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## The potential of the Expert Committee of the African Children's Charter in advancing adolescent sexual health and rights in Africa

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### Abstract

This paper examines the role of the African Committee of Experts on the Rights and Welfare of the Child (ACE) in advancing the sexual and reproductive rights of adolescent girls in Africa. The paper focuses on the implications of lack of access to contraceptive services for the enjoyment of the rights of adolescent girls as guaranteed under the African Children's Charter and the Convention on the Rights of the Child. It then considers the potential role of the ACE, through its protective and promotional mandate, in advancing female adolescents sexual and reproductive rights in Africa. The paper draws on experiences of other human rights bodies such as the Committee on the Rights of the Child before finding that ACE is in a unique position to advance the sexual and reproductive health and rights of adolescent girls in the region.

### Introduction

It is estimated that young people between the ages of ten and twenty-four years, account for 1,8 billion of the seven billion people living in the world,<sup>1</sup> and the majority of these live in developing countries, including Africa. It is believed that some seventy per cent of the adolescent population live in developing countries. Indeed, adolescent women account for approximately one-fifth of all women of reproductive age (fifteen to forty-nine years) in Africa, South-East Asia, Latin America, and the Caribbean.<sup>2</sup>

According to the World Health Organisation (WHO), adolescents are people in the ten to nineteen year age group, while young persons are between the ages of fifteen and twenty-four years.<sup>3</sup> There is a high incidence of unwanted pregnancies in many developing countries. The WHO reports that of some 200 million pregnancies that occur each year, approximately

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<sup>1</sup> UNFPA The state of the world population, UNFPA, New York, 2011.

<sup>2</sup> Alan Guttmacher Institute 2 (AGI) & International Planned Parenthood Federation 'Facts on sexual and reproductive health of adolescents in the developing world' 2010 2.

<sup>3</sup> WHO, UNDP, UNFPA&World Bank Special Programme of Research, Development and Research Training in Human Reproduction *Progress in reproductive health research* WHO, Geneva 2002 1.

eighty million are unwanted.<sup>4</sup> It has been estimated that ten per cent of all pregnancies each year occur among teenagers.<sup>5</sup> Three of the seven countries with the highest teenage pregnancy rates in the world are in Africa.<sup>6</sup> Indeed, more than half of adolescent women aged between fifteen and nineteen years who fall pregnant each year, are in sub-Saharan Africa.<sup>7</sup> Most of these pregnancies are either unwanted or unintended. Often, adolescents are forced to resort to clandestine, and generally unsafe, methods of abortion to terminate these pregnancies.<sup>8</sup> This is not only a traumatic experience, but can also lead to death.

Early pregnancy may have serious implications for the health and well-being of adolescent women. Some of its consequences include increased risk of maternal and infant mortality, increased risk of vulnerability to sexually transmitted infections, including HIV/AIDS, limited education as result of drop-out.<sup>9</sup> In most cases, adolescent girls in developing countries, particularly in Africa, lack adequate knowledge of the use of contraception and where to access health care services.<sup>10</sup> Barriers to access to sexual health services for adolescent girls include the need for parental consent, cultural and religious factors, the lack of access to sexual health information, the non-availability of youth-friendly services, and the lack of political will on the part of African governments.

Lack of access to sexual and reproductive health information and services for female adolescents, constitutes a violation of their human rights guaranteed in international and regional human rights instruments, including the African Charter on the Rights and Welfare of the Child (African Children's Charter),<sup>11</sup> and the Convention on the Right of the Child (CRC).<sup>12</sup>

In particular, their rights to health, life, dignity, and non-discrimination may be violated. Against this backdrop, the paper examines the role of the African Committee of Experts on the Rights and Welfare of the Child (the ACE) in advancing the sexual and reproductive rights of adolescent girls in Africa. The paper focuses on the implications of lack of access to contraceptive services for the enjoyment of the rights of adolescent girls as guaranteed under the African Charter and the CRC. It then considers the potential role of the ACE in advancing

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<sup>4</sup> UNFPA 'A global need for family planning' available at: [www.unfpa.org/sy/pubfiles/n\\_8N\\_Hg53.pdf](http://www.unfpa.org/sy/pubfiles/n_8N_Hg53.pdf) (last accessed 13 October 2013).

<sup>5</sup> De Bruyn & Parker *Adolescents, unwanted pregnancy and abortion: policies, counseling and clinical care* (2004) 7.

<sup>6</sup> World Health Organization 'Adolescents pregnancy' (2008) *Making Pregnancy Safer Notes* 1.

<sup>7</sup> *Ibid.*

<sup>8</sup> Okonufua *et al* 'Attitudes and practices of private medical providers towards family planning and abortion services in Nigeria' *Acta Obstetrica et Gynecologica Scandinavica* 84/32005 270.

<sup>9</sup> See Layo & Abril *Key issues for political advocacy in sexual and reproductive rights in Africa* (2011) 10.

<sup>10</sup> Guttmacher Institute n 2 above.

<sup>11</sup> African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24/0/49 (1990) (entered into force 29 November 1999).

<sup>12</sup> Convention on the Rights of the Child. Adopted in 1989 UN Doc A/44/49 entered into force 2 September 1990.

female adolescents' sexual and reproductive rights in Africa through its protective and promotional mandate. The paper draws on experiences of other human rights bodies, such as the Committee on the Rights of the Child, before finding that the ACE is in a unique position to advance the sexual and reproductive health and rights of adolescent girls in the region.

### **The African children's charter and adolescent sexual and reproductive health rights**

Historically, children have been treated with scant respect, and often do not enjoy the same measure of fundamental rights as the population as a whole. For several years, children were viewed as objects of welfare, rather than subjects of rights;<sup>13</sup> they were to be seen and not to be heard. Even political philosophers such as John Mills, failed to include children in his theory of liberty.<sup>14</sup> Rather, he argued that the right to liberty applied only to adults who could truly appreciate its implications. This paternalistic view of children started to change during the 20th century, most notably following the adoption of the CRC by the United Nations in 1989.<sup>15</sup> The CRC, which is sometimes referred to as the Children's Bill of Rights, contains a number of important rights of children. Indeed, the CRC is the first legally binding international human rights instruments to guarantee both civil and political rights, and socio-economic rights. Some of the rights guaranteed under the CRC include the rights to life,<sup>16</sup> survival, non-discrimination,<sup>17</sup> health,<sup>18</sup> participation,<sup>19</sup> information,<sup>20</sup> and privacy.<sup>21</sup> All these rights are relevant in advancing adolescents' sexual health rights in the region. The CRC is the most widely ratified human rights instrument, and has been ratified by virtually all the African countries, with Somalia as a notable exception.

