

# Adopting a Holistic Approach: International Legal Perspectives on Safeguarding the Rights of Migrant Children in Africa

Musa Abdurraheem

Zhongnan University of Economics and Law, China

DOI: <https://doi.org/10.51584/IJRIAS.2024.911008>

Received: 26 August 2024; Accepted: 05 September 2024; Published: 29 November 2024

## ABSTRACT

The protection of migrant children in Africa presents a complex challenge requiring a holistic approach encompassing legal, social, and economic dimensions. This research explores international legal perspectives on safeguarding the rights of migrant children in Africa, emphasizing the necessity of a comprehensive strategy to address their unique vulnerabilities. It also explores the imperative for adopting a holistic approach to safeguard the rights of migrant children in Africa within the realm of international law.

Key international legal frameworks, such as the Convention on the Rights of the Child (CRC) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), provide crucial guidelines for ensuring the protection and well-being of migrant children. However, these frameworks often operate in silos, leading to fragmented approaches that fail to address the multifaceted needs of migrant children comprehensively.

The need for a holistic approach arises from the complex nature of migrant children's experiences and vulnerabilities. A holistic approach involves integrating these frameworks with regional instruments, such as the African Charter on the Rights and Welfare of the Child (ACRWC), and incorporating principles of non-discrimination, best interests of the child, and child participation. Furthermore, it requires collaboration between governments, international organizations, civil society, and communities to address the root causes of migration, provide access to education, healthcare, and social services, and combat discrimination and xenophobia.

Despite these legal frameworks, challenges remain in ensuring the effective protection of migrant children's rights in Africa. These include gaps in implementation, lack of awareness of rights, and inadequate access to services. Addressing these challenges requires a holistic approach that involves cooperation between states, international organizations, civil society, and the private sector.

This research underscores the importance of adopting a holistic approach to safeguarding the rights of migrant children in Africa, highlighting the need for coordinated efforts at the international, regional, and national levels to ensure their protection, well-being, and inclusion in society. By addressing the root causes of migration and addressing the specific needs of migrant children, a holistic approach can help create a more inclusive and protective environment for migrant children in Africa.

**Key words:** International Law, Migrant Children, Rights of a Child, Legal Frameworks, Holistic Approach.

## INTRODUCTION

### Background

Adopting a holistic approach to safeguarding the rights of migrant children is a critical issue in international law. Migrant children face unique challenges and vulnerabilities, including the risk of exploitation, trafficking, and discrimination. The international legal framework for protecting migrant children is complex and involves multiple legal instruments and actors.

At the heart of the issue is the principle of the best interests of the child, which is enshrined in the Convention on the Rights of the Child (CRC). This principle requires that the best interests of the child be a primary consideration in all actions concerning children, including those related to migration. However, the best interest's principle is often not fully implemented in practice, particularly in the context of migration.

One of the key challenges in safeguarding the rights of migrant children is the lack of a holistic approach in international law. While there are several international legal instruments that address specific aspects of migrant children's rights, such as the CRC and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), these instruments do not provide a comprehensive framework for protecting migrant children.

A holistic approach to safeguarding the rights of migrant children requires addressing the multiple factors that contribute to their vulnerability. This includes addressing the root causes of migration, such as poverty, conflict, and lack of access to education and healthcare. It also involves ensuring that migrant children have access to essential services, such as education, healthcare, and legal assistance.

Another key aspect of a holistic approach is ensuring that migrant children are protected from exploitation and trafficking. This requires strengthening legal frameworks and enhancing cooperation between countries to combat these crimes. It also involves providing support and assistance to migrant children who have been victims of exploitation and trafficking.

Additionally, a holistic approach requires addressing the specific needs of different groups of migrant children, such as unaccompanied minors, refugee children, and children in detention. These children often face additional challenges and require specific measures to ensure their rights are protected.

Adopting a holistic approach to safeguarding the rights of migrant children is essential for ensuring that they are protected from harm and that their rights are fully respected. This approach requires addressing the multiple factors that contribute to their vulnerability and ensuring that they have access to essential services and protection mechanisms. By adopting such an approach, the international community can better protect the rights of migrant children and ensure that they have the opportunity to thrive.

### **Statement of the Problem:**

Migrant children in Africa are a vulnerable group facing numerous challenges related to their legal status, access to essential services, and protection from harm. Despite international legal frameworks such as the Convention on the Rights of the Child (CRC) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), these children often experience violations of their rights. Examples of these problems are as follows:

- a. **Lack of Legal Recognition and Protection:** Many migrant children in Africa lack legal recognition and are often considered "stateless" or are at risk of becoming stateless due to gaps in nationality laws and registration processes. This lack of legal status leaves them vulnerable to exploitation, trafficking, and denial of basic services.
- b. **Limited Access to Education:** Migrant children face barriers in accessing education due to factors such as language barriers, discrimination, and lack of documentation. Without education, these children are at risk of being trapped in cycles of poverty and exploitation.
- c. **Healthcare Challenges:** Migrant children often face challenges in accessing healthcare services, including lack of documentation, language barriers, and discrimination. This leaves them vulnerable to health risks and denies them their right to health and well-being.
- d. **Protection from Exploitation and Abuse:** Migrant children are often subjected to exploitation, abuse, and trafficking, including forced labour, sexual exploitation, and involvement in armed conflict. Existing legal frameworks do not adequately address these risks, leaving children unprotected.

- e. **Inadequate Legal Remedies:** Even when violations occur, migrant children often lack access to effective legal remedies due to factors such as fear of deportation, lack of legal representation, and complex legal procedures.

## Significance of the Study

This study is significant as it seeks to address the gaps in the protection of migrant children in Africa from an international legal perspective. By identifying key challenges and proposing a holistic approach, the study aims to contribute to the enhancement of the rights and well-being of migrant children in Africa. The findings of this study can inform policy development and advocacy efforts aimed at improving the protection of migrant children in Africa and ensuring their full enjoyment of their rights.

The issue of migrant children in Africa is a complex and multifaceted one, involving legal, social, economic, and humanitarian dimensions. Adopting a holistic approach to this issue is crucial, as it allows us to address the various challenges faced by migrant children comprehensively and effectively. In this analysis, we will explore the theoretical and practical significance of studying this topic from an international legal perspective.

## Theoretical Significance

From a theoretical perspective, studying the rights of migrant children in Africa from an international legal standpoint is important for several reasons. First, it helps us understand the legal frameworks that exist to protect migrant children and their rights. By examining international treaties, conventions, and agreements, we can gain insight into the rights that migrant children are entitled to and the obligations of states in protecting those rights.

Second, studying this topic allows us to explore the concept of children's rights within the context of migration. Children's rights are often marginalized in discussions about migration, with more emphasis placed on adult migrants. By focusing specifically on migrant children, we can highlight the unique challenges they face and the need for tailored legal protections.

Third, studying the rights of migrant children from an international legal perspective allows us to consider the intersectionality of their identities. Migrant children often face multiple forms of discrimination based on factors such as race, gender, nationality, and immigration status. By taking a holistic approach, we can better understand how these intersecting identities impact their rights and experiences.

## Practical Significance

From a practical perspective, studying the rights of migrant children in Africa from an international legal standpoint is crucial for several reasons. First, it helps identify gaps in existing legal frameworks and implementation mechanisms. Despite the existence of international treaties and conventions, many migrant children still face significant barriers to accessing their rights. By identifying these gaps, we can create room for the adoption of reforms that better protect migrant children.

Secondly, studying this topic allows us to develop practical solutions to the challenges faced by migrant children. For example, by examining best practices from around the world, we can identify strategies that have been successful in safeguarding the rights of migrant children and apply them in the African context.

Third, studying the rights of migrant children from an international legal perspective can help build capacity among policymakers, lawyers, and other stakeholders. By increasing awareness of international legal standards, we can empower these actors to advocate for the rights of migrant children more effectively.

In conclusion, studying the rights of migrant children in Africa from an international legal perspective is of significant theoretical and practical importance. By adopting a holistic approach, we can better understand the challenges faced by migrant children, identify gaps in existing legal frameworks, and develop practical

solutions to safeguard their rights. Ultimately, this research aims to help ensure that migrant children in Africa are able to enjoy their full range of rights and lead safe and dignified lives.

## Research Objectives

The purpose of this research paper aims to achieve the following objectives;

- i. Assess the effectiveness of existing international legal frameworks in protecting the rights of migrant children in Africa.
- ii. To identify gaps and challenges in the implementation of international legal instruments related to the rights of the migrant child.
- iii. It aims to propose a holistic approach to safeguarding the rights of migrant children in Africa, taking into account legal, social and economic factors.
- iv. To evaluate the potential impact of the proposed approach on the rights and well-being of migrant children

## A Holistic Approach in the Context of Migrant Children's Rights

A migrant child refers to an individual below the age of 18 who has moved or been moved across national borders, often accompanied by family or guardians, with the intention of establishing a new residence. They can be classified into categories such as asylum seekers, refugees, or economic migrants, based on the reasons for their migration.

Child migrants may be unaccompanied, separated or accompanied as they migrate. Understanding who are “unaccompanied” and “separated” children allows us to better anticipate and respond to the impact of separation on a child, depending on their existing needs and vulnerabilities. Unaccompanied children, because they are travelling on their own and cannot rely on family adults to protect them, are often more likely to be exposed to violence, exploitation and physical harm.<sup>1</sup>

### a. Unaccompanied Children

Children, as defined in Article 1 of the Convention on the Right of the Child<sup>2</sup>, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

### b. Separated Children

Children, as defined in Article 1 of the Convention on the Rights of the Child, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.<sup>3</sup>

While it is important to underline the vulnerability of unaccompanied and separated children, it is equally important to acknowledge children’s agency in making informed decisions, and their capacity for resilience when faced with adversity. Those children who make a deliberate decision to leave home during a crisis, fleeing serious human rights violations, abuse or neglect, or to access services or opportunities, may feel that their changed situation has improved rather than worsened their status.

Accompanied children are those who are presumed to be under the care of their parents or primary caregiver. They are typically referred to as “accompanied children” or, within the context of some immigration procedures, as “dependents of” the principal applicant or claimant (parents or caregivers).

<sup>1</sup> [Child Migration | EMM2 \(iom.int\)](https://emm.iom.int/handbooks/child-migration#introduction-) <https://emm.iom.int/handbooks/child-migration#introduction->

<sup>2</sup> [Convention on the Rights of the Child | OHCHR](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>3</sup> Ibid.

