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From concept to application: a critical reflection on child safeguarding from a children's rights perspective

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Citation

Kaviani Johnson, A. (2025, April 15). *From concept to application: a critical reflection on child safeguarding from a children's rights perspective*. Meijers-reeks. Retrieved from <https://hdl.handle.net/1887/4212005>

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Note: To cite this publication please use the final published version (if applicable).

From concept to application

From concept to application

A critical reflection on child safeguarding from a
children's rights perspective

PROEFSCHRIFT

ter verkrijging van
de graad van doctor aan de Universiteit Leiden,
op gezag van rector magnificus prof.dr.ir. H. Bijl,
volgens besluit van het college voor promoties
te verdedigen op dinsdag 15 april 2025
klokke 11:30 uur

door

Afrooz Kaviani Johnson

geboren te Christchurch, New Zealand

in 1979

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Technology, Australia)
dr. A. Getachew Asseffa (African Committee of
Experts on the Rights and the Welfare of the Child)

Opmaak binnenwerk: Anne-Marie Krens – Tekstbeeld – Oegstgeest
Omslagontwerp: Primo!Studio – Delft
Drukwerk: Ipskamp Printing – Amsterdam

ISBN 978 94 6473 734 9

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Acknowledgements

I am immensely grateful for the opportunity to pursue my PhD and recognize the privilege that has enabled this journey. My sincere thanks go to my supervisors, Professor Ton Liefwaard and Professor Julia Sloth-Nielsen, who have provided invaluable guidance, feedback, and support throughout my PhD. Their contributions to international children's rights law scholarship are a source of great inspiration.

I appreciate the resources and support provided by the Law School, and the constructive feedback from the esteemed members of my examining committee.

Throughout my career, I have been fortunate to work alongside many exceptional lawyers and child protection professionals. Their dedication, expertise, and encouragement have inspired my research and deepened my commitment to this field.

I am also grateful to my family for their love and support during my life and studies – my brother, my in-laws, and my parents. A special thanks to my parents, whose resilience and optimism in the face of injustice have shaped my sense of purpose from an early age. I also acknowledge my family still enduring persecution; their experiences underscore the importance of translating human rights law into practice.

To my husband and children, thank you for your incredible patience and support as we navigated life across three different continents over the course of this PhD. I dedicate this work to my children, Zavier and Zarina, with the hope that the world will become a safer and more just place for all children during their lifetime.

Table of contents

1	INTRODUCTION	1
1.1	Background	1
1.2	The concept of ‘child safeguarding’	5
1.2.1	Origins of the term ‘child safeguarding’	5
1.2.2	Concept diffusion	8
1.2.3	Distinguishing child safeguarding from child protection	11
1.2.4	Implementation challenges	14
1.2.5	Child safeguarding and children’s rights	18
1.3	Aims of the study and research questions	22
1.4	Methodological approach and scope	25
1.5	Outline of the study	27
2	SAFEGUARDING CHILDREN IN THE DEVELOPING WORLD – BEYOND INTRA-ORGANISATIONAL POLICY AND SELF-REGULATION	31
2.1	Introduction	31
2.2	The safeguarding landscape – evolving self-regulation and standard setting	34
2.2.1	Self-regulatory and standard setting initiatives and the West Africa ‘sex-for-food’ scandal	34
2.2.2	New and emerging initiatives – post Oxfam, #MeToo and #AidToo	37
2.3	International and regional child rights frameworks to guide safeguarding	40
2.3.1	Relevant treaties and articles for safeguarding children	41
2.3.2	Domestic implementation and the role of international cooperation	43
2.3.3	Applicability to non-state actors	45
2.3.4	Best interests of the child	46
2.3.5	Intra-organisational processes and codes of conduct	48
2.4	Key dilemmas and challenges for child safeguarding	49
2.5	Conclusion	55
3	CHILD PROTECTION, SAFEGUARDING AND THE ROLE OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD: LOOKING BACK AND LOOKING AHEAD	57
3.1	Introduction	57
3.2	Looking back – the impetus for the ACRWC	59

3.2.1	Child protection and the adoption of the ACRWC	59
3.2.2	Child protection: policy and programming in the 1990s	61
3.3	Shifts in the child protection landscape and the emerging jurisprudence of the ACRWC Committee	63
3.3.1	A 'systems' approach to child protection	63
3.3.2	Emerging ACRWC Committee jurisprudence on child protection	65
3.3.2.1	Policy, legislation and enforcement	67
3.3.2.2	Adequate capacities and sufficient resource allocation	67
3.3.2.3	Supportive social norms	68
3.3.2.4	Effective prevention actions	69
3.3.2.5	Essential services	69
3.3.2.6	Children in conflict with the law	70
3.3.2.7	Alternative care	71
3.3.3	General Comment 5 and measures introducing safeguarding principles	71
3.4	Future directions for child protection in Africa	74
3.5	Concluding remarks	77
4	ALL CARE, NO RESPONSIBILITY: LEGISLATION FOR MANDATORY REPORTING OF CHILD ABUSE IN THE 'DEVELOPING WORLD'	79
4.1	Introduction	79
4.2	Perspectives of international and regional child rights law on mandatory reporting	81
4.2.1	United Nations Convention on the Rights of the Child (UNCRC)	82
4.2.2	African Charter on the Rights and Welfare of the Child (ACRWC)	86
4.3	Mandatory reporting legislation in four countries in Eastern and Southern Africa	86
4.3.1	Mandated reporter groups	88
4.3.2	Circumstances and thresholds for reporting	90
4.3.3	States of mind and temporal situation that activate the reporting duty	91
4.3.4	When, to whom and in what form must the report be made?	91
4.3.5	Penalties for non-compliance and protection for reporters	92
4.3.6	Response triggered by a mandatory report	93
4.4	Discussion: Challenges, gaps, and opportunities	95
4.4.1	Responsive capacities do not match legislative ambition	96
4.4.2	Lack of administrative data and empirical research to measure impact	99
4.4.3	Guidance, support, and protection for mandated reporters	100
4.4.4	Improving mandatory reporting schemes in Eastern and Southern Africa	101
4.5	Conclusion	103