However, despite the detailed provisions relating to the rights of children under the CRC, 'the pen of scholarly commentators has not spared the CRC their scrutiny or discrediting analyses where warranted'.<sup>22</sup> For instance, commentators have argued that the provisions of the CRC are a recipe for conflict and disagreement, in that they are largely influenced by western thought and ideas, and fail to incorporate the cultures and beliefs of people in

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<sup>13</sup> Freeman 'Children as persons' in Freeman (ed) *Children's rights: a comparative perspective* (1996) 3.

<sup>14</sup> Mills *On Liberty* (1992) 22–23.

<sup>15</sup> UN Declaration on the Rights of the Child Proclaimed by General Assembly resolution 1386(XIV) of 20 November 1959 par 2 of the Declaration provides that: 'The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.'

<sup>16</sup> Article 6 of the CRC.

<sup>17</sup> *Id* at art 2.

<sup>18</sup> *Id* at art 24.

<sup>19</sup> *Id* at art 12.

<sup>20</sup> *Id* at art 13.

<sup>21</sup> *Id* at art 16.

<sup>22</sup> See Memzur 'The African Children's Charter versus the UN Convention on the Rights of the Child: a zero sum game?' (2008) 23/1&2 *South African Journal of Public Law* 4.

developing countries.<sup>23</sup> More specifically, Fottrel has argued that the CRC completely fails to reflect the needs and challenges encountered by the girl- child in developing countries.<sup>24</sup> She notes further, that the provisions of the CRC are weak on issues such as female genital mutilation and child marriage. The various criticisms levelled against the CRC led to the adoption of the African Children's Charter in 1990 to specifically address the human rights (including sexual and reproductive rights) of children and adolescents.

It should be noted that there are other important human rights instruments in the region that can be invoked to advance the sexual and reproductive rights of adolescents. For instance, the provisions of the African Charter on Human People's Rights on the right to life, privacy, dignity, health, and non- discrimination are all relevant in advancing the sexual and reproductive health of adolescents. More importantly, the coming into force of the Protocol to the African Charter on the Rights of Women in Africa (Women's Protocol), has provided an important platform for the promotion and protection of the sexual and reproductive health rights of women, including adolescent girls, in the region. The Protocol contains a number of significant provisions that are directly useful in advancing the sexual and reproductive rights of adolescents. For instance, the Women's Protocol explicitly articulates every woman's reproductive rights as human rights. It also expressly guarantees a woman's right to control her fertility, without being coerced into making wrong decision(s).<sup>25</sup> Article 14 titled 'Health and Reproductive Health' provides as follows:

States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:

- a) The right to control their fertility;
- b) the right to decide whether to have children, the number of children and the spacing of children;
- c) the right to choose any method of contraception;
- d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;
- e) the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognized standards and best practices;
- f) the right to have family planning education.

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<sup>23</sup> See for instance, Burman 'The best interests of the South African child' (2003) 17 *International Journal of Law, Policy and the Family* 38; Simon 'The Convention on the Wrongs of the Child' (2000) 8 *International Journal of Children's Rights* 1.

<sup>24</sup> Fottrel 'One step forward or two steps sideways? Assessing the First Decade of the Children's Convention on the Rights of the Child in Fottrel (ed) *Realising children's rights: 10 years of the Convention on the Rights of the Child* (2000) 10.

<sup>25</sup> Note 15 above art 14.

State Parties shall take all appropriate measures to:

- a) Provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas;
- b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding;
- c) protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

These provisions in the Women's Protocol, clearly make it one of the most important human rights instruments for promoting and protecting the sexual and reproductive health rights of women and girls, both internationally and nationally. The Women's Protocol is one of the most radical and ground-breaking human rights instruments to address sexual and reproductive health and rights – and in particular those of adolescent girls in Africa.<sup>26</sup> This article will, however, focus only on the viability of the African Children's Charter and its committee in advancing the sexual rights of adolescents.

The African Children Charter, which is the first and only comprehensive regional human rights instruments on children's rights,<sup>27</sup> came into operation in 1999, almost a decade after its adoption. The Charter has now been ratified by some forty-six African countries.<sup>28</sup> In addition to guaranteeing children's rights, the Charter also imposes a number of duties on children.<sup>29</sup> Although the rights guaranteed under the African Children's Charter are modelled on those of CRC,<sup>30</sup> in some respects the Charter provides a higher threshold of rights. For instance, unlike the CRC, the Charter makes the best-interests-of-the-child principle 'the primary consideration' in all actions concerning children.<sup>31</sup> It also defines a child as a person under the age of eighteen years without qualification.<sup>32</sup> This is aimed at better protection of children under national law.

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<sup>26</sup> Banda 'Blazing a trail: 26 the African Protocol on Women's Rights comes into force' (2006)

50 *Journal of African Law* 72; see also, Centre for Reproductive Rights (CRR) *Briefing Paper: The Protocol on the Rights of Women in Africa; an instrument for advancing reproductive and sexual rights* (2005) 4–7.

<sup>27</sup> Llyod 'The African Regional System for the Protection of Children's Rights' in Sloth-Nielsen (ed) *Children's rights in Africa: a legal perspective* (2008) 33 33–50.

<sup>28</sup> Africa Union Status of Documents available at: <http://www.africa union.org/root.au/Documents/Treaties/List/African Charter on the Rights and Welfare of the Child> (last accessed 14 February 2011); Save the Children and PLAN *Advancing Children's Rights: a guide for civil society organizations on how to engage with the African Committee of Experts on the Rights and Welfare of the Child* (2010) 109.

<sup>29</sup> Memzur n 22 above.

<sup>30</sup> In similar manner like the CRC, the Charter contains 'general principles' for the protection of children's rights. These include the best interests of the child principle, life, survival and development, non-discrimination and participation.

<sup>31</sup> See art 4 of the Charter.

<sup>32</sup> *Id* at art 2.

The Charter contains provisions prohibiting early marriage, harmful cultural practices, and child soldiers.<sup>33</sup> In addition, the African Children's Charter contains specific provisions that can be invoked directly or indirectly to advance the sexual health rights of adolescents, particularly adolescent girls, in the region. These include the rights to life,<sup>34</sup> health,<sup>35</sup> privacy,<sup>36</sup> non-discrimination,<sup>37</sup> information,<sup>38</sup> and education.<sup>39</sup> For the purpose of this article, the term 'adolescent girls' and 'female adolescents' will be used interchangeably to refer to a girl-child between the ages of ten and nineteen.

