

Towards effective implementation of the African Charter on the Rights and Welfare of the Child in Egypt

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Abstract

The adoption of the Convention on the Rights of the Child (CRC) in 1989 marked an important step towards the 'legal recognition and protection of the rights of children'. The inadequacies of the CRC regarding some issues peculiar to the African child, however, led to the adoption of the African Charter on the Rights and Welfare of the Child (ACRWC or African Children's Charter) in 1990, to complement the CRC and provide protection to children in peculiar African realities. The desired effects of the Charter will, however, only be achieved if its provisions are diligently implemented. Based on desk research and semi-structured interviews, this article discusses the implementation of the ACRWC in Egypt, highlighting the legislative and other measures adopted by Egypt to implement the provisions of the ACRWC. It also considers the role of the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) in ensuring implementation of the ACRWC in Egypt through the state reporting and complaint mechanisms and considers the measures adopted by Egypt towards the implementation of concluding observations of the African Children's Committee. It concludes with recommendations on how Egypt can better implement the provisions of the ACRWC.

Keywords

Implementation; children's rights; African Charter on the Rights and Welfare of the Child; African Committee of Experts on the Rights and Welfare of the Child; legislation

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1. Introduction

The adoption of the Convention on the Rights of the Child (CRC) by the United Nations General Assembly in 1989 marked an important step towards the 'legal recognition and protection of the right of children'.¹ The inadequacies of the CRC in terms of some issues peculiar to the African Child, however, led to the adoption of the African Charter on the Rights and Welfare of the Child (ACRWC or African Children's Charter) in 1990, which came into force in 1991, to complement the CRC and provide protection to children in peculiar African realities.² The ACRWC contains 48 articles, 31 of which are substantive children's rights provisions, while the remainder concerns procedural and oversight issues.³ The ACRWC is overseen by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC or Committee) which is mandated to undertake investigative missions, to receive and examine state reports, and to receive individual communications alleging violations of the rights contained in the Charter.

As at the time of writing, 48 states had ratified the African Children's Charter including Egypt.⁴ Egypt ratified the African Children's Charter on May 9, 2001, albeit, with a number of reservations including reservations to article 21(2) regarding child marriage; article 24 on adoption; article 30(a-e) on the special treatment of imprisoned mothers; article 44 on the competence of the Committee to receive communications; and article 45(1) on the competence of the Committee to undertake investigative missions in member states.⁵ Egypt is reported to have withdrawn the reservation against article 21(2) in February

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¹ D Olowu, 'Protecting children's rights in Africa: a critique of the African Charter on the Rights and Welfare of the Child' (2002) 10 *International Journal of Children's Rights* 127.

² F Viljoen, *International Human Rights Law in Africa* (2nd edition, 2012), 392-93; MG Nyarko & HM Ekefre, 'Recent Advances in Children's Rights in the African Human Rights System: A Review of the Decision of the African Committee of Experts on the Rights and Welfare of the Child in the Talibés Case' (2016) 15 *Law and Practice of International Courts and Tribunals* 385ts 5.

³ AG Assefa 'Advancing children's rights in Africa: the role of the African Children's Charter and its monitoring body' (2013) 2 *Mekelle University Law Journal* 66 73.

⁴ African Union, 'ACRWC Ratification Table' <<https://au.int/sites/default/files/treaties/7773-sl-african-charter-on-the-rights-and-welfare-of-the-child-1.pdf>> accessed 20 January 2019.

⁵ibid.

2015⁶ and commenced internal processes for the withdrawal of reservations on article 24 on adoption, article 30 (e) on prohibition of the death penalty for pregnant women, and article 44 on communications.⁷

In line with article 1(1) of the African Children's Charter, the desired effect of the Charter will only be achieved if state parties adopt the necessary legislative and other measures to diligently implement its provisions subsequent to ratification. This article examines the measures taken by Egypt to implement the African Children's Charter including concluding observations of the Committee. The paper is a result of mainly desk research supplemented by interviews with some key informants. Before delving into these measures, the article commences with a brief overview of the current country context of Egypt and how it affects children's rights.

2. Country context and general legal position of children

Egypt is currently recovering from 'political turmoil, economic free fall and social instability' following the Arab Spring which led to the ouster of President Hosni Mubarak in 2011⁸ and Mohammed Morsi in 2013. The political unrest has had a substantial impact on the economy, dwindling government's revenue.⁹ The current political transition and recurring periods of violence have increased the vulnerability of children to child labour,¹⁰ have increased the number of children living on the streets, violence against children, and led to a general decline in the realisation of children's rights.¹¹ The current situation of political instability has shifted government's attention from putting emphasis on human rights generally,¹² to maintaining national security. The political instability also makes it difficult to put children's rights on the agenda

⁶ Human Rights Watch, 'Egypt: small steps forward on child rights' (2015) <<https://www.hrw.org/news/2015/03/04/egypt-small-forward-steps-child-rights>> accessed 9 June 2016.

⁷ Al-Masry Al-Youm, 'Egypt cancels reservations on the Africa Child Rights Charter' (*Egypt Independent*, 27 Nov 2015) <<http://www.egyptindependent.com/news/egypt-cancels-reservations-african-child-rights-charter>> accessed on 26 August 2016.

⁸ W Gumedu, 'Egypt, Africa's second largest economy' (*Democracy Works* 26 May 2016) <<http://democracyworks.org.za/egypt-africas-second-largest-economy/>> accessed 31 May 2016.

⁹ MANARA Network for Child's Rights, 'Country Profile of Egypt: A review of the Implementation of the UN Convention on the Rights of the Child' (2011) 16.

¹⁰ United States Department of Labour, '2014 findings on the worst forms of child labour - Egypt' (2015) 2.

¹¹ Interview with the Child Rights Unit of the National Council for Human Rights in Cairo on 23 June 2016; Interview with Hany Helal of the Egyptian Foundation for Advancement of the Childhood Condition (EFACC) and General Secretary of the Egyptian Coalition of Children's Rights in Cairo on 21 June 2016.

¹² Interview with Hany Helal (n 11).

of the government and other stakeholders because it makes it difficult to plan.¹³

The dwindling economic fortunes have affected the realisation of children's rights badly as it has led to insufficient funding for the realisation of children's rights. The economic situation has also led to the disintegration of some families, which increases the vulnerability of children to child labour and sometimes to becoming street children.¹⁴ Some families are pushed by the economic situation to take their children from school and send them to work in order to support the family.¹⁵

In terms of statistics, an estimated 40.9% of the population is between 0-19 years – 51.7% of which are male and 48.3% female.¹⁶ The infant mortality rate stands at 21.55 per 1,000 live births,¹⁷ with an under five mortality rate of 24 per 1,000 live births.¹⁸ The state provides free and compulsory education up to the secondary level.¹⁹ The gross enrolment rate in primary school is 94.3% for males and 95.5% for females, while that of secondary school is 68.2% for both sexes.²⁰ However, the net enrolment rate in primary school stands at 90% for males and 92.2% for females, while that of secondary school is 57.9% for males and 62.7 for females.²¹ The completion rate at primary school level is 89.3% for both sexes.²² The teacher/student ratio is 24.9 in primary school and 14.5 in secondary school.²³

¹³ Interview with Noheier Noshayat, Child Protection Programme Manager of Save the Children Egypt in Cairo on 26 June 2016.

¹⁴ Interview with Magdy Garas, Director of Caritas Egypt, in Cairo on 23 June 2016.

¹⁵ Interview with Onsy Georgious of the International Labour Organization – Cairo Office (ILO Cairo) on 25 June 2016.

¹⁶ UNICEF, 'Children in Egypt 2015: a statistical digest' (2015) 4.

¹⁷ Central Intelligence Agency, *The World Factbook: Egypt* <<https://www.cia.gov/library/publications/the-world-factbook/geos/eg.html>> accessed 10 May 2016.

¹⁸ The World Bank, 'Date: mortality rate under-5 (per 1,000)' (2015) <<http://data.worldbank.org/indicator/SH.DYN.MORT>> accessed 18 May 2016.

¹⁹ Constitution of Egypt 2014, article 19; Child Law, Law No. 12 of 1996 as amended by Law No 126 of 2008, articles 54; Article 3 of Law No 23 of 1999 amending Education Act, Law No139/1981 as amended by Law No 233/1988 and Law No 2/1994. See UNESCO, 'World data on education: Egypt' (2012) IBE/2012/CP/WDE/UA 1 <http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/Egypt.pdf>

accessed 18 May 2016; see also UNESCO, 'Education for all in Egypt 2000-2015: a national assessment' (2014) <<http://unesdoc.unesco.org/images/0022/002299/229905E.pdf>> accessed 18 May 2016.

²⁰ UNICEF, 'Children in Egypt 2015: a statistical digest – Education' (2015) 12 <http://www.unicef.org/egypt/Ch8.Education_2015.pdf> accessed 23 May 2016.

²¹ *ibid* 14.

²² *ibid* 24.

²³ *ibid* 27.

Despite tremendous government efforts to achieve commendable enrolment rates in primary level, there are still various groups of children who are not enjoying access to quality education – children from poor and rural communities, children with disabilities, and refugee children living or working on the streets.²⁴ An estimated 2 million young people in Egypt have never been to school, in addition to 2.5 million young people who have dropped out of school; over 90% of children with disabilities have no access to educational opportunities.²⁵ The high enrolment rates in basic education have also not been accompanied by improvement in the quality.²⁶ Those particularly affected by poor quality education are poor and disadvantaged children, making them more likely to drop out of school.²⁷ In many rural areas, girls may be discriminated against with regards to educational opportunities.²⁸

The Child Law guarantees the right of every child to ‘access health and social care services and to be treated for any illnesses’.²⁹ Consequently, most children in Egypt have access to a health clinic.³⁰ Even in rural areas, most people live within 30 kilometres of a public hospital.³¹ There are about 5000 primary health care facilities and 1100 public hospitals,³² which are complemented by health care services provided by private health care providers and NGOs. The utilization of health care services by children is therefore ‘due less to physical access and more to socioeconomic, educational or cultural factors’.³³ The Egyptian Health Insurance Organization (HIO) provides health insurance coverage for all school children and newly born children up to age 5.³⁴ These health care providers are, however, unequally distributed with rural areas,

²⁴ Care International in Egypt, ‘Education programme overview’ <http://www.care.org.eg/index.php?option=com_k2&view=item&layout=item&id=9&Itemid=92&lang=en> accessed 27 June 2016.

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ Humanium, ‘Children of Egypt: realizing children’s rights in Egypt’ <<http://www.humanium.org/en/middle-east-north-africa/egypt/>> accessed 23 June 2016.

