

1 Statutory Limitations in Children’s Rights Protection under 2 Cameroonian Legal Systems

3 **Elvis Fokala**

4 <https://orcid.org/0000-0003-3631-0628>
5 Centre for Human Rights,
6 Faculty of Law, University of Pretoria
7 elvis.fokala@up.ac.za

8 **Abstract**

9 In terms of Article 1(1) of the of the African Charter on the Rights and Welfare
10 of the Child (African Children’s Charter), state parties are encouraged to
11 recognise the rights, freedoms and duties enshrined in this Charter and to
12 undertake the necessary steps, in accordance with their Constitutional processes
13 and with the provisions of the present Charter, to adopt such legislative or other
14 measures as may be necessary to give effect to the provisions of the African
15 Children’s Charter. Legislation is one of the most powerful instruments a
16 government has to regulate society and protect its citizens within its national
17 territory. It also outlines the rights and responsibilities of individuals and
18 authorities for whom legislation is intended to protect and govern. However, no
19 amount of legislation will have value if there is neither discipline nor
20 enforcement mechanisms, for example, through the establishment of key
21 institutions. This article sets out to evaluate the sufficiency of the laws and
22 institutions with a mandate to protect children’s rights in Cameroon.

23 **Keywords:** Cameroon; African Children’s Charter; children’s rights; child law; state
24 obligation

25

26 Introduction

27 The African Children’s Committee adopted its Rules of Procedure and Guidelines on
 28 State Reporting during its second session in 2002.¹ As indicated in its title, this
 29 instrument is a guideline, aimed to assist state parties to the African Children’s Charter
 30 to report adequately to the committee. Under international human rights law, only state
 31 parties to a particular instrument are obliged to report to the monitoring organ of that
 32 instrument.² Cameroon ratified the African Children’s Charter on 5 September 1997.
 33 Following its accession to the Charter, the state submitted its initial report on 29
 34 September 2003.³ According to article 43 of the Charter, a state party is required to
 35 submit its initial report within two years after it accedes to the Charter. Akin to most
 36 state parties to the African Children’s Charter, Cameroon’s initial report was late.
 37 Cameroon’s report was submitted six years after the state acceded to the Charter (1997
 38 to 2003). However, despite this lethargic start, the State has maintained an impressive
 39 record in relation to submitting its periodic reports to the committee.

40 According to the African Children’s Committee, thirty-eight out of fifty state parties to
 41 the Charter have submitted initial reports of which nine have submitted the first periodic
 42 report.⁴ This is encouraging as it is only through state reports that the committee can
 43 assess and make observations on the state of a state party’s domestication and
 44 implementation of the Charter, its recommendations, decisions and concluding
 45 observations. For example, through its reports to the African Children’s Committee,
 46 Cameroon has continuously provided and updated the committee on the legal and policy
 47 reforms made at the national level to ensure the protection of children’s rights within its
 48 national territory. However, there seems to be a disconnect between what is being
 49 reported in the state party reports and the reality in Cameroon. Thus, the focus of this
 50 article is to investigate two key issues. The first is to establish whether both in law and
 51 practice, the statutes highlighted in Cameroon state party reports exist and are
 52 applicable. Secondly, it will be ascertained, from an administrative and institutional
 53 viewpoint, whether the state has, indeed established the requisite institutions to enable
 54 the proper implementation of children’s rights at the national level. Overall, seen
 55 through an analytical human rights lens framed by the African Children’s Charter, this
 56 contribution seeks to investigate the gaps that exist in Cameroon’s statutory protection
 57 of children’s rights.

1 A Lloyd, ‘The first meeting of the African Committee of Experts on the Rights and Welfare of the Child’ 2002 AHRJ 320.

2 See for example, the general guidelines for reporting, to the UN Committee on Economic, Social and Cultural Rights, available at <file:///C:/Users/u05127913/Downloads/GL032748.pdf> 20-46 accessed 17 January 2021.

3 <<https://www.acerwc.africa/initial-and-periodic-reports/>> accessed 7 October 2019.

4 ACERWC’s webpage <<https://reporting.acerwc.africa/StateReportsConcludingObservations>> accessed 17 January 2021.

58 This contribution is limited to Cameroon’s reporting record to the African Children’s
 59 Committee. It does not, for example, investigate Cameroon’s reporting record to the
 60 Committee on the United Nations Convention on the Rights of the Child (Committee
 61 on the CRC).⁵ However, because Cameroon is a party to both treaties, overlaps cannot
 62 be completely avoided. Where such overlaps occur, the intention will be to draw some
 63 comparative analyses of Cameroon’s commitment to both monitoring bodies and
 64 reference specific aspects that also speak to the crux of this contribution. The article
 65 also does not analyse the current restive situation in the English-speaking regions in
 66 Cameroon and its resultant effects on children who are now internally displaced while
 67 their rights are perpetually being violated. The article is divided into six main sections
 68 including the introduction and concluding sections. The sub-sections are mainly tailored
 69 to outline existing gaps and make practical suggestions to strengthen Cameroon’s
 70 children rights protection mechanisms.