### **Factors limiting access to contraceptive services for adolescents**

In order to understand the potential role that the ACE can play in advancing the sexual health and rights of children and adolescents in Africa, it is important that the committee understand the nature of challenges adolescents encounter in accessing sexual health services, particularly contraceptive services. This will enable the committee to devise appropriate and pragmatic responses to these challenges. Thus, this section discusses some of the barriers to contraceptive services for adolescents and the implications this holds for the enjoyment of their rights guaranteed in regional and international human rights instruments. While the discussion focuses on the usefulness of the African Children Charter to address barriers to adolescents' sexual health and rights, it also draws on other human rights instruments, particularly the CRC, and the interpretation provided by its committee. The discussion here is not exhaustive but highlights some of the challenges facing adolescents, particularly female adolescents, in accessing contraceptive services in the region.

### **Age of consent**

Adolescents generally, and female adolescents in particular, experience difficulty in accessing sexual health services due to their age. In most countries, especially the common law jurisdictions, the age of majority is set at around eighteen years.<sup>40</sup> This implies that a younger adolescent, who is either sexually active or has experienced coerced sex, may not be able to seek contraceptive services to prevent either sexually transmitted infection or pregnancy, unless parental consent has been obtained. This often puts a female adolescent in

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<sup>33</sup> See arts 21 and 22.

<sup>34</sup> *Id* at art 5.

<sup>35</sup> *Id* at art 14.

<sup>36</sup> *Id* at art 10.

<sup>37</sup> *Id* at art 3.

<sup>38</sup> *Id* at art 7.

<sup>39</sup> *Id* at art 11.

<sup>40</sup> For instance, countries that are former colonies of Britain such as Ghana, The Gambia and Kenya all adopt eighteen as the age of majority.

a difficult situation, as she is unable to seek family planning or health care services that may assist her in making an informed decision about her health and well-being.

The issue of whether an adolescent should have access to health care services in general, and sexual health services in particular, remains controversial as it often pits the rights of the parent against those of the child. At common law, there are two approaches. One is that children generally are incompetent to consent to medical treatment independently of their parents or guardians.<sup>41</sup> The basis for this view is that essentially, a treatment intervention on a minor or a child, amounts to an adverse interference in the welfare of the minor or child, and so requires the prior consent of a parent or guardian who has legal custody of the minor.<sup>42</sup> Moreover, it is often erroneously believed that children are ‘unwise’, inexperienced, immature, and mentally and psychologically incapable of making decisions that may affect their health and life.<sup>43</sup> For instance, it is believed that allowing a child under the age of majority to have access to contraceptive services, is not only morally wrong, but also exposes the child to negative consequences of sexual activities.

The second approach is that the competence of children or minors to consent to medical treatment is a matter of fact, depending on the ability of the minor or child to exhibit sound understanding of the nature and importance of the treatment sought.<sup>44</sup> Supporting this view, the English House of Lords in the *Gillick* case, while considering the legality of health guidance which permitted a girl under the age of sixteen to consent to sexual health treatment, reasoned that the crucial point in this regard is to ascertain whether the girl truly understands the nature of the treatment and its implications.<sup>45</sup> Once this can be established, there is no reason why such a girl should not be allowed to consent to sexual health treatment, particularly contraceptive services.

In some jurisdictions, like the United States, there are two doctrines as regards minors or young people’s competence to consent to medical treatment. These are the ‘mature minor’, and the ‘emancipated minor’ rules. ‘Mature minors’ is the term used to describe older teenagers who understand the risks and benefits of a medical treatment.<sup>46</sup> In essence, the ‘mature minor’ doctrine is similar to the position under the common law mentioned above. On the other hand, the ‘emancipated minor’ doctrine, is used to describe a situation where a

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<sup>41</sup> See for instance, Boberg *The Law of persons and the family* (1977) 643.

<sup>42</sup> *Id* at 645.

<sup>43</sup> See for instance Maradiegue ‘Minors’ rights versus parents’ rights: review of legal issues in adolescents health care’ (2003) 3 *Journal of Midwifery and Women’s Health* 170.

<sup>44</sup> Straus *Doctor, patient and the law* (1991) 171; see also Armstrong ‘Traditionalism and access to health care’ in Armstrong (ed) *Women and law in Southern Africa* (1987) 221–236.

<sup>45</sup> See *Gillick v West Norfolk and Wisbech Health Authority and Department of Health and Social Security* [1986] 1 AC 112 and *R on the Application of Axon v The Secretary of State for Health* (2006) EWHC 37 (Administrative Court) Case No CO/5307/2004.

<sup>46</sup> Cook *et al Reproductive 46 health and human rights: integrating medicines, ethics and the law* (2003) 283.

young person is free from parental control, married, serving as a member of the armed forces, pregnant, or living away from home.<sup>47</sup>

Denial of access to sexual health services, especially contraceptive services, to children or adolescents on the basis of age, raises the issue of age- discrimination. The right to non-discrimination is enshrined in most human rights instruments. Articles 3 and 2 of African Children's Charter and the CRC respectively, prohibit discrimination on various grounds, including religion, political belief, sex, race, and 'other status'. The phrase 'other status' has been defined to include age.<sup>48</sup> Therefore, discriminatory practices on the basis of age will amount to a human rights violation. Specifically regarding sexual health services, the CRC Committee has noted that laws that deny adolescents access to sexual health services, including contraceptive services, on the basis of age, are a violation of the adolescents' human rights, and may jeopardise their well-being.<sup>49</sup> The committee has also noted that failure of a state to include provisions on age of consent for counselling and medical treatment for adolescents, is a violation of the rights of children under the CRC.<sup>50</sup>

Furthermore, articles 9 of the African Children Charter and 12 of CRC, recognise the principle of the 'evolving capacities' of the child. This refers to the phenomenon where children and adolescents, may manifest adult-like behaviour in some situations. Lending support to this principle, some child psychologists have argued that the ability of a child to make sound decisions is not based on age alone, but may be influenced by other factors. For instance, it has been noted that whereas a child of fourteen may lack the maturity to make sound decisions, a child of ten may possess the maturity to make such decisions.<sup>51</sup>

While it is admitted that determining whether a child's capacities have evolved, is sometimes difficult, it is submitted that each case must be treated on its merits. In other words, rather than generally assuming that a child or an adolescent is incapable of making an informed decision about his/her health, a case-by-case approach should be adopted. The question should be whether this particular child or adolescent, has exhibited sufficient maturity to understand the implications of the treatment he/she is seeking.<sup>52</sup> Once this has been resolved in favour of the child or adolescent, there should be no reason why he/she should not be provided with treatment.

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<sup>47</sup> *Ibid.*

<sup>48</sup> The Committee in its General Comment 20 on Non-Discrimination in Economic, Social and Cultural Rights E/C 12/GC/20 25 May 2009.

<sup>49</sup> Committee on the Right of the Child, Adolescents Health and Development in the Context of the Convention on the Right of the Child, General Comment No 4 CRC/GC/2003/4 Thirty-Second Session May 2003 par 6.