²⁹ Child Law (n 4) article 7bis.

³⁰ Ministry of Health and Population Egypt, Partnership for Maternal, Newborn & Child Health, World Health Organisation, World Bank and Alliance for Health Policy and Systems Research, ‘Success factors for women’s and children’s health: Egypt’ (2014) 14.

³¹ *ibid.*

³² *ibid.*

³³ *ibid.*

³⁴ World Health Organization, ‘Health system profile – Egypt’ (2006) 35.

particularly in Upper Egypt, having low levels of providers.³⁵

Access to water and sanitation is not generally a major children's rights issue in Egypt.³⁶ Significant progress has been made with regards to direct access to drinking water and sanitation, with 92.4% and 92.9% of households having direct access to drinking water and sanitation, respectively.³⁷ There are, however, disparities in access based on geographic and socio-economic factors, with children living in poor rural households 8.7 times more likely to drink unsafe water and 8.5 times more likely not to have toilet facilities as compared to their peers in urban areas.³⁸ Access to water and sanitation is also equally poor in urban slums.³⁹ The quality of water is similarly poor in less affluent areas.⁴⁰ The poor quality of water and the lack of access to sanitation for the rural poor and urban slum dwellers causes diarrhoea which was estimated to be the cause of 13% of child deaths under 5 in 2010,⁴¹ with current figures estimated at 9.1%.⁴²

There are many other areas of concern regarding children's rights in Egypt including child labour, which remains a huge problem.⁴³ While it is difficult to quantify the number of children engaged in child labour because children are mostly engaged in seasonal informal work,⁴⁴ in 2012, it was estimated that 1.8 million children were employed – 1.6 million (88.2%) of them engaged in child labour.⁴⁵ Boys (15.8%) were three times more likely to be employed and

³⁵ *ibid* 10.

³⁶ Interview with Noheier Noshaat (n 13).

³⁷ UNICEF Egypt, 'Water sanitation and hygiene' <http://www.unicef.org/egypt/immunisation_7135.html> accessed 28 June 2016.

³⁸ *ibid*.

³⁹ C de Albuquerque, 'Report of the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation – mission to Egypt' (2010) para 21 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/149/35/PDF/G1014935.pdf?OpenElement>> accessed 26 June 2016.

⁴⁰ C de Albuquerque (n 39) para 32-39; see also Center for Economic and Social Rights (CESR) '2014 UPR briefing –Egypt: the right to water and sanitation – Fact sheet no. 7' (2014) <<http://www.cesr.org/downloads/egypt-UPR2014-water-sanitation.pdf>> accessed 26 June 2014.

⁴¹ C de Albuquerque (n 39) para 41; CESR (n 40).

⁴² UNICEF Egypt (n 37).

⁴³ Interview with Dr Alaa Bakr, Family and Child Rights Programme Director of the National Council for Childhood and Motherhood, on 26 June 2016; Interview with Onsy Georgious (n 15).

⁴⁴ Interview with Onsy Georgious (n 15); See also UNICEF Egypt, 'Working children: issues and impacts' <http://www.unicef.org/egypt/protection_147.htm> accessed 27 June 2016>.

⁴⁵ International Labour Organization - International Programme on the Elimination of Child Labour (ILO-IPEC) & Central Agency for Public Mobilisation and Statistics (CAPMAS), 'Working children in Egypt: results of the 2010 national labour survey' (2012) ix.

engaged in child labour than girls (5%), with girls mostly employed in domestic work.⁴⁶ An estimated 90% of boys and 81% of girls employed were engaged in child labour,⁴⁷ with agriculture employing 63.5% of child labourers.⁴⁸ About 89% of children engaged in child labour were engaged in hazardous work,⁴⁹ 6.6% were employed under the age of 12, and 4.1% were between 12-14 years working more than 14 hours per week.⁵⁰ A majority of child labourers were unpaid, with 52% engaged in unpaid family work in agriculture and 11.5% in unpaid family work in other sectors or 'own account workers'.⁵¹ The current economic challenges in Egypt have exacerbated the problem of child labour as many poor families take their children out of school and send them to work to support the family.⁵² Child labour affects girls differently from boys as girls are predominantly engaged in domestic work – an estimated 9 out of 10 child domestic workers are girls.⁵³ Girls as young as eight are sent to cities from rural areas to work as domestic workers.⁵⁴ Girls engaged in domestic work are less likely to be educated than boys in the same line of work – one in three girls engaged in domestic work has never attended school compared to very few boys.⁵⁵ Girls engaged in domestic work are vulnerable to verbal, physical, psychological, and sexual abuse, especially those who are live-in domestic workers.⁵⁶

Children living on the street represent another area of concern in Egypt. Though it is difficult to quantify the number of street children in Egypt, their numbers are estimated to be at least in the tens of thousands, mostly found in

⁴⁶ *ibid.*

⁴⁷ *ibid.* Children in employment are designated as child labourers if they engage in hazardous work or are less than 12 years old or are between 12-14 years and work 14 hours or more per week.

⁴⁸ *ibid.* x.

⁴⁹ International Labour Organization - International Programme on the Elimination of Child Labour (ILO-IPEC) & Central Agency for Public Mobilisation and Statistics (CAPMAS), 'Working children in Egypt: results of the 2010 national labour survey' (2012) ix. 'Hazardous work includes any work in designated hazardous industries or occupations, work for long hours (i.e. more than 43 hours per week) or work under hazardous working conditions. Hazardous working conditions include working in an environment containing dust or fumes, fire gas or flames, loud noises of vibrations, extreme cold or heat, insufficient lighting or ventilation or in confined spaces; work with dangerous tools, chemicals or explosives; work underground, in high places, or under water; and work that involves exhaustion, bending for a long time or workplaces with no bathrooms'.

⁵⁰ *ibid.*

⁵¹ *ibid.* x.

⁵² Interview with Onsy Georgious (n 15).

⁵³ ICF International, 'Child domestic work in Egypt' (2012) 1.

⁵⁴ *ibid.* 5.

⁵⁵ *ibid.* 6, 26.

⁵⁶ *ibid.* 10.

the cities of Cairo and Alexandria.⁵⁷ Other organizations put the figures around 2 million.⁵⁸ It is estimated that the number of street children has increased subsequent to the Arab spring because of the economic situation,⁵⁹ but also because many children who were involved in protests that led to the revolution felt liberated and remained on the streets after the revolution.⁶⁰ Children living on the streets are particularly exposed to vulnerabilities such as commercial sexual exploitation and other forms of abuse⁶¹ and have less access to healthcare, education, and other social services.⁶² Girls living in the streets are viewed differently from boys. Girls are more likely to be stigmatised as immoral or even prostitutes because they live on the streets and are often exposed to more sexual violence.⁶³

Female genital mutilation and child marriage, even though outlawed, continued to be quite prevalent in rural areas.⁶⁴ About 92% of 'ever married women' between 15-49 years have been circumcised.⁶⁵ A recent survey indicated women reporting that 21% of their daughters between 0-19 have been circumcised, while an additional 35% intend to circumcise their daughters in the future.⁶⁶ Child marriage is still prevalent especially in rural Egypt even though the practice seems to have reduced over the years.⁶⁷ An estimated 17% of girls are married by the time they turn 18 and 2% by the time they turn 15.⁶⁸ Child marriage mainly affects girls in poor rural areas and is estimated to be

⁵⁷ UNICEF Egypt, 'Street children: issues and impact' <http://www.unicef.org/egypt/protection_4397.htm> accessed 23 June 2016.

⁵⁸ The General Egyptian Association for Child Protection 'Strategy for protection and rehabilitation of street children in Egypt' (1999); International Organization for Migration (IOM) Cairo, 'Street children in Egypt: Key findings of a study conducted by the National Center for Social and Criminological Research' <<http://www.egypt.iom.int/Doc/Street%20children%20profile.pdf>> accessed 16 June 2016.

⁵⁹ Interview with Onsy Georgious (n 15).

⁶⁰ Interview with Farida El Kalagy, Director of Samusocial International Egypt in Cairo on 22 June 2016.

⁶¹ Y Abdul-Hamid, 'Child rights situation analysis for the Middle East and North African region' (2008) 34.

⁶² UNICEF Egypt (n 37).

⁶³ Daily News Egypt, 'Street children: gender matters' <<http://www.dailynewsegypt.com/2013/11/17/street-children-gender-matters/>> accessed 23 September 2016.

⁶⁴ Interview with Dr Alaa Bakr (n 43).

⁶⁵ Ministry of Health and Population Egypt, El-Zanaty and Associates Egypt, and ICF International, 'Egypt Demographic and Health Survey 2014: Key Findings' (2015) 14.

⁶⁶ *ibid.*

⁶⁷ Interview with Dr Alaa Bakr (n 43).

⁶⁸ Girls Not Brides, 'Child marriage around the world: Egypt' <<http://www.girlsnotbrides.org/child-marriage/egypt/>> accessed 23 June 2016; see also UNICEF, 'The state of the world's children 2015: Executive summary' (2014) 85 <http://www.unicef.org/publications/files/SOWC_2015_Summary_and_Tables.pdf> accessed 28 June 29, 2016.

on the rise particularly in Upper Egypt. Child marriage exposes the girl child to further human rights violations such as domestic violence, poor sexual and reproductive health, and curtailment of education among others.⁶⁹

Child arrest, detention, and imprisonment continue to be a risk for children in Egypt.⁷⁰ Reports indicate that 400 children were arrested in 2013 in connection with the political unrest in Egypt at the time.⁷¹ Similarly, in 2014 the Central Security Forces (CSF) were reported to be holding about 600 children in a detention camp in northeast Egypt, with some of the children having been subjected to ill-treatment and torture.⁷² Additionally, Law 136 of 2014 broadened the jurisdiction of the military courts to include public spaces which could have serious implications for children – reports indicate that Egyptian military courts do not differentiate between children and adults.⁷³ Girls in detention are vulnerable to ‘violence, including beatings, harassment and both threats of and actual sexual assaults’.⁷⁴ Girls are sometimes kept in detention facilities at police stations and prisons in conditions which amount to cruel, inhuman, and degrading treatment.⁷⁵

Egypt is currently facing child refugee crisis with an estimated 120,000 Syrian refugees resident in Egypt.⁷⁶ Syrian child refugees sometimes face detentions, imprisonment, and deportation – some of these children are detained in overcrowded police stations for weeks without charge.⁷⁷ Those who are successful in registering live in households with insufficient food and shelter. Some of these households have resorted to sending children to work or to beg on the streets, as a coping strategy.⁷⁸ Economic hardship among Syrian refugees has increased the number of girls being forced into child marriages,⁷⁹

⁶⁹ UNICEF, ‘Early marriage: a harmful traditional practice’ (2005) <http://www.unicef.org/publications/files/Early_Marriage_12.lo.pdf> accessed 20 September 2016.