5	GROOMING AND CHILD SEXUAL ABUSE IN ORGANISATIONAL SETTINGS – AN EXPANDED ROLE FOR INTERNATIONAL HUMAN RIGHTS LAW	105
5.1	Introduction	105
5.2	Sexual grooming in organisational settings: Definitions and complexities	107
5.3	Child sexual abuse and grooming as a human rights concern	110
5.3.1	United Nations Convention on the Rights of the Child	110
5.3.2	Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography	113
5.3.3	CRC Committee guidance and recommendations	114
5.3.3.1	General comments	114
5.3.3.2	Concluding observations and recommendations	115
5.3.3.3	Individual communications and inquiries	117
5.3.4	European human rights frameworks and mechanisms	118
5.3.4.1	Lanzarote Convention	118
5.3.4.2	Child Sexual Abuse Directive	120
5.4	Domestic legislative responses and an expanded role for international human rights law	121
5.4.1	Grooming legislation in the US, UK and Australia	121
5.4.2	Utility of a broader grooming offence	124
5.4.3	Enhancing the global human rights framework	125
5.4.3.1	Scope of criminal law offences	126
5.4.3.2	The right to protection for every child	126
5.4.3.3	Organisational settings and change	127
5.4.3.4	Standards for staff and volunteers	127
5.4.3.5	Children’s right to be heard	128
5.5	Conclusion	128
6	GLOBAL NORMS, ORGANISATIONAL ACTION: LEVERAGING INTERNATIONAL CHILDREN’S RIGHTS LAW FOR ADVANCING CHILD SAFEGUARDING	131
6.1	Introduction	131
6.2	Aligning child safeguarding with international children’s rights law	139
6.3	Child safeguarding roles and responsibilities: The role of the state vis-à-vis NGOs	149
6.3.1	State duty to protect	149
6.3.2	Content and scope of state responsibility	154
6.3.2.1	Case example: Chile	160
6.3.3	A common set of minimum standards	162
6.4	Expanding accountability for child safeguarding	166
6.4.1	NGO responsibilities	166
6.4.2	Using existing children’s rights mechanisms	172
6.5	Conclusion	175

7	CONCLUSION	179
7.1	Child safeguarding as a child rights imperative	179
7.1.1	Key findings – sub-questions	179
7.1.2	Key findings – main research question	187
7.2	Implications for policy and practice	191
7.3	Concluding remarks	194
	REFERENCES	197
	SAMENVATTING (DUTCH SUMMARY)	205
	BIBLIOGRAPHY	213
	CURRICULUM VITAE	249

1 Introduction

1.1 BACKGROUND

‘This is what it looks like when someone chooses to put their selfish desires above the safety and love for those around them. And let it be a warning to us all and moving forward as a society, this is what it looks like when the adults in authority do not respond properly to disclosures of sexual assault. This is what it looks like when institutions create a culture where a predator can flourish unafraid and unabated, and this is what it looks like when people in authority refuse to listen, put friendships in front of the truth, fail to create or enforce proper policy, and fail to hold enablers accountable. This is what it looks like. It looks like a courtroom full of survivors who carry deep wounds.’

– Rachael Denhollander¹

Rachael Denhollander was the first to publicly accuse Larry Nassar, a former doctor for USA Gymnastics and Michigan State University, of sexual abuse. In 2018, Nassar was given a prison sentence of 40 to 175 years for sexually abusing girls and young women under the guise of providing medical treatment.² He faced allegations from 265 women who claimed he sexually assaulted them from childhood to adulthood. During the trial’s sentencing phase, 156 women delivered impact statements.³ Many claimed that when they raised concerns about Nassar’s actions, they were either disregarded or dismissed by the organisations in power, namely USA Gymnastics, Michigan State University, and the US Olympic Committee.⁴

The Boy Scouts of America faces a similar crisis. Over 80,000 individuals, mostly male, have come forward with allegations of sexual abuse committed

1 ‘Read Rachael Denhollander’s Full Victim Impact Statement about Larry Nassar’ (CNN, 24 January 2018) <<https://www.cnn.com/2018/01/24/us/rachael-denhollander-full-statement/index.html>>.

2 Eric Levenson, ‘Larry Nassar Sentenced to up to 175 Years in Prison for Decades of Sexual Abuse’ (CNN, 24 January 2018) <<https://www.cnn.com/2018/01/24/us/larry-nassar-sentencing/index.html>>.

3 Amy K Way, ‘Cruel Optimism as Organizing Strategy in USA Gymnastics: The Threat of High-Stakes Organizations in Precarious Times’ [2021] Human Relations 001872672110546 89, 8.

