legal discourse. To delimit the scope of the inquiry, the analysis of the responses will focus on regional, rather than country level. Any reference to specific countries in sub-regions is used to illustrate legal developments and challenges from a regional perspective with a view to ascertain whether there is an integrated approach to COVID-19 responses.<sup>2</sup> Given that the COVID-19 crisis is evolving, the arguments made reflect developments and challenges as of 31 December 2020.

This article is structured as follows: the first part discusses the normative legal framework for the protection of children under the African Union (AU) human rights system, to highlight the justification for applying a child rights-based approach to the

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\* An earlier version of this paper was virtually presented at the Environmental Law Association of South Africa (ELA), Annual Student Conference, University of Pretoria, South Africa in September 2020 and at the Socio-Legal Studies Association (SLSA) Conference, Cardiff Law School, United Kingdom in March 2021. The contribution of Rongedzayi was supported by the National Research Foundation of South Africa, (NRF) Grant No: 115581 under the South African Research Chair in Cities, Law and Environmental Sustainability, North-West University. The views expressed in this article, or any omissions thereof, are the authors' own.

1 Statement by UNICEF Executive Director Henrietta Fore, 'Don't let Children be the Hidden Victims of COVID-19 Pandemic' (9 April 2020) <<https://www.unicef.org/press-releases/dont-let-children-be-hidden-victims-covid-19-pandemic>> accessed 15 July 2020.

2 We acknowledge that African states have a range of different legal systems, response mechanisms and financial capacity to deal with adversity of this magnitude.

ensuing discussion. The second part examines the AU's responses to pandemics, with particular reference to COVID-19. In line with one of the AU's objectives to work towards the eradication of preventable diseases and the promotion of good health on the continent,<sup>3</sup> reference is made to the challenges of setting up an integral and coordinated response, given the sovereignty of states. Also, reference is made to the contribution of the African Committee of Experts on the Rights and Welfare of the Child (African Committee) to COVID-19 responses that are child-friendly and sensitive. The third part concerns the approaches adopted by sub-regions and how they have integrated or failed to integrate children's rights in COVID-19 response plans. Given the focus of the article, which is to evaluate the AU responses, any references to specific countries are meant to provide notable examples of recent legal developments and challenges but not intended for comparative purposes. It concludes with recommendations on how to integrate children's rights and the protection of children as an integral part of regional governance.

## Human Rights and Protection of Children under the African Union Law

The African human rights system is anchored in regional autonomy and cooperation regarding the respect, promotion and protection of all peoples. This section summarily explores human rights specific to the protection of the interests and welfare of children under African Union law. The AU (then as Organisation of African Unity) adopted the parent human rights instrument, the African Charter on Human and People's Rights in 1981 (Banjul Charter). The Banjul Charter, ratified by all AU member states, provides for the protection of the rights of 'every individual' and of 'peoples' under the jurisdiction of all African state parties. By implication, the Banjul Charter applies to children, both as individuals and peoples of Africa. Commenting on the protection of children under the Banjul Charter, Sloth-Nielsen argues that it provides special protection for children in that state parties are under obligation to 'ensure the protection of the rights of the child as stipulated in international declarations and conventions.'<sup>4</sup> Viljoen criticised the Banjul Charter for including children as an afterthought in the context of women's rights.<sup>5</sup> Despite the absence of an extensive provision on child-specific rights in the Banjul Charter, it reflects a strong acceptance of children's rights and the need to ensure their special protection.<sup>6</sup> Other regional instruments that generally protect the rights and interests of children are the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2005

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3 Article 3(n) of the AU Constitutive Act.

4 Article 18(3) of the Banjul Charter. Julia Sloth-Nielsen, 'The African Charter on the Rights and Welfare of the Child' in Trynie Boezaart, *Child Law in South Africa* (Juta 2017) 426–427.

5 Frans Viljoen, 'Supra-national Human Rights Instruments for the Protection of Children in Africa: The Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child' (1998) 31 CILSA 205.

6 Thoko Kaime, *The African Charter on the Rights and Welfare of the Child: A Socio-legal Perspective* (Pretoria University Law Press 2011) 22.

(Maputo Protocol);<sup>7</sup> the AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2009 (Kampala Convention); and the African Youth Charter, 2006.

In 1990 the AU adopted the African Charter on the Rights and Welfare of the Child (African Children’s Charter) as the first regional instrument to codify and recognise the rights of children.<sup>8</sup> The drafting and adoption of the African Children’s Charter was influenced by the Convention on the Rights of the Child, 1989 (CRC).<sup>9</sup> The CRC is upheld as the global authoritative source of children’s rights, and it has normative binding force on African member states to the CRC.<sup>10</sup> An extensive analysis of the application and influence of the CRC in African states is beyond the scope of this article.<sup>11</sup> Regionally, the African Children’s Charter stands as the principal human rights instrument for the protection of the rights and welfare of children under the AU law.<sup>12</sup> The AU has also adopted Africa’s Agenda for Children 2040 (Agenda 2040) which aims to ensure an Africa that is fit for all children by 2040. In particular, Aspiration 9 aims at the protection of children in emergencies.<sup>13</sup> Interestingly, the AU celebrated the thirtieth anniversary of the African Children’s Charter in 2020, amidst the COVID-19 pandemic. The impact of COVID-19 on the implementation of the human rights of children is discussed in part 4 below.

The provisions of the African Children’s Charter are comprehensive and relate to all aspects of children’s lives; including education, family and parental care, protection

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7 See Art 1(k) of the Maputo Protocol which defines ‘women’ as persons of female gender, including girls.

8 Danwood Chirwa, ‘The Merits and Demerits of the African Charter on the Rights and Welfare of the Child’ (2002) 10 *International Journal of Children's Rights* 157; Sloth-Nielsen (n 4) 424; Benyam Mezmur and Mbuton Khabila, ‘Follow-up as a ‘Choice-less Choice’: Towards Improving the Implementation of Decisions on Communications of the African Children’s Charter’ (2018) 1 *African Human Rights Yearbook* 200 201.

9 Some scholars argue that the African Children’s Charter was drafted and adopted following a perceived belief that Africa was misrepresented in the drafting of the CRC, see Kaime (n 6) 23; Sloth-Nielsen (n 4) 424–425.

10 Ursula Kilkelly, ‘The Convention on the Rights of the Child after Twenty-five Years: Challenges of Content and Implementation’ in Martin Ruck, Michele Peterson-Badali and Michael Freeman (eds), *Handbook of Children’s Rights: Global and Multidisciplinary Perspectives* (Routledge 2017) 80–82; Lawrence Schäfer, *Child Law in South Africa: Domestic and International Perspectives* (LexisNexis 2011) 90.

11 The two instruments do not compete, but complement each other. On this aspect, see Dejo Olowu, ‘Protecting Children’s Rights in Africa: A Critique of the African Charter on the Rights and Welfare of the Child’ (2002) 10 *International J of Children’s Rights* 127, 128. See also Julia Sloth-Nielsen, ‘Domestication of Children’s Rights in National Legal Systems in African Context: Progress and Prospects’ in Julia Sloth-Nielsen, *Children's Rights in Africa: A Legal Perspective* (Routledge 2008) 57–64.