<sup>50</sup> See the Concluding Observations of the Committee on CRC: Austria 15 May 7, 1999. UN Doc CRC/C/15/Add 98.

<sup>51</sup> Morgan 'Controlling minors' fertility' (1986) 12 *Monash University Law Review* 161.

<sup>52</sup> See for instance, Buchanan & Brock *Deciding for others: the ethics of surrogate decision-making* (1989) 18.



Opposition to capacity of children and adolescents to consent to sexual health treatment, is often unfounded and flies in the face of fact and reality. Studies have shown that children and adolescents, particularly girls, tend to mature early and engage in sexual activity without the knowledge of their parents or guardians.<sup>53</sup> Given the prevalence of HIV/AIDS, and the incidence of teenage pregnancies in Africa, it would seem compelling to adopt a more pragmatic approach to this issue. This would appear to be the position adopted by the English High Court in the *Axon* case.<sup>54</sup> Here, a mother of five daughters challenged a health guideline purporting to allow a girl under sixteen years of age, to seek contraceptive advice and treatment without parental consent. According to Mrs Axon, such a health guideline is unlawful and illegal, and erodes the power of parents to monitor the kinds of treatment their children receive. Justice Silber endorsed the reasoning of the majority in the *Gillick* case, and refused Mrs Axon's application challenging the health guideline in question. He rejected the argument that a health guideline which allows a girl of under sixteen to seek sexual health treatment. He further stated that 'the very basis and nature of the information which a doctor or a medical professional receives relating to the sexual and reproductive health of any patient of whatever age, deserves the highest degree of confidentiality...'.<sup>55</sup> The court was not convinced by the argument that allowing a girl under sixteen years of age to consent to sexual health treatment would interfere with the right to family life.

While it may be argued that the decisions in *Gillick* and *Axon* originated in a different cultural context and environment, it is submitted that the sexual health needs and challenges of adolescent girls in Africa are not entirely different from those in the United Kingdom.<sup>56</sup> Indeed, a South African High court in *Christian Lawyers Association v Minister of Health*,<sup>57</sup> upheld the right of a girl under eighteen, to seek an abortion under the Choice on Termination of Pregnancy Act of 1996, without the consent of her parents or guardians. In arriving at its decision, the court noted that making it mandatory for a girl under eighteen to seek parental consent before accessing abortion services, will interfere with her right to reproductive choice and bodily integrity guaranteed under the South African Constitution. According to the court, 'it cannot be in the interest of the pregnant minor girl to adopt a rigid age-based approach that takes no account, little or inadequate account of her individual

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<sup>53</sup> Awusabo-Asare *et al* 'Adolescent sexual and reproductive health in Ghana: a synthesis of research evidence *Occasional Report* New York: AGI, 2004, 13; Biddlecom *et al*, *Protecting the next generation in Sub-Saharan Africa: learning from adolescents to prevent HIV and unintended pregnancies* (2007) 17.

<sup>54</sup> *R on the Application of Axon v The Secretary of State for Health* (2006) EWHC 37 (Administrative Court) Case No CO/5307/2004.

<sup>55</sup> *Id per* Justice Silber par 62 .

<sup>56</sup> Durojaye 'Access to contraception for adolescents in Africa: a human rights challenge' (2011) 44/1 *CILSA* 23.

<sup>57</sup> *Christian Lawyers Association v National Ministers of Health and others* 2004 [10] BCLR 1086.

peculiarities'.<sup>58</sup> This is a purposive approach to interpreting the law, which pays attention to the plight and lived experience of adolescent girls.

It should be noted that the provision of the South African Children's Act,<sup>59</sup> which permits a child of twelve or above to seek contraceptive services without the need for parental consent, can be said to have been greatly influenced by the decision in *Gillick*. The above discussion has clearly shown that children and adolescents can, in some circumstance, make informed decisions regarding their health.

### **Lack of access to sexual health information**

Many adolescents lack adequate knowledge and information with regard to their sexuality. Therefore, while growing up and becoming sexually active, they tend to know little or nothing about contraception. They are, consequently not in a position to prevent unwanted pregnancies or STIs. In many parts of Africa, discussion about sex or sexuality is often forbidden, and most parents avoid discussing these issues with their children. Hence, rather than relying on information from parents or guardians, studies have shown that most adolescents look elsewhere for information as regards their sexuality.<sup>60</sup> For instance, a study has shown that the source of information about sexuality, for most adolescents, is either their peers or the media.<sup>61</sup>

Most parents do not realise that they are the primary sexuality educators of their children. Often, in the name of culture or religion, parents avoid discussing issues relating to sexuality with their children. Sometimes parents even deliberately misinform or feed children and adolescents wrong information on sexuality, which may confuse or mislead them.<sup>62</sup> It is important to note, however, that children and adolescents need their parents or guardians to talk to them about their sexuality. Communications between parents and adolescents on the latter's sexuality, prepare adolescents for the challenges they may face regarding their well-being.

It should be noted that the right to freedom of information is a fundamental right for all, and is adequately guaranteed in most human rights instruments. For example, article 19 of the International Covenant on Civil and Political Right guarantees the right to information for

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<sup>58</sup> *Id* at par 56.

<sup>59</sup> See s 134 of the South African Children's Act 38 of 2005. In what appears to be the codification of the decision in *Gillick*, s 130 of the Act provides that in the case of HIV testing, a child aged twelve with 'sufficient maturity' to understand the implications of such a test may lawfully give consent.

<sup>60</sup> Alubo 'Adolescent reproductive health practices in Nigeria' (2001)5 *African Journal of Reproductive Health* 109–119, 117.

<sup>61</sup> Sunmola *et al* 'Reproductive knowledge sexual behaviour and contraceptive use among adolescents in Niger State of Nigeria' (2002) 6 *African Journal of Reproductive Health* 82–92.