71 Cameroon the State Party—The State of Children’s Rights Protection in Cameroon

72 **An Insight into the Wellbeing of Children in Cameroon**

73 From a national legislative perspective, the State of Cameroon has made minimal efforts
 74 to protect its children through the enactment of laws. The struggles of children in
 75 Cameroon are aggravated by rigid bureaucratic challenges hindering them from thriving
 76 beyond an ordinary and difficult childhood. These include, but are not limited to,
 77 inadequate implementation of the limited existing sectoral laws and policies intended to
 78 assist children, unsatisfactory budgetary allocation for services related to children, such
 79 as education and health care, compounded by an endemic mismanagement of resources
 80 by officials.

81 According to a 2008 report published by the African Child Policy Forum (ACPF),⁶
 82 Cameroon is a ‘less child-friendly’ state.⁷ In this report, the ACPF provides an in-depth
 83 analysis of the state of African states’ legal and policy frameworks for child protection,
 84 states’ budgetary allocations to services related to children, and notable successes at
 85 state level for children’s rights protection.⁸ Four years after the ACPF’s report, the 2012
 86 United States Bureau of Democracy’s Human Rights Report on Cameroon paints a

5 Cameroon ratified the CRC on 11 January 1993
 <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en> accessed 20 November 2019.

6 The African Child Policy Forum is an independent, non-profit, pan-African institution of policy research and dialogue on the African child. The Forum has a rich track record in data analysis and comparative and analytical research on children’s rights in Africa.

7 The African Child Policy Forum, *The African Report on Child Wellbeing: How Child-friendly are African Governments?* (Addis Ababa, The African Child Policy Forum 2008) 7.

8 A Bequele, ‘Monitoring the Commitment and Child-friendliness of Governments: A New Approach from Africa’ *Child Abuse & Neglect* (Elsevier 2010) 34–44.

87 rather bleak picture.⁹ In that report, child abuse, amongst others, is highlighted as a
 88 significant problem in Cameroon.¹⁰ Also, when the ACPF published its updated report
 89 in 2013, the situation had not improved and consequently, the state was still classified
 90 a less child-friendly state and labelled further as one of the countries that ‘showed a
 91 sharp fall in ranking’ from the 2008 index.¹¹ In 2018, in its third successive report on
 92 child well-being in Africa, the ACPF classified Cameroon as a country out of step with
 93 international and African Union (AU) standards.¹² More specifically, in the 2018
 94 Report, the ACPF classified Cameroon as a state that still endorses child marriage.¹³
 95 Based on these, it is therefore not surprising that, in its decision on the communication
 96 submitted by the *Institute for Human Right and Development in Africa and Finders*
 97 *Group Initiative on Behalf of TFA (a Minor) v the Government of the Republic of*
 98 *Cameroon*, which also highlights the low-spirited reality in Cameroon, amongst others,
 99 the African Children’s Committee called on Cameroon to ‘[e]nact and implement a
 100 legislation eliminating all forms of violence, including sexual violence against
 101 children.’¹⁴

102 **The Constitution of Cameroon**

103 Akin to most constitutions around the world, Cameroon’s Constitution is the leading
 104 Act of parliament at the domestic level. It is also the leading law of the land. However,
 105 the 1996 Constitution of Cameroon is a typical ideological Constitution with no clear
 106 intention to ensure the protection of the rights of the most vulnerable children in the
 107 twenty-first century. This Constitution has been amended several times. However, the
 108 amendments have not addressed the inclusion or strengthening of the constitutional
 109 protection of children’s rights.¹⁵ As a state party to the African Children’s Charter, for
 110 example, Cameroon has an irrefutable mandate under article 1 of the Charter to:

111 Undertake the necessary steps, in accordance with their Constitutional processes
 112 and with the provisions of the present Charter, to adopt such legislative or other
 113 measures as may be necessary to give effect to the provisions of this Charter.

114 This has not been adhered to and the current pace at which Cameroon enacts its major
 115 legislation, suggests that it might not happen soon. Despite the fact that the current
 116 Constitution is largely flawed by huge rights-based gaps with rigid rules and regulations

9 See eg, United States Department of State Bureau of Democracy 2012 report on human rights in Cameroon available at <<http://www.state.gov/documents/organization/204309.pdf>> accessed 23 January 2019.

10 *ibid.*

11 The African Child Policy Forum (n 7) 39–47.

12 *ibid* (2018) 20–27.

13 *ibid.*

14 *Institute for Human Rights and Development in Africa and Finders Group Initiative on behalf of TFA (a minor) v the government the Republic of Cameroon*, Communication No: 006/Com/002/2015 Decision No:001/2018 16.

15 Amended in 2008 by Law No. 2008-1 of April 14, (to Amend and Supplement some Provisions of Law No. 96-6 of January 18, 1996 to Amend the Constitution of June 2, 1972).

117 proliferating from the different sections of government, the state does not seem
 118 interested in incorporating human rights or children’s rights provisions in the
 119 Constitution. Succinctly, the 1996 Constitution of Cameroon contains no Bill of Rights.
 120 The few rights provisions in the Constitution are all inscribed in the preamble with little
 121 or no substantive context. For example, one of the rights protected in the preamble
 122 vaguely provides that, ‘the Nation shall protect and promote the family which is the
 123 natural foundation of human society. It shall protect women, the young, the elderly and
 124 the disabled.’ At a time of increasing demand to adequately protect children’s rights in
 125 Africa, it is difficult to fathom how Cameroon intends to protect its children with such
 126 limited constitutional provisions.