⁷⁰ Defence for Children International, ‘Overview of child rights situation in Arab countries’ (2016) 10.

⁷¹ *ibid.*

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ Amnesty International, ‘“Circles of hell”: Domestic, Public and state violence against women in Egypt’ (2015) 51.

⁷⁵ *ibid.*

⁷⁶ Defence for Children International (n 70) 11.

⁷⁷ *ibid.*

⁷⁸ *ibid.*

⁷⁹ P Timms, ‘Child brides: Number of Syrian refugee girls forced into marriage has tripled since the conflict began’ <<http://www.abc.net.au/news/2015-10-14/child-brides-number-in-syria-triples-since-conflict/6851248>> accessed 23 September 2016; OA Gallart, ‘Many child marriages among Syrian refugees driven by economics’

which potentially leads to the violation of other rights of the girl child as discussed earlier.

Other major children's rights issues include violence against children, with 7 out of 10 children reporting that they have been subjected to violence as a form of punishment.⁸⁰

3. Ratification and domestication of the African Children's Charter

The President is entrusted with the power of making treaties on behalf of the state.⁸¹ This power is often exercised by officials of the Ministry of Foreign Affairs who may be empowered by the President to negotiate and sign treaties on behalf of the state.⁸² Ratification of treaties by the President is subject to the approval of the House of Representatives.⁸³ Upon ratification by the House of Representatives, it is sent back to the President to sign and authorise its publication.⁸⁴

Egypt operates a monist system of treaty implementation where treaties become part of domestic law upon ratification and publication, without the need for domestication.⁸⁵ The African Children's Charter, therefore, forms part of Egyptian law, having been ratified in 2001 and published in the official gazette in 2004.⁸⁶ Since the Charter forms part of Egyptian law, national authorities are obliged to directly apply its provisions as they would apply domestic legislation.⁸⁷

<<http://www.middleeasteye.net/in-depth/features/early-marriage-between-tradition-and-survival-1029647734>> accessed 23 September 2016.

⁸⁰Save the Children Sweden 'Ending corporal punishment and other cruel and degrading punishment of children' (2010) 4 <<http://resourcecentre.savethechildren.se/sites/default/files/documents/2765.pdf>> accessed 25 June 2016.

⁸¹Constitution of Egypt (n 2) article 151.

⁸² C Heyns & F Viljoen, 'The impact of United Nations treaties on the domestic level' (2001) 230.

⁸³ Constitution of Egypt (n 2 above) article 151.

⁸⁴ Heyns & Viljoen (n 82).

⁸⁵ Constitution of Egypt 2014, articles 93 & 151; D Sloss, 'Domestic application of treaties' (2011) 8 <<http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1620&context=facpubs>> accessed 10 May 2016; see also N Elaraby, *et al*, 'National Treaty Law and Practice: Egypt', in DB Hollis, *et al* (eds) *National Treaty Law and Practice* (2005) 238.

⁸⁶ Egypt's initial report to the African Committee of Experts on the Rights and Welfare of the Child (2005) 4.

⁸⁷ *ibid* 19.

Egypt's Constitution is silent on the hierarchy between international treaties and national legislation. Unlike other civil law jurisdiction in Africa, published treaties have equivalent status of laws passed by the legislature⁸⁸ and are, therefore, 'not considered superior to legislation and a treaty can thus both amend legislation and be amended by legislation'.⁸⁹ Consequently, where there is a conflict between the African Children's Charter and domestic legislation, the instrument which is later in time would take precedence as it may be logically deemed to have amended the earlier instrument. The Supreme Constitutional Court has, however, held that constitutional human rights should be interpreted by courts in conformity with international human rights treaties.⁹⁰

While it is difficult to directly link legislation and policy changes to the African Children's Charter, some significant legislative and policy developments that mirror the provisions of the Charter are highlighted here. The Constitution of Egypt defines a child as anyone who has not attained the age of 18 years.⁹¹ The Constitution also guarantees a range of children's rights including the right to name and identification, free compulsory vaccination, health and family care, 'basic nutrition, safe shelter', and 'emotional and cognitive development'.⁹² Others include protection 'from all forms of violence, abuse, mistreatment and commercial and sexual exploitation', early education in a childhood centre before the age of six, and the right to have their best interest taking into account in all issues involving them.⁹³ Children with disabilities are additionally guaranteed the right to rehabilitation and reintegration into the society.⁹⁴

Egypt's Child Law also expressly provides that 'the State shall, as a minimum, guarantee the rights of the child, as stated in the CRC and all other relevant international covenants enforced in Egypt'.⁹⁵ The Child Law thus incorporates a number of principles contained in the Charter. These are the definition of a child as any person who has not reached the age of 18 years;⁹⁶ non-

⁸⁸ *ibid.*

⁸⁹ M Killander & H Adjolohoun, 'International law and domestic human rights litigation in Africa: an introduction' in M Killander (ed), *International law and domestic human rights litigation in Africa* (2010) 10. See also N Bernard-Maugiron, 'Egypt' in C Heyns (ed), *Human rights law in Africa* (2004) 1040.

⁹⁰ *ibid.*

⁹¹ Constitution of Egypt (n 19) article 80.

⁹² *ibid.*

⁹³ *ibid.*

⁹⁴ *ibid.*

⁹⁵ Child Law (n 19) article 1.

⁹⁶ *ibid.*, article 2.

discrimination;⁹⁷ freedom of expression;⁹⁸ right to life, survival, and development – including protection from sexual abuse, exploitation, and maltreatment;⁹⁹ best interest of the child;¹⁰⁰ the right to name and nationality;¹⁰¹ health and health services.¹⁰² Others include the right to education;¹⁰³ protection and rehabilitation of children with disability;¹⁰⁴ protection against child labour;¹⁰⁵ protection against abuse and torture;¹⁰⁶ right to parental care and protection;¹⁰⁷ right of children separated from parents to alternative family care;¹⁰⁸ prohibition from engagement in armed conflict; and protection of the child during armed conflict.¹⁰⁹

A child born to an Egyptian father or mother attains Egyptian citizenship at birth.¹¹⁰ Egyptian law mandates that a child born in Egypt shall be given a name which shall immediately after birth be registered in the register of births.¹¹¹ The parent(s), adult relatives, directors of hospitals or health facilities, and the *Umda* or sheikh have the obligation, depending on the circumstances of the birth, to report the birth of a child to the nearest health office for registration within 15 days of the birth.¹¹² Physicians, obstetric professionals, and health inspectors are also mandated to issue birth certificates with regards to children delivered by them.¹¹³ The law requires that the first birth certificate is issued free of charge.¹¹⁴

Children below 12 years have no criminal responsibility.¹¹⁵ A Child Court may, however, sentence a child between 7 and 12 years who commits a felony or

⁹⁷ *ibid*, article 3(b).

⁹⁸ *ibid*, article 3(c).

⁹⁹ *ibid*, article 3(a).

¹⁰⁰ *ibid*, article 3.

¹⁰¹ *ibid*, articles 5 & 6.

¹⁰² *ibid*, article 7-bis.

¹⁰³ *ibid*, article 54.

¹⁰⁴ *ibid*, articles 75-78.

¹⁰⁵ *ibid*, articles 64-69.

¹⁰⁶ *ibid*, article 3(a).

¹⁰⁷ *ibid*, article 4.

¹⁰⁸ *ibid*.

¹⁰⁹ *ibid*, article 7-bis (b).

¹¹⁰ Constitution of Egypt (n 19) article 6.

¹¹¹ Child Law (n 19) article 5.

¹¹² *ibid*, articles 14 & 15.

¹¹³ *ibid*, article 15.

¹¹⁴ *ibid*, article 17.

¹¹⁵ *ibid*, article 94.

misdemeanour to reproach or censure, delivery to parent(s), guardian(s), or custodian(s), placement in a specialised hospital, or placement in a social care institution.¹¹⁶ The minimum age of marriage was raised from 16 to 18 years in 2008.¹¹⁷

The law prohibits the exposure of a child to ‘illegitimate physical abuse or harmful practice’ as a means of discipline.¹¹⁸ This provision is, however, not interpreted to abolish corporal punishment altogether as it recognises the right of persons responsible for the care of a child to discipline the child through ‘legitimate means’.¹¹⁹ Corporal punishment is thus still lawful in the home, alternative care, and day care institutions under the ‘right to discipline’,¹²⁰ provided it does not amount to intentionally exposing the child to ‘illegitimate physical abuse or harmful practice’. Even though a ministerial decree banned corporal punishment in schools as far back as 1971, corporal punishment in schools continues to be rampant.¹²¹

The Child Law also criminalises the abduction, trafficking, and sale of children¹²² and obliges the state to eliminate practices that are harmful to the health of the child.¹²³ However, conspicuously missing from the rights protected in the Child Law are freedoms of association, thought and conscience, and the right to privacy, which are all guaranteed under the Charter. Adoption is also prohibited.¹²⁴ The omission of these rights, however, should not pose any difficulty to their realisation since the Charter forms part of Egyptian law and is directly enforceable. Egypt also passed an anti-human trafficking law in 2010,¹²⁵ which not only criminalises the trafficking, exploitation, and sale of children,¹²⁶ but also provides for the protection, assistance, and rehabilitation of victims.¹²⁷ Also worthy of mention is the fact that the law specifically provides that the consent of the child or a guardian is

¹¹⁶ *ibid*, articles 94 & 101.

¹¹⁷ Civil Status Act No. 143 of 1994, article 31 bis, as inserted by Annex II of Law No 126 of 2008.

¹¹⁸ *ibid*, article 7 bis (a).

¹¹⁹ *ibid*.

¹²⁰ Global Initiative to End All Corporal Punishment of Children, ‘Corporal punishment of children in Egypt’ (2015) 1, 2.

¹²¹ Abdul-Hamid (n 61) 36.

¹²² Annex I of the Child Law, inserting article 291 to the Penal Code Law No 58 of 1937.

¹²³ Child Law (n 19) article 7-bis.

¹²⁴ *ibid*, article 4.

¹²⁵ Law No 64 of 2010.