Children affected by migration describes a wider group of children who are not necessarily engaged in mobility but whose lives are deeply affected by the migration of their families, by the migratory practices of the community they live in, or by their individual experience of migration, whether past or future. Examples of children affected by migration include:

- Children who have temporarily left a situation of previous migration but who are still affected by the impact of their migration or who plan to pursue their journeys at a later stage.
- Children who are left behind by their carers (see [Family and migration](#)).
- Children affected by statelessness; that is, children who are born to migrant parents who have not acquired the nationality of the country in which they reside.<sup>4</sup>

A holistic approach to migrant children's rights involves considering and addressing the various interconnected factors that affect their well-being and development. It goes beyond just focusing on legal rights and protections to encompass a broader range of considerations, including social, economic, cultural, and environmental factors. This approach recognizes that migrant children are part of complex systems and communities that influence their experiences and outcomes. Here's a detailed analysis and explanation of the meaning of a holistic approach in the context of migrant children's rights:

- i. **Legal Framework:** A holistic approach begins with a strong legal framework that protects migrant children's rights. This includes international conventions such as the Convention on the Rights of the Child (CRC), which sets out the rights of all children, including migrant children, to protection, education, healthcare, and a safe environment. Additionally, regional and national laws should be in place to ensure these rights are upheld.
- ii. **Child-Centred Perspective:** A holistic approach places the needs and best interests of the child at the centre of decision-making. This means considering the child's views, preferences, and experiences when developing policies and programs that affect them. It also means recognizing the unique vulnerabilities of migrant children, such as the risk of exploitation, trafficking, and separation from their families.
- iii. **Access to Services:** Migrant children should have access to a range of services that promote their well-being, including education, healthcare, psychosocial support, and legal assistance. These services should be culturally sensitive and tailored to the specific needs of migrant children, taking into account factors such as language barriers and trauma.
- iv. **Family Unity:** A holistic approach recognizes the importance of family unity for migrant children's well-being. It emphasizes the need to keep families together whenever possible and to provide support for reunification in cases where families have been separated.
- v. **Integration and Inclusion:** Migrant children should be supported to integrate into their new communities and societies. This includes access to education, healthcare, and social services, as well as opportunities for social and cultural participation. It also involves combating discrimination and promoting acceptance and inclusion.
- vi. **Protection from Harm:** Migrant children are often at increased risk of exploitation, abuse, and violence. A holistic approach includes measures to protect them from harm, including efforts to prevent trafficking, provide safe living conditions, and ensure access to justice for victims of abuse.
- vii. **Capacity Building and Empowerment:** A holistic approach involves building the capacity of migrant children and their families to advocate for their rights and access available services. This includes providing information about their rights, building life skills, and supporting community networks.

<sup>4</sup> [Child Migration | EMM2 \(iom.int\)](https://emm.iom.int/handbooks/child-migration#introduction) [https://emm.iom.int/handbooks/child-migration#introduction-](https://emm.iom.int/handbooks/child-migration#introduction)



viii. **Cross-Sectoral Collaboration:** A holistic approach requires collaboration across sectors and disciplines, including government agencies, non-governmental organizations, civil society, and the private sector. This collaboration is essential to address the multifaceted needs of migrant children and ensure a coordinated and effective response.

Addressing these myriad of challenges, ranging from legal and economic barriers to social, psychological traumas and issues requires a comprehensive, holistic approach that considers their rights, well-being, and future prospects. It is noteworthy to delve into the importance of such an approach, examining its key components and the benefits it offers to migrant children in Africa.

A holistic approach to migrant children's rights in Africa begins with legal protection. This includes ensuring that laws and policies are in place to safeguard their rights, such as access to education, healthcare, and protection from exploitation and abuse. Countries should ratify and implement international conventions like the Convention on the Rights of the Child (CRC) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), which provide a framework for protecting the rights of migrant children.

Education has always been fundamental right that can significantly impact the future of migrant children. A holistic approach should prioritize access to quality education for all migrant children, regardless of their legal status. This includes removing barriers to enrolment, providing language support, and addressing the specific needs of migrant children, such as trauma-informed care and social integration programs.

Provision of healthcare is another crucial aspect of a holistic approach. Migrant children often face barriers to accessing healthcare, including language barriers, lack of documentation, and discrimination. Governments and organizations should work to ensure that migrant children have access to essential healthcare services, including vaccinations, mental health support, and reproductive health services. Migrant children are also prone to experience social isolation and discrimination, which can have long-lasting effects on their well-being. A holistic approach should include social support programs that provide migrant children with a sense of belonging and community. This can include mentoring programs, cultural exchange programs, and support groups for both children and their families.

Many migrant children have experienced trauma, including violence, exploitation, and family separation. A holistic approach should prioritize psychological support services to help children cope with their experiences and build resilience. This can include counselling, therapy, and trauma-informed care. Family reunification is essential for the well-being of migrant children, as it helps them maintain their cultural identity and emotional bonds. A holistic approach should support family reunification efforts and provide integration support for families, including language classes, job training, and housing assistance.

Legal challenges, including immigration issues, discrimination, and exploitation are to be covered when initiating a holistic approach. Legal assistance programs that provide migrant children with access to legal representation and support. This can help ensure that their rights are protected and that they receive fair treatment under the law.

Advocacy and awareness-raising are crucial components of a holistic approach. Governments, organizations, and communities should work together to raise awareness about the rights and needs of migrant children and advocate for policies that protect and support them. This can help reduce stigma and discrimination and ensure that migrant children receive the support they need to thrive.

By addressing the legal, educational, healthcare, social, and psychological needs of migrant children, we can create a more inclusive and equitable society where all children have the opportunity to reach their full potential. A holistic approach to migrant children's rights recognizes that their well-being and development are influenced by a complex interplay of factors. By addressing these factors comprehensively and in an integrated manner, we can better protect and promote the rights of migrant children, ensuring they have the opportunity to thrive and reach their full potential.

## International Legal Framework

The protection of migrant children in Africa involves various international legal frameworks. The Convention on the Rights of the Child (CRC) is a key instrument, emphasizing the rights of children, regardless of their migration status. Additionally, regional agreements like the African Charter on the Rights and Welfare of the Child and the International Organization for Migration's (IOM) Principles and Guidelines on the Detention of Migrants provide guidance on ensuring human security for migrant children in Africa. National laws and policies also play a crucial role in implementing these international frameworks.

The protection of children's rights in Africa can be traced back to colonial-era laws and customary practices that often failed to recognize the unique vulnerabilities of children. With the emergence of international human rights law in the mid-20th century, efforts were made to address these shortcomings. The Universal Declaration of Human Rights (1948) and the Declaration of the Rights of the Child (1959) laid the foundation for the recognition of children as rights-holders and the obligation of states to protect their rights.

The protection of children's rights is rooted in the recognition of children as rights-holders with inherent dignity and worth. This recognition is enshrined in various international legal instruments, such as the United Nations Convention on the Rights of the Child (CRC), which sets out the fundamental rights of children and establishes the obligations of states parties to ensure their protection and fulfilment. These rights include the right to life, survival, and development; the right to be heard and taken seriously; and the right to protection from violence, abuse, and exploitation.

The CRC, adopted in 1989, represents a landmark in the recognition of children's rights as human rights. It has been ratified by almost every country in the world, making it the most widely ratified human rights treaty in history. The CRC is based on the principles of non-discrimination, best interests of the child, right to life, survival, and development, and respect for the views of the child. These principles provide a comprehensive framework for the protection and promotion of children's rights in all spheres of life.

International conventions play a crucial role in promoting and protecting children's rights by setting international standards and norms that states are obliged to adhere to. In addition to the CRC, other conventions, such as the Optional Protocol to the CRC on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution, and child pornography, provide additional protections for children in specific contexts. These conventions establish mechanisms for monitoring compliance and provide avenues for redress for violations of children's rights. They also promote international cooperation and assistance in the implementation of children's rights.

The increasing recognition of children as rights-holders and the growing awareness of the importance of children's rights in achieving sustainable development provide a favourable environment for promoting children's rights. International cooperation and partnerships among states, civil society organizations, and other stakeholders can also help to address the challenges and enhance the protection of children's rights.

The protection of children's rights under international law is a complex and multifaceted issue that requires a comprehensive and coordinated approach. While significant progress has been made in recognizing and promoting children's rights, much remains to be done to ensure their effective protection in practice. This article seeks to contribute to the ongoing discourse on children's rights by exploring the legal and ethical foundations, the role of international conventions, and the challenges and opportunities for protecting children's rights under international law. By examining these issues in depth, this article aims to provide valuable insights and recommendations for enhancing the protection of children's rights and safeguarding the future of our children.

In Africa, the protection of the rights of migrant children is primarily established through international treaties and agreements. The key international treaties that form the framework for the protection of these rights include:

## Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is a foundational document adopted by the United Nations General Assembly in 1948. It consists of 30 articles that articulate fundamental human rights and freedoms to be universally protected. These rights include civil, political, economic, social, and cultural rights. The UDHR serves as a common standard for all nations, emphasizing the inherent dignity and equality of every individual, promoting justice, freedom, and peace globally. It has influenced the development of international human rights law and remains a cornerstone in the quest for a world where human rights are respected and upheld.

The Universal Declaration of Human Rights (UDHR) applies universally to all individuals, regardless of their migration status, including migrant children. Migrant children, like all human beings, are entitled to the rights and protections outlined in the UDHR. These include the right to life, liberty, and security; the right to education; protection from discrimination; and the right to be free from torture, inhumane treatment, or arbitrary detention.

## United Nations Convention on the Rights of the Child (UNCRC)

The CRC consists of its preamble and 54 articles. The United Nations Convention on the Rights of the Child is an important agreement by countries who have promised to protect children's rights. The Convention on the Rights of the Child explains who children are, all their rights, and the responsibilities of governments. All the rights are connected, they are all equally important and they cannot be taken away from children.<sup>5</sup>

The most significant development in the protection of children's rights came with the adoption of the Convention on the Rights of the Child (CRC) in 1989. The CRC is a comprehensive treaty that has been ratified by virtually every country in the world, including all African countries.

The CRC has had a profound impact on African countries, shaping their domestic laws and policies regarding children's rights. It has also led to the establishment of national institutions and mechanisms for monitoring and enforcing children's rights. In addition, the CRC has been instrumental in raising awareness about children's rights and in promoting a child-centred approach to development.

While not specific to migrant children, the CRC is a fundamental treaty that sets out the civil, political, economic, social, and cultural rights of children worldwide. It emphasizes the need for special protection for migrant children, including protection from exploitation and the right to education and healthcare.