127 A positive clause in terms of children’s constitutional rights is Article 65 of the
 128 Constitution which stipulates that the preamble is part and parcel of the Constitution.
 129 Although the preamble of a constitution is not, generally, justiciable in a court of law,
 130 in Cameroon, it is. However, this is not sufficient, because the lack of depth in the
 131 provisions related to children is probably a strong contributor to the massive children’s
 132 rights violations registered in Cameroon. The lack of specific Acts of parliament related
 133 to children, to strengthen children’s rights protection seems to condemn the state to
 134 failing further in its statutory obligation to protect its children. Apart from children’s
 135 right to education, protected in paragraph 18 of the preamble, which opines that ‘the
 136 State shall guarantee the child’s right to education. Primary education shall be
 137 compulsory. The organisation and supervision of education at all levels shall be the duty
 138 of the State,’ the Constitution protects no other socio-economic right that is directly
 139 ascribed to children.¹⁶

140 According to O’Mahony, ‘the absence of specific constitutional protection for
 141 children’s rights [in a Constitution] can be the very reason for the subordination of
 142 children’s interests to those of adults.’¹⁷ This is critical because, in other African
 143 countries, for example, Kenya,¹⁸ South Africa¹⁹ and Nigeria,²⁰ children’s rights have
 144 been incorporated in the Constitution, and further expanded through other Acts of
 145 parliament, which at the National level in these countries, have provided the much
 146 needed dynamic influence to shape the jurisprudential literature review of children’s
 147 rights protection. The major difference between these countries and Cameroon is that
 148 they have legislation in place that provide the necessary legal support for a child who is

16 A Akonumbo, ‘Indirect Constitutional Protection of Economic, Social and Cultural Rights in Cameroon’ In D Chirwa and L Chenwi (eds) *The Protection of Economic, Social and Cultural Rights in Africa: International, Regional and National Perspectives* (Cambridge University Press 2016) 527–549.

17 C O’Mahony. ‘Constitutional Protection of Children’s Rights: Visibility, Agency and Enforceability’ *Human Rights Law Review* 2019, 1–34 <doi: 10.1093/hrlr/ngz017> accessed 15 May 2022.

18 Kenya ‘The Children’s Act 2001’.

19 See eg South Africa Children’s Act 38 of 2005.

20 Constitution of Nigeria 1999 chapter 5.

149 in conflict with the law. The existence of these pieces of legislation is significant to
 150 protect and guarantee the rights of the children in South Africa, Kenya and Nigeria.

151 This legislative gap in Cameroon is regrettable, but all is not lost. One way of construing
 152 any form of protection for children in the Constitution is by interpreting expressions
 153 generally used, such as ‘everyone,’ ‘all citizens,’ and ‘every person.’²¹ These
 154 expressions are inclusive and indeed mean everyone and by extension underline one of
 155 the key objectives of the African Children’s Charter and the CRC, which is that children
 156 are human rights holders alongside adults. However, as the UN Committee on the CRC,
 157 rightly points out, the test must be in the application of the rights and whether they are
 158 truly realised for children and directly invoked before a court of law.²²

159 Another method to relate the limited children’s rights protected in the Constitution, is
 160 through an expansive interpretative approach²³ with children as beneficiaries. This
 161 method of interpretation establishes a wider coverage of these rights and include
 162 children as beneficiaries of the rights protected without distorting the textual context in
 163 the Constitution. The obvious responsibility of legal representatives in courts will be to
 164 stretch the normative content of these rights, convince the court and then in the process
 165 claim these rights for children. The author believes that this could be the plausible way
 166 to finesse such loose constitutional rights existent in the Constitution of Cameroon.
 167 Thus, any attempt to relate or suggest such rights (initially intended for adults) to
 168 children, for example, could come down to a technicality.

169 **Other Children’s Laws in Cameroon**

170 Cameroon lacks sufficient laws that separately and comprehensively protect children’s
 171 rights. Sporadically, the state issues Decrees, Orders, Ordinances and Ministerial
 172 Instructions to respond to certain and specific aspects of children’s rights.²⁴ Some of

21 These terms are the most popular expressions used in the Constitution. They are inclusive and do denote all people—but key to the general development of rights is specific protection of specific groups of people. The term ‘children’ does not exist in the Cameroonian Constitution, rather it is incorporated in these phrases.

22 The committee on the CRC has defined implementation as ‘the process whereby States parties take action to ensure the realization of all rights in the Convention for all children in their jurisdiction.’ See CRC General Comment 5 in ‘General Measures of Implementation of the Convention on the Rights of the Child (2003) CRC/GC/2003/5 para 1. Implementation, in the context of international human rights law, has also been defined by the UN OHCHR as ‘moving from a legal commitment, that is, acceptance of an international human rights obligation, to realization by the adoption of appropriate measures and ultimately the enjoyment by all of the rights enshrined under the related obligations’; UN, ‘Report of the High Commissioner for Human Rights on Implementation of Economic, Social and Cultural Rights’ *E/2009/90* (2009) para 3.

23 This approach gives wider effect to a legal provision both subjectively and objectively. For details on this interpretation, see, S Dothan ‘In Defence of Expansive Interpretation in the European Court of Human Rights’ (2014) *Cambridge Journal of International and Comparative Law* 508–531.

24 CRC Committee, ‘Consideration of Reports Submitted by States Parties under Article 44 of the Convention – Cameroon’ CRC/C/28/Add.16 para 19.

