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HOW DO AFRICAN GOVERNMENTS SCORE IN PROTECTING THEIR CHILDREN?

“Serious work in social legislation begins always with the protection of children”

~ Albert Thomas, first Director of the ILO

The conceptual framework presented in the previous chapter identified child protection as one of the three dimensions used for measuring child-friendliness of governments. The dimension on child protection measures governments’ overall efforts to protect children against harm, abuse and exploitation through the effective provision of appropriate laws and policies. This chapter explores the various laws and policies put in place, shows how the index specific to this dimension was constructed, and, finally, provides an analysis of governments’ relative performance in protecting children using the index values.

The following key components have been identified and assessed to determine governments’ performances in putting in place relevant laws and policies for the protection of children:

- i. Ratification of international and regional legal instruments relating to children
- ii. Provisions in national laws to protect children against harm and exploitation
- iii. Existence of a juvenile justice system, National Plan of Action (NPA) and coordinating bodies for the implementation of children’s rights
- iv. Policy for free primary education.

A number of indicators have also been identified under each of the above components. The indicator values are first converted into standardised performance scores. These discrete scores are then aggregated to yield the index value. The index shows the overall score for the legal and policy framework laid in a country in comparison to the performance of other African countries. The ranking of governments’ performances in child protection is therefore based on these index values.

Below are descriptions of the indicators used, how the score values were calculated for each of the components, and how they were aggregated into a dimension index. First, we will take a quick look at the state of ratification of laws in the region.

3.1 Ratification of international and regional child rights treaties

Eight relevant international and regional child rights treaties were selected to assess governments’ efforts to adopt and realise child rights (see Figure 2.2 in Chapter 2). An analysis of ratification or accession of these treaties showed that 10 of the 51 governments surveyed (excluding Morocco) had not ratified the African Charter on the Rights and Welfare of the Child as of June 19, 2007.¹⁹ About half of African governments had not ratified the Optional Protocol on Involvement of Children in Armed Conflict; and 20 of the 52 governments had not ratified the Optional Protocol on Sale of Children, Child Prostitution and Pornography. It was also noted that only eight African governments (Burkina Faso, Burundi, Guinea, Kenya, Madagascar, Mali, Mauritius and South Africa) had ratified the Hague Convention on Intercountry Adoption, as of December 2007.

Second to the UNCRC ratified by all countries considered in this report, the most widely ratified or acceded treaty is the ILO Convention on the Worst Forms of Child Labour (No. 182), which all governments except Eritrea, Guinea-Bissau and Sierra Leone had ratified. Annex 3, Table A3.3, Ratification of international and regional legal instruments, provides more details.

Ratification, of course, is only one point of departure. Another is the extent to which international instruments are domesticated or harmonised with national laws (for detail see ACPF 2007). A third of the African countries surveyed did not have legal provisions for protection against child trafficking. In one-fourth of the reviewed countries, there was no legislation prohibiting harmful traditional practices. In contrast, domestic laws in all of the 52 African countries reviewed provide protection against sexual abuse.

3.2 National laws and policies

The assessment of legal minimum ages for criminal responsibility, employment and marriage collectively showed that Djibouti, Equatorial Guinea, Mauritania, Mauritius, Nigeria and Tunisia performed very well in setting appropriate minimum ages in their legal systems. The minimum ages set in these countries were consistent with internationally recommended ages, and their laws considered boys and girls equally without discrimination. On the other hand, the corresponding minimum ages set by the governments of Egypt, Gambia, Guinea-Bissau, São Tomé and Príncipe and Seychelles were found inappropriate and inadequate relative to international standards. The governments of these countries had not made an effort to address discriminatory minimum legal ages for marriage set differently for males and females. The minimum legal age for marriage in Guinea-Bissau was 14 for girls and 16 for boys. In Gambia, no minimum legal age was set for marriage, no adequate effort has been made to address this problem, and it is reported that girls continue to get married before the age of 15 (Equality Now 2002).

With regards to the minimum age for criminal responsibility, two-thirds of countries had set a minimum that is equal to or higher than the recommended minimum of 12.²⁰ In contrast, eight of the 52 countries assessed had a minimum age for criminal liability of between 8 and 10 years. Ten countries had the lowest minimum age for criminal responsibility (7 years). See details in Table 3.1, below.

Table 3.1 Countries where the minimum age of criminal responsibility is below 12 years

Countries with criminal responsibility of 7 years		Countries with criminal responsibility of 8-11 years	
		Country	Age of criminal responsibility
Egypt		Botswana	8
Gambia		Kenya	8
Lesotho		Zambia	8
Malawi		Ethiopia	9
Namibia		Cameroon	10
Seychelles		Central African Republic	10
South Africa		Côte d'Ivoire	10
Sudan		Sierra Leone	10
Swaziland			
Zimbabwe			

Source: Based on data from OHCHR, 2007

As regards corporal punishment, there was a better situation, relatively speaking, in several countries, such as Cameroon, Egypt, Ethiopia, Guinea-Bissau, Kenya, Mali, Malawi, Namibia, South Africa and Zambia. In these countries, corporal punishment is prohibited in more settings than in other countries of Africa. However, more than half of the 52 African countries reviewed have not yet prohibited corporal punishment in schools, or as a disciplinary measure in the penal systems.

The policy of free primary education was another indicator used to evaluate governments' performance in putting in place appropriate legal and policy frameworks. Annex 3, Table A3.6 shows that nearly half of the 52 African countries surveyed had policies that provided for free primary education – thus complying, at least formally, with their obligations under the UNCRC and the ACRWC.

