



Children Without Parental Care in Africa

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KEY DEFINITIONS

Alternative care: 'Alternative care consists of all formal and informal arrangements whereby a child is looked after at least overnight outside the parental home, either by decision of a judicial or administrative authority or duly accredited body, or at the initiative of the child, his/her parent(s) or primary caregivers, or spontaneously by a care provider in the absence of parents.'¹ Furthermore, '[i]t is the role of the State, through its competent authorities, to ensure the supervision of the safety, well-being and development of any child placed in alternative care and the regular review of the appropriateness of the care arrangement provided.'² While the term 'alternative care' is not reported in the UN Guidelines for the Alternative Care of Children, it is broadly referred to as including both formal and informal, temporary, or permanent care of children who lack parental care.

Children without parental care: 'All children not in the overnight care of at least one of their parents, for whatever reason and under whatever circumstances. Children without parental care who are outside their country of habitual residence or victims of emergency situations may be designated as: (i) "Unaccompanied" if they are not cared for by another relative or an adult who by law or custom is responsible for doing so; or (ii) "Separated" if they are separated from a previous legal or customary primary caregiver, but who may nevertheless be accompanied by another relative.'³

Deinstitutionalisation: 'A policy-driven process of reforming a country's alternative care system, which primarily aims at: decreasing reliance on institutional care with a complementary increase in family and community-based care and services; preventing separation of children from their parents by providing adequate support to children, families and communities; preparing the process of leaving care, ensuring social inclusion for care leavers and a smooth transition towards independent living.'⁴

Family-like care: Where children are cared for in small groups similar to that of a family and have a caregiver fulfilling the role of providing parental care.⁵

Foster care: 'Situations where children are placed by a competent authority for alternative care in the domestic environment of a family other than the children's own family that has been selected, qualified, approved and supervised for providing such care.'⁶

Gatekeeping: 'A set of measures put in place to effectively divert children from unnecessary initial entry into alternative care or, if already in care, from entry into an institution.'⁷ It involves preventing the inappropriate placement of a child in formal care.⁸

Institutional care: Care provided in any non-family-based group setting, such as places of safety for emergency care, transit centres in emergency situations, and all other short- and

1 Better Care Network (undated). Alternative Care Services. Available at: <https://bettercarenetwork.org/practitioner-library/services-and-interventions/alternative-care-services>

2 United Nations (UN) General Assembly (2010). Guidelines for the Alternative Care of Children (GA A/RES/64/142), para 5.

3 Ibid. para 29(a).

4 Eurochild (2014). Deinstitutionalization and Quality Alternative Care for Children in Europe: Lessons Learned and the Way Forward – Working Paper. Available at: www.openingdoors.eu

5 SOS Children's Villages (undated). Our Work Protection Quality Care. Available at: <https://www.sos-childrensvillages.org/our-work/quality-care/alternative-care/types-of-alternative-care>

6 UN General Assembly (2010). Guidelines for the Alternative Care of Children (GA A/RES/64/142), para 29(c)(ii).

7 <https://www.developmentaid.org/api/frontend/cms/file/2020/07/De-institutionalisation-and-quality-alternative-care-for-children.pdf>

8 Department of Children Services (Kenya) (2021). Gatekeeping Guidelines for Children in Kenya.

long-term residential care facilities, including group homes.’⁹

Kafalah: ‘The commitment under Islamic law to voluntarily take care of the maintenance ... the education and the protection of a minor, in the same way as a father would do it for his son.’¹⁰ This occurs without the child’s entitlement to the family name or an automatic right of inheritance from the family.

Kinship care: ‘Family-based care within the child’s extended family or with close friends of the family known to the child, whether formal or informal in nature.’¹¹ Informal kinship care involves a non-judicial arrangement within the family’s own extended family, temporarily or on a long-term basis. This can be with aunts, uncles, older siblings, grandparents, or neighbours. In formal kinship care, the same is arranged under an external administrative or judicial authority.¹²

Reintegration of children: ‘The process of a separated child making what is anticipated to be a permanent transition back to his or her family and community (usually of origin), to receive protection and care and to find a sense of belonging and purpose in all spheres of life.’¹³

Residential care: ‘Care provided in any non-family-based group setting, such as places of safety for emergency care, transit centres in emergencies, and all other short- and long-term residential care facilities, including group homes.’¹⁴

9 UN General Assembly (2010). Guidelines for the Alternative Care of Children (GA A/RES/64/142), para 29(b)(ii).

10 Better Care Network (undated). International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC). Available at: <https://bettercarenetwork.org/sites/default/files/attachments/Kafalah%20Fact%20Sheet.pdf>

11 UN General Assembly (2010). Guidelines for the Alternative Care of Children (GA A/RES/64/142), para 29(c)(i).

12 Department of Children Services (Kenya) (2021). Gatekeeping Guidelines for Children in Kenya.

13 SOS Children’s Villages (undated). Guidelines on Children’s Reintegration: Interagency Group on Children’s Reintegration. Available at: https://www.sos-childrensvillages.org/getmedia/107200b0-ad9e-4a71-b314-7daed6e7a054/Guidelines-on-Children-s-Reintegration_web-version.pdf

14 UN General Assembly (2010). Guidelines for the Alternative Care of Children (GA A/RES/64/142), para 29(c)(iv).



ACRONYMS

<i>ACRWC</i>	African Charter on the Rights and Welfare of the Child
<i>ACERWC</i>	African Committee of Experts on the Rights and Welfare of the Child
<i>AIDS</i>	Acquired Immunodeficiency Syndrome
<i>AU</i>	African Union
<i>ACPF</i>	African Child Policy Forum
<i>CBO</i>	Community-based Organisation
<i>CCI</i>	Charitable Children's Institutions
<i>CHH</i>	Child-headed Household
<i>CSO</i>	Civil Society Organisation
<i>CWPC</i>	Children without Parental Care
<i>CYCC</i>	Child and Youth Care Centres
<i>DHS</i>	Demographic Health Surveys
<i>DRC</i>	Democratic Republic of the Congo
<i>DOVCU</i>	Deinstitutionalisation of Orphans and Vulnerable Children
<i>ECD</i>	Early Childhood Development
<i>ESAR</i>	East and Southern Africa Region
<i>FBO</i>	Faith-based Organisation
<i>FDG</i>	Focus Group Discussion
<i>HIV</i>	Human Immunodeficiency Virus
<i>INGO</i>	International Non-governmental Organisation
<i>MENA</i>	Middle East and North Africa
<i>NGO</i>	Non-governmental Organisation
<i>OVC</i>	Orphans and Vulnerable Children
<i>REC</i>	Regional Economic Community
<i>SADR</i>	Sahrawi Arab Democratic Republic
<i>SOS CVI</i>	SOS Children's Villages International
<i>STI</i>	Sexually Transmitted Infection
<i>UN</i>	United Nations
<i>UNCRC</i>	United Nations Convention on the Rights of the Child
<i>UNHCR</i>	United Nations High Commissioner for Refugees
<i>UNICEF</i>	United Nations Children's Fund
<i>WCAR</i>	West and Central Africa Region

EXECUTIVE SUMMARY

While the plight of children without parental care (CWPC) in Africa is receiving greater attention, there is a significant evidence gap in regard to the extent of the problem and the legislative, regulatory, and programmatic responses to it. To date, no thorough study has been undertaken on a continental scale, encompassing all the regional economic communities in Africa, to examine the many forms of care that are available and to identify obstacles to ensuring that all children have access to parental care.

Between 2012 and 2016, UNICEF undertook a study to estimate the number of children in formal alternative care worldwide, including in Africa. The results showed that, out of 20 countries in the Eastern and Southern Africa Region (ESAR), only eight had data on foster care; out of 23 countries in the Middle East and North Africa (MENA) region, only five had such data; and out of 24 countries in the West and Central Africa Region (WCAR), only seven had data. The study also found that, of 20 countries in ESAR, 14 countries had data on residential care; of 23 countries in the MENA region, 14 had such data; and out of 24 countries in the WCAR, only 14 had data.

The United Nations (UN) General Assembly's Third Committee adopted an annual resolution on the rights of the child¹⁵ which focused on CWPC as one of the world's most vulnerable populations. At its 34th Ordinary Session in November 2019, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) decided to conduct continent-wide research on CWPC and those at risk of losing parental care.

KEY FINDINGS

Defining Parenting and CWPC in the African Context

The traditional African family is composed of grandparents, aunts, uncles and cousins, as well as unrelated persons who are regarded as family. A child's parents are thus not only his or her biological parents but include members of this extended family. Asikhai (2021) notes that parenting involves applying skills and methods of raising children to prepare them for contributing to society by developing their emotional, psychological, social and intellectual capabilities.¹⁶ Crucially, parenting is a responsibility which is not limited to biological parents alone but extends to an entire network of relations in society. This scenario is common to most African families.

The UN Guidelines for the Alternative Care of Children define CWPC as 'all children not in the overnight care of at least one of their parents, for whatever reason and under whatever circumstances'.¹⁷ Similarly, the United Nations Convention on the Rights of the Child (UNCRC) defines a child without parental care as one who is 'temporarily or permanently deprived of his or her family environment or in whose own best interest cannot be allowed

15 UN General Assembly (2020). Promotion and Protection of the Rights of Children: Resolution Adopted by the General Assembly 18 December 2019 (RES/74/133). Available at: <https://digitallibrary.un.org/record/3848250?ln=en>

16 Asikhai F (2021). The Psychology of Parenting in African Demography and Comparison with the First World Countries. School of Social and Human Studies, Atlantic International University. Available at: https://www.academia.edu/49101606/African_Parenting_Psychology

17 UN General Assembly (2010). Guidelines for the Alternative Care of Children (GA A/RES/64/142), para 29(a). Such reasons and circumstances include drug abuse; sexual abuse of children by family members; loss of one or both parents due to factors such as conflict, HIV/AIDs, or other illnesses; situations where children are living in residential care, with extended families, foster families, on the streets, or in juvenile detention; and abandonment by or separation from biological parent for whatever reasons.



to remain in that environment'¹⁸.

While noting these definitions, this study considers the following as CWPC in the African context: abandoned children; double orphans and/or children in child-headed households; children in detention, incarceration, or remand homes; children participating in conflict (child soldiers, abducted girls); children living in residential care settings; children living in institutions; street-connected children or children living on the streets; unaccompanied minors; trafficked children; and children in forced or child marriages. However, the following are not regarded as CWPC: children in kinship care or foster care; undefined orphans and vulnerable children (OVC); adopted children; and those in *kafalah* care.

The adoption of a narrow conceptualisation of CWPC would require State Parties to the ACRWC to review their normative frameworks in order to enable a more targeted, resource-efficient programmatic response to CWPC issues.

Nature and Prevalence of CWPC

This study finds that, in most African countries, the term 'children without parental care' is not commonly used. Generally, State Parties operate within a broader understanding of CWPC in which the notion of 'children without parental care' overlaps with categories of children who do have parents, or are cared for by extended family, but need care and protection. This has widened the range of children who are regarded as CWPC and presented a challenge for a targeted response to address the plight of CWPC.

Common risks faced by CWPC include exposure to sexual and other forms of abuse; delinquency; substance and drug abuse; exposure to hazardous work; mental health issues; inadequate food consumption; limited access to education and health-care services; and living in environments unconducive to children's emotional and physical well-being. While these risks have been documented in this study, it could not be determined which categories of CWPC face greater risks than others.

The study could not authoritatively estimate the total prevalence of CWPC in Africa due to reasons such as differences in how CWPC are defined, limitations in statistical data, and the low response by State Parties, UN agencies and civil society organisations to the study's online survey. However, analysis of available statistical data and secondary sources suggests that there are approximately 35 million CWPC in Africa. This figure is compiled from research into the following categories: children in child marriages; children in child-headed households; street-connected children; children on the move; children in detention; and children in institutional and residential-care settings.

Root Causes and Drivers of CWPC

Multiple causes and drivers of CWPC were identified. The causes include war and conflict; climate change and natural disasters; pandemics; poverty; orphanhood; child trafficking; and socio-economic and cultural factors. As a result of such factors, children end up on the streets, being trafficked, on the move, entering institutions, using drugs, and managing households on their own. Children who use drugs often commit suicide,¹⁹ are associated with armed groups,²⁰ and experience delayed physical and cognitive development.

18 Child Rights International Network (undated). Article 20: Protection of Children without Parental Care. Available at: <https://archive.crin.org/en/home/rights/convention/articles/article-20-protection-children-without-parental-care.html>

19 Arendt M et al. (2007). 'Parental alcoholism predicts suicidal behavior in adolescents and young adults with cannabis dependence.' International Journal of Adolescent Medical Health. 19(1): 67–77. Available at: <https://pubmed.ncbi.nlm.nih.gov/17458326/>

20 UNICEF (Undated). 'Children recruited by armed forces or armed groups.' Available at: <https://www.unicef.org/protection/children-recruited-by-armed-forces>

Current Normative Frameworks for CWPC

The study analysed constitutions as well as child protection laws and policies in Africa's five regions. The findings were categorised according to whether they relate to the constitutions, laws and policies of the former British colonies or to those of the other countries.

Constitutions

The inclusion of child protection issues in national constitutions in Africa varies, with the majority of constitutions not being explicit in this regard. In the Southern African region, up to 60% of countries (Eswatini, Malawi, Mozambique, Namibia, South Africa, and Zimbabwe) are explicit about children's rights and protection. Child protection issues are addressed in the constitutions of approximately 80% of the countries. In East Africa, a third of countries (Ethiopia, Kenya, Uganda, Somalia, and South Sudan) have constitutions that explicitly mention children's rights. Furthermore, 46.7% of the countries remain silent on CWPC issues in the region. As much as 53.3% of West African countries have low levels of CWPC incorporation in their constitutions. Child rights were explicit in 20% of the countries' constitutions (Cape Verde, The Gambia, and Togo). The constitutions of 28.6% of North African countries (Algeria and Libya) are rated as high in the extent to which they address child protection and CWPC issues, while 28.6% are rated as medium. Finally, among Central African countries, 62.5% of them (Central African Republic, Congo Republic, the Democratic Republic of the Congo (DRC), Gabon, and São Tomé and Príncipe) are rated as medium.

Laws

In Eastern and Southern Africa, more than 60% of countries have explicit child-related laws that provide for the care of CWPC, whereas in West Africa, Central Africa and North Africa, this is true of less than 50% of countries. As many as 40% of West African countries (The Gambia, Ghana, Guinea Nigeria, Sierra Leone, and Togo) have laws that address child rights and child protection issues, particularly issues concerning children who are not under the care of their parents. The majority of Southern African countries (Botswana, Eswatini, Lesotho, Malawi, and South Africa) have explicit laws on child rights and CWPC. As many as 80% of countries in the region have explicit laws on child rights. Sixty per cent of East African countries (Ethiopia, Kenya, Rwanda, Seychelles, South Sudan, Sudan, Tanzania, and Uganda) have laws explicitly governing children in need of care and protection. In contrast, 26.7% of countries in the same region do not have laws explicitly providing for CWPC rights. In North Africa, 42.8% of countries (Algeria, Egypt, and Libya) have a high rating, while 28.6% (Mauritania and Morocco) have a medium rating for countries with explicit laws. Only two Central African countries – the Congo Republic and DRC – have explicit legal provisions addressing CWPC, and in this regard account for 25% of the total.

Policies

Most countries (more than 70%) lack explicit child protection policies to implement key provisions in their constitutions and laws. An analysis of policies in East Africa reveals glaring gaps in the presence of explicit policies addressing CWPC protection, as recorded at 80%. In West Africa, 80% of countries lack explicit CWPC policies. Only 7% of countries (Togo) have explicit child protection policies, while 13% (Ghana and Guinea) have medium-quality policies. Despite their strong performance in mainstreaming child rights and CWPC in constitutions and laws, the majority of Southern African countries (70%) lack comprehensive CWPC policies. The absence of explicit child protection policies, which are critical for the implementation of key provisions in constitutions and laws, is a conspicuous gap in North Africa. The lack of policies, strategies, and action plans to address child protection issues is low in 87.5% of Central African countries.



Programmatic Responses

This study's secondary-data findings reveal that programmatic responses across Africa include the prevention of family separation, the provision of care and protection, and advocacy for better policy and regulatory frameworks. Various programmatic responses, such as protected communities, continuums of care, and child reintegration, were observed in Southern, West, and Central Africa. These responses have aided children through the prevention of violence, abuse, exploitation, and social exclusion, as well as through support for their reunification with immediate or extended family members.

Care Systems Reform

Reform of care systems needs to focus on implementing effective normative and regulatory frameworks based on international and continental standards. Care system reform is aimed at improving the quality of all alternative care options so as to ensure that children receive better care-and-protection services.

Alternative Care Options

Kinship care, foster care, kafalah care, residential care and institutional care were found to be the most common care options across the five African regions. Guardianship is also practised in some countries. The availability of these options varies by region.

- ***Kinship care*** is very common in Africa. Children in kinship care receive parental care from members of their immediate or extended family, or from close friends known to the child. Kinship care is the most common type of alternative care for disadvantaged children. In most cases, it is informal. However, the scarcity of information on informal care makes it difficult to ascertain what the outcomes are for children who are cared for informally.
- ***Foster care*** is a formalised form of care and often supported by legal frameworks; in Uganda, it has been piloted on a small scale.
- ***Kafalah care*** is commonly found in Islamic countries such as Egypt and Mauritania.
- ***Residential care*** is provided in a wide range of settings, from emergency shelters and small groups to larger residential facilities. It is provided in any non-family-based group setting, such as places of safety for emergency care, transit centres in emergency situations, and short- and long-term residential-care facilities.²¹
- ***Institutional care*** is provided both by public and private practitioners, usually to children in large groups or in dormitory settings where they are deprived of liberty for their protection.
- ***Guardianship*** is a kind of formal family-based care ordered by a competent authority; in many cases, the guardian is related to the child and is appointed by an authority or selected by the child or family.

CHILDREN'S VOICES

Via focus groups and surveys, the study captured the voices and perspectives of CWPC in different organisational settings (governmental, private, faith-based and community-based) as well as on the streets. The results highlight positive as well as negative outcomes for children's well-being. Health, education, and nutrition were among the main themes of the study's surveys and focus group discussions.

²¹ UN General Assembly (2009). Guidelines for the Alternative Care of Children (GA A/RES/64/142).

Eighty-seven per cent of those who were polled rated their health as average, good, or very good. The majority of respondents, who were in alternative care, provided positive feedback on their health status. By contrast, children living on the streets are more likely to have poor health outcomes.

Every child in alternative care reported going to school. As many as 43% of them are afraid of losing their caregivers and concerned about difficulties that their caregivers may face, as these issues could affect their responsibilities as caregivers. CWPC in residential care worry about what the future holds for them when they turn 18. As many as 96% expressed gratitude for receiving care, but many also felt abandoned and unwanted. Children regard relatives (22%) and the government (22%) as stakeholders responsible for their needs.

Children on the streets had positive stories to tell about receiving care and support from Open Centres,²² such as in Mozambique, while others, such as those in Cameroon and the DRC, shared negative stories about being ignored on the streets.

OVERALL RECOMMENDATIONS

DEFINING CHILDREN WITHOUT PARENTAL CARE

- i. It is necessary to achieve consensus among State Parties on which categories of children are considered as CWPC. Due to significant variation in the interpretation of the term 'children without parental care', it is important to establish a shared understanding of its definition and shared acceptance of its usage.
- ii. African regions should integrate CWPC into regional discussions on child rights and encourage State Parties to include traditional alternative care options, such as foster care, in their planning and financial support. This can be achieved through the allocation of social protection programme funds specifically designated for vulnerable groups.
- iii. State Parties should contemplate embracing a precise definition of 'children without parental care' that aligns with the findings of the study, while considering the unique characteristics of their respective national contexts.
- iv. On recognising the updated definition, State Parties should assess their normative frameworks to ensure they are in harmony with this adopted definition and the UN Guidelines for the Alternative Care of Children.

NATURE AND MAGNITUDE OF THE CWPC PROBLEM

- i. A continental study should be commissioned on the prevalence of CWPC, with State Parties committing to contributing to the generation of relevant statistics.
- ii. State Parties should advocate for the inclusion of CWPC in their national statistical databases or periodic studies such as demographic health surveys (DHS), multi-indicator cluster surveys (MICS) and national household surveys.
- iii. African regions should consider commissioning regional studies on the magnitude of the CWPC problem.
- iv. African regions should develop regional dashboards on the different categories of CWPC. The regional dashboard should be linked to robust national-level statistics.

NORMATIVE AND LEGAL FRAMEWORKS

- i. A framework should be developed to assist Member States of the African Union in incorporating CWPC issues in their constitutions, laws and policies.

²² An Open Centre is a community centre – a safe, educational and fun place where young people learn and socialise. Through expressive arts workshops, the children usually work as a team and grow in confidence, which helps to elevate their voices in the wider community.



- ii. A guiding framework should be developed to assist Member States in formulating national-level policies, strategies and actions plans in regard to CWPC.
- iii. African regions should consider developing regional frameworks for formulating constitutional provisions, laws, strategies and action plans that explicitly address issues relating to CWPC.

CARE OPTIONS

- i. National policies should be accompanied by legislation on appropriate high-quality care options that meet the needs of children. These policies should provide leadership in the development of family-based and family-like care settings, with the aim thereof being to move away from institutional care.
- ii. There is a need to develop and implement quality standards for alternative care provision. This means that governments should ensure the availability of suitable care options, effective gatekeeping mechanisms, case management structures and systems, and comprehensive national information management systems focused on CWPC.
- iii. The CWPC care reform agenda should aim to ensure proper care across all alternative care options, including residential care. Strategies around institutional care should focus on reducing the number of facilities and transforming them into providers of community-based short-term alternative care that complement the care system and improve the quality of care that children receive.
- iv. State Parties should enhance child safeguarding and protection systems to ensure that all children under the various care options are protected from all forms of abuse and neglect. In order to achieve this, it is important, among other measures, to enhance community-based systems that facilitate appropriate case management through reporting and response mechanisms.
- v. State Parties should work with other stakeholders to implement the care reform agenda. These efforts should include gradual steps towards achieving full compliance with the UN Guidelines for the Alternative Care of Children.
- vi. Gatekeeping is extremely weak in every country in Africa. Therefore, it is crucial to reinforce this system to ensure children are placed in alternative care only after a comprehensive gatekeeping assessment that considers both necessity and suitability.

PROGRAMMATIC RESPONSES TO CWPC

- i. It is of paramount importance that African regions gain a well-informed understanding of CWPC issues through the promotion of regional learning and information-sharing. A key focus should be on social protection measures that address the root causes and the drivers of CWPC.
- ii. African regions should identify best practices in their member states and adopt these as common benchmarks.
- iii. State Parties should invest in the prevention of family separation and strengthen communities economically in order to avoid recourse to alternative care.
- iv. State Parties should establish systems for licensing alternative care provision in all settings, monitoring it, and ensure that it meet quality standards.
- v. In collaboration with all development partners, Member States should work to strengthen their national child protection systems. This means that programmes should be designed to address gaps in the following areas:

- normative frameworks (laws, policy, plans, and the like);
- the coordination and oversight of national child protection systems;
- data management information systems;
- structures, finances, resources, and systems for the delivery of social services;
- the sufficiency and skills of a multisectoral workforce;
- child protection case management tools and procedures;
- the continuum of suitable care options; and
- social and behavioural change in community attitudes and practices.

1 INTRODUCTION

1.1 BACKGROUND CONTEXT

The African Union (AU) developed Agenda 2063 as a strategic blueprint that sets out seven aspirations for the continent. To advance the realisation of this agenda, Aspiration 6 provides for people-driven development. Paragraph 53 under Aspiration 6 implies that a precondition for people-driven development is the full implementation of the African Charter on the Rights and Welfare of the Child (ACRWC).²³ It is on the basis of this provision that the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) developed Agenda 2040, a document which is meant to ensure the full implementation of the ACRWC. Agenda 2040 has 10 aspirations and fulfilling them is intended to drive the implementation of the ACRWC and, by extension, the realisation of the continental agenda articulated in Agenda 2063.

Importantly, though, there are prerequisites for making all of the aspirations a reality. One indispensable condition is that children grow up in secure, caring environments that enable them to develop to their full potential. Accordingly, the Preamble of the ACRWC underscores the need for every child to grow up in a family environment in an atmosphere of happiness, love and understanding.

Africa is, however, faced with a challenge where children are either without parental care or at risk of losing it – and what is disconcerting is that, to date, no continental effort has been made to ascertain to the scale of this challenge. Globally, about 220 million children are without adequate parental care or are at risk of losing it.²⁴ One in 10 children under the age of 18 years lives with neither biological parent, and various national demographic studies show that a good percentage of such children are orphans who have lost one or both parents.²⁵

Article 19 of the ACRWC states that ‘every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents’. This provision of the Charter is premised on the understanding that parental care is the first level of protection for children. As such, a family environment is recognised as one of the prerequisites for the optimum development of a child. In cases where a child is unable to live within a family, efforts must be made to ensure that the model of care provided to the child is temporary and that continuous effort is made to place him or her in a family.

In the absence of parental care, children are left at a higher-than-usual risk of discrimination, violence, abuse, exploitation, and inadequate care, seeing as their wellbeing might not be properly monitored. Their rights are immediately compromised. Many end up alone in child-led households or institutional settings rife with neglect or abuse; they also face stigma, are at risk of exploitation, and have difficulties with community reintegration.²⁶ In the long term, they lack adequate life skills and face developmental challenges, low employment prospects, and increased social dependency. UNICEF estimates that nearly 2.7 million children live in

23 African Charter on the Rights and Welfare of the Child (ACRWC) (2012). OAU Doc. CAB/LEG/24.9/49 (1990), entered into force 29 November 1999. Available at: <https://au.int/en/documents-45>

24 SOS Children's Villages (2016). In the Blind Spot: Documenting the Situation of Children without Parental Care or at Risk of Losing It. Available at: <https://www.sos-childrensvillages.org/getmedia/c89ff763-79b1-45cb-b9d3-4c1fc473c385/In-the-Blind-Spot.pdf>

25 SOS Children's Villages (2017). The Care of Children in Data: Evidence, Gaps and Opportunities for Change in the SDGs. Available at: <https://www.sos-childrensvillages.org/getmedia/881d3ec2-92a9-4a3b-9425-6d074be04c27/SOS-Children-s-Villages-The-care-of-children-in-data.pdf>

26 UNICEF (undated). The Convention on the Rights of the Child: The Children's Version. <https://www.unicef.org/child-rights-convention/convention-text-childrens-version>



institutional care worldwide.²⁷ For the African continent, already lagging behind on many global developmental milestones, knowing the nature, prevalence, and causes of situations where children are without parental care is imperative.

Although many such children are in need of parental care, domestic adoptions, and other family-based solutions (such as foster care, kinship care, and *kafalah*) are not sufficiently promoted and pursued in Africa, as a result of which the children are exposed to the risk of discrimination, violence, abuse, exploitation, and inadequate care. Where they are adopted internationally, the continent is not well equipped in law, policy, and practice to ensure that they enjoy appropriate care and protection. In the absence of proper child protection systems, those children who end up in various forms of care receive inadequate care and are vulnerable to emotional, sexual and physical abuse and exploitation, all of which, moreover, affects their life chances and development to full potential. This is all the worse for children with disabilities, who are often institutionalised even where parental care could be provided easily.

Domestic family-based care helps children grow up in an environment where there they have strong bonds with their carers and their physical and cognitive development is greatly enhanced. To this end, local and traditional family-based options of care for children in need of parental care ought to be promoted. Many countries in Africa, however, do not have adequate systems for preserving families or strengthening the ability of families and communities to provide care to children without parental care (CWPC). There is thus a need to promote an integrated approach and ensure the availability of coherent alternative care systems where the focus is on local family-based solutions.

A significant challenge, though, is that there is a large gap in the evidence base as regards the scale and nature both of the problem and of the continent's policy, regulatory and programmatic responses to it. To date, no comprehensive study has been conducted at the continental level, covering all of the countries in Africa, to examine the various forms of care that are available and to identify obstacles to ensuring that all children have access to parental care.

In response to awareness of the need to intervene in ensuring that the issue of CWPC gains attention, the United Nations (UN) General Assembly's Third Committee adopted an annual resolution on the rights of the child²⁸ that focused on CWPC as one of the world's most vulnerable populations. The resolution urges governments to put programmes, policies and investments in place to better fulfil the rights of CWPC and ensure that the professionals and systems serving such children do so with a rights-based and participatory approach. The adoption of the resolution created the momentum to take action in improving the situation of millions of families and children around the world.

Accordingly, at its 34th Ordinary Session in November 2019, the ACERWC resolved decided to conduct continent-wide research on CWPC and those at risk of losing parental care.

Understanding the concept of 'family' and 'parent' in the African context: There is a difference in the way Europe, the Americas, and Africans define a 'family' or 'parent'. Many Western sociologists and psychologists use the term 'family' as synonymous with the 'nuclear family' made up of a mother, father, and children. However, in the traditional African system, the 'family' is understood as being composed as well of grandparents, aunts, uncles, cousins and, in some cases, even unrelated people. Mafumbate (2019) argues that in traditional Africa, life was characterised by brotherhood and a strong sense of belonging to a larger family. As such, in the context of the 'undiluted' African community, orphans or vulnerable children were non-existent, as they were absorbed within the larger African family.

Several scholars on African families maintain, too, that the concept of the 'extended family' is foreign to the 'undiluted' African community, where the larger family intervened

27 UNICEF (2017). Estimating the Number of Children in Formal Alternative Care: Challenges and Results. Available at: <https://data.unicef.org/resources/estimating-number-children-formal-alternative-care-challenges-results-2/>

28 UN General Assembly (2019). A/C.3/74/L.21/Rev.1.

to take care of orphans. Malde (2014) cited in Muchanyerei (2020) argues that the term 'extended family' is a Western one that suggests a separation or subdivision within the family between its 'nucleus' and 'extended' elements. The saying 'blood is thicker than water' has been widely accepted in African tradition and emphasises the importance of the 'African kinship family'. Factors such as migration, urbanisation and the influence of Western culture have contributed to the common use of the term 'extended family'. Urbanisation has also contributed to the growing tendency towards the 'nuclear' family. Despite the diluting impact of migration, urbanisation, and Western influence, the 'African family' still plays a key role in the care and support of CWPC. While statistics are not always available for most African countries, a large number of children are cared for by their kin, now often referred to as their 'extended family'.

Siegel (1996) illustrates the importance of the 'traditional African family' in his account of a situation that was seen at the time as a crisis. In 1988, 1.3 million migrant workers from Ghana were suddenly deported from Nigeria, a predicament made all the worse by drought. Western relief agencies made plans to house the influx of returning deported migrants, but within two weeks the Ghanaian deportees had disappeared into their families in homes across the country. However, despite the key role that the African kinship family plays in the care of its members, including children, its recognition in policy documents has not been translated into social policies and programmes that take cognizance of it.

In the same vein, within the traditional African context, the concept of 'parents' extends beyond biological parents to include uncles, aunts, older cousins, and members of the larger African family. Nelson Mandela once described a situation common to most African families throughout the continent when he noted that, during his childhood, his mother 'presided over three huts at Quinn, [which] ... were always filled with babies and children of my relations. There was never a time when only biological children stayed alone.'²⁹ In South Africa, for instance, children are taken care of by an 'extended family' the members of which are not necessarily biological parents. In the African context, the 'family' extends beyond the nuclear family to include all kinship family members; similarly, the term 'parents' means more than biological parents and includes other relatives and even non-relatives.

The ACRWC affirms that in all actions concerning the child undertaken by any person or authority, the best interests of the child shall be the primary consideration. Articles 4, 7, 19, 20, 24 also outline the responsibilities of parenting: the upbringing and development of the child; considering the best interests of the child in all situations; securing good living conditions for the child's development to extent possible within one's means and abilities; and administering domestic discipline with humanity and regard for the child's dignity.

The UN Guidelines for the Alternative Care of Children underscore the importance of the family as the fundamental group in society and the natural environment for the growth, well-being, and protection of the child. Consequently, all efforts must be made to raise the child in a family environment, with CWPC at a heightened risk of being denied such a nurturing environment. As such, the UN Guidelines acknowledge the existence of CWPC.³⁰

Parenting in the African context: Parenting is the process of raising and caring for a child from birth to adulthood. This entails giving emotional social, and physical support to children so that they can achieve their full potential. A child may be raised either by biological parents or within the extended family. Parenting in the African context involves the care of children by an extended family that includes uncles, aunts, grandparents, cousins, and others.³¹ Asikhai (2021) notes that parenting involves applying skills and methods of raising children to prepare them for contributing to society by developing their emotional, psychological, social

29 Oxfam (undated). English and Literacy: Nelson Mandela Lesson Plan 5: Pupils' Own Biographies. Available at: https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620681/lesson5_pupils_own_biographies.pdf;jsessionid=B6EAB5A04E1918D286C451BED99DEBE1?sequence=4

30 UN General Assembly (2010). Guidelines for the Alternative Care of Children (GA A/RES/64/142).

31 Amos PM (2013). Parenting and Culture: Evidence from Some African Communities. Intech, London.



and intellectual capabilities.³² Crucially, parenting is a responsibility which is not limited to biological parents but extends to a greater network of relations in society.

1.2 STUDY OBJECTIVES

Purpose of the study: The study was conducted to improve understanding of the situation of CWPC in Africa, provide a baseline, and offer a starting-point for addressing that situation. Data were systematically collected to the extent possible on the numbers and characteristics of children in various forms of care; in addition, the study identified gaps in key issues, examined the drivers of child-family separation, and analysed the functioning of child protection systems in selected countries. The study was undertaken to contribute to the evidence base on CWPC. This evidence base is crucial for advocating for, and developing, better policies and laws to advance children's rights in the African context.

Objectives of the study: The objectives of the CWPC continental study were to

- establish evidence on the nature and prevalence of CWPC in Africa in order to guide the formulation of a continental normative and programmatic response;
- build an evidence-based foundation for addressing the causes and drivers of CWPC in Africa;
- conduct a critical analysis of the current normative frameworks and their mutual interaction with the African conceptual understanding of CWPC;
- map out alternative care options and programmatic responses that are in the best interest of the child and meant to address the issue of CWPC in Africa; and
- recommend ways in which the ACERWC, regional economic communities, and State Parties may respond more effectively to issues impacting on CWPC.

32 Asikhai F (2021). The Psychology of Parenting in African Demography and Comparison with the First World Countries. School of Social and Human Studies, Atlantic International University. Available at: https://www.academia.edu/49101606/African_Parenting_Psychology

2 METHODOLOGY

2.1 CONCEPTUAL FRAMEWORK

This chapter outlines the study's research processes and methods. It begins by setting out the conceptual framework of study, after which it briefly describes its research design, mapping of case-study country stakeholders, geographical coverage, methods of data collection, and limitations.

The study is informed by a conceptual framework consisting of the elements presented in Figure 1.