173 these laws are outdated²⁵ or imported—outdated laws from neighbouring Nigeria and
 174 applicable mostly in the English- speaking regions (common law) of Cameroon.²⁶ For
 175 example, in the second half of the twentieth century, four pieces of legislation
 176 (Circulars) intended to protect children were promulgated into law. These are: Circular
 177 on Pre-trial Detention of Minors,²⁷ Circular on Juvenile Delinquents and Runaway
 178 Children,²⁸ Circular on Methods of Investigation in Relation to the Adoption of
 179 Children²⁹ and Circular on the Authorisation of Temporary Child Custody.³⁰ These were
 180 also captured in the state’s Report of 2009 to the Committee on the CRC as current legal
 181 protection accorded to children in Cameroon.³¹

182 Another elusive piece of legislation, which can also be used to protect children in
 183 Cameroon is Ordinance No 81/02 of 19 June 1981³² and the French Civil Code.³³
 184 Through these instruments, children’s rights are guaranteed, directly or through a
 185 representative in legal and administrative proceedings, in cases related to custody,
 186 divorce or separation proceedings in marriage and in hearings in the Council Chamber.
 187 These pieces of legislation, which Cameroon has flagged in several State reports as one
 188 of its laws that protect children’s rights in Cameroon, are old and out of touch with the
 189 current developments in Children’s rights jurisprudence in Africa and globally. For
 190 example, even though the African Children’s Committee has repeatedly condemned
 191 child marriage in Africa, Cameroon’s Ordinance No 81/02 of 19 June 1981 promotes it.
 192 In this Ordinance, Article 52(1) holds that ‘[n]o marriage may be celebrated if the girl
 193 is below the age of 15 years or the boy below the age of 18 years, except under an
 194 exemption granted by the President of the Republic for serious reasons.’³⁴ This
 195 provision, is problematic, for two reasons. The first, is a child’s right to non-
 196 discrimination in terms of its gender and age. The second, as indicated earlier, the
 197 provision approves of child marriage.³⁵ These are undisputable contradictions to

25 For example, the 1804 Napoleonic Civil Code, the Act of 24 July 1889 on the Protection of Ill-treated and Abandoned Children, the Act of 19 April 1898 on the Punishment of Violence, Assault, Acts of Cruelty and Offences Against Children, the Decree of 30 November 1928 establishing special courts and the probation system for minors, the Decree of 30 October 1935 on the Protection of Children, the Decree of 23 September 1954 on the Family Record Book.

26 For example, Juveniles Courts Rules, CAP 32 of the 1958 Laws of the Federation of Nigeria. The irony here is that Nigeria has long consolidated and improved its child law legislation in the Child’s Right Act of 2003.

27 No. 9062/DJAS of 15 July 1967.

28 No. 300018/DJAS/of 8 July 1968.

29 No. 522/MSAP/DAS/BDI of 27 June 1974.

30 No. 81/0018/LC/MINAS/SPFI of 18 September 1981.

31 Committee on the CRC (n 24). Access to these laws is difficult and almost impossible. Consequently, any attempt to quote and analyse any provision protected in any of these circulars, is a risk this contribution cannot take as it will be mere speculation.

32 On the organisation of the civil register Arts 52(1) and 64(1).

33 See Art 238.

34 See also Art 488 of the Civil Code.

35 Article 21.

198 Cameroon's commitment to the African Children's Charter, to uphold, at all times the
199 best interests of the child.

200 In 1990, the state promulgated two laws that are not directly intended for children but
201 could, through expansive interpretation, extend to safeguard children's rights. These are
202 the Act on Freedom of Social Communication,³⁶ and the Act on Freedom of
203 Association.³⁷ Although not directly intended to protect children, both Acts protect
204 some aspects of children's rights—for example, a child's right to freedom of expression
205 and of association. Like the other laws stated above, these Acts of parliament are
206 elusive—especially because they are inaccessible.

207 Two other pieces of legislation which could perhaps be identified as central to protecting
208 children's rights and possibly clear the inconsistencies in terms of age disparity and
209 other related issues, are still in draft stages. Unfortunately, the laws have not been
210 promulgated and have been shelved as draft laws for over ten years, and still counting.
211 These laws, (the Persons and Family Code and the Child Protection Code), are
212 specifically intended to extensively address a number of issues ranging from the best
213 interests of the child to the protection of the family environment.³⁸ It is crucial that
214 stakeholders, especially lawmakers and policy drivers in Cameroon, expedite the
215 process of adopting these laws because without a clear statute at the national level that
216 protects children and gives them assurances, Cameroon will continuously be regarded
217 as a less child-friendly state. Legislation is one of the most important instruments of
218 government in organising society and protecting its citizens within its national territory.
219 Amongst others, legislation outline the rights and responsibilities of individuals and
220 authorities who govern. Legislation will have little value if there is neither discipline
221 nor enforcement mechanisms, for example, through the establishment of key
222 institutions, discussed below.