The assessment using the indicators on juvenile justice systems showed that in 20 of the 52 countries surveyed, specialised juvenile courts were not established and children's cases were being treated in adults' courts – which in many cases are punishment-oriented rather than rehabilitation-oriented (Fagan and Zimring 2000). Judges in criminal courts also may not have specialised training to handle children's cases, and children's hearings are therefore more likely to proceed without the presence of social workers who provide psychosocial services to rehabilitate the children (Fagan and Zimring 2000). Additionally, National Plans of Action (NPA) and the existence or otherwise of government coordinating bodies to follow up and monitor the implementation of the plans were also reviewed. Most African countries have prepared National Plans of Action for children and established coordinating bodies to follow up and monitor. However, these establishments are often poorly resourced and lack the capacity to effectively discharge their responsibilities.

Amongst the most vulnerable children in Africa are the estimated 12 million children who have been orphaned by the HIV/AIDS crisis (2005 data, UNICEF 2006a). Another indicator that would capture government child-friendliness would therefore be whether or not governments had put in place policies and plans to address the needs of orphans and other vulnerable children. Unfortunately, there was insufficient country data to include this in our measurement.

3.3 Ranking of governments for child protection

Turning to the larger picture, the question now remains of how African governments fare relatively in terms of providing legal protection to their children. Table 3.2, below, presents the ranking based on the index values for the dimension on protection and how African governments performed in laying the legal and policy frameworks for protecting children against harm and exploitation.

The performance scores each government obtained with respect to the ratification of international and regional treaties; provisions made in national laws to protect children against abuse and exploitation; existence of a juvenile justice system; existence of a policy of free education; and existence of plans of action and coordinating bodies were aggregated to yield the index value for the dimension on protection (legal and policy framework).

The child protection ranking puts the Government of Kenya on top, indicating that it has performed well in laying appropriate legal and policy foundations for the protection of children. Kenya's laws have provisions that protect children against harmful traditional

practices, trafficking and sexual exploitation. It is one of the few countries where corporal punishment is prohibited both in schools and the penal systems. However, studies show that such punishment is still widely practiced in schools, as the law has loopholes in the prosecution of teachers who carry out corporal punishment (Save the Children 2005b). A juvenile justice system has been established in Kenya specially to treat children's cases. There is also a government body that coordinates national efforts and follows up the implementation of children's rights in the country. The Government of Kenya has also adopted a policy of free primary education, which has resulted in relatively high enrolment rates among both girls and boys, as discussed later in this chapter. The minimum ages for marriage and admission to employment in the country are consistent with internationally accepted minimum standards, and are the same for both boys and girls.

Following Kenya, the governments of Madagascar, Burundi, Morocco, Namibia, Rwanda, Mali, Burkina Faso, Nigeria and Libya have also performed well in putting in place relevant laws and policies for children. These countries have in particular ratified most of the international child rights treaties, and have scored relatively highly in this regard. Additionally, their domestic laws have provisions that criminalise child trafficking and sexual exploitation.

The bottom three governments in the ranking are those of Guinea-Bissau, Swaziland and Gambia. These three governments scored lowest particularly for the component on ratification of child rights treaties, as they had not ratified most of the relevant international and regional treaties. Their national laws did not have adequate provisions to protect children against exploitation and harmful traditional practices; juvenile justice systems were not established to handle children who were in contact with the law; and the various minimum ages, particularly for marriage, were low and discriminatory.

These findings necessitate the call to African governments that have not yet ratified the international and regional instruments to do so as soon as possible. Secondly, these findings also indicate that much remains to be done in amending domestic laws and making them consistent with the provisions of the UNCRC and the ACRWC to ensure adequate protection of children. This is in line with the recommendations in the ACPF study entitled "In the best interest of the child – harmonising laws in eastern and southern Africa".

Table 3.2 Index values and ranking for protection of children

Country	Score	Rank
Kenya	0.855	1
Madagascar	0.849	2
Burundi	0.821	3
Morocco	0.821	4
Namibia	0.821	5
Rwanda	0.810	6
Mali	0.798	7
Burkina Faso	0.774	8
Nigeria	0.768	9
Libya	0.766	10
Mauritius	0.762	11
Uganda	0.762	12
Senegal	0.756	13
Tanzania	0.750	14
South Africa	0.738	15
Tunisia	0.738	16
Lesotho	0.726	17
Angola	0.714	18
Cape Verde	0.714	19
Mozambique	0.714	20
Togo	0.702	21
Zambia	0.700	22
Ethiopia	0.698	23
Algeria	0.690	24
Dem. Rep. Congo	0.685	25
Malawi	0.679	26
Sierra Leone	0.671	27
Guinea	0.671	28
Comoros	0.667	29
Equatorial Guinea	0.667	30
Mauritania	0.667	31
Niger	0.667	32
Botswana	0.664	33
Côte d'Ivoire	0.656	34
Egypt	0.655	35
Chad	0.643	36
Congo	0.643	37
Eritrea	0.643	38
Sudan	0.643	39
Benin	0.631	40
Cameroon	0.624	41
Ghana	0.619	42
Gabon	0.595	43
Seychelles	0.595	44
Zimbabwe	0.595	45
Djibouti	0.587	46
Liberia	0.583	47
Central African Republic	0.576	48
São Tomé and Príncipe	0.548	49
Gambia	0.488	50
Swaziland	0.440	51
Guinea-Bissau	0.369	52

Source: Developed by The African Child Policy Forum, 2008



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