<sup>62</sup> Hughes & McCauley 'Improving the fit: adolescents' needs and future programmes for sexual and reproductive health in developing countries' (1998) 29 *Studies in Family Planning* 233–245 233.

all.<sup>63</sup> More specifically, in relation to sexual health information, articles 10(h) and 16(1)(e) of the Convention on All Forms of Discrimination against Women (CEDAW),<sup>64</sup> recognise the rights of women, particularly those in rural areas, to have access to information related to family planning. These provisions are broad enough to include access to contraceptive information for adolescents, especially female adolescents. Adolescents require accurate information with regard to their sexual health, including information related to contraception, to avoid their taking decisions which could be dangerous to their health and lives.<sup>65</sup> Indeed, the CEDAW Committee has urged states to provide, without prejudice, access to information and education on sexual health (including those related to contraception) to girls within their countries.<sup>66</sup>

The committee further explains that access to sexual health information and education forms an integral part of the enjoyment of the right to health. According to the committee, states are obliged to ‘ensure the rights of female and male adolescents to sexual and reproductive health education by properly trained personnel in specially designed programs that respect their rights to privacy and confidentiality’.<sup>67</sup> Similarly, the committee in its General Recommendation 21 has noted as follows:

in order to make an informed decision about safe and reliable contraception measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services as provided in article 10(h) of the Convention.<sup>68</sup>

In relation to children and adolescents, articles 7 of the African Children’s Charter, and 13 (1) of the CRC, specifically guarantee to young people, the right to information. Article 7 of the African Children’s Charter protects the right of a child to express his/her opinion freely in all matters, while article 13 (1) of CRC guarantees the child the right to ‘seek, receive and impart information and ideas of all kinds’. These provisions are broad enough to accommodate information related to contraception for adolescents. It should be noted that under the Charter and the Convention, the right to information is qualified by the phrase ‘subject to such restrictions by law’, and for the ‘sake of public health or morals’ respectively. These

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<sup>63</sup> International Convention Civil and Political Rights, GA Res 2200, UN GAOR, Supp NO16 at 52, UN DOC A/6316 (1966), 999 UNTS 171, 174 (entered into force on March 23, 1976) (hereafter ICCPR).

<sup>64</sup> Convention on the Elimination of All Forms of Discrimination Against Women GA Res 54/180 UN GAOR 34th Session Supp No 46 UN Doc A/34/46 1980.

<sup>65</sup> See Centre for Reproductive Rights (CRR) *Briefing Paper: 65 Implementing Adolescent Reproductive Rights through the Convention on the Rights of the Child* (1999) 4.

<sup>66</sup> See General Recommendation 24 of CEDAW on Women and Health UN GAOR, 1999, Doc A/54/38 Rev 1 par 18.

<sup>67</sup> *Ibid.*

<sup>68</sup> Committee on CEDAW General Recommendation 21 on Equality in Marriage and Family Relations’ Thirteen Session, General Assembly Report Supplement No 38 (A/49/38) pars 1–10.

provisions provide a fertile ground for opposition to adolescents' access to sexual health information, including access to contraceptive information. This is particularly true for many African countries, where deep religious and cultural norms surrounding sexuality, prohibit premarital sex among young people. Adherents of these norms may rely on the 'claw-back' provisions of article 7 of the Charter, and article 13(2) of the Convention, to justify their opposition to access to sex education or information on contraception for female adolescents in their countries.

It is hoped that when the opportunity arises, the ACE will adopt a liberal interpretation of article 7 so as not to defeat the intent and spirit of the Charter. Such an interpretation must take cognisance of other relevant provisions in the Charter. In particular, the 'claw-back' clause in article 7 must be read together with article 14(2)(c), which urges states to 'develop preventive health care and family life education' for children, and article 21(1)(b) which requires states to protect children from 'those customs and practices prejudicial to the health or life of the child'. Above all, the restriction in article 7 must be subject to the best-interests-of-the-child principle. Moreover, it is hoped that the committee will give a purposive interpretation to article 20 of the Charter, and require parents and guardians to provide their children or wards with sexual health education. This will go a long way in ensuring a healthy development of children and adolescents in the region.

### **Lack of political will**

In many African countries little or no attention has been given to the health needs of adolescents, especially female adolescents. Although governments have often paid lip-service to advancing the health needs of young people, in many parts of the region adolescents, particularly female adolescents, still lack access to special health information and services. Often, youth-friendly health care centres are unavailable, and budgetary allocation for programmes to support the sexual needs of adolescents is inadequate. It should be noted that human rights instruments often impose obligations on states to respect, protect, and fulfil the human rights guaranteed in those instruments. The obligation to fulfil rights requires governments to take all necessary steps, including administrative, legislative and budgetary steps, in order to realise such rights.

Regarding the sexual health needs of adolescents, the obligation to fulfil will require African governments not only to adopt favourable policies that ensure access to a wide range of services, including contraceptive services for adolescents, but also to commit adequate resources to the implementation of programmes and the physical construction of clinics and health care centres that are culturally appropriate for adolescents. From a human rights perspective, failure on the part of African governments to enact or develop appropriate laws and policies that will advance the sexual health needs of adolescents, especially female

adolescents, will amount to a breach of obligation under international law. Similarly, failure on the part of African governments to allocate adequate resources towards meeting the sexual health needs of adolescents, will result in the violation of their human rights.

Generally, health care systems in many African countries are poorly funded and lack basic amenities such as gloves, syringes, analgesic, toiletries, and other essentials necessary to promote and advance the sexual health needs of the people.<sup>69</sup> Studies have shown that African governments have not given priority to the sexual health needs of adolescents.<sup>70</sup>

Government-owned, youth-friendly health care services are virtually non-existent. In addition, there is a dearth of well-trained health care providers who can meet the needs of adolescents. This has led to negative consequences such as sexual ill health and loss of lives for adolescents, particularly female adolescents. Experience has shown that adolescent girls are more likely to suffer from morbidity or death during pregnancy or childbirth, than older women. This constitutes a violation of the right to life and the right to health of adolescents as guaranteed under the African Children's Charter and the CRC.

In examining state reports submitted by African governments to the CRC Committee, the committee has often expressed concern at the poor allocation of resources and the lack of legal frameworks for ensuring available, accessible, appropriate, and quality sexual health services for adolescents. For instance, in one of its concluding observations to Nigeria, the committee noted with concern, the poor allocation of resources by the government to address the health needs of adolescents.<sup>71</sup> According to the committee, this severe lack of resources for children's rights in the country, is often the result of widespread corruption and the uneven distribution of resources.<sup>72</sup> Thus, the committee urged the Nigerian government to prioritise, as a matter of urgency, 'budgetary allocations and efficient budget management to ensure the implementation of the rights of children' in the country.<sup>73</sup>

### **The African committee of experts on the rights and welfare of the child**

This body of eleven independent members, created under article 32 of the African Children's Charter, is tasked with ensuring the full realisation of the rights of children and adolescents

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<sup>69</sup> See for instance, Reis *et al* 'Discriminatory attitudes and practices by health care workers towards patients with HIV/AIDS in Nigeria' (2005) 2 *Plos Med* e246 0743 at 0747; see also Durojaye and Ayankogbe 'A rights-based approach to access to HIV treatment in Nigeria' (2005) 2 *African Human Rights Law Journal* 287–307.

<sup>70</sup> See for instance, Sedgh *et al* *Meeting young women's sexual and reproductive health needs in Nigeria* (2009) 12.