223 International Children's Law in Cameroon

224 Perhaps because the State is conscious of its children's rights legislative lacuna at the
225 national level, Cameroon has ratified almost all significant international instruments that
226 protect children's rights. Its ratification of, for example, the International Covenant on
227 Civil and Political Rights (1984), the Covenant on Economic Social and Cultural Rights
228 (1984), the Convention against Torture and Other Cruel Inhuman or Degrading
229 Treatment or Punishment (CAT) (1986), the CRC (1993), Convention on the
230 Elimination of All Forms of Discrimination against Women (1994), the African
231 Children's Charter (1997), the Convention on the Rights of People with Disability
232 (2008), African Women's Protocol (2012) and the Optional Protocol to the Convention

36 No. 90/53 of 19 December 1990.

37 No. 90/53 of December 1990.

38 See eg Child Protection Code draft ss 5, 18 & 42 of the draft.

233 on the Rights of the Child on the involvement of children in armed conflict (2013) show
234 pre-emptive intentions by the state to protect its citizens, and especially children.

235 Through Article 45 of the Constitution, which recognises ratified international law
236 instruments at the highest echelon of legally binding instruments in Cameroon—with
237 or without national law protection, ratified international laws are prioritised in courts of
238 law and in the general protection of children’s rights in this case. Hence, thanks to
239 Article 45 (which demonstrates Cameroon’s monist approach to international law) and
240 the ratification of these instruments, children can now claim, through a legal
241 representative,³⁹ their rights available to them.

242 This article does not address the level at which these international law instruments have
243 been referred to in local courts to protect children in conflict with the law, as research
244 revealed that there is little or no reference to international law, in matters related to
245 children in Cameroon courts. Notwithstanding, the benefits of the ratification of the
246 international treaties are significant. mainly through article 45 of the Constitution.
247 Suggestively, adherence to international instruments can and should be seen as a ‘quick-
248 fix’ attempt by the government to fill the legislative gap that exists at national level, due
249 to the severe shortage of laws that protect children’s rights in Cameroon. But, proper
250 incorporation of these international laws is critical because it is the only means through
251 which these rights could be redirected to the realities faced by children in Cameroon.

252 State Institutions in Cameroon

253 Article 4 of the CRC, for example, calls on state parties to take ‘appropriate ...
254 administrative and other measures for the implementation of the rights recognized in
255 the ... Convention.’ The technical inclusion of ‘other measures’ in this provision of the
256 CRC is progressive in that it also refers to the establishment of monitoring institutions
257 at national level. Consequently, the establishment of institutions that promote and
258 protect children’s rights, such as the National Commission on Human Rights and
259 Freedoms (NCHRF) in Cameroon, is an important mechanism to promote and ensure
260 the implementation of children’s rights. This is necessary because according to the
261 Committee on the CRC, the creation of, for example, the NCHRF falls ‘within the
262 commitment made by States parties upon ratification to ensure the implementation of
263 the Convention and advance the universal realization of children’s rights.’⁴⁰ From a
264 broader international law perspective, the position of the CRC is also corroborated by
265 Article 2(3) of the International Covenant on Civil and Political Rights, of which

39 MD Afuba ‘The Constitutional Protection of Civil and Political Rights in Cameroon’ (2006) *University of Botswana Law Journal* 68–69.

40 CRC Committee, ‘General Comment 2 on the Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child’ *CRC/GC/2002/2* (2002) paras 1 and 4.

266 Cameroon is a state party, that obligates a state party to provide effective remedy for
267 any person—including children—whose rights and freedoms are violated.

268 **National Commission on Human Rights and Freedoms**

269 Cameroon, as a state party, has a legal obligation under international law, to
270 institutionalise children’s rights at the national level. However, the country’s lethargic
271 performance in domesticating or legislating child-friendly laws seems to affect its effort
272 to establish child-friendly institutions. It is pointless to establish institutions to facilitate
273 redress when rights are violated under international law, without national legislation.
274 Legislation and relevant institutions complement one another. The logical starting point
275 is to legislate first, and Cameroon is not there yet. This is not to say that it has not
276 institutionalised Children’s rights—it has, but these institutions are weak and poorly
277 resourced.

278 At present, Cameroon’s only prime institution with the potential to provide a national
279 oversight over children’s rights protection and promotion, is its NCHRF. The NCHRF
280 was established in 1990, by a Presidential Decree.⁴¹ It is, so far, the only state-funded
281 institution with a mandate to monitor and promote human rights- related laws in
282 Cameroon. On paper, it is an independent institution with the mandate to advise,
283 observe, evaluate, discuss, debate, promote and protect issues of human rights and
284 freedoms.⁴² As the leading national human rights institution, the NCHRF is a central
285 institution in protecting children’s rights in Cameroon.⁴³ This is also because it enjoys
286 national coverage with regional offices in eight of the country’s ten regions. To facilitate
287 its work on promoting children’s rights, the NCHRF has established a sub-working
288 group within the head office of the commission, with the broad mandate to promote the
289 rights of vulnerable groups (including children).⁴⁴ In its 2013 activity report, the sub-
290 committee in the NCHRF reported that it had conducted a study on educational activities
291 in schools on the rights of the child.⁴⁵ From an analysis of existing reports on the
292 activities of the NCHRF, this seems to be the only activity that the sub-committee has
293 carried out in relation to children.

294 In search of answers and more information on the work of the NCHRF with regard to
295 Cameroon’s implementation of children’s rights, the author spoke to one of its officials
296 in 2020. It was noted that the NCHRF conducts hearings on issues such as child support

41 The NCHRF was established through Act No. 2004/016 of 22 July 2004, amended in 2010.

42 UN International Human Rights Instruments, ‘Common Core Document Forming Part of the Reports of States Parties – Cameroon’ UN/doc/HRI/CORE/CMR/2013 para 86.