¹²⁶ *ibid*, article 2

¹²⁷ *ibid*, articles 21-27.

irrelevant for the purpose of the crime.¹²⁸

Subsequent to this, a National Action Plan Against Human Trafficking was adopted to ensure prevention of human trafficking, to protect and assist the victims of trafficking, to 'ensure serious and effective punishment of traffickers,' and to promote national and international cooperation in combating human trafficking.¹²⁹ In addition, to address high infant mortality rates and high prevalence of FGM in rural areas, Egypt developed a National Acceleration Plan for Child and Maternal Health (2013-2015).¹³⁰ Egypt also adopted the Organ Harvesting and Transplant Act in 2010 to combat the trafficking and sale of children. The Strategic Plan to Improve the Quality of Education (2008-2012) and the National Plan to Combat Violence against Children (2007-2012) were also adopted.¹³¹

The Egyptian Constitution recognises that rights are enforceable by individuals whose rights are violated.¹³² Violations of constitutional human rights amount to a crime justiciable before the courts with no limitation period for both civil and criminal proceedings.¹³³ The victim of a human rights violation may file a criminal suit directly and the 'state guarantees just compensation' for victims of human rights violations.¹³⁴ In terms of the Civil Code, any person whose rights are infringed has the right to request for a cessation of the violation and for compensation.¹³⁵ Similarly, individuals or legal entities may bring claims before administrative courts to annul wrongful administrative decisions and seek compensation for the harm caused by the decision.¹³⁶

The Civil Code, however, suggests that children cannot on their own bring a civil suit for the vindication of their rights since the age of majority for the purpose of exercising civil rights is set at 21.¹³⁷ Children may, therefore, only bring civil suits for violation of their rights through a guardian or curator.¹³⁸ In

¹²⁸ *ibid*, article 3.

¹²⁹ National Action Plan Against Human Trafficking 2011-2013 (2010) 2.

¹³⁰ The World Bank, 'A roadmap to achieve social justice in health care in Egypt' (2015) 4.

¹³¹ MANARA Network, (n 9) 25.

¹³² Constitution of Egypt (n 19) article 99.

¹³³ *ibid*.

¹³⁴ *ibid*.

¹³⁵ Civil Code, Law No. 131 of 1948, article 50.

¹³⁶ Law No 47 of 1972 related to the Council of State, articles 10 & 13. See also Child Right International Network (CRIN), 'Access to justice for children: Arab Republic of Egypt' (2014) 2.

¹³⁷ Civil Code (n 124) article 44. See also CRIN (n 136) 4.

¹³⁸ Civil Code (as above) article 47; CRIN (n 136) 4.

a similar vein, children with mental disability and children below 15 years may only file criminal charges for violation of their rights through a guardian.¹³⁹ This suggests that children 15 years and older may on their own file criminal complaints for violation of their rights¹⁴⁰

Consequently, '[c]hildren [and] or their representatives may bring civil, criminal, administrative or constitutional cases to challenge violations of children's rights'.¹⁴¹ Complaints about children's rights violations can be made by children or their representatives via a '24-hour free emergency telephone helpline, known as the children's emergency line' launched in 2005.¹⁴² There is also a disability children helpline for complaints from children with disabilities or their families.¹⁴³ These emergency lines also provide free legal advice to children and their representatives.¹⁴⁴ The Constitution requires legal aid to be provided to children.¹⁴⁵ Additionally, the Child Law provides that child victims and witnesses shall have the right to be heard and to be treated with dignity and sympathy with full respect for their physical, psychological, and moral safety and shall have the right to protection, health, social and legal assistance, rehabilitation, and integration in the society, in accordance with the United Nations Guidelines on Justice for Child Victims and Witnesses of Crime.¹⁴⁶

Violations of children's rights may be remedied by means of criminal sanctions such as imprisonment or fines of the perpetrators¹⁴⁷ or in terms of civil proceedings, award of damages or injunction against the perpetrators to cease the violation.¹⁴⁸ With regards to administrative proceedings, the administrative courts may annul the offending administrative decision or award damages for the harm caused by the decision.¹⁴⁹ NGOs cannot, however, directly file civil, administrative or criminal complaints or constitutional suits to challenge

¹³⁹ Criminal Procedure Law No. 95 of 2003, article 5; CRIN (n 136) 4.

¹⁴⁰ CRIN (n 136).

¹⁴¹ *ibid.*

¹⁴² *ibid.*, 3. The emergency line is 16000.

¹⁴³ *ibid.* The helpline is 08008886666. See also Egypt's Third and fourth periodic report to the UN Committee on the Rights of the Child (2010) para 52.

¹⁴⁴ Egypt's third and fourth periodic report (n 143) para 51-52; CRIN (n 136) 5.

¹⁴⁵ Constitution of Egypt (n 19) article 80(5).

¹⁴⁶ Child Law (n 19) article 116-bis (d).

¹⁴⁷ *ibid.*, article 96; CRIN (n 136) 6.

¹⁴⁸ Civil Code (n 124) articles 50 & 164; CRIN (n 136) 6.

¹⁴⁹ Law No. 47 of 1972 related to the Council of State, article 10; CRIN as above.

potential human rights violations.¹⁵⁰ Neither can they file *amicus curiae* briefs in any proceedings.

4. National mechanism for implementation

The National Council for Childhood and Motherhood (NCCM) was established in 1988 as ‘the highest national authority entrusted with policymaking, planning, co-ordination, monitoring and evaluation of activities in the areas of protection and development of children’.¹⁵¹ It has the mandate to give ‘opinion on conventions related to childhood and motherhood’.¹⁵² The NCCM is thus responsible for coordinating policies and programmes for the implementation of various children’s rights treaties including the African Children’s Charter.¹⁵³ Since the NCCM is only a coordinating entity and does not actually engage in the general implementation of African Children’s Charter, it coordinates implementation with relevant state departments responsible for the implementation of relevant children’s rights as well as civil society organisations.¹⁵⁴ Its decisions are final and binding and must be implemented by all ministries, public bodies, and local government units.¹⁵⁵

The NCCM is also mandated to establish a General Department for Child Helpline to receive ‘complaints and handle them efficiently to protect children from all forms of violence, risk or neglect’.¹⁵⁶ Members of this department are to be selected from the Ministries of Justice, Interior, Social Solidarity and Local Development and Civil Society.¹⁵⁷ The department has the power to investigate complaints, follow up on investigation results and forward reports of its findings to the relevant authorities.¹⁵⁸

In a bid to ensure child participation in its activities, the NCCM has appointed

¹⁵⁰ CRIN (136 above) 7.

¹⁵¹ National Council for Motherhood and Childhood, ‘National report on follow-up to the world summit for children Egypt’ (2000) 2; Interview with Dr Alaa Bakr (n 43).

¹⁵² State information Service, ‘National Council for Childhood and Motherhood (NCCM)’ <<http://www.sis.gov.eg/En/Templates/Articles/tmpArticles.aspx?ArtID=2268#.V3RF82h97IU>> accessed 24 June 2016.

¹⁵³ Interview with Dr Alaa Bakr (n 43)

¹⁵⁴ *ibid.*

¹⁵⁵ Egypt’s Initial State Report to the ACERWC (2005) 23.

¹⁵⁶ Child Law (n 19) article 97.

¹⁵⁷ *ibid.*

¹⁵⁸ *ibid.*

child ambassadors in each governorate, who meet other children to discuss child rights issues. These child ambassadors also attend meetings and programmes of the NCCM and take part in the preparation of policies and programmes of the NCCM.¹⁵⁹

There is currently no national strategy for the implementation of the African Children's Charter.¹⁶⁰ The NCCM is, however, in the final stages of developing a comprehensive National Action Plan for the implementation of children's rights treaties, which takes into account the provisions of the African Children's Charter.¹⁶¹ The draft National Action Plan covers all children and provides measurable targets which it seeks to achieve and provides for progress and challenges reporting to the Prime Minister, the Ministry of Health and Population, and to the Parliament.¹⁶² The National Action Plan is being developed with the participation of children and civil society organisations.¹⁶³ The National Action Plan will include a child friendly version attached as an annexure.¹⁶⁴

In addition to the NCCM, the Child Law establishes Child Protection Committees in each governorate, mandated to formulate and monitor the implementation of child protection policies within the relevant governorate.¹⁶⁵ Membership of the Child Protection Committees includes 'directors of the security, social affairs, education, and health directorates, as well as representatives from the civil society' organisations engaged in child protection issues.¹⁶⁶ Most of the Child Protection Committees are however not yet operational.

The National Council for Human Rights (NCHR) was established in 2003 with a mandate to, among others,

'monitor the application of international human rights agreements and conventions, as well as provide the concerned authorities with proposals, notes and recommendations necessary for the proper application of such

¹⁵⁹ *ibid.*

¹⁶⁰ Interview with Noheier Nashaat (n 13)

¹⁶¹ Interview with Dr Alaa Bakr (n 43); Interview with Hany Helal (n 11)

¹⁶² *ibid.*

¹⁶³ *ibid.*

¹⁶⁴ *ibid.*

¹⁶⁵ Child Law (n 19) article 97.

¹⁶⁶ *ibid.*

agreements and conventions'.¹⁶⁷

Even though the mandate of the NCHR broadly encompasses all human rights, including children's rights, the NCCM largely takes up the role of the coordinating entity for the implementation of children's rights and for that matter the African Children's Charter because the NCCM has specific expertise on children's rights.¹⁶⁸ The NCHR, however, established a Child Rights Unit in 2015 which engages in creating awareness about children's rights and in monitoring the implementation of children's rights treaties.¹⁶⁹

5. The Role of the ACERWC in the realisation of children's rights in Egypt

As indicated earlier, the ACERWC uses various avenues in the promotion and protection of children's rights in accordance with the Charter. In the case of Egypt, the primary and most important avenue for achieving this is the state reporting process since Egypt entered a reservation against the competence of the Committee to undertake investigative missions and receive communications.¹⁷⁰ This section therefore focuses on the role of the ACERWC through the state reporting mechanism.

5.1. State reporting

Egypt submitted its Initial Report to the Committee in 2005 after ratifying the Charter in 2001. Egypt's Initial Report was prepared by the Public Department of Human Rights Affairs of the Ministry of Justice.¹⁷¹ The report was submitted about two years later than the two year period designated by the Charter for the submission of the initial report.¹⁷² It was presented by a large delegation of 'high-level inter-ministerial composition' headed by H.E Minister MOUSHIRA

¹⁶⁷ Law No. 94 of 2003 Promulgating the National Council for Human Rights, article 3(5).

¹⁶⁸ Interview with the Child Rights Unit of the National Council for Human Rights in Cairo on 23 June 2016 .

