

**Rights of African Children Under the African Charter on the
Rights and Welfare of the Child:
the Addition to the Universal Protection of a Child**

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Master International and European Public Law (accent on Human Rights Law)

June 2011

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Introduction

The *Universal Declaration of Human Rights* (UDHR) proclaims that “all human beings are born free and equal in dignity and rights,”¹ which entitles everyone, without distinction of any kind, to all the rights and freedoms set for in the UDHR.² Usage of the word “everyone” implies that individuals have rights naturally because they are human beings. Therefore, all human beings are entitled to an environment in which basic rights and freedoms can be enjoyed. However, the successful implementation of human rights mechanisms is not always possible. As a result, individuals belonging to the most vulnerable groups - such as children - suffer the most.

Unlike adults, children are not able to protect themselves. Younger children in particular are vulnerable, and depend on adults for their basic needs, such as food, health care, and education. Although there is no debate on the fact that children are dependent human beings, discussion on whether special rights for children should be promoted, to ensure better protection of children, does exist. The concept of children’s rights is valid and important for at least three major reasons.

First of all, considering whether children are entitled to human rights in general, serious thinking is needed to be done in order to see children as a separate category of persons.³ A child is, simply put, an adult-to-be, but this should not interfere with their being able to enjoy human rights. Children are not only entitled to care and protection, but they also have the right to participate in decisions involving their own destinies to a larger extent.⁴ Secondly, the enjoyment of rights belonging to children is often denied, because of the low social status afforded to children in most societies. As a result, a child may receive unfair treatment or be left out of important decision-making processes.⁵ There are 300 million chronically hungry children in the world; 100 million of them do not attend school.⁶ Moreover, children are being forced to engage in child labor and participate in armed conflicts. Children have the right to enjoy their childhood,

¹ The Universal Declaration of Human Rights, art. 1

² Ibid, art. 2.

³ Geraldine van Bueren, *The International Law on the Rights of the Child*, (Kluwer Law International, The Hague 1998) XXII.

⁴ Ibid.

⁵ Child’s Rights Information Network, „About Child Rights“ <<http://www.crin.org/themes/ViewTheme.asp?id=2>> accessed 3 March 2011.

⁶ United Nations Girls Education Initiative, „School feeding programmes encourage children to attend schools“ <http://www.ungei.org/infobycountry/247_323.html> accessed 3 March 2011.

as it is a period affecting the adults they become rather significantly, in particular their psychological wellbeing. Therefore, the protection of children's rights is important. Thirdly, precisely for the sake of the future adult, children of the present should be guaranteed the full right to survival and development. Such rights as the right to education or identity serve as keystones for a well-rounded life as an adult.

This important situation concerning children's rights requires that mechanisms for the protection of a child would be properly examined. The enjoyment of fundamental rights and freedoms of humans, and, in our case children, must be legally ensured by national governments, as well as by the international and regional laws. Under international human rights law, the main treaty protecting children's rights is the United Nations (UN) Convention on the Rights of the Child (CRC), adopted in 1990. The CRC embraces the basic human rights that children have everywhere: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural, and social life.⁷

On the regional level, states have also ratified legal instruments to ensure child protection. In regional human rights systems the biggest threat the protection of human rights faces is cultural diversity. Regions can have a perception of human rights that does not comply with the universal view, as a result, specific regional needs, where human rights are not the prevailing issue, may come first.⁸ However, if regions accept and acknowledge universal concept of human rights, regional human rights systems can have several advantages over the universal one. Regional systems are easier to create; consensus is easier to reach; and litigation is cheaper and more accessible.⁹ In addition to that, the most important advantage, in this author's opinion, is that regional systems have legal instruments that are based on the reality of particular regions. This means that provisions of a certain regional legal instrument, if universal perception of human rights is accepted, should strengthen the protection of such rights on issues that are most needed to improve in particular region.

⁷ United Nations International Children's Emergency Fund, „Convention on the Rights of the Child“ <<http://www.unicef.org/crc/>> accessed 3 March 2011.

⁸ Jeremy Sarkin, „The role of regional systems in enforcing state human rights compliance: Evaluating the African Commission on Human and People's Rights and New Court of Justice and Human Rights with Comparative Lessons from the Council of Europe and the Organization of American States“, *Inter-American and European Human Rights Journal*, Volume 1 (2000), No. 2, 209.

⁹ *Ibid*, 210.

When talking about children's rights, the continent of Africa should get special attention. Modernization has brought with it a wide range of abuses endured by African children, such as economic and sexual exploitation, gender discrimination in education and access to health, and their involvement in armed conflict.¹⁰ The *African Charter on the Rights and Welfare of the Child* (ACRWC), the first regional and comprehensive binding instrument proclaiming the human rights of children, was adopted less than a year after the CRC, and came into force in 1999.¹¹

Africa, to this day, is the only continent with a region-specific children's rights instrument.¹² The ACRWC was created in order to compliment the CRC and to fill the legal gaps in child protection that was left by the universal children's rights treaty. As a result, the ACRWC claims to be more protective than its universal counterpart.¹³

Both, the CRC and the ACRWC could be considered to be one of a kind. The CRC is the first comprehensive universal children's rights treaty, while the ACRWC is a non – precedential regional treaty protecting children's rights. Moreover, the CRC and the ACRWC were creations of essentially different societies. Although both treaties have the main object in common, due to the circumstances that the CRC and the ACRWC emerged in, treaties differ in specific ways. This thesis will concentrate on such differences.

Regional and universal human rights protection instruments differ because regions add their own specific features when regulating the protection of human rights. The reason why some provisions of the ACRWC have different scope of child protection might be because the treaty resembles the main features of the African human rights system, laid down in the *African Charter on Human and People's Rights* (ACHPR). This is why movements in the African protection of human rights are worth examining.

When talking about any treaty - international or regional - monitoring bodies play an important role. Examining the work of such bodies helps us understand the scope and meaning of the rights given by the treaty, and helps to form knowledge about how the protection of these

¹⁰ Pan-African Voices for Freedom and Justice, „Regional Protection of Child Rights in Africa“ <<http://www.pambazuka.org/en/category/comment/44416>> accessed 3 March 2011.

¹¹ Ibid.

¹² *Advancing Children's Rights – A Guide for African Civil Society*, Archivists Watch, <<http://thearchivistwatch.wordpress.com/2011/03/22/advancing-childrens-rights-a-guide-for-african-civil-society/>>, accessed on 8 June 2011.

¹³ Magdalena Sepulveda, Theo van Banning, Gedrun D. Gudmundsdottir, Christine Chamoun, Willen J.M. van Genugten, *Human Rights. Reference book*, (University for Peace 2004) 168.

rights is realized. The UN Committee on the rights of a Child (CRC Committee) - which monitors the implementation of the CRC and The African Committee of Experts on the Rights and Welfare of the Child (African Committee) monitoring the implementation of the ACRWC - are established respectively by the CRC and the ACRWC, and, therefore, are a part of each treaty.

The goal of this thesis is to scrutinize whether the ACRWC adds to the theoretical framework established by the CRC for the protection of African Children. In doing so, this author hopes to show that regional instruments are necessary for adding to the protection of children's rights, as they are more specifically geared to the specific needs of the children within these regions.

1. The Way Towards the CRC

Children protection has come a long way until it was realized and acknowledged that such protection is needed. Up until the late 19th century, children had a role mainly as quasi-property and economic assets.¹⁴ The proof of the latter is the Mary Ellen Wilson case taken by the New York State Supreme Court in 1874. This ten year old girl was repeatedly beaten and abused by her step-parents. The case was won by the party representing the girl only because the child was compared to a “little animal.”¹⁵ The maltreatment of animals, unlike the maltreatment of children, was forbidden due to fierce animal rights activism. It is ironic that animals, for certain period of time, had more rights than specific group of humans – children. The main reason, in this author’s opinion, why adults were not quick to legally acknowledge the rights of the children, is that a child was seen as an object to benefit from, mainly economically. The less rights children had, the more freedom of action belonged to adults.

Change in popular opinion concerning children’s social and economical status occurred in Western Europe during the late 19th century. Children lost their importance as a labor force because of the decreased need for agricultural workers. Moreover, compulsory education laws were introduced, which changed the priorities in a child’s life - seeking education became more important than working. Together with a developing image of women as separate juristic persons, children stopped being seen as a property of their fathers. As a result of the new roles of parents, states began to intervene in matters that were previously considered to be strictly family ones. Such intervention resulted in the appearance of a link between states and children.¹⁶ For the first time in history, matters and the well-being of children were started to be handled by the higher authority of states, and not by individual adults, which resulted in an admission of the humanly equality between children and adults.

Transformations regarding the legal rights of children came together with changed perceptions of international human rights law.¹⁷ In the 20th century, it was finally acknowledged

¹⁴ Law Library of Congress, „Children Rights: International Laws“, <<http://www.loc.gov/law/help/child-rights/international-law.php>> accessed 3 March 2011.

¹⁵ Early Childhood Education Journal, Vol. 34, No. 1, August 2006 (2006), The Story of Mary Ellen Wilson: Tracing the Origins of Child Protection in America, 2.

¹⁶ Geraldine van Bueren, *The International Law on the Rights of the Child*, (Kluwer Law International, The Hague 1998) 8.

¹⁷ *Ibid*, 1.

that all individuals, including children, are subjects of international law, and are entitled to international legal protection. Furthermore, specific rights were granted to individuals, including children, in the following international documents: in 1924 the UN *Declaration of the Rights of the Child* was adopted; the Fourth *Geneva Convention*, 1949, entitled children to special protection in times of armed conflict; and in 1959 the *Declaration of the Rights of the Child* was issued again, widening the scope of theoretical framework of children rights protection provided in the Declaration of 1924. Finally, since people are subjects of international law and have rights and freedoms, the procedural capacity to exercise and claim these rights and freedoms must be granted. The problem with children's rights had been that, although recognition of such rights existed, practical implementation by states or by human rights tribunals often had not taken place. As a result, the need for an international legally binding treaty arose, which would help in placing children rights protection in practice. The CRC was hoped to be such treaty. However, a closer look at the Declaration of 1924, and the one of 1959, should be given before examining the CRC.

When the League of Nations adopted the first *Declaration on the Rights of the Child* (*Declaration of Geneva*), it contained a short text of five basic principles reflecting the clear consensus that children were in need of special protection.¹⁸ However, the *Declaration of Geneva* was non-binding, and did not receive popularity from the States. This makes sense when keeping in mind the early years of the adoption of the text, and the fact that it was the very first attempt to establish a universal framework for children's rights protection. After the Second World War, in 1959, UN General Assembly adopted the new *Declaration on the Rights of the Child*, which was more precise and wider in scope regarding the protection of children. The Preamble of the *Declaration on the Rights of the Child* stated that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."¹⁹ One of the key principles in the *Declaration on the Rights of the Child* is that a child is to enjoy "special protection" as well as "opportunities and facilities, by law and by other means," for healthy and normal physical, mental, moral, spiritual,

¹⁸ Magdalena Sepulveda, Theo van Banning, Gedrun D. Gudmundsdottir, Christine Chamoun, Willen J.M. van Genugten, *Human Rights. Reference book*, (University for Peace 2004) 335.

¹⁹ Declaration on the Rights of the Child, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959) Preamble.

and social development “in conditions of freedom and dignity.”²⁰ Despite the creditable struggles to promote children protection, neither the document of 1924, nor the one of 1959 were binding.

In this author’s opinion, both editions of the *Declaration on the Rights of the Child* could be seen as testing documents, drawn mainly in order to reveal the attitude of States towards internationally protected children’s rights. Although, provisions of both declarations were very vague, they did not entail clarifications on State’s obligations towards children’s protection, and without any doubt, did not go so far as to indicate the influence, or even the fact of cultural diversity – a factor essentially important in States’ perception of human as well as children’s rights, the *Declaration on the Rights of the Child* was successful in raising the universal understanding that rights of the children, even in their vaguest sense, are in need of international legal attention.

The *Declaration on the Rights of the Child* of 1959 was, from the beginning, globally supported, since twenty-one countries - Belgium, Burma, Canada, Columbia, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, India, Iraq, Mexico, Netherlands, New Zealand, Panama, Philippines, South Africa, Sweden, United Kingdom, United States of America and Venezuela - showed support for the draft, and the document was adopted without abstention.²¹ Although, the number of the countries in favor of the document is not very big itself, it is the size and status of these states that matters.

Interestingly, the majority of UN Member States were still against a binding document on children’s rights. Although states such as Poland and Mexico were in favor of the drafting the CRC, the Netherlands provided general illustration for such avoidance: preparing the CRC would prove difficult concerning the divergence of morality and religion in different Member States.²²

Twenty years later, in 1979, opposition towards a binding international treaty was retracted by the majority of the previously opposed UN Member States, and the possibility for the CRC appeared. After a slow start, the drafting process gained its speed, as involved states developed a serious understanding about the importance of the CRC.

²⁰ Law Library of Congress, „Children Rights: International Laws“, <<http://www.loc.gov/law/help/child-rights/international-law.php>> accessed 3 March 2011.

²¹ Geraldine van Bueren, *The International Law on the Rights of the Child*, (Kluwer Law International, The Hague 1998) 10.

²² *Ibid*, 12.

The following reasons can be distinguished for the change of situation:

- the *Declaration on the Rights of the Child* no longer entailed all the needed rights as the situation of the children have progressed all over the world, for example civil and politic rights were omitted in the Declaration;
- it was realized that not only negative measures, prohibitions, but also positive international legislation was needed in order to protect children rights from discrimination;
- the Member States realized that children are in a need of special and distinctive rights, that have not been guaranteed by international law yet;
- it was also understood that two basic principles of the interpretation, evolving capacities and the best interest of the child, are important in the developing status of children;
- international standards regarding children's rights have to be uniformed and a comprehensive treaty had to be drawn, since any document that existed before the 1980s was not fully-rounded; and,
- emotional factors played a role, because the year of 1979 was officially marked as the International Year of the Child, and progress in protecting children was a very welcome appearance.²³

The first draft of the CRC, which involved text very similar to the one of the *Declaration on the Rights of the Child* of 1959, was submitted by Poland. It is not surprising that countries not representing Western Europe took the leading role in drawing the first draft, economically and politically challenged states face the need to strengthen human rights protection the most. Later, an open-ended Working Group was established by the Commission on Human Rights (the Commission), where not only members of the Commission were able to participate.²⁴ The Working Group submitted the second and final draft of the CRC, and the CRC was adopted by the UN General Assembly in 1989, entering into force in 1990. The second draft of the CRC was more extensive than the first, and included standards for parent-child relations, mass media,

²³ Geraldine van Bueren, *The International Law on the Rights of the Child*, (Kluwer Law International, The Hague 1998) 13.