43 <<http://www.cndhl.cm/index.php/organisation-de-la-cndhl>> accessed 7 May 2015.

44 For details on this working group, see <<http://www.cndhl.cm/index.php/les-sous-commissions/sous-commission-n-3>> accessed 16 November 2019.

45 NCHRF, ‘Activity Report’ <<http://www.cndhl.cm/index.php/rapports-edh-et-rapports-d-activites>> and <<http://www.cndhl.cm/index.php/protection-et-promotion-des-droits-des-enfants>> accessed 16 November 2019.

297 in cases where parents are divorced.⁴⁶ During these sessions, the NCHRF makes
 298 decisions that are in the best interests of the child.⁴⁷ This is noteworthy, as it is not
 299 reported in any of Cameroon's reports to the relevant treaty bodies at the time of writing
 300 this article, neither the AU nor the UN. Nonetheless, the fact that NCHRF has a mandate
 301 to adjudicate on child-related disputes is a positive development. Unfortunately, this
 302 mandate does not follow up with the powers to make binding decisions. As a result, the
 303 Commission functions more like a quasi-judicial body that makes recommendations
 304 with no powers to prosecute where there are clear violations of rights.⁴⁸ The best
 305 alternative to an institution with powers to prosecute will be a court of law, which and
 306 will be discussed below under the heading 'Recommendations.'

307 **National Commission to Protect Children at Risk, Juvenile Delinquents and** 308 **Abandoned Children**

309 In 2009 the state reported to the Committee on the CRC that a National Commission to
 310 Protect Children at Risk, Juvenile Delinquents and Abandoned Children⁴⁹ had been
 311 created⁵⁰ in the department of the Ministry of Social Affairs with the mandate to draw
 312 and oversee the monitoring and implementation strategies of the national children's
 313 policy.⁵¹ Also, in 2011, the state established an inter-ministerial committee within the
 314 office of the Prime Minister with the mandate to oversee the implementation of the
 315 recommendations and decisions from AU and UN organs. The state claims that placing
 316 this Committee within the office of the Prime Minister indicates the seriousness with
 317 which the State regards the organs of, for example, the AU.⁵² But, a glance on the

46 In a telephone conversation with an official at the Commission, on Monday 4 May 2015, he confirmed the fact that the Commission has conducted several of such hearings and made decisions that compel a father, for example, of children from a divorced marriage to provide financial support to their child(ren). However, he also admitted that the process has not been completely smooth, especially in cases where a parent fails to make such contribution and the other refuses to act on the Commission's recommendation to approach the courts for financial reasons.

47 *ibid.*

48 S Ebobrah, 'Reinforcing the Identity of the African Children's Rights Committee: A Case for Limiting the Lust for Judicial Powers in Quasi-Judicial Human Rights Mechanisms.' (2015) *The Transnational Human Rights Review* 1–31.

49 The Commission serves as an umbrella entity to enhance the interaction between the various stakeholders in the interest of improved coherence, efficiency and impact of the National Children's Policy.

50 Pursuant to Degree No. 90/524 of 23 March 1990.

51 Although reported in 2009, a similar Commission had been promulgated by Decree No. 90/524 of 23 March 1990, establishing the National Commission to Protect Children at Risk, Juvenile Delinquents and Abandoned Children. Several other institutions have also been created, including the National Committee to Combat Drug Abuse; the National Committee for the Social and Economic Rehabilitation and Reintegration of Disabled Person and the National Commission on Health and Safety at Work; the National Prison Administration Commission.

52 Interview conducted by Open Society Justice Initiative with Cameroon's then Minister of Justice, Mr. Hermine Kembo in 2013 <<https://www.justiceinitiative.org/uploads/7d34546e-dfe6-450b-82ec-77da3323d4bd/from-rights-to-remedies-20130708.pdf>> accessed 15 November 2019; interview granted by the former High Commission for Human Rights (Ms Navi Pillay) in Yaoundé at the end

318 website of the Prime Minister’s office, to investigate the mandate of the inter-ministerial
 319 committee, left the viewer disappointed and prone to speculation about the possible
 320 dissolution of the inter-ministerial committee.⁵³ This could well be the case, as it is
 321 supported further by the fact that Cameroon’s periodic report submitted to the African
 322 Children’s Committee in 2015, did not mention this inter-ministerial committee, which
 323 in 2013 was signposted as the answer to Cameroon’s lethargic compliance with the
 324 decisions and recommendations from AU and UN organs.⁵⁴ Unless proven otherwise,
 325 this committee does not exist.

326 Furthermore, this possibly explains why the committee and the UN Committee on
 327 Economic Social and Cultural Rights called on the state to establish effective
 328 monitoring units that will respond to the plight of children in Cameroon.⁵⁵ It is indeed
 329 crucial for the state to establish, as a matter of urgency, an effective monitoring
 330 institution that will oversee the domestication and implementation of children’s rights.
 331 The absence of an institution that could enforce and strengthen children’s rights at the
 332 national level betrays the state’s commitment to the international community to protect
 333 its children in a meaningful way.