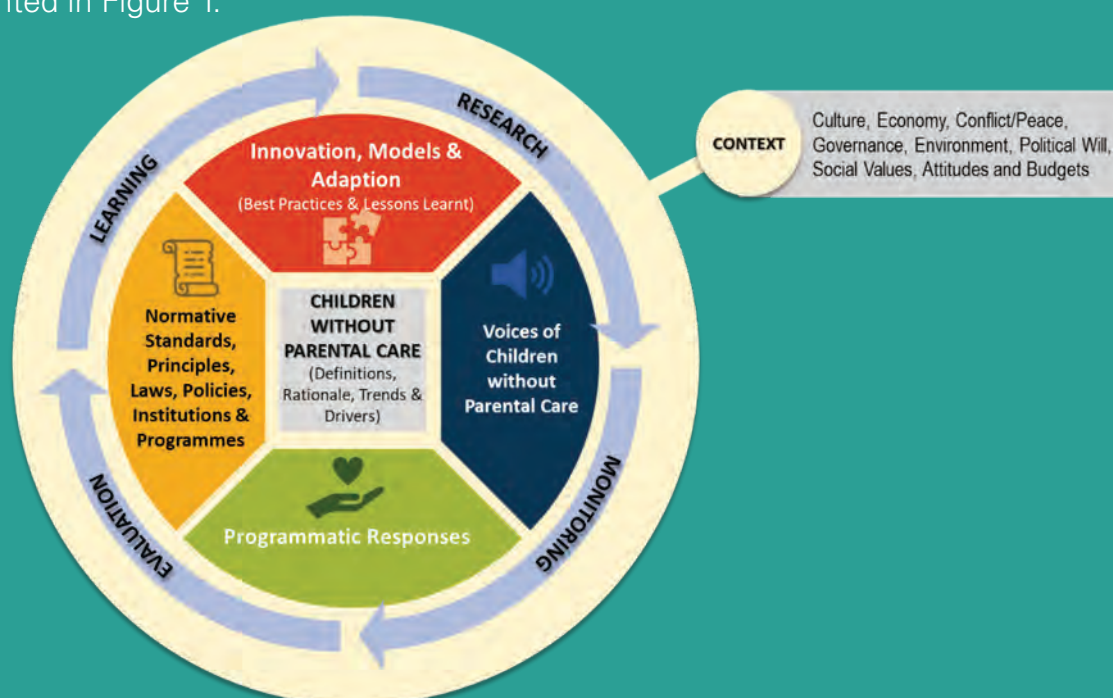


Figure 1: The study's conceptual framework for examining CWPC issues

The conceptual framework has seven elements in total:

1. description of CWPC (definitions, prevalence, and drivers);
2. norms and standards, laws, policies, institutions, and programmes;
3. care arrangements;
4. innovation, models, and adaption (best practices and lessons learnt);
5. voices of CWPC;
6. monitoring, evaluation, and learning; and
7. contextual settings for responses to CWPC.

Each of the seven elements, or components, of the conceptual framework is a site of change, that is, an area for potential intervention. Consequently, each area can be described, analysed, and acted upon to improve conditions for CWPC. In the research for this study, the conceptual framework was in effect a framework for assessing different yet interrelated aspects of the field of enquiry.



2.2 THE STUDY'S METHODOLOGICAL APPROACH

Research design: The study adopted a mixed-methods approach. Qualitative and quantitative methods were used in a complementary fashion to gather data on CWPC. The study relied on primary as well as secondary data, and in this regard consulted a wide array of sources.

In the inception phase of the study (October 2020), the consultancy team that conducted the research participated in an ideation workshop on CWPC organised by UNICEF in partnership with SOS Children's Villages (SOS CVI), Lumos Kenya, the African Child Policy Forum (ACPF), CAFOR, and the Secretariat of the ACERWC. The workshop brought together organisations that work throughout Africa with children and offered a window into understanding gaps in the care of CWPC and the aspirations of stakeholders. Crucially, the workshop was instrumental in shaping the research design of the study.

Geographic coverage and sampling: In the inception phase, 10 countries out of 55 (see Table 1) were selected for in-depth examination through case-study profiling; with the remaining 45 countries, the aim was to collect information through desk review and an online survey.

Stratified purposive sampling, based on the principle of inclusivity, was used to select the 10 countries. First, the countries were divided into the AU's five regional economic communities (Southern Africa, East Africa, North Africa, Central Africa, and East Africa). Secondly, the continent's diversity of language communities (Lusophone, Francophone, Arabic, and Anglophone) was taken into consideration, as were country populations, with preference given to countries with larger populations than others. Thirdly, two countries were selected from each of the five regions on the basis of their Child-friendliness Index (CFI) ranking³³ and/or the relative strength of their normative framework for child protection, as measured by the Child Protection Index.³⁴

33 The CFI is based on the three pillars of the UNCRC and ACERWC: protection, provision, and participation. The rankings are developed by the ACPF. See ACPF (2018). The African Report on Child Wellbeing 2018. Available at: <https://bit.ly/3CWC9tT>

34 World Vision International (2019). The Child Protection Index 2.0 for Bosnia and Herzegovina. Available at: https://www.wvi.org/sites/default/files/2019-06/Child%20Protection%20Index%202.0%20for%20BiH_engl_0.pdf

Table 1: Inclusion criteria for case-study countries

REGION	COUNTRIES	FEATURES OF INTEREST FOR CASE STUDY
Southern Africa	South Africa	Policy and normative framework; drivers; programmatic response; good practices; most child-friendly (as measured by the CFI)
	Mozambique	Alternative care; less child-friendly
East Africa	Kenya	Legal framework and programmatic responses; child-friendly
	Rwanda	Good practices; alternative care options; budgeting and programmatic response; child-friendly
Central Africa	Cameroon	Definition of CWPC and normative framework; least child-friendly
	DRC	Policy response and alternative care options; least child-friendly
West Africa	Nigeria	Definition of CWPC; nature and prevalence of CWPC; normative framework; fairly child-friendly
	Senegal	Definition of CWPC; nature and prevalence of CWPC; alternative care options; good practices; child-friendly
North Africa	Egypt	Definition of CWPC; nature and prevalence of CWPC; alternative care options; good practices; most child-friendly
	Mauritania	Normative framework; programmatic response; most child-friendly

Stakeholder mapping in case-study countries: The ACERWC led the process of seeking diplomatic permission from State Parties via their foreign affairs ministries. Ministries responsible for children's affairs were the primary respondents in all case-study countries, and facilitated engagement with other relevant government departments and ministries, such as ministries of justice and finance, as well as institutes for collecting statistics. Country-level engagements included meetings with civil society organisations (CSOs) and UN agencies, along with site visits to places of alternative care for CWPC. In all countries, key informant interviews, focus group discussions (FGDs), and surveys of children were conducted.

Research team: A team of regional child experts was recruited from the five regions to conduct research in the case-study countries. This was done to mitigate language barriers. Where the language of the child expert differed from that of the case-study country, local interpreters and translators were used. Country visits were led both by representatives of the ACERWC Secretariat and SOS CVI, as well as by the regional child rights expert.

Case-Study development: An inclusive and participatory approach was taken in the collection of primary data for the case studies. The ACERWC Secretariat participated in all interviews with government partners at national level, with SOS CVI providing support in making arrangements for the meetings.

Data collection methods: Quantitative and qualitative data were collected at two levels: via 10 case-study countries, and via 45 secondary-data countries.

Desk review: Literature review was an integral part of both levels of data collection. It served to provide a contextual understanding of all of the countries in regard to, inter alia, their



normative frameworks and drivers of CWPC. Researchers drew on online resources, reports shared by partner organisations as well as State Parties in case-study countries, and the outcomes of the ideation workshop. With the non-case-study countries, researchers utilised multiple data sources. Data included secondary data from SOS CVI national country offices, data shared by some Member States, and data from demographic health surveys (DHSs) and multiple indicator cluster surveys (MICSs).

Key informant interviews: Key informant interviews were conducted in case-study countries with multiple stakeholders working with CWPC. Key informants included government ministries responsible for children; other government departments working with them, such as national statistics offices and institutes for disaster management; and principal officers of CSOs, faith-based organisations (FBOs), UNICEF, SOS CVI, and the United Nations High Commissioner for Refugees (UNHCR). These organisations were selected for their depth of knowledge of CWPC-related policy and practice, and provided in-depth insight into relevant issues. (See the Annex for information on the stakeholders that were interviewed.)

Continental online survey: An online survey was developed to obtain information from all Member States, with the survey targeting child-sector state actors, UN agencies, international non-governmental organisations (INGOs), and local CSOs. The aim was to gather data on definitions of CWPC, normative frameworks, the drivers and magnitude of the problem, and the nature as well as strengths and weaknesses of programmes for addressing it. To supplement the results of the continental online survey, an additional quantitative analysis was undertaken of national censuses, poverty studies, MICSs and DHSs.

Children's survey and FGDs: The views of children in the case-study countries were canvassed through FGDs held with children in care facilities and via the administration of a survey among CWPC in various situations of care. Respondents were those in small institutions, child-headed households, the streets, and refugee camps. FGDs sought to obtain first-hand information on children's lived realities and were held with children as well as their care providers. As for the survey, it targeted 40 children in each case-study country. Together, the FGDs and survey explored key issues such as access to basic services, the impact of Covid-19, and children's aspirations and protection-related challenges.

Data-mining tool: A tool for collecting disaggregated data on CWPC was shared with the Member States. This aimed to determine the magnitude and nature of the CWPC problem as well as generate information about, inter alia, age and gender.

2.3 STUDY LIMITATIONS

Limited data-collection period: Each case-study visit was limited to five days, which restricted deeper engagement with stakeholders. The data-collection period did not allow for wider selection and mapping of CWPC. This meant researchers were generally confined only to reaching children in capital cities; conversely, few children in rural areas and refugee camps were reached. However, in collaboration with the UNHCR, some children in refugee camps could indeed be engaged through the children's survey. To mitigate limitations to do with the data-collection period, extensive planning meetings were held, as a result of which it was possible to collect data in certain refugee camps and other hard-to-reach settings (such as among children in the streets).

Logistical challenges: Due to Covid-19 restrictions, there was limited interaction and engagement with key focal persons, CSOs and government officials. Government clearances to access information were also hampered due to the absence of decision-makers. Generally, the majority of the stakeholders were working from home, and most interviews had to be conducted virtually.

However, this obstacle did not affect the quality of the data that were gathered. Key informant from across the continent also answered simple structured questions, as well as sharing secondary data sources, thereby providing researchers with substantive information that, where necessary, could be supplemented with internet searches to identify pertinent government documents.

Low response by governments to the continental online survey: Only 10 line ministries responsible for the care of children responded to the survey with statistics and national information about CWPC. The research team utilised desk review to gather information on the rest of the countries.

Limited participation by CSOs: The study notes that the lack of participation by CSOs that are playing a critical role in supporting the State Parties in the care of children deprives the findings of crucial information and statistics. Very few CSOs responded to the online survey.

Lack of data management systems: Most countries lack consolidated databases on child-related issues, resulting in fragmented statistics and/or conflicting statistics from different in-country departments.

Child-participation challenges: Restricted face-to-face interaction with children limited child participation, especially in areas where facilities were closed during Covid-19 and children were sent to their 'original homes'. Despite these challenges in the 10 case-study countries, the researchers were able to conduct FGDs with selected children from residential care settings, institutional settings, and refugee settings. The children also participated by responding to the children's survey, data from which was used to compile the study's account of children's voices.

2.4 ETHICAL CONSIDERATIONS AND SAFEGUARDING CHILDREN

The study complied with research ethics and principles for safeguarding children. The following values were adhered to:

- **Informed consent:** All participants in the case-study countries were well informed of the purpose of the study and its intended use before they gave their consent to participate. They were assured that their participation was voluntary and that they had the right to withdraw at any time. Child participants gave their verbal assent to participate after the consent of guardians was obtained.
- **Honesty and transparency:** Participants were informed of all aspects of the study to ensure that they understood their rights to express themselves freely. Before each engagement with children, facilitators explained matters to them and invited them to ask questions so as to ensure all was well understood and clarified.
- **Respect:** Researchers treated the views of all participants, including children, with respect. In the case of child respondents, peer respect for divergent views among them was maintained throughout all consultations.
- **Age-appropriateness:** Discussion guides were tailored to suit the diverse age groups into which participants fell. Children expressed themselves through discussions with their peers and wrote down their views on charts.
- **Child-friendliness:** Children participated in a familiar environment facilitated by friendly facilitators. All facilitators were well-trained child protection experts. Sufficient time was given to children to discuss issues with their peers while facilitators listened.



- **Inclusivity:** Stakeholders were selected from organisations working with children. The study also recognised that children are not homogeneous, and hence canvassed those of different ages, genders and language groups, as well as those living in differing situations. This included street children, refugee children, and children in institutions managed by governments or CSOs.
- **Professionalism:** The study worked with qualified national researchers with backgrounds in social work, child rights and child protection. As facilitators, they were also trained in working with children.
- **Safety:** Acceptable safety and protection principles were upheld. All facilities adhered to child- safeguarding principles. No children were interviewed in isolation and out of view of the designated focal persons at each site.

3 DEFINING CWPC IN THE AFRICAN CONTEXT

3.1 INTRODUCTION

Article 20 of the UNCRC defines a child without parental protection as '[a] child temporarily or permanently deprived of his or her family environment or in whose own best interest cannot be allowed to remain in that environment'. For the purposes of the study, it has been crucial to flesh out this definition to the facts of the African context, given that a central objective is to ascertain the scope and magnitude of the CWPC problem on the continent.

Accordingly, this report proposes a definition of CWPC in the African context that encompasses elements of the UNCRC, the UN Guidelines for the Alternative Care of Children, definitions provided by AU Member States, and findings made by the study. The definition outlines, on the one hand, categories of children that constitute CWPC (see Figure 2) and, on the other hand, categories that do not.

Children without parental care are all children not in the overnight care of their parents, guardians, relatives, or known adults. Categories of CWPC include the following:

- abandoned children;
- double orphans and/or children in child-headed households;
- children in detention, incarceration, or remand homes;
- children participating in conflict (child soldiers, abducted girls);
- children living in institutions;
- street-connected children or children living in the streets;
- unaccompanied minors;
- trafficked children; and
- children in forced or child marriages

Figure 2: Categories of CWPC in the African Context

The following should not be considered as CWPC: children in kinship care or foster care; undefined orphans and vulnerable children (OVC); adopted children; and those in *kafalah* care. Such children receive parental care in traditional home situations, albeit from surrogate parents. In addition, while there may be children whose parents or guardians are unable to provide adequate care (for instance, by meeting their health, nutritional and educational needs), such children should not be considered CWPC.

The study finds that most African countries understand the term 'children without parental care' in a broad way that includes OVC and children at risk of abuse and other forms of vulnerability within its scope. Such a broad conceptualisation poses challenges for mounting a practical and sustainable response to the plight of CWPC. Unlike those children with at least some form of parental care (whether from parents, guardians, relatives or known adults), CWPC lack any form of parental support and family environment whatsoever. In view of limited country resources and the need to use these efficiently, State Parties need to adopt a narrow definition of CWPC, an approach which will make it necessary for them to revise their normative frameworks and programmatic responses.

In turn, it is to be noted that UN Resolution A/C.3/74/L.21, adopted in 2019 in regard to the promotion and protection of children's rights, emphasises the importance of refraining



wherever possible from separating children from their parents unless such a separation is necessary for the best interests of the child, for instance in situations where children are abused or neglected by the parents, or the parents are living separately and decisions have to be made as to where to place the child.

The resolution affirms that CWPC are more likely than their peers to face human rights violations such as exclusion, violence, abuse, neglect and exploitation, and notes with concern that institutionalisation may harm their growth and development. It recognises that CWPC often have families, including one parent alive or relative, and, as such, urges child-rights stakeholders to encourage family reunification unless it is not in the child's best interests. The resolution also refers to the following categories of CWP: migrant children; children in refugee situations; children in armed conflicts; children involved in child marriages; and children who are exploited sexually and commercially.³⁵

Against this backdrop, Table 2 presents the ways in which the 10 case-study countries refer to and understand CWPC.

Table 2: CWPC terminology in use among the 10 case-study countries

REGION	COUNTRY	TERMINOLOGY
Southern Africa	South Africa	South Africa uses the term 'children in need of care and protection'.
	Mozambique	Mozambique does not specifically define CWPC. Such children are included in the broader category of 'children who live in a situation of risk'.
East Africa	Kenya	'CWPC' is not a common concept in Kenya. CWPC are understood to be 'children in need of care and protection'.
	Rwanda	'CWPC' is not a common concept in Rwanda. According to practitioners, CWPC are understood to be children who do not have parents, are abandoned, do not have sufficient parental oversight, or are children under placement.
Central Africa	DRC	Instead of 'child without parental care', the DRC uses the term 'child in difficult situations', as per Article 62 of Law No. 09/001 of January 10, 2009 on child protection.
	Cameroon	Cameroon's National Child Protection Policy document refers to CWPC as 'children in need of special protection measures'.
North Africa	Egypt	Most sources use the term 'children without parental care'. Other common terms include 'children who are in need of protection'.
	Mauritania	'Children without parental care' does not seem a common term in Mauritania. Such children are usually referred to as 'street children', which, depending on the actor who uses this phrase, can have a broader meaning than its literal sense. CWPC is a complex notion, and its definition is not obvious.

35 UN General Assembly (2020). Promotion and Protection of the Rights of Children: Resolution Adopted by the General Assembly 18 December 2019 (RES/74/133). Available at: <https://digitallibrary.un.org/record/3848250?ln=en>

REGION	COUNTRY	TERMINOLOGY
West Africa	Senegal	The term 'child without parental protection' or 'child without parental care' seems new to many. The usual names known by all are 'child in social disruption', 'child in family breakdown', 'child in geographical disruption', 'children in difficult situations' and 'children without adequate family care'.
	Nigeria	Nigeria refers to children who lack love, care, support and proper monitoring but not necessarily parents. The terms usually applied to such children are 'street children', 'unaccompanied children', 'children in internally displaced person camps', and 'children on the move'.

3.2 ACCEPTANCE OF THE CWPC DEFINITION ACROSS THE CONTINENT

While some regions accept and use the term 'children without parental care', there is a general understanding that the children are in difficult situations and need care and support. The findings suggest differences in the way countries conceptualise the term 'children without parental care'. This is also evident in the following excerpts from responses by certain State Parties and CSOs.

'We use the term "child in need of special protection measures" instead of "child without parental care".' Regional Delegation of Social Affairs of the Centre, Cameroon (key informant interview)

'[In] place of "child without parental care", we use the term "child in difficult situations" as guided by Law No. 09/001 of January 10, 2009, on child protection, especially Chapter 2 entitled Social Protection, article 62.' Official in Ministry of Social Affairs, DRC (key informant interview: Urban Division of Social Affairs)

'The concept of CWPC is not commonly used in Kenya but is understood to mean "children in need of care and protection" (CNCP) and includes children on the streets and those abandoned outside hospitals ...' Grace Mwangi Lumos Foundation Kenya

'A child who lives in a situation of risk and who has their growth and development seriously threatened.' Senior Officer, Ministry of Gender Children and Social Action, Mozambique (key informant interview)

In the countries that were surveyed, there is no single, universally applied definition of the term 'children without parental care'; instead, it is understood in diverse ways.

'We believe that this notion of CWPC is a very complex notion, and its definition is not obvious. However, we could understand that the CWPC are victims of social imbalances and several inadequate policies in the past, such as divorces, poverty, [and] abandonment, which can be among the causes of CWPC).' Coalition of Mauritanian Associations, Mauritania. (Key Informant)



3.3 WHO ARE 'CHILDREN WITHOUT PARENTAL CARE' IN THE AFRICAN CONTEXT?

The UN Guidelines for the Alternative Care of Children specify that CWPC include children living in residential care, with extended or foster families, in child-only households, in juvenile detention, on the streets, and with employers.

Desk review data collected showed that the term 'CWPC' includes children in alternative care; children in institutional care; street-connected children; children in correctional facilities; children associated with armed conflict; children in migration or displaced and separated from parents; trafficked children; children living in child-headed households; children in marriages; children born out of wedlock who may end up abandoned due to extreme discrimination; and abandoned children.

State Parties – both the 10 case-study countries and the 45 non-case-study countries – were asked to indicate which categories of children they identify as CWPC. Figure 3 presents the results of the enquiry in hierarchical order from the categories most widely regarded as CWPC across the continent to the categories least regarded as such. As the figure shows, the categories of children most commonly regarded in the various country contexts as CWPC are (1) children in institutional care (96.4%); (2) street-connected children (93.7%); (3) trafficked children (92%); (4) children involved in child labour (87.1%); (5) orphaned children (86%); (6) unaccompanied children (72.4%); and (7) children in refugee camps (71.7%).

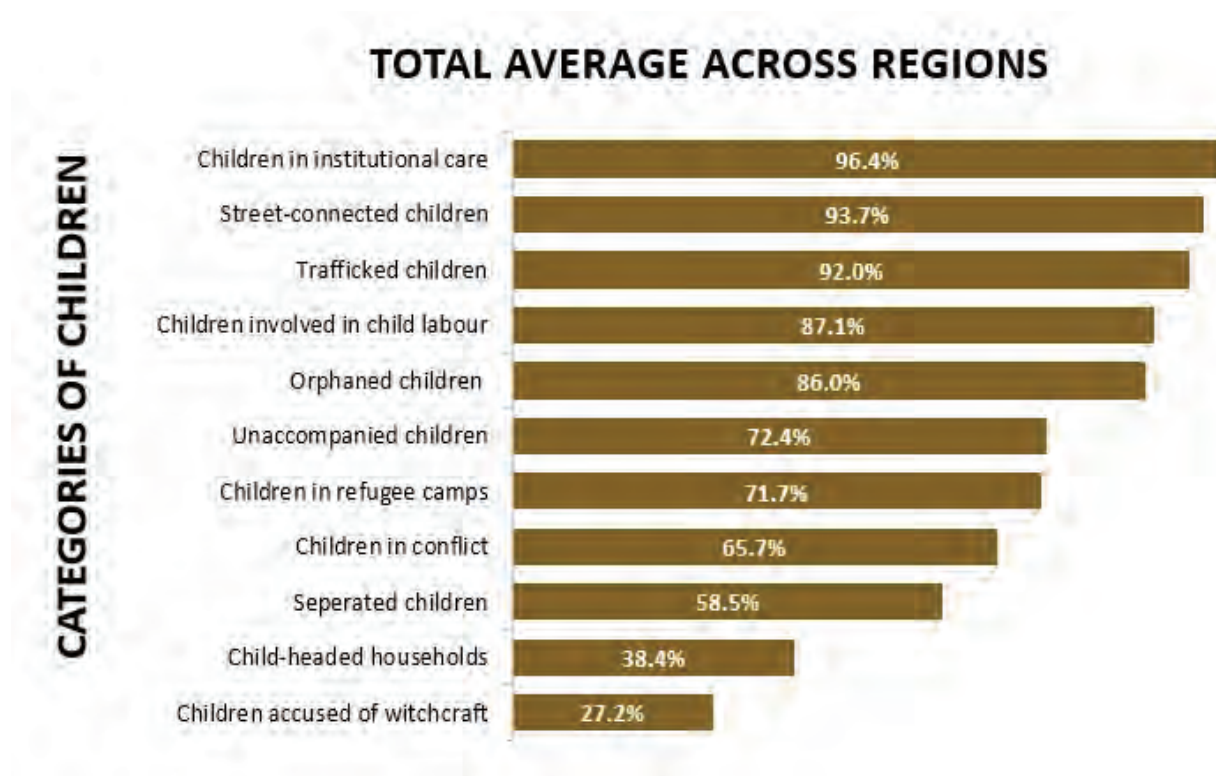


Figure 3: Hierarchy of classification of children as CWPC

Table 3: Categorisation of children without parental care

Other Additional Definitions in Africa	North Africa	West Africa	Central Africa	East Africa	Southern Africa	Total average across regions
Children living with chronically ill parents unable to provide child protection, with infirmity, or with impairment due to age	0%	33.3%	33.3%	28.6%	100%	39.0%
Children with disabilities	85.7%	40%	88.9%	100%	100%	82.9%
Children who lack education and protection	71.4%	46.7%	66.7%	78.6%	80%	68.7%
Children in marriages	100%	26.7%	88.9%	78.6%	100%	78.8%
Children living in conflict with the law, child victims, or child witnesses	85.7%	26.7%	55.6%	100%	100%	73.6%
Children at risk of losing care due to poverty	85.7%	40%	66.7%	85.7%	100%	75.6%
Children born out of wedlock	100%	20%	77.8%	78.6%	100%	75.3%

* To calculate the percentages, countries which correspond to each definition were counted and the result was then divided by the total number of countries in a region.

Table 3 shows that children with disabilities are widely covered under the definition of CWPC in Africa; however, West Africa has the lowest proportion (40%) for this category. Thirty-nine percent of countries in Africa consider children living with chronically ill parents as children falling under the definition of CWPC. It is evident that State Parties understand 'CWPC' in a broad manner, given that they categorise a large assortment of children as CWPC, including children at risk of losing care due to poverty, children born out of wedlock, children with disabilities, children with chronically ill parents, and children in refugee camps.

3.4 RECOMMENDATIONS

The following are key recommendations:

- Establish consensus on a common definition of 'CWPC' and its categories in line with the findings of this study.
- Incorporate the adopted definition in national frameworks in order to enable proper planning and implementation of programmes.
- Integrating the various categories of CWPC within national periodic surveys such as censuses and DHSs can enhance documentation of such children in countries. This would provide much-needed information for planning responses to address the problems that CWPC face.



4 NATURE AND PREVALENCE OF CWPC

4.1 NATURE OF CWPC

In most African countries, 'children without parental care' is not common terminology. Practitioners and others instead suggested that the concept of CWPC is understood as being embedded within the general notion of children in need of care and protection, as defined by the First International Conference on Family-Based Care for Children, held in Nairobi in September 2009.

Research on the 10 case-study countries and 45 secondary-data countries finds that there are various types of CWPC in Africa and that this variety may be attributable to differences between countries in terms of context, religion, legislation, and political status (particularly the presence or not of conflict). Table 4 presents some of the types of CWPC found in Africa, the form in which each type is manifested, and the risks that each manifestation typically faces in the absence of alternative care.

Table 4: A typology of CWPC in Africa

TYPE	FORM	RISK FACTORS
Double orphans and children in child-headed households	A child who has lost both biological/birth parents and is living in a child-headed household	Elevated risk of HIV infection through sexual transmission; mental health problems; depression, trauma and emotional distress; early sexual debut; multiple sexual partners; forced or unwilling sex; less likely to access schooling; physical and psychological abuse; poverty and abuse increasing the risk of transactional sex; high-risk sex; early adult responsibilities; economic pressure; lack of adequate health care; non-adherence to antiretroviral therapy, especially among those with sibling caregivers; late initiation of HIV treatment due to late detection of serostatus; early marriage; early pregnancy; suicide attempts; not attending school or leaving school early; abduction and enrolment as child soldiers; being driven into hard labour

TYPE	FORM	RISK FACTORS
Abandoned children, including infants	A child who is not under care and protection in a safe place and is left alone, unattended or intentionally cast away by parents or guardians	Inadequate food consumption in terms of food quality, preference and frequency of meals; poor health; exposure to hazardous work, trafficking, and neglect; living in extremely poor condition; not being raised in an environment conducive to proper mental and physical development; exposure to sexual and physical abuse; limited access to shelter; lack of healthy nutrition; girls enduring sexual aggression; being defenceless; the possibility of mental ill-health; adopting streetism; begging for food and money; child sexual exploitation; substance abuse; perpetrating petty crimes and muggings; no access to resilience resources such as clinics, hospitals and schools; HIV infection; starvation for days; physical injuries while on the streets; sexually transmitted infections (STIs) from multiple partners and unprotected sex, transactional sex, and violence
Children in detention or incarceration	Children in conflict with the law who are subsequently subjected to judicial action and committed to jail, rehabilitation centres, etc.	Lack of routine medical services; drug and alcohol use; early sexual debut; sexually transmitted diseases; physical abuse; conduct disorders; learning disabilities; depression; premature mortality and morbidity; lack of access to detained children's medical records and prescribed medication by detention facilities, making it difficult for them to proceed with treatment; failure to obtain appropriate medical services upon release from correctional care settings; abuse; torture; unconducive environments for children's emotional and physical well-being; corporal punishment; placement in solitary confinement; restriction of diet; withdrawal of privileges; sleep deprivation; electric shocks; threats of death; forced standing for long hours; interrogation at gun-point; anxiety; fear; low self-esteem; suicidal feelings; withdrawal or anti-social behaviour; psychosomatic disorders; co-morbidity; limited or no access to education
Children participating in conflict situations	Child soldiers and children in unstable environments with civil strife or war who have been separated from their parents	Abduction; forced recruitment of child soldiers; voluntary recruitment as child soldiers; exposure to rape and killings; fear of hardship and suffering if they leave armed groups; mistreatment by commanders of armed groups; lethal punishment for failed attempts to escape; exposure to violence; witnessing the massacre of family or community members; insecurity and vulnerability; sexual violence; exploitation; maiming; displacement; orphaning; deprivation of education; forced into expression of hatred of adults; sex slavery; early motherhood; concubinage; contracting HIV/AIDS and other STIs; forced marriage for abducted girls



TYPE	FORM	RISK FACTORS
Children living in institutions	Children living in large groups with no personalised quality care and freedom of movement	Poor health and sickness resulting from overcrowded conditions; physical under-development, with weight, height and head circumference below the norm; hearing and vision problems resulting from poor diet or under-stimulation; motor-skill delays and missed developmental milestones; physical and learning disabilities as a result of developmental delays; difficulties in language and social development; problems in concentrating or forming emotional relationships; physical and sexual abuse; craving for attention that results in readiness to trust teenage and adult strangers who make them easy targets of substance-abuse and sexual exploitation
Street-connected children	Children who run away from their families and live alone on the streets	Poverty; unemployment; lack of access to education; poor living conditions; poor sanitation and drinking water; high-risk exposure to sexually transmitted diseases; chronic illnesses; early exposure to sexual activity; substance abuse and misuse; multiple sexual partners; sexual exploitation for survival; HIV-risk sexual behaviour; exchanging of sex for food, money, or places to sleep
Unaccompanied minors	Children on the move without parents or relatives, including internally displaced children in this situation	Lack of access to adequate food, water and shelter; harassment; robbery; extortion; exploitation; being stranded and destitute in a foreign country; mental health problems; exploitation (sexual or non-sexual) by truck drivers, border officials and police officers; language barriers; insecurity; inadequate housing; lack of integration into schools; rape; demands of sexual favours and threats of abandonment for failure to comply; difficulties in obtaining legal documentation to access services; teenage pregnancy
Trafficked children	Trafficked children who are manipulated by adults into engaging in commercial sex or child labour	Sexual exploitation; lack of food; exposure to commercial sex; exposure to hazardous forms of work in factories, mines, and farms; entry into begging, prostitution, or organ harvesting

TYPE	FORM	RISK FACTORS
Children in child, early and forced marriage	Children in forced or coerced unions, cohabitation or any such arrangement made for them	Exposure to polygamous marriages; feelings of rejection, isolation and depression; loss of childhood and the opportunity to play and develop friendships; HIV infection due to unprotected sex with infected partners; exposure to STIs; malaria-related complications (such as anemia, pulmonary oedema, and hypoglycemia) during pregnancy; obstetric fistula; delivering pre-term or low-birthweight infants; infant morbidity and mortality; lack of access to sexual-health and reproductive services; intense pressure to prove fertility; financial dependency on husbands; lack of power to make demands to their husbands (to get tested, abstain from intercourse, or use condoms); lack of power to leave a marriage or obtain divorce

The risks that CWPC face are documented in numerous studies. These risks are diverse and point towards gross negative outcomes if durable solutions are not implemented for the various groups of children. This study was not able to determine the level of risk that each category of CWPC faces.

4.2 PREVALENCE OF CWPC

The study aimed to quantify how many CWPC there are on the continent. While a vast literature attests to the adverse effects and life outcomes of growing up without parental care, knowing how many children are living without parental care is important for quantifying the problem and formulating effective responses to reduce the number of such children. However, many countries in Africa lack the administrative systems necessary for tracking and monitoring the relevant statistics.

As an initial step, a survey of governments, UN agencies and CSOs was undertaken to ascertain the number of CWPC in Africa. This survey was unsuccessful, with the study receiving responses from only 10 governments, most of whom had incomplete data sets, and a small number of CSOs. A comprehensive desk review was conducted to fill in data gaps. In all data collection, the most recent figures were sought out in order to obtain the best available information. However, the study could not arrive at a definitive figure as to the prevalence of CWPC.

This was due to several reasons:

- There was no clarity on categories of CWPC at the beginning of the study. Such clarity emerged only in the course of greater engagement with stakeholders.
- Existing definitions of CWPC included children in kinship care as well as other kinds of children in need of care and support. This affected the study's ability to calculate the prevalence of CWPC in a systematic fashion.



- There was no clarity among State Parties as to which children constitute CWPC, as shown by their submissions, which are broad and include children cared for by parents and relatives and classified as vulnerable and needing care and support.
- There was a low response rate by State Parties and civil society to requests for statistics on categories of CWPC.
- There were variations in the statistics provided by State Parties and CSOs.
- National data collection mechanisms do not capture data on many categories of CWPC (including street-connected children, trafficked children, children participating in conflict, and abandoned children), thus leaving gaps in statistics that are needed to determine the prevalence of CWPC.

With certain categories of CWPC, figures were estimated from statistics provided by State Parties and analysis of secondary data sourced from governments, CSOs, UN publications, and other studies. The findings are presented in the Annex.

4.3 CHALLENGES IN ESTIMATING THE PREVALENCE OF CWPC

Although concerted efforts were made to find statistics, they were hard to locate, even among government bodies with the mandate to collect and monitor them; similarly, many academic papers were found to be littered with speculative estimates, some of which have been proven to be incorrect.

One such 'guesstimate' is that 100,000,000 million children globally are homeless. This number, commonly used by many agencies, stems from a UN paper in 1989.³⁶ More than a decade later, it was claimed that the numbers were growing, but this was contradicted by the figure provided in support of the claim: 'the latest estimates put the numbers of these children as high as 100 million'.³⁷ A population of '100 million' children cannot have remained static for more than a decade while at the same time being said to be growing. This claim has no empirical basis and has been proven many times to be incorrect, yet to this day it is regularly mentioned. Indeed, even larger figures have been cited: 'In 2001, the United Nations estimated that the worldwide population of street children ... was 150 million, with numbers rising daily'.³⁸

Without accurate statistics, it is hard for governments, donors and non-governmental organisations (NGOs) to plan appropriately. Furthermore, due to the difficulty of counting of them, it is usually the most vulnerable groups of children who are misrepresented in this way.

36 Consortium for Street Children (2019). Street Children and Homeless Children – Definitions. Available at: <https://www.streetchildren.org/about-street-children/>

37 De Benítez ST (2012). State of the World's Street Children: Violence. Available at: https://web.archive.org/web/20130723130038/http://www.streetchildren.org.uk/uploads/publications/state_of_the_world_-_violence.pdf

38 Dabir and Athale (2011). From Street to Hope: Faith Based and Secular Programs in Los Angeles, Mumbai and Nairobi for Street Living Children. Available at: <https://bit.ly/44MB5nY>

4.4 CHILDREN WITHOUT PARENTAL CARE

The UN Guidelines for the Alternative Care of Children define CWPC as ‘all children not in the overnight care of at least one of their parents, for whatever reason and under whatever circumstances’. The study finds that in, Africa, the term ‘parent’ is understood broadly to encompass not only biological parents but relatives as proxy parents; as such, children in kinship care are, in the African context, not considered CWPC. On this basis, Table 5 presents some available statistics of selected categories of CWPC.

Table 5: Available statistics of selected categories of CWPC in Africa

CATEGORY OF CWP		DEFINITION	MAGNITUDE
Child-headed households		Children aged 0-17 years living in child-headed households	Unavailable
Children in marriages		Children aged 10-17 years in marriages	26,816,027 ³⁹
Children in formal alternative care	Children in institutional care	Children aged 0-17 years in formal institutional care arrangements	518,000 ⁴⁰
Children in juvenile detention		Children aged 0-17 years in juvenile detention	7,457 (42 of 55 countries)
Street-connected children		Children aged 0-17 years connected to the streets and living on the streets or spending a significant amount of time begging and selling there	30,000,000 (Available continental data are speculative estimates with no empirical backing)

The total number of CWPC on the African continent could not be determined due to a lack of statistics.