12 Sloth-Nielsen (n 4) 424.

13 See Aspiration 9 of Agenda 2040.

from exploitation and harmful cultural practices, health care, play and recreation, housing, and displacement. In the implementation of the African Children's Charter, decision-makers are bound to interpret children's rights within the framework of the existing African human rights system and international human rights law. The African Children's Charter complements other regional human rights instruments and international treaties to ensure the protection of the rights and welfare of children in Africa. Article 1 of the African Children's Charter specifically proclaims that no provision in the Charter shall affect any provisions that are more conducive to the realisation of the rights of children contained under national law or any other international treaty or agreement in force in that state.<sup>14</sup> States parties to the African Children's Charter are obliged to recognise the rights, freedoms and duties contained in the Charter; and take the appropriate steps necessary that are in line with their constitutions to adopt legislative or other measures to protect the rights and interests of children in their territories.<sup>15</sup> The adoption of appropriate measures at the regional and national level has to be underpinned by the letter and spirit of international and regional children's rights law.

The African Children's Charter is anchored in the general principles of children's rights,<sup>16</sup> namely the right to non-discrimination;<sup>17</sup> the best interests of the child;<sup>18</sup> survival and development;<sup>19</sup> and the right to participate and be heard<sup>20</sup> and offers strong protection for children in Africa.<sup>21</sup> As Kaime notes, the general principles are derivative concepts, with more or less settled meaning and scope of application.<sup>22</sup> It is judicious to explain briefly their normative application in the protection of children in Africa. First, Article 4(1) of the African Children's Charter proclaims that the best interests of the child shall be the primary consideration in all matters concerning the child. The best interests of the child notion has been widely used in international and African regional law.<sup>23</sup> Generally, the best interests principle is expansive and must be construed to

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14 Article 1(2) of the African Children's Charter.

15 Article 1(1) of the African Children's Charter.

16 CRC Committee 'General Comment No 5: General Measures of Implementation of the Convention on the Rights of the Child' (2003) (General Comment No 5) para 12. See Noam Peleg, 'International Children's Rights Law: General Principles' in Ursula Kilkelly and Ton Liefaard (eds), *International Human Rights of Children* (Springer 2019) 151.

17 Article 3 of the African Children's Charter.

18 Article 4 of the African Children's Charter.

19 Article 5 of the African Children's Charter.

20 Article 6 of the African Children's Charter.

21 See Kaime (n 6) 93.

22 See Kaime (n 6) 94.

23 Article 3 of the CRC; Arts 5(b) and 16(1)(d) of the Convention on the Elimination of all Forms of Discrimination Against Women (1979). See Wouter Vandenhoe, Gamze Türkelli and Sara Lembrechts, *Children's Rights: A Commentary on the Convention on the Rights of the Child and its Protocols* (Edward Elgar 2019) 60. See also Human Rights Committee CCPR 'General Comment No 17: Art 24 on the Rights of the Child' (1989) paras 2 and 6; and Committee on Economic, Social and

encompass both actions and inactions,<sup>24</sup> as well as ‘decisions, conducts, services and procedures’ taken by State authorities.<sup>25</sup> This implies that the best interests principle requires authorities and institutions, such as the AU, to systematically consider from the onset, how the rights and interests of children will be affected by their actions or decisions, for instance, in COVID-19 responses. There is a unanimous acknowledgement that the best interests principle is a key concept in the implementation of children’s rights, without adherence to which the implementation would be severely compromised or even impossible.<sup>26</sup> Some scholars argue that the best interests standard is at the heart of children’s rights law, and it acts as a benchmark to evaluate institutional policies, responses and programmes.<sup>27</sup> We concur with this view because the best interests principle plays a central role in guiding policymakers in emergency situations on prioritising child protection measures.

Secondly, the rights to life, survival and development<sup>28</sup> impose a duty on States to ensure to the maximum extent possible the survival, protection and development of the child.<sup>29</sup> Provided for in terms of Article 5, the right to life is a prerequisite, and central to the enjoyment of all other rights,<sup>30</sup> more so in emergencies. The phrase ‘maximum extent possible’ expands the obligation on States to assure these rights in all situations including periods of emergencies or health crises to ensure the survival and protection of children. As a minimum, the right requires the provision of education, adequate nutrition, safe drinking water and sanitation, amongst other provisional measures. However, the parameters for the attainment of the right to survival and development are

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Cultural Rights (CESCR) in the ‘General Comment No 14: The Right to the Highest Attainable Standard of Health’ (2000) art 12 para 24.

- 24 Freeman argues, in the context of the CRC, that it would not make sense to exclude omissions from the ambit of the application of the principle. See Michael Freeman, *Art. 3: The Best Interests of the Child* (Martinus Nijhoff Publishers 2007) 45; Phillip Alston, ‘The Best Interests Principle: Towards A Reconciliation of Culture and Human Rights’ (1994) 8 Intl J of L, Policy and the Family 1, 13–14; Geraldine van Bueren, *International Law on the Rights of the Child* (Martinus Nijhoff Publishers 1998) 46; ‘General Comment No 14 on the Right of the Child to have his or her Best Interests taken as a Primary Consideration (Art 3, para 1 (2013) para 18.
- 25 General Comment No 14 (n 24) para 17.
- 26 Nigel Cantwell, ‘The Concept of the Best Interests of the Child: What Does it Add to Children’s Rights?’ in Milka Sormunen, *The Best Interests of the Child: A Dialogue between Theory and Practice* (Council of Europe 2016) 20.
- 27 Peleg (n 16) 136–153; Olowu (n 11) 129. See also Ursula Kilkelly, ‘The Best Interests of the Child: A Gateway to Children’s Rights?’ in Elaine Sutherland, and Lesley-Anne Macfarlane (eds), *Implementing Article 3 of the United Nations Convention on the Rights of the Child: Best Interests, Welfare and Well-being* (Cambridge University Press 2016) 51–66.
- 28 For the provision of the right to life under other international and African regional instruments applicable to children, see Art 6(1) of the International Covenant on Civil and Political Rights (1966); Art 4 of the African Charter on Human and Peoples’ Rights; art 6(1) of the CRC.
- 29 Article 5(1) and (2) of the African Children’s Charter.
- 30 General Comment No 36 on Art 6 of the International Covenant on Civil and Political Rights, on the Right to Life (2018) (General Comment No 36) para 2. See also Kaime (n 6) 119.

open-ended<sup>31</sup> since they act as a springboard to the actualisation of other rights contained in the African Children's Charter, such as the rights to health and the well-being of children. Thirdly, in all matters or proceedings affecting the child who is capable of communicating a view, an opportunity must be provided for the child to participate and be heard.<sup>32</sup> Child participation is one of the innovative hallmarks of the African Children's Charter, in that it recognises children as having a role in the decision-making processes.<sup>33</sup> The fourth principle is non-discrimination,<sup>34</sup> which extends to all the rights enshrined in the African Children's Charter and to all children without discrimination.<sup>35</sup> The four general principles complement each other and improve the interpretation and implementation of children's rights under the African human rights system.

The oversight role over the implementation of regional human rights instruments is carried out through monitoring bodies, namely, the African Commission on Human and Peoples' Rights (African Commission),<sup>36</sup> the principal human rights judicial body, the African Court on Human and Peoples' Rights (African Court),<sup>37</sup> and the African Committee.<sup>38</sup> Specific to children, the African Committee is empowered by a built-in mechanism of communications procedure to receive complaints, state party reports and carry out investigative missions.<sup>39</sup> Children and those acting on their behalf can utilise

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31 Douglas Hodgson, 'The Child's Rights to Life, Survival and Development' (1994) *Intl J of Children's Rights* 369.