²⁴ *Ibid*, 14.

recreation, foster care and adoption, and juvenile justice, in addition to the usual guarantees of health, education, and protection against discrimination.²⁵

Coming into force within nine months after its adoption, the CRC was the quickest ratified document of all human rights treaties. By the year of 1997, one hundred and ninety two UN Member States had ratified the CRC. Three countries were lagging back at that time - East Timor, Somalia and United States of America - have ratified it.²⁶ The main reason why East Timor and Somalia did not ratify the CRC was that neither of the states at that time was independent. East Timor (Timor – Leste) gained independence in 2002²⁷ and ratified the CRC in 2003.²⁸ Somalia, however, has not had an effective government since 1991,²⁹ and for such reason did not have the ability to ratify the CRC. As for the United States of America (USA), the country has signed the CRC, but has not been able to ratify it yet. However, the state ratified the two *Optional Protocols* to the CRC in 2002.³⁰ The official reason for the delay in ratifying the treaty itself is that it takes a rather long period of time to examine and evaluate compliance of the CRC with state and federal laws.³¹

The CRC is the first legally binding treaty of the UN that is applied only to children, as the treaties adopted before the CRC applied to both children and adults. As S. N. Achilinu notices: “the CRC also introduced new rights and reconstructed existing rights to promote a child – perspective.”³²

²⁵ Stephen N. Achilinu, *Do African Children Have Rights? A comparative and Legal Analysis of the United Nations Convention on the Rights of a Child*, (Universal-Publishers, Florida 2010) 26.

²⁶ Thoko Kaime, *The African Charter on the Rights and Welfare of the Child: A socio-legal perspective*, (Pretoria Universal Law Press, Pretoria 2009) 16.

²⁷ *UN Admits Newest Member State*, UN News Centre, <<http://www.un.org/apps/news/infocusRel.asp?infocusID=27&Body=timor&Body1>>, accessed on May 15, 2011

²⁸ *Timor – Leste*, Yale Law School, 2005, <<http://www.law.yale.edu/rcw/rcw/jurisdictions/asse/timorleste/frontpage.htm>>. accessed on May 15 2011.

²⁹ *Somalia*, The New York Times, 2011, <<http://topics.nytimes.com/top/news/international/countriesandterritories/somalia/index.html>>. accessed on 15 May, 2011.

³⁰ *United States Ratification of International Human Rights Treaties*, Human Rights Watch, 2009, <<http://www.hrw.org/en/news/2009/07/24/united-states-ratification-international-human-rights-treaties>>, accessed on may 15, 2011.

³¹ *Convention on the Rights of the Child*, UNICEF, <http://www.unicef.org/crc/index_30229.html>, accessed on May 15.

³² *Ibid*, 33.

1.1. The Contents of the CRC

In terms of rights recognized, the CRC is considered to be the most detailed and comprehensive universal human rights document. The CRC is a unique binding international treaty, because it incorporates civil and political, as well as economic, social, and cultural rights, and places equal emphasis on all of them.³³

Scholars categorize the contents of the CRC into four categories, which involves guiding principles and three categories of substantive rights: survival and development rights, protection rights, and participation rights of children.³⁴ The guiding principles cover general requirements for all rights. Article 1 of the CRC establishes that a child is every human being who is below the age of eighteen years, but adds, “unless under the law applicable to the child, majority is attained earlier.”³⁵ Such a provision, in this author’s opinion, needs clarification, as it is not entirely based in favor of the child. By Article 1, State Parties are left with the privilege to decide themselves on the age at which a child stops being a minor, and loses protection under the CRC. The CRC leaves the possibility for State Parties to use the document in favor of the state, and not in favor of the child, as the length of the time for childhood can be shortened.

Further, among the guiding principles, is the non-discrimination provision, which prohibits the unfair treatment of a child on any basis.³⁶ Article 3 also expresses an important requirement as it says that individuals as well as public institutions should act as if the best interest of the child is a primary consideration.³⁷ Although, emphasizing the purpose of the CRC – preserving the best interest of a child - is reassuring, the combination of Article 1 and Article 3 of the CRC shows that deciding what qualifies as “a best interest of the child” is left too widely in the hands of the States Parties. As will be more clearly explained later in this thesis, the freedom of the States Parties to interpret the provisions of the CRC was left intentionally, because the factor of the cultural diversity, missed in the *Declaration on the Rights of the Child*, was included. In this author’s opinion, the main advantage of leaving certain provisions open for

³³ Stephen N. Achilinu, *Do African Children Have Rights? A comparative and Legal Analysis of the United Nations Convention on the Rights of a Child*, (Universal-Publishers, Florida 2010) 31.

³⁴ United Nations International Children’s Emergency Fund, “Rights Under the Convention on the Rights of the Child” <http://www.unicef.org/crc/index_30177.html> accessed 3 March 2011.

³⁵ United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 1.

³⁶ *Ibid*, art. 2.

³⁷ *Ibid*, art. 3.

the States Parties' interpretation, is that by having some freedom, government of a State can apply the provisions of the CRC in a manner that results in the effect needed for that certain state. However, any freedom given to the States Parties can back-fire, when a state is more eager to please governmental issues, and not to protect children's rights. In such case, having the right of wide interpretation can result in an avoidance of obligations of the State Parties.

Next, the CRC puts an obligation on the State Parties to recognize "that a child has an inherent right to life," and to "ensure to the maximum extent possible the survival and development of the child."³⁸ Lastly, what is considered to be the general requirement, is the given possibility for children to express their own views in matters concerning them, and the opportunity for these children to defend their interests in judicial and administrative proceedings.³⁹ In short, the guiding principles establish the very basis on which a child can act as the subject of international human rights law.

The survival and developments rights are those rights that a child needs in order to lead a fully satisfied life and develop at one's full potential. Such rights as the right to health care, right to nutritious foods and clean drinking-water,⁴⁰ right to an education,⁴¹ as well as right to a name and identity,⁴² and the right to social security⁴³ are without a doubt necessary for creating circumstances in which children would enjoy growing up. Survival and development rights also cover the rights of specific groups of children. Article 22 of the CRC imposes an obligation on States Parties to ensure the protection of refugee children, Article 23 guarantees the rights of children with disabilities, and Article 30 protects children who belong to minority and indigenous groups.⁴⁴ While the guiding principles are important for a child to have a possibility to require that their rights would be respected, the survival and development rights provide for basic – food and water, and self-realization – name and education, needs. Practically speaking, survival and development rights are the most important ones, because they create 'a person', in a social sense, who, as such, gains a possibility to demand for the protection of his or her rights.

³⁸ United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 6.

³⁹ *Ibid*, art. 12.

⁴⁰ United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 24.

⁴¹ *Ibid*, art. 28, 29.

⁴² *Ibid*, art. 7, 8.

⁴³ *Ibid*, art. 26.

⁴⁴ *Ibid*, art. 22,23,30.

The main protection rights cover the prohibition against “illicit transfer and non-return of children abroad,”⁴⁵ “all forms of physical or mental violence, injury or abuse, neglect or negligence treatment, maltreatment or exploitation,”⁴⁶ economic exploitation and any work that would interfere with child’s education or would be harmful to child’s development,⁴⁷ illicit use of narcotic drugs,⁴⁸ “all forms of sexual exploitation or sexual abuse,”⁴⁹ children trafficking,⁵⁰ “inhuman or degrading treatment or punishment,”⁵¹ and abusing or neglecting children rights in the criminal justice system.⁵² In sum, protection rights are the rights that keep children safe from harm. The value of protection rights is that they acknowledge the fact that children’s rights violations are happening. Although such acknowledgement could have seem as a natural thing, at the time of the preparation of the CRC, because of the evolution of international human rights law, it must be kept in mind that apprehension that wrongdoings are actually happening to children was not easily realized throughout history.

Participation rights also guard respect for the views of children,⁵³ namely freedom of expression,⁵⁴ thoughts, conscience and religion,⁵⁵ association,⁵⁶ right to privacy,⁵⁷ access to information.⁵⁸ In other words, participation rights are needed to ensure that children have an active voice in matters concerning them. Participation rights are, roughly speaking, not as essential, as, for example, survival and development rights, however, their importance lies in the fact that by using, for instance, freedom of expression or association, children can strengthen the enjoyment of other groups of rights.

⁴⁵ United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 11.

⁴⁶ Ibid, art. 19.

⁴⁷ Ibid, art. 32.

⁴⁸ United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess, Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 33.

⁴⁹ Ibid, art. 34.

⁵⁰ Ibid, art. 35.

⁵¹ United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess, Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art art. 37.

⁵² Ibid, art. 40.

⁵³ United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess, Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art art. 14.

⁵⁴ Ibid, art. 13.

⁵⁵ Ibid, art. 14.

⁵⁶ Ibid, art. 15.

⁵⁷ Ibid, art. 16.

⁵⁸ Ibid, art. 17.

40 out of 54 Articles (Part I) of the CRC provide substantive rights for children and, as already has been mentioned, the range of rights protected is very wide. Part II of the CRC establishes the treaty monitoring mechanism. A Committee on the Rights of the Child (The CRC Committee) is basically responsible for checking and following the level of successful implementation of the CRC in States Parties. The powers and importance of the CRC Committee will be discussed in the third chapter of this thesis.

1.2. The *Optional Protocols* to the CRC

The CRC is accompanied by two *Optional Protocols*, adopted on 25 May 2000, dealing with the specific issues of children's rights. These protocols are called optional, because they do not become automatically binding for states who ratify the CRC. The *Optional Protocols* add and elaborate on the obligations expressed in the CRC, and states can choose themselves whether to become party to the *Optional Protocols*.⁵⁹

The main reason why the *Optional Protocols* are needed, is that they elaborate on especially painful and serious violations of children's rights. However, the freedom that is left for the States Parties to the CRC in deciding whether to become a party to the *Optional Protocols*, comes in contradiction with the purpose of such protocols – strengthening children's rights. Having said that, this author does not want to imply that adoption of the *Optional Protocols* was unnecessary. On the contrary, the separate ratification of the CRC and its *Optional Protocols*, in some situations can guarantee, that although children's rights are not protected by the CRC, the child is still guarded against certain gross violations covered by the *Optional Protocols*. The examples of the latter are the cases of the USA and Somalia. Neither of those states have ratified the CRC, however, the USA is a party to both *Optional Protocols* and Somalia is a party to the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*.

⁵⁹ United Nations International Children's Emergency Fund, „Optional Protocols to the Convention on the Rights of the Child <http://www.unicef.org/crc/index_protocols.html> accessed 5 March 2011.

The *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*⁶⁰ (OPSCCPCP) came into force on 18 January 2002. It was meant to elaborate on the contents of the CRC, and strengthen the implementation of Articles 1, 11, 21, 32, 33, 34, 35, and 36.⁶¹ The main purpose of OPSCCPCP is to ensure that Article 34 (obligation to protect children from all forms of sexual exploitation and sexual abuse),⁶² Article 35 (obligation to prevent abduction, sale or trafficking of children),⁶³ and Article 36 (obligation to protect children of any other form of exploitation)⁶⁴ of the CRC would be respected. As a result, the OPSCCPCP provides definitions for the offences of sale of children, child prostitution, and child pornography, states the necessity for the State Parties to criminalize such acts as sexual exploitation of the child, transfer of organs of the child for profit, engagement of the child in forced labour,⁶⁵ protects the rights and interests of child victims,⁶⁶ and stresses the importance of international cooperation in regard of crimes mentioned.⁶⁷

Violations, covered by the OPSCCPCP are serious and in need of strengthened protection, because they target a child's perception of self-value and do severe damage to a person psychologically. Moreover, such crimes as forced prostitution or sale of children never come as separate crimes, as such human rights violations happen as a result or reason for negating wide ranges of human rights. Children from less developed countries or poorer individual economical backgrounds make easier targets for the exploitation.⁶⁸ The latter statement supposes that African youth is especially vulnerable towards human trafficking and sexual exploitation, therefore, the fact that only seven, out of fifty-three African states have not ratified the OPSCCPCP yet, is a positive indicator in combating such crimes.

⁶⁰ United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, G.A. Res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/ 54/49, Vol. III (2000), entered into force January 18, 2002.

⁶¹ Stephen N. Achilinu, *Do African Children Have Rights? A Comparative and Legal Analysis of the United Nations Convention on the Rights of a Child*, (Universal-Publishers, Florida 2010) 34.

⁶² United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess, Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 34.

⁶³ *Ibid*, art. 35.

⁶⁴ *Ibid*, art. 36.

⁶⁵ *Ibid*, art. 3.

⁶⁶ *Ibid*, art. 8.

⁶⁷ *Ibid*, art. 10.

⁶⁸ Conny Rijken, Dagmar Koster, *Human Rights Approach to Trafficking in Human Beings in Theory and Practice*, 2008, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1135108>, accessed on 20 April, 2011, 6.

The major issue that caused the adoption of the second *Optional Protocol* to the CRC is the participation of children in armed conflicts. The child recruitment into armed forces is a worldwide practice, regionally differing in its intensity. Using child soldiers is reported in Western states such as the United Kingdom and the USA; however, it is mainly Third World countries that have children serving in their government forces, paramilitaries, or opposition forces.⁶⁹ Although South American (Colombia) and Asian countries (India, Indonesia, Iraq, Israel and the Occupied Palestinian Territory, Myanmar, Nepal, Philippines, Sri Lanka, Sudan, and Thailand)⁷⁰ figure in the global reports on child soldiers, the African continent is the one to get the most attention. According to the UN Secretary-General's Report on Children and Armed Conflict (UN Secretary-General's Report) submitted to the Security Council in November 2002, five countries were singled out as most notorious: Afghanistan, Burundi, the Democratic Republic of Congo, Liberia, and Somalia.⁷¹ As can be seen, African states composed four of them. Evaluating the influence that practices in Africa had on creating the *Optional Protocol on the Involvement of Children in Armed Conflict* (OPICAC), it is safe to say that regional situations of children's rights in Africa had a great influence on the need for such protocol. To this date, forty-three African states have ratified the OPICAC, showing that they acknowledge the problem of using children as soldiers and committing to strengthen children's protection. However, among the states that have not ratified the OPICAC yet, are those mentioned in the UN Secretary-General's Report - Liberia and Somalia. Since Liberia and Somalia are not eager to conform to international standards of human rights, children of those countries are especially vulnerable to violations of their rights. Pattern of not committing to the fullest when ensuring the protection of children's rights can be noticed in the cases of Cameroon, the Central African Republic, Ghana, already mentioned Liberia, and Zambia, because all those countries have ratified neither of the two *Optional Protocols*.

The OPICAC came into force in February, 2002, and relates to the Article 38 of the CRC which creates an obligation for State Parties to "take all feasible measures to ensure that persons

⁶⁹ Nsongurua J. Udombana, *War is not Child's Play! International Law and the Prohibition of children's involvement in Armed Conflicts*, 62, <[http://depot.gdnet.org/newkb/submissions/1164144478_Udombana_\(Temple\).pdf](http://depot.gdnet.org/newkb/submissions/1164144478_Udombana_(Temple).pdf)>, accessed on 15 May 2011

⁷⁰ *Child Soldiers Global Report 2008*, Coalition to Stop the Use of Child Soldiers, 2008, 9, <<http://www.hrw.org/en/reports/2008/12/11/child-soldiers-global-report-2008>>, accessed 15 May 2011.