¹⁶⁹ *ibid.*

¹⁷⁰ African Union (n 112). Despite the reservations entered by Egypt against the Committee's ability to receive communications, the Committee on 30 January 2017 notified Egypt that the reservations are not compatible with the object and purpose of the Charter and thus contrary to article 19(c) of the Vienna Convention on the Law of Treaties. The Committee then proceeded to seize two communications brought against Egypt even though both were declared inadmissible for failing to exhaust local remedies. See *Sohaib Emad v Egypt*, Communication No: 008/Com/002/2016 (Decision on Admissibility No:001/2017) and *Ahmed Bassiouny v Egypt*, Communication No: 009/Com/001/201 (Decision on Admissibility No: 002/2017).

¹⁷¹ Egypt's Initial Report to the ACERWC 1.

¹⁷² Article 43 of the African Charter on the Rights and Welfare of the Child.

KHATTAB.¹⁷³ No further periodic reports have been submitted – with three periodic reports currently outstanding.¹⁷⁴ The reporting process is inter-ministerial. The NCCM together with the Ministries of Justice and Foreign Affairs are responsible for the reporting process.¹⁷⁵ The Department of Human Rights Affairs at the Ministry of Foreign Affairs is responsible for coordinating with various ministries and National Councils for the preparation of state reports.¹⁷⁶ A drafting committee made up of representatives of various ministries and National Councils is set up to compile the report.

The Initial Report was silent on the involvement of NGOs, NHRI, media, academia, and children in the reporting process. The NCHR is usually represented in the drafting committee that drafts the state reports.¹⁷⁷ There are indications that NGOs sometimes participate in the state reporting process.¹⁷⁸

Reasons for the late submission could not be ascertained. The non-submission of subsequent periodic reports may, however, be attributable to the current challenging political environment since 2011.¹⁷⁹ Some also attribute non-reporting to the general lack of capacity within the government and the NCCM after the 2011 revolution.¹⁸⁰

Draft reports are sometimes made available to the network of civil society organisations working on children’s rights but not the general public.¹⁸¹ Copies of state reports are usually made available to the general public after they have been submitted to the relevant treaty body, which makes it impossible for the general public to comment and have their comments taken into consideration.¹⁸²

The initial report submitted to the Committee generally outlined social and

¹⁷³ Concluding Recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the Arab Republic of Egypt Report on the status of implementation of the African Charter on the Rights and Welfare of the Child(2008) 2.

¹⁷⁴ Article 43 requires state parties to submit periodic reports every three years.

¹⁷⁵ Interview with Dr Alaa Bakr (n 43).

¹⁷⁶ Egypt’s Initial State Report to the ACERWC 24.

¹⁷⁷ Interview with the Child Rights Unit of NCHR (n 168).

¹⁷⁸ *ibid.* Interview with Sameh Abu El-Soud of Forum of Dialogue and Partnership for Development, in Cairo on 26 June 2016.

¹⁷⁹ Interview with Dr Alaa Bakr (n 43); Interview with Noheier Noshayat (n 13).

¹⁸⁰ Interview with Hany Helal (n 11).

¹⁸¹ Interview with Dr Alaa Bakr (n 43).

¹⁸² Interview with Sameh Abu El-Soud (n 178).

economic indicators and the political set up of the state.¹⁸³ It also discusses the definition of the child and other legal provisions for the protection of the child.¹⁸⁴ Other issues discussed include the legal status of international treaties in Egyptian legal system¹⁸⁵ and institutional framework for the implementation of the Charter¹⁸⁶ before it proceeds to discuss the measures adopted to implement the various articles of the Charter.¹⁸⁷ The report was, therefore, substantially in conformity with the reporting guidelines of the Committee. It must be highlighted, however, that the report set out the legislative and policy measures adopted towards the realisation of the rights without an extensive discussion of how most of these rights are enjoyed in practice and the challenges that are faced in the realisation of the rights. The report also did not highlight any comprehensive strategy adopted to ensure children meaningfully participate in decisions affecting them and that their views are taken into consideration. No complementary reports from civil society organisations were sighted.

The next section provides, among others, a summary of some of the tangible progress made subsequent to the submission of the report, using the state's implementation of the Committee's concluding observations as the basis of assessment.

5.2. Concluding observations

Egypt received concluding observations from the Committee on its Initial Report in 2008.¹⁸⁸ The Committee made 15 pertinent observations which included recommendations for Egypt to waive its reservations to the Charter, popularisation of the Charter, including the rights of the child in all development policies, strengthening the capacity of the NCCM, deployment of necessary logistics to all birth reporting centres throughout the country and to undertake legislative reform to harmonise the age of marriage with the provisions of the Charter.¹⁸⁹ Others included adopting severe criminal penalties for perpetrators of child sexual exploitation and support mechanisms for victims, providing communities and rehabilitation centres with adequate

¹⁸³ Egypt's Initial Report to the ACERWC, para 3-10.

¹⁸⁴ *ibid*, para 10-17.

¹⁸⁵ *ibid*, para 19.

¹⁸⁶ *ibid*, para 20-32.

¹⁸⁷ *ibid*, para 33-97.

¹⁸⁸ Concluding Recommendations of ACERWC (n 209).

¹⁸⁹ *ibid*.

budget to assist children with disabilities, effective detoxification of victims of drug trafficking, abolishing corporal punishment, addressing discrimination against children born out of wedlock, harmonisation of the age of minority with the Charter, providing mechanisms and structures outside the prison system to take care of juvenile offenders, strengthening strategies in the fight against female circumcision, female genital mutilation and other harmful cultural practices, and adopting legislative measures to curb child labour.¹⁹⁰

The NCCM is responsible for following up on the implementation of the concluding observations and making recommendations to relevant government departments on measures to implement the concluding observations.¹⁹¹ The concluding observations have been translated into Arabic but are not usually available to the general public nor widely disseminated in the media.¹⁹² The NCCM, however, shared them with NGO networks working on children's rights.¹⁹³ There is currently no national plan for the implementation of the concluding observations. However, as indicated earlier, the NCCM is in the process of finalising a National Action Plan on the implementation of children's rights, which take into account the provisions of all children's rights treaties and concluding observations emanating from treaty bodies.¹⁹⁴ Civil society organisations and children are being engaged in the development of the National Action Plan.¹⁹⁵

Apart from their contribution to the development of NAP, the main role played by NGOs in the implementation of concluding observations is awareness creation about the concluding observations.¹⁹⁶ Some NGOs serve as members of the Child Protection Committees which are responsible for implementation of child protection policies in the various governorates. Some NGOs are also involved in providing direct services related to the concluding observations such as providing psychosocial and other support services for victims of sexual exploitation and drug trafficking as well as rehabilitation facilities for children with disabilities.

¹⁹⁰ *ibid.*

¹⁹¹ Interview with Dr Alaa Bakr (n 43); Interview with Hany Helal (n 11); Interview with Noheier Noshayat (n 13); Interview with Sameh Abu El-Soud (n 178).

¹⁹² Interview with Noheier Noshayat (n 13); Interview with Sameh Abu El-Soud (n 178).

¹⁹³ *ibid.*

¹⁹⁴ Interview with Dr Alaa Bakr (n 43); Interview with Hany Helal (n 11).

¹⁹⁵ *ibid.*

¹⁹⁶ Interview with Noheier Noshayat (n 13); Interview with Sameh Abu El-Soud (n 178).

Actions taken by the state in addressing the concluding observations are briefly outlined below.

5.2.1. Waiving reservations to the Charter

Some progress has been made on this recommendation. Egypt withdrew its reservation on article 21(2) regarding the age of marriage in 2015.¹⁹⁷ However, reservations against article 24 on adoption, article 30(a-e) regarding the special treatment of imprisoned mothers, article 44 on the competence of the Committee to receive communications, and article 45(1) on the competence of the Committee to undertake investigative missions in member states have not been withdrawn. This triggered the Committee's decision to declare this reservation as against the object and purpose of the Charter and, therefore, is invalid. As discussed earlier, internal processes have commenced towards the cancellation of reservations on articles 24, 30(e), and 44, but this has not been completed.

5.2.2. Popularisation of the Charter

The Charter has not been widely disseminated as recommended by the Committee.¹⁹⁸ The UN CRC has been the main children's rights treaty disseminated by the government.¹⁹⁹ Civil society organisations have been at the forefront of disseminating the provisions of the Charter.²⁰⁰ The situation is, however, improving. The NCCM now includes provisions of the Charter in its programmes, awareness campaigns, and policies.²⁰¹ The NCCM has recently, in collaboration with Save the Children Egypt and Plan International Egypt, produced an Arabic translation of the first 31 articles of the Charter.²⁰² The NCCM is also in the process of producing a child friendly version of the Charter in Arabic in a bid to create awareness of the Charter among children.²⁰³

5.2.3. The rights of the child in development policies

Children's rights do not feature prominently in all development policies especially after the 2011 revolution because the government's focus is on economic recovery and national security.²⁰⁴ Between 2013 and 2014, civil

¹⁹⁷ Human Rights Watch (n 6).

¹⁹⁸ Interview with Noheier Noshayat (n 13); Interview with Hany Helal (n 11).

¹⁹⁹ Interview with the Sameh Abu El-Soud (n 178).

²⁰⁰ Interview with Noheier Noshayat (n 13); Interview with Child Rights Unit of the NCHR (n 168).

²⁰¹ Interview with Dr Alaa Bakr (n 43).

²⁰² *ibid*; Interview with Noheier Noshayat (n 13); Interview with Child Rights Unit of the NCHR (n 168).

²⁰³ Interview with Dr Alaa Bakr (n 43).

²⁰⁴ Interview with Hany Helal (n 11).

society organisations made representations to the government and the World Bank to ensure that children's rights are taken into account in all development projects funded by the World Bank in Egypt.²⁰⁵ Even though the World Bank would usually make general statements on the need to take children's rights into account in all projects, implementation does not generally follow in practice.²⁰⁶

5.2.4. *Strengthening the capacity of NCCM*

The capacity of the NCCM has deteriorated even further subsequent to the Committee's recommendations.²⁰⁷ The NCCM does not have the full complement of staff, which coupled with the high turnover in the office of its secretary general has weakened the capacity of the NCCM.²⁰⁸ Administratively, the movement of the NCCM from the office of the prime minister to the Ministry of Health has also led to the weakening of its power and influence.²⁰⁹ There are, however, plans to make the NCCM technically and financially independent.²¹⁰

5.2.5. *Birth registration*

Significant progress has been made with regards to birth registration. Facilities are available in all districts for birth registration and the issuance of birth certificates.²¹¹ In some communities, government deployed mobile registration units to ensure that all births are registered.²¹² Recent studies indicate that 99% of children born in Egypt have access to birth registration.²¹³ There are, however, disparities in the rate of birth registrations throughout the country, with Upper Egypt and children born to migrant workers having lower rates of registration.²¹⁴ Additionally, even though birth registration is legally free, it is not yet *de facto* free of charge because a birth certificate requires a stamp which

²⁰⁵ Interview with Sameh Abu El-Soud (n 178).