4 Levenson (n 2).

by scout leaders.⁵ The claims surged ahead of a 2020 bankruptcy court deadline, with the organisation filing for bankruptcy to survive an overwhelming number of claims for damages.⁶ Abuse allegations date back several decades.⁷ Yet, for many years, the organisation kept these allegations largely hidden from the public. This changed when lawsuits exposed files detailing a long history of abuse and insufficient organisational responses.⁸

These two high-profile cases from the United States, depicted in Netflix documentaries 'Athlete A' and 'Scout's Honor,' serve as poignant examples of the failure of organisations entrusted with children's care to take steps to protect children from harm and to respond appropriately to disclosures and allegations of abuse. However, such examples are not confined to the US alone. Investigations reveal widespread abuse of children within the Catholic Church across multiple countries.⁹ Child abuse within orphanages remains a concern in countries where institutional care for children is still prevalent, such as in parts of Africa and Southeast Asia.¹⁰ High-profile cases of abuse continue

5 Mike Baker, 'Sex-Abuse Claims Against Boy Scouts Now Surpass 82,000' *The New York Times* (15 November 2020) <<https://www.nytimes.com/2020/11/15/us/boy-scouts-abuse-claims-bankruptcy.html>>.

6 *ibid.*

7 In a 1935 New York Times interview, the organisation's chief executive, James West, acknowledged that some men joined scouting with inappropriate intentions regarding 'sex matters': 'BOY SCOUTS HEAD EXPLAINS "RED" LIST; Name Applies Solely to Color of Sticker Put on Cards of Dismissed Group Leaders.' *The New York Times* (9 June 1935) <<https://www.nytimes.com/1935/06/09/archives/boy-scouts-head-explains-red-list-name-applies-solely-to-color-of.html>>.

8 Mike Baker, "'Staggering" Legal Fees in Boy Scouts Bankruptcy Case' *The New York Times* (11 May 2021) <<https://www.nytimes.com/2021/05/11/us/boy-scouts-bankruptcy-legal-fees.html>>.

9 For example: 'Polish Archbishop Refers Child Sex Abuse Case to Vatican' *BBC News* (16 May 2020) <<https://www.bbc.com/news/world-europe-52694489>>; 'Top German Cleric Asks to Quit over Church Sex Abuse Failures' *BBC News* (4 June 2021) <<https://www.bbc.com/news/world-europe-57357312>>; 'Church Sex Abuse: Thousands of Paedophiles in French Church, Inquiry Says' *BBC News* (3 October 2021) <<https://www.bbc.com/news/world-europe-58781265>>; 'More than 4,800 Victims of Sexual Abuse Uncovered in Portugal's Catholic Church' *BBC News* (13 February 2023) <<https://www.bbc.com/news/world-64626077>>; 'Switzerland: Hundreds of Sex Abuse Cases "Tip of the Iceberg", Say Researchers' *BBC News* (12 September 2023) <<https://www.bbc.com/news/world-europe-66790394>>; 'Spanish Church Sexual Abuse Affected 200,000 Children, Commission Finds' *BBC News* (27 October 2023) <<https://www.bbc.com/news/world-europe-67238572>>.

10 For example: Max Bearak and Rael Ombuor, 'A Child Sex Abuser Evaded Justice in Kenya. Then an "Ordinary Woman" Took Matters into Her Own Hands.' (*Washington Post*, 4 February 2021) <<https://www.washingtonpost.com/world/2021/02/04/kenya-orphanage-child-abuse/>>; Christopher Knaus, 'The Race to Rescue Cambodian Children from Orphanages Exploiting Them for Profit' *The Guardian* (18 August 2017) <<https://www.theguardian.com/world/2017/aug/19/the-race-to-rescue-cambodian-children-from-orphanages-exploiting-them-for-profit>>; Emily Crane, 'Ex-Priest Convicted in East Timor of Sexual Abuse at Orphanage' (21 December 2021) <<https://nypost.com/2021/12/21/ex-priest-convicted-in-east-timor-of-sexual-abuse-at-orphanage/>>; Margareth S Aritonang and Evi Mariani, 'Abused and Frightened, Orphanage Boys Cry for Help but the State, Church Fail Them' (*The Jakarta*

to surface in the development and humanitarian sector. For example, in 2018, allegations of senior male aid workers engaging in sexual abuse and exploitation in Haiti (known as the ‘Oxfam scandal’) prompted inquiries by the UK Commons Select Committee for International Development,¹¹ as well as separate investigations by the UK Charity Commission into Oxfam¹² and Save the Children.¹³

Historically, the abuse of children in organisational settings is far from novel. Institutions established for children’s care and protection – including orphanages and reformatory schools – have repeatedly been exposed as epicentres of abuse.¹⁴ Public inquiries in high-income countries like New Zealand,¹⁵ Australia,¹⁶ England and Wales,¹⁷ and the Netherlands¹⁸ have shed light on historic and contemporary cases of child abuse in organisational settings. Projects like the ‘Age of Inquiry’ illustrate the global nature and pervasiveness of the issue, documenting over 150 inquiries into institutional abuse across 20 countries.¹⁹

While acknowledging the unique contexts and dimensions of each case, a pattern of common systemic failures emerges across all instances. High-

Post, 28 August 2020) <<https://www.thejakartapost.com/news/2020/08/28/abused-and-frightened-orphanage-boys-cry-for-help-but-the-state-church-fail-them.html>>.