334 **The Courts**

335 At the judiciary level, there is no court specifically assigned to hear matters that concern
 336 children. Resultantly, depending on the matter, and especially issues related to custody,
 337 children are generally heard in the chambers of the Courts of First Instance, High Court
 338 or Court of Appeal, and in rare cases at the Supreme Court of Appeal.⁵⁶ The good news,
 339 is that unlike the NCHRF discussed earlier, the decisions of the courts are binding and
 340 the court would prosecute those who violate its orders. Technically, it is difficult to
 341 register custody disputes as examples of ascertaining children’s rights. This is because,
 342 the underpinning logic of custody cases is to assign a parent or both, custodial rights
 343 and powers to provide care for their child. However, there are elements of children’s

of her first visit to Cameroon in which she said: ‘The next step for Cameroon is to focus on rigorous implementation of recommendations from treaty bodies, special procedures and the Universal Periodic Review, so as to put in place a strong and inclusive human rights protection system for the benefit of its entire population’ <<http://www.un.org/apps/news/story.asp?NewsID=45329#.VUjFamNfZ8E>> accessed 20 November 2019.

53 <<https://www.spm.gov.cm/>> accessed 16 November 2019.

54 For details on this report, visit <https://acerwc.africa/wp-content/uploads/2018/04/Cameroon_Periodic_Report_Eng.pdf> accessed 16 November 2019.

55 CESCR *Concluding observations on the fourth periodic report of Cameroon UN E/C.12/CMR/CO/4*.

56 For details on the jurisdiction of these courts, see, the Justice and Peace Commission Archdiocese of Bamenda ‘Report on the Judicial System in Cameroon’ <<http://www.justiceandpeacebamenda.org/attachments/article/24/The+Judicial+System+in+Cameroon.pdf>> accessed 16 November 2019. See also the webpage of the Ministry of Social Affairs <www.minas.gov.cm> and *Children in Conflict with the Law* <http://www.minas.gov.cm/index.php?view=article&id=167%3Aenfant-en-conflict-avec-la-loi&format=pdf&option=com_content&Itemid=189&lang=en> accessed 7 May 2021.

344 rights in such cases that have to be verified before custody is granted—but children’s
 345 rights that are intricate in custody cases are aftermaths of the *raison-d’etre* of cases.⁵⁷
 346 The reality is that Cameroon does not dispose of a Children’s Court.⁵⁸ Even though there
 347 are hearings in the chambers on matters related to children, most of these cases are not
 348 reported and there is limited incentive to validate the rights of children protected in the
 349 African Children’s Charter and the CRC. The institutionalisation of a children’s courts
 350 as discussed below, will greatly improve Cameroon’s child justice system. From a
 351 prosecutorial perspective, a court which holds hearings on children’s rights issues, will,
 352 no doubt be a step up from the weak dispute resolution process at the NCHRF.

353 Recommendations

354 As indicated earlier, as per article 43(1) of the African Children’s Charter, all state
 355 parties have a duty to report on ‘the measures they have adopted which give effect to
 356 the provisions of the Charter and on the progress made in the enjoyment of these rights’
 357 at the national level. However, thirty-one years after the adoption of the Charter and
 358 twenty-two years since Cameroon ratified the Charter, the state has not satisfactorily
 359 domesticated the African Children’s Charter. This is particularly due to the fact that, the
 360 state has not, from a legislative and institutional perspective, paid sufficient attention to
 361 adopt domestic laws and establish national institutions with specific focus on children’s
 362 rights.

363 State commitment to children’s rights must be prioritised at all times. Childhood is a
 364 special epoch in human life and children represent the only human group protected
 365 under international human rights law with an ‘expiry date’ (eighteen years) in terms of
 366 their rights protection. After eighteen, they move into another group (adulthood) with
 367 another set of rights. This is justification enough why the state should, as a matter of
 368 urgency, ensure that it doubles its effort to enact progressive child-friendly laws. It must
 369 also ensure that the NCHRF is provided with adequate human, technical and financial
 370 resources to strengthen and effectively carry out its mandate to respond adequately to
 371 the plight of children in Cameroon. This includes extending the mandate of the NCHRF
 372 to lead the process to harmonise and update all aspects of Cameroon’s legislation related
 373 to children.

374 A unitary codification or, at the minimum, a contemporary Child Law Act which
 375 comprehensively protects children’s rights in Cameroon will benefit the entire child
 376 justice system. It will enable easy accessibility and propel the proper development of its

57 E Fokala, ‘The Impact of the Best Interests and the Respect for the Views of the Child Principles in Child Custody Cases’ 2019 *Nordic Journal of International Law* 13–20; See also, A Akonumbo ‘Excursion into the Best Interests of the Child Principle in Family Law and Child-related Laws and Policies in Cameroon’ 2010 *The International Survey of Family Law* 63–94.

58 S Tabe, ‘A Critical Appraisal of the Juvenile Justice System under Cameroon’s 2005 Criminal Procedure Code: Emerging Challenges’ 2012 *PELJ* 148–428.

377 provisions and children's rights in general. It will also, from a Cameroonian perspective,
 378 undoubtedly establish a springboard from which the contextual normative expansion of
 379 critical children's rights is developed to provide better protection for children. Once
 380 these laws have been harmonised, there will be a need for a special court or tribunal that
 381 deals specifically with children's issues. Critically, it will make these rights justiciable
 382 in a court of law. It will allow children the opportunity to claim their rights if they have
 383 been violated or neglected. Currently, as indicated above, children can only claim their
 384 rights through hearings in chambers. This is not enough as the urgency around children's
 385 issues requires that they must be given a full hearing with the agency that they deserve.