32 Articles 4(2) and 7 of the African Children's Charter.

33 Usang Assim, 'Civil Rights and Freedoms of the Child' in Kilkelly and Liefwaard (n 16) 397–398. In the context of the CRC, see Peleg (n 16) 136–153; 'General Comment No 12: the Right of the Child to be Heard' (2009).

34 Article 3 of the African Children's Charter.

35 Kaime (n 6) 98.

36 The African Commission promotes and protects human rights in member states of the Banjul Charter, by accepting complaints or communications from individuals, groups of individuals, non-governmental organisations and states concerning alleged violations of fundamental rights and freedoms enshrined in the Banjul Charter.

37 Established by the AU in June 1998 on the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. Having been in operation since 2006, the African Court is a regional tribunal with advisory and contentious jurisdiction concerning the interpretation and application of the Banjul Charter. For a detailed discussion see Rachel Murray, 'The Human Rights Jurisdiction of the African Court of Justice and Human and Peoples' Rights' in Charler Jalloh, Kamari Clarke and Vincent Nmeihelle (eds), *The African Court of Justice and Human and Peoples' Rights in Context: Development and Challenges* (Cambridge University Press 2019) 965–973.

38 Established in terms of arts 33–36 of the African Children's Charter, the African Committee is a body of independent experts mandated to monitor the implementation of African Children's Charter. See Benyam Mezmur, 'The African Committee of Experts on the Rights and Welfare of the Child: An Update' (2006) 6 *AHRLJ* 549, 551.

39 Regarding the work of the African Committee, in general, see Sloth-Nielsen (n 4) 436–441; Benyam Mezmur, 'Still an Infant or Now a Toddler? The Work of the African Committee of Experts on the Rights and Welfare of the Child and its 8th Ordinary Session' (2007) 7 *AHRLJ* 258–275.

the communications procedure against their States to seek redress in matters of an alleged violation of rights in the African Children's Charter.<sup>40</sup> Since the African Committee had its first meeting in May 2002,<sup>41</sup> it has received and decided on various communications related to the survival and development of children in Africa, for instance, the right to birth registration and nationality;<sup>42</sup> protection from sexual exploitation or abuse and access to justice for rape victims;<sup>43</sup> and protection from child slavery.<sup>44</sup> It is beyond the scope of this article to discuss issues of admissibility of communications, except to emphasise the role that the African Committee plays in cases where a domestic remedy is not found. The major criticism of the African Committee decisions is that they are not binding judgments, and their enforcement is based on the political willingness of the concerned member states to respect and implement the decision. In cases of global and regional crisis, the African Committee plays an indispensable role in guiding state parties and ensuring that the rights and interests of children are prioritised in the AU governance agenda.

### Children's Rights and the African Union's Responses to COVID-19

The preceding part of this article discussed the underpinning principles that guide States in the protection of children. This part addresses the intersection between human rights and (public) health, in so far as it relates to the protection of the rights and interests of children. As a point of departure it is imperative to note that AU disaster and emergency management strategies do not make explicit reference to children. For instance, the Africa Regional Strategy for Disaster Risk Reduction, 2004 (African Disaster Strategy) does not make any reference to children or any child rights principles. However, one of the priorities in the Programme of Action to Implement the Sendai Framework for Disaster Risk Reduction 2015–2030, in line with the African Disaster Strategy (2016),<sup>45</sup> points to the need, at the local level, to establish and strengthen multi-disciplinary mechanisms of disaster risk management, including the facilitation of capacity-building and the provision of appropriate support during response, particularly prioritising the evacuation of children and persons with disabilities. While it might have been framed without health pandemics in mind, the principle of prioritising children could be argued

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40 See Ann Skelton, 'International Children's Rights Law: Complaints and Remedies' in Kilkelly and Liefwaard (n 16) 78–83; Mezmur and Kahbila (n 8) 200–222.

41 See Mezmur (n 38) 551.

42 Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of children of Nubian descent in *Kenya v The Government of Kenya* Comm-No 002/Com/002/2009.

43 IHRDA and Finders Group Initiative on behalf of TFA (a minor) v The Government of Republic of Cameroon Comm-No 006/Com/002/2015.

44 Minority Rights Group International and SOS-Esclaves on behalf of *Said Ould Salem and Yarg Ould Salem v The Republic of Mauritania* Comm-No 007/Com/003/2015.

45 African Union Commission, Programme of Action for the Implementation of the Sendai Framework for Disaster Risk Reduction 2015–2030 in Africa in line with the Africa Regional Strategy for Disaster Risk Reduction (2016).

in the case of health pandemics, and it is in line with the best interests of the child and other principles discussed above.

From a rights perspective, Article 14 of the African Children's Charter proclaims that every child shall have the right to enjoy the best attainable State of physical and mental health.<sup>46</sup> Traditionally, health and human rights were perceived as distinctly separate concepts co-existing in a parallel. However, this perception changed in the wake of the HIV/AIDS epidemic.<sup>47</sup> As a result of this, the relationships between public health and human rights are now evolving rapidly in response to a series of events, experiences, and struggles. Apart from the HIV/AIDS epidemic, there was the Ebola epidemic in the West of Africa<sup>48</sup> and quite recently the global Coronavirus (COVID-19) pandemic spreading rapidly across virtually all the nations of the world. Since its outbreak and the World Health Organisation (WHO) declaration on the novel COVID-19 as a Public Health Emergency of International Concern (PHEIC),<sup>49</sup> the virus has spread to almost all the countries of the world. Confirmed cases have been high and continue to rise in Europe, America, Asia and Africa.<sup>50</sup> In Africa, there was a remarkably low number of reported COVID-19 deaths compared to other parts of the world, despite high levels of disease transmission across all African states.<sup>51</sup> Interestingly, for the first half of 2020,

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46 For an elaboration of the right to health, see art 24 of the CRC and the CRC Committee's 'General Comment No 15 on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health' (2013) CRC/C/GC/15 Art 24.

47 Patricia Kuszler, 'Global Health and the Human Rights Imperative' (2007) 2 *Asian J of WTO & Intl Health L & Policy* 99; Noah Novogrodsky, 'Duty of Treatment Human Rights and the HIV/AIDS Pandemic' (2009) 12 *Yale Human Rights & Development LJ* 1.

48 The Ebola epidemic was wide-spread in most countries in West-Africa, particularly, Guinea, Sierra Leone and Liberia recorded high death due to the epidemic. This led to the imposition of quarantine and isolation measures to contain the disease. Most of the affected countries in West Africa, were not prepared to disclose information regarding the disease, not to mention at least the human rights dimension of the disease, see, Florence Shu-Acquaye, 'The Ebola Virus Prevention and Human Rights Implication' (2017) 12 *University of Massachusetts LR* 2, 31–36; Lara Stemple, Portia Karegeya and Sofia Gruskin, 'Human Rights, Gender, and Infectious Disease: From HIV/AIDS to Ebola' (2016) 38 *Human Rights Quarterly* 993; Jumoke Oduwole and Akinola Akinlayo, 'The Rights to Life, Health and Development: The Ebola Virus and Nigeria' (2017) 17 *AHRLJ* 194. The Ebola disease also undermined children's rights by separating children from their families without consent, closing children's access to education and health care. See, UNICEF, 'Care and Protection of Children in the West African Ebola Virus Disease Epidemic: Lessons Learned for the Future Public Health Emergencies' (UNICEF 2016) <[www.unicef.org](http://www.unicef.org)> accessed 15 July 2020.