## International Labour Organization (ILO) Conventions:

Several ILO conventions, such as the Minimum Age Convention (No. 138)<sup>6</sup> and the Worst Forms of Child Labour Convention (No. 182)<sup>7</sup>, address child labour and provide protections for migrant children who may be vulnerable to exploitation in the labour market.

---

<sup>5</sup> <https://www.unicef.org/media/60981/file/convention-rights-child-text-child->

<sup>6</sup> [Minimum Age Convention, 1973 \(No. 138\) | OHCHR https://www.ohchr.org/en/instruments-mechanisms/instruments/minimum-age-convention-1973-no-138](https://www.ohchr.org/en/instruments-mechanisms/instruments/minimum-age-convention-1973-no-138). [Convention 138](https://www.ohchr.org/en/instruments-mechanisms/instruments/minimum-age-convention-1973-no-138) was developed to regulate child labour by setting a minimum age for admission to employment that the signatories are to respect. This Convention came into force on 19 June 1976. The minimum working age was set at 15 years (13 years for light work). For dangerous work, the Convention set the bar for admission to employment at 18 years (16 years under certain conditions).

<sup>7</sup> [Worst Forms of Child Labour Convention, 1999 \(No. 182\) | OHCHR https://www.ohchr.org/en/instruments-mechanisms/instruments/worst-forms-child-labour-convention-1999-no-182](https://www.ohchr.org/en/instruments-mechanisms/instruments/worst-forms-child-labour-convention-1999-no-182). The General Conference of the International Labour Organization, having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour



The two ILO Conventions on child labour are Convention No.138 on Minimum Age and Convention No. 182 on the Worst Forms of Child Labour. These Conventions are “fundamental” Conventions. This means that, under the ILO Declaration on Fundamental Principles and Rights at Work, all ILO member States have an obligation to respect, promote and realize the abolition of child labour, even if they have not ratified the Conventions in question.

ILO Convention No. 182 is the first ILO Convention to achieve universal ratification. It was also the most rapidly ratified Convention in the history of the ILO, with the majority of ratifications occurring within the first 3 years after it was adopted in 1999. ILO Convention No. 138 has also been widely ratified by ILO member States.

### **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW):**

Although not specific to Africa, the ICMW is a key treaty that addresses the rights of migrant children by ensuring that they and their families are protected from exploitation and discrimination. It emphasizes the need for appropriate measures to ensure the protection of migrant children's rights, including access to education and healthcare.

On 1 July 2003, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families entered into force. By 1 October 2005, 33 States had ratified it or acceded to it. The Convention is a comprehensive international treaty focusing on the protection of migrant workers' rights. It emphasizes the link between migration and human rights. The Convention opens a new chapter in the history of determining the rights of migrant workers and ensuring that those rights are protected and respected. It incorporates the results of over 30 years of discussion, including United Nations human rights studies, conclusions and recommendations of meetings of experts, and debates and resolutions in the United Nations on migrant workers.<sup>8</sup>

The Convention seeks to play a role in preventing and eliminating the exploitation of all migrant workers and members of their families throughout the entire migration process. Article 37<sup>9</sup> of the Convention establishes the right of migrant workers and members of their families who have the proper documentation or are in a regular situation to be informed before their departure, or at the latest at the time of their admission to the State of employment, of all conditions applicable to their admission, as well as of the requirements they must satisfy in the State of employment and the authority to which they must address themselves for any modification of those conditions.<sup>10</sup>

When problems of adjustment occur due to various reasons such as xenophobia, racism and any of the other various forms of discrimination especially the tacit criminalization of migrants which in most cases put them outside the scope and protection of the rule of law, article 25 of the Convention establishes that all migrant workers and their families shall enjoy treatment not less favorable than that which applies to nationals of the State of employment in respect of remuneration and other conditions of work and terms of employment.<sup>11</sup>

Article 27 of the Convention says that with respect to social security, all migrant workers and members of their families shall enjoy the same treatment granted to nationals insofar as they fulfil the requirements provided for by law.<sup>12</sup> Article 28 grants them the right to receive any medical care that is urgently required for the preservation of their life or avoidance of irreparable harm to their health.<sup>13</sup> The Convention in article 30

---

<sup>8</sup> The International Convention on Migrant Workers and its Committee Fact Sheet No. 24 (Rev.1) UNITED NATIONS New York and Geneva, 2005

<sup>9</sup> [Background to the Convention | OHCHR](https://www.ohchr.org/en/treaty-bodies/cmw/background-convention), <https://www.ohchr.org/en/treaty-bodies/cmw/background-convention>

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

establishes that each child of any migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned.<sup>14</sup>

The entry into force of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families reinforces and completes a series of other provisions under the main United Nations human rights treaties. Many of the provisions of such treaties are contained in the Convention on Migrant Workers, are applicable to all migrant workers and members of their families and in fact enhance the protection of migrants, for example:

- the International Covenant on Civil and Political Rights;<sup>15</sup>
- the International Covenant on Economic, Social and Cultural Rights;<sup>16</sup>
- the International Convention on the Elimination of All Forms of Racial Discrimination;<sup>17</sup>
- the Convention on the Elimination of All Forms of Discrimination against Women; and<sup>18</sup>
- the Convention on the Rights of the Child.<sup>19</sup>

At times, a right contained in another human rights treaty may provide a higher level of protection to migrant workers and members of their families than the Convention on Migrant Workers. For example, article 12 of the International Covenant on Economic, Social and Cultural Rights<sup>20</sup> provides for the right to the highest attainable standard of health for all persons, whereas article 28 of the Convention<sup>21</sup> may contain lesser obligations for States parties concerning migrant workers who are in an irregular situation and their families which is directly applicable to the children of migrant workers.

### **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography:**

The Optional Protocol aims to enhance the implementation of the Convention and bolster the safeguarding of children during armed conflicts. It highlights the imperative of criminalizing the sale of children, child prostitution, and child pornography, stressing the need for heightened public awareness and international collaboration to combat these grave violations of children's rights.

In addition to reinforcing the Convention, the Protocol sets out detailed requirements for states to eradicate the sexual exploitation and abuse of children. It also shields children from being sold for purposes beyond sexual exploitation, such as forced labour, illicit adoption, and organ trafficking.<sup>22</sup>

The Protocol defines key terms like 'sale of children', 'child prostitution', and 'child pornography', and imposes obligations on governments to outlaw and penalize actions associated with these crimes. It mandates punishment not only for those involved in offering or delivering children for sexual exploitation, organ trafficking, or forced labour but also for those accepting the child for these purposes.<sup>23</sup>

Moreover, the Protocol safeguards the rights and interests of child victims, requiring governments to offer legal and other support services to them. This includes prioritizing the best interests of the child in all dealings with the criminal justice system. Children must also receive necessary medical, psychological, logistical, and

---

<sup>14</sup> Ibid.

<sup>15</sup> International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49

<sup>16</sup> [International Covenant on Economic, Social and Cultural Rights | OHCHR](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights) <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

<sup>17</sup> [International Convention on the Elimination of All Forms of Racial Discrimination | OHCHR](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial) <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

<sup>18</sup> [Committee on the Elimination of Discrimination against Women | OHCHR](https://www.ohchr.org/en/treaty-bodies/cedaw) <https://www.ohchr.org/en/treaty-bodies/cedaw>

<sup>19</sup> Ibid

<sup>20</sup> ibid

<sup>21</sup> ibid

<sup>22</sup> [Strengthening the Convention on the Rights of the Child: Optional Protocols | UNICEF](https://www.unicef.org/child-rights-convention/strengthening-convention-optional-protocols) <https://www.unicef.org/child-rights-convention/strengthening-convention-optional-protocols>.

<sup>23</sup> Ibid.

financial support to facilitate their rehabilitation and reintegration.

The Protocol serves as a complement to the Convention on the Rights of the Child, with its interpretation guided by the principles of non-discrimination, the best interests of the child, survival and development, and child participation.

### **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:**

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Torture

Convention”) was adopted by the General Assembly of the United Nations on 10 December 1984 (resolution 39/46). The Convention entered into force on 26 June 1987 after it had been ratified by 20 States.<sup>24</sup>

### **Legal Frameworks**

In the context of international law, addressing migration involves adherence to legal frameworks that safeguard the rights and well-being of individuals on the move. International human rights law, refugee law, and other relevant conventions provide the basis for protecting migrants and ensuring their security.

- i. **Refugee Law:** The 1951 Refugee Convention and its 1967 Protocol establish the legal framework for the protection of refugees. These instruments define the rights of refugees and the legal obligations of states to provide asylum and protection. Statelessness is a source of human insecurity, forced displacement and serious conflict, which may pose a threat to national and regional stability. Legislation on nationality and administrative practices that are in accordance with internationally recognized human rights standards are essential elements of the rule of law and key in addressing root causes of conflict. UNHCR provides technical advice and support to governments for the accession to the [1954 Convention Relating to the Status of Stateless Persons](#) and [the 1961 Convention on the Reduction of Statelessness](#).<sup>25</sup>
- ii. **International Human Rights Law:** Various international treaties, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, outline fundamental human rights that apply to all individuals, regardless of their migration status.
- iii. **Labor Migration:** Legal frameworks, like the International Labour Organization conventions, address the rights of migrant workers, ensuring fair treatment, protection from exploitation, and access to social and labor rights.
- iv. **Protection of Vulnerable Groups:** International law recognizes the need for special protection for vulnerable groups, including children, women, and victims of human trafficking, who may face specific risks during migration.
- v. **Non-Refoulement Principle:** The principle of non-refoulement prohibits the expulsion or return of individuals to a country where their life or freedom would be at risk, emphasizing the importance of protecting individuals from persecution or serious harm.

While these legal instruments exist, challenges persist in ensuring their effective implementation and enforcement. Cooperation among states, international organizations, and civil society is crucial to uphold human rights in the context of migration within the framework of international law

However, despite the existence of these conventions, challenges remain in ensuring their effective implementation at the national level. One of the main challenges in protecting children's rights under

<sup>24</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. <https://legal.un.org/avl/ha/catcidtp/catcidtp.html>

<sup>25</sup> <https://www.un.org/ruleoflaw/thematic-areas/international-law-courts-tribunals/refugee-law/>

international law is the gap between international standards and national laws and practices. Many countries have yet to fully incorporate the provisions of international conventions into their domestic legal frameworks, leading to a lack of effective protection for children's rights in practice. This highlights the need for greater awareness and capacity-building among states to ensure the effective implementation of children's rights.

Migrant children in Africa represent a complex demographic group with unique challenges and needs.