⁷¹ The Secretary-General, *Report of the Secretary-General on Children and Armed Conflicts*, delivered to the Security Council, U.N. Doc. S/2002/1299 (Nov. 26, 2002).

who have not attained the age of fifteen years do not take a direct part” in armed conflicts.⁷² This provision is elaborated by the following one, stating that obligatory recruitment by the state of children under fifteen years old is illegal, but voluntary recruitment of persons between fifteen and eighteen years old is not forbidden.⁷³ The OPICAC explains the content of the provisions laid down in the CRC, and provides the requirements that must be followed when a certain State Party allows the voluntarily recruitment of persons under eighteen years old: the recruitment must be genuinely voluntarily; the recruitment is possible only by the state army and not armed forces of different kind; persons between age fifteen and eighteen can join the army but state Party must take all possible measures to ensure that a minor would not take part in combat activities.⁷⁴

An important requirement when ratifying the OPICAC is that states must make a declaration regarding the age at which voluntarily recruitment into the armed forces is permitted; moreover, steps must be taken to ensure that such recruitment is never forced. Such an obligation is important since the OPICAC states the minimum age only for direct participation in armed conflict, not in armed forces.⁷⁵

The CRC still has one rather serious disadvantage - it does not offer an individual complaint procedure. The *Draft Third Optional Protocol to the CRC to Provide the Communications Procedure*, which will be discussed in the third chapter of the thesis, was prepared in 2010. However, until the *Third Optional Protocol* remains a draft and is not adopted, the CRC remains the only international human rights treaty without an individual communications procedure provision.

⁷² United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess, Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 38, par. 2.

⁷³ United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess, Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 38 par. 3.

⁷⁴ United Nations Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263, art. 3, 4.

⁷⁵ United Nations International Children’s Emergency Fund, „Optional Protocol on the Involvement of Children in Armed Conflict“ <http://www.unicef.org/crc/index_30203.html>, accessed 10 March 2011.

2. Protection of an African Child

Children are the future of the world. This saying has a special meaning in Africa for at least two reasons. During the last decade, at least forty-four percent of Africa's population consisted of persons under the age of fifteen. Compared to other regions, the percentage is very high; in Asia, Latin America and Caribbean thirty percent of the population was under fifteen, while in Europe the percentage was only sixteen.⁷⁶ Keeping in mind that children are much more sensitive than adults, and are more likely to be victims of human rights violations, nearly half of the African population is an extremely vulnerable group.

Aside from this statistical point, children in Africa need extremely effective protection because of the reality of the continent. HIV/AIDS, warfare, famine, and harmful cultural practices results in the exploitation of children in any possible way.⁷⁷ Although the participation of children in armed conflicts shows some recent decline, in the late 1990's child soldiers were a widespread practice in at least thirteen African countries.⁷⁸ According to Amnesty International, in 1998, gross violations such as torture and ill-treatment, rape, abductions, forced labor, sexual slavery, harassment, and interrogation of children with the purpose to affect their parents was recorded in a number of African countries.⁷⁹

Despite ongoing violations, it cannot be said that the African regional system has been negligent about the concept of children's rights on paper. The first firm attempt to promote the protection of children in Africa was in 1979, when The Assembly of Heads of State and Government (the Supreme Organ) of the Organization of African Unity (OAU) adopted a *Declaration on the Rights and Welfare of the African Child*.⁸⁰ The *Declaration on the Rights and Welfare of the African Child* was not binding; however, it was a step further in the moral sense. Furthermore, the document already served as an example of the regional human rights documents to come, covering specific regional issues as among other measures it urged states to adopt „legal and institutional measures” which would abolish cultural practices harmful to

⁷⁶ Lory S. Ashford, „America's Youthful Population: Risk or Opportunity?“ (2007), <<http://www.prb.org/pdf07/africayouth.pdf>> accessed 10 April 2011.

⁷⁷ Frans Viljoen, *International Human Rights Law in Africa* (Oxford University Press, Oxford 2007) 261.

⁷⁸ Stephen N. Achilinu, *Do African Children Have Rights? A Comparative and Legal Analysis of the United Nations Convention on the Rights of a Child*, (Universal-Publishers, Florida 2010) 64.

⁷⁹ Ibid.

⁸⁰ Declaration on the Rights and Welfare of the African Child, OAU Doc AHG/st.4(XVI) Rev.1 (1979).

children, such as child marriage or female circumcision.⁸¹ After the *Declaration on the Rights and Welfare of the African Child*, the OAU speed-up its movements forward in protecting children's rights. The OAU became active on such issues as child labor, children trafficking, and the involvement of children in armed conflict.⁸² However, at that time, children's rights were not yet the object of an internationally legally binding treaty. The *African Charter on Human and People's Rights*, adopted in 1981, referred to children alongside women's rights in a very vague manner: states are obligated to protect woman and child "as stipulated in international declarations and conventions."⁸³

The turning point in the legal protection of the child was the adoption of the CRC in 1989, which served as an example and reason for creating a legally binding regional children's rights document, the *African Charter on the Rights and Welfare of the Child*.

2.1. Reasons for the ACRWC

Some substantive provisions of the CRC are left rather vague as a result of the wish to satisfy the culturally diverse international community that participated during the drafting and adoption process.⁸⁴ An already mentioned example of the demonstrated tolerance towards cultural diversity of the world countries is the possibility for a State Party to the CRC to decide for itself on the age at which a child reaches majority. The CRC does not elaborate on specific regional issues of children's rights. The lack of specifications of regional reality is the main reason why the ACRWC was considered necessary. Africans considered that the potentially decisive and emotive issues of their region were omitted with the purpose of satisfying the diverse backgrounds of participant states.⁸⁵ Besides the supposed shortcomings of the contents of the CRC, political motives also played a role, as African states were not fully involved in the drafting process of the CRC, at least at the beginning. In the period between 1981 and 1988, only

⁸¹ Declaration on the Rights and Welfare of the African Child, OAU Doc AHG/st.4(XVI) Rev.1 (1979), par. 3.

⁸² Julia Sloth – Nielsen, *Children's Rights in African: A Legal Perspective*, (Ashagate Publishing Limited, Hapshire 2008) 34

⁸³ African Charter on Human and People's Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), adopted 27 June 1981 (entered into force 21 October 2001), art. 18 (3).

⁸⁴ Julia Sloth – Nielsen, *Children's Rights in African: A Legal Perspective*, (Ashagate Publishing Limited, Hapshire 2008) 34

⁸⁵ 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 *The Comparative and International Law Journal of Southern Africa*, 205.

three – Algeria, Morocco and Senegal - out of fifty-three African countries attended the sessions of the Working Group of the Commission on Human Rights, which was responsible for the drafting of the CRC. The attendance of Algeria, Morocco, and Senegal might have been connected to the fact that all three countries gained their independence in the 1970's, and had an experience advantage in foreign relations and politics over the other African states that reached independence later. Another fact connecting the three states is that they are all Muslim states. As a result, Algeria, Morocco, and Senegal had more interest in participating in the creation of a universal human rights treaty, as it presented the possibility to promote and protect Islamic values.

In comparison to the level of participation of Africa, Europe had sixty-one percent of the continent participating in the preparations of the CRC, and even Latin America had twenty-nine percent.⁸⁶ Overall, the low participation level was common among Third World countries because of the lack of financial resources and the shortage of trained personnel whom these countries could rely on.⁸⁷ Although there has been discussions about whether the participation of African continent was really crucially limited (by 1989, nine African countries joined the activities of the working group), legal scholars agree that African countries were reasonable in naming regional specificities as the reason for the creation of the ACRWC.⁸⁸

Some specific omissions from the CRC, regarding Africa, were listed during the drafting process of the CRC in 1988 at a UNPACAN/UNICEF conference on 'Children in Situations of Armed Conflict in Africa':⁸⁹

- The situation of the children living under Apartheid was not addressed;
- Disadvantages influencing the female child were not sufficiently considered;
- Practices common in Africa, such as female circumcision were not mentioned explicitly;

⁸⁶ 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 *The Comparative and International Law Journal of Southern Africa*, 200.

⁸⁷ Stephen N. Achilinu, *Do African Children Have Rights? A Comparative and Legal Analysis of the United Nations Convention on the Rights of a Child*, (Universal-Publishers, Florida 2010) 28.

⁸⁸ *Ibid*, 205.

⁸⁹ These grounds have been forwarded by L G Muthoga (1992) 'Introducing the African Charter on the Rights and Welfare of the African Child and the Convention on the Rights of the Child', paper delivered at the International Conference on the Rights of the Child, Community Law Centre, University of the Western Cape and S. A. Wako 'Towards African Charter on the Rights of the Child', paper delivered at a workshop on the Draft Convention on the Rights of the Child, Nairobi, 9 - 11 May (1988).

- Internal displacement arising from internal conflicts was not sufficiently taken into account;
- Certain socio-economic conditions, such as illiteracy and low levels of sanitary conditions common in Africa needed more addressing;
- The community's inability to engage in meaningful participation in the planning and management of basic programs for children was not taken into account;⁹⁰
- The African conception of the community's responsibilities and duties had been neglected;
- Compulsory minimum age of military services is of great importance, because of the child soldiers often used in Africa; and
- The negation of the role of the family by the CRC in the upbringing of the child, and in matters of adoption and fostering.

Because of the importance of the listed arguments, the OAU set up a working group of African experts to prepare a draft of the ACRWC. All listed omissions from the CRC were, at least partially, addressed by the ACRWC. The Assembly of Heads of State and Government adopted the ACRWC on 11 July 1990. The adoption of the ACRWC is unique in the sense that it took such a short period for the African States to reach an agreement; however, the ACRWC did not come into force until almost ten years later. Only on 29 November 1999, after it received the requisite fifteen state ratifications,⁹¹ the regional document became legally binding. To date, forty-five out of fifty-three African States have ratified the ACRWC. The Central African Republic, Djibouti, the Democratic Republic of Congo, the Arab Democratic Republic, Somalia, Sao Tome and Principe, Swaziland, and Tunisia⁹² have not ratified the treaty yet, mainly because of the political instability in those countries and constant notorious practices concerning the denial of human rights.

⁹⁰ N. Muhindi 'A Proposal for an African Draft Charter on the Rights of the Child', undated, copy with the author, art 8.

⁹¹ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 47(3).

⁹² List of Countries Which have Signe, Ratified/Acceeded Acceded to the African Charter on the Rights and Welfare of the Child, <<http://www.africa-union.org/root/au/documents/treaties/List/African%20Charter%20on%20the%20Rights%20and%20Welfare%20of%20the%20Child.pdf>>, accessed on 05 June 2011.

2.2. The Basic Features of the ACRWC

The reason why African States were much more willing to ratify the CRC than the ACRWC can be found in the contents of the ACRWC, although, at first sight, the two documents seem to be quite similar. Despite the fact that the ACRWC was intended to satisfy the needs of important socio-cultural and economic realities of the African experience, as A. Lloyd notices, the ACRWC “yet was inspired by the trends evident in the UN system” and should play the role of a “complementary mechanism to that of the UN in order to enhance the enjoyment of the rights of children in Africa.”⁹³ However, after a closer look, this complementary mechanism appears to be stricter concerning the rights of children than the CRC.

The Preamble of the ACRWC recognizes “that the child occupies a unique and privileged position in the African society,” “that the child should grow up in a family environment in an atmosphere of happiness, love and understanding,”⁹⁴ and acknowledges that the situation of African children “remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger.”⁹⁵ The ACRWC consists of four sections: The Preamble and Part 1 “Rights and Duties,” Part 2 “The Establishments and Organization of the African Committee of Experts,” Part 3 “The Mandate and Procedure,” and Part 4 “Miscellaneous Provisions.”

Similarly as in the CRC, four core principles of children’s rights protection can be distinguished. The main of these principles is a rule against discrimination, stating that the enjoyment of the rights and freedoms recognized in the ACRWC must be guaranteed to every child equally.⁹⁶ The non-discrimination clause is broader than in the CRC because the ACRWC adds the prohibition of discrimination under certain circumstances, such as apartheid regimes and military destabilization.⁹⁷ Provisions like the latter are necessary in a continent that is constantly undergoing military practices.

⁹³ Stephen N. Achilinu, *Do African Children Have Rights? A Comparative and Legal Analysis of the United Nations Convention on the Rights of a Child*, (Universal-Publishers, Florida 2010) 70.

⁹⁴ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, Preamble par. 4.

⁹⁵ *Ibid*, par. 3.

⁹⁶ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 3.

⁹⁷ *Ibid*, art. 26.

Interestingly, the ACRWC does not mention, unlike the CRC, that the obligation not to discriminate is applied specifically to States Parties. This implies that responsibility falls not only on state actors, but, broadly speaking, on society as a whole. In this author's opinion, such a perception supposes that respect for children's rights in Africa is meant to rise initially from every individual. In the continent where national authorities are the main violators of human rights, it was smart not to place the obligation of non-discrimination solely in the hands of a state.

At this point, this author would like to add that placing the obligation to respect the children's rights on the community is not accidental - it relies to a traditional African thinking that child is a communal responsibility. A popular Nigerian saying illustrates the situation perfectly: *It takes a whole village to raise a child.*⁹⁸ The saying implies that not only parents, but also older brothers and sisters, aunts and uncles, grandparents, and even neighbors or friends take part in upbringing the child. Taking care of a child by this, so called extended family, shows that African people value human relationships, self – sacrifice for the other and sharing.⁹⁹ As will be shown in this thesis, communal ties had visible influence in establishing the mechanism of protection of children.

The second principle is the rule of the best interest of a child. This means that in any action undertaken regarding children, the child must be in *the* primary consideration.¹⁰⁰ In comparison with the CRC, which points towards *a* primary consideration of child's best interests, the ACRWC gives a stricter and more specific obligation. It is only an article that makes the difference in this case, however, in the context of the CRC, *a* primary consideration implies that decision making of States Parties is tried to be undisturbed by the provisions of the treaty. As a result, when, in matters concerning children, the interests of the child collide with the interests of another kind, the child would not necessarily have the ultimate importance. The ACRWC does not imply such a thing, but promotes the superiority of the children's well-being.

Thirdly, a child's survival and development is of great importance. A child's life is protected by law, and States Parties are given the responsibility to ensure, "to the maximum

⁹⁸ *African Proverb of the Month, November, 1998*, African Proverbs, Sayings and Stories, <<http://www.afriprov.org/index.php/african-proverb-of-the-month/23-1998proverbs/137-november-1998-proverb.html>>, accessed on 10 May 2011.

⁹⁹ *Ibid.*

¹⁰⁰ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 4 (1).

extent possible,” the survival, development, and protection of children.¹⁰¹ The right to survival and development should not be understood only in a physical sense, but also as a right to evolve mentally, emotionally, socially, and culturally.¹⁰² Furthermore, the establishment of a death sentence is forbidden for crimes committed by children.¹⁰³ Given the fact that prohibition of a death sentence for children is not expressed in the CRC, an explicit addition to the survival and development rights has been added by the ACRWC. The ACRWC elaborates on the right to life of a child, because creators of the treaty faced the importance of that issue, at least thirty-two African countries had capital punishment as legal practice. However, the ACRWC does seem to have a gap in the protection of child’s rights, because it, unlike the CRC,¹⁰⁴ does not prohibit life sentences. This author wants to explain here that certain provisions, declared in the CRC and omitted in the ACRWC will be mentioned in this thesis. This will be done in order to show how the regional treaty complies with its aim – to strengthen children’s protection. In this author’s opinion, the ACRWC does not fully comply with its goal if the treaty does not elaborate on the provisions which are specifically important while protecting the rights of African children, even though these provisions have been generally dealt with in the CRC.

The ACRWC prohibits torture, inhuman or degrading treatment or punishment of the child¹⁰⁵, and, according to international human rights law, the treatment of persons which is not appropriate to their age and legal status is inhuman.¹⁰⁶ Although the abolition of life imprisonment of children is implied in the ACRWC, such prohibition needs clarification. As a result, in respect of the issue of clear standing on matters of life imprisonment, the ACRWC stays one step behind the CRC.