49 WHO, 'COVID-19 Public Health Emergency of International Concern' <[https://www.who.int/publications/m/item/covid-19-public-health-emergency-of-international-concern-\(pheic\)-global-research-and-innovation-forum](https://www.who.int/publications/m/item/covid-19-public-health-emergency-of-international-concern-(pheic)-global-research-and-innovation-forum)> accessed 22 June 2020.

50 UNDP, 'Humanity Needs Leadership and Solidarity to Defeat the Coronavirus' <<https://www.undp.org/content/undp/en/home/coronavirus.html>> accessed 21 June 2020.

51 Africa CDC, 'Policy Paper, Research and Development Priorities for COVID-19 in Africa' (2021) 1 <<https://africacdc.org/download/policy-paper-research-and-development-priorities-for-covid-19-in-africa/>>. See also Pan African Policy Paper, 'Save the Children, COVID-19 Impacts on African Children: How to Protect-a-generation at Risk' (June 2020) <[https://reliefweb.int/report/world/covid-](https://reliefweb.int/report/world/covid-19-impacts-on-african-children-how-to-protect-a-generation-at-risk)

confirmed cases have been relatively low in Africa owing to a number of reasons, including incredibly poor health systems to detect, assist, and record excess mortality, and also in some instances, denialism from leaders and politicians.<sup>52</sup> Drastic measures such as travel bans, quarantine measures and lockdown restrictions contributed to ‘flatten the curve’ and partly slowed the spread of the virus.<sup>53</sup> Other reasons could be that almost half of Africa’s population consists of children, some cases are unreported, and thus not a true reflection of the actual statistics. The first measures taken by most African governments were to restrict cross-border movement and limit flight travel,<sup>54</sup> but it became clear that the spread of the virus could not be stopped at the borders. With the increase in the number of affected persons, other stringent measures like lockdown, curfews and emergency measures were further adopted to contain the virus.<sup>55</sup> Nevertheless, the impact of the COVID-19 pandemic on Africa has moved beyond a health crisis to a devastating socio-economic crisis that may persist over the months and years to come.<sup>56</sup>

However, the emergency legislative and policy measures adopted, encroached on fundamental freedoms and rights beyond what might be necessary. The fragility of democratic institutions such as national human rights institutions and the judiciary were put to the test in African member states. COVID-19 restrictions had and still continue to have an impact at different levels such as curtailing the freedom of movement, resulting in women and children at home being at risk and experiencing increased forms of violence and intrusive technology that breach privacy laws.<sup>57</sup> Vulnerable groups were hit the hardest and democratic processes such as elections were significantly affected.<sup>58</sup>

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19-impacts-african-children-how-protect-generation-risk-pan-african-policy-paper> accessed 25 June 2020.

52 For instance, in the case of Tanzania, see Isaac Mugabi, ‘Magufuli’s COVID-19 Apathy is a Recipe for Disaster’ (4 May 2020) <<https://www.dw.com/en/opinion-magufulis-covid-19-apathy-is-a-recipe-for-disaster/a-53327883>>; Isaac Mugabi, ‘COVID-19: WHO Cautions Against the Use of Traditional Herbs in Africa’ (5 May 2020) <<https://www.dw.com/en/covid-19-who-cautions-against-the-use-of-traditional-herbs-in-africa/a-53341901>> accessed 17 December 2020.

53 Save the Children (n 51).

54 *ibid.*

55 Fidelis Mbah, ‘Nigeria Announces Lockdown of Major Cities to Curb Coronavirus’ *Aljazeera* (Doha, 30 March 2020). In Nigeria, the Federal government announced a total lockdown in three major cities, Lagos, Ogun state and the Federal Capital territory Abuja. The lockdown was to last for fourteen days subject to review. The measure employed by the federal government has been criticised for being unconstitutional.

56 See, Save the Children (n 51).

57 Joseph Cannataci, ‘Report of the Special Rapporteur on the Right to Privacy’ Seventy-fifth Session of the UN General Assembly on Item 72(b) of the Provisional Agenda (27 July 2020); John Mills and Kelsey Harclerode, ‘Privacy, Mass Intrusion and the Modern Data Breach’ (2018) 69 (3) *Florida LR* 771.

58 Stefania Giannini, ‘COVID-19 – Education is the Bedrock of a Just Society in the Post-COVID World’ (2 June 2020) <<https://en.unesco.org/nwes/covid-19-education-bedrock-just-society-post-covid-world>> accessed 17 December 2020.

The preamble to the Banjul Charter stresses that: ‘civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.’ Yet, the balancing act of change during crises calls for and demands strong democratic institutions.

COVID-19 has a significant impact on socio-economic rights and the rights and welfare of children. The African Commission expressed its concern about the impact of the spread of COVID-19 and the drastic measures taken by countries.<sup>59</sup> The restrictions on movement and closure of borders placed an enormous financial burden on States, and with tax revenues falling due to the economic decline, States are cutting public services, and pushing families into household poverty, thereby placing children in vulnerable situations.<sup>60</sup> COVID-19 contributed to high levels of unemployment, social exclusion and inequality. The majority of the workforce forms part of the informal sector, and is facing food insecurity, poverty and failure to provide certain basics. Many African countries are experiencing multiple humanitarian crises that have left millions of children and their families extremely vulnerable and rendered them reliant on external assistance.

As noted by the Peace and Security Council of the AU, the adverse effects of COVID-19 on children include general child care and the right to education (school closures affect all children, but especially those with disabilities).<sup>61</sup> The protection of children from other forms of harmful cultural practices has also been intensified by the prolonged closures of schools and childcare facilities. Practices such as Female Genital Mutilation (FGM) and child marriages threaten the right to the health and dignity of a child as do domestic and sexual violence.

The AU, however, commends African states for introducing online education platforms, but warns of the increasing vulnerability of children to cyber-attacks, pornography and

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59 See the Communique for the 924th PSC Meeting on the Impact of COVID-19 on Children in Africa adopted by the Peace and Security Council (12 May 2020) <<http://peaceau.org/en/article/communique-for-the-924th-psc-meeting-on-the-impact-of-covid-19-on-children-in-africa-12-may-2020>> accessed 29 April 2020.

60 Daniel Mahler, Christoph Lakner, Andres Aguilar and Haoyu Wu, ‘The Impact of COVID-19 (Coronavirus) on Global Poverty: Why Sub-Saharan Africa Might be the Region’s Hardest Hit’ <<https://blogs.worldbank.org/opendata/impact-covid-19-coronavirus-global-poverty-why-sub-saharan-africa-might-be-region-hardest?>> accessed 20 April 2020. Where it estimated that about twenty-three million people in the sub-Saharan region will have been hit by poverty during the COVID-19 pandemic.