Unfortunately, comprehensive statistics on this population can be difficult to obtain due to various factors such as lack of standardized data collection methods, the transient nature of migration, and the often informal nature of migration routes.

Another challenge is the issue of enforcement and accountability. While international conventions establish mechanisms for monitoring compliance, such as reporting mechanisms and treaty bodies, their effectiveness is often limited by lack of resources, political will, and cooperation from states. This underscores the need for stronger enforcement mechanisms and accountability measures to hold states accountable for violations of children's rights.

Despite these challenges, there are also opportunities for advancing children's rights under international law.

### **The African Regional Frameworks**

In Africa, several regional and sub-regional instruments contribute to safeguarding the rights of migrant children. Some key ones include:

#### **African Charter on Human and Peoples' Rights:**

While not specifically focused on children, this charter guarantees various rights and freedoms that indirectly impact the protection of migrant children. The African Charter on Human and Peoples' Rights (**ACHPR**) is the principle regional human rights treaty for the African continent. Adopted in 1981, there is now a significant body of jurisprudence and interpretation by its African Commission on Human and Peoples' Rights and the recently established African Court.<sup>26</sup>

#### **African Charter on the Rights and Welfare of the Child (ACRWC):**

This charter, specific to children, outlines their rights and addresses issues relevant to migrant children, emphasizing their best interests.<sup>27</sup> The African Charter on the Rights and Welfare of the Child (ACRWC) was adopted by the Organization of African Unity (OAU) in 1990 (in 2001, the OAU legally became the African Union) and entered into force in 1999. Like the United Nations Convention on the Rights of the Child (CRC), the Children's Charter is a comprehensive instrument that sets out rights and defines universal principles and norms for the status of children. The ACRWC and the CRC are the only international and regional human rights treaties that cover the whole spectrum of civil, political, economic, social and cultural rights. It calls for the creation of an African Committee of Experts on the Rights and Welfare of the Child. Its mission is to promote and protect the rights established by the ACRWC, to practice applying these rights, and to interpret the disposition of the ACRWC as required of party states, AU institutions, or all other institutions recognized by AU or by a member state. As at February 2009, the ACRWC has been ratified by 45 of the 53 countries in the continent.<sup>28</sup>

#### **ECOWAS Protocol on Free Movement of Persons, Residence, and Establishment:**

This West African regional instrument promotes free movement, and its provisions can impact the rights of

<sup>26</sup> [The African Charter on Human and People's Rights : a commentary in SearchWorks catalog \(stanford.edu\).](https://searchworks.stanford.edu/view/13118290) <https://searchworks.stanford.edu/view/13118290>

<sup>27</sup> [36804-treaty-african charter on rights welfare of the child.pdf \(au.int\).](https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf) [https://au.int/sites/default/files/treaties/36804-treaty-african\\_charter\\_on\\_rights\\_welfare\\_of\\_the\\_child.pdf](https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf)

<sup>28</sup> [African Charter on the Rights of the Child | Save the Children's Resource Centre.](https://resourcecentre.savethechildren.net/document/african-charter-rights-child/) <https://resourcecentre.savethechildren.net/document/african-charter-rights-child/>

migrant children within the ECOWAS member states. In May 1979, ECOWAS member States adopted their first protocol relating to the Free Movement of Persons, Residence and Establishment. It stipulated the right of ECOWAS citizens to enter, reside and establish economic activities in the territory of other member states and offers a three step roadmap of five years each to achieve freedom of movement of persons after fifteen years. The first phase regards the right of visa-free entry, phase two dealt with the right of residency, and phase three concerns the right of establishment in another member State.<sup>29</sup>

It's essential to consider that the effectiveness of these instruments often depends on their implementation at the

national level, and collaboration between countries is crucial to ensuring the protection of migrant children across borders.

### **East African Community (EAC) Protocol on the Establishment of the EAC Common Market:**

This regional economic community has protocols that touch upon migration, and its principles can contribute to safeguarding the rights of migrant children in East Africa. Article 10 of the CMP guarantees the free movement, within the region, of workers who are the citizens of the member states. It entitles a worker to apply for employment and accept offers of employment actually made; move freely within the territories of the partner states for the purpose of employment; and conclude contracts and take up employment in accordance with the contracts, national laws and administrative actions. It also guarantees the worker to stay in the territory of a partner state for the purpose of employment in accordance with the national laws and administrative procedures governing the employment of workers of that partner state; enjoy the freedom of association and collective bargaining for better working conditions in accordance with the national laws of the host partner state; and enjoy the rights and benefits of social security as accorded to the workers of the host partner state. Article 10 of the CMP also requires the partner states to ensure that workers do not face discrimination in employment, remuneration and other conditions of work because of their citizenship.<sup>30</sup>

**Southern African Development Community (SADC) Protocol on Gender and Development:** While not exclusive to children, it addresses gender-related aspects that may be relevant to the protection of migrant children in the Southern African region. Article 11 of the Southern African Development Community (SADC) Protocol on Gender and Development states that:

- 1) State Parties shall adopt laws, policies and programs to ensure the development and protection of the girl and the boy child by:
  - a) eliminating all forms of discrimination against them in the family, community, institutions and at state levels;
  - b) ensuring that they have equal access to education and health care, and are not subjected to any treatment which causes them to develop a negative self-image;
  - c) ensuring that they enjoy the same rights and are protected from harmful cultural attitudes and practices in accordance with the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child;
  - d) protecting them from economic exploitation trafficking and all forms of violence including sexual abuse; and
  - e) ensuring that they have equal access to information education services and facilities on sexual and reproductive health and rights.

<sup>29</sup> [ECOWAS - Free Movement of Persons | United Nations Economic Commission for Africa \(uneca.org https://archive.uneca.org/pages/ecowas-free-movement-persons\)](https://archive.uneca.org/pages/ecowas-free-movement-persons)

<sup>30</sup> [East-AQfrican-comon-market-protocol.pdf \(knqa.go.ke\). https://www.knqa.go.ke/wp-content/uploads/2019/05/East-AQfrican-comon-market-protocol.pdf](https://www.knqa.go.ke/wp-content/uploads/2019/05/East-AQfrican-comon-market-protocol.pdf)



- 2) State Parties shall develop concrete measures to prevent and eliminate violence, harmful practices, child marriages, forced marriages, teenage pregnancies, genital mutilation and child labor as well as mitigate their impacts on girls' and boys' health wellbeing education future opportunities and earnings.<sup>31</sup>

### **African Committee of Experts on the Rights and Welfare of the Child:**

The African Committee of Experts on the Rights and Welfare of the Child (either ACERWC or the Committee), which was established in July 2001, monitors the implementation of the African Charter on the Rights and

Welfare of the Child.<sup>32</sup> The Committee draws its mandate from Articles 32-46 of the Charter<sup>33</sup>.

The Committee reports to the Assembly of Heads of State and the African Union (AU) every two years. It must also consider any communications it has received about violations of children's rights under Article 44 of the Charter to the AU.<sup>34</sup>

The role of the African Committee of Experts on the Rights and Welfare of the Child is to promote and protect the rights spelled out in the African Charter of the Rights and Welfare of the Child.

Its main functions are to:

- collect information
- interpret provisions of the Charter; monitor the implementation of the Charter
- give recommendations to governments for working with children's rights organisations
- consider individual complaints about violations of children's rights
- investigate measures adopted by States to implement the Charter by carrying out missions, collecting information, and questioning States (see [Article 45 of the Charter](#))<sup>35</sup>; and, choose the theme of the Day of the African Child, which is held every year on 16 June to commemorate those killed in the Soweto uprisings in South Africa. Although the Committee cannot bring cases to the [African Court on Human and Peoples' rights](#), it can request advisory opinions from the Court on legal issues relating to human rights instruments.

The Committee is empowered to undertake two types of investigations under [Article 45 of the Charter](#)<sup>36</sup>:

1. On issues arising from the Charter based on allegations of violations of child rights.
2. On measures taken by States Parties to implement the Charter.

The Committee could set up sub-committees or working groups to carry out the investigation. The Committee can designate a Special Rapporteur among its members or independent experts to accompany sub-committees, working groups and Special Rapporteurs on their missions.<sup>37</sup>

---

<sup>31</sup> [EN-REVISED SADC PROTOCOL ON GENDER AND DEVELOPMENT 2016-final.pdf](#) [https://www.sadc.int/sites/default/files/2023-02/EN-REVISED\\_SADC\\_PROTOCOL\\_ON\\_GENDER\\_AND\\_DEVELOPMENT\\_2016-final.pdf](https://www.sadc.int/sites/default/files/2023-02/EN-REVISED_SADC_PROTOCOL_ON_GENDER_AND_DEVELOPMENT_2016-final.pdf)

<sup>32</sup> [Migration Policy Framework for Africa and Plan of Action \(2018 – 2030\) \(au.int\)](#) [https://au.int/sites/default/files/documents/35956-doc-2018\\_mpfa\\_english\\_version.pdf](https://au.int/sites/default/files/documents/35956-doc-2018_mpfa_english_version.pdf)

<sup>33</sup> African Charter on the Rights and Welfare of the Child Adopted by the 26th Ordinary Session of the Assembly of Heads of State and Government of the OAU Addis Ababa, Ethiopia - July 1990 Entered into force on 29 November, 1999

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

The Committee will prepare a preliminary mission report on the situation of child rights in the country, and a final report in which it will make recommendations to the State party concerned. The recommendations will also be sent to other public and private institutions responsible for monitoring and implementing child rights. The Committee invites a State to submit a written reply, with information on measures taken to follow up recommendations made by the Committee after the mission. It could request additional information on measures taken by the State party from other institutions and civil society organizations. It could also ask the State to include information about measures it has taken to follow-up recommendations in its next report to the Committee.<sup>38</sup>

States should submit their initial reports about the measures they have adopted to implement the provisions of the African Charter, two years after they have ratified the Charter, and every three years thereafter. The Committee began examining State Party reports in May 2008. Rapporteurs are appointed to examine each country's report.

The Civil Society Forum on the Rights and Welfare of the Child, which is now held prior to every session of the African Committee on the Rights and Welfare of the Child, supports the work of the African Committee on the Rights and Welfare of the Child and provides a strong platform for children's rights information and advocacy in the region.

[Article 44 of the Charter](#) empowers the Committee to consider individual communications alleging a violation of any of the rights enshrined in the Charter. However, States can make reservations on the extent of the Committee's powers<sup>39</sup>.