- 11 UK Parliament, ‘Sexual Exploitation and Abuse in the Aid Sector Inquiry – Committees’ <<https://committees.parliament.uk/work/3401/sexual-exploitation-and-abuse-in-the-aid-sector-inquiry/>>.
- 12 UK Charity Commission, ‘Charity Inquiry: Oxfam GB’ (*GOV.UK*) <<https://www.gov.uk/government/publications/charity-inquiry-oxfam-gb>>.
- 13 UK Charity Commission, ‘Charity Inquiry: The Save the Children Fund (Save the Children UK)’ (*GOV.UK*, 7 March 2022) <<https://www.gov.uk/government/publications/charity-inquiry-the-save-the-children-fund-save-the-children-uk>>.
- 14 Katie Wright and Alasdair Henry, ‘Historical Institutional Child Abuse: Activist Mobilisation and Public Inquiries’ (2019) 13 *Sociology Compass* e12754, 2; Kathleen Daly, ‘Conceptualising Responses to Institutional Abuse of Children’ (2014) 26 *Current Issues in Criminal Justice* 5.
- 15 ‘Abuse in Care Royal Commission of Inquiry’ <<https://www.abuseincare.org.nz/>>. In June 2024, the Inquiry published its final report into the abuse and neglect of children, young people and adults in the care of the State and faith-based institutions in Aotearoa New Zealand between 1950 and 1999.
- 16 ‘Royal Commission into Institutional Responses to Child Sexual Abuse’ <<https://www.childabuseroyalcommission.gov.au/>>. On 15 December 2017 the Royal Commission presented a final report to the Governor-General, detailing the culmination of a five-year inquiry into institutional responses to child sexual abuse and related matters.
- 17 ‘The Independent Inquiry into Child Sexual Abuse’ <<https://www.iicsa.org.uk/index.html>>. The Inquiry published its final Report in October 2022.
- 18 ‘Onvoldoende beschermd – Geweld in de Nederlandse jeugdzorg van 1945 tot heden – Rapport – Rijksoverheid.nl’ (12 June 2019) <<https://www.rijksoverheid.nl/documenten/rapporten/2019/06/12/onvoldoende-beschermd-geweld-in-de-nederlandse-jeugdzorg-van-1945-tot-heden>>. The Committee published its final report on 12 June 2019.
- 19 Katie Wright, Shurlee Swain and Johanna Sköld, *The Age of Inquiry: A Global Mapping of Institutional Abuse Inquiries*. (Second edition, La Trobe University 2020) <<http://doi.org/10.4225/22/591e1e3a36139>>.

profile cases, legal proceedings, and public inquiries reveal that abuse in organisational contexts is often not isolated but reflects entrenched systemic flaws. Despite this recognition, approaches to protect children from harm in organisational settings frequently remain insufficient and fragmented, lacking a unified and evidence-informed approach and remaining siloed within their operational context.²⁰ This failure has led to severe repercussions for children. Children have been subjected to abuse by both the very individuals entrusted with their protection and, at times, by their peers within organisational settings. The consequences of abuse extend far beyond childhood, often manifesting in lifelong negative impacts.²¹ Beyond the immediate impacts of abuse lies another critical issue: the frequent inadequacy of organisational responses to disclosures and allegations of abuse. Too often, when cases of abuse come to light, children are met with reactions ranging from disbelief and victim-blaming to prioritising the reputation of the organisation or individuals above children's best interests.

The concept of 'child safeguarding' has emerged in response to the systemic failures exposed by numerous cases and government inquiries into child abuse in organisational settings. It can be understood as a specific subset of 'child protection', a broader field encompassing efforts to prevent and respond to violence, exploitation, abuse, and neglect of children. Child safeguarding focuses on the responsibilities of organisations to proactively identify and reduce risks to children, to respond appropriately to concerns, and to report suspected abuse to relevant authorities. This study uses the terms 'institutions' and 'organisations' interchangeably to refer to the range of organisations in contact with children, such as residential facilities, schools, sports clubs, and religious associations, as well as entities involved in humanitarian and development work. This study focuses on child safeguarding from an international children's rights law perspective.

At its core, viewing children as rights-bearing individuals fundamentally changes any approach to child safeguarding, from merely providing charitable protection to recognising children as distinct subjects and holders of rights. A child rights perspective promotes a shift away from narrow and subjective views that can weaken children's legal protections on a domestic level, towards embracing international standards for the treatment of children.²² The international children's rights law framework identifies the responsible duty-bearers and outlines their duties and obligations. Further, '[r]ights offer fora for action'; without them, children must rely on the charity, kindness, or sense of respons-

20 Luciana C Assini-Meytin and others, 'Preventing and Responding to Child Sexual Abuse: Organizational Efforts' (2021) 112 *Child Abuse & Neglect* 104892, 2.

21 Carly Parnitzke Smith and Jennifer J Freyd, 'Institutional Betrayal' (2014) 69 *American Psychologist* 575.

22 Martha Minow, 'What Ever Happened to Children's Rights' (1995) 80 *Minnesota Law Review* 267, 295.

ibility of those in power and cannot demand what they are entitled to.²³ This has the potential to elevate the discourse of child safeguarding, establishing minimum global standards and mechanisms for accountability. By examining child safeguarding through the lens of the human rights of children, the aspiration is that this study will make an original contribution to the field. The study seeks to raise the importance of child safeguarding among key stakeholders in the domain of children's rights while also enriching the child safeguarding discourse by introducing insights from international children's rights law.

This introductory chapter proceeds as follows: Section 1.2 clarifies the concept of 'child safeguarding' explaining how it differs from 'child protection' and why this difference is important and begins to explore its links with international children's rights law. Section 1.3 summarises the overall aims of the study and research questions. Section 1.4 describes the methodological approach and the scope of the study. Finally, Section 1.5 outlines the subsequent chapters.