61 See the Communique for the 924th PSC Meeting on the Impact of COVID-19 on Children in Africa adopted by the Peace and Security Council (n 59); Save the Children (n 51).

online sexual exploitation.<sup>62</sup> The problem with this recommendation is that a disproportionate number of African learners and teachers have no access to electronic devices and online education platforms. Also, in many African states, the internet connections are often unstable, and data is costly when a child has to spend an entire day learning online. The AU further stresses the need for the inclusion of radio as an alternative means of reaching out to children during lockdowns (especially children in internally displaced camps (IDPs)). Also, it reiterated the need for member states to pay particular attention and channel resources to child-related public health services such as immunisation and vaccination campaigns to combat childhood diseases.<sup>63</sup> It also noted the impact of COVID-19 on children in conflict-prone settings, particularly those in IDP camps. Regarding the needs of children with disabilities and vulnerable children, the AU stresses the relevance of a collective commitment at national, regional and continental levels to ensure that all African children benefit from social protection measures.<sup>64</sup>

Furthermore, the AU calls on States to intensify programmes and policies that will enable families to have access to vital health, nutrition, education, and child protection and welfare services. Lastly, the AU emphasises the need to implement the different relevant continental and international normative (legal and policy) frameworks relating to the rights and well-being of all children, including refugee and internally displaced children.<sup>65</sup> Within this framework, the Peace and Security Council calls upon all member states, which have not yet done so, to sign and ratify and fully domesticate all the instruments of the AU and other international instruments relating to the protection of children, including the African Children's Charter and the CRC.

In addition, the African Committee issued the 'Guiding Note on child protection during COVID-19'<sup>66</sup> to guide member states. The African Committee notes that millions of learners across Africa are temporarily out of school, and risking permanent drop-out, especially vulnerable girls and children with disabilities. It is recommended that the AU integrate child protection measures in COVID-19 responses, which include, among others:

- (i) Establish child-friendly information and communication procedures ...  
'Child-friendly information' is adapted, among others, to a child's age,

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62 See the Communique for the 924th PSC Meeting on the Impact of COVID-19 on Children in Africa adopted by the Peace and Security Council (n 59).

63 *ibid.*

64 *ibid.*

65 *ibid.*

66 See African Committee, 'COVID-19 and its Implication on Children's Rights and Welfare- Guiding Note to Member States of the African Union' (8 April 2020) <[https://www.acerwc.africa/wp-content/uploads/2020/04/Guiding-Note-on-Child-Protection-during-COVID-19\\_English-1.pdf](https://www.acerwc.africa/wp-content/uploads/2020/04/Guiding-Note-on-Child-Protection-during-COVID-19_English-1.pdf)> accessed 1 June 2020.

maturity, language, gender and culture. ... Any information, regarding COVID-19 must be tailored in line with children's ages and maturity. The content of the information, the complexity of the terms adopted and the modes of transmission must take into account their level of understanding. Children are more likely to adhere to hygienic practices, such as hand washing, that prevent, or reduce the risk of the infection, only when the message is communicated in a language they understand, [with] due regard to their evolving capacities.

- (ii) Establish child-friendly quarantine procedures and environment. In cases where children contract the virus, mandatory quarantine, whether home- or facility-based, could be [put in place] ... such measures, [could] have a multi-faceted impact on children, ranging from deprivation of family environment to a lack of adequate food and heightened levels of anxiety and depression. [Measures may include the provision of]: dedicated frontline [professionals] with the relevant expertise to respond to the needs of children; provisions of adequate food and nutrition; and services tailored to the specific needs and maturity of children, including recreational, cognitive or social stimulation materials.
- (iii) Ensure every child's right to education, [which] plays an irreplaceable role in the promotion and development of a child's personality, talents and mental and physical abilities to their fullest potential ... The current measure, despite its 'temporary' nature, may lead to permanent dropout, particularly for girls, children with disabilities and children coming from economically disadvantaged parents.
- (iv) Ensure continued provisions of essential services which are crucial to life, survival and development of children ...
- (v) Ensure that children enjoy their right to parental care and protection ...<sup>67</sup>

The Guiding Note to AU member states is not binding. The implementation of the principles and recommendations in the Guiding Note is dependent on determined compliance. Member states are urged to integrate a child rights-based and a unified approach in their responses to COVID-19 to ensure the protection of children across Africa.<sup>68</sup> At the time of writing, there was no evidence to show that children were involved or participated in the design and adoption of the Guiding Note.<sup>69</sup> Discussions are taking place at the African Committee level for the adoption of 'Guidelines for Child Participation' to provide guidance to member states on how to integrate the participation of children in governance and responses, as well as in their participation within AU

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<sup>67</sup> *ibid.*

<sup>68</sup> See also the UN Committee on the Rights of the Child, 'Statement on COVID-19' <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CRC/S TA/9095&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CRC/S TA/9095&Lang=en)> accessed 30 June 2020.

<sup>69</sup> It was noted that other non-AU institutions engaged children in Africa in their COVID-19 studies and policy recommendations. See African Child Policy Forum, 'Under Siege: Impact of COVID-19 on Girls in Africa' (2020) <<https://app.box.com/s/0sjjmlrm5vvumu176lx26s9s2fmqfm8m>> accessed 17 December 2020; African Child Policy Forum, 'COVID-19 and Girls in Africa: A Synopsis' (2020) <<https://app.box.com/s/nlsx9z2iz24gwjczwmqs2p7dm0eaerbl>> accessed 17 December 2020.

governance structures. While it is too early to comment on the transformational nature of the Guidelines for Child Participation, they present a potential turning point for the participation of children at the AU level and even sub-regional structures.

## Children and Sub-regional Responses to the COVID-19

Article 3(1) of the AU Constitutive Act underscores that one of the objectives of the AU is to ‘coordinate and harmonise the policies between ... Regional Economic Communities (RECs)’ for the gradual realisation of the vision and all the objectives of the Union, including the protection of human rights. There is an emerging trend of RECs focusing on aspects of human rights, in particular children’s rights,<sup>70</sup> apart from trade and economic integration. A sub-regional approach presents opportunities to reach a coordinated approach to the protection and improvement of children’s lives, for instance, harmonisation of legal and policy frameworks at the sub-regional level. Apart from the continental AU responses, sub-regional bodies (or RECs) took measures aimed at integrating the protection of peoples from the impact of COVID-19, which was experienced differently across regions and States, owing to the measures adopted at sub-regional and national levels. For instance, the UN predicted that COVID-19 disruptions will intensify the already dire situation of approximately 107 million people in Sub-Saharan Africa who are facing severe food insecurity, estimated at 57 million in East and Southern Africa, and 50 million in West and Central Africa.<sup>71</sup> It was estimated that 262.5 million children in Sub-Saharan Africa had been significantly affected by educational and social disruptions, lack of access to vital healthcare and protection services.<sup>72</sup>

## COVID Responses in East and Southern Africa

In general, East and Southern African states took swift and bold decisions to effect lockdown measures meant to flatten the curve. The lockdown restrictions across East and Southern African states were a blanket cover, with significant impact on the economic activities, food and nutrition security, and education disruptions. Gender-based violence during the lockdown period, which had an impact on the rights and welfare of children, was scantily addressed in COVID-19 responses. For instance, the East African Community (EAC) and the Southern African Development Committee (SADC) adopted response plans that were meant to ensure that States adopt a coordinated approach and mechanisms.<sup>73</sup> The SADC, for example, recommended that

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70 For instance, see the East African Community, Child Policy (2016) and the Framework for Strengthening Child Protection Systems and Community Mechanisms (2018).

71 United Nations, Policy Brief: Impact of COVID-19 in Africa (20 May 2020) <<https://unsdg.un.org>> accessed 17 June 2020.

72 Save the Children (n 51).

73 See the East African Community, ‘COVID-19 Response Plan’ (April 2020) <<https://www.tralac.org/documents/resources/covid-19/regional/3466-eac-covid-19-response-plan-april-2020/file.html>> accessed 20 June 2020; and SADC, ‘Regional Response to COVID-19

member states incorporate gender-based perspectives in all responses to COVID-19.<sup>74</sup> Further, States were urged to ensure that actions during, and after the COVID-19 crisis aim to build more equal, inclusive and sustainable economies and societies. However, the sub-regional responses lacked a comprehensive child-sensitive focus.