The Committee's guidelines state that "where a child is capable of expressing his or her opinions, they should be heard by a Committee member." Children may bring complaints under universal human rights treaties if their State is not a party to the African Charter. However, a communication may be presented on behalf of a victim without his consent if the author is able to prove that the complaint has been brought in the supreme interest of the child.<sup>40</sup>

Communications are sent to all Committee members three months prior to each ordinary session. The Committee may set up a working group to meet before its sessions to consider whether a communication will be accepted. The working group then appoints a rapporteur. The Committee, working group or rapporteur brings the communication to the attention of the State concerned and requests an explanation or written statement within six months. The Committee may also request the presence of the person or group submitting the communication, and the State party concerned for more information, clarification or observations.<sup>41</sup>

While the Committee is considering a communication, it can ask the State concerned to take certain measures to prevent any harm to the child mentioned in the communication, or other children who could be victims of similar violations.<sup>42</sup>

No such requests for provisional measures have yet been made, but examples of provisional measures requested in by other regional human rights mechanisms can be found on the [Inter-American Commission](#) and the [Council of Europe](#) pages.<sup>43</sup>

The African Committee currently has one child-specific special mechanism. The Special rapporteur on child marriage is empowered to monitor this issue in the region, and conduct fact-finding missions on alleged

<sup>37</sup> [Migration Policy Framework for Africa and Plan of Action \(2018 – 2030\) \(au.int\)](https://au.int/sites/default/files/documents/35956-doc-2018_mpf_a_english_version.pdf)  
[https://au.int/sites/default/files/documents/35956-doc-2018\\_mpf\\_a\\_english\\_version.pdf](https://au.int/sites/default/files/documents/35956-doc-2018_mpf_a_english_version.pdf)

<sup>38</sup> Ibid

<sup>39</sup> African Charter on the Rights and Welfare of the Child Adopted by the 26th Ordinary Session of the Assembly of Heads of State and Government of the OAU Addis Ababa, Ethiopia - July 1990 Entered into force on 29 November, 1999

<sup>40</sup> [Migration Policy Framework for Africa and Plan of Action \(2018 – 2030\) \(au.int\)](https://au.int/sites/default/files/documents/35956-doc-2018_mpf_a_english_version.pdf)  
[https://au.int/sites/default/files/documents/35956-doc-2018\\_mpf\\_a\\_english\\_version.pdf](https://au.int/sites/default/files/documents/35956-doc-2018_mpf_a_english_version.pdf)

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

violations. Complaints involving other breaches of children's rights may be addressed to the African Commissions special mechanisms.

Once the [Protocol on the Statute of the African Court of Justice and Human Rights](#) comes into force, the African Committee will be eligible to submit cases to this new unified Court. Moreover, article 36 introduces new concepts with regard to representation of parties before the Court. It provides that:

*"The African Commission, the African Committee of Experts [...] shall be represented by any person they choose for that purpose."*

This opens the door for the Committee to hire legal counsel or law professors, or to be represented by their own

staff members.

### **The African Commission on Human and Peoples Rights:**

The [African Commission on Human and Peoples' Rights](#) is a quasi-judicial body based in Banjul, Gambia, established by Article 45 of the African Charter<sup>44</sup>. The Commission has a [mandate](#) to promote and protect both human rights and peoples' rights, and to interpret the guarantees set forth in the Charter, and in other human rights instruments, in disputes that arise between individuals and state parties.

To fulfil its mandate, the Commission evaluates complaints ("communications") brought by individuals alleging violations of rights guaranteed under the Charter and other instruments, conducts on-site visits and fact-finding missions, and issues recommendations based on its findings. It also establishes standing committees, working groups, rapporteurships, and other "special mechanisms" to investigate and report on human rights abuses.

### **The African Court on Human and People's Rights:**

The [African Court on Human and Peoples' Rights](#) was established under a [1998 protocol](#) to the African Charter. The Court, based in Arusha, Tanzania, compliments the work of the Commission by adjudicating applications seeking redress for the violation of rights guaranteed under the Charter and other human rights instruments. It also issues advisory opinions.

- **Contentious Jurisdiction**

The Court hears applications brought directly by individuals and state parties. It also hears applications on a referral basis from the Commission and NGOs granted observer status by the Commission. However, the Court may only adjudicate a claim against an AU member state if it has ratified the 1998 protocol to the African Charter and explicitly consented to the Court's jurisdiction. Unlike the recommendations made by the Commission, the Court's decisions are considered legally binding.

- **Advisory Jurisdiction**

The Court may issue an advisory opinion at the request of any AU entity or member state or other organization recognized by the AU. The opinion may interpret any provision of the African Charter or other human rights instrument, provided that the subject is not related to any matter currently under investigation by the Commission.

The African Union has adopted two protocols amending the Court's governing statute. The [first protocol](#), adopted in 2008, will merge the Court with the nascent Court of Justice of the African Union to create a single

---

<sup>44</sup> African Charter on the Rights and Welfare of the Child Adopted by the 26th Ordinary Session of the Assembly of Heads of State and Government of the OAU Addis Ababa, Ethiopia - July 1990 Entered into force on 29 November, 1999

African Court of Justice and Human Rights. The rationale for the merger is that a single court will be more cost-effective and will avoid the logistical challenges of maintaining separate courts in different locations.

The [second protocol](#), adopted at the AU's annual summit in Malabo, Equatorial Guinea, in 2014, will create a new section within the merged African Court of Justice and Human Rights that will have jurisdiction over international and transnational crimes. The net effect will be to create an Africa-based alternative to the International Criminal Court, which some have criticized for focusing too narrowly on prosecuting African heads of state.

So far, only eight of the required 15 AU member states have ratified the merger protocol, and no member states have ratified the Malabo protocol extending the merged court's jurisdiction to criminal matters. For the time being, the African Court on Human and Peoples' Rights remains a stand-alone court whose jurisdiction is limited to adjudicating human rights claims.

### **Comparative Analysis between International Frameworks and African Regional Frameworks**

The protection of migrant children is a complex issue that involves a multitude of legal frameworks at the international and regional levels. This analysis will compare and contrast the international frameworks, primarily the United Nations Convention on the Rights of the Child (CRC), with the African regional frameworks, including the African Charter on the Rights and Welfare of the Child (ACRWC) and other relevant instruments. The focus will be on the key provisions, mechanisms, and challenges in safeguarding the rights of migrant children within these frameworks.

#### **International Frameworks:**

The CRC, adopted in 1989, is the most comprehensive treaty on the rights of the child. It sets out a wide range of rights, including the right to non-discrimination, the right to life, survival, and development, and the right to protection from violence, abuse, and exploitation. Article 22 specifically addresses the rights of refugee children, emphasizing their right to protection and assistance.

Additionally, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) provides specific protections for migrant workers and their families, including children. It highlights the rights of migrant children to education, health care, and other social services, regardless of their migration status.

#### **African Regional Frameworks:**

The ACRWC, adopted in 1990, complements the CRC by providing additional protections and rights tailored to the African context. It emphasizes the right of the child to a name and nationality, protection from harmful social and cultural practices, and the right to education and healthcare. Article 6 of the ACRWC specifically addresses the rights of migrant children, stating that they should receive appropriate protection and humanitarian assistance.

The Kampala Convention, adopted in 2009, focuses on internal displacement in Africa but also contains provisions relevant to the protection of migrant children. It emphasizes the need to prevent the separation of families during displacement and ensures that children have access to education, healthcare, and other essential services.

#### **Comparative Analysis:**

Both the CRC and the ACRWC recognize the rights of migrant children and emphasize the importance of providing them with protection and assistance. However, the CRC is more comprehensive in its scope and provides a broader range of rights and protections for all children, including migrants. The ACRWC, on the other hand, focuses more specifically on the African context and includes provisions that are tailored to address the unique challenges faced by migrant children in Africa.

The CRC (Convention on the Rights of the Child) and the ACRWC (African Charter on the Rights and Welfare of the Child) both aim to protect the rights of children, including migrant children. However, there are some differences in their approach and focus.

The CRC is a global treaty adopted by the United Nations General Assembly, while the ACRWC is specific to Africa and was adopted by the African Union. This means that the ACRWC applies specifically to African countries, although many of its provisions are consistent with the CRC. Both treaties contain similar provisions regarding the protection of children's rights, including the right to education, healthcare, and protection from violence, abuse, and exploitation. However, the ACRWC includes additional provisions that are specific to the African context, such as the protection of children in armed conflicts and the protection of children from harmful cultural practices.

The CRC has a Committee on the Rights of the Child, which is responsible for monitoring its implementation by states parties. The ACRWC also has a Committee on the Rights and Welfare of the Child, which monitors its implementation by African states parties. However, the ACRWC also allows for regional monitoring mechanisms, such as the African Committee of Experts on the Rights and Welfare of the Child, to be established.

The ACRWC emphasizes the importance of African values and traditions in promoting and protecting the rights and welfare of children. This includes recognizing the role of the family, community, and traditional institutions in the upbringing of children. This is a key difference between the two frameworks is the emphasis on family unity. While both the CRC and the ACRWC recognize the importance of family unity for the well-being of the child, the ACRWC places a stronger emphasis on preventing the separation of families during migration and ensuring that children are reunited with their families as soon as possible.

The Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) both emphasize the importance of family unity and preventing family separation for migrant children, but they differ in their approach and specific provisions.

Article 9 of the CRC<sup>45</sup> States parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.

Article 10<sup>46</sup> states that applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States parties in a positive, humane, and expeditious manner. States parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

While the ACRWC Article 22<sup>47</sup> states that parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or regional instruments shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in the present Charter and in other relevant international instruments on human rights and humanitarian law. Article 23<sup>48</sup> of the ACRWC states parties to the present Charter shall take appropriate measures to ensure that a child who is subjected to any form of exploitation shall not be considered a criminal or a delinquent and shall not be penalized for illegal activities committed as a direct consequence of his or her situation.

---

<sup>45</sup> [Convention on the Rights of the Child | OHCHR](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>46</sup> [Convention on the Rights of the Child | OHCHR](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>47</sup> Overall, while there are differences between the CRC and the ACRWC, both treaties share the common goal of promoting and protecting the rights of children, including migrant children, and complement each other in their efforts to do so.

<sup>48</sup> Ibid.



Another difference is the emphasis on education. The CRC and the ACRWC both recognize the right of migrant children to education, but the ACRWC includes specific provisions aimed at ensuring that migrant children have access to education, regardless of their migration status. Article 11 of the ACRWC recognizes the right of the child to an education and calls for the promotion of education for all children. Article 22 highlights the rights of refugee children, stating that they should receive appropriate protection and humanitarian assistance. Article 23 emphasizes the right of disabled children to special measures of protection and assistance, including access to education.<sup>49</sup> While Articles 28, 29 and 42 of the CRC recognizes the right of the child to education but does not make specific provisions for migrant children or children with special needs right to education.<sup>50</sup>

The CRC is a global treaty while the ACRWC is specific to Africa, although many of its provisions align with the CRC the CRC provides more detailed and specific provisions regarding the protection of migrant children, including family unity and separation, compared to the ACRWC which is more general in its language.