1.2 THE CONCEPT OF 'CHILD SAFEGUARDING'

Child safeguarding has varied applications across different social, political, and geographic contexts. This section briefly traces the origins of the term, examines its diverse applications, and distinguishes it from 'child protection' as understood in international discourse. This section identifies some implementation challenges for child safeguarding, recognising the limitations of pursuing child safeguarding objectives through legal and policy instruments alone. It begins to analyse the connections between child safeguarding and children's rights.

1.2.1 Origins of the term 'child safeguarding'

The term 'child safeguarding' originates from the UK. It emerged in the 1990s in response to changes to child welfare policy and practice²⁴ and first appeared in official government guidance in 1999.²⁵ 'Child safeguarding'

23 Michael Freeman, 'The Value and Values of Children's Rights' in Antonella Invernizzi and Jane Williams (eds), *The human rights of children: from visions to implementation* (Routledge 2016) 23.

24 See: Nigel Parton, 'Child Protection and Safeguarding in England: Changing and Competing Conceptions of Risk and Their Implications for Social Work' (2011) 41 *British Journal of Social Work* 854.

25 Department of Health, Home Office, and Department of Education and Employment, 'Working Together to Safeguard Children: A Guide to Inter-Agency Working to Safeguard

reflected a more comprehensive approach to child welfare aimed at ensuring children's overall safety and well-being, in contrast to the narrower term 'child protection' focused on identifying and intervening in situations in which children were suffering, or likely to suffer, significant harm.²⁶ 'Child protection' was not removed from policy and practice but was instead integrated into broader efforts aimed at 'safeguarding and promoting the welfare of children'.²⁷



Figure 1: The UK statutory approach – child safeguarding as a comprehensive approach to ensure children's safety and wellbeing, inclusive of child protection

The term and concept were enshrined in UK legislation²⁸ and elaborated in statutory guidance. 'Safeguarding and promoting the welfare of children' was first defined as:

- protecting children from maltreatment
- preventing impairment of children's health or development
- ensuring that children grow up in circumstances consistent with the provision of safe and effective care, and

and Promote the Welfare of Children' (1999) <<https://lx.iriss.org.uk/sites/default/files/resources/043.%20Working%20Together%20to%20Safeguard%20Children.pdf>>.

26 Hilary Owen, 'From Protection to Safeguarding: Bringing You up to Date on Statutory Responsibilities' in Liz Hughes and Hilary Owen, *Good practice in safeguarding children: Working effectively in child protection* (Jessica Kingsley Publishers 2009); Parton (n 24) 860.

27 Parton (n 24) 860.

28 The foundation of child safeguarding in the UK is laid out in the 1989 and 2004 Children Acts, the Education Acts, and the 2006 Childcare Act: HM Government, 'Working Together to Safeguard Children: Statutory framework: Legislation relevant to safeguarding and promoting the welfare of children' (2023) <<https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>>.

- undertaking that role so as to enable those children to have optimum life chances and enter adulthood successfully.²⁹

The statutory guidance has subsequently been updated but retains the distinction between child safeguarding and child protection, explaining that:

‘Child protection is part of safeguarding and promoting the welfare of children and is defined for the purpose of this guidance as activity that is undertaken to protect specific children who are suspected to be suffering, or likely to suffer, significant harm. This includes harm that occurs inside or outside the home, including online.’³⁰

The UK statutory guidance sets out the responsibilities of local authorities and social workers in identifying, assessing, and supporting children and families. It also elaborates the responsibilities of organisations working with children and their families. This includes the requirement for organisations and agencies working with children and families to have clear policies for dealing with allegations of abuse against people who work with children. The guidance sets out additional duties for certain organisations including schools and educational providers, early years and childcare providers, health providers, children’s homes, as well as voluntary, charity, social enterprise, faith-based organisations, and private sectors, among others. The guidance refers to safeguarding standards applicable to specific organisations, such as for charities subject to charity law and regulated by the Charity Commission,³¹ and sports organisations subject to the Standards for Safeguarding and Protecting Children in Sport.³² Thus, the term has a broad definition in the UK, extending beyond organisational settings to encompass a broader approach to children’s welfare.

29 HM Government, ‘Working Together to Safeguard Children: A Guide to Inter-Agency Working to Safeguard and Promote the Welfare of Children’ (2006) cited in Parton (n 24) 860.

30 HM Government, ‘Working Together to Safeguard Children 2023: A guide to multi-agency working to help, protect and promote the welfare of children (December 2023) <<https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>> 8.

31 Charity Commission for England and Wales, ‘Strategy for Dealing with Safeguarding Issues in Charities’ (GOV.UK, 6 December 2017) <<https://www.gov.uk/government/publications/strategy-for-dealing-with-safeguarding-issues-in-charities/strategy-for-dealing-with-safeguarding-issues-in-charities>>.

32 NSPCC, ‘Standards for Safeguarding and Protecting Children in Sport’ (*Child Protection in Sport Unit*, 7 September 2018) <<https://thecpsu.org.uk/resource-library/tools/standards-for-safeguarding-and-protecting-children-in-sport/>>.