Regional networks such as the Child Rights Network for Southern Africa (CRNSA) and the Eastern Africa Child Rights Network (EACRN) worked tirelessly to advocate and lobby for the inclusion and integration of children's rights and their best interests in all COVID-19 responses.<sup>75</sup> However, the rights and interests of children were grouped with those of women. For instance, a report by the Zimbabwe Human Rights Association (ZimRights) on COVID-19 and human rights in Zimbabwe noted the government's disregard of human rights in general,<sup>76</sup> and in particular children's rights. The report failed to critically consider how COVID-19 disproportionately impacted children as a distinct group.<sup>77</sup> In Kenya, children were mentioned as an afterthought, within the context of the protection of the family. For instance, in his State Address on COVID-19, the Kenyan President stated that;

Therefore, to fortify our protection of the family as the foundation of the State, I further Direct and Order that the National Crime Research Centre to probe: the escalating cases of gender-based violence; the worrying trend of cases where the girl child has been disempowered; and the violation of children's rights.<sup>78</sup>

These examples illustrate that in light of the recommendations by the African Committee on how States must integrate the rights and interests of children in COVID-19 responses, it seems that States are identifying and separating children's issues and targeting the class as a peculiar subject of socio-legal and economic policy making in State responses.

In South Africa for instance, the High Court declared that the lockdown regulations were in violation of the best interests of the child. In *De Beer v Minister of Cooperative*

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Pandemic: An Analysis of the Regional Response and Impact' (Bulletin 2–5) <<https://www.sadc.int/issues/covid-19>> accessed 20 June 2020.

74 SADC, 'Regional Response to COVID-19 Pandemic' (n 73).

75 See CSO FORUM, 'Reports from the Virtual Meeting of the 16th Civil Society Organizations to the African Charter on The Welfare and Rights of the Child Forum' (3 June 2020). See also reports from sub-regional sessions, which included children themselves, wherein children participated virtually on their views on responses to COVID-19 pandemic.

76 ZimRights, 'Rights in Crisis: A Human Rights Analysis of the COVID-19 Pandemic in Zimbabwe' (July 2020) 41 <<https://www.zimrights.org.zw/download/Rights%20in%20Crisis%20Report%20lr.pdf>> accessed 15 July 2020.

77 *ibid* 34–37.

78 President Uhuru Kenyatta, 'The Ninth State Address on the Coronavirus Pandemic' *Harambee House* (6 July 2020).

*Governance and Traditional Affairs*<sup>79</sup> the lockdown regulations were found to be irrational and unconstitutional. While the court was dealing with the constitutionality and rationality of regulations in general, it proclaimed on how the lockdown regulations impact on the best interests of children entrenched in section 28(2) of the Constitution of the Republic of South Africa, 1996. As per Davis J:

To illustrate this irrationality further in the case of hairdressers: a single mother and sole provider for her family may have been prepared to comply with all the preventative measures proposed in the ... regulations but must now watch her children go hungry while witnessing minicab taxis pass with passengers in closer proximity to each other than they would have been in her salon. She is stripped of her rights of dignity, equality, to earn a living and to provide for the *best interests of her children*.<sup>80</sup>

The court took judicial notice of the impact that the regulations had on persons responsible for children to ensure that the best interests of children are taken into account and catered for.<sup>81</sup> In relation to education and the closure of schools, the court adopted an approach that the cautionary regulations were in line with the objectives and rationale.<sup>82</sup> Despite the matter still being sub-judice and proceeding to the Supreme Court of Appeal,<sup>83</sup> an important factor is the High Court's declaration that the lockdown regulations had a direct and indirect impact on the rights and interests of children. The case highlights the role of the courts in invoking children's constitutional rights to ensure that child protection is an integral part of measures and responses adopted by governments.

Other important issues related to the impact of lockdown regulations, are access to education and access to food and nutrition. While this article does not extensively discuss COVID-19 and access to education, it is important to note that in *Equal Education and Others v Minister of Basic Education and Others*,<sup>84</sup> the High Court declared that 'Covid-19 had the devastating effect of denying [nine million South African] school going children at least one nutritious meal a day, leaving many, many

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79 (21542/2020) [2020] ZAGPPHC 184 (2 June 2020).

80 *De Beer* (n 79) para 7.3 [emphasis provided].

81 *De Beer* (n 79) para 7.4.

82 *De Beer* (n 79) para 7.14.

83 The High Court granted leave to appeal in the *Minister of Cooperative Governance and Traditional Affairs v De Beer & Others* unreported case 21542/2020 (30 June 2020). See also *De Beer N.O and Others v Minister of Cooperative Governance and Traditional Affairs* (21542/2020) [2020] ZAGPPHC 676 (23 October 2020) para 1.3.

84 (22588/2020) [2020] ZAGPPHC 306; [2020] 4 All SA 102 (GP); 2021 (1) SA 198 (GP) (17 July 2020). In this case, the applicants allege that the Minister of Basic Education and other eight respondents were in 'breach of their constitutional and statutory duty to ensure that the National School Nutrition Programme [NSNP] provides a daily meal to all qualifying learners whether they are attending school or studying away from school as a result of the Covid-19 pandemic.' See para 2.

children hungry and unfed while attempting to learn.’<sup>85</sup> Also, it stated that COVID-19-induced ‘lockdown exacerbated the growing unemployment and the existing high poverty levels’ immensely affecting children, and ‘has increased child hunger and placed already poor households with little to no food security [worse off].’<sup>86</sup> The approach by the South African courts may provide awareness and insights for judiciaries in Zimbabwe, Tanzania, Kenya, Namibia, Uganda, and other States on how to interpret children’s rights in matters that have a direct and indirect impact on the rights and interests of children, such as COVID-19 responses.

## COVID Responses in West and Central Africa

In West Africa, the Economic Community of West African States (ECOWAS) in partnership with Regional Child Protection Working Group (RCPWG)<sup>87</sup> is deeply concerned for the state of children, particularly in countries where health, education and social protection systems are weak and severely impaired in times of stability, let alone in a crisis of such magnitude as caused by the pandemic. Based on these concerns, it made some far-reaching recommendations<sup>88</sup> with a core objective to integrate a child-centred approach as a way to mitigate the impacts of COVID-19 on children in West African. Among these are:

- the use of child-friendly information to inform and prepare children and families through TV, Radio and socio media platforms;
- meaningful participation of girls and boys in decision-making processes;
- inclusion of the core child rights and professional protection services;
- ensure access to social protection measures for the most vulnerable children;<sup>89</sup>

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85 *Equal Education* (n 84) para 20.

86 *Equal Education* (n 84) paras 31, 33.

87 The RCPWG is a coalition of agencies with a common goal of strengthening the protection of children in West Africa. It comprises fifteen organisations: International School Services (ISS), Save the Children, World Vision International, *Educacion con Participacion de la Comunidad* (EDUCO), African Movement of Working Children and Youth (MAEJT), Environment Development Action in the third World (ENDA), *Terre des homes-Lausanne*, Handicap International, Child Fund, Plan International. *Societas Socialis* (SOS) Children’s Village, International Labour Organisation (ILO), International Organisation of Migration (IOM), United Nations Office on Drugs and Crime (UNODC) and United Nations Children’s Fund (UNICEF).