Assumptions underlying the statistics

- Categories of children are mutually exclusive.
- National values are not extrapolated to a common reference year.
- In the African context, adoption is not considered an alternative care option
- Child marriage is defined as marriage before the age of 18 years.
- Girls are deemed to be in a child marriage if they are 10-17 years old; boys are deemed in a child marriage if they are 15-19 years old.
- Legally adopted children are not CWPC.

³⁹ Using data from the UNICEF database, it was assumed that boys are in child marriages if they get married between the ages of 15-19 years and that girls are in child marriages if they do so between the ages of 10-19 years.

⁴⁰ Estimated by removing the Middle East and North Africa from estimated figures for the African continent. See Petrowskia N, Cappaa C and Gross P (2017). ‘Estimating the number of children in formal alternative care: Challenges and results.’ Child Abuse & Neglect. 70: 388–398. Available at: <https://www.sciencedirect.com/science/article/pii/S0145213416302873#sec0015>



4.5 GOOD PRACTICES, GAPS NOTED, AND RECOMMENDATIONS

Good Practices

Some good practices were noted during the collation of statistics on CWPC:

- ***Sex-disaggregated data:*** Some of the governments are collecting sex-disaggregated data, namely Benin, Cameroon, Mali, Niger, Togo and Zimbabwe.
8.
- ***Child protection government dashboards:*** Some governments are using integrated databases that are updated monthly or annually, a good practice which ensures that all relevant sectors of government and civil society have access to up-to-date data. Togo has a comprehensive dashboard which is updated annually through collaboration between state and non-state actors. This dashboard is hence an example of how non-state actors can work with the government to create strong management information systems.

Gaps Noted

- ***Lack of integrated reporting and managing systems to ensure that children do not fall through the cracks:*** Most governments are still using segregated and manual systems that make it hard to access data, especially in regard to those not reflected in the system due to bureaucratic processes and data not being stored in central databases.
- ***Gaps in statistics:*** Many government departments are not adequately recording the data they are required to under their mandates. In most cases, DHS household surveys omit children living outside of households, and as well as data on the reasons for these child-family separations.
- ***Shortcomings in birth and identity documentation:*** It is noted that not all children in institutional or residential care facilities have birth certificates or forms of identification. This may lead to limitations in terms of accounting for their existence and meeting their needs. It also makes it difficult to trace and identify their families for purposes of reintegration.

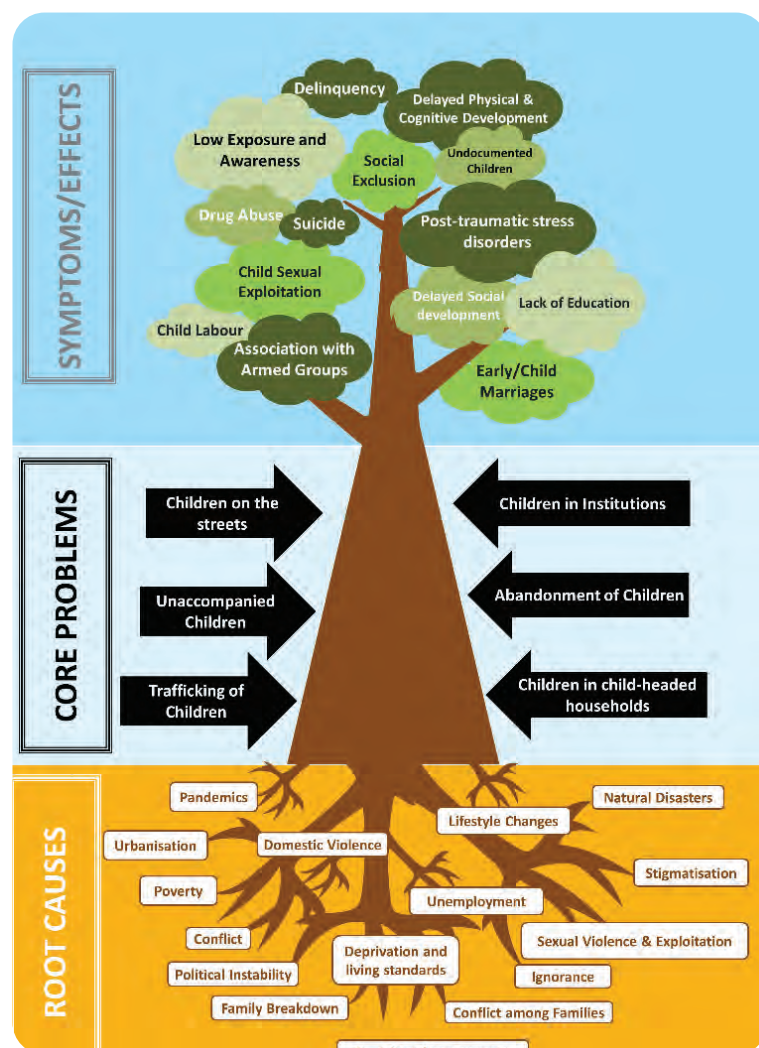
Recommendations

- i. There is a need for State Parties to adopt the categorisation of CWPC presented in this report in order to enhance uniformity across Africa.
9.
- ii. State Parties should consider integrating national statistical agencies with relevant government departments to ensure that categories of CWPC are mainstreamed into national data collection systems (censuses, DHSs, MICs and others). In addition, the creation of open dashboards would facilitate efficient sharing of data. State Parties should also consider incorporating questions in national surveys to measure newly emergent kinds not contemplated in the current scheme.
- iii. State Parties should consider conducting national-level studies to quantify the prevalence of CWPC. Such national statistics would be used to determine the prevalence of CWPC at a continental level.
10.
- iv. State Parties should consider improving existing DHSs by enlarging their scope to include children living outside of households as well as to ascertain the factors driving child-family separations.
11.
- v. State Parties should consider the collection of disaggregated data on CWPC.

5 ROOT CAUSES AND DRIVERS OF CWPC

5.1 INTRODUCTION

The 2019 UN Resolution⁴¹ referred to earlier in this report expresses concern that millions of children worldwide continue to be deprived of their rights to parental care due to poverty, discrimination, violence, abuse, neglect, trafficking in persons, humanitarian emergencies, natural disasters, migration, the death or illness of a parent, and health constraints.



There are, indeed, multiple causal factors responsible for the existence of CWPC. It is important to know at the outset that often it is not just the risk factor but a combination of many causes that results in children's separation from their families. As such, it is critical to understand the causes and consequences of a child's loss of the 'supportive, protective and caring environment that promotes his or her full potential'⁴².

For example, CWPC are more vulnerable than others to malnutrition and long-term poverty, less likely to attend school, and more likely to die young or suffer from maternal and reproductive health problems in adolescence.

Though not exhaustive, the list of causes of CWPC presented in this study was adduced from the 10 country case studies, secondary data, and inputs at the ideation workshop hosted by the CWPC Working Group on 11-12 November 2020.

Figure 4 depicts the root causes of CWPC, the problems that arise, and the latter's societal manifestations.

⁴¹ Unrepresented Nations and Peoples Organization (2018). 'UNPO and SAHEL submit joint report for CRC review of Mauritania.' Available at: <https://unpo.org/article/21008>

⁴² UN General Assembly (2010). Guidelines for the Alternative Care of Children (GA A/RES/64/142), Article 4.



5.2 POLICY-RELATED FACTORS

Policy-related factors driving the phenomenon of CWPC are factors that have been enforced by an administration or government and which may have a negative impact on children by leading to the separation of families. These factors result in root causes for CWPC such as poor governance, corruption, lack of strong social protection systems, lack of investment, inadequate monitoring of institutions, and poor child anti-trafficking safeguards.

As has been noted, the study revealed that most State Parties are unfamiliar with the term CWPC. As a result, many of the categories of CWPC (child-headed households; children in detention; children participating in conflict situations; children living in institutions; street-connected children; unaccompanied minors; trafficked children; and those in early or child marriages) are not covered adequately under the national country responses (that is, policy and programmes). This extends to the lack of a robust child case management system that prevents the unnecessary institutionalisation of children.

Although most State Parties have anti-trafficking laws, their implementation and the tracing of trafficked children remain a major concern. Trafficked children are exposed to child labour, sexual exploitation and certain forms of slavery.

- **South Africa** is a destination for most children trafficked across the Southern African region.
- Children trafficked from East, Central and North Africa often have their destinations in Europe. **Libya** is an East African transit country for human trafficking into Europe. In most cases, children are victims of sexual abuse for financial gain or are employed as maids by expatriates.
- In **Morocco**, child victims of trafficking are common.
- In **Mauritania**, child labour is one of the drivers for CWPC. In this country, child labour takes a different form from that of historical slavery. While slavery has been outlawed, it remains an under-enforced practice and also involves children. Mauritania has an estimated 150,000–300,000 slaves, the highest number in the world. Slavery is closely associated with trafficking and sexual exploitation. It is reported that the Haratin population is most vulnerable to slavery, with up to 20% of the population enslaved without access to education or pay.⁴³

5.3 HARMFUL CULTURAL AND FAMILY PRACTICES

Negative cultural practices and poor parenting practices drive children out of their families. Such practices include maltreatment, denial of emotional support, sexual abuse, female genital mutilation, witchcraft accusations, and the stigmatisation of children with disabilities and albinism.

Across the five regions of Africa, young girls are reported to be victims of sexual abuse in the home by extended family members or persons close to their families. Young girls who are victims of sexual abuse often abandon their homes for safe environments and usually find their way either to the street or, later, to protective institutions. Governments and NGOs provide care and support to such children. As with girls, boys who experience physical abuse in their homes flee to the streets or eventually join safe homes.

According to UNICEF, the world's highest rates of child marriage are found in Africa, especially

⁴³ Unrepresented Nations and Peoples Organization (2018). 'UNPO and SAHEL submit joint report for CRC review of Mauritania.' Available at: <https://unpo.org/article/21008>

in sub-Saharan Africa, where 4 in 10 girls are married before the age of 18.⁴⁴ Niger has the highest such rate, at 77% of all girls. The impacts of child marriages are manifold. Girls in this situation seldom receive any education beyond the mandated primary education, and are twice as likely to experience sexual violence compared to counterparts of theirs who marry after the age of 18.⁴⁵

Children who have lost both parents: In Africa, orphanhood is among the numerous reasons that children fall out of parental care. Even so, HIV/AIDS orphans are in many cases the group in focus in the case of 'orphans and vulnerable children (OVC)'.⁴⁶ In sub-Saharan Africa, HIV/AIDS has placed additional pressure on the extended family, notwithstanding that the continent has been able to turn the tide of deaths due to it. Consequently, where the extended family would normally be the natural place for children in need of care, HIV/AIDS has meant that there are simply too many children to take care of. Since 1990, indeed, the number of orphans in sub-Saharan Africa has risen by more than 50%, due largely to the AIDS pandemic; in the process, extended family networks – once the pride of African care for children – have been overwhelmed by the growing number of children in need of alternative care.⁴⁷

As the availability of alternative care arrangements facilitated by African governments tends to be limited, these developments led initially to a rise in the number of families headed by aunts or grandparents. However, from the early 1990s, there has been an unprecedented increase in child-headed households.⁴⁸ Most recently, the Covid-19 pandemic, along with, in some cases, natural disasters, resulted in increased fatalities among parents and caregivers. As such, a notable proportion of orphans have wound up as CWPC requiring immediate attention in regard to alternative care options. Responses to the care of orphans has varied significantly from region to region and country to country.⁴⁹

Children with disabilities: Globally, the number of children with disabilities is estimated at 240 million,⁵⁰ and relative to their non-disabled peers, they are disadvantaged on most measures of child well-being. As a result, they are at greater risk of losing parental care and being placed in alternative care and institutions.⁵¹ There is, in other words, a close link between disability and the risk of child abandonment, a linkage that leads to over-reliance on alternative care or institutionalisation of children with disabilities. Factors that aggravate the risk of abandonment include a lack of inclusive basic services, financial hardship, single parenthood, unwanted pregnancy, and negative attitudes in communities. Generally, children with disabilities experience rights violations such as lack of social support, social stigmatisation, limitation of access to education and health care, and discrimination and violence. In addition, they have difficulty in reporting rights violation even where reporting systems are in place.⁵²

Abandonment of babies or young children: Across Africa's five regions, babies and older children are abandoned. Abandonment is often associated with unplanned pregnancy, especially among adolescents. Abandoned babies face the risks attendant on loss of parental care and protection; oftentimes, moreover, they risk dying before they are rescued.

44 The Borgen Project (2020). '7 facts about child marriage in Africa.' Available at: <https://bit.ly/437wYC9>

45 International Centre for Research on Women (undated). Child Marriage and Domestic Violence.

46 Phillips C (2011). Child-Headed Households: A Feasible Way Forward or an Infringement of Children's Right to Alternative Care? Available at: <https://files.eric.ed.gov/fulltext/ED527864.pdf>

47 Ibid.

48 Ibid.

49 <https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/overview>

50 UNICEF (2021). 'Nearly 240 million children with disabilities around the world, UNICEF's most comprehensive statistical analysis finds.' Available at: <https://www.unicef.org/press-releases/nearly-240-million-children-disabilities-around-world-unicefs-most-comprehensive>

51 Ibid.

52 Ibid.



For instance, *Morocco* experiences the phenomenon of babies being abandoned on the streets or left on purpose in hospitals. Many children are vulnerable to this plight, in particular children born out of wedlock and children with disabilities. A study by UNICEF and the Moroccan League of Child Protection observed that 6,480 Moroccan babies were abandoned in 2008, representing 1–2% of all births in the country.⁵³

5.4 URBANISATION

Urban growth has a massive impact on children in Africa, but social and economic policies often do not reflect the demographic realities that are consequent upon the fact that an increasing number of children live in poverty in urban slums. In African cities today, an estimated 200 million children are at risk of exploitation, abuse and disease.⁵⁴ Moreover, increasing urbanisation in African countries is leading to the emergence of nuclear families, which are less likely than traditional ones to be able to absorb vulnerable children – specifically, children whose parents have died or children who, for other reasons, are without parental care. These dynamics have contributed to the growth in the number of vulnerable children who live in child-headed households rather than receiving support from kinship or foster care environments.

Climate change: Shocks and stressors such as environmental disasters and degradation, along with ensuing economic crises and civil conflict, exacerbate poverty and increase the likelihood of parents or carers, adolescents and children responding in ways that put children at a heightened risk of protection violations. The long-term instability caused by climate change will have an impact on poverty, rates of adult migration, and other root causes of loss of parental care.⁵⁵ CWPC in Africa are at a greater risk than other children of climate-change impacts such as extreme weather events like floods, droughts and cyclones. These contribute to food shortages and water scarcity, as well as to disease and other health threats.

5.5 POLITICAL INSTABILITY

Conflicts and wars: War, conflict, displacement, migration, or death of parents all cause children to lose parental care. Children might be recruited into armed forces, be in conflict with the law and put in detention or be deprived of their freedom in contexts where they are unaccompanied migrants.⁵⁶

In all of these situations, children are subjected to a wide range of rights violations, with many of them at risk of being deprived of, or actually deprived of, the enjoyment of their right to parental care. This is because emergency situations lead to an immediate increase in the number of children without parental care as parents are killed or are separated from their children in the chaos.

Conflict and insecurity can put children at risk of protection violations through the normalisation of physical and sexual violence or the death or displacement of parents and caregivers. Conflict and physical insecurity can lead to parents reasoning that their daughters

53 UNICEF Morocco (2022). Country Office Annual Report. Available at: <https://www.unicef.org/media/136221/file/Morocco-2022-COAR.pdf>

54 Save the Children (2012). Voices from Urban Africa: The Impact of Urban Growth on Children. Available at: <https://bit.ly/44iZCkA>

55 EveryChild (2009). Missing: Children without Parental Care in International Development Policy. Available at: <https://bit.ly/3r6lkKD>

56 Lang-Holmen P (2016). In the Blind Spot: Documenting the Situation of Children without Parental Care or at Risk of Losing It. Available at: <https://www.sos-barnebyer.no/in-the-blind-spot-pdf?pid=Native-ContentFile-File&attach=1>

will be best protected from sexual or physical violence in the community or emanating from combatants through resort to marriage – considerations that may result in child marriage.⁵⁷ In the process, children may become unaccompanied and consequently be exposed to numerous risks.

For instance, *Libya* has CWPC who are victims of armed conflict. Many are reported to have been harmed or killed during uprisings, while others were victims of bombings by foreign powers.⁵⁸ Heavy violence in some parts of the country has forced families to flee their homes.⁵⁹ Among the 170,000 people displaced, an estimated 54% are children, who are at risk of abuse and violence and vulnerable to recruitment by armed groups.⁶⁰ As of 2020, there were nearly 585,000 migrants and refugees in Libya, including about 47,000 children, of whom 12 000 were unaccompanied.⁶¹

In *Morocco*, recruitment of children into armed groups is a common occurrence. A UNCRRC report revealed that while some children enlisted voluntarily, generally the recruitment and use of children in hostilities by state and non-state armed groups, including private security companies, has not been explicitly prohibited or criminalised.⁶²

Socioeconomic factors: These factors include unemployment, poverty, lack of access to education, poor livelihoods, and weak community safety and support systems. They significantly affect children's quality of life. While the overall poverty rate in Africa decreased from 56% in 1990 to 40% in 2018, the total number of people, including children, living in poverty still rose. The poverty rate in sub-Saharan Africa has not fallen fast enough to keep up with population growth in the region, and as many as 433 million Africans were estimated to have been living in extreme poverty in 2018 compared to 284 million in 1990.⁶³ Poverty and unstable family environments push insecure children to the streets, where they are vulnerable to drug abuse, sexual abuse, and inability to access adequate health and education. The challenges facing children living on the streets are common across all five regions of Africa.

5.6 IMPACT OF COVID-19 ON CWPC

Children were largely spared the staggering mortality rates caused by Covid-19, yet the socioeconomic impact on their lives was far-reaching. Covid-19 was a multiplier of child protection risks and exacerbated the negative situations faced by vulnerable children. UNICEF identified four dimensions along which children were impacted by the pandemic: falling into poverty; learning; survival; and health and safety.⁶⁴ In its report *State of the World's Children 2021*, UNICEF showed that children, particularly adolescents, had been affected

57 Mugove K and Hlatywayo L (2015). 'Why children leave their homes for the streets? The case of Harare.' International Journal of Scientific and Research Publications. 5(10). Available at: <https://www.ijsrp.org/research-paper-1015.php?rp=P464665>

58 Humanium (undated). Children of Libya. Available at: <https://www.humanium.org/en/Libya/>

59 UNICEF (2017). 'More than half a million children in Libya need humanitarian assistance.' Available at: <https://bit.ly/3NTS02K>

60 UNICEF (2018). '378,000 children in need of life-saving humanitarian assistance in Libya.' Available at: <https://bit.ly/435H2M1>

61 UNICEF (2020). 'Humanitarian action for children 2021 – Libya.' Available at: <https://reliefweb.int/report/libya/humanitarian-action-children-2021-libya>

62 Committee on the Rights of the Child (2012). 'Consideration of reports submitted by States parties under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.' Available at: <https://bit.ly/460aipm>

63 American Diplomacy (2023). 'Coming to grips with poverty in Africa.' Available at: <https://americandiplomacy.web.unc.edu/2023/05/coming-to-grips-with-poverty-in-africa/>

64 UN (2020). Policy Brief: The Impact of COVID19 on Children. Available at: https://unsdg.un.org/sites/default/files/2020-04/160420_Covid_Children_Policy_Brief.pdf



psychologically by Covid-19. Their mental health was adversely affected by interruption to their lives and delayed achievement in education.⁶⁵ In 2020, an estimated 188 countries had imposed school closures, affecting about 1.5 billion children and youth.⁶⁶

UNICEF reported that the poorest of children were disproportionately disadvantaged,⁶⁷ with an estimated 100 million children projected to have been living in multidimensional poverty by the end of 2021 compared to the pre-Covid era. Covid-19 left children without parental care due to high mortality rates among the adult population, and threatened to increase the number of separated and unaccompanied minors. By the end of April 2021, some 1.5 million children had lost a parent or grandparent caregiver who was living with them and responsible for their care.⁶⁸ It was also estimated that an additional 4 million children would lose their parents and caregivers due to Covid-19-induced deaths. Strain on livelihoods and the loss of care and protection of a parent would force some children to venture away from their communities in search of a better living environment. World Vision, for instance, reported that children on the move were at risk of physical and sexual violence, exploitation and abuse, child marriage, child labour, gender-based violence, and having limited or no access to basic services.⁶⁹

Without parental care, children had care opportunities taken away, or further strained, by the pandemic. This included limited or reduced access to health services and basic nutrition. Lockdowns and movement restrictions imposed for extended periods caused stress for caregivers and increased the risk of child abuse and violence against CWPC.⁷⁰ The psychosocial impact of the pandemic on CWPC was documented by UNICEF⁷¹ and pointed towards aggregated levels of stress for children who were already experiencing vulnerable situations and uncertain outcomes. UNICEF's report also noted that the loss of loved ones through deaths in the communities had resulted in increased stress and low esteem.

Addressing the root causes and drivers of CWPC calls for an understanding of the categories of CWPC that exist in each country or region. The drivers and causes should be viewed as unique to their different contexts prevailing, and State Parties are called upon to appreciate this uniqueness.

65 UNICEF (2021). State of the World's Children 2021. Available at: <https://www.unicef.org/reports/state-worlds-children-2021>

66 OECD (2020). Policy Responses to Coronavirus (COVID-19): Combatting COVID-19's Effect on Children. Available at: <https://www.oecd.org/coronavirus/policy-responses/combating-covid-19-s-effect-on-children-2e1f3b2f/>

67 UNICEF (2020). Impact of COVID-19 on Children Living in Poverty. Available at: <https://data.unicef.org/resources/impact-of-covid-19-on-children-living-in-poverty/>

68 Global Social Service Workforce Alliance (2021). Children: The Hidden Pandemic 2021. Available at: https://www.socialserviceworkforce.org/system/files/resource/files/orphanhood_report_compressed.pdf

69 World Vision (2019). 'COVID-19 places millions of children at risk in fragile & displacement contexts.' Available at: <https://www.wvi.org/opinion/view/covid-19-places-millions-children-risk-fragile-displacement-contexts>

70 ACERWC (2022). Continental Assessment of the Impact of COVID-19 on the Rights and Welfare of Children. Available at: <https://www.acerwc.africa/sites/default/files/2022-09/Continental-assessment-Impact-of-Covid-19- January 2022 English.pdf>

71 UNICEF (2021). State of the World's Children 2021. Available at: <https://www.unicef.org/reports/state-worlds-children-2021>

6 CURRENT NORMATIVE FRAMEWORKS FOR CWPC

6.1 REGIONAL OVERVIEW OF NORMATIVE AND LEGAL FRAMEWORKS FOR CWPC

This chapter examines the degree to which State Parties to the ACRWC have legal and policy frameworks in place to address the rights of CWPC. To this end, it assesses the child-sensitiveness of selected national constitutions and laws and policies on child protection.

Figure 5 presents the sequence followed in the analysis of legal, policy and programmatic responses to the situation of CPWC in Africa

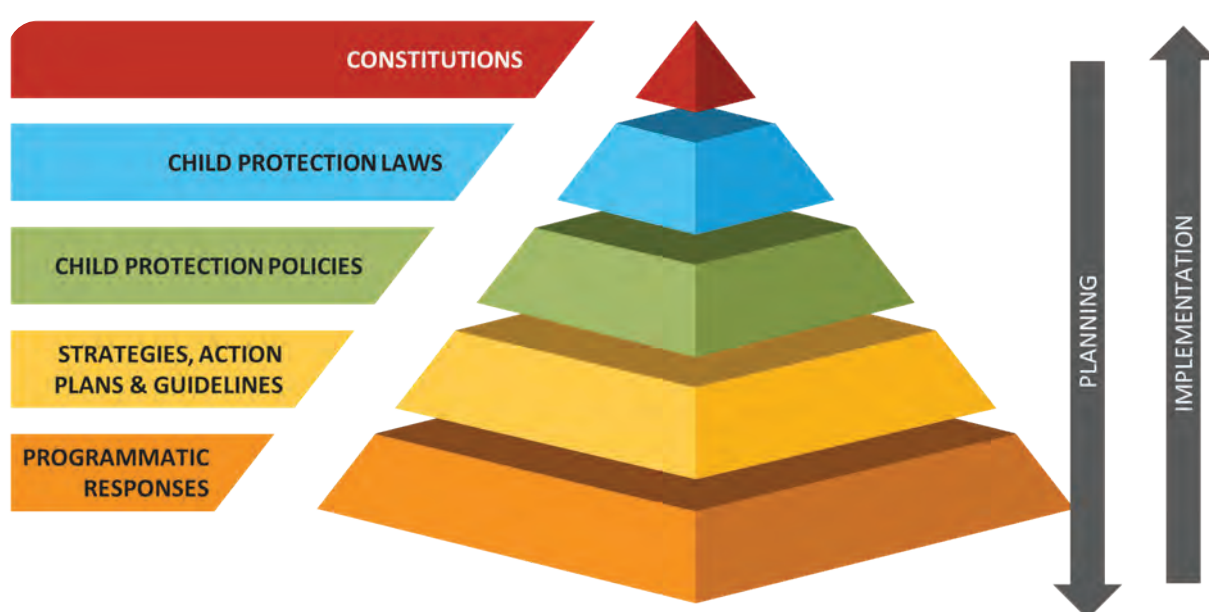


Figure 5: Ideal sequence for legal, policy and programmatic responses in any given sector of development

Constitutions: A constitution is the highest law of a country. Its provisions in specific areas form the basis for the enactment of national laws. The study's analysis of the normative framework for CWPC assesses the degree to which constitutional provisions cover child protection issues and, in particular, CWPC. The analysis also considers the degree to which provisions of the UNCRC and ACRWC are captured. Ratings are high when CWPC issues are explicitly addressed; medium when average; and low when less than comprehensive.

Child protection laws: Laws are drawn from constitutions. They often take the form of Acts, and are broader and more detailed than provisions in a constitution. These statutory laws are usually amended periodically to address emergent issues in relevant sectors. For this study, the assessment focused on the extent to which child care and protection matters in the UNCRC and ACRWC are addressed in the current laws. More specifically, State Parties were assessed on the degree to which CWPC issues are included in their laws. Ratings are high when these issues are covered explicitly, medium when partially covered, and low when barely covered at all.

Policies: Many policies can be derived from an Act. Policies are action-oriented and provide a framework within which stakeholders design their programmes. For this assessment, the



55 Member States' child protection policies were analysed in regard to their provisions for CWPC. More widely, as with the analysis of constitutions and child protection laws, policies were assessed to identify the extent to which they include CWPC issues within their scope.

As depicted in Figure 5, addressing the situation of CWPC involves engagement at different levels, starting with constitutions, laws and policies, proceeding to strategies, action plans and guidelines, and ending with programmatic responses. That is, the implementation of legal and policy provisions is operationalised through the design and execution of programmes.

In this chapter, the focus is on the top three elements (constitutions, laws, and policies). The chapter in each case provides a synthesis of the situation in the various State Parties within Africa's five regions. The country assessments are ordered by looking first at former British colonies and then at non-British ones.

6.2 CHILD-SENSITIVENESS OF CONSTITUTIONS IN AFRICA

SOUTHERN AFRICA

ANGOLA: Constitution of Angola (2010): Under Article 80, the state regulates the adoption of children with a view to promoting their integration into a healthy family.

BOTSWANA: Constitution of Botswana (1966, as amended in 2005): The Constitution refers only to children's rights concerning their benefits associated with the pensions of their parents. It does not have a dedicated section on child rights.

ESWATINI: Constitution of Eswatini (2005): Article 29 of the constitutional amendment of 2005 is dedicated to the rights of the child. Provisions include protection from labour abuse and degrading treatment, along with the right to care and upbringing by parents or other lawful authorities. The Constitution highlights that children born out of wedlock enjoy the same rights as any other child. It also provides for free education in public schools up to the primary level, and mandates the state to develop other supportive laws for the protection of children.

LESOTHO: Constitution of Lesotho (1993, as amended to 2020): Article 32 of the Constitution ('Protection of Children and Young People') makes provision for (i) protection and assistance of all children and younger persons without any description for reasons of parentage and any other reasons; (ii) protection from economic and social exploitation; and (iii) prohibiting employment of children and young persons in work harmful to their morals, health or lives. It sets the age limits for paid employment of children. That aside, the Constitution does not contain detailed provisions regarding children's issues such as the definition of CWPC.

MALAWI: Constitution of Malawi (1994, as amended to 2017): All children, regardless of their circumstance of birth, are entitled to equal treatment before the law, and the best interests of the child shall be the primary consideration in all decisions affecting him or her. Other provisions include the child's right to a name, or family name, and nationality, and the right to know and be raised by parents; in addition, all children shall be entitled to reasonable maintenance from their parents, whether such parents are married, unmarried or divorced.

MOZAMBIQUE: Constitution of Mozambique (2004; rev. 2007): It recognises the rights of children as fundamental rights. Article 47 provides for the right of children to protection and the care required for their well-being. Article 120 affords protection to parents and recognises that the family has a core responsibility in ensuring that children live in a safe environment that enables them to reach their full potential and contribute to society. Additionally, children born

out of the family are to be afforded support. Article 121 provides for the right of orphans, children with disabilities, and abandoned children to be protected by the family and state from all forms of discrimination, ill-treatment, and abuse of authority within the family and other institutions.

NAMIBIA: Constitution of Namibia (1990, as amended to 2010): Article 15 provides for the rights and protection of children, including rights to a name, nationality, and protection from economic exploitation.

SOUTH AFRICA: Constitution of South Africa (1996): Article 28 makes provision for the rights and welfare of children, including the right (i) to a name and a nationality; (ii) to family care or parental care, or appropriate alternative care when removed from the family environment; (iii) to basic nutrition, shelter, health-care services and social services; (iv) to be protected from maltreatment, neglect, abuse or degradation; (v) to be protected from exploitative labour practices; (vi) not to be detained except as a measure of last resort; and (vii) to have a legal practitioner assigned to them by the state. In general, the Constitution makes children's rights a priority and declares that the best interests of a child are the overriding concern in any matter affecting him or her.

ZAMBIA: Constitution of Zambia (2016): While the UNCRC recognises a child as a person under 18 years of age, the Zambian Constitution, as the supreme law of the land, does not define a child. Article 24, on the protection of young persons from exploitation, provides for young persons to be protected from hazardous labour that may affect their health, education, and moral and mental well-being. They are also protected from trafficking as well as physical or mental ill-treatment and all forms of neglect.

ZIMBABWE: Constitution of Zimbabwe (2013): It sets out rights for special groups, which include children. Article 19 mandates the state to adopt policies and measures in matters relating to children, and stipulates that the best interests of the children concerned are paramount. Furthermore, the state has to provide resources to ensure that children enjoy the following: family and parental care, as well as appropriate care when removed from the family environment; shelter, basic nutrition, and health care; protection from maltreatment, neglect or any form of abuse; access to appropriate training and education; and protection from exploitative labour practices. In Article 81, the Constitution provides for the rights of children to include equal treatment before the law; the right to be heard; the right to a name and family name; the right to a birth certificate for those born in or outside Zimbabwe as long as they are Zimbabwean; the right to a family; the right to protection from economic exploitation, child labour, and maltreatment; and the right not to be detained except as a measure of last resort. Children also enjoy adequate protection by the courts, in particular by the High Court as their upper guardian.

WEST AFRICA

BENIN: Constitution of 1990: It makes some provision for children's rights to include the right to education. However, it does not make special provision for children in need of care and protection.

BURKINA FASO: Constitution of 1991 with Amendments through 2015: The Constitution has few provisions for children's rights that have implications for children in need of care and protection. Article 2 protects children from slavery and degrading mistreatment, while Article 18 provides for state support for children. The Constitution also highlights the importance of the family as a basic unit of society. Parents are recognised as having a natural right and duty to raise and educate their children.

CAPE VERDE: Constitution of 1980 with Amendments through 1992: The Constitution makes strong provision for children's rights. Article 44 protects children from separation from their parents wherever this is possible. It also prohibits discrimination against children born out of wedlock,



and mandates parents to educate their children. Article 15 protects children from child labour. Importantly, the Constitution makes provision for the right to social security as a result of a child's orphaning or being in any situation of need or loss. Youth are to be supported by the state, and have a right to special protection by the family and society. The Constitution also guarantees the protection of children against all forms of discrimination or oppression, as well as against abuses of authority by the families or public institutions caring for them.

THE GAMBIA: Draft Constitution of 2020: This makes provision for children's rights. It mandates all state organs and public officers to address the needs of vulnerable groups, including children and youth. Article 56, on the rights of children, is comprehensive and covers a wide range of child rights, including the right to nationality, nutrition, and protection from child labour, abuse and neglect, and all forms of violence and exploitation. Article 64 provides for state support for children.

GHANA: Constitution of 1992 with Amendments through 1996: The Constitution is strong in the provision of children's rights and their protection. Article 27 provides for state support for children. Article 28 sets out a comprehensive list of children's rights, and, among other things, imposes limits on the employment of children as well as prohibiting cruel treatment and torture of them. Article 37 guarantees that the state shall enact appropriate laws to ensure the protection and promotion of all basic human rights and freedoms, including those of the disabled, the aged, children, and other vulnerable groups.

GUINEA: Constitution of 2010: The Constitution makes provision for some children's rights, though not very explicitly. Parents have the right and duty to ensure the education as well as physical and moral health of their children. Article 19 grants rights to children and limits the employment of children. The state has a duty to protect youth in particular against exploitation, moral abandonment, sexual abuse, and trafficking.

GUINEA-BISSAU: Constitution of 1984 with Amendments through 1996: It provides for minimal rights for children and the protection of the family by the state. The Constitution also declares that children are equal before the law irrespective of the status of their parents.

IVORY COAST: Constitution of 2016: This makes provision for children to receive free education and be protected from child labour. Article 32 provides for state support for children. The Constitution sets out measures to protect vulnerable children, including those with disabilities. Article 34 enumerates the rights of youths, and provides for state support against all forms of exploitation and abandonment.

LIBERIA: Constitution of 1986: The Constitution makes provision for child protection issues, albeit not explicitly for CWPC. It makes provision for inheritance that might benefit children from other marriages.

MALI: Constitution of 1992: This does not explicitly provide for the rights of children in need of care and support; instead, children's provisions are lumped together with general ones applicable to all citizens.

NIGER: Constitution of 2010 with Amendments through 2017: Article 22 provides for state support for children and prohibits discrimination against girls and young women as well as persons with disabilities. Article 23 provides for free education, and declares it is the right and duty of parents to raise, educate and protect their children. Youths are protected by the state and other public collectives against exploitation and abandonment. The state is responsible for promoting the physical and intellectual growth of young people.

NIGERIA: Constitution of 1999: Chapter II, under 'Fundamental Objectives and Directive Principles of State Policy', makes provision for the protection of children and young persons against moral and material neglect as well as any form of exploitation whatsoever. The Constitution also provides that a 'child' includes a stepchild, a lawfully adopted child, a child

born out of wedlock, and any child to whom any individual stands in place of a parent. It does not mention child protection issues, nor does it refer to children's rights.