The CRC has a well-established system for monitoring and reporting on its implementation through the Committee on the Rights of the Child, while the ACRWC has a similar mechanism through the African Committee of Experts on the Rights and Welfare of the Child.

In summary, both the CRC and the ACRWC emphasize the importance of family unity and preventing family separation for migrant children, but the CRC provides more detailed and specific provisions compared to the ACRWC. Overall, while there are differences between the CRC and the ACRWC, both treaties share the common goal of promoting and protecting the rights of children, including migrant children, and complement each other in their efforts to do so.

## Challenges and Recommendations

One of the main challenges in safeguarding the rights of migrant children is the lack of implementation and enforcement of existing legal frameworks. Both the CRC and the ACRWC rely on states parties to implement their provisions and to ensure that migrant children are protected and provided with the necessary assistance.

To address these challenges, states parties should strengthen their efforts to implement the provisions of the CRC and the ACRWC and to ensure that migrant children are provided with the necessary protection and assistance. This includes providing access to education, healthcare, and other essential services, as well as ensuring that migrant children are not separated from their families during migration.

Additionally, states parties should work together to address the root causes of migration, including poverty, conflict, and persecution, and to create a more supportive environment for migrant children and their families.

While understanding both the international and African regional frameworks, it provides important protections for migrant children, there are differences in their scope and emphasis. The CRC is more comprehensive and provides a broader range of rights and protections for all children, including migrants, while the ACRWC focuses more specifically on the African context and includes provisions tailored to address the unique challenges faced by migrant children in Africa. States parties should strengthen their efforts to implement these frameworks and to ensure that migrant children are provided with the necessary protection and assistance.

## Case Studies

Case laws and jurisprudence play a crucial role in safeguarding the rights of migrant children in Africa within the framework of international law. They provide legal precedents and interpretations that guide decisions in

<sup>49</sup> [Convention on the Rights of the Child | OHCHR](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>50</sup> AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD Adopted by the 26th Ordinary Session of the Assembly of Heads of State and Government of the OAU Addis Ababa, Ethiopia - July 1990 Entered into force on 29 November, 1999.

cases involving the rights of these children. Consistent rulings establish a foundation for protecting the rights of migrant children, ensuring a more uniform and equitable application of international legal standards across jurisdictions. This helps address challenges such as child trafficking, exploitation, and discrimination, contributing to a more comprehensive protection framework for migrant children in Africa.

The Institute for Human Rights and Development in Africa (IHRDA) is a pan–African non-governmental organization (NGO) working to promote awareness of human rights in Africa and improve the effectiveness of the African Human Rights system. IHRDA envisions an African continent where all have access to justice via national, African and international human rights mechanisms.<sup>51</sup>

IHRDA undertakes *pro bono* legal counsel and provides support to victims of human rights violations, including refugees and individuals who are denied formal citizenship.

An Example could be cited in the decided case decided by the African Committee of Experts on the Rights and Welfare of the Child, *Children of Nubian Descent in Kenya v. Kenya*<sup>52</sup>.

### Facts:

Although the Nubians have lived in Kenya for over 100 years, they were always regarded as “aliens” and continue to have an uncertain citizenship status. According to the Kenyan Constitution Children do not have their nationality recognized at birth. While most Kenyan children have a legitimate expectation that their Kenyan citizenship will be recognized, Nubian children have no such expectation.<sup>53</sup>

On reaching the age of 18, all Kenyan children apply for the ID cards that are necessary to prove citizenship. For most Kenyan children, this is a simple process. However, Nubian children are forced to go through a long and complex vetting procedure with an uncertain result. Some will never receive ID cards. Some will get them only after a long delay. Nubians are the only non-border people to be treated in this way. This situation has been described by the Kenyan National Commission on Human Rights as “institutionalized discrimination.”<sup>54</sup>

The failure to recognize nationality or what has been called the “right to have rights,” means that the government does not recognize the property rights of the Nubians and treats them as squatters on their own land.<sup>55</sup>

The Justice Initiative together with the Institute for Human Rights and Development in Africa (IHRDA) brought a complaint to the African Committee of Experts on the Rights and Welfare of the Child arguing that the rights of the Nubian children in Kenya have been violated, in a case entitled *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative (on behalf of Children of Nubian Descent in Kenya) v. the Government of Kenya*.

### Issue and resolution:

The right of the child to birth registration and to acquire nationality; statelessness; discrimination; access to health care and education. The Committee found that the Kenyan government’s failure to register Nubian children’s births and its differing treatment of Nubian children violated the Charter. It also found consequential violations of the children’s rights to equal access to health care and education.<sup>56</sup>

<sup>51</sup> [Institute for Human Rights and Development in Africa – Global Human Rights Direct \(arizona.edu\)](https://globalhumanrightsdirect.arizona.edu/ngos/institute-for-human-rights-and-development-in-africa/)  
<https://globalhumanrightsdirect.arizona.edu/ngos/institute-for-human-rights-and-development-in-africa/>

<sup>52</sup> [Children of Nubian Descent in Kenya v. Kenya - Open Society Justice Initiative](https://www.justiceinitiative.org/litigation/children-nubian-descent-kenya-v-kenya)  
<https://www.justiceinitiative.org/litigation/children-nubian-descent-kenya-v-kenya>

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> [Institute for Human Rights and Development in Africa \(IHRDA\) and Open Society Justice Initiative on Behalf of Children of Nubian Descent in Kenya v. The Government of Kenya | CRIN](https://archive.crin.org/en/library/legal-database/institute-human-rights-and-development-africa-ihrda-and-open-society-justice.html) <https://archive.crin.org/en/library/legal-database/institute-human-rights-and-development-africa-ihrda-and-open-society-justice.html>

## Court reasoning

The Committee held that the Kenyan government's practice of failing to register Nubian children violated article 6(2) of the Charter<sup>57</sup>, which imposes a duty to register children immediately after birth. The Committee concluded that, although not all Nubian children are stateless, a significant number of them were rendered stateless due to the failure to register their births. This resulted in violations of articles 6(3) and (4)<sup>58</sup> of the Charter, under which Kenya must allow a child to acquire Kenyan nationality if they are born in Kenya and have not been granted nationality elsewhere. The Committee also concluded that the different treatment of Nubian children by the Kenyan government constituted unjustified discrimination contrary to article 3 of the Charter. As a result of the non-recognition of Nubian children's nationality, the Committee also found that these children were denied equal access to health and educational services, in violation of articles 14 and 11(3)<sup>59</sup> of the Charter respectively.<sup>60</sup>

The Committee recommended that the Kenyan government:

- ensure that Nubian children in Kenya who are stateless can acquire Kenyan nationality and proof of such nationality at birth;
- implement its birth registration system in a non-discriminatory manner, and ensure that Nubian children are registered immediately after birth; and
- ensure the fulfilment of the right to the highest attainable standard of health and the right to education.

## Legal responses at the international and regional levels:

At the international level, the case invokes several key legal instruments, including the United Nations Convention on the Rights of the Child (CRC) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). These treaties obligate states to protect children's rights and prohibit racial discrimination.

The CRC, in particular, emphasizes the right of every child to a nationality in Article 7 and access to education in Article 28<sup>61</sup>. The ICERD prohibits racial discrimination in the enjoyment of rights, including the right to nationality, education, and other social services Article 5.<sup>62</sup> In the IHRDA and OSJI v. Kenya case, the applicants argue that Kenya's denial of birth certificates and national identity cards to Nubian children violates these international legal obligations. They argue that the discrimination faced by Nubian children constitutes a violation of their rights under the CRC and ICERD.

At the regional level, the African Charter on the Rights and Welfare of the Child (ACRWC) is a key legal instrument and it reaffirms the rights enshrined in the CRC and provides additional protections for children in Africa. Article 6 of the ACRWC emphasizes the right of every child to a name and nationality.<sup>63</sup> In the IHRDA and OSJI v. Kenya case, the applicants argue that Kenya's actions violate the ACRWC, specifically Article 6<sup>64</sup>, by denying Nubian children their right to a nationality.

---

<sup>57</sup> AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> [Convention on the Rights of the Child | OHCHR](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>62</sup> International Convention on the Elimination of All Forms of Racial Discrimination | OHCHR <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

<sup>63</sup> AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

<sup>64</sup> Article 6 of the ACRWC states that, 1. Every child shall have the right from his birth to a name. 2. Every child shall be registered immediately after birth. 3. Every child has the right to acquire a nationality. 4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the

The case raises several legal arguments. Firstly, the applicants argue that Kenya's actions constitute direct discrimination against Nubian children based on their ethnicity, which is prohibited under ICERD. They argue that the denial of birth certificates and national identity cards to Nubian children is a form of racial discrimination.

Secondly, the applicants argue that Kenya's actions violate the right to nationality under international law, as recognized in the CRC and ACRWC. They argue that the denial of birth certificates and national identity cards effectively renders Nubian children stateless, depriving them of their right to a nationality.

Thirdly, the applicants argue that Kenya's actions violate the right to education under international law. Without birth certificates and national identity cards, Nubian children are unable to enroll in school, effectively denying them access to education, which is a fundamental right under the CRC and ACRWC.

### **Implications and Conclusion**

The IHRDA and OSJI v. Kenya case highlights the importance of international and regional legal mechanisms in protecting children's rights, particularly in cases of discrimination based on ethnicity or race. It highlights the complex interplay between international human rights law and domestic legal systems, as well as the challenges faced by marginalized communities in accessing their rights. The case also underscores the need for states to comply with their obligations under international law, including the CRC, ICERD, and ACRWC, to ensure that all children have access to their rights, including the right to a nationality and education.

In conclusion, the case represents a significant legal challenge to Kenya's treatment of Nubian children and has broader implications for the protection of children's rights in Africa. It highlights the importance of international and regional human rights mechanisms in addressing issues of discrimination and statelessness. It also underscores the need for states to comply with their obligations under international and regional human rights instruments and to ensure that all individuals, regardless of their ethnicity or background, are able to enjoy their fundamental rights and freedoms. It most importantly underscores the importance of international and regional legal mechanisms in holding states accountable for violations of children's rights and ensuring that all children have access to their fundamental rights, regardless of their ethnicity or nationality.