Lastly, children’s views and participation are emphasized, which means that children have a right to be heard, and have their opinions taken seriously in judicial and administrative

¹⁰¹African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 4 (2).

¹⁰² Stephen N. Achilinu, *Do African Children Have Rights? A Comparative and Legal Analysis of the United Nations Convention on the Rights of a Child*, (Universal-Publishers, Florida 2010) 72.

¹⁰³African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999 , art. 5.

¹⁰⁴ United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess, Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 37 (a).

¹⁰⁵ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999 , art. 17 (a).

¹⁰⁶ Human Rights Committee, General Comment 9, Article 10 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 9 (1994), par. 3.

proceedings affecting them.¹⁰⁷ Moreover, similarly as in the CRC, children are given freedom of expression, association, thought, conscience, and religion, together with a prohibition for the state to interfere with children's privacy.¹⁰⁸ In general, participation rights are very similar to those established in the CRC. On the other hand, given the reality of African family life, where respect for the elderly is extremely valued, and decisions concerning children are often made by the elderly family members,¹⁰⁹ the ACRWC should be more attentive in protecting participation rights. For example, Article 7 states that "every child who is capable to communicate his or her views"¹¹⁰ is entitled to express his opinion. In the African society, most children could not express their opinions, just because the views of the authoritative family members are held superior. The ACRWC, supposing to be a regionally adequate treaty, left a certain gap that contradicts with the main idea of the treaty. Communicating one's views is the essence of participation rights; therefore, elaborate explanation on terms of enjoyment of such rights is needed.

2.3. The Uniqueness of the ACRWC

Within the Preamble of the ACRWC the explicit situation of an African child is emphasized. The regional nature of the ACRWC shows itself as it is stated that African cultural heritage, historical background, and values should inspire and characterize the concept of the rights and welfare of the child.¹¹¹ Such provisions suggest the possible differences between the CRC and the ACRWC.

Concept of a child. The first notable difference between the ACRWC and the CRC lies already in the concept of "a child." According to the African document, the child is "every human below the age of 18 years,"¹¹² and no exceptions, like in the case of the CRC, are

¹⁰⁷ Human Rights Committee, General Comment 9, Article 10 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 9 (1994), art. 4 (2).

¹⁰⁸ *Ibid.*, art. 7, 8, 9, 10.

¹⁰⁹ Danwood Mzikenge Chirva, *The Merits and demerits of the African Charter on the Rights and Welfare of the Child*, *The International Journal of Children's Rights* 10: 157 – 177, 2002 (Kluwer Law International 2002), 160.

¹¹⁰ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 7.

¹¹¹ *Ibid.*, art. 6.

¹¹² African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 2.

provided. As a result, all people under the age of eighteen are guaranteed the unconditional protection of the ACRWC. In this author's opinion, the establishment of the fixed age of minority is directly linked with the principle of the best interests of the child.

Moreover, Article 1(2) of the ACRWC denies the affect that the treaty may have to "any provisions that are more conducive" to the realization of the rights of the child contained by the State Party under any other international convention or agreement.¹¹³ According to the latter, the protection of children's rights cannot compromise the protection of adults' rights, if an emancipated child is entitled to a protection of his adult rights in a State Party where adulthood is attained earlier. The ACRWC follows the importance of "the best interest," therefore, does not limit the scope of children's protection by the individual practices of national states.

The abolishment of the harmful cultural practices. Traditional, cultural, or religious practices are often happening among African people. Most of these practices are brutal and discriminatory. Examples include female genital mutilation, dietary taboos, or the killing of twins and triplets.¹¹⁴ The required abolition by States Parties of all practices that can be harmful to the welfare, normal growth, and development of the child, and therefore are inconsistent with rights, duties and obligations contained in the ACRWC is established, as a general rule, in the very first article of the ACRWC.¹¹⁵ Moreover, Article 21 elaborates on the matter, and not only requires the elimination of social and cultural practices that are harmful to the health or life of the child and are discriminatory, but also states the minimum age for marriage as eighteen, and demands for the official registration of all marriages.¹¹⁶

The establishment of a strict age to reach the majority in the ACRWC is linked to the child marriages which are very popular in this continent. More than forty percent¹¹⁷ of girls are married before the age of eighteen in Africa; moreover, there are parts of West and East Africa, where girls are forced to marry even before they reach puberty.¹¹⁸ Compared to the CRC, where

¹¹³ Ibid, art. 1 (2).

¹¹⁴ 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 The Comparative and International Law Journal of Southern Africa , 208.

¹¹⁵ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 47(3), art 1. (2).

¹¹⁶ Ibid, art. 21.

¹¹⁷ *Child Marriage: What We Know?* Public Broadcasting Service, 2010, <<http://www.pbs.org/now/shows/341/facts.html>>, accessed on 17 May 2011.

¹¹⁸ *Child Marriage*, UNIFEC, <http://www.unicef.org/protection/index_earlymarriage.html>, accessed on 17 May 2011.

only those practices prejudicial to the health of children are abolished,¹¹⁹ the ACRWC provides stricter rules for the States Parties. In this author's opinion, the prohibition of child marriages is the excellent example of how the regional specificities have influenced the contents of the ACRWC.

One more aspect of abolishing cultural practices should be mentioned. Imagine, that an African society has been practicing certain rituals, and keeping specific traditions for a significant period of time, until, suddenly, they are abolished. It is natural that the African community, as well as the authorities of the African states, would need time to adjust to the new circumstances, that is, to evolve in understanding the perception of human and, in this case, children's rights. The need for a transitional period in realizing the superiority of children rights, in author's opinion, could have been an important reason why African states, at the beginning, were not so eager to ratify the ACRWC.

Parental responsibilities. The ACRWC does not leave all the child-care obligations to the parents. When parents are not capable of satisfactory provision for the children, States Parties must take all appropriate measures to assist parents, especially with regard to nutrition, health, education, clothing, and housing.¹²⁰ The CRC provides that assistance in general by the State Parties is needed,¹²¹ so the ACRWC is once again more elaborate on the matter. Keeping in mind that Africa has food and drinking water shortage problems, and that children are much more easily exposed to the HIV/AIDS infection, the responsibility of a state to help parents in need is crucial.

The other example of not giving the parents complete responsibility for the sake of a child concerns freedom of thought, conscience, and religion. The African document provides the duty for parents to guide children "in the exercise of these rights having regards to the evolving capacities and best interest of the child,"¹²² while the CRC contains an obligation for parents to guide children "in a manner consistent with the evolving capacities of the child."¹²³ The

¹¹⁹ United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 24,3.

¹²⁰ *Ibid*, art. 20 (2) (a).

¹²¹ United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 18 (2).

¹²² African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 9 (2).

¹²³ United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 14.

supervisory role of parents is not as strict according to the ACRWC; therefore, children, theoretically, have more influence on their enjoyment of freedom of thought, conscience, and religion. However, the word „theoretically” was used, because the provisions of the ACRWC do not meet the reality of the African family lifestyle. Same as in matters of freedom of expression, in aspects concerning freedom of thought, conscience, and religion, the parents’ role is not quite clear. When providing a duty for parents to guide the child in, for example, matters of religion, it is not clear who, parent or a child, should evaluate the evolving capacities of the child, according to which guidance is provided.

Name and nationality. Unlike the CRC, stating vague obligations to States Parties to respect and preserve the child’s right to name and nationality,¹²⁴ the ACWRC is more comprehensive because it specifically notes that a child is a national of the state in which he or she is born, plus, children must be registered immediately after the birth.¹²⁵ In this author’s opinion, such an elaboration of identity rights was absolutely needed in Africa, for the following reason. In Africa, many families live in rural areas, where hospitals are a long distance from people’s homes; as a result, a significant amount of women give birth at home. After giving birth at home, the newborn is not acknowledged by any legal act. If the mother of the child does not require for such an act from authorities, the child, legally, does not exist and, therefore, is not entitled to protection of his rights under the law. By imposing obligations on State Parties to register every newborn and to provide him or her with a nationality, the ACRWC stimulates the national implementation of treaty protection.

On the other hand, the ACRWC did not finish its work in protecting the identity of the child, because the right to preserve or to regain the identity after deprivation is not provided. The reasons why a child could have lost his name and nationality involve such human rights violations as child trafficking or abduction. The CRC protects the right to reestablish the identity,¹²⁶ because the threat of human trafficking was being realized universally by the time the treaty was being drawn.¹²⁷ The omission of the right to preserve identity in such a continent as

¹²⁴ Ibid, art. 7, 8.

¹²⁵ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 6 (2), (4).

¹²⁶ United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 8 (2).

¹²⁷ The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others was adopted in 1949.

Africa, where devastation of poverty has been pointed out as a primary push factor for human trafficking,¹²⁸ should not exist.

The right to education. While the educational provisions in the CRC and the ACRWC are similar in the way that both treaties provide compulsory obligations for States Parties to guarantee basic education of children, and to encourage and make possible secondary and higher education, the ACRWC adds more specific obligations towards State Parties, which resemble the African nature of the document. This author will distinguish two specific elements found in the African perception of the right to education.

First of all, the ACRWC declares that the education of the child shall be directed to “the preservation and strengthening of positive African morals, traditional values and cultures,”¹²⁹ and to the preparation of the child for life in “mutual respect and friendship all peoples ethnic, tribal and religious groups.”¹³⁰ The CRC does not elaborate on specific non-discriminatory obligations in the right of education; instead, it provides a basic obligation for State Parties to make education accessible to all children.¹³¹ The African states, however, were aware of the complexity of the cultural diversity of the continent and the threat that such variety posed to protection of children’s rights. Africa’s population reaches approximately 800 million; there are over one thousand languages used, more than three thousand recognized unique ethnic groups, and around four hundred recognized tribal groups.¹³² The variety of the continent not only ignites conflicts and discrimination, but is the main reason for an armed conflict – Africa has the highest incidence of civil war, compared to other continents.¹³³ The inclusion of tolerance, respect, and equality of different tribal, ethnic, and religious groups to the right of education adds the possibility to grow generations of people that would not consider armed conflict as an option.

¹²⁸ *Child Trafficking Situation*, Child Trafficking in Africa, <http://www.childtraffickinginafrica.org/?page_id=3>, accessed on 17 May 2011.

¹²⁹ *Ibid*, art. 11 (2) (c).

¹³⁰ *Ibid*, art. 11 (d).

¹³¹ United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 28 (d).

¹³² African Cultural Center, <http://www.africanculturalcenter.org/5_0people.html>, accessed on 17 May 2011.

¹³³ Tokunbo Simbowale Osinubi and Oladipupo Sunday Osinubi, *Ethnic Conflicts in Contemporary Africa: The Nigerian Experience*, Kamla – Raj 2006, 101, <<http://www.krepublishers.com/02-Journals/JSS/JSS-12-0-000-000-2006-Web/JSS-12-2-083-158-2006-Abst-Text/JSS-12-2-083-158-2006-Web/JSS-12-2-101-114-2006-165-Osinubi-T-S/JSS-12-2-101-114-2006-165-Osinubi-T-S-Text.pdf>>, accessed on 17 May 2011.

Secondly, the ACRWC obliges States Parties to take special measures in educating female, gifted, and disadvantaged children,¹³⁴ as well as to ensure that girls who become pregnant have the possibility of obtaining education on the basis of their individual ability after giving birth.¹³⁵ Such provisions serve as anti-discriminatory devices, and provide the most vulnerable groups of children with more comprehensive rights than under the CRC. Special attention to girls with children, in matters of education, is given, because getting married or bearing a child in Africa most often means that a girl will not attend school.¹³⁶ Given the repressed situation of African girls, education is the most important tool to help girls to stand on their own feet and have the opportunity to improve their social and economic situation. By adding the importance of educating adolescent mothers, the ACRWC definitely improves the situation of such girls, and pushes States Parties to realize and solve the problem in girls' education.

Health care. Both the CRC and the ACRWC express the necessity of primary health care, emphasizing a provision of adequate nutrition and drinking water, and the protection of pregnant and nursing women. What this author misses is the elaboration on the protection of pregnant girls and girls who have just gave birth. Mortality rates in Africa are the biggest in the world,¹³⁷ given the frequency of marriages of girls under eighteen, a great number of mothers are minors. Moreover, no special attention is given to the problem of HIV/AIDS, which is enormous in Africa and affects children in two different ways: children are more easily exposed to disease; and, if a parent, or legal guardian, of the child gets infected, the child faces the threat to become an orphan. HIV/AIDS has created more than 14 million orphans so far, and more than ninety percent of them live in Africa.¹³⁸

¹³⁴ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 11 (3)(e).

¹³⁵ *Ibid*, art.11 (6).

¹³⁶ *Child Marriage*, UNIFEC, <http://www.unicef.org/protection/index_earlymarriage.html>, accessed on 17 May 2011.

¹³⁷ Margaret Grieco, Jeff Turner, *Maternal mortality: Africa's burden*, 2005, 5, <<http://www4.worldbank.org/afr/ssatp/Resources/HTML/Gender-RG/Source%20%20documents/Tool%20Kits%20%20Guides/Maternal%20Health/TLMH1%20Toolkit%20G&T%20Maternal%20Mortality.pdf>>, accessed on 17 May 2011.

However, health protection in the ACRWC has certain advantages, since the treaty stresses the importance of integrating basic health service programmes in national development plans, and promotes the co-operation of NGOs, local communities, and beneficiary populations in the planning and management of a basic service program for children, as well as urging States Parties to support technically and financially the development of primary health care for children.¹³⁹ By adding an emphasis on basic health care, the ACRWC targets at the very core of health protection – creating a successful and accessible primary level of health facilities helps avoid possible complications in the future. Moreover, placing an obligation to plan basic service programme for children partly in the hands of the community supposes that the biggest efforts would be put in health protection fields that realistically need the most attention. In this author's opinion, the fact that the most stressed obligation of State Parties is to provide financial and technical help, and not to plan the development of basic health care, is a smart step since it helps to avoid the abuse of state powers, and get the financial support so much needed in an economically weak Africa.

On the other hand, limiting the influence of State Parties and imposing economic obligations, like it was done with the right of health, could easily be one more reason why African states were not fast in greeting the prepared text of the ACRWC.

Exploitation of children. The ACRWC contains similar obligations towards States Parties concerning the protection of a child against any kind of abuse, torture, and sexual exploitation to the ones laid down in the CRC. However, one addition to the obligation to prevent the abduction, the sale of or traffic in children for any purpose or in any form,¹⁴⁰ is made – an obligation to prevent the use of children in all forms of begging is added.¹⁴¹ Because of the poverty that people are experiencing in Africa, children are considered to be a common source of money and labor power. Forced child begging is a widespread problem in Africa, connected with the issue of

¹³⁸ Facts About Children and Poverty, <<http://www.care.org/campaigns/childrenpoverty/facts.asp>>, accessed on 17 May 2011.

¹³⁹ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 14 (g)(i)(j).

¹⁴⁰ Ibid, art. 26 (a); United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 35.

¹⁴¹ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 29 (b).

street children.¹⁴² The ACRWC adds to the protection of children from any exploitation, mainly because it attracts attention to the existence of other forms of exploitation not mentioned in the CRC.

