

Submission on Draft General Comment No. 3 on Article 4 of the African Charter on Human and People's Rights (the right to life).
By the Child Rights International Network (CRIN)
(www.crin.org, info@crin.org), August 2015

The Child Rights International Network (CRIN) is a rights-based organisation that advocates for the full realisation of all children's rights. Our submission aims to contribute information on the way that the right to life applies to children and the ways that the right interrelates with the other rights of the African Charter. We urge the Commission to specifically address these issues in developing its Draft General Comment on the right to life.

Children's rights and the right to life

Under the African Charter, States have an explicit obligation to ensure the protection of the rights of children as stipulated in international declarations and conventions.¹ With this in mind, we urge the Committee to explicitly address the specific ways in which the right to life of children is violated and States' specific obligations to address these violations.

This brief submission does not address all of the areas in which children's rights concerns may arise with respect to the right to life under the Charter, but raises some of these issues. CRIN would be happy to provide in depth information or further resources on any of these topics at the request of the Committee.

Interrelation of the right to life with the other rights of the African Charter

As the introduction to the draft indicates, the General Comment stresses that "the right to life should not be interpreted too narrowly" and that "a positive responsibility to protect dignified life may require the realisation of other human rights". As the right to life is a core right underlying the other provisions of the treaty, we urge the Commission to explicitly address the ways that the right to life relates to the other rights under the Charter.

The requirement of accountability

The current section of the Draft General Comment addressing the need for accountability for violations of the right to life identifies the need for independent and impartial investigation, but does not address the need to make these justice mechanisms accessible to children. Children face greater challenges in accessing justice, whether because of restrictive rules on filing complaints, lack of legal advice and support or other restrictions that limit children's access to courts or complaints mechanisms.² Access to justice needs to be tailored to the needs of children if it is to be a reality for children.³

The death penalty

Specific international standards apply to the death penalty when applied for offences committed while under the age of 18 that are not identified in the current Draft General Comment. Capital punishment is prohibited as a sentence for an offence committed while a child under the UN Convention on the Rights of the Child (CRC)⁴ and International Covenant on Civil and Political Rights.⁵ Where the age of the

¹ African Charter on Human and Peoples' Rights, Article 18.

² See *Report of the United Nations High Commissioner for Human Rights: Access to justice for children*, 16 December 2013, A/HRC/25/35, Part III: Barriers to children's access to justice.

³ See CRIN's Access to Justice for Children Project for more information, www.crin.org/home/law/access. See also CRIN, *Access to justice: model report*, available at: <https://www.crin.org/en/library/publications/access-justice-children-model-report>.

⁴ UN Convention on the Rights of the Child, Article 37a.

⁵ International Covenant on Civil and Political Rights, Article 6(5).

accused is not clear, the court must presume that the person is under the age of 18.⁶ While abolition of the death penalty for child offenders is absolutely to be welcomed, it must also be seen in light of other human rights standards. Abolition of the death penalty for child offenders frequently leads to an increase in the sentencing of children to life imprisonment, a sentence recognised by the UN Special Rapporteur on torture as a form of cruel and inhuman punishment when applied to children.⁷ The African Charter enshrines an absolute prohibition on cruel inhuman or degrading punishment and so abolition and the resulting reform should take into account related standards in the Charter.⁸ We encourage the Commission to consider abolition within the broader context of developing a rights compliant justice system for children.

Infant and child mortality

The right to life is reinforced by a range of obligations on States relating to the right to health,⁹ including “to take appropriate measures to diminish infant and child mortality”.¹⁰ These deserve recognition in the General Comment. Despite progress, 10 African States were listed as having the highest rates of under-five mortality in the world in *UNICEF's State of the World's Children 2014*.¹¹ Rates actually increased between 1990 and 2012 in four States: Botswana, from 48 to 53; Lesotho 85 to 100; Swaziland 71 to 80; and Zimbabwe from 74 to 90.¹² We encourage the Commission to urge States to take specific actions to prevent avoidable death, disease and disability.

HIV and AIDS

HIV and AIDS pose a particular threat to children’s right to life and should be addressed explicitly in the General Comment. According to UNAIDS data from 2013, the majority of the 3.2 million children under the age of 15 with HIV live in sub-Saharan Africa and 76 per cent are without access to treatment. In addition, children living with HIV are one third as likely to have access to treatment as adults.¹³ Factors such as a lack of prevention efforts,¹⁴ the absence of treatment tailored to children and legal barriers that impede their access to services, such as a lack of anonymity and confidentiality, contribute to this situation. In its General Comment on Children and HIV/ AIDS, the Committee on the Rights of the Child asserts: *State obligations to realize the right to life, survival and development also highlight the need to give careful attention to sexuality as well as to the behaviours and lifestyles of children, even if they do not conform with what society determines to be acceptable under prevailing cultural norms for a particular age group... Effective prevention programmes are only those that acknowledge the realities*

⁶ See, for example, UN Committee on the Rights of the Child, *Concluding observations on the fourth periodic report of Yemen*, 25 February 2014, CRC/C/YEM/CO/4, paras. 33 and 34.

⁷ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 March 2015, A/HRC/28/68, para. 74. Available at: www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_68_E.doc.

⁸ See the Report of the Secretary-General on the question of the death penalty, 30 June 2014, A/HRC/27/23, para. 74. Available at: www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A_HRC_27_23_ENG.doc.

⁹ African Charter on Human and Peoples’ Rights, Article 16.

¹⁰ UN Convention on the Rights of the Child, Article 24(2); African Charter on the Rights and Welfare of the Child, Article 14.