<sup>71</sup> Committee on CRC Concluding Observation on Nigeria 2005 CRC/C/146 adopted at the 1025th meeting held on 28 January 2005pars 685–686.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

guaranteed under the Charter. Its primary responsibility is to promote and protect the rights and welfare of the child.<sup>74</sup>

The ACE has broader responsibilities than the CRC Committee. This is because the ACE is not only charged with receiving and examining state reports as stipulated under the African Children's Charter, but also has the responsibility to receive individual communications with respect to the violations of the provisions of the African Children's Charter.<sup>75</sup> Similarly, the committee has a mandate to collect and document information, and to commission interdisciplinary assessments of African problems with regard to children's rights.

Other functions of the ACE include organising meetings, encouraging national and local institutions concerned with the rights and welfare of the child, and offering its views and making recommendations to governments where necessary.<sup>76</sup> Further, the committee is empowered to monitor implementation and ensure the protection of the rights enshrined in the Charter.<sup>77</sup> The Committee is also authorised to formulate and lay down principles aimed at protecting children's rights in Africa.<sup>78</sup> To this extent, the ACE is a unique creation because of its progressive and action-oriented protective mandate.<sup>79</sup> No other body, at either the international or the regional level, has a similar mandate. The unique duties entrusted to the committee, place it in an ideal position to realise adolescents' sexual health and rights in the region. Viljoen correctly submits that through this unique feature of the African Children's Charter, the instrument has progressively raised the bar in the promotion and protection of children's rights in Africa.<sup>80</sup>

The creation of the ACE with powers and responsibilities under the African Children's Charter is intended to ensure effective and accessible regional mechanism for the realising children's rights. This is a commendable approach by the drafters of the Charter, as it will ensure a better focus on children's rights, including sexual health rights, in the region. Moreover, it will enable the ACE to develop important rules and jurisprudence with regard to advancing children's rights in the region.

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<sup>74</sup> See art 42 of the African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24 0/49 (1990) (entered into force 29 November 1999).

<sup>75</sup> *Id* at art 44, recently the UN General Assembly has adopted an Optional Protocol to the CRC to enable the Committee on CRC to entertain individual communications.

<sup>76</sup> Lloyd 'Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: raising the gauntlet' 2002 *International Journal of Children's Rights* 179, 186.

<sup>77</sup> Article 42 (b) of the Charter.

<sup>78</sup> *Id* at 42 (a) (ii).

<sup>79</sup> *Ibid*.

<sup>80</sup> Viljoen *International human rights law in Africa* (2007) 265.

The ACE established under the African Children's Charter, is a body of high moral standing, integrity, impartiality, and competence in matters relating to the rights and welfare of the child.<sup>81</sup> Members are expected to serve in their personal capacity with the aim of promoting and protecting the rights guaranteed in the Charter.<sup>82</sup> Usually, members of the committee are proposed by the relevant ministries, and then elected by the African Union with due regard to geographic and gender balance. Members of the committee enjoy privileges and immunities<sup>83</sup> in order to strengthen its impartiality and to ensure effective service on the part of members.<sup>84</sup> For some years after the African Children's Charter came into force, the ACE could not be established. However, at the 37th Assembly of Heads of State and Governments of the then Organisation of the African Unity (OAU), now the African Union (AU), held in July 2001 in Lusaka, Zambia, the ACE was officially launched. However, the committee only started considering its first set of reports from four state parties to the Charter, at its 11th ordinary session held in Addis Ababa, Ethiopia in 2008, almost a decade after its inception.<sup>85</sup> This is a welcome development, and it is sincerely hoped that it will be sustained despite the fact that state parties are yet to familiarise themselves with the reporting guidelines of the committee.<sup>86</sup> This may be regarded as a temporary problem which should be overcome within a reasonable period.

### **The protective mandate of the committee**

The potential of the ACE to advance adolescents' sexual health needs, especially with regard to access to contraception, in the region, lies not only in its ability to receive individual communications, but also in its power to examine state parties' reports. In essence, through its protective and promotional mandate, a great opportunity exists for the committee to hold African governments accountable to their obligations under the Charter and other international human rights law instruments.

By virtue of article 44 of the African Children's Charter, the ACE is empowered to receive communications from any individual, group, or nongovernmental organisation. This provides an avenue for the committee to invoke the principles and standards recognised in the Charter and other relevant human rights instruments, such as the CRC, to affirm adolescents' sexual health rights in the region. The conditions required for admissibility of communications before the committee, are similar to those of the African Commission.<sup>87</sup>

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<sup>81</sup> Article 33(1).

<sup>82</sup> *Id* at 33(2) and 43 (a).

<sup>83</sup> Lloyd n 75 above at 186.

<sup>84</sup> *Ibid*.

<sup>85</sup> These states' parties are Nigeria, Rwanda, Mauritius and Egypt. For a detailed discussion on this, see Mezmur & Sloth-Nielsen 'An ice breaker: State Party Report and the 11<sup>th</sup> Session of the African Committee of Experts on the Rights and Welfare of the Child' 2008 *African Human Rights Law Journal* 596.

<sup>86</sup> *Id* at 615.

<sup>87</sup> See Chap 2 of art 1(III) a-d of the Rules of Procedures of the Committee.

Drawing on the experience of the African Commission on Human and Peoples' Rights, the ACE can develop important jurisprudence around adolescents' sexual health needs.

Moreover, the mere fact that the committee will not be hindered by the problem of justiciability of the right to health, makes it a potent force for realising access to contraception for adolescents in the region. It should be noted that one of the most authoritative decisions of the African Commission addressing socioeconomic rights, including the right to health, under the African Charter, is the *SERAC*<sup>88</sup> case. In this case the commission found the Nigerian government in violation of the Ogoni peoples' rights to health, life, a clean environment, and dignity guaranteed under the African Charter. This case has remained an important precedent in advancing socio-economic rights, including the right to health.

The decision in *SERAC*, therefore, should serve as a point of reference for ACE in the adjudication of future cases on access to sexual health services, including contraceptive services for adolescents, from African countries. The committee will, it is hoped, be alive to its responsibility to protect children's and adolescents' rights. In entertaining communications before it relating to the violation of adolescents' sexual health and rights, the committee would need to pay greater attention to the rights of female adolescents in arriving at its decisions. In its first ever case to be decided on merits, the ACE has, in the *Nubian* case,<sup>89</sup> displayed a willingness to accord the provisions of the Charter a purposive interpretation. In that case, two non-governmental organisations filed a communication before the committee on behalf of the Nubian people, claiming that they had suffered a series of human rights violations at the hands of the Kenyan government. The complainants alleged that children born to the Nubian people, were either denied birth registration, or refused birth certificates by the Kenyan government. In its decision, the committee adopted the notion of the indivisibility of human rights, and found that the actions of the Kenyan government had resulted in the violations of article 6 (the right to nationality), article 3 (non-discrimination), article 11 (education), and article 14 (the right to health).