Furthermore, the ACRWC adds an extra obligation to States Parties in the prohibition of child labor. Apart from obligation to set minimum wage, appropriate working hours, and provide penalties and sanctions from exploiting children for labor, the ACRWC promotes the importance of spreading information on the hazards of child labor to all sectors of the community.¹⁴³ Information spread is important because of the widespread of the problem - over forty percent of children are working in Africa, mainly as slaves in private households.¹⁴⁴ Additional provision on prevention of forced child labor provides more tools for combating such crimes. It is regrettable, in this author's opinion that any prevention mechanism is set in provisions regarding sexual exploitation, or sale, trafficking and abduction.

Juvenile justice. This author wants to emphasize two additions to the administration of juvenile justice made by the ACRWC, in comparison with the CRC. Firstly, an obligation to determine matters *as speedily as possible* by an impartial tribunal is set, as well as the right to appeal is provided.¹⁴⁵ The CRC does not contain the provision which would set the limitation on crime investigation and trial process. The ACRWC goes along with the international standards of criminal procedure, which prohibits the undue delay in trying the person who is determined of a criminal charge.¹⁴⁶ It is an important addition by the ACRWC, clearly needed in African context. Although many African constitutions have provisions against unreasonable delay, the problem continue to exist, especially visibly in Nigeria, Ghana, Uganda, Tanzania and South Africa.¹⁴⁷ Delay in the trial can be especially harmful for a child, since children are more physically and

¹⁴² Jens Chr. Andvig, Sudharshan Canagarajah, Anne Kielland, *Issues in Child Labor in Africa*, Africa Region Human Development Working Paper Series, 2001, 17, <http://www.childtrafficking.com/Docs/andvig_canadaraja_kielland_.pdf>, accessed on 17 May 2011.

¹⁴³ *Ibid*, 15 (2).

¹⁴⁴ Child Labor, <<http://www.childlabour.in/child-labour-in-africa.htm>>, accessed on 17 May 2011.

¹⁴⁵ *Ibid*, 17 (2) (c) (iv).

¹⁴⁶ United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 14 (3) (c).

¹⁴⁷ Obiokoye Onyinye Iruoma, *Eradicating delay in the administration of justice in African Courts: A comparative analysis of South African and Nigerian Courts*, 2005, <http://www.up.ac.za/dspace/bitstream/2263/942/1/obiokoye_io_1.pdf>, accessed on 17 May 2011.

mentally vulnerable while waiting for a trial in the conditions characteristic to African countries: little food, few beds, and small cells where children are not separated from adults.¹⁴⁸

Second improvement by the ACRWC is the reformation, reintegration and social rehabilitation of the child and his family, once the trial is over.¹⁴⁹ The ICCPR promotes the importance of the rehabilitation of juvenile persons,¹⁵⁰ the CRC does not. The rehabilitation, in this author's view, is especially important in a continent that suffers from lack of finance to perform criminal investigations appropriately and successfully. Due to the delay in trials and nearly inhuman conditions while in detention, minors face violations of their other rights, such as the right of health, as minors have been reportedly beaten by their adult inmates or even by the police officers who arrest them,¹⁵¹ liberty and movement. The principal offences committed by young people are theft, robbery, smuggling, prostitution, the abuse of narcotic substances, and drug trafficking.¹⁵² It does seem to the author that in African justice system, the possibility for a child to be exposed to a greater violation of his rights, than is the crime that he did, is very high.

Moreover, even if a child is found not guilty, he and his family have already been exposed to become associated with a criminal stigma. Such association could have serious negative influence to their life in the community, keeping in mind that Africans value community ties and consider them, together with family, to be the most important social element.

While having added certain important aspects to the juvenile justice system, the ACRWC omitted one specific element. Unlike the CRC,¹⁵³ it is not mentioned in the African treaty that imprisonment of a child shall be used only as a measure of last resort and for the shortest

¹⁴⁸ Michael Wines, *For Young, Justice is as Impoverished as Africa - Africa & Middle East - International Herald Tribune*, 2006, <<http://www.nytimes.com/2006/12/24/world/africa/24iht-web.1224africa.3998715.html>>, accessed on 17 May 2011.

¹⁴⁹ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 17 (3).

¹⁵⁰ United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 14 (4).

¹⁵¹ Michael Wines, *For Young, Justice is as Impoverished as Africa - Africa & Middle East - International Herald Tribune*, 2006, <<http://www.nytimes.com/2006/12/24/world/africa/24iht-web.1224africa.3998715.html>>, accessed on 17 May 2011.

¹⁵² Juvenile Delinquency, World Youth Report 2003, 198, <<http://www.un.org/esa/socdev/unyin/documents/ch07.pdf>>, accessed on 15 May 2011.

¹⁵³ United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 37 (b).

appropriate period of time. This is a problem because of the already mentioned inappropriate conditions that children are kept in while being imprisoned.

Children in armed conflict. With the continuing practice of children soldiers in Africa, there is a need for a stricter protection of children in this regard. As has been already mentioned, the CRC states the age of fifteen years as a minimum age of children to be used in armed conflicts.¹⁵⁴ The latter provision is made stricter by the OPICAC, as it forbids the States Parties to use children under eighteen in direct hostilities.

One of the most remarkable traits of the ACRWC is that it sets the requirement of at least eighteen years in order for a person to take direct part in hostilities. Although the age is not mentioned explicitly, the ACRWC says that States Parties must ensure that *no child* would be recruited or would voluntarily participate in armed forces.¹⁵⁵ Since, under the ACRWC, a person is a child until he reaches the age of eighteen, the ACRWC goes further than the CRC in protecting children. Moreover, the ACRWC elaborates on the protection and care of children who are affected by an armed conflict, and adds that the protection must apply also in situations of internal armed conflict, tension, and strife.¹⁵⁶

In 2007, the number of child soldiers worldwide was estimated to be three hundred thousand, and one hundred thousand of these children were involved in armed conflicts in Africa.¹⁵⁷ By 2007, child soldiers were reported to be actively deployed in Guinea, the Ivory Coast, the Democratic Republic (DR) of the Congo, Chad, Sudan, Somalia, Uganda, Rwanda, and Burundi.¹⁵⁸

There is no doubt that the problem of child soldiers in Africa is of great importance. As a proof of the latter is the fact that the very first detainee of the International Criminal Court (ICC), Thomas Lubanga Dyilo, former president of the Union of Congolese Patriots (UPC) and former rebel leader from the DR of the Congo, was charged with the war crime of enlisting children under the age of fifteen; conscripting children under the age of fifteen; and using children under

¹⁵⁴ United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 38.

¹⁵⁵ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 22 (2).

¹⁵⁶ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 22 (3).

¹⁵⁷ Child Soldiers, the Shadow of Their Existence, 2007, Africa,

<<http://cms2.warchild.nl/uploadedfiles/origineel/1182.pdf>>, accessed on 17 May 2011.

¹⁵⁸ Ibid.

the age of fifteen to participate actively in hostilities.¹⁵⁹ Lubanga, in period of 2002 – 2003 was the leader of one of the two ethnic groups engaged in an armed conflict in Ituri, in the north-eastern DR of the Congo.

Using child as a soldier, makes an extremely great negative effect on child's psychology and perspective of life – the child loses understanding between right and wrong, misses a chance to have a normal childhood. Perpetrators of such crime see children as their property, leaving them with no rights at all. Having set older age for legal involvement in armed conflicts, the ACRWC cultivates understanding about the absolute unacceptability for a minor to become an active soldier. Moreover, in Africa, a place where armed conflicts of any kind are often practice, it is necessary to widen the form of violent practices, in which using child soldiers is prohibited. The ACRWC definitely improves the protection of child soldiers by providing stricter and more regionally applied provisions.

Internally displaced children. The second big addition by the ACRWC is the one regarding internally displaced children. While both the CRC and the ACRWC talk similarly about the protection of refugee children, the ACRWC adds the protection of internally displaced children under the same article.¹⁶⁰ The internal displacement can be through political or military circumstances, such as internal armed conflict or civil strife, through natural disaster, breakdown of economic and social order, or howsoever caused.¹⁶¹ The ACRWC leaves the list of reasons of internal displacement open to new circumstances; therefore, the extension towards the protection of internally displaced children is possible.

Adding internally displaced children under the protection of the ACRWC is necessary, first of all, because it stipulates the understanding that internally displaced children, just because their forced movement does not involve crossing states' borders, are not in a more favorable position than the refugee children. In some cases, the situation of internally displaced children could be even worse. For example, the refugee children, if having fled to the country where human rights are respected more than in the country they escaped from, have the possibility for the better environment. Internally displaced children, in contrast, are left within the country, where they continue to be exposed to the threat of children's rights violations, among them sexual and physical violence, recruitment to the armed forces, denial of the right of education

¹⁵⁹ *Lubanga Case*, <<http://www.iccnw.org/?mod=drctimelinelubanga>>, accessed on 18 May 2011.

¹⁶⁰ *Ibid*, art. 23 (4).

¹⁶¹ *Ibid*.

and lack of access for food and clean drinking water.¹⁶² Secondly, according to the data of 2010, forty percent of world's internally displaced people were in Africa.¹⁶³ The number proves that the problem of internal displacement in Africa is real and widespread, therefore, requires a lot of attention.

When talking about the reasons which could cause the internal displacement, as the practice of events show, the open list proves to be an advantage. The data of 2010 proves government elections, not mentioned in the ACRWC, to have been a cause for internal displacement in Cote d'Ivoire, Nigeria and Sudan.¹⁶⁴ As a result, broadening the scope of children protection, the ACRWC, fulfilled its purpose as a regional treaty.

As can be seen, most of the provisions, among them the non-discrimination of children under the apartheid regimes, the abolition of harmful cultural practices, the prohibition of child marriages, the absolute prohibition of involvement of children in armed forces, and protection of internally displaced children, were added by the ACRWC because they reflect the African reality. Without the already mentioned particularities of the ACRWC, some more exist that can be derived particularly from the distinctive nature of the African human rights system.

2.4. The Influence of the ACHPR

The *African Charter on Human and People's Rights*, the main regional human rights document, was adopted in 1981 and came into force in 1986. As been mentioned before, the ACHPR did not elaborate on the protection of children, therefore such an omission became one of direct reasons for the need of a new specific treaty.

When compared with its regional and universal counterparts, the ACHPR is often described as the most original and controversial human rights document. There are several features of human rights that various scholars distinguish as belonging particularly to the African continent. However the most often described ones are the indivisibility of rights, the concept of 'peoples' rights, individual duties, limitations, claw – back clauses, and the lack of a derogation clause.

¹⁶² *Internal Displacement in Africa*, Internal Displacement Monitoring Centre, 2011, <[http://www.internal-displacement.org/8025708F004CE90B/\(httpRegionPages\)/B3BA6119B705C145802570A600546F85?OpenDocument](http://www.internal-displacement.org/8025708F004CE90B/(httpRegionPages)/B3BA6119B705C145802570A600546F85?OpenDocument)>, accessed on 18 May 2011.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

In this chapter the visible influence that three African features - indivisibility of rights, individual duties and claw – back clauses, had on the theoretical framework of children’s rights under the ACRWC will be examined. This will be done in order to show whether the continental legal characteristics had an influence in creating differences between the CRC and the ACRWC, and strengthening the regional protection of the children.

Socio – economic rights. Africa is a young and underdeveloped continent when it comes to talks about the possibility for the enjoyment of human rights. That is why all three generations of rights have a stressed importance in the ACHPR. As a result, socio-economic rights have the same importance as civil and political rights. The ACHPR was ahead of its time, as in the international arena, the rights under the *International Covenant on Economic, Social and Cultural Rights (ICESPR)*,¹⁶⁵ 1966, had to come a long way to reach the same justifiability as the rights under the *International Covenant on Civil and Political Rights (ICCPR)*¹⁶⁶, 1966.

The exaltation of socio-economic rights relates to the goal of development. Five of eight Millennium Development Goals for Africa include socio-economic rights: the eradication of extreme poverty and hunger; the achievement of universal primary education; reduction of children mortality; the improvement of maternal health and combating HIV/AIDS; malaria and other diseases.¹⁶⁷ As can be noticed, all these goals are directly linked to the rights of children. Therefore, one of the features of the ACRWC is the advanced status of socio-economic rights beyond the traditional confines of rights which are considered only attainable by “progressive realization.”¹⁶⁸ For example, the right to health and health services, to education, leisure, recreation and cultural activities, and freedom from economical exploitation has a broader scope than the same rights under the ICESPR.¹⁶⁹

Compared to the CRC, additions that the ACRWC makes are these concerning mainly the elaboration on the same socio – economic rights. Remembering what was said previously in this

¹⁶⁵ International Covenant on Civil and Political Rights, adopted 16 December 1966 (entered into force 23 March 1976) G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171.

¹⁶⁶ International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966 (entered into force 3 January 1976) G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3.

¹⁶⁷ „Millennium Development Goals for Africa”,

<<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/0,,contentMDK:20234497~menuPK:485868~pagePK:146736~piPK:226340~theSitePK:258644,00.html>>, 2011 – 01 – 03, 14:20.

¹⁶⁸ Stephen N. Achilinu, *Do African Children Have Rights? A Comparative and Legal Analysis of the United Nations Convention on the Rights of a Child*, (Universal-Publishers, Florida 2010) 73.

¹⁶⁹ *Ibid*, 73.

thesis, the CRC puts great emphasis on second generation rights as well. However, by placing the great importance on the socio – economic rights, in the ACWRC, same as in African human rights system in general, African society and states show their understanding about the difficulties that their continent is facing. It is said, that first step to solving the problem, is identifying it.

Duties. The Memorandum of the Meeting of Experts who prepared the ACHPR stated that “it is necessary to point out that if individuals have rights to claim, they also have duties to perform. In traditional African societies there is no opposition between rights and duties or between the individual and the community.”¹⁷⁰ Because of the specificity of African traditional values, duties of adults and children were incorporated in the ACHPR,¹⁷¹ and, later, duties were also drawn into the ACRWC. Again, note that the CRC provides only rights and freedoms for children.

The last article of Part I of the ACRWC deals with the responsibility of the child. It states that “every child shall have the responsibilities towards his family and society, the State and other legally recognized communities and the international community.”¹⁷² Further, the more explicit content of such an obligation is provided; for example, the duty to respect ones parents at all times and assist them in case of need, and the duty to preserve and strengthen African cultural values.¹⁷³ The absolute duty to respect parents – “at all times” - could be understood as a confrontation against the prohibition of the harmful cultural practices. However, general explanation is that the content of the duties must be understood in the context of the ACRWC as a whole. That is, duties are not meant to negate any rights and freedoms given to children, but, on the contrary, to put more emphasis and to strengthen their realization.¹⁷⁴

In this author’s opinion, it is hard to see duties as a firm advantage of the ACRWC. Although, it is understandable that, by placing duties on the children, the balance between the rights of a child and the environment that child finds himself in is set, duties could also be easily

¹⁷⁰ Eva Brems, *The Universality and Diversity of Human Rights*, (Cluwer Law International, The Hague 2001) 110.

¹⁷¹ African Charter on Human and People’s Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), adopted 27 June 1981 (entered into force 21 October 2001), art. 29.

¹⁷² African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 31.

¹⁷³ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 31 (a) (d).

¹⁷⁴ 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 *The Comparative and International Law Journal of Southern Africa*, 211.

used by States Parties to abuse children's rights, raising national interests higher than the child's. For example, the ACRWC proclaims that child has a duty to "serve his national community by placing his physical and intellectual abilities at its service."¹⁷⁵ Placing ones physical abilities could be understood as engaging in an armed conflict as a soldier, which is, as practice shows, acceptable in a number of African countries.