1.2.2 Concept diffusion

The introduction of the term ‘child safeguarding’ into international discourse seems to have occurred after the 2002 West African ‘sex-for-food’ scandal. This scandal came to light when a report from the UN High Commissioner for Refugees (UNHCR) and Save the Children UK implicated 67 personnel from 42 agencies in Liberia, Sierra Leone, and Guinea in the sexual exploitation of refugee children.³³ Among other things, the report documented a lack of adequate control of people working for international and local humanitarian agencies, as well as an absence of regulation, monitoring, and retribution for personnel who abuse their power and organisational resources to exploit children.³⁴ Prior reports had surfaced about sexual abuse and exploitation by peacekeepers and humanitarian workers, but the issues were not given significant attention until the UNHCR/Save the Children report.³⁵

The 2002 scandal catalysed significant action by the humanitarian community, including bilateral donors. Child safeguarding in humanitarian and development contexts is discussed in Chapter 2 of this study but briefly canvassed here to foreground the study. In response to growing awareness of child abuse by humanitarian workers, several UK-based non-governmental organisations (NGOs) formed the ‘Keeping Children Safe’ coalition and introduced the ‘Child Safeguarding Standards’ in 2002.³⁶ The coalition used the term ‘child safeguarding’ to describe an organisation’s duty to ensure that its staff, operations, and programmes ‘do no harm’ to children. This responsibility encompassed two main actions: firstly, identifying and mitigating risks to children, and secondly, reporting any child safety concerns to the appropriate authorities.

Although not the focus of this study, it is important to note that the UN’s response to the West African scandal was not exclusively centred on children but addressed ‘protection from sexual exploitation and abuse’ (often abbreviated to ‘PSEA’) perpetrated by its staff and partners.³⁷ Distinct policy documents and initiatives have emerged for PSEA. For instance, in 2003, the UN Secretary-General’s Bulletin on Special measures for protection from sexual

33 United Nations High Commissioner for Refugees and Save the Children UK, ‘Sexual Violence and Exploitation: The Experience of Refugee Children in Liberia, Guinea and Sierra Leone’ (2002) <<https://www.parliament.uk/documents/commons-committees/international-development/2002-Report-of-sexual-exploitation-and-abuse-Save%20the%20Children.pdf>>.

34 *ibid.*, 11.

35 Karin Landgren, ‘Protection: The United Nations Children’s Fund Experience’ in Michael O’Flaherty (ed), *The Human Rights Field Operation: Law, Theory and Practice* (2007) 190.

36 Keeping Children Safe, ‘Child Safeguarding Standards and How to Implement Them’ 5 <<https://www.keepingchildrensafe.global/wp-content/uploads/2020/02/KCS-CS-Standards-ENG-200218.pdf>>.

37 This work has its own definitional controversies. See for example: Independent Commission for Aid Impact, ‘The UK’s Approach to Safeguarding in the Humanitarian Sector: Literature Review’ (2022) 4–5 <<https://icai.independent.gov.uk/wp-content/uploads/Safeguarding-literature-review.pdf>>.

exploitation and sexual abuse was released. Its provisions include a clear prohibition of sexual activity with children (defined as individuals under 18), irrespective of the local age of majority or consent, and state that a mistaken belief in the age of a child cannot be used as a defence.³⁸ The 'PSEA' effort is coordinated by the Inter-Agency Standing Committee (IASC),³⁹ comprised of nine specialised agencies of the UN, with standing invitations to a further nine organisations representing UN, inter-governmental and non-governmental organisations (NGOs). It still serves as the primary mechanism for inter-agency coordination for policy issues relating to humanitarian assistance and for the UN response to humanitarian emergencies.⁴⁰

Almost two decades later, another scandal rocked the humanitarian sector which thrust the concept of 'safeguarding' back into the limelight. After the 'Oxfam scandal' in 2018, safeguarding emerged as a 'buzzword' in certain humanitarian policy arenas.⁴¹ The UK's Department for International Development – now the Foreign, Commonwealth and Development Office (FCDO) – organised an international 'safeguarding summit', which gathered over 500 representatives from government donor agencies, NGOs, and various entities from the multilateral and private sectors. During the summit, several initiatives were unveiled and commitments to bring about 'long-term strategic shifts' in the sector, discussed further in Chapter 2 of this study. Notably, the UK expanded its definition of safeguarding to encompass the protection of *everyone* involved in aid work, not just the recipients of aid. The FCDO emphasises that organisations '...have a safeguarding duty of care to beneficiaries and other stakeholders, staff and volunteers, as well as to children and adults-at-risk who may be directly or indirectly delivering or impacted by the programme and may be vulnerable to abuse'.⁴²

These high-profile cases, along with the efforts of various organisations and countries, serve to illustrate how the term 'child safeguarding' was introduced into international discourse, adapted, and evolved within specific contexts. The 'PSEA' effort – and the broader concept of safeguarding advanced by FCDO and others encompassing workplace bullying and harassment – diverge from the focus of this study on *child* safeguarding. While these initia-

38 United Nations Secretariat, 'Secretary-General's Bulletin, Special Measures for Protection from Sexual Exploitation and Sexual Abuse, UN Doc ST/SGB/2003/13'.

39 Inter-Agency Standing Committee, 'Protection from Sexual Exploitation and Abuse' <<https://psea.interagencystandingcommittee.org/>>.

40 Dug Cubie, 'An Analysis of Soft Law Applicable to Humanitarian Assistance: Relative Normativity in Action?' (2011) 2 *Journal of International Humanitarian Legal Studies* 177, 207.

41 Kristin Bergtora Sandvik, "'Safeguarding' as Humanitarian Buzzword: An Initial Scoping' (2019) 4 *Journal of International Humanitarian Action* 3.