This decision is a welcome development as it clearly shows the ACE as progressive and forward-looking. It is hoped that in future when an opportunity presents itself, the committee will adopt a similar proactive approach in advancing the right to health, including sexual and reproductive health rights of adolescents, especially female adolescents. It should be noted, however, that in the *Nubian* case, the committee did not clearly articulate the gender dimension raised by the case. The committee concentrated on protecting the rights of

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<sup>88</sup> *Social and Economic Rights Action Centre (SERAC) and another v Nigeria* (2001) AHRLR 60 (ACHPR 2001).

<sup>89</sup> *Institute for Human Rights Development in Africa (IHRD) and Open Society Justice Initiative on behalf of Children of Nubian Descent in Kenya v The Government of Kenya Communication No Com/002/2009*, delivered on 22 March 2011.



the Nubian children generally as against the government of Kenya, and did not focus on the implications of the long years of persistent human rights violations for Nubian girl-children. In future one will expect the committee to be more gender-sensitive in dealing with similar cases.

The ACE is also empowered to adopt temporary or provisional measures in order to prevent violations of human rights which a child may experience.<sup>90</sup> This is a very important provision that can be used to advance the sexual health and rights of adolescents. Other human rights' bodies, such as the African Commission, adopt similar measures. The advantage of this provision is that it can be invoked by the committee to compel a state to meet an important, but lacking, sexual health need of adolescents in the region. For instance, if the lack of access to contraceptive services for adolescents is likely to result in grave negative health consequences, including loss of life, the committee should be able to order a state party to provide access to contraceptive services as a matter of urgency, to prevent further harm to adolescents. This will be consistent with the best-interests of- the-child principle. The only problem with this provision, is noncompliance by state parties. If the experience of the African Commission is anything to go by,<sup>91</sup> the committee may face a daunting task in ensuring that African governments comply with this provision.

In addition to the above, the committee may also consider the appointment of special rapporteurs to strengthen its protective mandate. This approach has been used to good effect under the African Charter.<sup>92</sup> The ACE has already provided for the appointment of a rapporteur to consider the admissibility of communications, and there is nothing to prevent it from going a step further, by considering the appointment of a special rapporteur who will focus on the sexual and reproductive health challenges facing the girl-child in Africa. This can be justified based on studies that the girl-child in Africa is often the victim of coerced sex, and lacks access to youth-friendly health care services.<sup>93</sup> In many African countries, there is a high incidence of unwanted pregnancies and sexually transmitted infections, including HIV/AIDS among adolescents. Such an appointment will help not only to generate debate, but also to draw the attention of African governments to the health needs of the girl-child in the region.

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<sup>90</sup> See for instance, Chap 2 art 2 (IV) of the Rules for Communications.

<sup>91</sup> See for instance, C 91 communications 137/94, 139/94, 154/96 and 161/97 *International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organisation versus Nigeria* where the military junta of General Sanni Abacha went ahead to execute Ken Saro-Wiwa despite a subsisting provisional order from the Commission ordering the Nigerian government to stay action.

<sup>92</sup> The Commission took the initiative to establish other procedures to supplement its initial mandate when it appointed for the first time in 1994 the Special Rapporteur on Extra Judicial Killings, Summary and Arbitrary Executions in Africa available at: [http://www.achpr.org/english/info/prison\\_mand.html](http://www.achpr.org/english/info/prison_mand.html) (last accessed 28 January 2012).

<sup>93</sup> Jejeebhoy & Bott 'Non-consensual sexual experiences of young people in developing countries: an overview' in Jejeebhoy & Bott (eds) *Sex without consent: experiences of young people in developing countries* (2005).

It may be argued that the appointment of such a rapporteur by the ACE is unnecessary given the fact that a Special Rapporteur on the Rights of Women already exists under the African Charter. A counter argument to this, could be that the Special Rapporteur on the Rights of Women in Africa (SPRWA) has often focused on issues affecting women and girls generally, without specific and detailed attention to the plight of the girl-child.

Although in some of her reports, the SPRWA has documented certain of the challenges facing adolescent girls in the region, this has often been done as an ‘add-on’ rather than the main focus of the reports. Moreover, as shown above, the challenges adolescent girls face regarding access to sexual health services, are somewhat different from those of an adult woman. Above all, the SPRWA is a commissioner of the African Commission, appointed under the African Charter and responsible to the commission.

### **Promotional mandate**

The promotional mandate of the committee involves the examination of state reports and embarking on mission visits. In exercising its promotional functions with regard to state reports, the committee can demand that state parties show what steps they have taken to advance the sexual health needs, including access to contraceptive services, of adolescent girls in their countries. The committee can do this by including in its reporting guidelines to state parties, an item covering access to sexual health services for adolescent girls. The committee has already noted that a state party report ‘offers an important occasion for conducting a comprehensive review of the various measures undertaken to harmonise national law and policy with the Children’s Charter and to monitor progress made in the enjoyment of the rights set forth in the Children’s Charter’.<sup>94</sup> At present, the committee does not have a specific item addressing access to sexual health services for adolescents in its guidelines. However, under the heading ‘health and welfare’,<sup>95</sup> it can raise questions on what a state party has done to ensure access to sexual health and contraceptive services for female adolescents within its jurisdiction. The committee can also inquire into how the sexuality of adolescent girls is construed, and the implications of this for the enjoyment of adolescent girls’ right to physical and mental well-being.

After examining a state party’s report, the committee may adopt a similar approach to that of the CRC Committee, by issuing concluding observations or recommendations to the state. This may include a recommendation for the review of laws and policies that hinder access to contraception for adolescents, especially female adolescents, within the jurisdiction of a state

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<sup>94</sup> See par 94 3 of the Guidelines adopted by the African Children’s Charter Committee issued pursuant to art 43 of the African Children’s Charter o/ACRWC/2 II Rev 2.

<sup>95</sup> *Id at* par 17–18.

party to the Charter. The committee can also order a state party to formulate laws and policies that will facilitate access to sexual health services by adolescents. While a state party's report remains a viable means of ensuring accountability for human rights protection, its major challenge is the reluctance or unwillingness of state parties to meet their reporting obligations.

Recently, the committee has started to make recommendations on state reports. In some of its Concluding Recommendations to African Governments, the committee has expressed great concern over issues such as child marriage, female genital cutting/mutilation, and trafficking, that may affect the health of children and adolescents.<sup>96</sup> However, the committee has yet specifically to address the issue of access to sexual and reproductive health services for children and adolescents. The committee may need to pay more attention to this issue, as evidence abounds that children and adolescents, especially adolescent girls, encounter difficulties in accessing health care services in many African countries.