²⁰⁶ *ibid.*

²⁰⁷ Interview with Hany Helal (n 11); Interview with Dr Alaa Bakr (n 43); Interview with Noheier Nashaat (n 13).

²⁰⁸ Interview with Dr Alaa Bakr (n 43).

²⁰⁹ Interview with Hany Helal (n 11).

²¹⁰ Interview with Dr Alaa Bakr (n 43).

²¹¹ Interview with Hany Helal (n 11); Interview with Magdy Garas (n 14).

²¹² Interview with Noheier Noshaat (n 13).

²¹³ UNICEF, 'The state of world's children 2015: executive summary' (2014) 85.

²¹⁴ Concluding observation of the Committee on the Rights of the Child on Egypt's third and fourth periodic report (2011) para 42. Even though the aim of this study is to assess the implementation of the African Children's Charter in Egypt, reference is occasionally made to concluding observations of the CRC Committee and reports submitted to the CRC Committee for information purposes where the issues raised are identical.

is not free.²¹⁵ This has the potential to deter poor families from registering the birth of a child and obtaining a birth certificate.

5.2.6. *Age of marriage and employment*

The age of marriage for girls was increased from 16 to 18, and marriage to any person below 18 was prohibited from being registered.²¹⁶ The law, however, falls short of explicitly prohibiting and criminalizing child marriages.²¹⁷ Whilst this provision may be interpreted as prohibiting child marriage, what is indeed prohibited is the registration of the marriage and not, for instance, the celebration of the marriage *per se*. Arguably, it is still possible to celebrate a marriage with a child without registering it.

With regards to the age of employment, the Child Law prohibits the employment of a child under 15 years and training to a child under 13 years.²¹⁸ Employment of children in hazardous work and in particular those that fall under ILO Convention No. 182 of 1999 on the Worst Forms of Child Labour is also prohibited.²¹⁹ The law, however, allows a governor to enact a decree subject to the approval of the Minister of Education for the employment of children between 12-14 years in seasonal work that neither harms their health nor interferes with their education.²²⁰ Children are also required to undergo medical examination to ascertain their fitness prior to employment.²²¹ These provisions largely conform to the provisions of the Charter.

5.2.7. *Sexual exploitation of children*

The Child Law provides criminal sanctions for sexual exploitation of children. The minimum penalty for exposing a child to the risk of sexual exploitation is imprisonment for 6 months or a fine of 2000 Egyptian pounds.²²² Parents, guardians, or carers get double the minimum penalty if they are the perpetrators of this offence. Sexual exploitation of a child attracts a minimum penalty of 5 years imprisonment and a fine of not less than 50,000 Egyptian

²¹⁵ *ibid.*

²¹⁶ Second schedule of the Child Law No. 126 of 2008 adding new article 31-bis to Law No. 143 of 1994 on Civil Status.

²¹⁷ Concluding observation of the Committee on the Rights of the Child on Egypt's third and fourth periodic report (2011) para 32.

²¹⁸ Child Law (n 19) article 64.

²¹⁹ *ibid.*, article 65.

²²⁰ *ibid.*, article 64.

²²¹ *ibid.*, article 65-bis.

²²² Child Law (n 19) article 96.

pounds.²²³ The penalty is ‘doubled if committed transnationally by an organized criminal group’.²²⁴ The penalty for producing, distributing, exporting, importing, or broadcasting pornographic material involving children or related to the sexual exploitation of children is a minimum of 2 years imprisonment in addition to a fine of not less than 10,000 Egyptian pounds.²²⁵

While there has been an enhancement in the criminal sanctions, there is still a ‘lack of available physical and psychosocial rehabilitation centres and support services available for victims of sexual abuse and exploitation’.²²⁶

Additionally, while there are efforts at the national level to have these rehabilitation and support services in place including the hotline for the reporting of abuse against children, these are not adequate as there are not enough follow-up mechanisms to assist victims of commercial child sexual exploitation.²²⁷ The bulk of the support and rehabilitation services are provided by civil society organisations which sometimes lack specialised training and resources.²²⁸ ‘The absence of proper sex education ... and poor understanding of reproductive health’ also contributes to children’s ‘vulnerability to commercial sexual exploitation’.²²⁹ Finally, the treatment of child sexual exploitation as a taboo subject culturally ‘seriously hinders the effective prosecution of offenders’.²³⁰

5.2.8. Children with disabilities

As discussed earlier, the normative framework for the protection and realisation of the rights of children with disabilities has been enhanced by the Child Law and the Constitution. Access to rehabilitation services provided by the state is, however, woefully inadequate, with only 4% of children with disabilities having access to rehabilitation services provided by the state.²³¹

²²³ New article 291 of the Penal Code Law No 58 of 1937 as inserted by annex 1 of Law No 126 of 2008.

²²⁴ *ibid.*

²²⁵ *ibid.*, article 116-bis.

²²⁶ Concluding observation of the Committee on the Rights of the Child on Egypt’s third and fourth periodic report (2011) para 82.

²²⁷ Abdul-Hamid (n 61) 17.

²²⁸ *ibid.*; Interview with Noheier Noshaat (n 13); Interview with Farida El Kalagy (n 60); Interview with Hany Helal (n 11).

²²⁹ ECPAT International, ‘Global monitoring report on the status of action against commercial sexual exploitation of children - Egypt’ (2008) 14.

²³⁰ *Ibid.* 16.

²³¹ Concluding observations of the Committee on the Rights of the Child on Egypt’s third and fourth periodic report (2011) para 60.

Rehabilitation services and health insurance for children do not cover children with disabilities who are outside the education system.²³² This is very worrying given that only about 1.1 % of children with disabilities have access to education.²³³ There have been government efforts to provide community-based rehabilitation services through health centres, but these are still very weak.²³⁴ Rigorous advocacy campaigns by civil society organisations have, however, led to a shift in social perception of children living with disabilities and provided them with more visibility.²³⁵ A helpline established in 2003 enables children with disabilities and their families to receive free medical advice and information on services provided by the state and other NGOs.²³⁶ Even with these interventions by the state, the bulk of support and rehabilitation services for persons with disabilities are provided by civil society organisations.²³⁷

5.2.9. Detoxification and support of children involved in trafficking of drugs

Recent studies reveal that drug addiction in Egypt is increasing while the age at which people use illicit drugs is decreasing.²³⁸ Drug use and addiction among children continue to be high especially among street children with some surveys suggesting that up to 95% of street children are drug addicts.²³⁹ In 2013, Egypt adopted a national action plan to combat drug addiction which addresses among others treatment and rehabilitation,²⁴⁰ but this is not effectively implemented nationally to ensure detoxification and rehabilitation of all children involved in drug trafficking and abuse²⁴¹ as the general public and the police still perceive these children as criminals and not victims in need

²³² *ibid.*

²³³ *ibid.*

²³⁴ *ibid.*

²³⁵ Manara Network (n 9) 35.

²³⁶ *Ibid* 34.

²³⁷ *Ibid* 34-39.

²³⁸ D Abd El Wahab, 'Egypt: Drug situation and policy' (2014) 5 *P-PG / Med* 16 & 45t <<https://www.coe.int/T/DG3/Pompidou/Source/Images/country%20profiles%20flags/profiles/CP%20Egypt%20English%20V4.pdf>> accessed 30 August 2016.

²³⁹ International Organisation for Migration, Cairo, 'Street children in Egypt: Key findings of a study conducted by the National Center for Social and Criminological Research' <<http://www.egypt.iom.int/Doc/Street%20children%20profile.pdf>> accessed 9 September 2016.

²⁴⁰ International Narcotics Control Board (INCB), 'Report of the International Narcotics Control Board for 2013' (2014) 39-40 <https://www.incb.org/documents/Publications/AnnualReports/AR2013/English/AR_2013_E.pdf> accessed 9 September 2016.

²⁴¹ Interview with Noheier Noshaat (n 13).

of rehabilitation.²⁴²

5.2.10. Corporal punishment

As discussed earlier, the law prohibits the exposure of a child to ‘illegitimate physical abuse or harmful practice’ as a means of discipline.²⁴³ This provision is, however, not interpreted to abolish corporal punishment altogether as it recognises the right of persons responsible for the care of a child to discipline the child through ‘legitimate means’.²⁴⁴ Corporal punishment is thus still lawful in the home, alternative care and day care institutions under the ‘right to discipline’,²⁴⁵ provided it does not amount to intentionally exposing the child to ‘illegitimate physical abuse or harmful practice’. Even though a ministerial decree banned corporal punishment at school as far back as 1971, corporal punishment in schools continue to be rampant.²⁴⁶ There have also been reports of the use of corporal punishment in childcare institutions.²⁴⁷

5.2.11. Children born out of wedlock

Some progress has also been made with regards to the situation of children born out of wedlock. Children born out of wedlock now have the right to be registered and issued a birth certificate²⁴⁸ which is necessary to access health services and education.²⁴⁹ There is, however, still widespread stigmatization of children born out of wedlock because it is not culturally acceptable.²⁵⁰

5.2.12. Harmonisation of age of majority

Progress has been made on this recommendation. The new Constitution stipulates that a child is anyone below the age of 18 years.²⁵¹ This is also the position of the Child Law. In 2015, Egypt’s cabinet approved an amendment to

²⁴² United Nations Office on Drugs and Crime, ‘Egypt: Street children and substance abuse’t <<http://www.unodc.org/newsletter/en/perspectives/0601/page006.html>> accessed 9 September 2016.

²⁴³ Child Law (n 4) article 7 bis (a).

²⁴⁴ *ibid.*

²⁴⁵ Global Initiative to End All Corporal Punishment of Children, ‘Corporal punishment of children in Egypt’ (2015) 1-2.

²⁴⁶ Abdul-Hamid (n 61) 36.

²⁴⁷ Concluding observations of the Committee on the Rights of the Child on Egypt’s third and fourth periodic report (2011) para 57.

²⁴⁸ Child Law (n 19) article 5.

²⁴⁹ Abdul-Hamid (n 61) 35.

²⁵⁰ Interview with Hany Helal (n 11); Interview with Child Rights Unit of NCHR (n 27); Interview with Dr Alaa Bakr(n 43).