SENEGAL: Constitution of 2001 with Amendments through 2016: The Constitution makes provision for children's rights. Article 20 recognises that parents have the natural right and duty to raise their children. Under the same Article, youth are protected by the state against exploitation, drugs, narcotics, moral abandonment, and delinquency. Article 21 makes provision for the state to guarantee the education of children. Article 22 guarantees that all children, boys and girls, in all places of the national territory, have the right to attend school.

SIERRA LEONE: Constitution of 1991, reinstated in 1996, with Amendments through 2008: Article 8 guarantees the care and welfare of young people. While Article 9 makes provision for access to higher education and safeguarding the rights of vulnerable groups, such as children, the Constitution does not define what a child is or mention child protection issues or rights.

TOGO: Constitution of 1992 with Amendments through 2007: Article 31 sets out the rights of children, which include the right to a family and state support. Parents have to provide for the support and education of their children, with the assistance of the state. Whether they are born in or out of marriage, children have the same right to familial and social protection. Article 32 prescribes that nationality is accorded to children born of a Togolese father or mother. Article 35 recognises children's right to education and provides that the state shall create conditions favourable to its realisation. Schooling is compulsory until the age of 15. Article 36 protects youth against any form of exploitation.

EAST AFRICA

BURUNDI: Constitution of the Republic of Burundi (2005): The Constitution makes some provision for children's rights to include the right to education. Article 30 provides for special protection to be given to a child by his or her family, society, and the state.

COMOROS: Constitution (2018): Article 30 makes provision for children's rights, along with limiting the abuse of children in employment in the labour market

DJIBOUTI: Constitution (1992 with Amendments through 2010): The Constitution is silent on issues to do with children.

ERITREA: Constitution of Eritrea (1997): The Constitution enumerates fundamental rights, freedoms and duties that are equally applicable to children. Article 14 states that no person shall be discriminated against on account of race, ethnic origin, language, colour, sex, religion, disability, age, political belief, or opinion, social or economic status, or any other factors. Article 22 provides that parents have the right and duty to bring up their children with due care and affection.

ETHIOPIA: Constitution of the Federal Democratic Republic of Ethiopia (1995): The Constitution makes provision for the protection of children and recognises the principle of the best interests of the child. Article 36 is explicit about the rights of children. It guarantees that every child has the right to life, to a name, to be taken care of by his or her parents, to be protected from exploitative practices, and to be neither required nor permitted to perform work that may be hazardous or harmful. Article 36(2) stipulates that primary consideration be given to the best interests of the child. Article 36(4) requires that children born out of wedlock be accorded the same rights as those born within it. The Constitution also obligates the state to accord special protection to orphans. Moreover, the state is required to encourage the establishment of institutions that advance children's welfare and education. Article 41(5) requires the state to allocate resources and provide assistance to children without parents or guardians.



KENYA: *Constitution of the Republic of Kenya (2010)*: It defines a child as a person less than 18 years of age. The Constitution is explicit about the rights of children to be protected from harmful practices, neglect, abuse, and exploitative labour. It mandates parents to protect their children, and stipulates that children shall not be detained except as a measure of last resort. Article 53 declares that the best interests of the child must be of paramount importance in every matter concerning him or her. The same also covers youths, guaranteeing state measures and affirmative action programmes to ensure youth access to relevant education and training.

MADAGASCAR: *Constitution of Madagascar (2010)*: Article 21 obligates the state to protect the child through legislation and appropriate social institutions.

MAURITIUS: *Constitution of Mauritius (1968; rev. 2016)*: This is silent on child protection issues.

RWANDA: *Constitution of the Republic of Rwanda 2003 with Amendments through 2015*: This provides for the protection of children. Article 19, on the rights of the child, stipulates that every child has the right to specific mechanisms of protection availed by his or her family, other Rwandans, and the state, depending on his or her age and living conditions, as provided for by national and international law.

SEYCHELLES: *Constitution of the Republic of Seychelles (1996)*: The Constitution expressly provides for the inalienable protection of children. Article 31 recognises the rights of children to special protection, given their vulnerability. To this end, the state undertakes to provide a minimum age of employment of 15 years to ensure special protection against social and economic exploitation. Article 32 recognises that the family is the naturally fundamental element of society.

SOMALIA: *Constitution of the Federal Republic of Somalia (2012)*: The Provisional Constitution is the primary legal document that outlines the state's duties to its children. Article 29 makes provision for the rights of children. These include the right to a name, to be protected from mistreatment, neglect and degradation, to be detained as a last resort or for a limited time, and to be protected from armed conflict and not be used in such conflict. Article 27 articulates the principle of the child's best interests.

SOUTH SUDAN: *Constitution of the Republic of South Sudan (2011)*: It prescribes that state governments should adopt policies and provide facilities for the welfare of children and youth and ensure that they develop morally and physically and are protected from abandonment as well as moral and physical abuse and. Article 17 prohibits all corporal punishment, and establishes that 'every child has the right ... to be free from corporal punishment and cruel treatment by any person including parents, school administrations and other institutions. Paramount consideration shall be the best interest of the child in all actions concerning children cared for by the public, private, welfare institutions, the court of laws, and administrative authorities. All governments shall accord special protection to orphans and other vulnerable children and child adoption shall be regulated by law.' Article 40 mandates the state to adopt policies and provide facilities for the welfare of the children and youths to ensure their moral and physical development and protect them from abuse and abandonment.

SUDAN: *Constitution of Sudan (2019)*: This contains a small section on children's rights. Article 50 mandates that the state protect the rights of the child as provided in international and regional agreements ratified by Sudan.

TANZANIA: *Constitution of the United Republic of Tanzania (1998)*: The Constitution does not provide for the rights of children.

UGANDA: *Constitution of the Republic of Uganda (1995)*: This provides explicitly for the rights of children in need of care and protection. Chapter 11 makes provision for foundlings and adopted children. Chapter 13 provides that every child has the right to belong to a family.

Chapter 34 is explicit on the rights of the child and emphasises his or her best interests, stating that every child has the right to education, a healthy life, nutrition, and protection from social and economic exploitation.

NORTH AFRICA

ALGERIA: Constitution of Algeria (2020): The Constitution provides for child rights and child protection issues. Article 69 stipulates that the employment of children under the age of 16 shall be punishable by law. Article 74 makes provision for the protection of the family by the state and society. Within this provision, the Constitution sets out the following: (i) the state shall protect the rights of the children, upholding the best interests of the child; (ii) the state shall take responsibility for abandoned or non-affiliated children; (iii) parents are obligated to provide care and protection of their children; and (iv) the law shall punish acts entailing the exploitation of children.

EGYPT: Constitution of Egypt (2014): Article 80 provides for the rights of the child. These include the right to identity, as well as free and compulsory vaccinations; the right to health; and the right to a family and alternative care. The Constitution protects children with disabilities, and enshrines the principle of the best interests of the child. Article 16 makes provision for the care of the children of war martyrs.

LIBYA: Constitution of Libya (2011): The Constitution makes provision for children's rights. Article 5 prescribes that the state shall guarantee the protection of children, young people, and persons with special needs. Article 59 provides for social care and education for children of unknown parentage to ensure their integration within society and enjoyment of all rights without discrimination. Article 59 details the rights of the child, with the state being obligated to adopt all measures for children to enjoy their rights fully and protect them from conditions that endanger their interests, education, and development. The state shall adopt legislation and policies based on the principle of the child's best interests.

MAURITANIA: Constitution of Mauritania 1991 with Amendments through 2012: The Constitution is silent on issues to do with children. It contains no explicit provisions for children's rights.



MOROCCO: Constitution (2011): Article 32 'assures one equal juridical protection and one equal social and moral consideration to all children, [being the] abstraction made from their familial situation'. The Constitution makes no provision for issues to do with CWPC.

TUNISIA: Constitution (2014): Article 47 provides for children's rights to dignity, health, care, and education from their parents and the state. The Constitution stipulates that the state shall provide all forms of protection to all children, including CWPC, without discrimination and according to their best interests.

SAHRAWI ARAB DEMOCRATIC REPUBLIC (SADR): Constitution of the SADR (2015): Article 7 recognises that the family is the foundation of society, and shall be based on religious, ethical and national values and historical heritage. In terms of Article 39, the state shall ensure protection for mothers, children, disabled persons and the elderly by establishing institutions to that end and promulgating the relevant laws. Article 41 provides that the state shall guarantee material and moral rights to parents, widows of martyrs, their children who have not yet attained the age of majority, those wounded in war, prisoners of war, the disappeared, and victims of the liberation war; these rights shall be defined by law. Article 50 provides that the protection and promotion of the family shall be an obligation of parents, especially as regards the education of their children.

CENTRAL AFRICA

CONGO REPUBLIC: Constitution (2015): It explicitly articulates the rights of children. Article 38 accords the same rights to children born within or outside marriage, prohibiting discrimination against children. Article 40 obligates the state to protect children and adolescents from economic or social exploitation, and sets the minimum age of child employment as 16 years.

GABON: Constitution of the Republic of Gabon (2003): Article 15 prescribes that care should be given to children, and makes provision for the state and parents to educate children. Parents have the primary right to secure the moral and religious education of their children. Article 17 protects children against any form of exploitation and physical abandonment.

CAMEROON: Constitution of the Republic of Cameroon (Amendment) (2008): It guarantees the right to education, but makes no explicit provision for the rights of children in need of care and support.

DEMOCRATIC REPUBLIC OF THE CONGO: Constitution of 2005 with Amendments through 2011: Article 40 prescribes that, with the assistance of public authorities, parents have to provide care and education to their children. Article 41 prohibits the abandonment and maltreatment of children, in particular via paedophilia, sexual abuse, and engaging in witchcraft. It also states that parents must take care of their children and ensure their protection against any acts of violence inside or outside the parental home. Public authorities must ensure the protection of children in difficult situations and bring the authors of acts of violence against children and their accomplices to justice. Article 42 provides that public authorities are obligated to protect the youth against any threat to their health, education, or development.

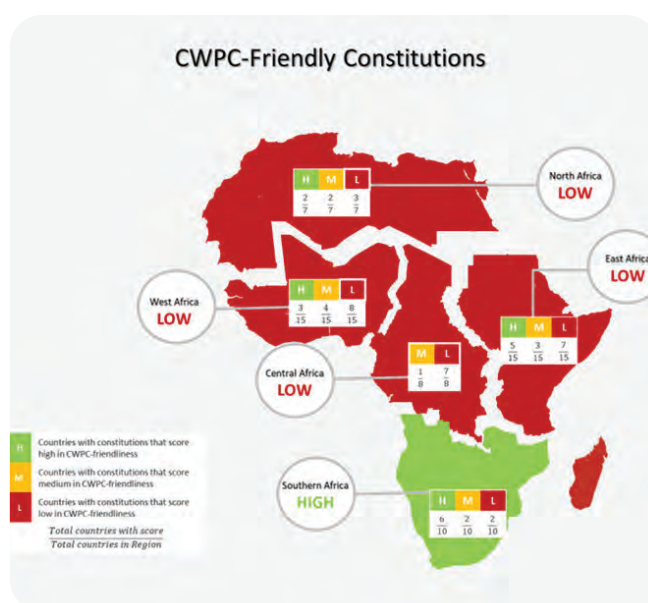
CHAD: Constitution of the Republic of Chad (1996): Article 36 guarantees the education of children, while under Article 38 parents have the natural right and the duty to raise and educate their children.

CENTRAL AFRICAN REPUBLIC: *Constitution of the Central African Republic (2004):* Article 6 guarantees the protection of children against violence and insecurity, exploitation, and moral, intellectual and physical abandonment. It gives parents the natural right and primary duty to raise and educate their children to ensure their physical, intellectual and moral development. Children born out of wedlock have the same rights to public assistance as legitimate children. Article 7 states that parents must provide for the education and instruction of their children at least up to the age of 16.

EQUATORIAL GUINEA: *Constitution of the Republic of Equatorial Guinea (1991, as amended to 2012):* Article 23 guarantees state support for children.

SÃO TOMÉ AND PRÍNCIPE: *Constitution of São Tomé and Príncipe (1975 with Amendments through 2003):* The Constitution does not have a dedicated article on the rights of children, but such issues are integrated into other relevant articles. Article 26 provides for the maintenance of children by spouses. Also, children born out of wedlock must not be subject to any form of discrimination. The same article obligates parents to provide education and maintenance for their children. Article 44, on 'social protection', makes provision for the state to support children through the social protection system, including in cases of illness, orphanhood, and other eventualities prescribed by law. Article 51 provides for children to cooperate with their parents in their education, while Article 53 protects young workers from labour exploitation. The Constitution does not have an explicit, detailed article addressing CWPC.

6.3 REGIONAL OVERVIEW OF CONSTITUTIONS



This study's analysis of constitutions finds that all countries, except Djibouti, Botswana, Liberia, Mauritania and the SADR, mention children's rights in their constitutions.

Countries with elaborate provisions on children in the bill of rights are Burundi, Cape Verde, the DRC, Ethiopia, Eswatini, Gambia, Ghana, Kenya, Malawi, Mozambique, Namibia, Somalia, South Africa, South Sudan, Tanzania, Uganda, Zambia, and Zimbabwe.

Lastly, countries that refer to children only in the preamble to the constitution are Cameroon, Comoros, Mali, and Tunisia.

Figure 6: Regions' constitutional responsiveness to CWPC



Table 6: Approach to child rights by State Parties

APPROACH TO CHILD RIGHTS	COUNTRIES
Refer to children in the constitution	All countries except Botswana, Djibouti, Liberia, Mauritania, and the SADR
Elaborate provisions on children in the bill of rights	Burundi, Cabo Verde, DRC, Ethiopia, Eswatini, Gambia, Ghana, Kenya, Malawi, Mozambique, Namibia, Somalia, South Africa, South Sudan, Tanzania, Uganda, Zambia, Zimbabwe
Refer to children only in the preamble to the constitution	Cameroon, Comoros, Mali, Tunisia

Source: ACPF (2007). *Harmonization of Laws on Children: Some Practical Guidance*

From a regional overview, emerging issues in **Southern Africa** include protection of the rights of orphans and abandoned children, as well as rights to children's health. Most countries have a bill of rights that enshrines the right to education and protects children from exploitation and harmful cultural practices. In **West Africa**, notable issues include the extent to which CWPC are contained in constitutions. In **East Africa**, constitutions provide for the best interests of children in all matters concerning children but are silent on issues to do with CWPC. In **North Africa**, constitutions cover key issues, including the best interests of the child and the state's role in the support and protection of vulnerable children. **Central African** constitutions do not clearly outline child protection and CWPC issues.

6.4 CHILD-SENSITIVENESS OF LAWS IN AFRICA

SOUTHERN AFRICA

ANGOLA: *Law on the Protection and Integral Development of Children (Law No.25/12)*: The child has the right to special attention to the family, society and the state. The state must ensure all forms of protection against abandonment, discrimination, oppression, exploitation and abusive exercise of authority in the family and other institutions. **Other relevant laws:** Articles 4 and 5 of the Basic Social Protection Law (Law No. 7/04); and the Family Code Law 1 of 88 of 20 February, Article 197 of which provides for adoption.

BOTSWANA: *Children's Act (2009)*: The guiding principles of the Act are the best interests of the child and the child's participation in decisions affecting him or her. Part III of the Act deals comprehensively with the Bill of Child Rights. Part V is explicit about the role the community and government should play in supporting poor families in the care of children. It also provides for the establishment of village child protection committees. Part VI makes provision for the establishment of children's consultative forums, and Part VII, a national children's council. Part VIII is comprehensive in its provision for the establishment and functioning of the children's court. Part IX provides for commissioners of child welfare. Part X has a component dealing explicitly with children in need of protection. Part XII concerns the alternative care of children in need of care and protection, while Part XIII deals with issues around foster care. Other provisions relate to children in conflict with the law, the institutionalisation of children, and child trafficking.

ESWATINI: *Children's Protection and Welfare Act (2012)*: The Act is explicit about the rights of the child. Part III sets out the rights of the child and the responsibilities of parents and the state. Part IV deals explicitly and comprehensively with the child in need of care and protection.

It also makes provision for children in need of rehabilitation and urgent protection. Part IIX stipulates the conditions for taking a child into care. Part IX addresses adoption issues and Part X, child trafficking issues. Part XVI contains explicit provisions on children's courts, their establishment and their operations. Part XXII has detailed provisions on institutions involved in the care of children.

LESOTHO: *Children's Protection and Welfare Act (2011)*: Part 2 covers the principles of the Act and the best interests of the child. Part 3 enumerates the rights of the child and the responsibilities of the state in regard to, inter alia, issues of identity, registration, the rights of orphans, the right to live with parents and grow up in a caring environment, and the rights of children with disabilities. Chapter 4 covers many issues explicitly, including who children in need of care and protection are, taking children into a place of safety, their presentation before the children's court, and the health of children. Other areas covered by the Act are (i) the administration of the property of children by the Office of the Master of the High Court (Part 5); (ii) offences concerning the health and welfare of children (Part 6); (iii) the conditions for taking a child into care (Part 7); (iv) foster care and adoption (Part 8); (v) trafficking and abduction of children (Part 9); (vi) children in need of habilitation and urgent protection (Part 10); (vii) children in conflict with the law (Part 11); and (viii) restorative justice (Part 15).

MALAWI: *Child Care Protection and Justice Act (2010)*: The Act sets out the duties and responsibilities of parents and children; explicitly details the requirements of parentage; and provides for the maintenance of children, including the issue of joint responsibility for their maintenance. It also addresses the following: taking a child into a place of safety; the child's presentation before a child justice court; children in need of medical treatment; and control of hospitalised children. Division 3 of the Act contains detailed provisions on guardianship, and Division 4, on foster care. Division 5 provides for the support of children by local authorities. Division 6 deals with the protection of children from undesirable practices such as abduction, trafficking, and forced marriage. Part 3 concerns children suspected to have committed offences. Part 5 provides for a child justice court, and Chapter VIII, for reformatory centres and children's homes.

MOZAMBIQUE: *Law on the Promotion and Protection of Children's Rights (2008)*: This is an exemplary law established to adopt and incorporate principles and provisions of the UNCRC and ACRWC. Among other things, it guarantees children's access to courts to seek justice, governs child protection, and incorporates UNCRC principles. Articles 26-29 relate to the right to a family and community existence. Article 13 specifically guarantees that children who have temporarily lost their family environment have the right to alternative protection and assistance under the state's obligation. The Act recognises the foster family as an option (Article 28). It provides for the institutionalisation of children where alternative care cannot be established. Articles 70, 73, 75 and 76 detail conditions under which institutional care of children happen. **Other relevant laws:** Civil Registration Code and Family Law (Law No. 10/2004); Law for Guardian Organization of Minors (Law No. 8/2008); Trafficking in Persons Act (Law No. 6/2008), Social Protection Regulations on the Subsystem of Basic Social Security (Law No. 4/2007); Labour Law (Law No. 23/2007).

NAMIBIA: *Childcare and Protection Act (2015)*: Aligned to international child-rights practices, the Act covers several issues, including adoption; children's homes; places of detention; children's courts; and the prevention of neglect, ill-treatment and exploitation of children. The purpose of the Act is to give effect to the rights of the child contained in the Namibian Constitution. It also provides for a children's fund and the establishment of a national advisory council for children. **Other relevant legal provisions:** Combatting of Trafficking in Persons Act (2018); policy on inclusive education (2018); national agenda for children (a five-year strategy); Labour Act (2007); Combatting of Immoral Practices Amendment Act (2000).



SOUTH AFRICA: Children's Act 38 of 2005: The Act stands out vividly as a good practice within the realm of normative frameworks addressing the care and protection of children in South Africa. Although developed as far back as 1960, the Act underwent an evolution in which it benefitted from the catalytic role of South Africa's ratification of the UNCRC and ACRWC. The original Act had a strong child-care-programme framework as opposed to a rights-based approach. Consultations highlighted the various benefits of the country's ratification of global and regional child-rights protocols. The principle of the best interests of the child is systematically and strongly mainstreamed in all aspects of child care and protection in the Act. Chapter 4 of the Act provides for the children's court and its procedures, including parameters for court proceedings. Chapter 7 makes provision for child protection, while Chapter 9 focuses explicitly on children in need of care and protection. Key themes in the chapter include the removal of the child to temporary safe care and the children's court's processes. Chapters 15 and 16 deal with the adoption of children at a national and international level, respectively. The Act also sets out conditions for foster care. The children's court system is another commendable feature of this statute. Sections 45 and 46 contain detailed provisions in regard to the children's court and the protection of vulnerable children. The Act is consistently being reviewed, and at the time of the research (May 2021), the second Children's Amendment Bill was in motion to strengthen the Act. The main purpose was to amend the Children's Act of 2005 and insert certain definitions in the Act. Key provisions include extending the children's court's jurisdiction, providing funding for early childhood development (ECD) programmes, and improving the care of abandoned or orphaned children. Furthermore, it makes provisions for children with disabilities.

ZAMBIA: Children's Code Bill 2022 (draft): This establishes diversion and alternative correctional programmes and promotes the rehabilitation of a child in conflict with the law through programmes to facilitate restorative justice and compliance with laws. The Code provides for the probation of a child in conflict with the law and provision of probation services. It provides too for the establishment of child reformatory centres, as well as the regulation of child-care facilities and child safeguarding.

ZIMBABWE: Children's Act [Chapter 5:06] (2001): Replacing the old Child Protection and Adoption Act and the Children's Act (1972), the Act categorises children in need of care as destitute, orphans and vulnerable children, abandoned, and those without adequate nutrition. Under the Act, the government commits a child to alternative care only when all options (such as placement in families and kinship care) have been exhausted. The Act provides for the safeguarding of children's welfare and best interests. Nonetheless, it has gaps. Its definition of a child is not in line with other instruments such as the ACWRC and the Constitution of Zimbabwe. The Act defines a child as someone below the age of 16, whereas the ACWRC defines a child as someone below the age of 18. The Act does not provide for the establishment of a child protection committee, even though Article 19 of the UNCRC requires state parties to establish social programmes and structures for the identification, reporting, referral, investigation, treatment, and follow-up of instances of child maltreatment. In addition, the Act does not cover the issue of children's education as provided for under both Article 28 of the UNCRC and Article 11 of the ACRWC. **Other relevant laws:** Criminal Law (Codification and Reform) Act (2004); Social welfare Assistance Act (2001); Guardianship of Minors Act (2002).

WEST AFRICA

BENIN: Law No. 2015-08 of December 8, 2015, on the Children's Code in the Republic of Benin: The Children's Code is the very essence of the protection and promotion of children's rights in Benin. It defines the framework for the protection of children, and provides appropriate measures for all forms of abuse and violence. This law creates the central authority for inter-country adoption, and also institutes national adoption for children deprived of parental care. **Other relevant laws:** Law on Conditions for Moving Minors and Trafficking of Children in the Republic of

Benin, 2006: For sex trafficking of children, Article 21 of Act 2006-04 prescribes penalties of 10 to 20 years, which are sufficiently stringent and commensurate with those for other serious crimes such as rape. For forced child labour, Article 22 of Act 2006-04 prescribes penalties of six months to two years' imprisonment and a fine, which are not sufficiently stringent. **Law No. 2002-07 of August 24, 2004**, usually cited as the *Persons and Family Code in the Republic of Benin*: This law coordinates units for child protection within government ministries, especially to combat child labour and trafficking. It is a law par excellence that warns the family against separation. **Decree No. 2012-416 of November 6, 2012** sets the norms and standards applicable to the Child Reception and Protection Center (CAPE) in the Republic of Benin. **Guidance on Alternative Care in the Best Interests of the Child** (currently being validated): It is inspired by the UNCRC, the UN guidelines on alternative care, the 2019 UN resolution on the rights of the child, the National Child Protection Policy (PNPE), the Children's Code and the norms and standards applicable to CAPEs in the Republic of Benin.

BURKINA FASO: Labour Law (2008); Law Regulating Hazardous Labour of Children (2009): While Burkina Faso in 2008 and 2009 revised its laws protecting children from hazardous work, some gaps remain in providing comprehensive protection for children. **Law to Combat Trafficking (2008):** The new law criminalises child trafficking and increases the penalties for traffickers to the maximum, with ten years in prison. The Government of Burkina Faso does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. **Law for Free Medical Care for Women and Children Under Five (2016):** This abolishes direct payment for health care for women and children under five. There is no comprehensive Children's Act that works directly to support children's rights and their best interests.

CAPE VERDE: Child and Adolescent Statute (2013): This aims to increase coordination among agencies serving children and youth, including the abandoned and vulnerable. **National Program to Combat Sexual Violence against Children and Adolescents 2017–2019 in 2016: Action Plan for the Prevention and Elimination of Child Labour:** The Action Plan seeks, among things, to gain an improved understanding of the country's child labour situation, and to align the definition of child labour with that in the International Conventions of the International Labour Organization. **National Plan to Combat Human Trafficking:** Human trafficking has been a criminal offence in Cape Verde since 2015, and a National Plan to Combat Human Trafficking was implemented in 2018–2021. The country has made major advances in children's rights, but its limited resources hamper measures to advance the realisation of these rights.

THE GAMBIA: Children's Act (Act No. 38 of 2005): This legislation brings together all laws relating to children, sets out the rights and responsibilities of children, and provides for their care and maintenance. It emphasises the best interests of the child in matters concerning him or her. The Act prohibits the engagement of a child in exploitative labour and hazardous work. It also deals with the following: partial care of children, including the regulation, management, closure, and safety of facilities (Chapter 4); and child protection systems, including national norms and standards, quality assurance, and the reporting of abuse and neglect of children (Chapter 6). Chapter 7 provides for a national child protection register, and Chapter 10, for prevention and early intervention in regard to children in need of care and protection. Chapter 11 is explicit on the protection of children in need of care and protection, and covers the removal of children to temporary care; bringing children before the children's court; reports by social workers; and abandoned or orphaned children. Chapter 12 provides for alternative care, and Chapter 13, for different types of foster care including cluster foster care. Chapter 14 provides for youth and child-care centres; and Chapter 15, for dropping-in areas. Chapters 16 and 17 deal with adoption and inter-country adoptions.

GHANA: Children's Act (1998): It is explicit in its provisions for the rights of children in need of care and protection. Part I enumerates a comprehensive set of child rights, including the



rights to education, name and nationality, and property. Part II provides for the care and protection of children, covering issues such as investigation of child abuse; supervisory orders; home visits; care orders; and adoptions. Part IV deals with foster care and adoption, and Part V, with the prevention of child labour. Part VI concerns institutionalisation and related matters, including day-care centres. **Other relevant legal provisions:** National Plan of Action for the Elimination of Worst Forms of Child Labour 2017–2021; National Strategic Framework to End Child Marriages in Ghana 2017-2026 and its Operational, Monitoring and Evaluation Plan (2020–2021); Strategic Plan to Address Adolescent Pregnancies in Ghana 2018-2022. The latter provides guidelines for addressing adolescent pregnancy and reproductive health challenges by availing adolescents, especially girls, with information and services to protect them from unplanned pregnancies.

GUINEA: Law on Child Labour, 1994: This includes provisions that criminalise major child-rights violations such as the recruitment of child soldiers, which is treated as a war crime. Articles 319 and 320 of the Penal Code criminalise child and forced marriage. **Fundamental Law of the Republic of Guinea (1990):** Article 16 states that parents have the right and duty to ensure the education as well as physical and moral health of their children; children have a duty of care and assistance to their parents. Article 17 protects young people from exploitation and moral abandonment. **Children's Code:** Children's rights in Guinea are regulated by the Children's Code, which incorporates all provisions of the UNCRC. As a result, provisions in international treaties and UN recommendations are an integral part of the national legal framework, thus strengthening the system of protection of children's rights.

GUINEA-BISSAU: There is no consolidated or comprehensive Children's Act in national law; instead, legal provisions relevant to children are found in various national laws and decrees, as well as in customary law.

IVORY COAST: National Action Plan against Trafficking, Exploitation, and Child Labour: There is no comprehensive Children's Act in Ivorian law; instead, provisions relevant to children's rights are found in various codes, acts and decrees.

LIBERIA: Children's Law (2011): This law makes provision for child rights and, with some issues, it is explicit in regard to CWPC. Article 5 emphasises the best interests of the child and highlights the right of the child to be cared for by his or her biological parents. Article 6 provides for the child's right to appropriate parental guidance, while articles 8,9,10 and 11 make provision for the right to health care, education, adequate food, safe and clean water, and safe housing. Article 17 provides for the child's right to inherit property from his or her parents, while other articles protect children from sexual abuse and prostitution, armed violence or conflict, and child labour. **Other relevant laws: An Act to Ban Trafficking in Persons within the Republic of Liberia (2005):** This prescribes a minimum sentence of one year's imprisonment for the trafficking of adults and six years for the trafficking of children. **Penal Code (1976):** Provisions in the Penal Code and other legislation whose intent is to protect the child from sexual exploitation shall be construed with the child's best interests as the primary consideration.

MALI: Code on Child Protection (2002): The Code aims to protect children from abuse, violence, and exploitation, and promotes improved access to education and livelihood services for vulnerable children, especially those affected by armed conflict. Article 17 prohibits those under the age of 18 from participating in armed conflict or joining the armed forces. Articles 50 and 58 identify begging as a form of economic exploitation of children. **Other relevant laws: Law to Create the National Monitoring Committee of the Agreement of Cooperation in Mali and Cote d'Ivoire for the Fight Against Cross-border Trafficking of Children (2001):** The law is framed around the best interests of the child.

NIGER: Children's Code: The draft code makes provision for the protection of children. Article 453, on protection from abuse in the family, states: 'Physical and psychological abuse, corporal punishment and deliberate neglect are liable to the penalties in paragraph 1 of Article 452 above.' The article referred to (Article 452) punishes violence, including mild and repeated violence. Article 470 states: 'Corporal punishment and other forms of violence or abuse are prohibited in schools, vocational training and institutions.' The same article confirms that the prohibition applies to all institutions, including those for children with disabilities, as well as shelters, hospitals, and any other place for temporarily or permanently providing child care. However, the article is not explicit about CWPC. **National Strategic Plan to End Child Marriages by 2018:** This addresses violence against women, including child marriages. **National Child Protection Plan:** The Plan rests on three pillars, namely prevention, care, and the strengthening of the national child protection system.

NIGERIA: Child's Right Act (2003): The Act is comprehensive in its coverage of CWPC issues. Article 10 sets out children's rights to freedom from discrimination, including discrimination in regard to the circumstances of their birth. Article 16 guarantees the rights of a child in need of special protection, while Article 20 enumerate parents' responsibilities to their children. Article 30 protects children from child labour, including through the prohibition of buying, selling, hiring or otherwise dealing in children for prostitution or for hawking or begging. Article 34 prohibits the recruitment of children into the armed forces. Article 50 accords certain persons the power to bring children in need of care and protection before a court. Article 79 grants the relevant minister the power to make orders and the like in regard to the custody of children, while Article 177 gives the state government the duty to provide for the welfare of children under its care. All in all, the Act embraces the principle of the child's best interests. **Other relevant laws: Nigerian Children's Trust Fund Act (1990):** The Act establishes the Nigerian Children's Trust Fund to provide relief to children in need. **Compulsory, Free Universal Basic Education Act (2004):** This Act provides for free, compulsory, and universal basic education for all children of primary and junior-secondary school age.

SENEGAL: Penal Code, 1965 (as of 1999): The Code contains provisions to severely punish offences against children. It punishes all forms of sexual exploitation of children, and sets a maximum of 10 years' imprisonment where victims are minors less than 13 years old. Articles 300, 319, 320b, 348 prohibit the exploitation of children for sexual purposes. Article 327b institutes a special provision in the event of prostitution by a minor. Such a minor is expected to appear before a children's tribunal and is entitled to the protection measures provided for by the Code of Penal Procedure. In cases where a minor under 15 years has been abducted, the punishment shall be hard labour for life (Article 347). Three forms of sexual exploitation of children for commercial ends are defined: prostitution of children; trafficking and sale of children for sexual purposes beyond or within national borders; and child pornography punishable by Article 320b. **Other relevant laws:** Law 02/2005 of 29 April 2005 on Child Trafficking and Exploitation; National Child Protection Strategy; Family Code 1989 has no provisions that specifically set out the rights of children.

SIERRA LEONE: Child Rights Act (2007): The Act is explicit in its provisions for the rights of children, particularly those in need of care and protection. Its guiding principles embrace the best interests of the child. Part III, on child rights, parental and state responsibilities, recognises that every child has the right to life and survival and development to the maximum extent possible. Parents have a primary responsibility to provide support to their children in the enjoyment of their rights. Article 114 guarantees that while a child is in an approved home for the care of children, the staff of the home shall assume parental responsibility for the child and ensure that the rights of the child under this Act are protected. Such parental responsibility shall include an application to a family court to protect the best interests of the child where necessary. Part VIII affords protection against child labour. **Other relevant laws:** Anti-Human Trafficking Act (2005); Adoption Act (1989); Children and Young Persons Act (1945).



TOGO: Children's Code (2007): The Code is explicit in its provisions for children in need of care and is aligned with the UNCRC. It provides for the establishment of a National Committee on the Rights of the Child and for the Directorate General for Child Protection at the Ministry of Social Affairs to manage the coordination of social protection services for children. Article 258 guarantees the right of children with disabilities to education, vocational training, and rehabilitation. Children with disabilities, as well as those affected by HIV/AIDS, are guaranteed access to special social and medical care. The Code includes protections for OVC, and the Government of Togo has developed norms and standards in this regard. In 2008, Togo established the National Adoption Committee to oversee inter-country adoptions. Since 2009, the government has maintained a toll-free line to enable citizens to report child abuse and receive legal assistance. The Children's Code ensures a strong commitment to addressing poverty, promoting access to health care and education, protecting the rights of children, combatting child trafficking and child labour, and providing protection for vulnerable groups. **Other relevant laws:** Norms and Standards Applicable for Child Care Centres for Vulnerable Children, 2010; Act No. 2005-009 of 3 August 2005 on the trafficking of children.

EAST AFRICA

BURUNDI: There is no consolidated or comprehensive Children's Act or other national law that works directly to support children's rights and their best interests. Other relevant legal provisions with implications for CWPC include the **Employment and Labour Law (2021):** By means of this law, Burundi has made a moderate advance in efforts to eliminate the worst forms of child labour. The government, furthermore, has established institutional mechanisms for the enforcement of laws and regulations on child labour. However, gaps in the operations of relevant ministries may hinder adequate enforcement of child labour laws. **Adoption Law (1999):** This has filled a gap in the placement of children abroad. **Prevention of Trafficking in Persons (2014):** Burundi does not fully meet the minimum standards for the elimination of trafficking and is not making significant efforts to do so.

COMOROS: There is no law explicitly governing the rights and protection of CWPC. **Other relevant laws:** Code of Criminal Procedure 1970; Code of Civil Procedure (2001); Family Code (2011).

DJIBOUTI: There is no law explicitly governing the rights and protection of CWPC. **Other relevant laws:** Family Law (2002) (which regulates matters such as marriage, divorce, child custody, and inheritance); Law to Control Human Trafficking (2007); Law Establishing and Organizing National Council of Child (2016); Legal Protection of Minors (2015); Criminal Procedure Code (1995).