### **Policy Implications**

The protection of migrant children is governed by several international legal instruments, including the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), and the African Charter on the Rights and Welfare of the Child (ACRWC).

The CRC is the most widely ratified human rights treaty, emphasizing the rights of children to protection, education, health care, and family life. It obligates states to ensure that migrant children receive the same rights and protections as citizens. However, implementation remains a challenge, particularly in Africa, where many countries have yet to fully incorporate the CRC into domestic law.

The ICRMW complements the CRC by focusing specifically on the rights of migrant workers and their families. It emphasizes the importance of protecting migrant children from exploitation, abuse, and discrimination, and highlights the need for states to provide them with access to education, health care, and social services.

The ACRWC builds on the principles of the CRC and provides additional protections for African children, including the right to a name, nationality, and family care. It also prohibits child marriage, child labor, and harmful traditional practices. However, like the CRC, the ACRWC faces challenges in implementation, particularly in countries with weak legal frameworks and limited resources.

---

State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

### Implications for Policy:

Adopting a holistic approach to safeguarding the rights of migrant children in Africa requires governments to develop comprehensive policies that address the root causes of migration, provide access to basic services, and protect children from exploitation and abuse.

Firstly, governments must ensure that their laws and policies are in line with international standards, particularly the CRC, ICRMW, and ACRWC. This includes enacting legislation that guarantees migrant children's rights to education, health care, and protection from exploitation.

Secondly, governments should invest in social services that benefit migrant children, including education, health care, and psychosocial support. This requires collaboration between government agencies, non-governmental organizations (NGOs), and international partners to ensure that migrant children receive the support they need.

Thirdly, governments should work to address the root causes of migration, including poverty, conflict, and climate change. This requires long-term investments in economic development, conflict resolution, and environmental protection to create conditions where families can thrive in their home countries.

Finally, governments must strengthen their child protection systems to ensure that migrant children are not subjected to exploitation, abuse, or discrimination. This includes training law enforcement officials, social workers, and other relevant actors on the rights of migrant children and how to identify and respond to cases of abuse.

### Implications for Practice:

In addition to policy changes, adopting a holistic approach to safeguarding the rights of migrant children in Africa requires changes in practice at the local level. This includes:

- a) **Community Engagement:** Engaging with local communities to raise awareness about the rights of migrant children and to promote acceptance and integration.
- b) **Capacity Building:** Building the capacity of local service providers, including health workers, teachers, and social workers, to provide culturally sensitive services to migrant children.
- c) **Data Collection:** Improving data collection on migrant children to better understand their needs and develop targeted interventions.
- d) **Legal Assistance:** Providing migrant children with access to legal assistance to help them navigate complex legal systems and secure their rights.
- e) **Partnerships:** Building partnerships between government agencies, NGOs, and international organizations to ensure a coordinated response to the needs of migrant children.

Adopting a holistic approach to safeguarding the rights of migrant children in Africa requires a multifaceted approach that addresses legal, policy, and practical challenges. By ensuring that international legal standards are integrated into national laws and policies, providing access to basic services, addressing the root causes of migration, and strengthening child protection systems, governments can create a more inclusive and protective environment for migrant children in Africa.

## RECOMMENDATIONS

This extended conclusion provides a more in-depth analysis of the complexities involved in safeguarding migrant children in Africa and outlines a comprehensive roadmap for the future, emphasizing collaboration, innovation, and a steadfast commitment to human rights. The challenge of protecting migrant children in Africa is a complex issue that demands a nuanced understanding of both the Human Security Approach and



the intricacies of international law. This further extension of the conclusion aims to explore additional layers of this topic, offering a more comprehensive insight into the potential solutions and future strategies.

- i. **Comprehensive Protection Strategies:** The protection of migrant children requires a multi-layered strategy. This involves not only immediate humanitarian aid but also long-term solutions such as family reunification, legal support, and ensuring access to basic rights like health care and education. These strategies should be grounded in the principles of the Human Security Approach, emphasizing the protection of individuals above all else.
- ii. **Strengthening Legal Frameworks:** While international laws provide a basis for protecting migrant children, there is an ongoing need to strengthen these legal frameworks. This includes closing gaps in existing laws, ensuring that all forms of exploitation and abuse are addressed, and adapting to new challenges such as those posed by climate change and evolving conflict scenarios
- iii. **Enhancing Data Collection and Research:** Effective policy-making requires robust data and research. There is a need for more comprehensive data collection on migration flows, the specific challenges faced by migrant children, and the efficacy of existing protection measures. This data should inform policy decisions and help tailor solutions to the unique needs of different migrant groups.
- iv. **The Role of Education in Empowerment:** Education is a critical tool for empowering migrant children and enabling them to build sustainable futures. This goes beyond formal education to include life skills and vocational training, which can be particularly valuable for older children who may need to support themselves and their families.
- v. **Addressing Mental Health and Psychosocial Needs:** The trauma experienced by migrant children, often including experiences of violence, loss, and disruption, necessitates a strong focus on mental health and psychosocial support. Services that address these needs are crucial for the long-term well-being and integration of these children into host communities.
- vi. **The Critical Importance of Advocacy:** Advocacy plays a key role in bringing attention to the plight of migrant children and in influencing policy at both national and international levels. This includes advocacy by non-governmental organizations, civil society, and even the children themselves, through platforms that give them a voice.
- vii. **Building Resilient Communities:** Efforts to protect migrant children should also focus on building resilient communities, both in the countries of origin and in host countries. This includes investing in community development, conflict resolution, and economic opportunities, which can help address the root causes of migration.
- viii. **The Need for Flexible and Adaptive Policies:** Given the dynamic nature of migration, policies and strategies need to be flexible and adaptable. This means being responsive to changing circumstances, including economic shifts, political upheavals, and environmental changes.
- ix. **Fostering International Collaboration:** The issue of migrant children in Africa is a global challenge that requires international collaboration. This collaboration should not only be among states but also include international organizations, non-governmental organizations, and the private sector. Sharing resources, expertise, and best practices can significantly enhance the effectiveness of protection strategies.
- x. **The Role of Technology in Protection Strategies:** Technology can play a significant role in enhancing the protection of migrant children. This includes the use of digital platforms for education, telemedicine for health care, and apps for legal assistance. Technology can also aid in family tracing and reunification efforts.

- xi. **Preparing for Future Challenges:** As migration dynamics continue to evolve, it is essential to prepare for future challenges. This includes anticipating the impacts of climate change, which is likely to be a significant driver of migration in the coming years, and developing strategies to address this new wave of migration.

It is evident that safeguarding the rights of migrant children in Africa within the context of international law is a multifaceted challenge that requires a comprehensive, empathetic, and dynamic approach. The adoption of the Human Security Approach<sup>65</sup> provides a valuable framework for addressing this challenge, focusing on the protection and empowerment of individual children. By combining robust legal frameworks, strong advocacy, community empowerment, and innovative solutions, there is potential to make significant strides in protecting and uplifting migrant children across the continent. As the world continues to grapple with the complexities of migration, the need for concerted action, grounded in a deep commitment to human rights and dignity, has never been more urgent.

The adoption and effective implementation of the Migration Policy Framework for Africa and Plan of Action 2018-2030<sup>66</sup> by African states is a recommended step that would ensure the safeguarding of the rights of migrant children in Africa.

### Recommended strategies

- i. Ensure that the rights of migrant children, adolescents and youths are effectively protected under national laws by incorporating relevant international instruments, particularly the African Charter on the Rights and Welfare of the Child, the African Youth Charter, the UN Convention on the Rights of the Child, the UN Convention Against Trans-National Organized Crime and its two Protocols; and ILO Convention 182 on the Worst Forms of Child Labour.
- ii. Ensure, through legislative policy, that migrant children, adolescents and youths have adequate access to gender-responsive and culturally appropriate health care, education and shelter.
- iii. Ensure that national migration policies are linked to and coherent with policies relating to families.
- iv. Promote informational/educational campaigns to raise awareness about the youth dimension of migration among migrants, those affected by migration, and policy makers and personnel involved in migration, especially in the managing the migration process.
- v. Develop gender-responsive policies that encourage and promote migration and sports.

---

<sup>65</sup> Human security, as a legal concept, involves the protection of individuals from various threats and vulnerabilities through legal frameworks. While there isn't a universally agreed-upon legal definition, human security often intersects with international human rights law and humanitarian law. It emphasizes the responsibility of states to ensure the safety and well-being of their citizens, addressing not only traditional security concerns but also non-traditional threats like poverty, disease, and environmental degradation. The legal foundation of human security involves adherence to international treaties, conventions, and customary international law that safeguard individuals' rights and promote a holistic approach to security.

<sup>66</sup> [Migration Policy Framework for Africa and Plan of Action \(2018 – 2030\) \(au.int\) https://au.int/sites/default/files/documents/35956-doc-2018\\_mpfa\\_english\\_version.pdf](https://au.int/sites/default/files/documents/35956-doc-2018_mpfa_english_version.pdf). During their 74th Ordinary Session in July 2001, The Organization of African Union Council of Ministers called for the development of a migration policy framework in light of the development potential and challenges posed by migration. This resulted in the AU Migration Policy Framework for Africa (MPFA), which was adopted in Banjul, the Gambia, in 2006. Ten years later, in 2016, the AU Commission (AUC) conducted an evaluation of the MPFA regarding its efficiency, its implementation challenges and opportunities that could be seized, relevance and whether there was a need for revision. At their meeting of November 2016, AU Member States and Regional Economic Communities (RECs) acknowledged that migration is dynamic, and that migration trends and patterns on the Continent had changed over the past ten years. In line with their recommendation for the AUC to update the MPFA and formulate a plan of action for its implementation, the “Migration Policy Framework for Africa and Plan of Action (2018 – 2030)” is a revised, strategic document that builds on the achievements and challenges of the previous MPFA to guide Member States and RECs in the management of migration, reflecting the current migration dynamics in Africa<sup>66</sup>

- vi. Foster exchanges among youth and students of/in Africa, with a view to further Africa's integration

## CONCLUSION

In summary, this study has deeply examined the complexities surrounding the protection of migrant children's rights in Africa using a holistic approach within the context of international law. The investigation into the numerous challenges faced by these vulnerable groups has underscored the critical need for a comprehensive strategy that places their human security at the forefront.

The main aim of this research has been to illuminate the various obstacles encountered by migrant children in Africa, analyzing their vulnerabilities within the ever-evolving framework of international law. Through a thorough evaluation of existing international legal frameworks, including conventions, treaties, and regional agreements, this study has aimed to evaluate their effectiveness and identify areas for improvement in safeguarding the rights of these marginalized individuals.