88 Joint Advisory by the ECOWAS Commission and the Regional Child Protection Working Group (RCPWG) to ECOWAS Member States, ‘Minimizing the Impact of the COVID-19 Pandemic on Children’ (2020) <[https://www.tdh.ch/sites/default/files/final\\_ecowas-grpe\\_advisory\\_on\\_child\\_rights\\_on\\_covid19\\_response-rm\\_10\\_april\\_-stu\\_1.pdf](https://www.tdh.ch/sites/default/files/final_ecowas-grpe_advisory_on_child_rights_on_covid19_response-rm_10_april_-stu_1.pdf)> accessed 19 August 2020. See also, ECOWAS Member States in Collaboration with Partners Assess the Impact of Covid-19 Pandemic on Child Rights and Protection <<https://www.ecowas.int/ecowas-member-states-in-collaboration-with-partners-assess-the-impact-of-covid-19-pandemic-on-child-rights-and-protection/>> accessed 19 November 2020.

89 By providing support to their parents and caregivers. Provide the most vulnerable families with free access to healthcare, urgently needed food, hygiene, shelter where possible for those living in the

- efforts to continue school lunch programmes and other school-based social protection measures to benefit children;<sup>90</sup>
- strengthen social protection measures for both formal and informal safety nets;<sup>91</sup>
- protect and care for children living on the streets, without parental care, or who have been separated from or lost parents/carers due to the disease;<sup>92</sup>
- provision of mental health and psycho-social support to assist children and parents/caregivers;<sup>93</sup>
- ensure access to online/tele education for all;<sup>94</sup>
- train health, education, social workers and child services staff on COVID-19 related child protection risks;<sup>95</sup>
- ensure child friendly reporting mechanism, such as child help lines and hot-lines;
- strengthen the digital capacity of regional, national and sub-national children and youth led organisations to engage safely and effectively in meaningful ways that will encourage youth involvement and participation in preventing and responding to the pandemic; and
- integrate the protection of all children in disease control measures; ensure child protection is included in country-level humanitarian responses especially for IDPs, transparent information sharing, and lastly, disaggregation of age and gender on COVID-19 statistics and reporting.

Clearly, these measures were meant to bolster mechanisms to integrate the rights of children during public health emergencies. To a large extent, they have been adopted and implemented in most West African states. For instance, in Nigeria, the government developed strategies to flatten the curve of the pandemic and reduce its impact on

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streets, sanitation items including sanitary pads and cash assistance support to overcome the immediate and long-term impact of the crisis. These measures should be integrated into the government's response mechanisms and should have been rolled out at the onset of the crisis. Plans should particularly target families depending on daily income, working in the informal sector or with lack of income especially in remote areas and those living in humanitarian settings.

90 In out-of-school settings, this may include delivery of school lunches and meals to the homes or designated centres for the most vulnerable families.

91 Bringing in both contributory and non-contributory forms of social insurance as a means of reaching the most vulnerable.

92 Government's response should include alternative care provisions for street children and those who have been separated and/or lost their parents/carers as a result of the virus, as well as a mechanism to monitor situations of child-headed families. Kinship, foster care, family care or temporary shelter care should be preferred options to institutional care.

93 This may include the provision of free hotlines, helpdesks, online programmes and counselling options or community outreach programmes, when possible.

94 By using child-friendly distant education methods such as television, radio or online learning. Schools should continue to provide life skills education to reduce the risk of stigmatisation and exclusion of groups affected by the virus, as well as to help children recognise risks and mitigate them as a part of the online curriculum.

95 These include the prevention of child labour, sexual exploitation and abuse and how to safely report concerns.

families, through financial assistance and extension of the school feeding programme—the ‘Lockdown School feeding Programme’<sup>96</sup>—in theory a laudable project, but the implementation and sustainability of the project were problematic. As a result, children in most States in the federation could not benefit from this and it was criticised for its failure and even referred to as a scam in Nigeria.<sup>97</sup>

School closures had an adverse effect on access to education and learning, despite the adoption of alternative teaching methods such as online platforms (for private schools) and other alternative teaching platforms such as the use of radio and state-owned television stations were available to reach out to children at home.<sup>98</sup> In some States, interactive radio instructions were given in Yoruba, Hausa and English.<sup>99</sup> This notwithstanding, the learning platforms were limited to children in exit classes as other lower classes were excluded. Even so, not all States in the federation have been able to adopt alternative teaching methods. This could be ascribed to a lack of sustainability on the part of the government, or the fact that most families do not have access to this form of learning owing to poverty, poor or lack of internet connectivity, lack of personal skills to handle distance or online teaching and also an erratic power supply.<sup>100</sup>

In addition to the above, northern State governors prohibited the *Almajiri* system<sup>101</sup> under which children are pooled from various places to be enrolled in Islamic schools. As a consequence, they now survive by begging on the streets for food and alms. Following this prohibition, the children were removed from their special education centres, deprived of their rights to education for fear of spreading the virus and deported to their various States of origin.<sup>102</sup> Furthermore, the special needs of children with

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96 Onyedika Agbedo, ‘Lockdown School Feeding Programme: When Humanitarian Services Stir Controversy’ *The Guardian* (London, 23 May 2020) <<https://m.guardian.ng/saturday-magazine/lockdown-school-feeding-programme-when-a-humanitarian-service-stirs-controversy/>> accessed 20 June 2020. This programme is different from the earlier school children’s feeding programmes. The lockdown programme is designated to provide the families of school children with palliative measures in the form of food items donated to the families.

97 *ibid.*

98 Taibat Hussain, ‘Education and COVID-19 in Nigeria: Tackling the Digital Divide’ <<https://worldliteracyfoundation.org/education-and-covid-19-in-nigeria/>> accessed 25 June 2020.

99 Janey Fugate, ‘Radio Lessons in Northern Nigeria Support Reading During the COVID-19’ <<https://www.creativeassociatesinternational.com/stories/radio-lessons-in-northern-nigeria-support-reading-during-the-covid-19-pandemic/>> accessed 25 June 2020.

100 See Hussain (n 98).

101 This is a system of Islamic education practised in Northern Nigeria, which permits parents to leave parental responsibilities to the Islamic schools. See Bashir Mashema, Abdurrrhman Idria and Yawale Musa, ‘The Challenges of Almajiri System of Education to Social Peace in Nigeria: A Cross-Sectional Investigation’ (2018) 5 (8) *Intl J of Innovative Research and Advanced Studies* 44.

102 Ibrahim Mohammed and Abubakar Maishanu, ‘Kano, Kaduna Provide COVID-19 Status of Hundreds of Returned Almajiris’ (*Premium Times*, 10 May 2020) <<https://www.premiumtimesng.com/coronavirus/392204-kano-kaduna-provide-covid-19-status-of-hundreds-of-retained-almajiris.html>> accessed 25 June 2020.

disabilities are non-existent. To that end, Ajanwachuku and Faga argue for special protection measures for children with disabilities for instance, in the provision of facilities that enable and enhance their integration in society.<sup>103</sup> This includes mainstream infrastructure and services in the different areas of life such as inclusive education, recreation, and health services, especially during pandemics.