ERITREA: Penal Code (2015): Article 101 provides for the possibility of placing child offenders in homes. The Code prohibits the recruitment of children into the armed forces. Article 327 defines child neglect, which includes abandoning children and exposing them to moral and physical dangers. The Code also makes provision for the management of children abused through enslavement or trafficking. Article 306 deals with the sexual abuse of children, which (in Article 309) includes incest. **Other relevant laws and policies: Labour Proclamation of Eritrea, 2001:** This prohibits the employment of a person under the age of 14. **Transitional Penal Code of Eritrea, 1957:** Article 52 states that the criminal law does not apply to children under the age of 12; that is, such children have no responsibility for their acts. If they commit a crime, correctional measures are expected to be taken by the parents, school or guardian. Also of relevance is the **Integrated Early Childhood Development Policy (2004).**

ETHIOPIA: Labour Proclamation No. 377/2003: This prohibits the employment of persons under the age of 14. **Federal Revised Family Code Penal Code:** The Code prohibits the engagement

of persons under the age of 18 in sexual intercourse. It contains provisions for CWPC. All spouses are enjoined to protect the security of the family and ensure the good behaviour and education of their children in order to make them responsible citizens. The Code explicitly mentions that spouses must provide maintenance for their children in cases of divorce.

KENYA: *The Children Act (2022)*: This new Act was recently signed into law to align the country's children's legislation with the Constitution of Kenya. The Act provides for the care and protection of children, and addresses, inter alia, parental responsibility, foster care, adoption, custody, maintenance, guardianship, and administration of children's institutions. It gives effect to the principles of the UNCRC and ACRWC. Under this Act, a child is 'entitled to protection from physical and psychological abuse, neglect and any other form of exploitation including the sale, trafficking, or abduction by any person'. Part VI establishes children's courts to conduct civil and criminal proceedings on matters involving the care and protection of children. Article 127 makes it an offence for 'any person who has parental responsibility, custody, charge or care of any child' to 'wilfully assault, ill-treat, abandon, or expose [a child], in any manner likely to cause him unnecessary suffering or injury to health (including injury or loss of sight, hearing, limb or organ of the body, or any mental derangement); or ... by any act or omission, knowingly or wilfully cause that child to become, or contribute to his becoming, in need of care and protection'. **Other relevant provisions:** Penal Code (Cap. 63 Laws of Kenya); Sexual Offences Act (2006); National Youth Council Act (2009); Counter-Trafficking in Persons Act (2010); Basic Education Act (2013); National Action Plan for Children 2015–2022. To promote children's best interests in the legal system, the government has also formed the National Council on the Administration of Justice Special Taskforce on Children Matters. The government is aware of the need for reform in certain areas of law, regulation, and policy that relate to institutional care.

MADAGASCAR: *Legal provisions with implications for CWPC*: Penal Code Amendment on the crime of trafficking (2008); Law on adoption (2005); Decree relating to host family (2006); Law on birth registration (2008).

MAURITIUS: *Legal provisions with implications for CWPC*: National Children's Council Act (2003); Labour Act (1975); Combatting of Trafficking in Persons Act (2009).

RWANDA: *Law Relating to the Rights and Protection of the Child (2001)*: The law is explicit in its provision for the protection of children. Chapter 1 provides that the rights of the child include the right to life, to a name, and to be taken care of by parents. Article 16 concerns the principle of the child's best interests; Article 19 prohibits recruitment of persons under 18 in the military; Article 20 protects the child from torture and inhuman and degrading treatment; and Chapter 3 deals with children in conflict with the law. **Law 32/2017 of 2016** governs families and persons and sets out terms and conditions for kinship care, adoption of children, and guardianship. **The Children's Act (2018)** stands out as a good practice in Rwanda's normative frameworks for addressing the care and protection of children. **Strategy for National Child Care Reform (2012–2013)** has the primary aim of transforming the current child-care system into a family-based, family-strengthening system. It includes the targeted closure of 33 institutions⁷² and placement of 3,153 children and young people from institutions into family-based care. The Strategy includes support to vulnerable families to prevent separation, and envisions transformation of orphanages into child-centred, community-based services. **Other relevant laws and policies:** Law No. 13/2009 Regulating Labour in Rwanda (2009) (Article 4 of which prohibits the employment of children under 16 even as apprentices); National Strategic Plan on Child Survival (2008–2012); Strategic Plan for the Integrated Child Rights Policy in Rwanda (2011); National Policy for Orphans and Other Vulnerable Children (2003); Strategic Plan of Action for Orphans and Other Vulnerable Children (2003).

⁷² The Survey on Institutional Care, conducted in 2012 by MIGEPROF in partnership with Hope and Homes for Children, revealed that, at the time, 3,323 children were living in a total of 33 institutions.



SEYCHELLES: Children (Amendment) Act (2016): Part III of the Act provides for foster care, and covers, inter alia, the protection of children going abroad, registration of foster parents, the prohibition of unregistered fostering, and restrictions on a child's removal from foster care. Part V deals with adoption, while Part VI enumerates offences against children, including cruelty to children, using children for begging, and using them in witchcraft. Part VII provides for compulsory care, and addresses issues such as children in need of compulsory measures of care and removal to a place of safety. Part VII provides for the establishment of juvenile courts. **Other relevant laws and policies:** The Seychelles Framework for Early Childhood Care and Education (2011); National Council for Children Act (1981); Civil Code (1976); Penal Code (1955); Children Act (Foster Care Regulation) (1995). There is no explicit policy on the rights and protection of CWPC.

SOMALIA: There is no law explicitly governing the rights and protection of CWPC. **Other relevant laws:** Penal Code (1962); Child Rights Bill; Somali Sexual Offences Bill; Juvenile Justice Bill.

SOUTH SUDAN: Child Act (2008): Chapter II provides for children's rights and duties, and highlights the paramount importance of the best interests of the child in all matters concerning him or her. The rights are comprehensive: they include the right to freedom from discrimination; to a name and nationality; to birth registration; to know and grow up with parents in a family environment; and to inheritance. Children also have the right to protection from torture, degrading treatment and abuse; marriage and harmful cultural practices; child-labour abuse; and participation in armed conflict. The Act provides for the rights of refugee and displaced children, as well as the rights and duties of parents. Chapter V deals with foster care and adoption, while Chapter IX makes explicit provision for children in need of special care and protection, including detail on the classification of such children; security of care and protection; charitable children's homes; and registration of homes run by NGOs. Chapter X provides for children in conflict with the law. There is no explicit provision for the rights and protection of CWPC. **Other relevant laws:** Penal Code Act (2008); Southern Sudan War Disabled, Widows and Orphans Commission Act (2011).

SUDAN: Child Act (2010): Chapter II, on general principles, makes provision for the right of the child to protection against all forms of maltreatment, and stipulates that the child's best interests are of paramount importance. Children born outside of marriage have the right to birth registration and affiliation with their parents. The Act makes provision for the care of vagrant children, and states that their vagrancy may not be deemed an offence punishable by law. It provides for alternative care of children, which can be availed, inter alia, by care homes or a relative of the mother or father. The Act makes provision for care homes to be established for children deprived of family care, and stipulates how such care homes should function. Chapter VII prohibits child-labour abuse, and Chapter VII, children's recruitment in the military and participation in armed conflict. Chapter X deals explicitly with children in need of special care and protection. The Act provides for a prosecution attorney's bureau to deal with all legal matters involving children. It also establishes a children's court, as well as making provision for children exposed to delinquency. The Act provides, too, for youth homes. There are no provisions explicitly for the rights and protection of CWPC. **Other relevant laws:** *The Child Welfare Act (1971)* regulates the means of dealing with children whose parents are unknown, and stipulates that social workers must be appointed to find an appropriate person to care for such children. *The Personal Status of Muslims Act (1991)* regulates alternative care for children who are either temporarily or permanently deprived of their family environment, or, in their best interests, not permitted to stay in that environment. The *Registration of Births and Deaths Act (1992)* prescribes that all births must be registered. Also relevant is the *Penal Code (2003)*.

TANZANIA: Law of the Child Act (2009): The Act is explicit in its provisions on the rights of

the child. Part II specifies that a child has the right to a name, parental property, non-discrimination, and protection from harmful employment as well as torture and degrading treatment. Part III provides for the care and protection of the child, and Part IV, for foster care placement. Part VI is explicit about the protection of children from harmful employment. Part IX provides for a child in conflict with the law, and emphasises that he or she should be detained only as a last resort. Placement in and removal from institutionalised care is provided for in Part XI. **Other relevant provisions:** Penal Code; Anti-Trafficking in Persons Act (2008); Law on Guardianship (1963); National Action Plan for Prevention and Eradication of Violence against Women and Children (2001–2015); National Costed Plan of Action for Most Vulnerable Children II (2013–2017) (NCPA II) (which categorises those living and working on the streets as among the most vulnerable children in Tanzania); National Action Plan for the Elimination of Child Labour (2009–2015).

UGANDA: Children Amendment Act (2016): This is explicit in its provisions for the protection of children with regard to, inter alia, guardianship, inter-country adoption, and corporal punishment. Clause 4 of the Act provides comprehensively for the full rights of the child. Among other things, children have the right to express their opinions; to birth registration; to access to information that parents or guardians deem necessary for the child's growth and well-being; and to property inheritance. Clause 7 protects children from harmful customary practices, such as early marriage and female genital mutilation, and prescribes penalties for offenders, while Clause 8 protects them from harmful employment. Clause 10 protects children from violence and provides a right to access child protection services. **Other relevant laws:** Prevention of Trafficking in Persons Act (2009); Adoption of Children Rules; National Council for Children Act; Penal Code (Amendment) Act (2007). The latter prohibits all forms of sale or trafficking in children.

NORTH AFRICA

ALGERIA: Child Protection Law (2015): Article 2 makes provision for different kinds of children in need of care and protection, who are termed 'children in danger'. Examples include a child who is a refugee, a victim of sexual exploitation, or a victim of armed conflict. Article 6 sets out the responsibility of the state to protect the rights of the child in situations of emergency, disaster, and war or armed conflict. **Other relevant laws:** Ordinance No. 72-03 of 1972: Protection of Children and Young Persons and Children in Situations of Emergency; Ordinance No. 75-64 1975: Institutions and Services to Protect Children and Young Persons; Algeria Criminal Code (1966); Penal Code Amendment (2016).

EGYPT: Child Law (No.12 of 1996) Amended in 2008/2016/2020: This deals comprehensively with children in need of care and protection. Article 3 protects children from all forms of harm, including sexual abuse, and states that the best interests of the child shall be a primary consideration in all decisions. Article 4 provides for kinship care; for the right of children to know their paternal and maternal lineage; and for the state to support children deprived of family care with alternative care. Adoption is prohibited. Article 5 accords the child the right to a name and, moreover, to a name without degrading connotations. Article 14 provides for registration of the child within 15 days of birth; Article 7, for state support for children in difficult situations, including conflict; and Article 20, for protection of abandoned children. Chapter 2 deals explicitly with alternative care, stressing the importance of caring for children in natural family environments. Article 48 provides for institutional care for children deprived of family care, and enables youth older than 18 who may be in institutions to remain there until they graduate. Article 49 makes provision for monthly grants to orphans, children in female-headed households, children of divorced parents, those from families that have broken down, and those whose parents are imprisoned. Article 94 concerns children who have infringed the penal law. No child under 12 is subjected to criminal responsibilities. Articles 97–99 establish child protection committees for the protection of all children in difficult situations. Articles 107–108 relate to children placed in institutions through the child



court system. Articles 121–143 deal with child courts, the protection of children in need of care and protection, and children in conflict with the law.

Other relevant legal provisions: *Egypt's National Plan for Children 2018–2030* contains several targets regarding CWPC. The Plan was formulated by the National Council for Childhood and Motherhood through cooperation between government departments, international organisations, and CSOs.⁷³ The stakeholders are developing an alternative means of taking care of CWPC that entails supporting a family system that provides a safe environment for the child.⁷⁴ Additionally, through the Ministry of Social Solidarity and the Ministry of Education, the National Plan is providing an educational environment in juvenile institutions for CWPC to enable them to develop skills.⁷⁵ Also relevant is the *National Action Plan for Combatting Worst Forms of Child Labour in Egypt and Supporting Family (2018–2025)*.

LIBYA: Child Protection Act (No. 5 of 1997): Article 12 led to the establishment of the Higher Committee for Children, the national authority in charge of implementing the UNCRC. Article 15 protects children from child-labour abuse, while Article 9 protects children born out of wedlock and those with disabilities. Chapter 3 specifies parental rights and responsibilities; Chapter 5 concerns the children's court; and Chapter 9 makes explicit provision for children in need of care and protection. Such children include those who are abandoned or orphaned; display behaviour that cannot be controlled by a parent or caregiver; live on the streets; abuse substances; or have been exploited or neglected. The Act also specifies the conditions necessary for a child to be placed in, and removed from, temporary safe care, with the child's best interests being the determining factor in any such decisions. Libya does not have a comprehensive policy that deals explicitly with CWPC. **Other relevant laws:** Child Protection and Welfare Ordinance of 1991 (through which Libya integrated the best-interests principle into domestic law); Juvenile and Homeless Persons Law of 1955; Penal Code (Law No. 48 of 1956) (which provides that children can be held criminally responsible for all offences from the age of 14, depending on their capacities); Law on the Situation of Minors (No. 17 of 1992); Child Protection Law (No. 5 of 1997). Section 10 of the latter prohibits the employment of children in any work unless for an apprenticeship and based on their wishes.

MAURITANIA: Penal Code (1983): Chapter 1 provides for crimes against children. Prison sentences and fines are indicated for each criminal offence; however, the Penal Code has to be reviewed to align it with both the Constitution and other laws related to children. **Other relevant legal provisions:** Law on the Judicial Protection of Children (2005); National Policy on Child Development; Labour Code (2004). The *Law on the Judicial Protection of Children (2005)* sets out criminal procedures for matters related to children (persons under 18). It sets the age of criminal responsibility at 7 years and prohibits incarceration of children aged 7–15 years. Article 42 criminalises the act of employing a child as a beggar and prohibits the guardians of children from enabling other persons to employ a child as a beggar. Article 60 criminalises the exploitation of minors through unpaid services or any form of compensation below the actual value of the work done. Articles 70–76 provide for matters related to the child and family, including failure to pay benefits due to a child; custody issues in the event of marital breakdown; and withholding children from their legal guardians. **Criminalization of Slavery and Slavery Practices (2015):** Article 13 provides for the imprisonment of any person who deprives the child of access to education and forces the child into slavery. This is punishable by five to 10 years' imprisonment and a fine of 500,000 to 7 million *ouguiyas*. Article 3 provides for the placement of a child. It specifies that handing over of a child, by either or both of his or her natural parents or by his or her guardian, to another person, whether for reward or not, is viewed as exploitation of the child or young person or his or her labour.

73 Gale C (2021). The National Child Protection System and Alternative Child Care in Egypt. Available at: <https://bit.ly/3JFgydw>

74 Ibid.

75 Ibid.

MOROCCO: Code of the Family (2004): It recognises the best interests of the child as a basic principle. The Code establishes that it is up to the state to take the necessary measures to ensure the protection of children and guarantee that their rights are respected in conformity with the law. **Penal Code (1962):** It is explicit about the rights of every child. These are enshrined in Articles 54 and 510, which highlight the duty of parents and custodial parents to protect and advance the right of the child to develop. Articles 408–411 of the Penal Code are clear on the punishments for ill-treatment and abuse of children. It is emphasised that any form of violence which is punishable when committed against adults is equally punishable when committed against children. The Code also provides punishments for child abandonment; however, there is no punishment if the abandonment occurred in a situation where there are people who agreed to take care of the child. Articles 467–2 criminalise forced child labour and prescribe penalties of one to three years' imprisonment. Article 475 states that whoever 'abducts or deceives' a minor, without using violence, threats or fraud, can escape prosecution and imprisonment if (i) the abductor marries the victim, and (ii) those persons who have a right to request annulment of the marriage do not file a complaint. The Penal Code does not deal explicitly and comprehensively with CWPC.

TUNISIA: Penal Code (2005): Article 227 criminalises the sexual abuse of children, imposing the death penalty on those who sexually abuse children under the age of 10. Article 224 provides for the punishment of anyone who abuses a child under his or her care: offenders are given a sentence of five years or a fine of 120 *dinars*. The country does not have a policy that deals comprehensively with issues to do with CWPC. **Other relevant laws: Family Law:** This emphasises that the state and family should ensure the good upbringing of children as well as manage children's affairs, including education, travel, and financial transactions. The **Labour Code** sets the minimum age of employment at 16, with some exceptions. The **Child Protection Code** outlaws children's participation in war or armed conflict and other harmful practices. It sets the age of voluntary military service at 18.

SAHRAWI ARAB DEMOCRATIC REPUBLIC: Act No. 04/02 dated 3 July 2004 on the Juvenile Law: No additional information about this law is documented for public use.

CENTRAL AFRICA

CONGO REPUBLIC: Law on Child Protection (2010): It builds on previous commitments to international conventions and affords a strong legal basis for the protection of children across many domains. The Law prohibits, and imposes significant punishments for, various forms of child abuse and exploitation, including the recruitment of children into armed forces; the worst forms of child labour; arbitrary arrest; rape and sexual violence; and torture. It also provides strong protection to children in conflict with the law. The Law specifies penalties for the abduction of persons under 18 independently of trafficking, but no penalties are prescribed specifically for the trafficking of persons for commercial sexual exploitation or child domestic work. Although the Constitution provides that children receive free and compulsory education until the age 16, parents may be required to pay for books, uniforms, and school fees, all of which may limit children's access to education. **Other relevant policies:** The Congo Republic has no policies that deal specifically with the rights of CWPC.

GABON: Gabon has no legislation or other laws that explicitly articulate the rights of children. However, it does have other legal provisions with implications for CWPC. These include the **Law to Control Child Trafficking (2004):** As its title indicates, the Law serves to combat child trafficking. **Penal Code (1963):** Article 235 punishes perpetrators of violence against children under 15 years of age with imprisonment of one to five years. It also provides, in Article 264, for the forced marriage of girls under the age of 15 to be punished by a prison sentence of one to five years. **Nationality Law (1998):** This provides the basis for the legal framework on nationality, and favours children. The Law does not distinguish between people; therefore,



anyone may acquire Gabonese nationality as their nationality of origin if they were born in the country. The Law also provides that nationality may be acquired after birth through marriage, adoption, reintegration, or naturalisation. ***Law on Education of Persons with Disability (2004)***: It seeks to strengthen policies and programmes for integrating children with disabilities into mainstream education, to train teachers, and to make schools more accessible to such children.

CAMEROON: Cameroon has no specific legislation or other laws that frame the rights of children. However, it does have legal provisions with implications for CWPC, among them the ***Criminal Law***: This seeks to protect the interests of the child. Protection of the child is warranted by the fact of the child's immaturity and consequent vulnerability to exploitation. ***Law on the Fight Against Trafficking (2005)***: Chapter 1 makes general provisions in the fight against child trafficking and slavery. ***Law Related to Child Labour***: This sets the minimum age of employment at 14. Thanks to the Law, Cameroon has made a moderate advance in efforts to eliminate the worst forms of child labour. However, gaps in the operations of enforcement agencies may hinder adequate enforcement of the country's child labour laws.

DEMOCRATIC REPUBLIC OF THE CONGO: ***Law on Child Protection (2009)***: Article 3 states that the provisions of this law apply without discrimination to any child living in the national territory. Article 4 guarantees that all children are equal before the law and have the right to equal protection. Article 5 prohibits any discriminatory act against children. Article 6 explicitly recognises that the best interests of the child are a primary concern in all decisions concerning him or her. Under Article 13, every child has the right to life; under Article 14, the right to an identity from birth; under Article 17, the right to a family environment; under Article 21, the right to health; and under Article 28, the right to information. As per Article 34, a child for whom one or both parents is absent, in detention, in exile, imprisoned, expelled, or dead, has the right to essential information about the whereabouts of the member or members of his or her family. Article 37 provides that the child has the right to be protected against unlawful removal and/or detention abroad perpetrated by a parent or third party. Under Article 38, every child has the right to education. Article 42 spells out that children with disabilities have the right to protection, specific medical care, education, training, rehabilitation, and recreational activities, as well as preparation for employment, so that they may lead a full, decent life. Furthermore, a child may not be employed before the age of 16 (Article 50), the worst forms of child labour are prohibited (Article 53), and children are protected against all forms of exploitation and violence (Articles 57 and 58).

Other relevant laws: ***Labour Code (2002)***: The DRC has ratified all key international conventions on child labour. Further to this, it has instituted laws and regulations related to child labour. However, gaps in the legal framework militate against protecting children adequately from child labour. ***Family Code***: Article 352 sets the age of marriage at 18 for men and 15 for women. Concerning 'emancipated' children, Article 357 provides that '[a] child, even if emancipated, who has not attained the age required for marriage may not contract marriage without the consent of its father and mother'. ***Penal Code Amendment on Sexual Offences (2006)***: By and large, this takes into account the protection of the most vulnerable, in particular child victims of sexual violence. The Code explicitly seeks to bring Congolese law on sexual violence into alignment with international standards. It raises the age of minority from 14 to 18 years, and, in Article 174(i), prohibits the trafficking and exploitation of children for sexual purposes.

CHAD: The country does not have an explicit law on child protection or CWPC, but it has other relevant laws. ***Labour Law***: This prohibits forced or compulsory labour, including among children. Article 52 stipulates that children may not be employed in any profession whatsoever before the age of 14 and can be hired only with the consent of their legal representative. Article 206 prohibits night work by persons under the age of 18. ***Penal Code***: This provides guarantees for the proper administration of justice for minors, such as immunity from

criminal responsibility for minors under 13 years. It penalises the marriage of girls under the age of 13. **Anti-trafficking Law 006/PR/18**: Chad does not fully meet the minimum standards for the elimination of trafficking, but is making significant efforts to do so. Law 006/PR/2018 on Combatting Trafficking in Persons criminalises sex trafficking and labour trafficking.

CENTRAL AFRICAN REPUBLIC: There is no explicit law on the rights and protection of CWPC, but other relevant laws make provision for child protection. **Law on the Promotion and Protection of Persons with Disabilities (2000)**: Article 26 provides for children with disabilities to be educated in ordinary schools or centres of specialised education. Article 33 guarantees support for education and vocational training for young people with disabilities. **Labour Code, 2009**: This prohibits the employment of children under 14 years of age. However, the Ministry of Labour has not enforced the provision and child labour is common in many sectors of the economy, especially in rural areas. The Labour Code does not define the worst forms of child labour. **Penal Code (2010)**: Chapter VII makes provisions for crimes and offences against children.

EQUATORIAL GUINEA: There is no explicit law on the rights and protection of CWPC. **Other relevant laws**: **Law on the Smuggling of Migrants and Trafficking in Persons (2004)**: The Law criminalises labour and sex trafficking, and prescribes penalties of 10 to 15 years' imprisonment. With that having been noted, the Government of Equatorial Guinea does not fully meet the minimum standards for the elimination of trafficking and is not making significant efforts to do so.

SÃO TOMÉ AND PRÍNCIPE: There is no explicit law on the rights and protection of CWPC. **Other relevant laws** include the **Penal Code (2012)** and **Family Law (1997)**. The **Civil Code** provides for the registration of the child upon birth, as well as for adoption. Under the **Family Act**, orphaned and abandoned children have the right to special protection from the state and society. In terms of the Penal Code, children under 16 years of age do not have criminal responsibility. The **Child Labour Act** prohibits the worst forms of child labour.

6.5 REGIONAL OVERVIEW OF LAWS

As the previous section indicates, the majority of countries in Africa have Laws, Acts and Codes that speak directly to the rights and protection of children. It is also noted some have current and revised versions of these documents, or ones under review. Countries with recent laws from which others may learn include:

- Benin: Children's Code (2015);
- Central African Republic: Child Protection Code (2020);
- Ghana: Children's Act 560 of 1998 (as amended, 2019) and Juvenile Justice Act (2003) (as amended, 2019);
- Namibia: Child Care and Protection Act 6 of 2015;
- South Africa: Children's Act 37 of 2005 (as amended, 2016);
- Zambia: Draft Children's Code Bill (tabled for Parliament); and
- Zimbabwe: Children's Act Cap 5:06 (currently under revision)

However, other countries do not have Laws, Acts and Codes that speak to children in general. These include Côte d'Ivoire, Equatorial Guinea, Eritrea, Ethiopia, Guinea-Bissau, Morocco, Niger, and the Sahrawi Arab Democratic Republic.



The discussion below presents a region-by-region distillation of the results to emerge from the study.

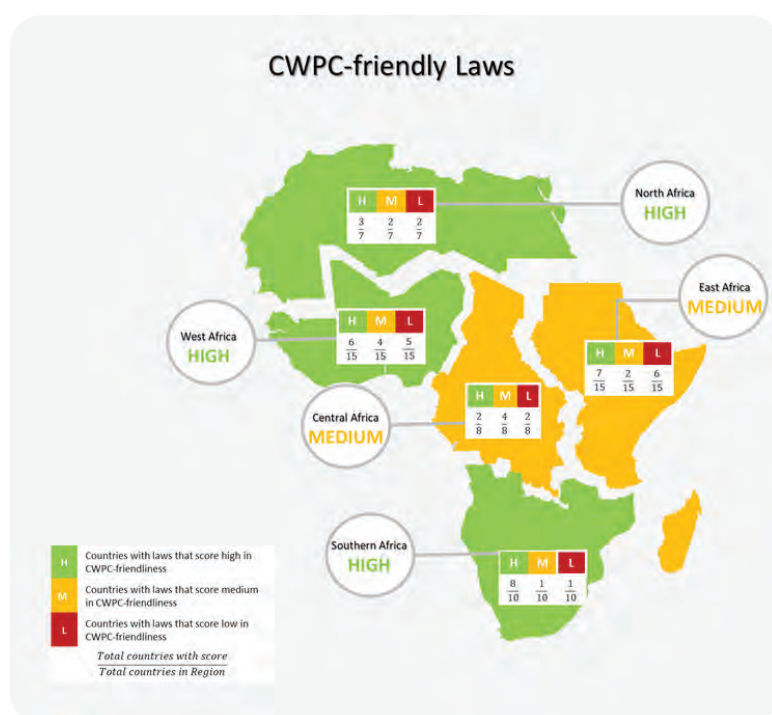


Figure 7: Responsiveness of laws in Africa to CWPC issues

- **Southern Africa:** The majority of countries have laws that are explicit on child rights and CWPC and are inclusive of child protection. Child-rights and CWPC issues covered in the laws include the best interests of the child, the bill of rights of children, options of care, children's care systems, institutionalisation, abandoned children, trafficked children, children in kinship care, and children on the move.
- **West Africa:** Most countries have Children's Acts, the majority of which have an explicit focus on CWPC and address, among other issues, the principle of the best interests of the child, parental responsibilities, alternative care options, registration of children in need of care and support, and children's court systems.
- **East Africa:** The majority of countries have explicit laws on issues relating to children in need of care and protection. Such laws include Children's Acts as well as Penal Codes. The laws engage comprehensively with matters such as the rights to a name, birth registration, and a family irrespective of whether a child is born out of wedlock. Most laws also provide for the protection of children from abuses related to witchcraft, and good number of them protect the child from participation or recruitment in armed conflict. Overall, the laws make provision for numerous issues affecting CWPC, such as children's courts, adoption, protection from abusive labour, and alternative care, including temporary care in institutions.
- **North Africa:** Laws in the region address key issues such as the best interests of the child, protection of children from sexual abuse, protection of children born out of wedlock, protection of children from armed conflict, and protection of children from child labour as well as abuses related to witchcraft.
- **Central Africa:** Two countries (the Congo Republic and DRC) have legal provisions that

explicitly address issues to do with CWPC. However, for most countries in the region, this seems not to be the case.

6.6 CHILD-SENSITIVENESS OF POLICIES IN AFRICA

SOUTHERN AFRICA

- **ANGOLA:** No explicit policy for the rights and protection of CWPC.
- **BOTSWANA:** No explicit policy for the rights and protection of CWPC.
- **ESWATINI:** No explicit policy for the rights and protection of CWPC.
- **LESOTHO:** No explicit policy for the rights and protection of CWPC.
- **MALAWI:** No explicit policy for the rights and protection of CWPC.
- **MOZAMBIQUE:** No explicit policy for the rights and protection of CWPC.
- **NAMIBIA:** No explicit policy for the rights and protection of CWPC.
- **SOUTH AFRICA: *National Child Care and Protection Policy (2019)*:** The Policy is drawn mainly from the Children's Act and provides the overarching framework for addressing children's issues. Chapter 4 details key matters concerning children in need of care. The Policy emphasises the importance of a collective national duty to care for disadvantaged children and provide support for such care. In this regard, it recognises that some caregivers, parents and families cannot fulfil their duties without support. The Policy makes provision for kinship care of orphaned or abandoned children, including with additional state support. It notes the growing incidence of youth- and child-headed households and recognises that, while not the best option, they are legitimate options of care that may serve as temporary care homes while alternatives are being arranged.
- **ZAMBIA: *National Child Policy (2015)*:** It provides guidance and institutional frameworks through which to secure children's protection. The Policy seeks to harmonise national legislation with the UNCRC as well as consolidate all existing and proposed legislation about children into a single comprehensive statute. It combats child trafficking, abduction, and all forms of abuse.
- **ZIMBABWE: *National Orphan Care Policy (1999)*:** Zimbabwe does not have an all-embracing children's policy; however, it does have a national orphan care policy.

WEST AFRICA

- **BENIN:** No explicit policy for the rights and protection of CWPC.
- **BURKINA FASO:** No explicit policy for the rights and protection of CWPC.



- **CAPE VERDE:** No explicit policy for the rights and protection of CWPC.
- **THE GAMBIA:** No explicit policy for the rights and protection of CWPC.
- **GHANA:** *Child and Family Welfare Policy (2014):* Its guiding principles are in line with the UNCRC and ACRWC. Strategies for implementation of the policy include strengthening community structures, early intervention through social protection, improved child and family welfare services, and alternative care when the child's family is not an option. Objective 2 covers regular coordination and improved information and data management. Objective 3 relates to the empowerment of children and young people as well as families through social dialogue and change. The policy also emphasises the role of NGOs in the care of children. *National Plan of Action for the Elimination of Worst Forms of Child Labour (2017–2021):* It outlines the plan of action for the reduction of the worst forms of child labour. *National Strategic Framework to End Child Marriages in Ghana 2017–2026 and its Operational, Monitoring and Evaluation Plan (2020–2021):* This provides a national strategic framework and costed operational plan for ending child marriage by 2030. *Strategic Plan to Address Adolescent Pregnancies in Ghana (2018–2022):* It provides guidelines for addressing adolescent pregnancy and reproductive health-related challenges and for providing adolescents, especially girls, with appropriate information, knowledge, skills and services to protect them from unplanned pregnancies.
- **GUINEA:** *National Policy for the Promotion of the Rights and Welfare of the Child (2015):* This included a three-year action plan from 2017 to 2019. The Committee recommended that the state allocate adequate human, technical, and financial resources to the National Directorate for Children to ensure that it could function effectively.
- **GUINEA-BISSAU:** No explicit policy for the rights and protection of CWPC.
- **IVORY COAST:** No explicit policy for the rights and protection of CWPC.
- **LIBERIA:** *National Social Welfare Policy and Action Plan (2012):* This upholds the importance of parental responsibility for children living within the family environment, and contains provisions on how the government can support parents and families to prevent unnecessary family separation.
- **MALI:** No explicit policy for the rights and protection of CWPC.
- **NIGER:** No explicit policy for the rights and protection of CWPC.
- **NIGERIA:** No explicit policy for the rights and protection of CWPC.
- **SENEGAL:** Senegal has no specific policy that frames the rights of children.
- **SIERRA LEONE:** No explicit policy for the rights and protection of CWPC.
- **TOGO:** *National Child Protection Policy (2008):* The Policy's overall aim is the establishment of a national system of protection for all children, especially the most vulnerable and marginalised, to ensure that they enjoy the same rights and protection against negligence and all forms of abuse, violence and exploitation. Interim objectives are reducing the number of children at risk, improving the care and protection of children

at risk, and combatting all forms of child abuse. The Policy targets any child at risk who faces a threat to survival or development due to a difficult family or personal situation or a situation of abuse (such as neglect, violence, economic exploitation, or the worst forms of child labour).

EAST AFRICA

- **BURUNDI:** *National Orphans and Other Vulnerable Children (OVC) Policy (2008):* It focuses on HIV/AIDS prevention for young people, the protection of OVC, and prevention of mother-to-child infection. It also provides for assistance to OVC. *National Child Protection Policy (2012–2016):* This policy takes its strategic direction from challenges identified in an evaluation of the child protection system. Its focus areas are (i) laws, policies, standards and regulations; (ii) cooperation, coordination and collaboration; and (iii) strengthening the technical and institutional capacity of stakeholders for prevention and response to child protection issues.
- **COMOROS:** No explicit policy for the rights and protection of CWPC.
- **DJIBOUTI:** No explicit policy for the rights and protection of CWPC.
- **ERITREA:** No explicit policy for the rights and protection of CWPC.
- **ETHIOPIA:** *National Children's Policy (2017):* The Policy aims to advance children's rights and enhance the family and community's role in the child's development. It seeks to integrate the efforts of all stakeholders, including the family, community, government, NGOs, and regional and international organisations. The objective is to create a conducive environment for the promotion and protection of children's rights and welfare to enable children to develop to their full potential and become responsible citizens. The Policy has three pillars: children's growth and development; prevention of and protection from social, economic and political hardships; and rehabilitation, care and support for children in difficult circumstances.
- **KENYA:** *National Children Policy (2010):* The Policy provides a framework for channelling related policies and legislation towards the advancement of children's rights. It highlights the need to support CWPC in its sections 5.14 and 5.15, which deal, respectively, with 'orphans and vulnerable children' and 'children under community care, adoption, foster care and charitable children's institutions'. The Policy seeks to protect children in these alternative care arrangements from abuse and exploitation. In addition, it promotes the domestication of the Hague Convention on Inter-country Adoption, and aims to strengthen community structures that care for OVCs and support parents and caregivers. Another policy relevant to CWPC is the *National Action Plan for Children (2015–2022)*.
- **MADAGASCAR:** No explicit policy for the rights and protection of CWPC.
- **MAURITIUS:** No explicit policy for the rights and protection of CWPC.
- **RWANDA:** *Integrated Child Policy and National Strategic Plan for Orphans and Vulnerable Children (2007):* The National Strategic Plan led to the establishment of the Imbuto Foundation, which promotes kinship and informal foster care and seeks to build a network of caregivers to address challenges facing children, especially CWPC. As



regards the Integrated Child Policy, its adoption has seen meaningful progress in health, education, and child protection. *Other policies with implications for CWPC* include the National Strategic Plan on Child Survival (2008–2012) and Strategic Plan for the Integrated Child Rights Policy (2011).

- **SEYCHELLES:** No explicit policy for the rights and protection of CWPC.
- **SOMALIA:** No explicit policy for the rights and protection of CWPC.
- **SOUTH SUDAN:** No explicit policy for the rights and protection of CWPC.
- **SUDAN:** No explicit policy for the rights and protection of CWPC.
- **TANZANIA: *Child Development Policy (2008)*:** Chapter 24 provides for the protection of children who are, among other things, orphaned, abandoned, neglected, or born out of wedlock.
- **UGANDA: *National Child Policy (2020)*:** The Policy is strong in its provision for the protection of children. Chapter 2.3 states that they should be protected against abuse, neglect, violence and exploitation, and that they have the right to family care and birth registration. Among other things, the Policy engages with orphanhood, makes provisions in regard to a children's justice system, and recognises the right of children on the streets to protection by the state.