Throughout the course of this research, it has become evident that while the current international legal framework provides a basis, it is insufficient in addressing the specific and nuanced challenges faced by migrant children in Africa. The Human Security Approach has emerged as a compelling paradigm, emphasizing the interconnected nature of various elements such as economic, environmental, and societal factors in the pursuit of protecting the rights of these children.

This study has also recommended the adoption of the African Union's (A.U) Migration Policy Framework for Africa and Plan of Action 2018-2030. A key contribution of this study is the identification and analysis of the unique challenges encountered by migrant children in the African context. The examination of socio-economic disparities, cultural nuances, and regional variations has deepened our understanding of the intricate dynamics at play. Additionally, the review of existing international legal instruments has highlighted both their strengths and shortcomings in addressing the specific vulnerabilities of migrant children.

The changing demographic of migrant flows is evident in the increasing number of children, adolescents, and young people migrating without parental or caregiver supervision. Whether the migration is involuntary, as indicated by the high proportion of unaccompanied minors, or voluntary, stemming from factors such as economic hardship or conflict, the rights and well-being of these children must be prioritized.

## REFERENCES

1. 36804-treaty-african charter on rights welfare of the child.pdf (au.int). [https://au.int/sites/default/files/treaties/36804-treaty-african charter on rights welfare of the child.pdf](https://au.int/sites/default/files/treaties/36804-treaty-african%20charter%20on%20rights%20welfare%20of%20the%20child.pdf)
2. Africa Migration Report – Challenging the Narrative. International Organization for Migration (IOM). 2020
3. AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD Adopted by by the 26th Ordinary Session of the Assembly of Heads of State and Government of the OAU Addis Ababa, Ethiopia - July 1990 Entered into force on 29 November, 1999
4. AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.
5. African Charter on the Rights of the Child | Save the Children's Resource Centre. <https://resourcecentre.savethechildren.net/document/african-charter-rights-child/>
6. African Charter on the Rights of the Child | Save the Children's Resource Centre. <https://resourcecentre.savethechildren.net/document/african-charter-rights-child/>
7. Alexander Gilder. International law and human security in a kaleidoscopic world. (2020)
8. Anne Peters, Beyond Human Rights: The Legal Status of the Individual in International Law (2016)
9. Background to the Convention | OHCHR <https://www.ohchr.org/en/treaty-bodies/cmw/background-convention>
10. Child Migration | EMM2 (iom.int) <https://emm.iom.int/handbooks/child-migration#introduction->
11. Child rights and why they matter UNICEF. <https://www.unicef.org/child-rights-convention/child->

- rights-why-they-matter.
12. Children of Nubian Descent in Kenya v. Kenya - Open Society Justice Initiative.
  13. Children of Nubian Descent in Kenya v. Kenya - Open Society Justice Initiative <https://www.justiceinitiative.org/litigation/children-nubian-descent-kenya-v-kenya>
  14. Children's voices critical for effective migration response (unicef-irc.org) <https://www.unicef-irc.org/article/2118-childrens-voices-critical-for-effective-migration-response.html>
  15. Committee on the Elimination of Discrimination against Women | OHCHR <https://www.ohchr.org/en/treaty-bodies/cedaw>
  16. Committee on the Elimination of Discrimination against Women | OHCHR <https://www.ohchr.org/en/treaty-bodies/cedaw>
  17. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 ENTRY INTO FORCE: 26 JUNE 1987, IN ACCORDANCE WITH ARTICLE 27 (1)
  18. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment | OHCHR
  19. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment <https://legal.un.org/avl/ha/catcidtp/catcidtp.html>
  20. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment | OHCHR <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>
  21. Convention on the Elimination of All Forms of Discrimination against Women Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 ENTRY INTO FORCE: 3 SEPTEMBER 1981, IN ACCORDANCE WITH ARTICLE 27 (1)
  22. Convention on the Rights of the Child | OHCHR <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>
  23. East-African-common-market-protocol.pdf (knqa.go.ke). <https://www.knqa.go.ke/wp-content/uploads/2019/05/East-African-common-market-protocol.pdf>
  24. EN-REVISED SADC PROTOCOL ON GENDER AND DEVELOPMENT 2016-final.pdf [https://www.sadc.int/sites/default/files/2023-02/EN-REVISED SADC PROTOCOL ON GENDER AND DEVELOPMENT 2016-final.pdf](https://www.sadc.int/sites/default/files/2023-02/EN-REVISED_SADC_PROTOCOL_ON_GENDER_AND_DEVELOPMENT_2016-final.pdf)
  25. Global Programme to end Violence Against Children Legal Framework (unodc.org) [https://www.unodc.org/unodc/en/justice-and-prison-reform/global-programme-to-end-violence-against-children\\_legal-framework.html](https://www.unodc.org/unodc/en/justice-and-prison-reform/global-programme-to-end-violence-against-children_legal-framework.html)
  26. [https://www.unicef.org/media/60981/file/convention-rights-child-text-child-Human Rights of Unaccompanied Migrant Children: Focus on Detention – Ideas for Peace.](https://www.unicef.org/media/60981/file/convention-rights-child-text-child-Human_Rights_of_Unaccompanied_Migrant_Children:_Focus_on_Detention_-_Ideas_for_Peace) <https://www.ideasforpeace.org/content/human-rights-of-unaccompanied-migrant-children-focus-on-detention/>
  27. Human Rights of Unaccompanied Migrant Children: Focus on Detention – Ideas for Peace. <https://www.ideasforpeace.org/content/human-rights-of-unaccompanied-migrant-children-focus-on-detention/>
  28. Institute for Human Rights and Development in Africa – Global Human Rights Direct (arizona.edu)
  29. Institute for Human Rights and Development in Africa – Global Human Rights Direct (arizona.edu) <https://globalhumanrightsdirect.arizona.edu/ngos/institute-for-human-rights-and-development-in-africa/>
  30. Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on Behalf of Children of Nubian Descent in Kenya v. The Government of Kenya | CRIN <https://archive.crin.org/en/library/legal-database/institute-human-rights-and-development-africa-ihrda-and-open-society-justice.html>
  31. Institute for Human Rights and Development in Africa : Citizenship Rights in Africa Initiative (citizenshiprightsafrika.org)
  32. International Convention on the Elimination of All Forms of Racial Discrimination Adopted and opened for signature and ratification by General Assembly resolution 2106 A (XX) of 21 December 1965 ENTRY INTO FORCE: 4 JANUARY 1969, IN ACCORDANCE WITH ARTICLE 19
  33. International Convention on the Elimination of All Forms of Racial Discrimination | OHCHR <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination->



- all-forms-racial
34. International Convention on the Elimination of All Forms of Racial Discrimination | OHCHR <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>
  35. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted 18 December 1990 by General Assembly resolution 45/158.
  36. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families Adopted by General Assembly resolution 45/158 of 18 December 1990 ENTRY INTO FORCE: 1 JULY 2003, IN ACCORDANCE WITH ARTICLE 87 (1)
  37. International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49
  38. International Covenant on Economic, Social and Cultural Rights | OHCHR <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>
  39. International Covenant on Economic, Social and Cultural Rights | OHCHR <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>
  40. International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966 ENTRY INTO FORCE: 3 JANUARY 1976, IN ACCORDANCE WITH ARTICLE 27
  41. International Organization for Migration, Glossary on migration, IML Series No. 34, 2019. Who is a Migrant? | International Organization for Migration (iom.int). <https://www.iom.int/who-migrant-0>
  42. Migration law guide - an introduction (fedcourt.gov.au). <https://www.fedcourt.gov.au/law-and-practice/guides/migration/introduction>
  43. Migration Policy Framework for Africa and Plan of Action (2018 – 2030) (au.int) [https://au.int/sites/default/files/documents/35956-doc-2018\\_mpfa\\_english\\_version.pdf](https://au.int/sites/default/files/documents/35956-doc-2018_mpfa_english_version.pdf)
  44. Migration Policy Framework for Africa and Plan of Action 2018-2030.
  45. Minimum Age Convention, 1973 (No. 138) | OHCHR <https://www.ohchr.org/en/instruments-mechanisms/instruments/minimum-age-convention-1973-no-138>
  46. NATO - Topic: Human security. [https://www.nato.int/cps/en/natohq/topics\\_181779.htm](https://www.nato.int/cps/en/natohq/topics_181779.htm)
  47. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women Adopted by General Assembly resolution 54/4 of 6 October 1999 and opened for signature, ratification and accession on 10 December 1999 ENTRY INTO FORCE: 22 DECEMBER 2000, IN ACCORDANCE WITH ARTICLE 16
  48. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography Adopted and opened for signature, ratification and accession by General Assembly resolution 54/263 of 25 May 2000 ENTRY INTO FORCE: 18 JANUARY 2002, IN ACCORDANCE WITH ARTICLE 14
  49. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict Adopted and opened for signature, ratification and accession by General Assembly resolution 54/263 of 25 May 2000 ENTRY INTO FORCE: 12 FEBRUARY 2002, IN ACCORDANCE WITH ARTICLE 10
  50. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict | OHCHR
  51. Protect the human rights of all migrants | OHCHR. <https://www.ohchr.org/en/stories/2010/07/protect-human-rights-all-migrants>
  52. Statement by Ivan Simonovic, Assistant Secretary-General for Human Rights - Report of the United Nations High Commissioner for Human Rights to the ECOSOC General Segment 2010, Item 14(g), Thursday, 22 July 2010 New York | OHCHR. <https://www.ohchr.org/en/statements/2010/07/statement-ivan-simonovic-assistant-secretary-general-human-rights-report-united?LangID=E&NewsID=10231>
  53. The African Charter on Human and People's Rights : a commentary in SearchWorks catalog (stanford.edu). <https://searchworks.stanford.edu/view/13118290>
  54. The International Convention on Migrant Workers and its Committee Fact Sheet No. 24 (Rev.1) UNITED NATIONS New York and Geneva, 2005
  55. Universal Declaration of Human Rights Adopted and proclaimed by General Assembly resolution 217



A (III) of 10 December 1948

56. What's the Difference Between a Migrant and a Refugee? | Britannica.  
<https://www.britannica.com/story/whats-the-difference-between-a-migrant-and-a-refugee>
57. Worst Forms of Child Labour Convention, 1999 (No. 182) | OHCHR  
<https://www.ohchr.org/en/instruments-mechanisms/instruments/worst-forms-child-labour-convention-1999-no-182>