²⁵¹ Constitution of Egypt (n 19) article 80.

lower the age of majority from 21 to 18.²⁵²

5.2.13. Juvenile justice

The enactment of the Child Law Amendment Act in 2008 and the adoption of a new Constitution in 2014 has improved the normative framework for juvenile justice in Egypt. The Child Law establishes Childhood Protection Committees and Protection Sub-Committees within each governorate to monitor children at risk and 'to take the necessary preventive, therapeutic, and follow-up measures for all cases identified'. The age of criminal responsibility has been increased from 7 to 12 years,²⁵³ and juvenile offenders are exempted from the death penalty, life imprisonment, or forced labour.²⁵⁴ Children in conflict with the law have the right to be provided legal aid²⁵⁵ and be kept in detention facilities separate from adults.²⁵⁶

Children under 15 years are not to be kept in preventive custody, but are to be offered diversion arrangements such as reproach, delivery to parents or guardian, training and rehabilitation, probation, community service, and placement in specialised hospitals or social care institutions.²⁵⁷ The law establishes at least one child court in every governorate, which has exclusive jurisdiction over children in conflict with the law.²⁵⁸ Trials of children in conflict with the law are held *in camera* with only relatives, witnesses, lawyers, social observers, and other permitted persons allowed to attend.²⁵⁹ These mechanisms are substantially in conformity with the provisions of the Charter.

While there have been improvements in the legal framework, implementation has not been without some challenges. For instance, some children have been tried before military courts and imprisoned together with adults subsequent to the 2011 revolution.²⁶⁰ There are reports of a high number of children between

²⁵²Ahram Online, 'Egyptian cabinet approves amendment to lower age of legal adulthood to 18' (15Jan 2015) <<http://english.ahram.org.eg/NewsContent/1/64/120441/Egypt/Politics-/Egyptian-cabinet-approves-amendment-to-lower-age-o.aspx>> accessed 27 June 2016.

²⁵³ Child Law (n 19) article 94.

²⁵⁴ *ibid*, article 111.

²⁵⁵ Constitution of Egypt (n 19) article 80; Child Law (n 19), article 125.

²⁵⁶ Constitution of Egypt (n 19) article 80; Child Law (n 19), article 112.

²⁵⁷ Child Law (n 19) article 101.

²⁵⁸ *ibid*, articles 120-22.

²⁵⁹ *ibid*, article 126.

²⁶⁰ MANARA Network (n 9) 75; Concluding observations of the CRC Committee (2011) para 86(g); Amnesty International, 'Egypt: children on trial –stop sending juveniles before military courts' (2012) <<https://www.hrw.org/news/2012/03/27/egypt-children-trial>> accessed 27 June 2016.

12-18 years who are held in custody, contrary to the Child Law's prohibition of placing children below 15 years in custody.²⁶¹ It has also been reported that an individual who committed an offence while under the age of 18 was sentenced to death.²⁶² In some police stations, children are still held in custody with adults, in clear violation of the Child Law.²⁶³ Additionally, the establishment of the Child Courts and Specialized Child Prosecution Offices has been slow and alternative measures for children in conflict with the law are not well developed.²⁶⁴

5.2.14. *Female circumcision*

This has been outlawed with a minimum penalty of 3 months imprisonment or a fine of 1000 Egyptian pounds,²⁶⁵ but the practice has not gone away. Even though there are suggestions that the figures have reduced, as indicated earlier, the practice is still quite prevalent in rural areas. It is also quite worrying that majority (74%) of female circumcision is now being performed by medical doctors.²⁶⁶ This gives the impression that advocacy and awareness creation on FGM was packaged around the harmful methods used in performing it and not as a violation of the rights of the child. Attitudes among women towards female circumcision seem to have changed a little with just over half of 'ever-married' women believing that it is required by religion but just about 30% believe the practice should be stopped.²⁶⁷ Additionally, despite many thousands of girls getting circumcised each year, perpetrators are almost never sentenced,²⁶⁸ and the law does not require mandatory reporting of FGM cases.²⁶⁹

5.2.15. *Child labour*

There has been some improvement in the protection of children from child labour following the amendments to the Child Law in 2008 and the adoption of the new Constitution in 2014 both of which prohibit child labour. The Child Law still has some deficiencies as it allows children between 12-14 years to be

²⁶¹ Concluding observations of the CRC Committee (2011) para 86(b).

²⁶² *ibid*, para 38.

²⁶³ *ibid*, para 86(c).

²⁶⁴ *ibid*, para 86(a).

²⁶⁵ New article 242-bis of the Penal Code Law No. 58 of 1937 as inserted by annex 1 of Law No. 126 of 2008.

²⁶⁶ Ministry of Health and Population Egypt, El-Zanaty and Associates, Egypt, and ICF International (n 108).

²⁶⁷ *ibid*.

²⁶⁸ UNICEF Egypt, 'Egypt Programme Profile: Child Protection' <<http://www.unicef.org/egypt/protection.html>> accessed 27 June 2016.

²⁶⁹ Concluding observation of the Committee on the Rights of the Child on Egypt's third and fourth periodic report (2011) para 68.

employed in seasonal work.²⁷⁰ Additionally, the Labour Law does not apply to domestic work and agriculture²⁷¹ which employ the majority of child labourers. It is, therefore, not clear whether the minimum age provisions in the Child Law apply to children employed in domestic work and agriculture.²⁷² There is also discrepancy between the Child Law and its executive regulations which lower the minimum age for employment in hazardous work to 17 years contrary to 18 years as provided by the Child Law.²⁷³ The situation is, however, not all gloomy as in 2017 the NCCM conducted 35 awareness-raising campaigns on child labour while the Ministry of Social Solidarity began operating 17 mobile units that provide services to more than 4000 children in the streets who are most at risk of the worst forms of child labour.²⁷⁴

6. Extent of treaty and general comment awareness

The treaty provisions and the general comments²⁷⁵ of the Committee are not very well known among government representatives. The NCCM has, in collaboration with Save the Children Egypt and Plan International Egypt, recently translated the Charter into Arabic in a bid to popularise it. The NCCM also indicates that it has undertaken some training programmes for government officials on the provisions of the charter.²⁷⁶ The NCCM also organises mandatory training on the Child Law (which substantially conforms to the provisions of the Charter) for all incoming prosecutors.²⁷⁷ The NCCM has also organised training on the Child Law for some judges of the Child Courts, representatives of the media, school social workers, and lawyers.²⁷⁸

²⁷⁰ Section 64 of Child Law; Concluding observation of the Committee on the Rights of the Child on Egypt's third and fourth periodic report (2011) para 78(c).

²⁷¹ United States Department of Labour (n 26) 3.

²⁷² *ibid.*

²⁷³ Concluding observations of the Committee on the Rights of the Child on Egypt's third and fourth periodic report (2011) para 78 (d).

²⁷⁴ United States Department of Labour, '2017 findings on the worst forms of child labour: Egypt' (2018) <<https://www.dol.gov/agencies/ilab/resources/reports/child-labor/egypt>> accessed 20 January 2019.

²⁷⁵ This is notwithstanding the fact that the general comments are freely available on the Committee's website in Arabic which is the official language as well as the most widely spoken language, and, therefore, no effort is required on the part of the government except to popularise them.

²⁷⁶ Interview with Dr Alaa Bakr (n 43).

²⁷⁷ Concluding observations of the Committee on the Rights of the Child on Egypt's third and fourth periodic report (2011) para 25.

²⁷⁸ *ibid.*

Media coverage of the provisions of the Charter is not common. NGOs and other civil society organisations, particularly members of the NGO Coalition on the Rights of the Child use the Charter in their campaigns, programmes, and advocacy.²⁷⁹

The National Council for Human Rights does not currently use the Charter and its general comments in its programmes on children's rights²⁸⁰ neither has the provisions of the Charter and general comments been generally incorporated into the curricula at the university level and are rarely mentioned in academic writings.²⁸¹ Some universities, however, offer postgraduate degrees in human rights which would necessarily include the Charter and its general comments. For instance, the American University in Cairo offers a graduate diploma and a master's programme in international human rights law which include in their curriculum a module on human rights in Africa.²⁸² The module on human rights in Africa, however, forms part of the elective courses which students may take and is, therefore, not part of the mandatory curriculum.²⁸³

7. Court decisions

The judicial authority of the state is vested in the ordinary courts which adjudicate on all disputes and crimes except those within the competence of other judicial authorities,²⁸⁴ State Council with a mandate to adjudicate exclusively on administrative disputes,²⁸⁵ and the Supreme Constitutional Court – exclusively competent to determine the constitutionality of laws and regulations.²⁸⁶

As discussed earlier, the Charter forms part of Egyptian municipal law upon ratification and publication. It can, therefore, be invoked before national courts. No domestic decisions were, however, found in which the Charter was used as an interpretative source nor a substantive basis for finding human rights

²⁷⁹ Interview with Hany Helal (n 11); Interview with Sameh Abu El-Soud (n 178).

²⁸⁰ Interview with the Child Rights Unit of the NCHR (n 168).

²⁸¹ Email correspondence with Dr Eldakak of University of Alexandria on 28 June 2016.

²⁸² The American University in Cairo, 'International Human Rights Law (M.A.) <http://catalog.aucegypt.edu/preview_program.php?catoid=15&moid=1742&returnto=474> accessed 27 June 2016.

²⁸³ *ibid.*

²⁸⁴ *ibid.*, article 188. See also Egypt's preliminary report presented to the African Committee of Experts on the Rights and Welfare of the Child (2005) 5.

²⁸⁵ *ibid.*, article 190.

²⁸⁶ *ibid.*, articles 191 & 192.

violations. This is equally true of the UN CRC.²⁸⁷ The frequency with which courts will cite international human rights instruments in their judgements partly depends on the frequency with which parties before the courts utilise these instruments in their pleadings.²⁸⁸ The non-use of the Charter and its general comments in domestic decisions could, therefore, be attributable to the failure of parties to cite them in their pleadings. As discussed above, the Charter became part of Egyptian law after ratification and publication, making it enforceable by all organs of state including the courts. NGOs and lawyers providing assistance in children's rights litigation before the courts should, therefore, not shy away from citing the Charter as a basis to claim substantive violations and also as an interpretative guide to similar provisions in the Constitution and national legislation. This is the only way the Charter will receive recognition and enforcement before the local courts.

8. The role of civil society

CSOs are involved in the development of the national action plan for the implementation of the Charter and other children's rights treaties.²⁸⁹ CSOs monitor the implementation of the Charter by following-up with the government (NCCM) on implementation measures when they are invited for conferences and workshops organised by the NCCM.²⁹⁰ CSOs also engage in awareness creation about the Charter.²⁹¹ Under the Child Law, NGOs are represented in the Child Protection Committees established under the various governorates which are mandated with the promulgation and monitoring of implementation of child protection policies within each governorate.²⁹² Some NGOs are also involved in providing direct services related to the provisions of the Charter. NGOs and other civil society organisations have developed programmes informed by the Charter and have used the Charter in their campaigns, programmes, and advocacy.²⁹³

Civil society organisations did not submit alternative reports to the Committee

²⁸⁷ CRIN (n 136).