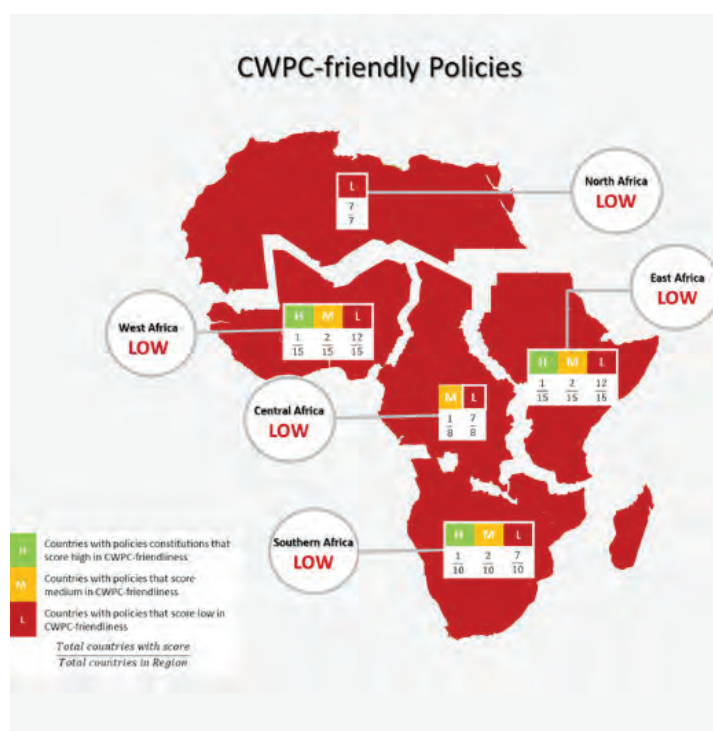
NORTH AFRICA

- **ALGERIA:** No explicit policy for the rights and protection of CWPC.
- **EGYPT:** No explicit policy for the rights and protection of CWPC.
- **LIBYA:** No explicit policy for the rights and protection of CWPC.
- **MAURITANIA:** No explicit policy for the rights and protection of CWPC.
- **MOROCCO:** No explicit policy for the rights and protection of CWPC.
- **TUNISIA:** No explicit policy for the rights and protection of CWPC.
- **SAHRAWI ARAB DEMOCRATIC REPUBLIC:** No explicit policy for the rights and protection of CWPC.

CENTRAL AFRICA

- **CONGO REPUBLIC:** No explicit policy for the rights and protection of CWPC.
- **GABON:** No explicit policy for the rights and protection of CWPC.
- **CAMEROON:** No explicit policy for the rights and protection of CWPC.
- **DEMOCRATIC REPUBLIC OF THE CONGO:** No explicit policy for the rights and protection of CWPC.
- **CHAD:** No explicit policy for the rights and protection of CWPC.
- **CENTRAL AFRICAN REPUBLIC:** No explicit policy for the rights and protection of CWPC.
- **EQUATORIAL GUINEA:** No explicit policy for the rights and protection of CWPC.
- **SÃO TOMÉ AND PRÍNCIPE:** No explicit policy for the rights and protection of CWPC.

6.7 REGIONAL OVERVIEW OF POLICIES



The analysis finds that in **Southern Africa**, most State Parties do not have comprehensive policies to address CWPC issues.

In **West Africa**, the majority of countries lack explicit policies in this regard.

East Africa has significant gaps in terms of explicit policies for protecting CWPC. This highlights the urgent need to develop relevant child protection policies that are aligned with existing constitutions and laws.

Despite **North Africa's** good practices in embracing CWPC in constitutions and laws, a glaring gap is the absence of explicit child protection policies for CWPC. Such policies are critical for the sake of implementing key provisions in national constitutions

and laws.

Figure 8: Responsiveness of policies in Africa to CWPC issues

As with other regions, **Central Africa** faces a major challenge given the absence of explicit policies for child protection or CWPC.

6.8 CONTINENTAL OVERVIEW OF NORMATIVE AND LEGAL FRAMEWORKS FOR CWPC

The hierarchy of the normative framework varies by region. In most countries in the central and northern parts of Africa, legal frameworks draw on national constitutions to generate policies that are then given effect in laws. By contrast, in southern and eastern African, policies are established largely on the basis of laws. This may be attributable to the countries' differences in colonial history, as a result of which they adopted differing legal systems.



Figure 9: The legal hierarchy in Africa's normative and legal frameworks

The analysis of normative frameworks shows, in constitutions, laws and policies CWPC are generally subsumed within the broad concept of 'vulnerable children'.

To accommodate CWPC more explicitly, State Parties therefore need to make a deliberate effort to incorporate the constituent categories of CWPC (abandoned children; children on the street; child-headed households; unaccompanied minors; trafficked children; and children in marriages) into their normative frameworks.

This would provide a strong basis for programmatic responses to the challenges facing CWPC, particularly given that there is often a disconnect between the development of a normative framework, on the one hand, and its implementation, on the other. Countries should go beyond policies to formulate explicit strategies and action plans that map out mechanisms for responding to the various categories of CWPC.

What are the good practices? Countries that have done well are those that have developed explicit laws on CWPC or categories of CWPC. Often laws are comprehensive, covering many factors that relate to CWPC. Across the regions, the following are countries with explicit laws regarding CWPC (see Table 7).

Table 7: African countries with laws explicitly addressing CWPC issues

REGIONS	COUNTRIES WITH EXPLICIT LAWS ADDRESSING CWPC ISSUES
Central	Chad, Congo Republic, DRC, Gabon
East	Kenya, Madagascar, Rwanda, Seychelles, South Sudan, Sudan, Tanzania, Uganda
North	Algeria, Egypt, Libya
Southern	Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, South Africa, Zimbabwe
West	Benin, The Gambia, Ghana, Guinea, Liberia, Mali, Niger, Nigeria, Sierra Leone, Togo

There is a need for legal provision for the *child court system*. Child courts allow for CWPC issues to be dealt with through the judiciary, and also present a further opportunity for the documentation of CWPC.

What is scalable? The development of laws specifically for CWPC is practice which is scalable across the regions. The existence of such laws would create opportunities for the development of supportive policies and guidance for responding to CWPC.

What are the main gaps? Across the continent and regions, very few countries have developed explicit policies, strategies and costed action plans that can drive the implementation of good laws on CWPC. Such policies, strategies and costed action plans can help stakeholders in the child protection sector operationalise the provisions on CWPC contained in laws.

Key recommendations for effective normative frameworks for CWPC

In the light of the study findings reported in this chapter, the following are key recommendations for the continent, regions, and countries:

- i. As countries review their constitutions, they should consider incorporating provisions on CWPC as contained in the UNCRC and ACRWC. Child protection stakeholders should advocate for this when countries have opportunities to review their constitutions.
- ii. The development of explicit laws for CWPC is recommended for all countries that do not have them in place. The details of the laws should be modelled on the provisions of the UNCRC and ACRWC.
- iii. Child court systems should be considered when developing explicit laws for CWPC. The advantage of these systems is that they enable better handling of child protection issues and stand to improve documentation of the number of CWPC in each country.



6.9 COORDINATION AND OVERSIGHT MECHANISMS

An appropriate coordination mechanism is necessary for effective implementation of the child protection agenda at the national level, where there is a need for clarity on coordination and oversight mechanisms given the broad range of stakeholders involved.

From the study, it is clear that governments have brought together a variety of stakeholders to address the issues of children including CWPC. However, in most cases, coordination and oversight are weak. The implementation of effective coordination and oversight should be led by the ministry responsible for children's services. An example of a best practice is provided by Kenya, which has a robust coordination mechanism (see Figure 10).

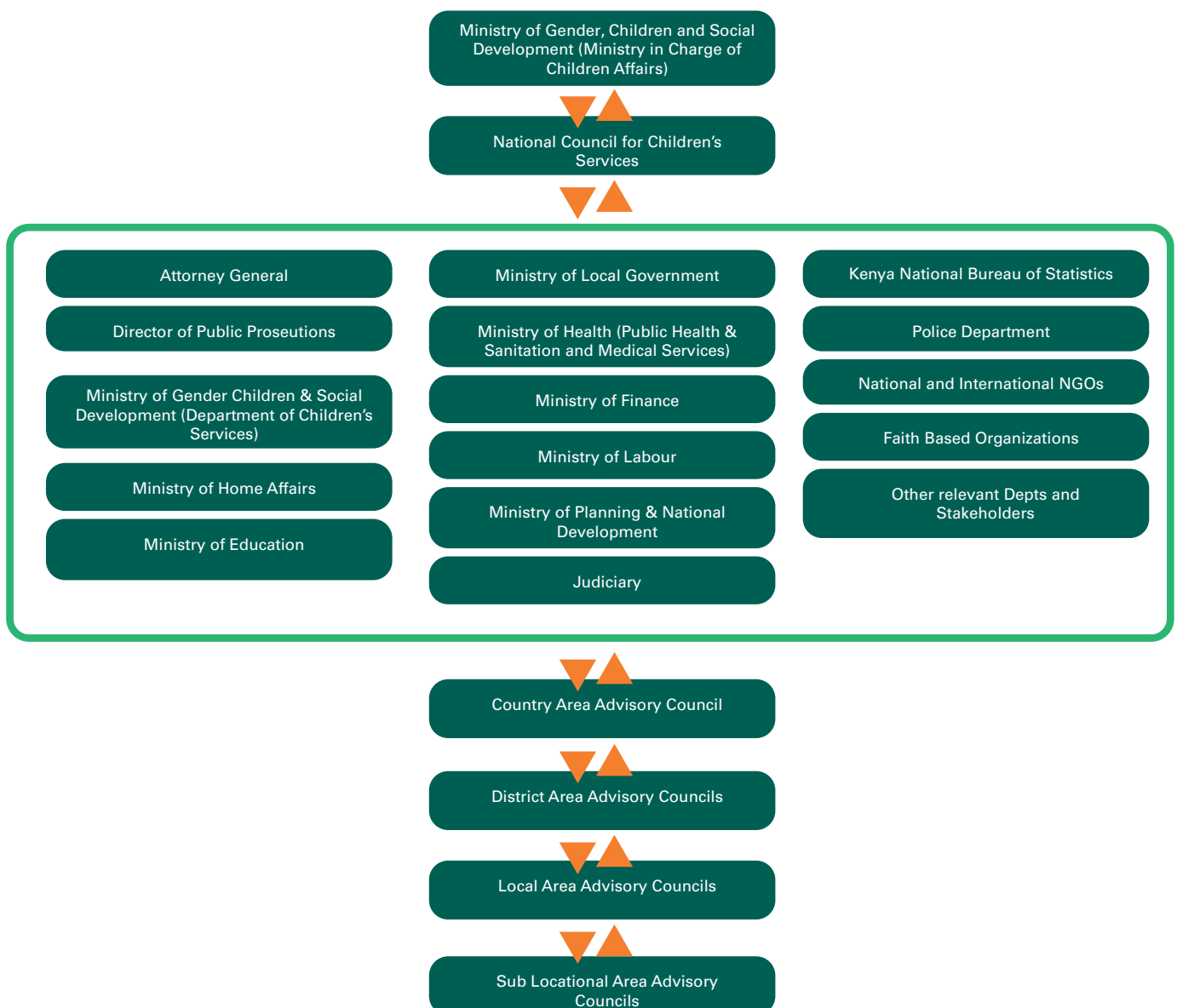


Figure 10: Framework for national child protection in Kenya

Source: National Council for Children's Services (2011). *The Framework for the National Child Protection System for Kenya*. Available at: <https://resourcecentre.savethechildren.net/pdf/framework-national-child-protection-system-kenya-2011.pdf/>

7 PROGRAMMATIC RESPONSES

Programmatic responses to CWPC issues include prevention, protection, reintegration, promotion and participation. Such responses entail a range of integrated case management practices, such as systematic assessment strategies, case planning, treatment, and follow-up. Specific processes are shaped by formal and informal laws, policies and practices. Measures should be taken to ensure the equal access, protection and participation of all children. This applies to formal mechanisms as well as to and informal community mechanisms, which serve as the frontline of protection and allow for practice guidelines to be adapted to the local context.

7.1 APPROACHES TO PROGRAMMATIC RESPONSES

Programmatic responses may take the following forms:

- A protected community equipped with appropriate tools and mechanism.
- A continuum of care providing a range of services from prevention to promotion and protection.
- Reintegration.
- Rehabilitation centres.
- Gatekeeping.

The protected-community approach: In the *Democratic Republic of the Congo*, its Social Protection Thematic Group has adopted the protected-communities approach to 'promote a protective environment for children in adverse circumstances'⁷⁶. The goal of a 'protected community' is to prevent violence, abuse, exploitation and social exclusion. A community is 'protected' with tools and mechanisms adapted to the local reality to prevent abuse and social exclusion and to promote children's rights as well as mitigate risks.

Continuum of care:

- *Zambia* has instituted a continuum of community-based social services for children and women in need of social protection that integrates case management, social work and counselling.
- *Guinea Bissau* utilises an integrated case management approach that functions within a continuum-of-care model at the decentralised level. This approach aims to better coordinate a multisectoral approach to assessment, case planning, intervention and follow-up. Cross-sectoral mechanisms are developed to target vulnerable children and address harmful cultural practices.
- *Senegal's* continuum-of-care model entails three categories of service: prevention, protection and promotion. Minimum standards for the different steps of the reintegration of vulnerable children (including identification, child and family assessment, reintegration, and monitoring) have been developed through a participatory process. Initially aiming to address the issue of street children, Senegal has designed a service delivery system which is integrated and that includes eight steps of service delivery provided by a range of actors: identification of vulnerable children and families; social enquiry (the study of the child); listening to the child; family evaluation; social reintegration; and follow-up and alternative placement, if necessary, inclusive of case management services.



- In **Ethiopia**, the thematic issue of children in street situations has been the basis for creating a continuum-of-care structure that adopts an integrated case management approach and facilitates inter-sectoral child protection coordination.
- In **Malawi**, the strategic use of funding for the HIV/AIDS epidemic, one of the worst in the region, has provided an opportunity for the government to expand the range and reach of basic child protection significantly. Malawi's experience demonstrates how good practices in service delivery aimed at a particularly vulnerable population can be expanded to strengthen the overall system and thereby protect all children through a full continuum of responses.
- In **Swaziland**, a continuum-of-care model is effected through Neighbourhood Care Points of Care Centres, where children access basic services including child protection services. These centres are based on pre-existing structures developed to address HIV/AIDS in communities.

Reintegration of children in family-based or parental care: Reintegration is a process in which children who are in different forms of alternative care, as well as children separated from their families, transition back to a family setting with their immediate or extended family members. Reintegration into the family setting aims to provide children with a more sustainable living environment and better care and protection.

According to the UN Guidelines for the Alternative Care of Children, family reintegration should be complemented with continuous ties of the child in alternative care with their family; participation of the child in the termination of alternative care; deciding and planning reintegration; working closely with professional officials such as social workers; monitoring during and after reintegration; and family strengthening programmes for receiving families. Countries such as Rwanda and Kenya are reintegrating children into families of origin after adequate preparation for the process, using reintegration guidelines and adequate support including transition planning.

Transit and street-children rehabilitation centres: In **Rwanda**, transit and street-children rehabilitation centres are at the heart of street-children family reintegration. This strategy recognises that is important to rehabilitate street children before any family reintegration can occur. On the one hand, due to the physical and emotional damage suffered while on the street, a child living on the streets needs healing and care services. On other hand, because relations between the child and his or her family have been severed, the two parties can live together willingly again only after efforts to address the root causes of resentment and separation by means of family counselling and mediation. Figure 11 depicts the process.

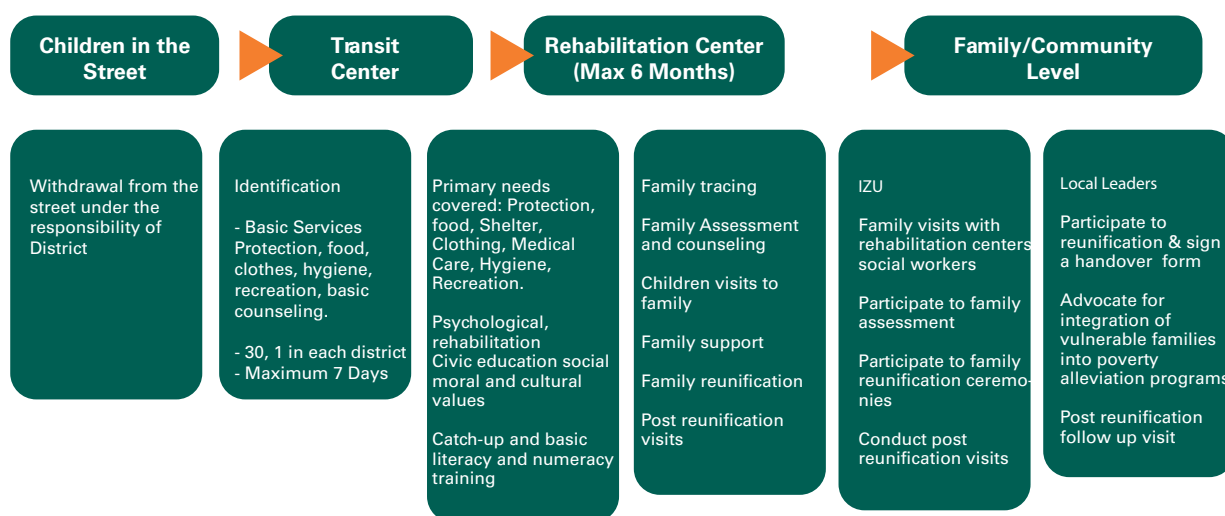


Figure 11: Reintegration process for children living on the street in Rwanda

Source: National Commission for Children (2016). *A Comprehensive Assessment of the Street Children Phenomenon in Rwanda*

Gatekeeping is the development of procedures to screen referrals of children to an alternative care setting, assess the need for placement, and authorise placement based on available options and resources. A robust gatekeeping mechanism helps to ensure that children are admitted to the alternative care system only if all possible means of keeping them with their parents or wider (extended) family have been explored. The requirements are twofold: first, adequate services or community structures to which referrals can be made; secondly, a gatekeeping system that can operate effectively regardless of whether the potential formal care provider is public or private. The necessity and suitability of placements should be reviewed regularly if countries are to avoid the challenges that arise if unwarranted placements are made. Countries such as *Kenya, Malawi, Tanzania and Uganda* are currently implementing gatekeeping mechanisms in collaboration with civil society.

7.2 CARE SYSTEMS REFORM

Care system reform aims to transform the child protection and care system from one orientation to another, in pursuit of an approach to care and protection that better meets the needs of children and their families in accordance with their rights⁷⁷. African countries have challenges ahead of them before they have adequate capacity to address the negative effects of climate change, conflict, harmful cultural practices, and other obstacles to the full realisation of children's rights.

Efforts at care system reform need to focus on ensuring implementation of effective normative frameworks based on international and continental provisions. The reform needs to look at coordination and oversight of national local governance systems; development and operationalisation of effective data management information systems; strengthening governance and support structures; ensuring allocation of adequate resources by duty-bearers to child-protection and social-services delivery; and ensuring the availability of a sufficient and skilled multisectoral workforce. Governments need to have coordinated, organised and accessible child protection case management tools and procedures that inform policy and decisions.

By creating the enabling environment described above, African governments have the responsibility to effectively support policy, ensure availability and regulate the provision of suitable quality care options for children in need. Another key element of care system reform is community-level social and behavioural change geared towards parenting and supporting vulnerable children generally and CWPC in particular.

Actions by governments and other recognised actors to bring about change to social welfare institutions mandated with child welfare and protection – as well as to develop practices to improve outcomes for children who are especially vulnerable to risk, such as those living outside of family care – are referred to as child-care reform⁷⁸.

Recognising the region's child welfare issues, several countries have started reform initiatives to better respond to children at risk of separation from their parents and to children who have already been removed from their families. A 2009 conference in Africa

77 Better Care Network and UNICEF (2015). The President's Emergency Plan for AIDS Relief (PEPFAR) and the United States Agency for International Development (USAID): An Analysis of Child-Care Reform in Three African Countries – Summary of Key Findings. Available at: <https://bit.ly/44pflFI>

78 Ibid.



on family-based care demonstrated a widespread acknowledgement of the need to shift towards ensuring that children are cared for by their families across the continent⁷⁹. Notable care reform work has been documented in *Ghana, Liberia and Rwanda*.⁸⁰ Ghana began the reform process in 2007, and Liberia, in 2009. A national directive, strategy, or policy focusing on child-care reform was issued in Ghana, Liberia and Rwanda, along with key benchmarks and calls to action. In addition, all of the three State Parties have a designated government body to lead the reform effort. Diverse actors, including networks and coalitions, are involved in aspects of the care-reform process at all levels of the system.⁸¹ The countries also have strong child-rights legal and policy frameworks that prioritise family-based care. Family tracing and reintegration of children into families are prioritised in strategies emphasising counselling, mediation, economic empowerment, and family support. *Kenya* has developed national care reform strategies for children with clear objectives aligned with international, regional and national legal and policy frameworks and standards – all of which will help it to shift from a model of care heavily reliant on institutional care.

Promising strategies for care system reform in Africa: A promising example of a care reform strategy in Africa is provided by *Kenya*. A key player in the global movement toward care reform, the Government of Kenya has made care reform one of its priorities and received support for this agenda from both state and non-state actors. As a result, it has undertaken county-level care reform for CWPC from which other State Parties can learn. Kenya's strategy has three pillars, each with management, coordination, and monitoring structures that interact with one another.⁸²

These pillars are:

- ***Prevention of separation and family strengthening:*** This involves support measures and services that strengthen families and prevent children from being separated from their families. The measures and services relate to education, health care, social protection, livelihood support, positive parenting, psychosocial support, day-care facilities, community-based rehabilitation for children with disabilities, employment support, and support for child-headed households.
- ***Alternative care:*** Reform effort around this pillar entails strengthening and expanding family- and community-based alternative care options for children unable to live in parental care. The elements of alternative care include kinship care, kafalah, foster care, guardianship, traditional approaches to care, places of safety and temporary shelter, and effective gatekeeping mechanisms.
- ***Tracing, reintegration and transitioning to family- and community-based care:*** This relates to the safe, sustainable transition of institutionalised as well as unaccompanied and separated children into family- and community-based care. It covers tracing, reintegration, and case management, along with support for leaving care, aftercare, and independent living.

79 Save the Children UK (2009). Keeping Children out of Harmful Institutions: Why We should be Investing in Family-based Care. Available at: <https://bit.ly/3PDp1kW>

80 Better Care Network and UNICEF (2015). The President's Emergency Plan for AIDS Relief (PEPFAR) and the United States Agency for International Development (USAID): An Analysis of Child-Care Reform in Three African Countries – Summary of Key Findings. Available at: <https://bettercarenetwork.org/sites/default/files/PDF>

81 Ibid.

82 Republic of Kenya (2022). National Care Reform Strategy for Children in Kenya (2022-2032). Available at: <https://bit.ly/437jEhg>



Figure 12: Kenya's strategic approach to care system reform

Source: Republic of Kenya (2022). *National Care Reform Strategy for Children in Kenya (2022-2032)*

7.3 GOOD PRACTICES IN CARE SYSTEM REFORM

Global momentum towards care system reform has grown significantly. This is well demonstrated by State Parties such as *Ghana, Kenya, Liberia, Uganda, and Rwanda*, which have issued policies, directives and strategies prioritising care reform, and made progress in implementing them.

- Uganda: Deinstitutionalisation of Orphans and Vulnerable Children in Uganda (DOVCU)***: This project supported efforts by the Ministry of Gender Labour and Social Development to advance the national alternative care framework.⁸³ The DOVCU project was implemented through sub-granting in which a child fund administered funds to its sub-grantee partners.⁸⁴ It aimed to improve the safety and well-being of highly vulnerable children, especially ones without parental care, in 12 districts in Uganda.⁸⁵ In particular, it sought to reduce vulnerability through reunification or placement of OVC in alternative family-based care.⁸⁶ The project was supported by local organisations working with children on the streets.⁸⁷ A key achievement was that, in conjunction with a related project, some 1,610 children have been reunited with their families since 2014. Foster care replacements are approved by an Alternative Care Panel and regulated by the Foster Care Placement Rules contained in Schedule 2 of the Children Act (2014).

83 Mutenyo F et al. (2020). 'Multistage processes of identifying children at risk or out of family care: A case of DOVCU project methods in Uganda.' *Global Social Welfare*, 7(3): 201-213. Available at: <https://bit.ly/3pnlMDO>

84 Ibid.

85 Ibid.

86 Ibid.

87 Ibid.



- **Rwanda: Tubarerere Mu Muryango ('Let's Raise Children in Families')**: By the end of the first phase of this programme, one which aligns well with the country's cultural values in favour of family care, Rwanda achieved a redoubtable 70% reduction in the number of children in institutional care, doing so by facilitating their placement in foster care or reintegration in families.⁸⁸ About 3,000 children were reunited with their families and communities during this phase. Several facets of the programme's strategy contributed to its success, some of which are highlighted below as best-practice learnings for State Parties to consider.
 - **Mass closure of institutions**: Working across Rwanda to close many facilities simultaneously reduced the risk of children being placed in institutional care; it also meant that those running institutions could not close in one district and set up in another.
 - **Mass-media campaigning**: Media campaigning focused on the harm caused by institutional care and the benefits of children growing up in families. The campaign was strengthened by building on cultural values centred on the importance of the family and leveraging a network of church and local leaders as advocates and influencers.
 - **Monitoring remaining institutional care facilities**: Institutions that continued to care for children were closely monitored by social workers to ensure that they did not take in any new children.
 - **Development of emergency foster care**: When attempts were made to place a child in institutional care, emergency foster care was offered as an alternative. Carers could take in children at short notice and look after them whilst assessments were made as to whether the children should return to families or be placed for adoption or longer-term foster care. In total, 150 emergency foster carers were trained during the evaluation period.
 - **Working with teenage parents**: Social workers and psychologists offered counselling to young parents to attempt to avoid child abandonment. The Government of Rwanda was also supporting a campaign to prevent teen pregnancy.
- **Kenya: National Standards for Best Practices for Charitable Children's Institutions (CCI)**: These have been developed in line with the country's CCI regulations of 2005, which stipulate practices that should be followed in CCIs to ensure that caregivers act in the best interests of the child and comply with the UNCRC. The Standards for Best Practices⁸⁹ provide guidelines on, inter alia, the management of CCIs, programming, staffing, admission of children, preparation of child-care plans, documentation of children, exit strategies, risks and hazards, and working with families and communities. Importantly, these guidelines are buttressed by a training manual for use in capacity-building with CCI stakeholders.

Kenya's initiatives above demonstrate compliance with the UN General Assembly's 2019 resolution on the rights of children.⁹⁰ The resolution calls on states to strengthen their child welfare and protection systems and improve care reform efforts. Actions should include increased cross-sectoral collaboration – including between child welfare and health,

88 Better Care Network and UNICEF (2015). An Analysis of Child-Care Reform in Three African Countries: Summary of Key Findings. Available at: <https://bit.ly/44pfLFI>

89 Republic of Kenya (2013). National Standards for Best Practices in Charitable Children's Institutions. Available at: <https://bit.ly/3px1GXC>

90 UN General Assembly (2020). Promotion and Protection of the Rights of Children: Resolution Adopted by the General Assembly 18 December 2019 (RES/74/133). Available at: <https://digitallibrary.un.org/record/3848250?ln=en>

education, and justice sectors – as well as active coordination among all relevant authorities and improved capacity-building programmes for relevant stakeholders.

7.4 SOCIAL PROTECTION PROGRAMMES

7.4.1 CASH TRANSFERS

Most countries in Africa have cash transfer programmes, among them cash transfers to OVC and persons with severe disabilities. However, in countries where these programmes exist, they are still not interwoven with alternative care, which would involve prioritising prevention and reinforcing family-based care. There is evidence as to the benefits of such an approach. For instance, a study in three African countries (Ghana, Rwanda and South Africa) finds that cash transfers ‘prevent family separation and increase reintegration of children’ and ‘enable families to care for children who are not their own’.⁹¹

7.4.2 FAMILY SUPPORT

Some countries have put programmes in place to address the causes of child abandonment and family separation. These include social protection programmes targeting poor families caring for OVC, for elderly persons, and for people with disabilities. Examples are briefly highlighted below:

- **Family-strengthening programmes:** Such programmes seek to empower families to address challenges they face in trying to provide children with adequate support and access to quality basic social services. A family-strengthening programme enhances self-reliance, livelihood skills, and knowledge of the technical aspects of income generation; improves family dynamics; encourages child participation and decision-making; and raises awareness among children and parents alike of children’s rights, safety and security. These programmes help families better ensure access to education for children in their care by increasing the household income they can use to cover the costs of education, nutrition and the like.
- **Parenting-support programmes:** These are programmes for improving parental skills in matters of child development, health, discipline, beliefs and practices.⁹² They aim to improve the parent-child relationship and prevent negative parenting that could lead to children leaving their homes. The support may come in the form of family mediation, child protection, or family welfare services.
- **Educational-support programmes:** Educational support is common in many countries in Africa. Most governments avail their limited resources to target children in need through schemes such as bursaries. Further support is typically provided in the form of school feeding programmes.
- **ECD services:** Several African countries have allocated significant resources to the establishment of ECD centres. Such initiatives address child-neglect concerns.
- **Health-care support services:** Some countries have initiated universal health care services to ensure the survival of parents and their children via life-saving treatments, sexual and reproductive health services, and respite care, among other things.

91 Roelen K (2012). ‘Researching the links between social protection and children’s care.’ Available at: <https://bit.ly/3CTLjaC>

92 UNICEF (2015). Family and Parenting Support: Policy and Provision in a Global Context. Available at: https://www.unicef-irc.org/publications/pdf/01%20family_support_layout_web.pdf



- ***The Takaful and Karama Programme (TKP):*** This is a programme in *Egypt* for protecting the poor through income support.⁹³ ***Takaful*** is a family-income support programme targeting families with children, whereas ***Karama*** is a social inclusion programme that targets the elderly, that is, those 65 years of age and older. However, ***Karama*** also caters for orphans who reside outside of institutions and are under the care of members of their extended families. In addition, children and other targeted groups receive free health insurance via the Takaful and Karama Programme.

93 UNICEF (2019). Reform of Social Protection in Egypt. Available at: <https://bit.ly/3pzsdni>

8 MAPPING ALTERNATIVE CARE OPTIONS FOR CWPC

This chapter describes various options of care found across Africa's five regions as well as at the level of the continent as a whole. An analysis is provided of regional experiences of these options. The chapter ends by presenting views on debates around institutional care and making key recommendations.

8.1 ALTERNATIVE CARE OPTIONS

According to the relevant UN Guidelines,⁹⁴ the alternative care of CWPC should follow several principles:

- It should secure a stable home that meets the child's basic needs and allows for continuous attachment to caregivers.
- Children must be treated with dignity and respect at all times, and neglect and all forms of exploitation must be avoided.
- The removal of a child from the care of a family should be a measure of last resort, temporary, and of the shortest possible duration.
- All decisions about the alternative care of a child should be made in his or her best interests.
- Siblings with existing bonds should not be separated by placement in alternative care unless there are observed risks relating to abuse or there are other justifications for it in the best interests of the child.

These principles provide a baseline against which to consider common options of alternative care that are encountered in Africa (and described below).

8.1.1 KINSHIP CARE

Kinship care is the care of CWPC within their extended family or by close friends or family known to them. It can be formal, where it is regulated by country systems, or informal, where family members assume control of the care of the child. Kinship care is a predominant form of alternative care for disadvantaged children across the continent. In the majority of cases, it is informal. Before arrangements for alternative care or kinship care are agreed upon for the child or the adolescent, there is consensus and mutual agreement among family members (namely, parents or guardians).

Traditional African care of children without parents is largely part of community living and remains mostly undocumented. The African proverb that 'it takes a village to raise a child' is embodied in traditional cultural norms according to which a child belongs to all and an elder is an elder to all. The elders have a natural responsibility to oversee the welfare of all who are younger than them. It is no surprise, then, that for generations the care of children, including those who have lost parental care, has fallen to the community, with either the extended family or other suitable persons within the community not related to the child taking the immediate responsibility for him or her. This often happens in instances where the parents die or are permanently incapacitated, or in the case of single young mothers.⁹⁵

94 UN General Assembly (2010). Guidelines for the Alternative Care of Children (GA A/RES/64/142).

95 UNICEF and International Social Service (2004). 'Improving protection for children without parental care – Kinship care: An issue for international standards.' Available at: <https://bit.ly/3Nz6HXx>



Be that as it may, the dearth of information on informal care makes it difficult to establish the dynamics and outcomes of children who are cared for informally. Even the prevalence of children under this care arrangement is unknown, despite the fact that such care is extremely common throughout Africa. The UN Guidelines indicate that kinship care arrangements which are informal should be formalised under country regulations. Formalisation would make for easier tracking and monitoring of children in kinship care.

Furthermore, the Guidelines highlight the importance of supporting kinship caregivers. Such support could come from qualified professionals to maintain career motivation and improve their capacity to manage the demands of caring for children. For instance, in Namibia, the country's Child Care and Protection Act (Act 3 of 2015) expressly recognises kinship care as a form of alternative care for CWPC.⁹⁶

8.1.2 FOSTER CARE

Foster care is a formalised option of care in which CWPC are placed within a family environment. Foster families are often subject to rigorous selection by authorities, and are sometimes assessed further by police and health officials to gauge their capacity and suitability to work with children separated from their birth families.

The UN Guidelines prescribe that foster parents should encourage the children under their care to maintain ties with their families of origin. Where necessary, mediation of contact between children and birth families should be supervised by professionals. Foster parents should also ensure that children under their care have access to basic needs, including health and education. These parents are expected to receive support from qualified professionals in order to improve their services to children under their care.⁹⁷

In *Uganda*, foster care is supported in legal frameworks, and some CSOs have piloted it on a small scale.⁹⁸ It has been developed successfully for abandoned babies and street-connected children. Foster care of unaccompanied and separated children in Uganda is provided by volunteer foster carers in refugee settlements. One of the key lessons to emerge from this country experience is that it is critical for caseworkers to conduct regular follow-up visits to monitor children in foster care.

8.1.3 KAFALAH CARE

Kafalah care derives from Sharia law. It is often defined as a commitment to voluntarily take care of the education and protection of a child in the same way as a father would look after his own. Under this care option, the new parents provide parental care on a permanent basis. *Egypt* and *Mauritania* are examples of countries that follow the strict application of the *Kafalah* option of care.

Although Article 25 of the ACRWC does not expressly refer to *kafalah* as one of the alternative care options, *kafalah* falls within the scope of this article given that *kafalah* represents a family-based form of family care. *Kafalah* is comparable to long-term foster care. Fostering, unlike adoption, is recognised and permitted under Islam as an alternative care form. Similarly, kinship care is like *kafalah*, in that both promote cultural and religious continuity in children's upbringing.⁹⁹

⁹⁶ Child Care and Protection (Act 3 of 2015) (GG 5744) brought into force on 30 January 2019 by GN 4/2019 (GG 6829).