Claw – back clauses. The ACHPR contains several articles,¹⁷⁶ such as Article 9(2), which provides that "every individual shall have the right to express and disseminate his opinions within the law."¹⁷⁷ "Within the law" suggests that any authority deciding on the limitations of an expression of rights lies in the hands of the national law of the state. This kind of limitation is called a claw-back clause, and at first sight is in contradiction with the international law principle that national laws cannot prevail over the international or regional ones.

The ACRWC contains claw-back clauses as well.¹⁷⁸ For example, under the best interests of the child, it is stated that the views of child in all judicial and administrative proceeding affecting them "shall be taken in consideration by the relevant authority in accordance with the provisions of appropriate law."¹⁷⁹ Similarly, when enjoying the freedom of expression, children should be assured to "disseminate his opinions subject to such restrictions as are prescribed by law."¹⁸⁰

If claw-back clauses are successfully exercised, then the ACHPR, as well as the ACRWC, lose their authority, since the implementation of the provisions in the treaty could easily be denied or changed by national laws. However, the African Commission on Human and People's Rights, being aware of the ambiguous situation, held that "to allow national law to have precedent over international law of the Charter (the ACHPR) would defeat the purpose of the rights and freedoms enriched in the Charter. International human rights standards must always prevail over contradicting national law."¹⁸¹

¹⁷⁵ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 31 (b).

¹⁷⁶ African Charter on Human and People's Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), adopted 27 June 1981 (entered into force 21 October 2001), art. 12 (4), 10 (1), 13(1), 14.

¹⁷⁷ *Ibid*, art. 9 (2).

¹⁷⁸ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 4, 5, 6, 7, 8, 9.

¹⁷⁹ *Ibid*, 4 (2)

¹⁸⁰ *Ibid*, 7.

¹⁸¹ *Media Rights Agenda and Others v. Nigeria*, Communication no. 105/93, 128/94, and 152/96 (1998).

Since the inclusion of the claw-back clauses, together with the duties, in the ACRWC is the direct consequence of the specificity of the ACHPR, it would seem that such provisions are not meant as an obstacle for the enjoyment of children's rights, but rather as a sign of African uniqueness that would serve as the reinforcement for the successful implementation of children's rights. Having said that, this author sees the need of elaboration on the inclusion of claw – back clauses and duties in the ACRWC. The explanation of a meaning of these provisions should not be found between the lines of the treaty text, but rather, as a separate provision, leaving no opportunities to wrongful and abusive interpretations by the States Parties.

3. Treaty Monitoring Bodies

Establishing the rights and freedoms is only half of the work however; the other half is to create a treaty implementation mechanism. As has been already mentioned, the establishment of monitoring body is the part of the CRC, as well as the ACRWC. The last and very important difference between the CRC and the ACRWC, which has not yet been explained, lies in the treaties' supervisory bodies. Further chapter will discuss these differences.

3.1. The UN Committee on the Rights of a Child (CRC Committee)

The CRC Committee is made out of eighteen experts of high moral standing and recognized competence in the field covered by the CRC.¹⁸² The main function, of the CRC Committee, provided in Article 44 of the CRC, is to receive reports from State Parties concerning the measures that are adopted to give effect to the rights recognized by the CRC and on the progress made on the enjoyment of these rights.¹⁸³ State Parties who have acceded to the two *Optional Protocols* to the Convention must also submit additional reports on the implementation of these protocols.

First report has to be submitted within two years of the entry into force of the CRC for the State Party; afterwards, the reporting must be done every five years.¹⁸⁴ The *General Guidelines*¹⁸⁵ provide reporting States with the requirements of the report. The reporting State, after giving basic information on its population, general institutional and judicial framework of the country, has to provide relevant information on taken measures to ensure children's rights on eight broad topics:¹⁸⁶ general measures of implementation, definition of the child, general principles, civil rights and freedoms, family environment and alternative care, basic health and welfare, education, leisure and cultural activities, special protection measures. The goal of initial

¹⁸² United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989, art. 43 (2).

¹⁸³ *Ibid*, 44.

¹⁸⁴ *Ibid*.

¹⁸⁵ General Guidelines for Periodic Reports : . 20/11/96. CRC/C/58, adopted by the Committee on the Rights of the Child on 11 October 1996,

<http://www.nanoq.gl/emner/landsstyre/departementer/departement_for_sociale_anliggender/lovgivning%20og%20konventioner/~media/B02A6A78C6684AA6B4C971CE52E48E85.ashx>, accessed on 15 May 2011.

¹⁸⁶ *Ibid*, art. 11 – 166.

and periodic reports is to show what is being done by States Parties to comply its laws and administrative practices with the CRC.

The reports are necessary not only because they urge States Parties to take their obligations under the CRC seriously, but also because these reports provide State Parties and the CRC Committee with the basis of a discussion. The CRC Committee may request further necessary information on the implementation of the CRC and, after examining the reports, it provides Concluding Observations, where general evaluation of the report is given: the positive developments in the protection of children during the reported period are noted, and the areas that need follow – up and improvement are stressed with the recommendations.¹⁸⁷

The disadvantage of the Concluding Observations is that they are not legally binding to the States Parties, that is, the recommendations given are not obligatory but rather authoritative. The decision whether to follow the instructions of the CRC is left to governments of States Parties, which is not in favor for the protection of children's rights, since the recommendations could be left ignored. Moreover, in cases of overdue reports, the CRC Committee has no powers to enforce any legally binding measures on the States Parties. If a State Party has a tendency of persistent avoidance to report, the CRC Committee may, after notifying the State Party, to consider the situation in the country in the absence of a report, on the basis of all available information.¹⁸⁸ As a result, there are no strict sanctions against the state which denies its obligation to report.

Although African states were not quick to start the reporting procedures under the CRC, by 2006 December all African state parties to the CRC have submitted at least one report, and most of them had no overdue reports.¹⁸⁹ In spite of the fact that the Concluding Observations by the CRC Committee are not binding, functions of the CRC Committee are none the less important. Concluding Observations provide the State Party with detailed response on strengths and weaknesses in the implementation of the CRC. From the Concluding Observations, adopted as responses to the African states' reports, it is clear that biggest problems in implementation of

¹⁸⁷ Stephen N. Achilinu, *Do African Children Have Rights? A Comparative and Legal Analysis of the United Nations Convention on the Rights of a Child*, (Universal-Publishers, Florida 2010) 42.

¹⁸⁸ Overview of the Reporting Procedures, The Committee on the Rights of the Child, CRC/C/33/24 October 1994, par. 34, < <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G94/195/85/PDF/G9419585.pdf?OpenElement>>, accessed on 20 May 2011.

¹⁸⁹ Frans Viljoen, *International Human Rights Law in Africa*, (Oxford University Press 2007) 142.

the CRC are discrimination of girls, as a result of harmful cultural practices; shortages in educational and health systems; non-registration of newborns, especially in rural areas; issues of child labor; and unfavorable position of juvenile offenders.¹⁹⁰ Positive aspects of the States Parties' practices are those related to ratification of the Optional Protocols to the CRC and the ACRWC, together with the adoption of national laws which are aimed to implement the CRC. Because of the reporting system under the CRC, the situation of African children can be seen and understood more clearly.

Arising out of the experience on the reviewing of reports, the CRC Committee also releases General Comments, which covers various topics on matters concerning children.¹⁹¹ General Comments involve tendencies in certain area of children's protection and general guidelines that States Parties need to follow to improve the situation. The CRC Committee has issued thirteen General Comments since 2001: concerning general measures of implementation for the CRC, the aims of education, AIDS/HIV and other health issues, juvenile justice, indigenous children, disabled children, unaccompanied children outside their own countries, right to be heard and freedom from all forms of violence.¹⁹² Although the matters that General Comments elaborate on are directly relevant to the African states because of the situation of children's rights protection there, the CRC Committee, having no binding powers, lack the affect on the States Parties.

3.2 The African Committee of Experts on the Rights and Welfare of the Child (African Committee)

The African Committee consists of 11 members who work to promote and protect the rights and welfare of the child.¹⁹³ Article 42 of the ACRWC provides main functions of the African Committee: to collect and document information, commission interdisciplinary inter-disciplinary assessment of problems in Africa regarding rights and welfare of the child, organize

¹⁹⁰ Frans Viljoen, *International Human Rights Law in Africa*, (Oxford University Press 2007) 144.

¹⁹¹ *Ibid*, art. 38.

¹⁹² *Committee on the Rights of the Child - General Comments*, Office of the United Nations High Commissioner on Human Rights,
<<http://www2.ohchr.org/english/bodies/crc/comments.htm>>, accessed on 15 May 2011.

¹⁹³ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 32,33.

meetings to formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa. To strengthen the protection of a child, the African Committee is also enabled to cooperate with other African, international and regional institutions and organizations concerned with the promotion and protection of the rights and welfare of the child.¹⁹⁴

The African Committee, same as the CRC Committee, not only guards and promotes children's rights, but also monitors the implementation of such rights.¹⁹⁵ The African Committee also has powers to interpret provisions of the ACRWC by the request of State Party or an institution of the Organization of African Unity.¹⁹⁶ The State reporting procedure under the ACRWC resembles the one provided by the CRC: State Parties to the ACRWC must provide information on the implementation of the ACRWC, according to the protection of certain groups of children's rights. *Guidelines for Initial Reports for State Parties*¹⁹⁷ under the ACRWC sets the following topics to report on: general measures of implementation of the ACRWC - State's legislative and administrative practices regarding implementation; definition of a child; general principles – non-discrimination, best interest of the child, the right to life, survival and development, respect for the views of the children, and provision of information to children and promotion of their participation; civil rights and freedoms; family environment and alternative care; health and welfare; education, leisure and cultural activities; special protection measures; and responsibilities of the child.¹⁹⁸ As can be noticed, extra section of reporting, compared to the *General Guidelines* for reporting under the CRC, is added – States Parties have to indicate taken measures to guarantee the implementation of children's duties. The inclusion of duties is reasonable, given the practices in the African human rights system; however, the duties of the parents are not added in the section. This does not seem to be in favor of the child, since it implies that duties of persons who are responsible for the wellbeing of the child are not forced on

¹⁹⁴ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 42.

¹⁹⁵ *Ibid*, 42 (b).

¹⁹⁶ *Ibid*, 42, (c).

¹⁹⁷ Guidelines for Initial Reports of States Parties, Prepared by the African Committee of Experts on Rights and Welfare of the Child Pursuant to the Provision of Article 42 of the African Charter on the Rights and Welfare of the Child, Cmttee/ACRWC/2 II. Rev2, <http://www.africa-union.org/child/Guidelines%20for%20Initial%20reports%20_%20English.pdf>, accessed on 15 May 2011.

¹⁹⁸ *Ibid*, art. II-X.

enough. Such omission contradicts to the whole concept of duties, explained by the African Commission on Human and People's Rights – to strengthen the realization of human rights.

The reporting period for the first report under the ACRWC is the same as under the CRC – two years, however, following reports must be submitted every 3 years.¹⁹⁹ Theoretically, such obligation is well thought because the African Committee is able to monitor the protection of children's rights in shorter periods of time than it is able to be done under the CRC. The ACRWC fulfills its goal as the regional human rights document, since more detailed protection is offered. Given the intensity and frequency of violations of human and, in particular, children rights, that are happening in Africa, the obligation to submit a report every five years would make it more difficult to follow – up these violations and to prevent them from happening again. On the other hand, the shorter reporting period under the ACRWC is related to be fact that states which are parties to the CRC as well as to the ACRWC, have to submit their reports to both committees. It does seem logical to this author, that, in order to have more detailed responses about the protection of children, the reporting period under the regional treaty should be shorter than under the universal one.

According to the reporting guidelines under the ACRWC, those States Parties that have already submitted a report to the CRC Committee based on the provisions of the CRC may use elements of that report for the report that it submits to the African Committee as required by the ACRWC. The report should, in particular, highlight the areas of rights that are specific to the ACRWC.²⁰⁰ Basically, what State Party has to submit to the African Committee, is the report under the CRC, plus, the material representing additional regional requirements. However, if the State Party has not submitted report to the CRC Committee yet, the full report must be prepared for the African Committee.²⁰¹

¹⁹⁹ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 43 (b).

²⁰⁰ Guidelines for Initial Reports of States Parties, Prepared by the African Committee of Experts on Rights and Welfare of the Child Pursuant to the Provision of Article 42 of the African Charter on the Rights and Welfare of the Child, Cmttee/ACRWC/2 II. Rev2, art. XI (24), <http://www.africa-union.org/child/Guidelines%20for%20Initial%20reports%20_%20English.pdf>, accessed on 20 May 2011.

²⁰¹ Rules of Procedure of the African Committee of Experts on the Rights and Welfare of the Child, /ACRWC/II.Rev 2, rule 70, <http://www.africa-union.org/child/Rules%20of%20procedure%20of%20the%20Committee_English.pdf>, accessed on 20 May 2011.

The reporting task under the ACRWC, in a way, is made easier. The latter, in author's opinion, is an advantage, given the fact that African States are not eager to report to the African Committee and stricter provisions could make the situation even worse. Only four African States had submitted initial reports by the December of 2006.²⁰² In comparison with the reporting procedure under the CRC, great difference is seen. Moreover, unlike it happened with the CRC, African States have not improved their performance in time, as only eleven States Parties to the ACRWC submitted their initial reports to the present date – Burkina Faso, Cameroon, Kenya, Mali, Niger, Nigeria, Rwanda, Senegal, Tanzania, Togo and Uganda.²⁰³ None of them have submitted periodic report.

In this author's opinion, the reason why African states are reluctant to report under the ACRWC, maybe because states do not see it necessary, in certain cases, to submit the same information twice. The role of the ACRWC as a regional treaty would be stressed even more, if African states would have to prepare reports for the CRC Committee on the matters listed in the CRC, and submit reports to the African Committee only concerning the additional aspects of the ACRWC.

The second factor that has a potential to be seen as the one limiting the will of African States to report to the African Committee is that States Parties in their reports have to specify the action taken by in response to any recommendations made to it by the African Committee and/or to the CRC Committee.²⁰⁴ Double reporting on the measures taken under the recommendations of the CRC Committee seems unnecessary and the issue could be resolved by the better communication between the CRC Committee and the African Committee.

This author sums up that, in regard of additions to the theoretical framework of children protection under the CRC, the ACRWC improves the reporting procedure mostly because it strengthens the importance of such procedure by shortening the reporting period, and emphasizing the importance of the implementation of provisions specific to the ACRWC.

²⁰² Frans Viljoen, *International Human Rights Law in Africa*, (Oxford University Press 2007) 222.

²⁰³ State Reports and Committee Recommendations,
<<http://www.acerwc.org/state-reports/>>, accessed on 20 May 2011.

²⁰⁴ Guidelines for Initial Reports of States Parties, Prepared by the African Committee of Experts on Rights and Welfare of the Child Pursuant to the Provision of Article 42 of the African Charter on the Rights and Welfare of the Child, Cmttee/ACRWC/2 II. Rev2, art. XI (25),
<http://www.africa-union.org/child/Guidelines%20for%20Initial%20reports%20_%20English.pdf>, accessed on 20 May 2011.

By giving Observations of States Parties' Reports the African Committee emphasized mostly the same issues of implementation of the ACRWC, as did the CRC Committee on matters concerning the CRC: still existing harmful cultural practices; low rates of registration of children; discrimination issues, especially discrimination against girls; problems in accessing education and health services; violence against children and children abuse, in labor and sexually, child trafficking; and problems in juvenile justice.²⁰⁵ Apart from vague inclusion of children duties the African Committee does not make expressive African additions when evaluating the implementation issues under the ACRWC.