¹¹ UNICEF, *State of the World’s Children 2014*, p. 24. Available at: http://www.unicef.org/sowc2014/numbers/documents/english/SOWC2014_In%20Numbers_28%20Jan.pdf

¹² Ibid: 30-34

¹³ UNAIDS, “New initiative announced to expand access to treatment for children in Africa”, August 2004. Available at: <http://www.unaids.org/en/resources/presscentre/featurestories/2014/august/20140808pepfarciff>

¹⁴ The South African government’s failure to make anti-retroviral drug treatment available beyond pilot sites to prevent mother-to-child transmission of HIV/AIDS was successfully challenged when the High Court ruled that this was an unreasonable limit on the constitutional duty to progressively realise the right to health. *Treatment Action Campaign et al v. Minister of Health*, 21182/2001

*of the lives of adolescents, while addressing sexuality by ensuring equal access to appropriate information, life skills, and to preventive measures.*¹⁵

Discrimination and infanticide

Every individual is entitled to the rights set out in the Charter without discrimination.¹⁶ However, some groups of children do not enjoy their rights to life and maximum development on an equal basis with others. For example, certain children are more vulnerable to infanticide and are killed systematically in cultures where aspects of their identity or circumstances are viewed as a bad omen (e.g. children with disabilities, children born in the breech position¹⁷ and children with albinism¹⁸). The UN Committee on the Rights of the Child has noted that such crimes against children with disabilities often go unpunished or carry reduced sentences.¹⁹

Harmful practices based on tradition, culture, religion or superstition

Harmful traditional practices perpetrated by parents, relatives, religious and community leaders and other adults scar or extinguish the lives of thousands of children around the world each year.²⁰ These practices include killings “in the name of honour”, the treatment of children accused of witchcraft, early marriages, female genital mutilation and male circumcision, among others.²¹ While some of these practices have been widely denounced, others remain relatively unchallenged and undiscussed. The Commission should urge States to enact laws prohibiting *all* harmful traditional practices in accordance with article 24(3) of the CRC and article 21 of the African Charter on the Rights and Welfare of the Child, and take measures to ensure these are adequately enforced.

Armed conflict

Children's rights to life and maximum development are violated in conflict in particular ways: they may be killed or maimed; abducted; recruited and used to participate directly in hostilities or in supporting roles; experience sexual violence and attacks on their schools; and suffer poor health and and severe malnutrition, as a result of the conflict. The response to violations of children's rights in armed conflict must be tailored to their needs. For instance children who have been recruited and used to commit atrocities must be treated as victims; ultimately it is the decision of adult commanders to recruit children and it is adults who should be held accountable for these atrocities and their life-long impact on children.

¹⁵ Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC/2003/3, para. 11

¹⁶ African Charter on Human and Peoples' Rights, Article 2.

¹⁷ See for example CRC concluding observations for Benin, 2006, para. 30. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/BEN/CO/2&Lang=En

¹⁸ Persons with albinism, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/24/57, 12 September 2013, p. 9, para. 43

¹⁹ CRC General Comment on the rights of children with disabilities (2006), p. 9, para. 31, available at: <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/GC/9>.

²⁰ International NGO Council on Violence against Children, *Violating Children's Rights: harmful practices based on tradition, culture, religion or superstition*, October 2012, p. 1. Available at: https://www.crin.org/sites/default/files/inco_report_15oct_2.pdf

²¹ The International NGO Council on Violence against Children has set out a list in its report on p.19

²² The only long-term way to mitigate violations of children's right to life should a conflict break out or resume in a country currently at peace is to guarantee respect for all areas of their rights.

Child labour and hazardous work

Globally, an estimated 215 million children work,²³ more than half of them in the worst forms of child labour, as defined by the International Labour Organisation,²⁴ with 21 per cent of children in sub-Saharan Africa affected.²⁵ This figure does not include the millions of children who work in agriculture and domestic service, where they are exposed to harmful chemicals, long hours and abuse. In many countries, this kind of work is exempt from laws governing child labour and occupational safety, threatening children's rights to life and health. The Commission should encourage States to undertake law reform to protect children from the worst forms of child labour, ratify the ILO's Conventions on the worst forms of child labour, the minimum age for admission to employment and on child domestic workers, and take measures to ensure these standards are enforced. Where children work in permitted forms of employment, this should be in "equitable and satisfactory conditions," and they should "receive equal pay for equal work", in accordance with article 15 of the Charter.

Suicide

Suicide is among the top five causes of mortality worldwide for 15-19 year olds, and according to the World Health Organisation, suicide rates among young people in Africa are at a peak.²⁶ States should be urged to investigate the causes of suicide among children and young people and develop counselling and other services tailored to their unique needs.

²² The UN Special Representative on children and armed conflict has said that there is no such thing as voluntary enrolment and that "the distinction between "voluntary" enlistment and forced recruitment is without meaning because even if children join on a "voluntary" basis, it is a desperate attempt to survive." SRSG's website: "Root causes of child recruitment". Available at: <https://childrenandarmedconflict.un.org/effects-of-conflict/root-causes-of-child-soldiering/>. In addition, the Paris Principles on Children Associated with Armed Groups state that: "Children who are accused of crimes under international law allegedly committed while they were associated with armed forces or armed groups should be considered primarily as victims of offences against international law; not only as perpetrators. They must be treated in accordance with international law in a framework of restorative justice and social rehabilitation, consistent with international law which offers children special protection through numerous agreements and principles," p. 9, 3.6

²³ International Labour Organisation, "Child Labour". Available at:

<http://www.ilo.org/global/topics/child-labour/lang-en/index.htm>

²⁴ ILO Convention No. 182 on the worst forms of child labour, 1999

²⁵ Ibid

²⁶ World Health Organisation, "First WHO report on suicide prevention", 4 September 2014. Available at: <http://www.who.int/mediacentre/news/releases/2014/suicide-prevention-report/en/>