⁹⁷ RELAF and UNICEF (2011). Application of the UN Guidelines for the Alternative Care of Children: A Guide for Practitioners. Available at: <https://bit.ly/44pGRw2>

⁹⁸ UNICEF and Government of Uganda (2022). 'Care reform in Uganda: Virtual study tour.' Available at: <https://bit.ly/3JESOpL>

⁹⁹ Assim U and Sloth-Nielson J (2014). 'Islamic Kafalah as an alternative care option for children deprived of a family environment.' African Human Rights Journal. 14: 322-345. Available at: <https://bit.ly/447m94t>

8.1.4 RESIDENTIAL CARE

Residential care encompasses a wide range of settings from emergency shelters and small-group homes to large residential facilities. According to the UN Guidelines, the use of residential care should be limited to cases where such a setting is appropriate, necessary, and in the child's best interests. The Guidelines regard residential care as a necessary component in the range of alternative care options. For example, it can take the form of a small-group setting where trained staff provide therapeutic care or treatment for children who have suffered trauma or severe abuse or neglect, or it can enable large sibling groups to remain together. Residential care can be a suitable option for certain care needs when the quality is such that it focuses on providing individualised opportunities for social and emotional development. While the Guidelines set out strict standards to be met, and clear restrictions on recourse to residential care, they also recognise the 'constructive' role that residential care can play.¹⁰⁰

8.1.5 FAMILY-LIKE CARE

Family-like care is included under residential care. In contrast to 'family-based' care, 'family-like' refers to the way that care is organised rather than to the pre-existing 'family' status of the care setting. Family-like care is provided in largely autonomous small groups under conditions that resemble a family environment as far as possible. One or more surrogate parents serve as caregivers, although not in their normal home environment. Family-like care recognises the importance of a stable caring relationship and commitment to the upbringing of children, which includes keeping siblings together and children's building lasting relationships.¹⁰¹

The family-like characteristics of a residential care setting are important criteria when determining the setting's suitability. The UN Guidelines specify that, for care of this kind to be consistent with children's rights, a small family-style living unit should be provided in residential facilities.

8.1.6 INSTITUTIONAL CARE

The term 'institutions' (or 'centres') refers to 'all public or private settings outside the justice system or the penitentiary administration, where children can be deprived of liberty for their protection, for reasons of their education, health or disability, drug or alcohol abuse, poverty, for being separated from their parents, for being orphans, for living in street situations, for having been trafficked or abused, or for similar reasons – by the action of the state (either directly or through licensing or contracting of non-state actors) – where the state has assumed or accepted responsibility for the care of the child'.¹⁰²

8.1.7 GUARDIANSHIP

Guardianship care is a form of formal family-based care ordered by a competent authority (that is, a court or administrative authority), and encompasses arrangements in which a child is cared for and living with the person appointed as his or her guardian. Often, the guardian is kin to the child, so in some countries, children in guardianship care would be subsumed under formal kinship care.¹⁰³

100 Cantwell N et al. (2012). Moving Forward: Implementing the 'Guidelines for the Alternative Care of Children'. Available at: <https://bit.ly/3CU92HI>

101 Ibid.

102 Committee on the Rights of the Child (2019). United Nations Global Study on Children Deprived of Liberty. Available at: <https://bit.ly/435Mq1z>

103 UNICEF (undated). 'Definitions'. Available at: <https://www.unicef.org/eca/definitions#childreninalternativecare>



According to the Better Care Network:

The guardian's function is to ensure that a child's rights are upheld and the child's best interests are protected. The existence, process and duties of a guardian will vary from country to country. When no formal guardian system exists, alternative systems can be created for having a legally recognised representative for a child. This is particularly important when children are likely to be orphaned or made vulnerable by HIV/AIDS, or unprotected by adult caretakers such as child-headed households. Guardians are particularly beneficial when there are disagreements regarding the care of a child between the family, child, or local authority. ... They usually represent the child in legal proceedings, providing evidence and recommendations regarding the care plan for the child. The guardian may be appointed by the local authority or selected by the child or family.¹⁰⁴

Other forms of alternative care:

- **Community-based care:** This often associated with the care of those in child-headed households. In such situations, communities organise themselves with the support of NGOs to monitor the welfare of CWPC. Forms of support vary from material support to parenting services. In organised communities, individual adults are allocated households for which they are responsible for providing care. This form of care is progressive in the sense that the children continue to live in the homes of their parents and in most cases have entitlement to the property of the parents.
- **Temporary or interim safe care:** These are arrangements for those in need of care and protection on a short-term basis. Such children may include abandoned children or those at risk of sexual abuse, exploitation, or neglect. This option is also suitable for trafficked children, migrants, children living on the streets, or those on the move. Children can be placed with relatives, foster carers or residential care facilities.
- **Children's correctional facilities:** The purpose of juvenile centres is to keep children in conflict with the law away from the public, as well as separate from adult correctional centres (prisons). Juvenile centres also serve as rehabilitation centres for young offenders.

8.2 CHILD PROTECTION CASE MANAGEMENT TOOLS AND PROCEDURES

Children with urgent child protection needs need to be identified and provided with age- and culturally appropriate information, as well as an effective, multisectoral and child-friendly response from relevant providers working in a coordinated and accountable manner.

State Parties should ensure that agencies responsible for CWPC, especially the departments of children's services, have case management procedures in place to ensure quality, consistency, and coordination of services. Case management requires certain competencies, and involves a social service worker or para-professional social service worker who collaboratively assesses the needs of a child and arranges, coordinates, monitors, evaluates and advocates for a package of services to meet a specific child's needs.

State Parties need to invest in the social service workforce through innovative approaches that include the use of paid and unpaid governmental and non-governmental personnel. In

104 Better Care Network (undated). 'Guardianship.' Available at: <https://bit.ly/3NXVxgu>

most communities on the continent, the social service system consists of interventions and programmes that are provided by governmental, civil society and community actors and which in most cases are carried out by trained volunteers. Many institutions have no clear procedures to follow in the event of child abuse, nor an internal code of conduct to govern relationships within the facility.

8.3 CONTINENTAL OVERVIEW OF COMMON CARE OPTIONS

This section describes the experiences that Africa's five regions have had with the most common options of alternative care. Analysis of country-level responses indicates that, across the regions, residential, foster, kinship and institutional care are the most common options, and are found in 42.8% to 100% of countries. Kinship care is more prevalent in Southern Africa and Central Africa than elsewhere. *Kafalah* care is practised mostly in North Africa, but is encountered in all of the regions except Southern Africa.

East Africa: The most common forms of alternative care in East Africa identified in the literature review are kinship, institutional, residential, and foster care; *kafalah* care is the least widespread care option. Figure 13 provides an overview of care options that are common in the region.

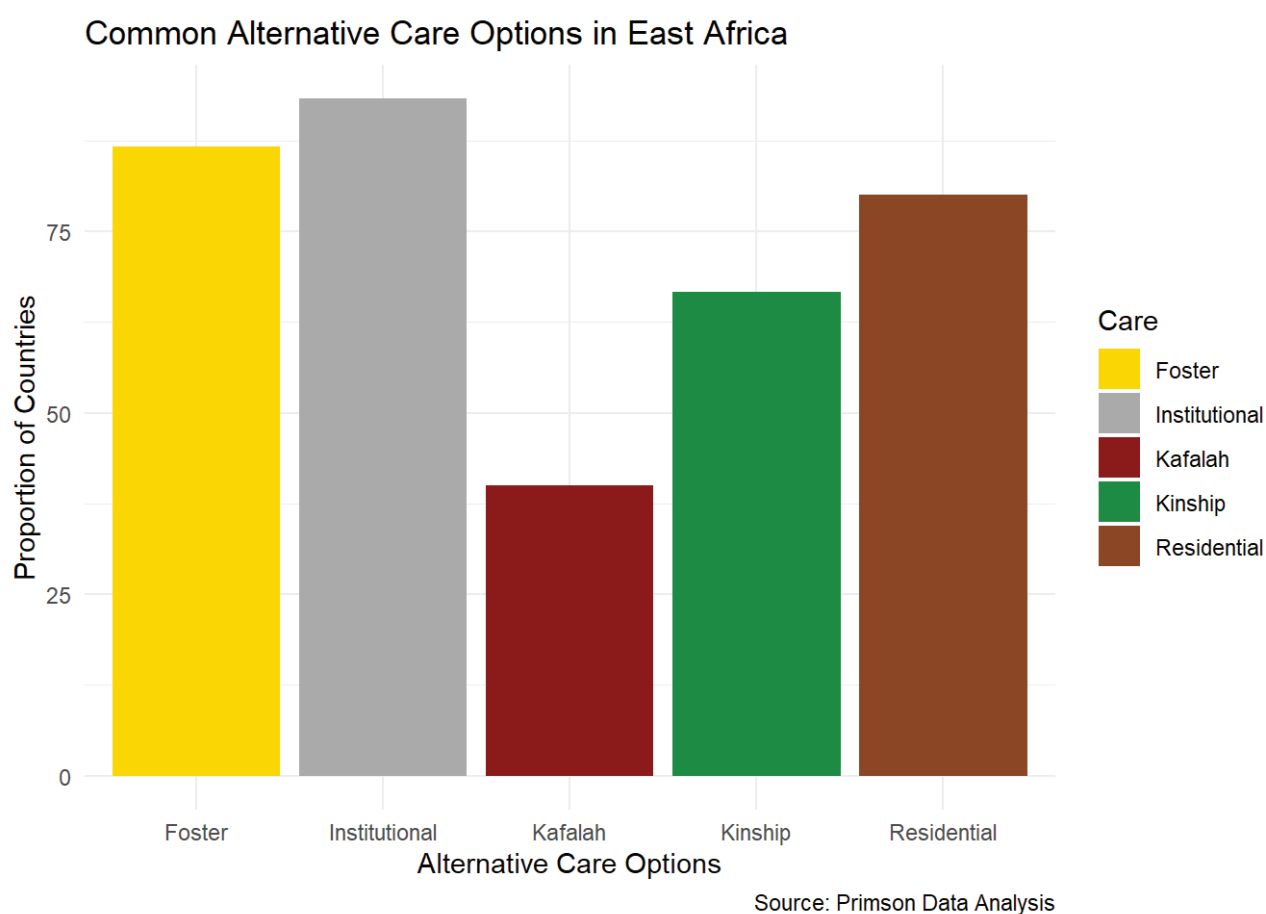


Figure 13: Common alternative care options in East Africa

* Note that the statistics are indicative, rather than conclusive, as to which forms of care are less or more predominant than others. This can be attributed to gaps in record-keeping among African governments.



The majority of countries in the region have foster and institutional care. Children's laws in **Tanzania** and **Zanzibar** provide for institutional care. In Tanzania, children are placed in institutional care as a last resort or while temporarily awaiting relocation to a safe home through a court order. Placement of children in institutional care is effected through governmental social welfare systems. Institutions are either entirely government-run, or licensed and monitored by the government but operated by private, faith-based or non-governmental organisations.

In **Kenya**, kinship care is either formal or informal. Formal care is arranged through children's courts, and informal care, by the extended family. In **Tanzania** and **Zanzibar**, kinship care is governed by laws (in Tanzania, by Chapter 13 of the Child Act and by the Child Protection Regulations of 2014; in Zanzibar, by the Child Act of 2011 and Child Protection Regulations of 2017). In both cases, kinship care refers to the care of children without parental care by relatives and extended family members.

Few countries in East Africa practise *kafalah* care. Those that do are **Somalia, Tanzania, and Zanzibar**. In the latter, *kafalah* is provided for within the Child Act of 2011. *Kafalah* guardians assume parental rights and responsibilities in respect of the child with regard to custody, maintenance, day-to-day well-being, and education as if the child were born to them as their own.

Central Africa: The most common forms of alternative care are kinship, residential, institutional and foster care (see Figure 14).

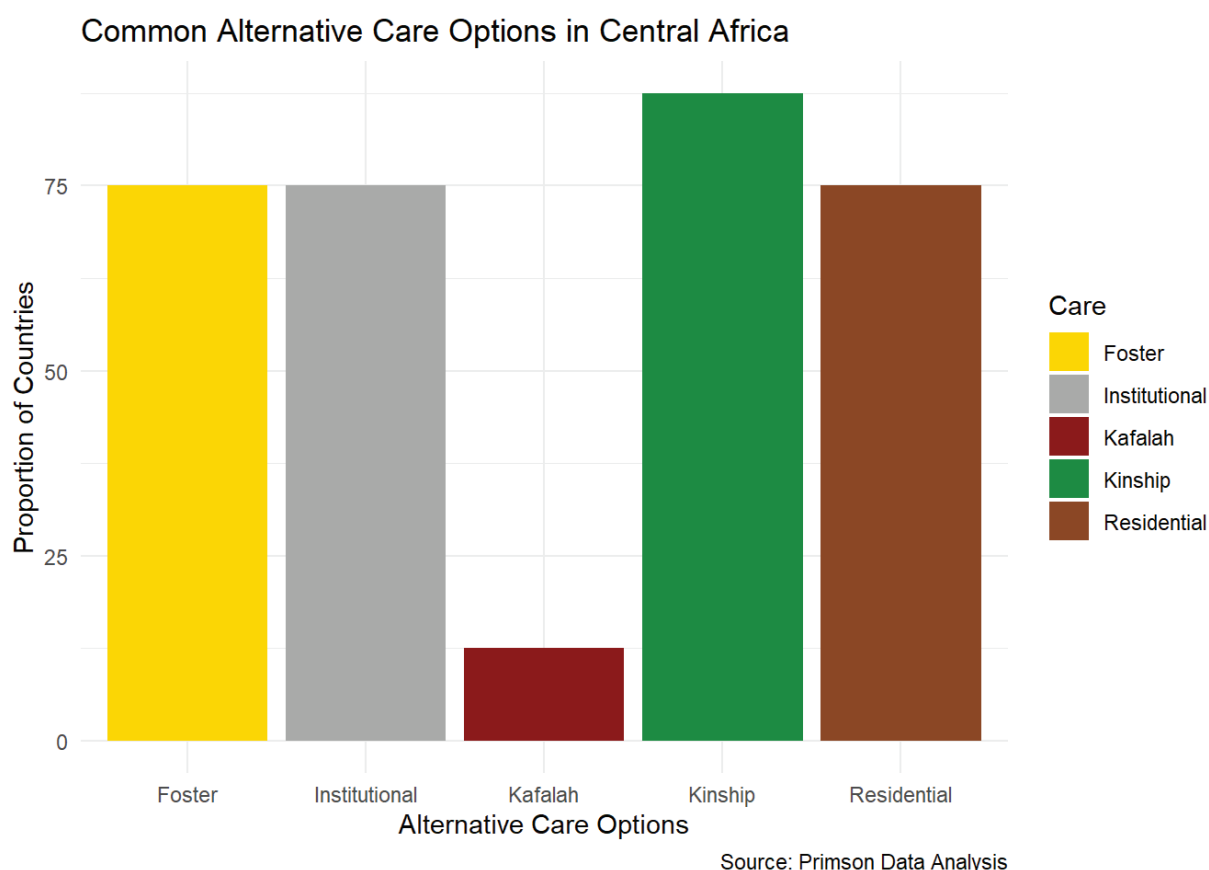


Figure 14: Common alternative care options in Central Africa

* Note that the statistics are indicative, rather than conclusive, as to which forms of care are less or more predominant than others. This can be attributed to gaps in record-keeping among African governments.

Within the region, 87.5% of countries practise kinship care. In the **DRC**, one of the case-study countries, this traditional practice has been formalised through the child court system.

Kinship care protects CWPC from situations associated with the Ebola virus, armed conflict, HIV/AIDs and natural disasters, as with the recent eruption of Mount Nyiragongo, which contributed to the country's rising incidence of orphanhood.

Institutional care is common in the region. In the **DRC**, institutional care mainly entails the care of CWPC in child and youth care centres (CYCC). Such placements should be in a child's best interest and a measure of last resort if alternative placements are not appropriate. Placement of children under 3 years of age is undertaken with special caution, given the potential impact on their development. CYCCs often provide development programmes suited to the needs of the child. **Cameroon** indicated that it has several institutional care centres, which are run by NGOs as well as the government and municipalities. As in other countries, institutionalisation is a measure of last resort. In **Burundi**, institutional care is either short- or long-term. Facilities are referred to as 'residential centres' or 'child placement centres'.

North Africa: The most common form of alternative care is **kafalah**, which is practised by all of the countries in the region. By contrast, institutional care is found in only about 50% of them. Another popular care option is foster care, which is practised by 85.7% of countries (see Figure 15).

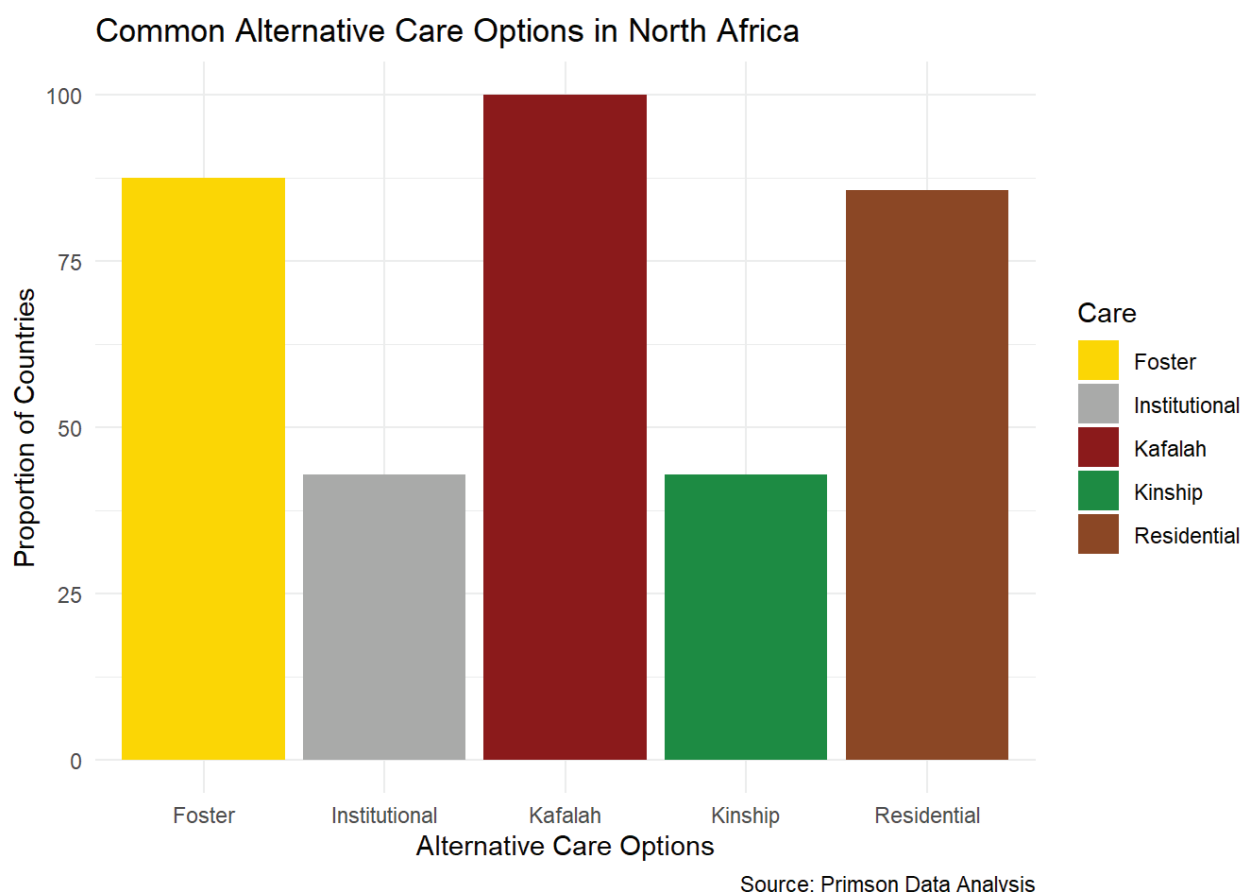


Figure 15: Common alternative care options in North Africa

* Note that the statistics are indicative, rather than conclusive, as to which forms of care are less or more predominant than others. This can be attributed to gaps in record-keeping among African governments.



In *Egypt*, *kafalah* is encouraged as it is seen not only as commendable but a religious duty. In *Algeria*, *kafalah* is recognised under Article 490 of the Family Code No. 40 to 46, which provides safeguards for CWPC. In *Morocco*, *kafalah* is an official Islamic principle of fosterage. A child taken into *kafalah* is entitled to similar rights as a natural child, such as maintenance, education, and moral and physical protection. In *Tunisia*, *kafalah* is provided for through Law No. 1958-0027 of March 4 Relating to Public Guardianship, which allows for an abandoned child to be placed under *kafalah*. Some of the challenges in implementing *kafalah* relate to difficulties in tracing the parentage of the child placed under *kafalah*.

In regard to foster care, foster children in *Egypt* retain their surnames due to Islamic regulations in respect of family lineages. In 2020, however, Egypt broadened the rules as to who may foster a child to include divorcees as well as single women over 30. It also reduced the minimum required level of education, hoping that increasing the pool of prospective adoptive parents will make fostering more widespread and socially acceptable.¹⁰⁵ The country now permits formal fosterage (see the quotation below).

'Egypt's Ministry of Social Solidarity announced in July 2021 that an orphan child is now permitted to include the names of foster parents in their birth certificate, after receiving the approval of the Grand Imam of Al-Azhar.' Minister of Social Solidarity Ghada Wali (media reports)

In *Egypt*, the fostering of children can take place only under the following conditions: (i) children receive material support while living in residential care; (ii) there is a contractual agreement with the residential home to support the child in full while he or she in the residential home setting; (iii) there is a contractual agreement between the family and the childhood governmental administration under the Ministry of Social Affairs to fully support the child. Guardianship may be assigned only to blood relatives. In *Morocco*, children placed under foster care may not inherit, although they are entitled to other benefits; in Islamic culture, inheritance can be passed only through blood.

West Africa: The most common care options in West Africa are residential and institutional care (practised in nearly all countries), kinship care (in 80%), and foster care (in 86.7%).

105 Habieb H (2021). 'Egypt's fostering campaign helps orphans find homes.' Reuters. Available at: <https://www.reuters.com/article/us-egypt-society-idUSKBN2AV1UC>

Other care options include *kafalah* care, practised by 20% of countries (see Figure 16).

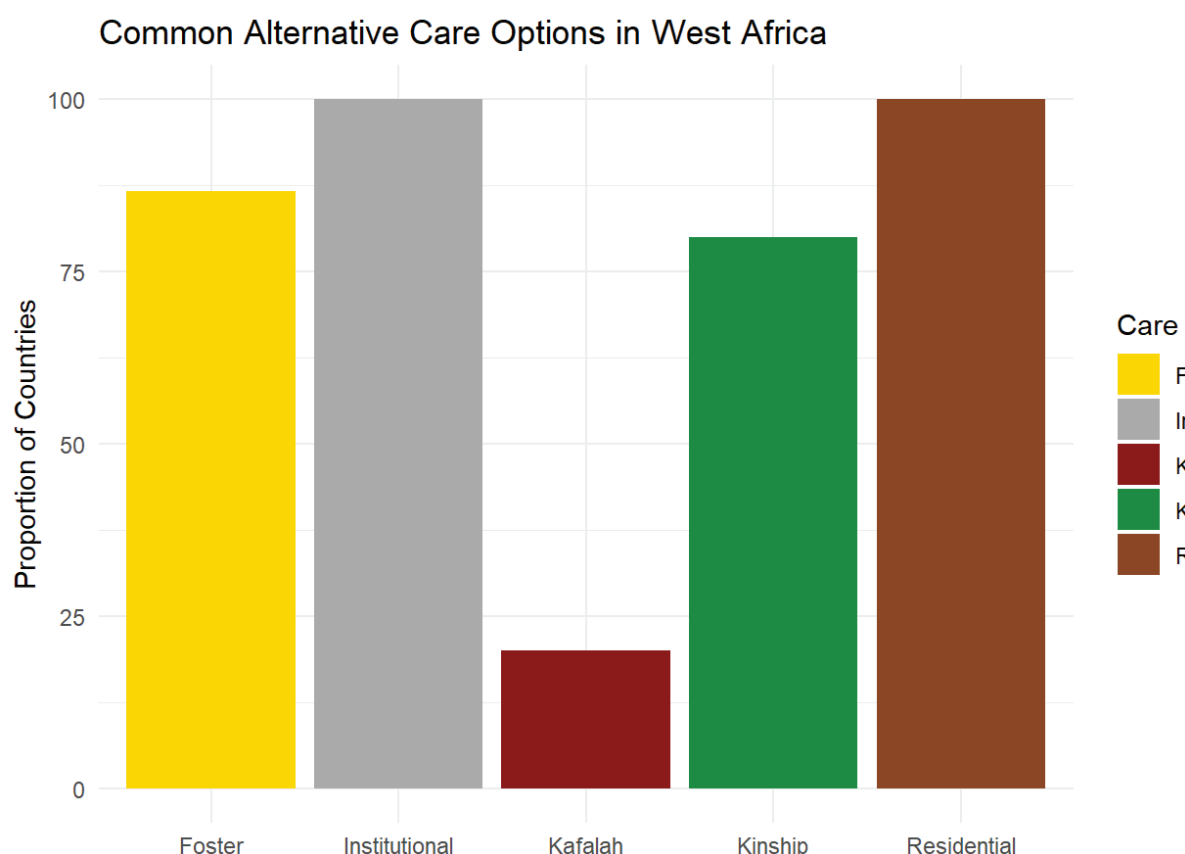


Figure 16: Common alternative care options in West Africa

* Note that the statistics are indicative, rather than conclusive, as to which forms of care are less or more predominant than others. This can be attributed to gaps in record-keeping among African governments.

Residential and institutional care is common throughout the region. In *Nigeria*, orphanages are owned and managed by a variety of stakeholders, among them the government, NGOs, philanthropic organisations, and individuals, as a result of which quality of services varies from institution to institution. Orphanages play a key role in raising CWPC, with most of them depending on donations and the proceeds of agricultural ventures for their funding.

In *Togo*, institutional care is a favoured option for protecting CWPC, with more than 250 private institutions in existence in the country. Moreover, the Government of *Togo*, in conjunction with development partners, has developed a strategy for children in foster care to improve the protection and well-being of CWPC.

Generally, information on options of care in the region was very limited.



Southern Africa: The most common forms of alternative care in the region are residential, kinship, foster and institutional care (see Figure 17). Case-study countries provided most of the information for this analysis, which was supplemented with data from secondary sources.

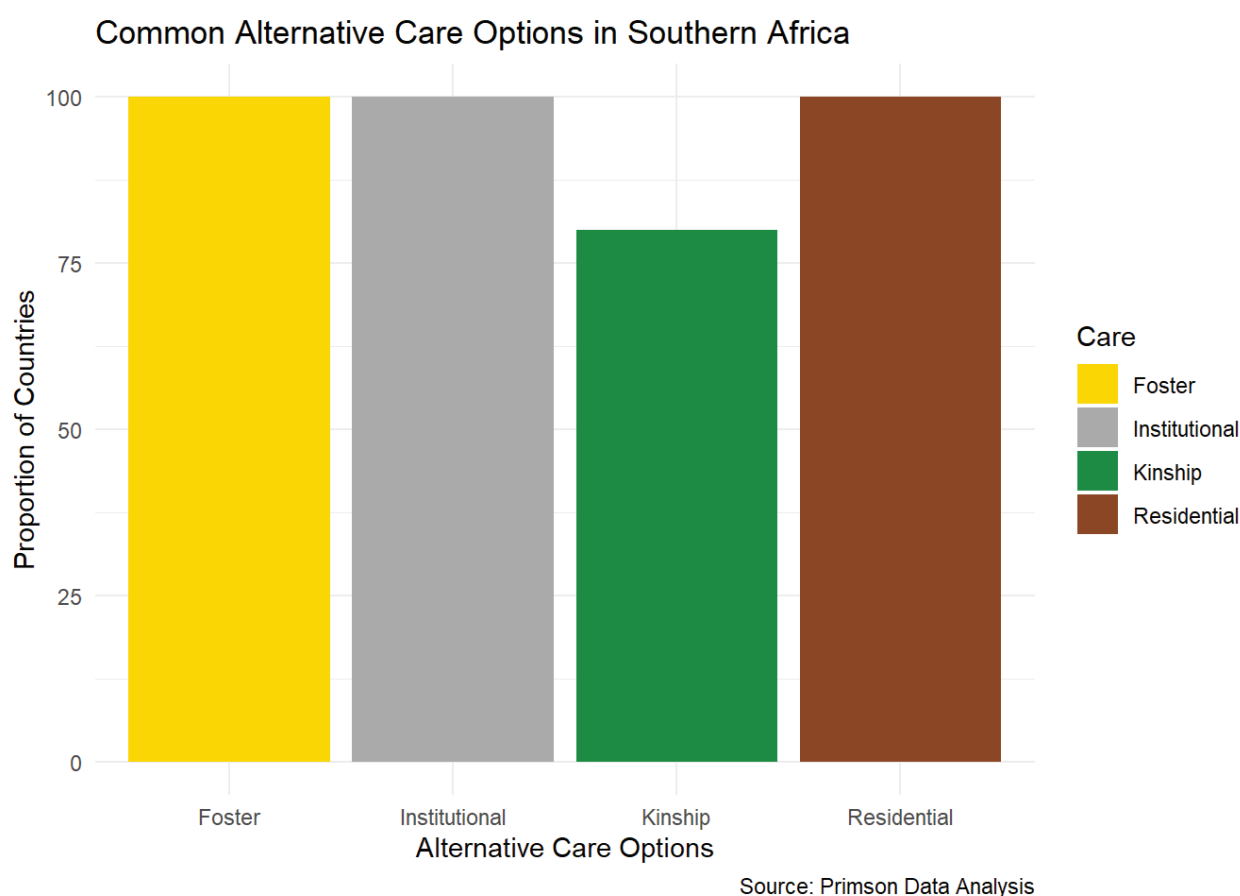


Figure 17: Common alternative care options in West Africa

* Note that the statistics are indicative, rather than conclusive, as to which forms of care are less or more predominant than others. This can be attributed to gaps in record-keeping among African governments.

Institutional care is common in most countries, and typically provided by CYCCs. In **South Africa**, for instance, on average there are more than 400 CYCCs in each of the country's nine provinces. Children in need of care and protection may reside in such centres for up to 18 years, after which they are expected to transition to independent living. Noted challenges posed by CYCCs include cultural dilution, given that most social workers do not speak indigenous languages; in addition, children later encounter problems in reintegrating with their communities, in good part because English is the main language used in CYCCs. As of 2020, **Mozambique** had 99 registered residential centres, including eight state-owned institutions, all of which hosted a total of 7,269 children.

KEY RECOMMENDATIONS

- i. As per the UN Guidelines for the Alternative Care of Children, countries and regions should consider formalising kinship care and *kafalah*. However, the pros and cons ought to be deliberated before making a policy decision. On the one hand, formalisation has the advantage of enabling improved tracking and monitoring of children under these arrangements; it also affords opportunities for governments and development partners to support such care options. On the other hand, formalisation may discourage willing kinship carers, as it entails the legal right to inheritance. Some families might not wish to accept this and thus withdraw their willingness to provide care for children.
- ii. State Parties should put a range of care options in place, along with robust gatekeeping mechanisms for them. Each child in need should undergo proper individualised assessment to determine which is the best care option for him or her, as well as to prevent the unnecessary institutionalisation of children.
- iii. It is strongly recommended that countries and regions adopt child court systems so as to document options of care for CWPC and, as part of this, monitor the support provided to such children. To curb the number of children in institutional care, governments and stakeholders should consider programmatic interventions on family-strengthening services that can empower families to provide adequate care for their children. In view of the dormitory nature of institutional care, children should be placed instead in small-scale residential care family environments, in foster care, or in other types of care, depending on their needs.



9 CHILDREN'S VOICES

This chapter highlights the results of the study's engagement with CWPC in the case-study countries. To obtain their perspectives, FGDs were held with between seven and 43 children in each of the countries. The contributions that participating children made are invaluable in enriching the study's analysis of the continent's normative frameworks, programmatic responses, and forms of alternative care with insights gleaned from the lived experience of children themselves. It should be noted, nevertheless, that the data presented here are skewed towards those living in institutions in capital cities, given that the field work for the study was performed conducted within a short period during the Covid-19 lockdown.

9.1 VOICES OF CHILDREN ON THE STREET

Children on the streets constitute the majority of children without parental care. Many compounding factors result in their ending up on the street. These include the death of parents, parental neglect, violence and abuse, poverty, family breakdown, armed conflict, and displacement due to natural disasters.¹⁰⁶ The reasons are many and vary from place to place and child to child. Street-connected children were interviewed in some of the case-study countries and shared their experiences. The following statement underlines that poverty is indeed one of the factors contributing to children ending up on the street.

'I ended up here because I was hoping to meet an important person who could help my family and I to live in decent conditions and to go to school. Unfortunately, everyone ignores us when we are on the street. The rich always roll up the windows of their cars.' A child on a street, Yaoundé, Cameroon

While children may end up on the street in search of a better life, it is a call for help and attention to their plight. Oftentimes, they do not find the help they hope to get, and if and when it comes, it tends to be fragmented and unsustainable. The following expresses the disappointment they come to feel.

'They don't know why we go and stand along the boulevard every day. It's so they can see us when they go to their offices. Even all those white people who pass by don't see us. On the contrary, they pass by with their guards, who push us around and trample us like animals.' A child on the street, Kinshasa, DRC

Some positive experiences were recorded in Mozambique amongst street-connected children. They were receiving care and support from Hlayiseka Open Centre for Street Connected Children, in stark contrast to the experience of so many of their peers across the continent.

'We do a lot of activities. I came to get an opportunity to study. I learn to read stories and do crafts. We learn to recycle things. I want to be a soldier. I would like this project to never stop. I like to continue to study. My dream is to be a doctor.' **Martha (16)**

¹⁰⁶ Consortium for Street Children (undated). 'Street children are some of the most vulnerable children on the planet.' Available at: <https://www.streetchildren.org/about-street-children/>

'This is a wonderful project because I could learn how to read. I go to a public school. One thing I would like to do is to meet my father because I have never met him. I would like to be an advisor to the President.' **Zek (17)**

'What makes me feel safe here is this, in the street, some young people are older than us. They make us beg for them. People here at the centre came and proposed that we come here. We don't want to go back there.' **Boy (15)**

'I feel protected here, so I feel safe. It is not possible to find it on the street.' **Girl (14)**

CASE STUDY OF A CHILD-HEADED HOUSEHOLD

This situation illustrates some of the challenges that CWPC face in the absence of alternative care.

Joao, a boy, and his two siblings live alone in a single room. Their room is in an open compound where two bigger units are owned by other families. The roof sheets are loose and held in place by rocks. The door is as old as the structure itself and secured by a chain. It does not close completely.



Joao is 16, his younger brother, 12 and his sister, nine. Their mother abandoned them a year ago and is said to be engaged now in sex work. She hardly visits them, and according to Joao, when she does, she comes empty-handed.

The children last saw her in January 2021 when she passed by to check on them.

An uncle, a brother to the mother, sees to the welfare of the children. He sells masks and other small items for a living. They do not live with their uncle, and Joao does not know why.

Figure 19: Image of a child-headed household

'Our mother abandoned us and it makes me feel sad and hurts me,' **says Joao.**

Says his sister: *'I miss having a mother to take care of me... Every day I wake up early in the morning and clean the house and wash the plates, then I play with my friends and go to school.'*



Primary education is provided free of charge in Mozambique. She is in Grade 3 and her uncle bought the school uniforms, while some of her friends give her some of the school supplies. She hopes to become a police officer one day.

Joao wakes up to fetch water from a neighbour's house and goes to the street to spend the day with his friends and returns home in the evening. He aspires to be a digital influencer. Joao does not go to school. He explains: 'My mother did not register me for Grade 8, so I am not going.'

The field supervisor from a local CSO indicates that the mother has the documents needed to register Joao in school. They have not been able to locate her. She says that getting duplicate documents is a long process:

'The head of the 10 houses (constituting award) alerted us to the plight of the children. As a CSO, we have managed to register them and they are now on our waiting list. They will receive a food hamper for three months and we are currently negotiating with the neighbour who has always been assisting where possible with the children. We hope the neighbour can continue to look out for the children.'

The CSO plans to set up a small project for the children to sell small items after school next to their house. This is an attempt to make them self-reliant. The CSO will also continue to try and register Joao in school.