386 The Importance of a Progressive and Supportive Legal and Policy Reform at National 387 Level

388 Like all state parties, Cameroon is mainly dependent on the national actions of the state
 389 when it comes to the translation of children's rights into reality.⁵⁹ One of the methods
 390 to transpose international law provisions to respond to the domestic plight of children's
 391 rights, is through domestication/incorporation of treaty principles or norms into national
 392 legal and policy reforms. Legal and policy reforms are, jointly, a key component in the
 393 effective implementation of the specific intent of any children's rights provision in the
 394 African Children's Charter.⁶⁰ For example, at the United Nations (UN) level, Article 4
 395 of the CRC, calls on state parties to take all appropriate legislative, administrative and
 396 other measures to implement the rights recognised in the Convention. The Committee
 397 on the CRC, in interpreting the scope of article 4, declares that the request made in
 398 Article 4 'should be considered of fundamental importance for the implementation of
 399 the Convention.'⁶¹

400 The African Children's Charter echoes similar measures in its article 1(1), in which it
 401 calls on state parties 'to adopt such legislative or other measures as may be necessary to
 402 give effect to the provisions of [the] Charter.' Although similar to the provision of
 403 Article 4 of the CRC, the weight of the obligation to state parties in the Charter is
 404 different and weaker when compared to the weight of the obligation in the CRC. The
 405 Charter uses 'or' as opposed to 'and' as is the case in the CRC. The use of 'or' in the
 406 Charter gives state parties the option to either take only legislative measures or other
 407 measures, whereas the CRC is stricter, as it requires state parties to adopt both legislative

59 See generally, L Lundy and others, 'Incorporation of the United Nations Convention on the Rights of the Child in Law' in M Freeman (ed) *The Future of Children's Rights* (Brill 2014) 305. See also, J Donnelly, *Universal Human Rights in Theory and Practice* (Cornell University Press Ithaca and London 2013) 171, in which he asserts that 'the fate of human rights – is largely a matter of national, not international, action.'

60 P Alston and J Tobin, *Laying the Foundations for Children's Rights: An Independent Study of some Key Legal and Institutional Aspects of the Impact of the Convention on the Rights of Children* (UNICEF 2005) 28–30.

61 CRC Report on the Twenty-second Session CRC/C/90 (1999) para 291(d).

408 and other measures in their effort to incorporate international law principles into
409 national laws.

410 The textual difference concerning state party obligation in both instruments is
411 contextually problematic. Nonetheless, both instruments have striking similarities both
412 in text, context and scope. They are the only two mainstream children's rights
413 instruments applicable in Cameroon. As a result, there is bound to be some
414 complications in terms of preference and applicability. Accordingly, Doek advises that
415 the preferred method chosen by a state, for example, at the African regional level, at the
416 minimum, entails '... activities of a government to ensure that national laws and related
417 administrative regulations are in full compliance ...' with mainstream treaties that it has
418 ratified.⁶² Therefore, Cameroon is obliged to domesticate and fulfil its mandate under
419 both instruments. In cases where there are textual and technical differences as indicated
420 above, the state must apply its mind to the provision that will best protect children.
421 Progressive prioritisation between these two children's rights instruments is crucial. As
422 Viljoen correctly points out, these two instruments are not in an 'oppositional but rather
423 complimentary relationship' in the context of children's rights protection in Africa.⁶³

424 Conclusion

425 The adoption of a consolidated children's rights statute at national level represents a
426 valuable opportunity for the state to incorporate and protect all aspects of children's
427 rights. However, the problem lies with implementation, which is crucial because it gives
428 meaning to the laws enacted and provides a means of evaluating the institutions created.
429 It is also the final determinant in the general protection of rights. However, Goonesekere
430 acknowledges that in some developing countries, legislative reforms may be viewed
431 with cynicism as, in practice, law enforcement is generally weak and public awareness
432 of the rights enshrined in such treaties (and to some extent national laws) is low or at
433 worse, non-existent. She goes on to add that '... legal procedures are either inaccessible
434 or ineffective to give relief and remedies from injustice and abuse of power' in most
435 developing countries.'⁶⁴

436 Therefore, in Cameroon, any legal reform with the common objective of putting the law
437 in place to protect children's rights is insufficient to achieve the objective of
438 domesticating children's rights. What is crucial is the next step after legislation, which
439 will be a satisfactory implementation. A proper implementation requires the
440 institutionalisation of children's rights. Appropriate institutions with the mandate to

62 J Doek, *Harmonisation of Laws on Children: Some Practical Guidance* (2007) 2
<<https://app.box.com/s/ca19481c7d5dc225abff>> accessed 12 May 2022.

63 F Viljoen *International Human Rights Law in Africa* (Oxford University Law Press 2012) 392.

64 S Goonesekere, *Children, Law and Justice: A South Asian Perspective* (UNICEF 1998) 355.
Although this work is set in an Asian context, the logic is equally true and applicable in the African
context.

441 monitor and implement children’s rights at the national level provide the required bridge
 442 legislation and enjoyment of such rights. Sloth-Nielsen concurs and rightly points out
 443 that a comprehensive domestication of the Charter, for example, is not only the preserve
 444 of a parliamentary activity through the enactment of laws but also the jurisprudence and
 445 activities emanating from institutions such as the courts.⁶⁵

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