It is impossible yet to make conclusions about the effect that the Observations of the African Committee have, since no periodic reports exist, therefore it is impossible to check if the States Parties see the African Committee as an authoritative body. On the other hand, given the fact that the absolute majority of African States do not even comply with the obligation to report, the answer to the latter question is obvious.

3.3. Individual Communications Procedure

Moving away from the reporting procedure, this thesis will approach the crucial aspect of the ACRWC monitoring system – communications procedure, which is considered to be the main advantage of the African Committee's powers, in comparison with the ones of the CRC Committee.

If an international or regional treaty gives rights and freedoms to a person, it is only reasonable for that treaty to provide a mechanism which would create a possibility to protect these rights and freedoms – to file complaints to a competent treaty body when the violation of obligations appear.

The CRC Committee so far cannot receive individual and inter-state communications. The possibility to raise individual communications concerning children' rights only before other committees with competence – the Human Rights Committee; the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Committee on the Elimination of All Forms of Racial Discrimination; or the Committee on the Elimination of

²⁰⁵ State Reports and Committee Recommendations,
< <http://www.acerwc.org/state-reports/>>, accessed on 20 May 2011.

Discrimination Against Women, is the main factor supposing wider powers of the African Committee.

Article 44 of the ACRWC provides the possibility to any person, group or non-governmental organization recognized by the Organization of African Unity, by a Member State, or the United Nations, to submit communication to the African Committee relating to any matter covered by the ACRWC.²⁰⁶ The communications procedure was necessary, because without it, the whole creation of the regional children's rights would not satisfy its aim. The ACRWC recognizes that children has equal rights as adults to protect themselves and demands that States would repair wrongdoings the child has experienced. Individual communications procedure is a big contribution to protection of children's rights, setting example for the modern perspective towards children's law and children as such. Together with promoting rights of children, the ACRWC keeps the African thinking while providing that communications can be submitted by any person, group or non – governmental organization. African society believes that rights and freedoms can be best protected by the community; therefore, possibility to protect children's rights is put not only in the hands of individuals, but in the hands of society as well.

Although, theoretically, provision creating possibility to submit an individual complaint is, without a doubt, a huge advantage of the ACRWC, practically, certain matters, such as who is able to file and complaint and what are the admissibility requirements for the complaint need more elaboration. According to the *Guidelines for the Consideration of Communications Provided for in Article 44 of the ACRWC (Guidelines)*, the children themselves (and/or their parents), if the rights of a child under the ACRWC have been violated, can submit a complaint to the African Committee.²⁰⁷ Such given right to a child shows that African States understand the autonomy of the child as an independent subject to a law and with this understanding comes the better protection of a child. However, no communication by a child author, have been submitted yet.

Secondly, legal representatives of a child, group of persons or NGO recognized by the African Union, by a Member State or by any other institution of the UN system can submit a

²⁰⁶ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999 , art. 44

²⁰⁷ Guidelines for the Consideration of Communications Provided for Article 44 of the African Charter on the Rights and Welfare of the Child, ACERWC/8/4, chapter 2, art. 1 (1) (1).
<<http://www.acerwc.org/wp-content/uploads/2011/03/ACERWC-Guidelines-on-Communications-English.pdf>>, accessed on 20 May 2011.

complaint on behalf of the child, even without the consent of the victim, if it is proven that the author of the communication is acting according to the best interest of the child.²⁰⁸ It is necessary to let the a child to be helped to, because, firstly, the victim of maltreatment, being a minor, could not realize that his or her rights are being violated, and secondly, even if such understanding existed, it is very unlikely that a child would know where to go and whom to talk to in order to file a complaint. That is why the outside help is essential, especially for African children who live in rural areas and do not have an access to the information on such matter. The ACRWC does not provide for any program to spread the information in the community about the ways in which children could demand the fixing of the wrongdoings they are subjected to.

There were several communications submitted by NGOs, for example, the communication of *The Centre for Human Rights versus Uganda* that is being dealt with by the African Committee since 2005.²⁰⁹ This communication deals with children's rights violations in the rebel-controlled region of Northern Uganda, where children were reported to have been forcefully abducted to participate in hostilities between rebels and government troops. There were also incidents of the denial of the right to education, internationally displaced children's rights violations, sexual slavery and several more violations proscribed by the ACRWC.²¹⁰ However, neither communication against Uganda, nor other that have been submitted are not yet dealt with by the African Committee. The main reason for such ineffectiveness is that the African Committee, as well the African Union has very limited funds. As a result, the African Committee lacks trained personnel and working experience to perform its duties successfully.²¹¹

Thirdly, an individual complaint can be submitted, as an exception to the rule because of the need to ensure the best protection of a child, against the state which is not a party to the

²⁰⁸ Guidelines for the Consideration of Communications Provided for Article 44 of the African Charter on the Rights and Welfare of the Child, ACERWC/8/4, chapter 2, art. 1 (1) (1).
<<http://www.acerwc.org/wp-content/uploads/2011/03/ACERWC-Guidelines-on-Communications-English.pdf>>, accessed on 20 May 2011.

²⁰⁹ Ruth Esemeje Adegbola, *Children's Rights in Africa: An appraisal of the African Committee of Experts on the Rights and Welfare of the Child*, 2007, 32,
<<http://repository.up.ac.za/upspace/bitstream/2263/5343/1/adegbola.pdf>>, accessed on 20 May 2011.

²¹⁰ Ruth Esemeje Adegbola, *Children's Rights in Africa: An appraisal of the African Committee of Experts on the Rights and Welfare of the Child*, 2007, 33,
<<http://repository.up.ac.za/upspace/bitstream/2263/5343/1/adegbola.pdf>>, accessed on 20 May 2011.

²¹¹ Frans Viljoen, *International Human Rights Law in Africa*, (Oxford University Press 2007) 221.

ACRWC.²¹² In such event, children or party representing them have the right to file a complaint under universal human rights treaties that such State is a party to. In considering such a communication, the African committee has to collaborate with other treaty-implementing mechanisms which the ACRWC non-State Party has ratified. The provision is laudable, since ten of the African states which are by far not the best guardians of children and human rights have not ratified the ACRWC yet.

The other uncertainty that needs to be explained, concerns the admissibility criterion for the complaints. Situation is tricky, since the ACRWC does not mention any requirements. However, the Article 46 of the ACRWC provides that the African Committee should draw inspiration from international law and human rights, especially provisions of the ACHPR should be followed. As a result, the Guidelines set the admissibility criteria very much similar to the ones, expressed in the ACHPR: compatibility with the Constitutive Act or with the ACRWC; communication not exclusively based on information in the media; issues must not have been decided by another investigation, procedure or international regulation; exhaustion of domestic remedies or when the author of the communication is not satisfied with the solution provided at domestic level; presentation of the communication within a 'reasonable period' after exhaustion of the local remedies; the wording should not be offensive; the complaint cannot be anonymous or unwritten; and the State concerned (with exceptions) must be Party to the ACRWC.²¹³

This author would like to emphasize two big advantages of the admissibility criteria under the ACRWC. Firstly, because of the influence of the ACHPR, no strict time is set to present the communication after the local authorities had decided on the matter. Because of the diverse complexity of the issues that communications could cover, and because of the children vulnerability factor, it is best to decide „a reasonable period” in each case individually. Secondly, what already has been mentioned, the fact that State the complaint is filed against could even be a non-party to the ACRWC, if accepting such communication would promote the best possible protection of a child, implies the absolute superiority of the children's rights. As a result, it does seem that the African Committee is considered about the actual protection of the African child more than about strict procedural rules.

²¹² Guidelines for the Consideration of Communications Provided for Article 44 of the African Charter on the Rights and Welfare of the Child, ACERWC/8/4, chapter 2, art. 1 (2).
<<http://www.acerwc.org/wp-content/uploads/2011/03/ACERWC-Guidelines-on-Communications-English.pdf>>, accessed on 20 May 2011.

²¹³ *Ibid*, chapter 2, art. 2.

When talking about the individual complaint procedure, the other power of the African Committee should be noted – the possibility to carry the investigation of any matter, falling within the ambit of the ACRWC. During the Eight Ordinary Session it was suggested to read Articles 44 and 45 of the ACRWC together, since dealing with communications would require the African Committee to lead an investigation to assess the validity of the claim.²¹⁴ On spot investigations are indeed favorable since they help to get more detailed information on a case. Other advantage of the African Committee’s powers while investigating individual complaints is that the provisional measures can be requested to take by the State Party concerned, in order to prevent children from any other harm they could suffer.²¹⁵ What stresses the importance of the child even more is that children’s participation and opinion is greatly valued when dealing with the communications.²¹⁶

The main disadvantages of the individual communications procedure are the confidentiality when dealing with communications²¹⁷ and the fact that the African Committee, same as the CRC Committee, does not have binding legal powers to force the States Parties to follow – up the committees’ decisions. The confidentiality principle comes with the influence of the ACHPR, but resembles negative practice of “mother charter”. Although the confidentiality in children’s communications could be seen necessary because of the intension to protect a child from extensive stress and negative public opinion, the non-disclosure of information in communications to the public may prevent third parties from providing information and help that is needed to solve the communications successfully. Secondly, even though the monitoring system to check how the State Party complies with the African Committee’s opinion is without a doubt, necessary and welcome, any measures, apart from naming and shaming, are provided to really ensure that children’s protection would be improved.

²¹⁴ Julia Sloth – Nielsen, *Children’s Rights in African: A Legal Perspective*, (Ashagate Publishing Limited, Hapshire 2008) 49.

²¹⁵ Guidelines for the Consideration of Communications Provided for Article 44 of the African Charter on the Rights and Welfare of the Child, ACERWC/8/4, chapter 2 (4), <<http://www.acerwc.org/wp-content/uploads/2011/03/ACERWC-Guidelines-on-Communications-English.pdf>>, accessed on 20 May 2011.

²¹⁶ Ibid. chapter 3 (3).

²¹⁷ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999 , art. 44 (2).

3.4. The Third Optional Protocol to the CRC to Provide a Communications Procedure (The Third Optional Protocol to the CRC)

Although the possibility to file an individual complaint under the CRC does not officially exist yet, the draft of the Third Optional Protocol to the CRC has been prepared. The last chapter of this thesis will distinguish the main differences that would take place between individual complaint procedure under the CRC and the ACRWC, if the Third Optional Protocol to the CRC is adopted.

The most crucial difference is that adoption of the Third Optional Protocol to the CRC would not necessarily mean that children from all States Parties to the CRC would have right to a communications procedure. As has been already mentioned, States Parties to the CRC must ratify every *Optional Protocol* to the CRC separately. As a result, if State Party chooses not to comply with the communications procedure under the CRC, it is its legal choice. The ACRWC, in contrast, provides states with an obligation to accept the competence of the African Committee automatically by ratifying the treaty itself.²¹⁸ As a result, the ACRWC is stronger in protecting children's rights than the CRC, since the CRC once again, leaves more freedom to the States Parties to act on their own choice.

Secondly, what catches the attention is that under the Third Optional Protocol to the CRC, children, as such, cannot file a complaint. Individuals, meaning persons of age eighteen, can submit a communication if they have experienced violations of their rights under the CRC and its *Optional Protocols* when they were still children.²¹⁹ Under the ACRWC, children have the capacity to submit complaint themselves, therefore, have more legal autonomy. Although, under the Third Optional Protocol to the CRC, other individuals can file a complaint on behalf of the child, while he or she is still a minor, in author's opinion, the principal of a best interest of the child is met incompletely by not letting the children to submit communications themselves.

²¹⁸ African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999, art. 44.

²¹⁹ Revised proposal for a draft optional protocol prepared by the Chairperson-Rapporteur of the Open-ended Working Group on an optional protocol to the Convention on the Rights of the Child to provide a communications procedure, presented on 13 January 2011 by UN Human Rights Council, par. 2, art. 6 (1), <<http://www.crin.org/docs/A-HRC-WG-7-2-4.pdf>>, accessed on 20 May 2011.

Thirdly, what this author considers to be ambiguous is the possibility of a friendly settlement provided in the Third Optional Protocol to the CRC.²²⁰ It is stated that an agreement on a friendly settlement will be tried before the consideration of a communication. The ACRWC takes up on more extreme way of dealing with communications, since friendly settlement is not provided. The advantage of a friendly settlement is that the situation concerning the violation of child's rights could be solved with causing less stress and negative emotions to the child than it could be caused by going all the way with the communication. Moreover, the State that complaint is submitted against, should be in favor of a less "messy" way to solve the claim, in order to avoid negative image of the country that investigation of the communication could cause. On the other hand, friendly agreement could be used by States Parties to avoid solving the problems in their human rights systems and, in particular, in cases considering the communications against them. The CRC Committee has a power to follow – up the State's actions after the friendly settlement but it is not clear what effect would the follow – up have.

Fourthly, the Third Optional Protocol to the CRC, unlike the ACRWC, does not emphasize the victim's participation in communication's procedure. It is not clear how wide are the rights of the child when expressing his opinions to the CRC Committee.

To sum up, it is clear, that the individual communications procedure, under the ACRWC, is more child oriented, therefore, offers more effective protection of children's rights than the present draft of the Third Optional Protocol to the CRC. However, both individual communications procedures have a common feature that is of great importance: neither the CRC Committee, nor the African Committee, can absolutely ensure the States Parties to follow – up their opinions.

²²⁰Revised proposal for a draft optional protocol prepared by the Chairperson-Rapporteur of the Open-ended Working Group on an optional protocol to the Convention on the Rights of the Child to provide a communications procedure, presented on 13 January 2011 by UN Human Rights Council, par. 2, art. 12, <<http://www.crin.org/docs/A-HRC-WG-7-2-4.pdf>>, accessed on 20 May 2011.

Conclusion

Children, as humans, are entitled to the protection of their rights. However, certain aspects of such protection can differ at universal and regional levels. Regional human rights systems add specificities of the region while constructing human rights documents. Those specificities are supposed to elaborate on and improve the protection of children's rights, in comparison with the protection granted under the international children's rights protection.

The CRC is the first international legally binding treaty that protects children's rights. The CRC, in this author's opinion, could be considered as a crucial factor taking the protection of children to the higher level. However, when creating the universal treaty, it is normal that the universal picture prevailed over the regional characteristics, therefore, one particular continent – Africa, raised the idea of more regionally oriented children's rights instrument.

It can be said that the African continent had legitimate reasons for the creation of their own children's rights treaty. The CRC has a very broad scope of rights and freedoms, and in certain cases, lacks strictness when dealing with the powers of the States Parties. Some provisions of the treaty leave rather extended powers to the States Parties to decide on the implementation of the treaty, for example in the cases of the age of a child and the principle of a best interest of the child. Such freedom is left in order to satisfy cultural trends and needs of the world. In contrast to the intentions of the CRC creators, African states felt that provisions in the CRC are not sufficient in protecting the African children, that is why the ACRWC was adopted.

The ACRWC, in compliance with the aim of the regional human rights treaties, should have added to the protection of a child. In the current research, this author pursued to answer whether the ACRWC really strengthened the theoretical framework of the protection of African children, in comparison with the CRC.