42 Foreign, Commonwealth & Development Office, 'Safeguarding against Sexual Exploitation and Abuse and Harassment (SEAH) in the Aid Sector' (GOV.UK, 4 May 2023) <<https://www.gov.uk/guidance/safeguarding-against-sexual-exploitation-and-abuse-and-sexual-harassment-seah-in-the-aid-sector>>.

tives are crucial in the effort to tackle sexual exploitation in the aid sector, they lack the specific measures aimed at protecting children that characterise child safeguarding efforts. This has also been observed by researchers conducting fieldwork in Liberia more than 15 years after the West African ‘sex-for-food’ scandal. Blakemore *et al.*, for example, highlight the need for child safeguarding policies that are distinct from, and more targeted than, broader strategies to combat sexual exploitation and abuse.⁴³

The term ‘child safeguarding’ has also gained prominence in other sectors. For example, in sports, high-profile cases of child sexual abuse in multiple countries in the 1990s prompted organisations, initially in the UK, Canada and Australia, to develop child safeguarding measures.⁴⁴ Similar to the humanitarian sector, sport was historically ‘autonomous, unregulated, self-policing and dominated by a large unscrutinised workforce’.⁴⁵ A notable development was the creation of International Standards for Safeguarding and Protecting Children in Sport led by a partnership of organisations, spearheaded by UNICEF UK, for the 2012 Beyond Sport Summit in London.⁴⁶ These Standards (now called ‘Safeguards’) were refined during a piloting phase and are now adopted by various sports organisations around the world.⁴⁷

In the United States, while the specific term ‘child safeguarding’ is not widely used, there has been a concerted effort to prevent child sexual abuse within ‘youth-serving organisations’.⁴⁸ In Australia, there has been a shift towards fostering ‘child safe organisations’, driven by increasing public awareness of the risks to children in institutional care, particularly over the past decade.⁴⁹ The African Committee on the Rights and Welfare of the Child has expressly advised state parties to ensure that organisations working with

43 Sarah Blakemore, Rosa Freedman and Nicolas Lemay-Hébert, ‘Child Safeguarding in a Peacekeeping Context: Lessons from Liberia’ (2019) 29 *Development in Practice* 735, 741.

44 Gretchen Kerr, Ashley Stirling, and Ellen MacPherson, ‘A Critical Examination of Child Protection Initiatives in Sport Contexts’ (2014) 3 *Social Sciences* 742; Celia H. Brackenridge and Daniel Rhind, ‘Child Protection in Sport: Reflections on Thirty Years of Science and Activism’ (2014) 3 *Social Sciences* 326.

45 Kerr, Stirling and MacPherson (n 44) 744.

46 Brackenridge and Rhind (n 44) 331.

47 UNICEF UK, ‘Children’s rights and sport’, <<https://www.unicef.org.uk/sport-for-development/safeguarding-in-sport/>>.

48 Janet Saul and Natalie C Audage, ‘Preventing Child Sexual Abuse Within Youth-Serving Organizations: Getting Started on Policies and Procedures’ (Atlanta, Georgia: Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 2007). See also: Sandy K Wurtele, ‘CSA PREVENTION EVALUATION TOOL FOR ORGANIZATIONS,’ 2014.

49 Commonwealth of Australia, ‘Final Report, Volume 6: Making Institutions Safe’ (Sydney, New South Wales: Royal Commission into Institutional Responses to Child Sexual Abuse, 2017), 135, <<https://www.childabuseroyalcommission.gov.au/final-report>>.

children adopt ‘child safeguarding’ policies.⁵⁰ The Children’s Rights Division of the Council of Europe has introduced a child safeguarding policy to prevent and minimise the risk of harm that may be caused to children through its projects and activities.⁵¹ The Pontifical Commission for the Protection of Minors, established in 2013 as an advisory body to the Pope, is working on developing universal guidelines for the safeguarding of children within the Church.⁵² These examples highlight some of the more prominent and documented instances of the uptake of the term and concept of child safeguarding, but they are by no means exhaustive, as the approach continues to evolve and expand across diverse contexts globally.

1.2.3 Distinguishing child safeguarding from child protection

‘Child safeguarding’ and ‘child protection’ are sometimes used interchangeably, and at a local level, specific terminology will vary to best reflect the context and needs of the community. The semantic distinction between ‘child safeguarding’ and ‘child protection’ may seem minor in some contexts. However, it is crucial for clarifying the specific responsibilities of protecting children from harm within organisational settings, distinguishing them from the broader child protection systems that states are obligated to establish. This study draws a clear distinction between them.

As noted, the term ‘child protection’ is applied narrowly in some jurisdictions. For example, in the UK, child protection is narrowly focused on the statutory response to children at risk of harm (refer above, *Figure 1*). On the other hand, the concept of child protection in international discourse has become very broad and, arguably, less precise. Child protection is generally understood as encompassing activities aimed at preventing and responding to violence, exploitation, abuse, and neglect. This broad usage has been influenced by article 19 of the Convention on the Rights of the Child (CRC) and the interpretative guidance of the Committee on the Rights of the Child (CRC Committee). The CRC Committee explains that a ‘holistic child protection system’ integrates a spectrum of integrated measures that span prevention, identification, reporting, referral, investigation, treatment, and follow-up of

50 African Committee of Experts on the Rights and Welfare of the Child, General Comment No 5 on ‘State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection,’ 2018, 47.

51 Council of Europe, Children’s Rights Division, ‘Child Safeguarding Policy’ (Directorate General of Democracy, Directorate of Anti-Discrimination, Children’s Rights and Sport Values Department, October 2019), <<https://rm.coe.int/2019-council-of-europe-child-safeguarding-policy/168098c6cf>>.