It could be argued that the COVID-19 pandemic is contributing to the widening of the educational inequality gap in Nigeria, as access to education is available only for a selected few who can access digital platforms. In cases of such public health emergencies, access to education must be inclusive and it becomes clear that during the pandemic, the best interests of the child were not considered.<sup>104</sup> If the systemic inequality is not addressed, it may defeat Nigeria's objective of attaining its Sustainable Development Goals for 2030.<sup>105</sup> A worrying issue, which has been exacerbated by the COVID-19 pandemic, is the remarkable increase in domestic and sexual violence. This has threatened the health and lives of children, especially the poor, vulnerable and children living in conflict zones. It was reported that the lockdown measures imposed, have led to an increase in sexual violence, thus leading State governors across Nigeria to declare a state of emergency over rape and other gender-based violence against women and children in the affected States.<sup>106</sup> For instance, some of the cases include the brutal killing and rape of a child in a church in Benin City, and some other reported cases on gender-based violence in Benue State.<sup>107</sup> These incidences were compounded because of a weak child protection system in Nigeria. Furthermore, there are concerns of an increase in infant mortality due to low attendance for routine immunisation because of societal attitudes towards the pandemic. It was reported that the fear of contracting the virus has led many health workers and parents to avoid the health

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103 Michael Ajanwachuku and Hemen Faga, 'The Nigerian Child's Rights Act and the Rights of Children with Disabilities: What Hope for Enforcement?' (2018) 72(1) *Juridical Current* 57–66.

104 See African Union, Day of the African Child, 'Humanitarian Action in Africa: Children's Rights First' (2019). The African Committee emphasised the need to recognise and incorporate the provision of art 4 (1) of the African Children's Charter which consists of the best interest of the child. The African Committee reiterated the need to use the best interest principle as a 'gap-filling' tool that will ensure that the child whose rights are violated in a humanitarian crisis are subsequently recognised and protected by the states.

105 In the SDG 4, government must ensure inclusive and equitable quality education and promote lifelong learning opportunities for all nine. This will include the IDPS, children with disabilities and poor children.

106 See, Sam Olukoya, 'Nigeria Declares Emergency After Rapes Triple Under Lockdown' *The Washington Post* (Washington, 12 June 2020).

107 *ibid.*

facilities.<sup>108</sup> In the long run, if left unchecked, the infant mortality rate will increase and hence defeat the achievement of the SDGs by 2030 in Nigeria.<sup>109</sup>

Similarly, in the central African region, the Economic Community of Central African States (ECCAS) developed a COVID-19 response strategy, comprising four elements: preventive measures to curb the spread of the virus; limit mortality rates and manage positive cases; respond to the socio-economic and security impact; and deal with cross-border security issues caused by the pandemic.<sup>110</sup> However, implementation depends largely on how each country manages the effects of the pandemic at national levels. Although these measures are not directly aimed at a specific group, a close examination of the measures to mitigate socio-economic and security effects will reveal its impact on the plight of children within this region. For instance, Cameroon,<sup>111</sup> like Nigeria, is grappling with socio-economic<sup>112</sup> and insecurity crises within its borders. Internal conflict has further exacerbated the impact of COVID-19 on the rights and interests of children, especially the internally displaced as a result of already existing conflicts. Coupled with the lockdown, there is a congestion in camps for the displaced. The closure of schools, the curtailment of educational activities and the closure of child-friendly spaces because of social distancing have all taken their toll, as have a lack of access to water and sanitation, the increasing burden of care for family members, the disruption of household incomes (fragile even before the COVID-19 crisis) and gender-based violence. In addition, reports of food insecurity in the Lake Chad region have surfaced,<sup>113</sup> which further compromises the survival and development of children.

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108 World Health Organisation (WHO), 'Nigeria Drives Routine Immunizations Amid COVID-19' <<https://www.afro.who.int/news/nigeria-drives-routine-immunization-amid-covid-19-0>> accessed 23 June 2020.

109 See SDG 3, which emphasises the need for all to enjoy good health and wellbeing, especially children. See further, UNICEF Report, 'COVID-19: 950 More Nigerian Children Under Five Could Die Every Day Without Urgent Action' <<https://www.unicef.org/nigeria/press-releases/covid-19-950-more-nigerian-children-under-five-could-die-every-day-without-urgent>> accessed 23 June 2020.

110 See the 9th Extraordinary Session of the Council of Ministers of ECCAS, 'Final Communiqué' (4 June 2020) <<https://www.tralac.org>> accessed 23 June 2020.

111 A Special Statement by the Prime Minister, Head of Government, 'Government Response Strategy to the Coronavirus Pandemic (COVID-19)' <<https://www.spm.gov.cm/site/?q=en/content/government-resonse-strategy-coronaviru-pandemic-covid-19>> accessed 25 June 2020; Cameroon, 'Child Protection Risk Prevented by Covid-19 and Related Control Measures' (March 2020) <<https://www.humanitarianresponse.info/ru/op%C3%A9rations/cameroon/document/cameroonchild-protection-risks=analysis-covid-19>> accessed 25 June 2020.

112 Peterson Ozili, 'COVID-19 in Africa: Socioeconomic Impact, Policy Response and Opportunities' (2020) *International Journal of Sociology and Social Policy*.

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This notwithstanding, it is evident from the initial responses from most Western and Central African countries that there was no contingency plan in place to tackle issues of children's rights, interests and needs during emergencies. The AU measures are merely templates for States to adopt. Mere adoption by the State is not enough; implementation of these measures is integral to the attainment of the rights of the child in Africa.

## Conclusion and Recommendations

It is concluded that, from the onset, Africa was ill-equipped to implement comprehensive COVID-19 responses that integrate children's rights and interests, owing to socio-economic frailties, conflict, corruption and other institutional challenges. Africa's socio-economic status has deteriorated after the outbreak of COVID-19, which arguably places the continent in an even weaker position to cope with future pandemics or COVID-19 variants. Also, as reiterated in this article, the failure to integrate children's rights and interests may be attributed to the lack of a structured and institutional framework of cooperation between the African Committee and AU subregional institutions. The article has sought to examine whether, and if so, how children's rights were integrated in COVID-19 responses at AU level. The analysis indicated that there are glaring disparities and discord in how sub-regions prioritise the rights and principles of the African Children's Charter, which gives States a free reign to handle child protection, thereby marginalising children's rights and interests. The article further illustrated that there is a need for the AU to strengthen the coordination of member states through effective support and monitoring to achieve a unified approach to the protection of children's rights and interests as espoused under the African Children's Charter.

For a holistic and comprehensive regional or subregional approach to the integration of the rights and interests of children during emergencies, a deliberate effort must be made to adopt regional standards for the protection of children's rights and interests. The relationship between the African Committee and RECs could be more structured and institutionalised, to ensure clear coordination and monitoring of RECs commitment to children's rights. The authors recommend that, in tandem with the approach of the African Committee, sub-regions and national governments anchor COVID-19 and other pandemics in a child rights-based approach. The AU and sub-regional institutions will need to support the following:

- developing the capacity of health systems (to increase access to healthcare services), expand the right to access to continuing education, and also strengthen child protection services in line with the aspirations of Africa's Agenda for Children 2040;
- ensuring that all responses are informed by child rights principles so that they are non-discriminatory, in the best interests of the child and promotes the survival and development of children and child participation;

- recognising and integrating the special needs of vulnerable children, in particular children with disabilities and IDPs as a central element of regional and national responses;
- ensuring the participation of children by guaranteeing that their views are taken seriously in decision-making, at all levels of formulation, implementation and monitoring of public health emergencies or responses; and
- developing and implementing sustainable social protection mechanisms and policies to protect children and help families to mitigate long term, and potentially irreversible effects.

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