²⁸⁸ MG Nyarko, 'The impact of the African Charter and Maputo Protocol in Ghana' in VO Ayeni (ed), *The impact of the African Charter and Maputo Protocol in selected African states* (Pretoria University Law Press, 2016) 95.

²⁸⁹ Interview with Dr Alaa Bakr (n 43); Interview with Hany Helal (n 11).

²⁹⁰ Interview with Sameh Abu El-Soud (n 178).

²⁹¹ Interview with Noheier Noshayat (n 13); Interview with Sameh Abu El-Soud (n 178).

²⁹² Child Law (n 19) article 97.

²⁹³ Interview with Hany Helal (n 11); Interview with Noheier Noshayat (n 13); Interview with Sameh Abu El-Soud (n 178).

during the consideration of the initial report and since there has not been any periodic report submitted after the initial report, civil society organisations have not had the opportunity to submit alternative reports to the Committee. CSOs are, however, very poised to submit alternative reports whenever Egypt submits its next periodic report to the Committee.²⁹⁴

9. Conclusions and way forward

Egypt has made some tangible progress towards the implementation of the African Children's Charter in terms of both legislation and practical measures. The enactment of the Child Law in 2008 and the adoption of a new Constitution in 2014, together provide quite comprehensive protection for children's rights in line with the provisions of the Charter. Some of the notable best practices include the monist system of treaty implementation, which makes ratified and published treaties part of Egyptian law directly enforceable by all organs of state including courts. It is commendable that Egypt's Child Law provides that the minimum standard of child protection shall be in accordance with the CRC and other treaties ratified by Egypt. This expresses Egypt's willingness to ensure full implementation of treaties ratified by Egypt including the Charter.

Other measures that deserve commendation include the establishment of the NCCM, which is mandated to enact policy, coordinate, monitor, and make recommendations to relevant department on the implementation of treaty provisions and concluding observations, and decentralisation of the implementation of children's rights through the establishment of Child Protection Committees in the various governorates, thereby ensuring that implementation can easily be monitored at the grassroots level. It is, however, important to ensure that there is central oversight of the Child Protection Committees by an institution like the NCCM which has overall national responsibility for policy making and monitoring of implementation of children's rights. These together with the Child Rights Unit recently established within the NHRC to monitor the implementation of children's rights as a complement to the role of the NCCM need to harmonize their activities for the effective implementation of children's rights.

It is important to also highlight that education is free and compulsory up to secondary level and that all children under 6 and school children are covered by national health insurance. Egypt must also be commended for the almost

²⁹⁴ Interview with Hany Helal (n 11); Interview with Sameh Abu El-Soud (n 178).

universal enrolment rates at primary school.

The state reporting mechanism has increased the level of awareness with regards to the Charter and children's rights and wellbeing generally. Even though most civil societies working on children's rights use the UN CRC as the primary advocacy and awareness creation tool, CSOs especially those belonging to the NGO Coalition on the Rights of the Child are increasingly using the Charter, its general comments, and concluding observations from the Committee in their programmes and advocacy campaigns. NGOs also use the Charter for capacity building of their members and other public officials they interact with. There are also indications that the NCCM conducts training programmes for some of the government officials engaged in the implementation of children's rights. The state has also taken some steps towards the implementation of concluding observations of the Committee.

There are, however, a number of notable challenges that impede the effective implementation of the Charter and the realisation of children's rights in general. These include reservations entered against the protective mandate of the Committee with regards to the communications procedure and investigative missions as these reservations have the potential to hamper the Committee's effective monitoring of Egypt's compliance with the Charter in between reporting periods. Until the Committee's recent decision declaring that this reservation goes against the object and purpose of the Charter and is, therefore, invalid, the only avenue that the Committee was left with in monitoring the implementation of the Charter in Egypt was the state reporting mechanism which is not regularly complied with. The state reporting mechanism, therefore, needs to be supplemented with other mechanisms such as the communications procedures and investigative missions to ensure effective monitoring of implementation. As is noticeable, Egypt has neither ratified the optional Protocol to the CRC on complaints mechanism, leaving very little room for the monitoring of compliance with children's rights by both UN and African regional human rights treaty bodies. The government should therefore urgently consider withdrawing its reservations to the mandate of the Committee to receive communications (especially given that the Committee has declared this reservation as being against the object and purpose of the Charter and is, therefore, invalid) and undertake in-country investigative missions. This will enable the Committee to better monitor the implementation of the Charter in Egypt as well as afford individuals and NGOs to seek redress of child rights violations through the communications procedure.

Other challenges include the legal uncertainty regarding the hierarchy of treaties within the Egyptian legal system which presents a challenge to effective implementation. Without an express constitutional provision on the hierarchy of treaty provisions in the national system and with the equation of treaties with national legislation, it has been suggested that treaties may indeed be amended and superseded by subsequent acts of Parliament which may defeat the purpose of ratification if the standards provided by the subsequent legislation are lower than those in the treaty provisions. There is, thus, need for clarity in the hierarchy of international human rights treaties in the national human rights system. Ideally, treaty provisions should take precedence over national law and, at minimum, have equal status with constitutional provisions. The Charter should also be incorporated into the curriculum of undergraduate law courses and all postgraduate courses in human rights to ensure that all trained lawyers have sufficient knowledge of the Charter. The Charter should equally be incorporated in the curriculum of trainings for judges, prosecutors, police officers, correctional officers, social workers, and all relevant personal working on children's rights. The absence of the Charter from the curriculum of universities and other training institutions may account for its limited use both in advocacy and litigation as well as academic writings.

Failure to submit state reports which would enable the Committee to comment on progress made and make recommendations through concluding observations on how to better implement the provisions of the Charter has hampered the impact of the Charter, especially since reservations were entered against investigative visits and communications. Since Egypt has not been reporting, the Committee has rarely had the opportunity to assess Egypt's implementation of the Charter subsequent to the submission of the initial report. NGOs have also not had the opportunity to submit alternative reports, usually done through a consultative process amongst NGO coalitions which creates greater awareness. State reports should therefore be submitted regularly to ensure that the Committee has the opportunity to assess the mechanisms adopted by the state and provide feedback on how to better implement the provisions of the Charter through concluding observations.

It is also worrying that the NCCM has become a much weaker institution with less capacity, contrary to the recommendation of the Committee for its capacity to be strengthened, and there continue to be general lack of awareness of the provisions of the Charter and general comments among the general public.

Lack of awareness has created a general apathy among the general public towards the implementation of the Charter, and, hence, there is little pressure on government to implement the Charter. In this regard, legislation and policy on children's rights should be accompanied by 'adequate human, technical and financial resources for its implementation'.²⁹⁵ The NCCM and other government departments and agencies responsible for policy making, monitoring, and implementation of children's rights need to be capacitated with human, technical, and financial resources to effectively carry out their mandates. The government also has to ensure that the Child Protection Committees are established in all governorates and properly resourced to ensure the effect realisation of child rights at the grassroots.

The prohibition or inability of NGOs to bring cases before national courts for the protection of children's rights also presents a challenge for the effective realisation of children's rights in Egypt. As is the reality, not all children have parents or guardians capable of representing their interests in court. In some instances, the parents or guardians are the perpetrators of child rights violations. It is, therefore, imperative that NGOs be able to bring children's rights related claims before the courts or intervene as *amicus curiae* for the remediation of potential children's rights violations. The non-utilisation of the Charter by courts in their decisions also presents a challenge to the realisation of the Charter.

Child participation in the implementation of children's rights remains very limited due to societal and cultural attitudes towards children.²⁹⁶ Children are, therefore, not usually encouraged to participate in decisions that affect them.²⁹⁷ Girls are even less encouraged to express their views due to prevailing gender roles.²⁹⁸ Civil society organisations that work on children's rights and the general public, including children, should be meaningfully engaged in the development of laws and policies affecting children's rights and their implementation. This should also be extended to the preparation of state reports and implementation of concluding observations.

Adequate measures should be taken to popularise the Charter and the general

²⁹⁵ Committee on the Rights of the Child, 'Concluding observations on Egypt's State Report on Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography' (2011) para 13 <<http://hrlibrary.umn.edu/research/Egypt/CRC.C.OPSC.EGY.CO.1.pdf>> accessed 27 June 2016 .

²⁹⁶ Abdul-Hamid (n 61) 32.

²⁹⁷ *ibid.*

²⁹⁸ *ibid.*

comments among the general public and especially among policy makers, implementers, and law enforcement officials. In this regards, judges should be encouraged to use the Charter and the general comments in their judgements.

With regards to juvenile justice, which continues to face significant challenges, government should '[m]onitor judicial sentences' treatment of child defendants in political cases as victims of exploitation rather than criminal lawbreakers'.²⁹⁹ Additionally, children involved in drug trafficking and abuse should be treated as victims rather than criminals in order to be able to provide them with the needed treatment and support. To this end, government should ensure that detoxification and rehabilitation facilities are available nationwide and staffed with trained personnel to provide treatment that is adapted to the age and sex of the child.

Necessary legislative measures should be adopted to prohibit corporal punishment in all settings, including the home. This should be accompanied by national awareness raising campaigns on such prohibition and the complaint mechanisms available to children.³⁰⁰ In this regard, it is commendable that the NCCM has commenced a national campaign on responsible parenting aimed at sensitizing parents on alternative ways of ensuring discipline in children without the use of violence.³⁰¹ The government has to specifically criminalise the celebration and cohabitation of child marriages in addition to the criminalisation of registration of child marriages.

Finally, with regards to child labour and other forms of exploitation of children, government should ensure that all forms of sexual exploitation and employment of children in hazardous work is prohibited with criminal sanctions. This should be complemented by appropriate social intervention policies such as rehabilitation of children, easy access to school, school feeding programmes, and direct cash transfer schemes to ensure that children most at risk of child labour are economically secured.

²⁹⁹ Egyptian Initiative for Personal Rights (EIPR), 'On the parliamentary agenda: nine issues to anchor democracy and rule of law' (2016) <<http://eipr.org/en/pressrelease/2016/01/09/2493>> accessed 7 July 2016.

³⁰⁰ Global Initiative to End All Corporal Punishment of Children (n 15) 3.

³⁰¹ Interview with Dr Alaa Bakr(n 43).