The ACRWC and the CRC undoubtedly entail certain differences. The most important additions by the ACRWC are stating the age of majority as eighteen years; raising the minimal age for participation in direct hostilities which completely outlaws the use of child soldiers; the abolition of all forms of harmful cultural practices, and the prohibition of child marriages. These additions were made, because of the regional need to draw stricter obligations to the States Parties in order to ensure the best protection of the child. As a result, the ACRWC fulfils its aims as a regional document not only by broadening the scope of children's protection, but placing the

interest of a child in a superior position, prevailing over the States Parties' individual evaluation of the priorities.

Also important changes are the stronger emphasis on child's autonomy when manifesting his views; added protection of the internally displaced children; additions in juvenile justice; the elaboration on identity, health, and education rights; the establishment of a prevention measure in the labour exploitation issue; and the strengthened rights of expectant and nursing girls. All these provisions, theoretically, strengthen the protection of the African child, as they are the response to the children's rights violations which are often in African society.

Further, the ACRWC entails such additions as children's duties and claw – back clauses, which emerged under the influence of the ACHPR. The meaning of these additions, in this author's opinion, is ambiguous. Although, it was acknowledged that, theoretically, duties and claw – back clauses serve as guards for the better protection of human and children's rights, this author misses the more elaborate provisions, explaining in the ACRWC itself, that neither duties, nor claw – back clauses are able to weaken the protection of children.

Similar elaboration is needed on the role of the parents, because, although, under the ACRWC, the child has a freedom to choose what is best for him or her, the authoritative tradition involving older family members, could compromise such freedom.

Having established the improvements by the ACRWC, and matters that need elaboration to be fully considered as improvements, this author notices, that in some cases, the African treaty seems to have disadvantages in comparison with the CRC. The reference needs to be made to certain omissions in the ACRWC that do not guarantee the best possible protection of a child. Such shortages involve the omission of direct prohibition of the life sentence to minors, as well as missing the alternatives to the juvenile imprisonment; the skipped right to reestablish an identity; and left areas of health protection which, although being extremely relevant, are not elaborated on. Given the fact, that mentioned provisions are covered by the CRC, African children are not left without the guarantee to such rights. However, since the ACRWC is meant to elaborate and broaden the rights, given by the CRC, the regional treaty does not fully succeed in its purpose by omitting certain regionally important issues. Having said that, this author states that the additions that the ACRWC makes are very important improvements, and listed omissions do not compromise the accomplishments of the regional treaty.

The other advantages of the ACRWC, that will be mentioned separately, consider the powers of treaty monitoring body. By including the automatic acceptance of the African Committee's mandate to the ACRWC, African States, firstly, strengthened the authority of the monitoring body, and, secondly, provided less excuses for States Parties to avoid being subjected to the evaluation of their treatment towards children.

The State reporting obligations under the CRC and the ACRWC, although seems to collide in content, are none the less important, because being obliged to report about their actions towards children's protection, the states are constantly reminded to implement and respect children's rights. Theoretically, because of the fact that the ACRWC covers broader scope of children's rights, than the CRC, African States have to take care of more areas of children's protection, therefore, African reporting procedure helps to monitor States Parties better.

The individual complaint procedure is a huge advantage in the African children's rights system. Even compared with the Third Optional Protocol to the CRC, the ACRWC provides more children – friendly mechanism of protection. Providing the possibility for children to address their complaints themselves, in author's opinion, gives the children more confidence and belief in resisting the violations of their rights. The fact that wide circle of groups can submit a communication on behalf of the child is a very welcomed provision, steaming from African views that child is a responsibility of the whole community.

Unfortunately, despite of the fact, that the ACRWC covers the protection of implementation of children's rights thoughtfully, the African Committee does not have enough practical capabilities to enforce States Parties' compliance with the treaty. The main problems the African Committee faces are financial constraints and the lack of experience in dealing with its functions. No communications have been finished to deal with and, due to the low reporting rate only eleven responses to reports of the States Parties have been prepared. As a result, although African society succeeded in establishing the regional children's rights treaty that is more protective of a child, than the CRC, because of the restraints African continent faces, the fruits of such labor are still very limited.

In this author's opinion, difficulties in the implementation of the ACRWC, relate, aside of the issue of material recourses, to the fact that African states and people needed, and still need, time to process the changes in the perception of children's rights. Many aspects of African social and cultural practices that have been changed or denied by the ACRWC have been lasting

for years. As has been mentioned in this thesis, African states were slow in ratifying the ACRWC. A transitional period for the African states to acknowledge and commit it selves to the ACRWC seemed to be needed. Now, the transitional period to actually comply with such commitment is needed.

This author finalizes that the very fact of the establishment of the more protective and extended theoretical framework of the African children's rights treaty, in comparison with the CRC, should not be deemphasized because of the so far not so successful implementation. The adoption of the ACRWC gives hope that, in time, the best interest of the African child will become an actual and common practice of the African states.

List of Abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
ACHPR	African Charter on Human and People's Rights
CRC	Convention on the Rights of the Child
NGO	Non Governmental Organisation
OAU	Organization of African Unity
OPICAC	Optional Protocol on the Involvement of Children in Armed Conflict
OPSCCPCP	Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations

Bibliography

Danwood Mzikenge Chirva, *The Merits and demerits of the African Charter on the Rights and Welfare of the Child*, *The International Journal of Children's Rights* 10: 157 – 177, 2002 (Kluwer Law International 2002).

Early Childhood Education Journal, Vol. 34, No. 1, August 2006 (2006), The Story of Mary Ellen Wilson: Tracing the Origins of Child Protection in America, 2.

Eva Brems, *The Universality and Diversity of Human Rights*, (Cluwer Law International, The Hague 2001) .

Frans Viljoen, *International Human Rights Law in Africa* (Oxford University Press, Oxford 2007).

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 *The Comparative and International Law Journal of Southern Africa*, 211.

Geraldine van Bueren, *The International Law on the Rights of the Child*, (Kluwer Law International, The Hague 1998).

Jens Chr. Andvig, Sudharshan Canagarajah, Anne Kielland, *Issues in Child Labor in Africa*, Africa Region Human Development Working Paper Series, 2001.

Jeremy Sarkin, „The role of regional systems in enforcing state human rights compliance: Evaluating the African Commission on Human and People's Rights and New Court of Justice and Human Rights with Comparative Lessons from the Council of Europe and the Organization of American States”, *Inter-American and European Human Rights Journal*, Volume 1 (2000), No. 2, 199.

Julia Sloth – Nielsen, *Children's Rights in African: A Legal Perspective*, (Ashagate Publishing Limited, Hapshire 2008).

Magdalena Sepulveda, Theo van Banning, Gedrun D. Gudmundsdottir, Christine Chamoun, Willen J.M. van Genugten, *Human Rights. Reference book*, (University for Peace 2004).

Ruth Esemeye Adegbola, *Children's Rights in Africa: An appraisal of the African Committee of Experts on the Rights and Welfare of the Child*, 2007 Stephen N. Achilinu, *Do African Children Have Rights? A comparative and Legal Analysis of the United Nations Convention on the Rights of a Child*, (Universal-Publishers, Florida 2010).

Nsongurua J. Udombana, *War is not Child's Play! International Law and the Prohibition of children's involvement in Armed Conflicts*, 2006.

Obiokoye Onyinye Iruoma, *Eradicating delay in the administration of justice in African Courts: A comparative analysis of South African and Nigerian Courts*, 2005.

Thoko Kaime, *The African Charter on the Rights and Welfare of the Child: A socio-legal perspective*, (Pretoria Universal Law Press, Pretoria 2009).

Tokunbo Simbowale Osinubi and Oladipupo Sunday Osinubi, *Ethnic Conflicts in Contemporary Africa: The Nigerian Experience*, (Kamla – Raj 2006).

List of International and Regional Documents

African Charter on Human and People's Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), adopted 27 June 1981 (entered into force 21 October 2001), art. 18 (3).

African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49(1990); adopted 11 July 1990, entered into force 29 November 1999.

Declaration on the Rights and Welfare of the African Child, OAU Doc AHG/st.4(XVI) Rev.1 (1979).

International Covenant on Civil and Political Rights, adopted 16 December 1966 (entered into force 23 March 1976) G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171.

International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966 (entered into force 3 January 1976) G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3.

Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948.

United Nations Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263.

United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, G.A. Res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/ 54/49, Vol. III (2000), entered into force January 18, 2002.

United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49, 1989.

United Nations Declaration on the Rights of the Child, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).

Legislation of Treaty Monitoring Bodies

Committee on the Rights of the Child - General Comments, Office of the United Nations High Commissioner on Human Rights, available at:

<<http://www2.ohchr.org/english/bodies/crc/comments.htm>>.

General Guidelines for Periodic Reports : . 20/11/96. CRC/C/58, adopted by the Committee on the Rights of the Child on 11 October 1996, available at:

<http://www.nanoq.gl/emner/landsstyre/departementer/departement_for_sociale_anliggender/lov_givning%20og%20konventioner/~media/B02A6A78C6684AA6B4C971CE52E48E85.ashx>.

Guidelines for Initial Reports of States Parties, Prepared by the African Committee of Experts on Rights and Welfare of the Child Pursuant to the Provision of Article 42 of the African Charter on the Rights and Welfare of the Child, Cmttee/ACRWC/2 II. Rev2, available at:

<http://www.africa-union.org/child/Guidelines%20for%20Initial%20reports%20_%20English.pdf>.

Guidelines for the Consideration of Communications Provided for Article 44 of the African Charter on the Rights and Welfare of the Child, ACERWC/8/4, available at:

<<http://www.acerwc.org/wp-content/uploads/2011/03/ACERWC-Guidelines-on-Communications-English.pdf>>.

Revised proposal for a draft optional protocol prepared by the Chairperson-Rapporteur of the Open-ended Working Group on an optional protocol to the Convention on the Rights of the Child to provide a communications procedure, presented on 13 January 2011 by UN Human Rights Council, available at:

<<http://www.crin.org/docs/A-HRC-WG-7-2-4.pdf>>.

Rules of Procedure of the African Committee of Experts on the Rights and Welfare of the Child, /ACRWC/II.Rev 2, available at:

<http://www.africa-union.org/child/Rules%20of%20procedure%20of%20the%20Committee_English.pdf>.

Overview of the Reporting Procedures, The Committee on the Rights of the Child, CRC/C/33 24 October 1994, available at:

<<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G94/195/85/PDF/G9419585.pdf?OpenElement>>.

State Reports and Committee Recommendations, available at:

<<http://www.acerwc.org/state-reports/>>.

Case law and Communications

Media Rights Agenda and Others v. Nigeria, Communication no. 105/93, 128/94, and 152/96 (1998).

The Centre for Human Rights versus Uganda.

The Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06.

Register of Internet Resources

African Cultural Center, available at:

<http://www.africanculturalcenter.org/5_0people.html Child's Rights Information Network, „About Child Rights“, available at: <<http://www.crin.org/themes/ViewTheme.asp?id=2>>.

African Proverb of the Month, November, 1998, African Proverbs, Sayings and Stories, available at:

<<http://www.afriprov.org/index.php/african-proverb-of-the-month/23-1998proverbs/137-november-1998-proverb.html>>.

Child Labor, available at:

<<http://www.childlabour.in/child-labour-in-africa.htm>>.

Child Marriage: What We Know? Public Broadcasting Service, 2010, available at:

<<http://www.pbs.org/now/shows/341/facts.html>>.

Child Marriage, UNIFEC, available at:

<http://www.unicef.org/protection/index_earlymarriage.html>.

Child Soldiers, the Shadow of Their Existence, 2007, Africa, available at:

<<http://cms2.warchild.nl/uploadedfiles/origineel/1182.pdf>>.

Child Soldiers Global Report 2008, Coalition to Stop the Use of Child Soldiers, 2008, available at:

<<http://www.hrw.org/en/reports/2008/12/11/child-soldiers-global-report-2008>>.

Conny Rijken, Dagmar Koster, *Human Rights Approach to Trafficking in Human Beings in Theory and Practice*, 2008, available at:

<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1135108>.

Convention on the Rights of the Child, UNICEF, available at:

<http://www.unicef.org/crc/index_30229.html>.

Facts About Children and Poverty, available at:
<<http://www.care.org/campaigns/childrenpoverty/facts.asp>>.

Internal Displacement in Africa, Internal Displacement Monitoring Centre, 2011, available at:
<[http://www.internal-displacement.org/8025708F004CE90B/\(httpRegionPages\)/B3BA6119B705C145802570A600546F85?OpenDocument](http://www.internal-displacement.org/8025708F004CE90B/(httpRegionPages)/B3BA6119B705C145802570A600546F85?OpenDocument)>.

Juvenile Delinquency, World Youth Report 2003, 198, available at:
<<http://www.un.org/esa/socdev/unyin/documents/ch07.pdf>>.

Law Library of Congress, „Children Rights: International Laws“, available at:
<<http://www.loc.gov/law/help/child-rights/international-law.php>>.

List of Countries Which have Signed, Ratified/Acceeded to the African Charter on the Rights and Welfare of the Child, available at:
<<http://www.africa-union.org/root/au/documents/treaties/List/African%20Charter%20on%20the%20Rights%20and%20Welfare%20of%20the%20Child.pdf>>.

Lory S. Ashford, „America’s Youthful Population: Risk or Opportunity?“ , available at:
<<http://www.prb.org/pdf07/africayouth.pdf>>.

Margaret Grieco, Jeff Turner, Maternal mortality: Africa's burden, 2005, available at:
<<http://www4.worldbank.org/afr/ssatp/Resources/HTML/Gender-RG/Source%20%20documents/Tool%20Kits%20&%20Guides/Maternal%20Health/TLMH1%20Toolkit%20G&T%20Maternal%20Mortality.pdf>>.

Michael Wines, *For Young, Justice is as Impoverished as Africa - Africa & Middle East - International Herald Tribune*, 2006, available at:
<<http://www.nytimes.com/2006/12/24/world/africa/24iht-web.1224africa.3998715.html>>.

Millennium Development Goals for Africa, available at:
<<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/0,,contentMDK:20234497~menuPK:485868~pagePK:146736~piPK:226340~theSitePK:258644,00.html>>
Pan-African Voices for Freedom and Justice, „Regional Protection of Child Rights in Africa“, available at: <<http://www.pambazuka.org/en/category/comment/44416>>.

Somalia, The New York Times, 2011, available at:
<<http://topics.nytimes.com/top/news/international/countriesandterritories/somalia/index.html>>.

Timor – Leste, Yale Law School, 2005, available at:

<<http://www.law.yale.edu/rcw/rcw/jurisdictions/asse/timorleste/frontpage.htm>>.

UN Admits Newest Member State, UN News Centre, available at:

<<http://www.un.org/apps/news/infocusRel.asp?infocusID=27&Body=timor&Body1>>.

United Nations Girls Education Initiative, „School feeding programmes encourage children to attend schools“, available at:

<http://www.ungei.org/infobycountry/247_323.html>.

United Nations International Children’s Emergency Fund, "Rights Under the Convention on the Rights of the Child“, available at:

<http://www.unicef.org/crc/index_30177.html>.

United Nations International Children’s Emergency Fund, „Convention on the Rights of the Child“, available at: <<http://www.unicef.org/crc/>>.

United States Ratification of International Human Rights Treaties, Human Rights Watch, 2009, available at:

<<http://www.hrw.org/en/news/2009/07/24/united-states-ratification-international-human-rights-treaties>>.