'We don't have money for the hospital if we get sick, but I have not been sick so far. We do not always have food to eat, my uncle struggles. There is no one else to help us at the moment,' says Joao, looking down at his feet.

The situation of Joao and his siblings reveals the deprivations of CWPC as well as risks to their long-term prospects. At 16, he has less than two years in which to receive care that could alter the course of his life. He spends most of his time on the street, but time is of the essence.

His young sister shares a room with two boys. The children reported that they do not feel safe alone and do not always have food to eat. Their father died when they were much younger, and they do not know of any other relatives besides their mother's brother, who occasionally checks up on them.

PACO, the CSO trying to assist them, has registered them to get assistance under the Covid-19 Subsidy Programme, which offers support for six months through monthly subsidies of 1,500 MK (about 27 USD) According to PACO, there is a programme for the poor, but it requires a poverty certificate. The children do not qualify because their mother is still alive.

CWPC ON THEIR VIEWS ON THE STATE OF THEIR HEALTH STATUS BY CARETAKER

Eighty-seven per cent of those who were polled rated their health as average, good, or very good. The majority of respondents, who were in alternative care, provided positive feedback on their health status. By contrast, children living on the streets are more likely to have poor health outcomes.

Every child in alternative care reported going to school. As many as 43% of them are afraid of losing their caregivers and concerned about difficulties that their caregivers may face,

as these issues could affect their responsibilities as caregivers. Approximately 2.6% said they long for their families, while 3.4% expressed concern about their families. CWPC in residential care worry about what the future holds for them when they turn 18. Up to 96% expressed gratitude for receiving care, but many also felt abandoned and unwanted. Children regard relatives (22%) and the government (22%) as stakeholders responsible for their needs.



10 CONCLUSION & RECOMMENDATIONS

The challenges facing CWPC are real and can no longer be ignored by the continent's governments. Although there are no exact statistics on the number of such children in Africa, it is highly likely to be on the rise when one considers the increases in the numbers of children in each of the constituent categories of CWPC.

At the same time, the Committee commends State Parties for steps they have been taking already in child-care reform. Most countries in all five regions are embracing the care reform agenda and UN Guidelines for the Alternative Care of Children.

10.1 DEFINING 'PARENTING' AND 'CHILDREN WITHOUT PARENTAL CARE'

The study has shown that, in the African context, the term 'parent' is broad and encompasses relatives as proxy parents. Parenting is the process of raising and caring for a child from birth to adulthood. Overall, a child without parental care is one who is temporarily or permanently removed from his or her family environment. This study defines CWPC in the African context and contributes to existing definitions by the UNCRC and UN Guidelines on alternative care. It complements these definitions by defining CWPC as those without any form of parental care, which in the African context means that 'CWPC' includes the following: abandoned children; double orphans; children in child-headed households; children in detention, incarceration, or remand homes; children participating in conflict (child soldiers, abducted girls); children living in residential care settings; children living in institutions; street-connected children or children living in the streets; unaccompanied minors; trafficked children; and children in forced or child marriages. CWPC do not include children in kinship care or foster care; undefined OVC; adopted children; and those in kafalah care.

The study finds that the term 'children without parental care' is not used in the same way across the continent. Some countries prefer other terminology, with the way in which they characterise such children often deriving from their legal provisions. For example, South Africa and Kenya adopt the term 'children in need of care and protection', while Mozambique refers to this group as 'children who live in a situation of risk'. The DRC prefers 'children who live in a situation of risk'. Egypt used the term 'children who need protection'. Senegal in turn employs a range of terms, among them 'children in social disruption', 'children in family breakdown', or 'children in difficult situations'.

KEY RECOMMENDATIONS

In the light of the study's findings, the following are key recommendations at the continental, regional and national levels.

AFRICA UNION LEVEL

Consensus amongst State Parties has to be reached on which categories of children constitute CWPC. Given the significant variation in regard to the term 'children without parental care', there is a need for a common acceptance of the use of this term and a common understanding of what it means and refers to.

REGIONAL LEVEL

African regions should incorporate CWPC in regional child-rights discourse and encourage State Parties to plan and adequately finance traditional alternative care options such as

foster care through social protection programme financing for vulnerable groups.

STATE PARTIES

- i. State Parties should consider adopting the narrow definition of CWPC in line with the study findings and mindful of the specificities of their national contexts.
- ii. Noting the new definition, State Parties should review their normative frameworks to align them with the adopted definition and the UN Guidelines for the Alternative Care of Children.

10.2 NATURE AND MAGNITUDE OF THE CWPC PROBLEM

Nature: The study finds that State Parties do not have a common understanding of which categories constitute CWPC. This makes effective programming for CWPC a challenging task.

As noted, the study proposes a categorisation of CWPC as abandoned children, children in marriage, unaccompanied children, trafficked children, those living in child-headed households, and those participating in conflict situations – and excludes children in kinship care, foster care, OVCs not clearly defined, adopted children, and in *kafalah* care. The study finds that most State Parties do not categorise children in kinship care and those who have been legally adopted as CWPC, as is consistent with African belief systems and practices.

CWPC face multiple risks that compound negative outcomes. These include exposure to sexual and other forms of abuse; delinquency; substance and drug abuse; exposure to hazardous work; mental health issues; inadequate food consumption; limited access to education and health-care services; and living in an unconducive environment for children's physical and emotional well-being. While the risks have been documented by the study, it could not be determined which categories of CWPC face the highest risks in comparison to each other.

Magnitude: The study finds that few State Parties have effective, well-organised information management systems for the different categories of CWPC. The study could not estimate the number of CWPC in Africa for various reasons, including diversity in defining CWPC, limited statistics, and poor survey response rates from stakeholders. However, analysis of existing data on CWPC suggests that there are an estimated 35 million CWPC in Africa. This figure is derived from statistics in regard to child marriage, child-headed households, street-connected children, children in detention, and children on the move.

KEY RECOMMENDATIONS

AFRICA UNION LEVEL

- i. There is a need to develop a database of CWPC in Africa, one which should also highlight the regional differences.
- ii. An explicit continental study on the prevalence of CWPC, one in which Member States commit to contributing to the generation of relevant statistics, should be commissioned. The continental study should be undertaken after State Parties conduct national-level studies on national prevalence of CWPC. This would provide rich data for use in the continental study.



REGIONAL LEVEL

- i. African regions should consider commissioning regional studies on the prevalence of CWPC. Such a study should come after a national-level study on the same.
- ii. African regions should consider developing regional dashboard on the categories of CWPC. Each regional dashboard should be linked to robust national-level statistics.

10.3 NORMATIVE AND LEGAL FRAMEWORKS

The study finds that most countries have constitutions and laws that address the needs of CWPC. However, the huge gap across the countries is the limited availability of explicit policies, strategies, and action plans for responding to issues in regard to CWPC. This gap entails that countries will be slow to act through robust programmes, constitutions and laws addressing CWPC issues. Where policies, strategies and action plans exist, they tend to deal with OVC. Furthermore, most countries lack strategies and costed action plans for child protection, which exacerbates gaps in financing responses for CWPC.

Overarchingly, there is a need for strong child care and protection legal and policy frameworks. This should take the form of comprehensive legislation on the basis of which various stakeholders design a wide range of programmatic interventions. In this regard, State Parties should follow what South Africa has done in generating policies related to children.

KEY RECOMMENDATIONS

AFRICAN UNION LEVEL

- i. A framework for incorporating CWPC issues in constitutions, laws and policies should be developed for the Member States.
- ii. A guiding framework for the development of national-level policies, strategies and actions plans around CWPC should be developed for the Member States. The framework would set out the key areas for consideration when the State Parties develop these tools.
- iii. Sensitization workshops should be conducted with State Parties to build buy-in on the importance of incorporating CWPC in their national normative and legal frameworks.

REGIONAL LEVEL

- i. African regions should consider building the capacity of regional State Parties for the development of quality normative and legal frameworks that address CWPC issues adequately.
- ii. African regions should consider adopting frameworks for the development of constitution, laws, strategies and action plans that explicitly address CWPC issues.

STATE PARTIES

- i. State Parties should consider developing explicit child protection laws, strategies and action plans that are responsive to CWPC issues. Such laws and planning tools should go beyond a focus on OVC and extend to all of the other categories of CWPC outlined in this study.

- ii. Where possible, strategies and actions plan should be costed so as to initiate the mobilisation of funding of responses for CWPC.
- iii. With the laws, policies, strategies and action plans so developed, State Parties should consider popularising them among all stakeholders in the sector in order to broaden the use of these national tools – for instance, by means of developing guidelines on criteria and procedures to apply when assessing a child's risks, inspecting facilities, monitoring foster care, and the like.

10.4 PROGRAMMATIC RESPONSES

- **Social protection:** The challenges in initiating social protection programmes in Africa are numerous. These include limited institutional and technical capacity to develop and administer social protection programmes, small budget allocations, overdependence on donor funding, and the complexities inherent in targeting and reaching beneficiaries. State Parties also need support to make strategic decisions about the most effective social protection instruments required to suit an individual country's context, especially given the impact of Covid-19 on economies.
- **Cash transfers:** Although cash transfers are increasingly used as a form of social protection to meet the needs of children, it is important that discussions relating to social protection are not oversimplified or approached only from a child protection perspective. The resources required, the level of coordination involved, and the technical capacity needed to administer such schemes are often beyond the scope of child protection organisations and generally require high-level political commitment from a government as a whole and not only ministries with responsibility for children.

Care reform agenda: The UN Guidelines on alternative care that culminated in the development of the UN resolution emphasised the need for children to live with their families. The primary focus of care reform in most countries is moving from institutional care to family and community-based care. Rwanda is one of the leading countries in care reform. The alternative care system in Africa has been grounded and centered on institutions, which for some time have been the first resort rather than the last and the most accessible option for 'rescuing' children from abandonment, orphanhood, family poverty, family disintegration, disability, or displacement.

Monitoring and standards: State Parties have set standards for residential care. However, government agencies and independent donors do not have the staffing and professional capacity to monitor adherence to standards. State Parties should invest in the licensing and monitoring of residential care providers. This includes certification based on acceptable standards of performance and delivery of services.

Scalability of preventive programming: Across the continent, some programmes target families, caregivers or guardians. There is room to scale up efforts in preventive intervention programmes aimed at strengthening families and communities to enhance resilience and improve livelihoods. Examples from South Africa, Kenya, and Mozambique are worth considering for scalability.

Most State Parties have prevention programmes in place, but the study found that the funds earmarked for this initiative continue to decline every year.



KEY RECOMMENDATIONS

AFRICAN UNION LEVEL

- i. Regional learning, especially on social protection measures that address the root causes and the drivers of CWPC on the continent, is of paramount importance.

REGIONAL LEVEL

- i. African regions should consider the development of regional programmes to address cross-border issues around CWPC. The programmes should include, among others, addressing trafficking in children, children on the move, and street-connected children.
- ii. African regions should encourage community members to invest in the monitoring of residential care facilities for children. This includes certification based on acceptable standards of performance and delivery of services. This would stop children from escaping to a second country and looking for refuge at 'better facilities' where none probably exist.
- iii. African regions should promote benchmarking by members as to what is working. Across the continent, some programmes target families, caregivers, or guardians. There is room to scale up prevention and intervention programmes aimed at strengthening families and communities to enhance resilience and improve livelihoods. Family-strengthening programmes run by Member States offer an excellent opportunity for learning from promising models. Regional State Parties need to share and learn from each other.

STATE PARTIES

- i. State Parties should enhance family-strengthening in communities, which should be seen as an important intervention component.
- ii. There is a need to advocate for support for ECD programmes. State Parties should consider providing support for ECD for poor families.
- iii. State Parties should set quality standards for residential care providers.

10.5 OPTIONS OF CARE

Key options of care for CWPC are *kafalah*; foster care; kinship care; guardianship; residential care; adoption; institutional care; community-based care; temporary safe care; and children's correctional facilities. All alternative care systems or options must be supported by strong gatekeeping mechanisms.

KEY RECOMMENDATIONS

AFRICAN UNION

Guidance should be provided to duty-bearers on the need to avail, regulate, finance and monitor a range of alternative care options. States' normative and legal frameworks should give priority to family- and community-based solutions but recognise that residential settings may also be 'appropriate, necessary and constructive' for some children at given moments.

There should be guidance that encourages national policies to have legislation on appropriate high-quality care options that meet the needs of children and provide leadership on the

development of family-based solutions, with a planned move from poor-quality institutional and residential care.

Countries should require that placements for individual children are decided on a case-by-case basis to meet their needs. The guidance should also provide direction for placements that respond to the needs of children whether these placements are emergencies, respite care, short term or longer-term, as well as requiring effective gatekeeping and proper planning so that no child is placed in alternative care and cut off from his or her family of origin, either in-country or inter-country, unless appropriate.

STATE PARTIES

- i. State Parties should work to enhance child care and protection systems to ensure that all children under the various care options are protected from all forms of abuse and neglect, by strengthening community-based systems for reporting, responding and appropriate case management.
- ii. State Parties should work with other stakeholders to implement care system reform and, as a critical part of this, ensure full implementation of the UN Guidelines on alternative care.
- iii. Gatekeeping is extremely weak in all the countries in Africa and needs to be strengthened so that the placement of children in alternative care is not compromised.
- iv. State Parties should continuously assess children in alternative family care options to enhance family tracing, reunification and reintegration of children as appropriate.
- v. State Parties should develop policies and programmes that build on the positive aspects of the African family and encourage the placement of CWPC in the care of kinship families.



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ANNEXURE

NATURE	FORM	DANGERS/RISKS
<i>Double orphan</i>	A child who has lost both biological/ birth parents	Elevated risk of HIV infection ¹⁰⁷ through sexual transmission, mental health problems ¹⁰⁸ , depression ¹⁰⁹ , trauma ¹¹⁰ and emotional distress ¹¹¹ , sexual debut ¹¹² , multiple sexual partners ¹¹³ , forced or unwilling sex ¹¹⁴ , less likely to access schooling ¹¹⁵ , physical and psychological abuse ¹¹⁶ , poverty and abuse increase the risk for transactional sex ¹¹⁷ , high-risk sex ¹¹⁸ , early adult responsibilities ¹¹⁹ , economic pressure ¹²⁰ , lack of adequate health care ¹²¹ , ART non-adherence ¹²² especially those with sibling caregivers, late initiation of HIV treatment due to late detection of sero-status ¹²³ , early marriage ¹²⁴ , early pregnancy ¹²⁵

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NATURE	FORM	DANGERS/RISKS
<i>Child headed household</i>	Children in a household where the older child takes responsibility for a younger sibling.	Delinquency ¹²⁶ , substance abuse ¹²⁷ , depression ¹²⁸ , suicide attempts ¹²⁹ not going to school ¹³⁰ or leaving school early, sexual abuse ¹³¹ by neighbours and relatives, drug abuse ¹³² which predispose them to sexually transmitted diseases ¹³³ and HIV/AIDS itself, abduction ¹³⁴ and enrolment as child soldiers ¹³⁵ or be driven in hard labour ¹³⁶ , sex work ¹³⁷ or life on the streets ¹³⁸ struggle in getting birth registered ¹³⁹ and national identification cards. Elevated degree of anxiety ¹⁴⁰ trigger behaviour problems such as aggression ¹⁴¹ and emotional withdrawal ¹⁴² , risk of early marriage, ¹⁴³

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NATURE	FORM	DANGERS/RISKS
<i>Abandoned Children</i>	A child who is not under the care and protection in a safe place and left alone, unattended or intentionally cast away by his/her parents or guardian.	Exposure to hazardous work ¹⁴⁴ , being vulnerable to trafficking ¹⁴⁵ , abuse ¹⁴⁶ , neglect ¹⁴⁷ , living in extreme poor conditions ¹⁴⁸ , not being raised in an environment conducive for proper mental and physical development ¹⁴⁹ exposure to sexual and physical abuse ¹⁵⁰ , no access to shelter ¹⁵¹ , lack of healthy nutrition ¹⁵² , girls enduring sexual aggression ¹⁵³ , being defenceless ¹⁵⁴ , possibility of mental ill-health ¹⁵⁵ , adopting streetism ¹⁵⁶ , begging for food and money ¹⁵⁷ , prostitution ¹⁵⁸ , drug proliferation ¹⁵⁹ , petty crimes ¹⁶⁰ , muggings ¹⁶¹ , no access to resilience resources such as clinics, hospitals and schools. ¹⁶² HIV infection ¹⁶³ , starve for days ¹⁶⁴ physical injuries while on the streets ¹⁶⁵ , STIs ¹⁶⁶ from multiple partners and unprotected sex, transactional sex ¹⁶⁷ , violence ¹⁶⁸

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NATURE	FORM	DANGERS/RISKS
<i>Children abandoned at Hospitals</i>	A Child abandoned as an infant in hospital and whose mother disappear without trace and origins and records are unclear and contacts unknown for purposes of tracing	Inadequate food consumption ¹⁶⁹ (food quality, preference and frequency of meals), poor health ¹⁷⁰ ,

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NATURE	FORM	DANGERS/RISKS
<i>Children in Detention / Incarcerated / Children in Remand Homes</i>	Children in conflict with the law and who are subsequently subjected to judicial action and committed to jail, rehabilitation centres etc	Lack of routine medical services ¹⁷¹ (dental care, positive tuberculin tests and congenital defects), drug and alcohol use ¹⁷² , adolescents' initiation to intercourse at earlier ages ¹⁷³ , great rates of sexually transmitted diseases ¹⁷⁴ , physical abuse ¹⁷⁵ , conduct disorders ¹⁷⁶ , learning disabilities ¹⁷⁷ , depression ¹⁷⁸ , premature mortality and morbidity ¹⁷⁹ , lack of access on detained children medical records and prescribed medication ¹⁸⁰ by detention facilities making it difficult for them to proceed with treatment, failure to obtain appropriate medical services upon release from correctional care settings ¹⁸¹ , abuse of children ¹⁸² , torture ¹⁸³ , unconducive environments for children's emotional and physical wellbeing ¹⁸⁴ , corporal punishment ¹⁸⁵ , placement in solitary confinements ¹⁸⁶ , restriction of diet ¹⁸⁷ , withdrawal of privileges ¹⁸⁸ , sleep deprivation ¹⁸⁹ , electric shocks ¹⁹⁰ , threats of death ¹⁹¹ , enforced standing for long hours ¹⁹² , interrogation and gun point ¹⁹³ , anxiety ¹⁹⁴ , fear ¹⁹⁵ , low self-esteem ¹⁹⁶ , feelings if suicide ¹⁹⁷ , withdrawal or anti-social behaviour ¹⁹⁸ , psychosomatic disorder ¹⁹⁹ , comorbidity ²⁰⁰

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NATURE	FORM	DANGERS/RISKS
<i>Children participating in Conflict Situations</i>	Children in unstable environments where there is civil strife and war / and child soldiers who have been separated from their parents	Abduction ²⁰¹ , forced recruitment of child soldiers ²⁰² , voluntary recruitment as child soldiers ²⁰³ , exposure to rape ²⁰⁴ and killing ²⁰⁵ , fear of hardships and suffering since they leave armed groups ²⁰⁶ , mistreatment by commanders of armed groups ²⁰⁷ , lethal punished for failed attempts to escape ²⁰⁸ , exposure to violence ²⁰⁹ , witnessing the massacre of family or community members ²¹⁰ , insecurity ²¹¹ and vulnerability ²¹² , sexual violence ²¹³ , exploitation ²¹⁴ , they are maimed ²¹⁵ , displaced ²¹⁶ , made orphans ²¹⁷ , deprived education ²¹⁸ , forced to give expression to the hatred of adults ²¹⁹ , sex slaves ²²⁰ , girl mothers ²²¹ , concubines ²²² , risk of contracting HIV/AIDS and other sexually transmitted infections (STIs) ²²³ , abducted girls forced into marriages ²²⁴

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NATURE	FORM	DANGERS/RISKS
<i>Children living in Institutions</i>	Children living in large groups with no personalized quality care and freedom of movement.	Poor health ²²⁵ and sickness resulting from overcrowded conditions, physical under-development with weight, height and head circumference below the norm ²²⁶ , hearing and vision problems resulting from poor diets or under-stimulation ²²⁷ , motor skills delays and missed developmental milestone ²²⁸ , physical and learning disabilities ²²⁹ as a result of a combination of motor skills delays and retarded developmental stages, difficulties in language and social development ²³⁰ , problems in concentrating or forming emotional relationships ²³¹ , physical and sexual abuse ²³² , craves for attention will result in readiness to trust teenage and adult strangers who make them easy targets of substance abuse ²³³ and sexual exploitation ²³⁴
<i>Street Connected Children</i>	Children who ran away from their families and live alone on the streets	Poverty ²³⁵ , unemployment ²³⁶ , lack of access to education ²³⁷ , poor living conditions ²³⁸ , poor sanitation ²³⁹ and drinking water, high-risk exposure to sexually transmitted diseases ²⁴⁰ , chronic illnesses ²⁴¹ , early exposure to sexual activity ²⁴² , substance abuse and misuse ²⁴³ , multiple partners ²⁴⁴ , high-rate sex trade ²⁴⁵ for survival, HIV risk sexual behaviour ²⁴⁶ , exchanged sex for food, money or place to sleep ²⁴⁷ , peer influence and social networks ²⁴⁸

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NATURE	FORM	DANGERS/RISKS
Unaccompanied Minors	Who are internally displaced for one or the other and moving without their parents. including undocumented movements (e.g., seasonal movement in spaces allowing free movement of people), not being in the company of a relative or a parent. <i>Including children on the move without their parents/ relatives</i>	Lack of access to adequate food ²⁴⁹ , water and shelter, risks of harassment ²⁵⁰ , robbery ²⁵¹ , extortion ²⁵² , exploitation ²⁵³ , possibility of being stranded and destitute ²⁵⁴ in a foreign country, mental health problems, ²⁵⁵ exploitation (sexual or non-sexual) by truck drivers, boarder officials and police officers ²⁵⁶ , language barriers ²⁵⁷ , insecurity ²⁵⁸ , inadequate housing ²⁵⁹ , integration into schools ²⁶⁰ . Denial of social services ²⁶¹ and legal documentation ²⁶² , rape ²⁶³ , demands of sexual favours ²⁶⁴ and threats of abandonment for failure to comply by truck drivers ²⁶⁵ difficulty in obtaining legal documentation in order to access services ²⁶⁶ , teenage pregnancy ²⁶⁷

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NATURE	FORM	DANGERS/RISKS
<i>Trafficked Children</i>	A trafficked child who is manipulated by adults to engage in commercial sex, child labourers.	Sexual exploitation ²⁶⁸ ,starved of food ²⁶⁹ ,physical, verbally exploited ²⁷⁰ , exposure to commercial sex ²⁷¹ , armed conflict, ²⁷² exposure to hazardous forms of work ²⁷³ in factories, mines, farms and begging, prostitution ²⁷⁴

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NATURE	FORM	DANGERS/RISKS
<i>Child marriage / Forced early marriage</i>	This refers to a forced or coerced union/cohabitation or any such arrangement made for a child who has not attained the age of eighteen years.	Exposure to polygamous marriages ²⁷⁵ , girls feel rejected ²⁷⁶ , isolated ²⁷⁷ , depressed ²⁷⁸ , loss of childhood and the opportunity to play and develop friendships ²⁷⁹ , HIV infection ²⁸⁰ and prevalence for married girls, exposure to sexually transmitted infection ²⁸¹ (such as herpes, chlamydia, gonorrhea), high risk of malaria-related complications (such as anemia, pulmonary adema, hypoglycemia) during pregnancy ²⁸² , risk of obstetric fistula ²⁸³ , under age mother have high risks of delivering preterm or low-birthweight infants ²⁸⁴ , morbidity and mortality ²⁸⁵ of the infant is greatly dependent of the young mother's poor nutrition, lack of social and reproductive services, having older husbands substantially elevates HIV rates among married girls ²⁸⁶ , frequent unprotected sex ²⁸⁷ and to have infected partners ²⁸⁸ , intense pressure to prove fertility ²⁸⁹ , financial dependency on husbands, lack of power to make demands to their husbands ²⁹⁰ (to get tested, abstain from intercourse or demand condoms), lack of power to leave a marriage or divorce ²⁹¹

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NATURE	FORM	DANGERS/RISKS
<i>Talibé</i>	A who is a resident of 'Daraa' which is a traditional Islamic School where the children are supposed to study the Quran.	Corporal punishment ²⁹² , abuse ²⁹³ , being sent out to beg ²⁹⁴ , sleeping outside in the courtyard ²⁹⁵ , physical abuse ²⁹⁶ , not being provided with any meals ²⁹⁷ the children eat thanks to the money they receive from begging as well as offerings in kind, <i>marabout</i> do not provide them with any clothing ²⁹⁸ , sexual abuse ²⁹⁹ , violence ³⁰⁰ , street exposure ³⁰¹ , poor health ³⁰² and nutrition ³⁰³ , lack of access to education ³⁰⁴ , poverty ³⁰⁵ , denied access to health ³⁰⁶ , safe and loving environment ³⁰⁷ , maltreatment ³⁰⁸ , lack of sanitation and hygiene ³⁰⁹ , neglect ³¹⁰ , vulnerability from being away from home and lack of social protection from their families ³¹¹

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Table 19: Magnitude of Children Without Parental Care

REGION	COUNTRY	Institutional Care	Foster Care	Child-Headed Households	Juvenile Detention Children	Children Street Connected	Children on the Move	Child Labour	Child Marriages	Kalalah	Talibé	Children Born out of Wedlock	Children in Conflict Situations
Southern Africa	Botswana	120,000 ³¹²	No data	No data	404 ³¹³	No data	No data	Old Statistics	No data	NA	NA	NA	No data
	Eswatini	No data	No data	No data	265 ³¹⁴	No data	No data	No data	No data	NA	NA	NA	No data
	Lesotho	No data	No data	210,712 ³¹⁵	49 ³¹⁶	No data	No data	No data	No data	NA	NA	NA	0 ³¹⁷
	Malawi	No data	No data	No data	1117 ³¹⁸	Only 2 cities categorized	No data	2,100,000 ³¹⁹	7,999,005 ³²⁰	NA	NA	NA	No data
	South Africa	No data	Old Statistics	Old Statistics	0 ³²¹	100,000 ³²²	642,000 ³²³	No data	Old Statistics	NA	NA	NA	No data
	Zambia	No data	No data	Old Statistics	571 ³²⁴	No data	No data	400,000 ³²⁵	No data	NA	NA	NA	No data
	Zimbabwe	No data	1,221 ³²⁶	No data	122 ³²⁷	No data	No data	No data	No data	NA	NA	NA	No data
	Angola	No data	No data	No data	No Data	Old Statistics	No data	7,360,020 ³²⁸	No data	NA	NA	NA	No data
	Mozambique	No data	No data	10,115 ³²⁹	1581 ³³⁰	No data	No data	No data	No data	NA	NA	NA	336,000 ³³¹
	Namibia	No data	No data	No data	15 ³³²	No data	No data	No data	Old Statistics	NA	NA	NA	No data

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REGION	COUNTRY	Institutional Care	Foster Care	Child-Headed Households	Juvenile Detention Children	Children Street Connected	Children on the Move	Child Labour	Child Marriages	Kafalah	Talibé	Children Born out of Wedlock	Children in Conflict Situations
East Africa	Kenya	Old Statistics	No Data	No data	511 ³³³	300,000 ³³⁴	No data	1,300,000 ³³⁵	12,367,100 ³³⁶	No data	No data	NA	No data
	Rwanda	Old Statistics	No data	No data	685 ³³⁷	7,000 ³³⁸	No data	No data	1,748,250 ³³⁹	No data	No data	NA	No data
	Seychelles	No data	No data	No data	1 ³⁴⁰	No data	No data	No data	No data	No data	No data	NA	No data
	Tanzania	No data	Old Statistics	No data	1265 ³⁴¹	No data	No data	4,200,000 ³⁴²	18,290,022 ³⁴³	No data	No data	NA	No data
	Uganda	No data	No data	Old Statistics	0 ³⁴⁴	No data	No data	2,000,000 ³⁴⁵	No data	No data	No data	NA	142,000 ³⁴⁶
	Burundi	No data	No data	No data	156 ³⁴⁷	No data	No data	No data	No data	No data	No data	NA	No data
	Comoros	No data	No data	No data	12 ³⁴⁸	No data	No data	42,145 ³⁴⁹	No data	No data	No data	No data	No data

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REGION	COUNTRY	Institutional Care	Foster Care	Child-Headed Households	Juvenile Detention Children	Children Street Connected	Children on the Move	Child Labour	Child Marriages	Kafalah	Talibé	Children Born out of Wedlock	Children in Conflict Situations
	Djibouti	No data	No data	No data	33 ³⁵⁰	1,100 ³⁵¹	No data	23,693 ³⁵²	No data	No data	No data	No data	No data
	Eritrea	No data	No data	No data	No data	No data	No data	No data	No data	No data	No data	NA	No data
	Ethiopia	No data	No data	No data	No data	150,000 ³⁵³	No data	16,000,000 ³⁵⁴	No data	No data	No data	NA	Old Statistics
	Madagascar	No data	No data	No data	1021 ³⁵⁵	No data	No data	5,700,000 ³⁵⁶	Old statistics	No data	No data	NA	No data
	Mauritius	No data	No data	No data	80 ³⁵⁷	No data	No data	803 ³⁵⁸	No data	No data	No data	NA	No data
	Somalia	No data	No data	No data	No data	No data	450,000 ³⁵⁹	2,700,000 ³⁶⁰	No data	No data	No data	No data	No data
	South Sudan	No data	No data	No data	No data	3,000 ³⁶¹	65,637 ³⁶²	No data	5,700,009 ³⁶³	No data	No data	NA	Old Statistics
	Sudan	No data	No data	1,100 ³⁶⁴	420 ³⁶⁵	No data	No data	4,000,000 ³⁶⁶	No data	No data	No data	No data	No data

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REGION	COUNTRY	Institutional Care	Foster Care	Child-Headed Households	Juvenile Detention Children	Children Street Connected	Children on the Move	Child Labour	Child Marriages	Kafalah	Talibé	Children Born out of Wedlock	Children in Conflict Situations
Central Africa	Congo Republic	No data	No data	No data	61 ³⁶⁷	No data	No data	No data	No data	No	No	NA	850,000 ³⁶⁸
	Gabon	No data	No data	No data	130 ³⁶⁹	No data	No data	No data	200,000 ³⁷⁰	No	No	NA	No data
	Cameroon	No data	No data	No data	583 ³⁷¹	10,000 ³⁷²	10,000 ³⁷³	No data	2,400,00 ³⁷⁴	No	No	NA	56,295 ³⁷⁵
	DRC	No data	No data	No data	No data	Old Statistics	No data	No data	8,900,000 ³⁷⁶	No	No	NA	631 ³⁷⁷
	Chad	No data	No data	Old Statistics	392 ³⁷⁸	No data	No data	No data	2,600,000 ³⁷⁹	No	No	No	84,000 ³⁸⁰
	The Central African Republic	No data	No data	Old Statistics	No data	No data	No data	No data	Old statistics	No	No	NA	370,000 ³⁸¹
	Equatorial Guinea	No data	No data	No data	No data	No data	No data	No data	100,000 ³⁸²	No	No	NA	No data
	São Tomé & Príncipe	No data	No data	No data	0 ³⁸³	No data	No data	No data	20,000 ³⁸⁴	No	No	NA	No data

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REGION	COUNTRY	Institutional Care	Foster Care	Child-Headed Households	Juvenile Detention Children	Children Street Connected	Children on the Move	Child Labour	Child Marriages	Kafalah	Talibé	Children Born out of Wedlock	Children in Conflict Situations
West Africa	The Gambia	No data	No data	No data	7 ³⁸⁵	No data	No data	No data	200,000 ³⁸⁶	No data	No data	No data	No data
	Ghana	39,232 ³⁸⁷	No data	No data	1188 ³⁸⁸	Old Statistics	No data	Old statistics	2,300,000 ³⁸⁹	No data	No data	NA	No data
	Nigeria	No data	27,192,000 ³⁹⁰	No data	1204 ³⁹¹	No data	No data	15,000,000 ³⁹²	22,000,000 ³⁹³	No data	No data	NA	1,300,000 ³⁹⁴
	Sierra Leone	No data	No data	No data	0 ³⁹⁵	20,000 ³⁹⁶	No data	900,000 ³⁹⁷	1,000,000 ³⁹⁸	No data	No data	No data	No data
	Benin	No data	No data	No data	162 ³⁹⁹	No data	No data	No data	900,000 ⁴⁰⁰	No data	No data	NA	No data
	Burkina Faso	No data	No data	No data	148 ⁴⁰¹	Old Statistics	No data	10,210,000 ⁴⁰²	2,600,000 ⁴⁰³	No data	No data	No data	386,000 ⁴⁰⁴

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REGION	COUNTRY	Institutional Care	Foster Care	Child-Headed Households	Juvenile Detention Children	Children Street Connected	Children on the Move	Child Labour	Child Marriages	Kafalah	Talibé	Children Born out of Wedlock	Children in Conflict Situations
	Cape Verde	No data	No data	No data	No data	No data	No data	388,635 ⁴⁰⁵	30,000 ⁴⁰⁶	No data	No data	NA	No data
	Guinea	No data	No data	No data	189 ⁴⁰⁷	332 ⁴⁰⁸	1926	No data	1,900,000 ⁴⁰⁹	No data	No data	No data	No data
	Guinea-Bissau	No data	No data	No data	15 ⁴¹⁰	No data	No data	No data	200,000 ⁴¹¹	No data	No data	NA	No data
	Ivory Coast	No data	No data	No data	729 ⁴¹²	No data	790,000 ⁴¹³	Old statistics	No data	No data	No data	NA	No data
	Liberia	Old Statistics	No data	Old Statistics	51 ⁴¹⁴	14,000 ⁴¹⁵	17,689 ⁴¹⁶	750,000 ⁴¹⁷	500,000 ⁴¹⁸	No data	No data	NA	No data
	Mali	No data	No data	No data	91 ⁴¹⁹	No data	No data	No data	2,800,000 ⁴²⁰	No data	7015 ⁴²¹	No data	105,000 ⁴²²

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	Niger	No data	84 ⁴²³	No data	560 ⁴²⁴	No data	No data	No data	4,100,000 ⁴²⁵	No data	No data	No data	867,000 ⁴²⁶
	Senegal	No data	No data	1,120,005 ⁴²⁷	231 ⁴²⁸	No data	No data	1,600,000 ⁴²⁹	No data	100 ⁴³⁰	No data	No data	No data
	Togo	No data	No data	No data	54 ⁴³¹	572 ⁴³²	No data	600,000 ⁴³³	No data	No data	NA	No data	No data
North Africa	Egypt	No data	No data	NA	No data	Old Statistics	No data	1,800,000 ⁴³⁴	No data	No data	No data	No data	No data
	Algeria	No data	No data	NA	520 ⁴³⁵	No data	No data	No data	No data	No data	No data	No data	No data
	Libya	No data	No data	NA	No data	No data	51,828 ⁴³⁶	No data	No data	No data	No data	No data	No data
	Mauritania	No data	No data	NA	No data	No data	No data	24,516 ⁴³⁷	400,000 ⁴³⁸	No data	No data	No data	No data
	Morocco	80,000 ⁴³⁹	No data	NA	935 ⁴⁴⁰	No data	No data	No data	33,686 ⁴⁴¹	No data	No data	No data	No data

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	Tunisia	No data	No data	NA	47 ⁴⁴²	No data	No data	215,000 ⁴⁴³	No data	No data	No data	No data
	Sahrawi Arab Democratic Republic	No data	No data	NA	No data	No data	No data	No data	No data	No data	NA	No data

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