In addition to the above, the ACE may follow in the footsteps of its forerunner, the African Commission, by adopting resolutions which may be useful in advancing the sexual health needs of female adolescents in the region. This is possible, through a generous interpretation of article 33 of the Charter, which authorises the committee to formulate principles aimed at protecting children's rights in Africa. In recent times, the African Commission has adopted important resolutions relating to sexual and reproductive health in the region. Among these are resolutions on HIV/AIDS,<sup>97</sup> maternal mortality,<sup>98</sup> and access to essential medicines.<sup>99</sup>

While these resolutions are not binding on African governments, they have tended to clarify the nature of African governments' obligations with regard to these issues, and the need to adopt measures to address them. The ACE can equally adopt a resolution calling on African governments to address the sexual health needs of adolescents, especially female adolescents.

In addition, the ACE can issue a General Comment or Recommendation (recently, the African Commission adopted its first General Comment on article 14 (1) d (d) and (e) of the

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<sup>96</sup> See Committee of Experts' Recommendations 96 to governments of Nigeria and Egypt.

<sup>97</sup> See Resolution on the HIV/AIDS Pandemic—Threat against Human Rights and Humanity adopted at the 29th Ordinary Session of the African Commission held in Tripoli, Libya ACHPR Res 53/(XXIX)01, where the Commission urges African governments to ensure that all efforts aimed at combating the HIV/AIDS epidemic in the region are respectful of human rights.

<sup>98</sup> See the African Commission on Human and Peoples' Rights Resolution on Maternal Mortality in Africa Meeting at its 44th Ordinary session held in Abuja, Federal Republic of Nigeria, from 10–24 November 2008 ACHPR/Res135 (XXXXIII), where the Commission notes that due to high maternal deaths in Africa, maternal mortality should be declared a state of emergency in the region.

<sup>99</sup> African Commission on Access to Health and Needed Medicines in Africa at its 44<sup>th</sup> Ordinary Session held in Abuja, Federal Republic of Nigeria, from 10–24 November 2008; ACHPR/Res 141 (XXXXIII) 08, where the Commission calls on African governments to fulfil access to medicines by adopting all necessary and appropriate positive measures to the maximum of its available resources to promote, provide and facilitate access to needed medicines.

African Women's Protocol) to give more clarity on the rights contained in the Charter or specific issues affecting the sexual health of children and adolescents in the region. With regard to the sexual health and rights of adolescents, General Comments 3 and 4 of the CRC Committee spring to mind. The former emphasises the need to adopt a holistic approach to the HIV/AIDS epidemic, including law reform, ensuring access to sexuality information and services, and addressing cultural practices and stereotypes that render female adolescents susceptible to infection. The latter relates to ensuring comprehensive youth-friendly access to sexual and reproductive health services for adolescents, particularly female adolescents.

The ACE may issue a detailed resolution or comment, to clarify the nature and extent of the rights guaranteed under the African Children's Charter, and how they can be used to advance the sexual and reproductive health rights of adolescents, particularly adolescent girls, in the region. Such a resolution or comment would also need to clarify the nature of obligations expected of African governments in this regard. It will be important for the committee to clearly articulate the steps and measures that African governments should take in order to facilitate access to sexual and reproductive health services for adolescent girls. The resolution or comment should be informed by empirical evidence, rather than religious or traditional beliefs. It should reflect the peculiar lived experience of the girl-child in Africa, and the challenges she encounters regarding her sexual health and well-being. In particular, it should address pertinent issues relating to adolescent girls' sexual health in Africa, such as the implications of harmful traditional practices such as female genital cutting/mutilation, coercive sex during initiation rites, and early marriage. Given the negative effects of these practices, it will be necessary for the ACE to issue a resolution or general comment reflecting this situation which is peculiar to the girl-child in Africa.

It is important to note, however, that recourse to international or regional human rights bodies such as the ACE, has its own limitations. One of the major weaknesses of relying on international human rights mechanisms, is the problem of the enforcement and implementation of decisions by human rights bodies. As Cook *et al* rightly observe, these mechanisms lack the legal authority to enforce any decision made, and are at best dependent on moral persuasion, diplomacy, or political embarrassment.<sup>100</sup> Most human rights instruments do not as a rule provide enforcement mechanisms, and the African Children's Charter is no exception. Experience has shown that the enforcement of decisions of regional bodies is always difficult. For instance, some years after the decision of the African Commission in the *SERAC* case referred to above, the Nigerian government is yet to give effect to it. Nothing much has changed in the lives of the Ogoni people in the Niger-Delta in

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<sup>100</sup> Cook *et al* *Reproductive health and human rights: integrating medicines, ethics and law* (2003) 229.

Nigeria, as oil exploration has continued, and pollution remains a serious threat to the lives and economic conditions of the people. This clearly demonstrates that too much faith should not be placed in international human rights mechanisms to address internal human rights violations.

Furthermore, it should be noted that the ACE, like most other human rights bodies, faces administrative challenges which may hinder it from protecting and promoting the sexual health rights of adolescents in the region. One of these challenges is, inevitably, a lack of resources. The committee is currently underfunded and requires additional resources if it is to function effectively as a human rights body established to advance the rights of children. Given the shoe-string allocations from the African Union to human rights bodies such as the African Commission and the Committee, one cannot but wonder if African leaders are serious about addressing human rights violations in the region. This lack of funding has made it difficult for the committee to employ capable individuals and to establish a proper and functional secretariat. The committee was only able to hire a full-time secretary in 2007, and has an administrator, but has yet to employ a legal adviser.<sup>101</sup> This situation has led to poor performance by the ACE.

## **Conclusion**

This paper has discussed some of the sexual health issues such as early or teenage pregnancy, and sexually transmitted infections, including HIV/AIDS, relating to adolescent girls in the region. It has also identified certain factors – such as, the age of consent, the lack of sexuality education, and the lack of political will – as militating against access to sexual health information and services for adolescents, especially female adolescents, in Africa. It has been shown that the African Children's Charter contains important provisions relevant to advancing the sexual health and rights of adolescent girls, particularly in the context of access to contraceptive services. More importantly, the paper has shown that, despite its limitations and challenges, the Committee of Experts of the African Children's Charter is in a unique position (through its protective and promotional mandate) to advance the sexual health rights of adolescents girls in the region. It is hoped that the ACE will be in a position to rise to the occasion when the situation demands.

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<sup>101</sup> See for instance, Save the Children and PLAN *Advancing children's rights: a guide for civil society organizations on how to engage with the African Committee of Experts on the rights and welfare of the child* (2010) 109.