52 Tutelaminorum, Pontifical Commission for the Protection of Minors, Universal Guidelines Framework, <<https://www.tutelaminorum.org/universal-guidelines-framework/>>.

instances of child maltreatment.⁵³ Operationalising such a system requires enhancing laws, policies, and mechanisms that address risks to children in all settings, as well as paying attention to family and community dynamics that impact individual children.⁵⁴ A robust child protection system, therefore, must include the capacity to implement these laws, policies and mechanisms through the coordinated efforts of social workers, police, and a functional justice system. Thus, the term ‘child protection’ has come to include a broad range of actions aimed at improving laws, policies, and mechanisms in support of a ‘holistic child protection system’.

Within the global development context, the scope of actions under ‘child protection’ has expanded even further through initiatives supported by international NGOs and UNICEF, the UN specialised agency for children.⁵⁵ ‘Child protection’ now encompasses a diverse range of activities, including improving birth registration systems, developing alternative care frameworks, and implementing measures to support children in conflict with the law. This broad approach is justified by the links between child maltreatment and the increased vulnerability of certain groups of children – children not registered at birth, living in alternative care, in actual or perceived conflict with the law who are at greater risk of violence.⁵⁶ Consequently, interventions that aim to mitigate these underlying risk factors fall within the scope of ‘child protection.’

Rather than conflating ‘child safeguarding’ with the somewhat nebulous term ‘child protection’, this study frames child safeguarding as a distinct subset within the broader landscape of child protection (see below, *Figure 2*). It can be differentiated from child protection in three fundamental aspects. Firstly, it specifically targets organisational settings, including both state and non-state entities in contact with children. This is not limited to physical environments such as residential facilities and schools, but also includes organisations working with children in community settings, such as sports clubs, religious associations, and entities involved in humanitarian and development work.

53 United Nations Committee on the Rights of the Child, ‘General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence, UN Doc CRC/C/GC/13’ (2011) para 45.

54 United Nations Children’s Fund, ‘Child Protection Systems Strengthening’ (UNICEF 2021) <<https://www.unicef.org/documents/child-protection-systems-strengthening>>.

55 Landgren (n 35) 184.

56 *ibid*; United Nations Committee on the Rights of the Child, ‘General Comment No. 13’ (n 53) para 72(g).

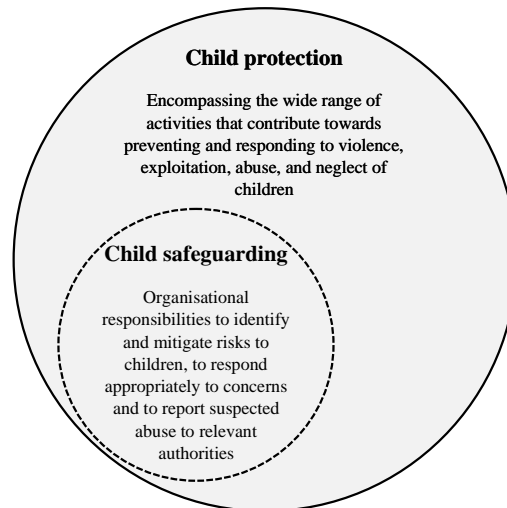


Figure 2: Child safeguarding as a subset of child protection, as conceptualised for this study

Secondly, child safeguarding takes a proactive, preventative approach, in contrast to the traditionally reactive nature of child protection. This approach calls for organisations to anticipate potential risks to children stemming from their operations, programmes, and personnel, and to actively implement measures to mitigate these risks before any harm occurs. Effective safeguarding requires adapting preventative measures to each organisation's unique context considering factors such as size, structure, staff composition, governance, target demographics, as well as their missions, values, programmes, services, funding sources, geographic locations, and cultural contexts. This includes acknowledging and mitigating risks present in both physical and online environments. Certain environmental features can potentially heighten the risk of child abuse, such as those that allow access to children in isolated or unsupervised locations.

Thirdly, child safeguarding emphasises a clear accountability framework. Despite all preventive actions, an organisation's response to abuse, if and when it occurs, is important.⁵⁷ Organisations must establish clear reporting channels and procedures for handling concerns about a child's safety. This requires reporting suspected abuse to appropriate authorities. It calls for those in authority within organisations to be approachable and attentive to children's views in line with article 12 of the CRC. Swift and sensitive responses to concerns, disclosures, and allegations of abuse are critical to maintain trust and encourage future reporting.

⁵⁷ Hazel Blunden and others, 'Victims/Survivors' Perceptions of Helpful Institutional Responses to Incidents of Institutional Child Sexual Abuse' (2021) 30 *Journal of Child Sexual Abuse* 56.

1.2.4 Implementation challenges

This study is primarily focused on the legal and policy dimensions of child safeguarding but acknowledges the limitations of ‘top-down’ approaches. While international children’s rights law offers the advantage of near-universal norms, standards, and accountability mechanisms, its effective implementation requires careful consideration of local contexts and factors affecting children’s protection.⁵⁸ Consequently, effective child safeguarding necessitates a nuanced understanding of how broader systems, local contexts, and cultural dynamics intersect with organisational practices and children’s experiences.

To address these complexities, Bronfenbrenner’s ecological systems theory⁵⁹ provides a helpful theoretical lens. This theory conceptualises children’s development, and by extension safeguarding, as occurring within a complex system of relationships affected by multiple levels of a child’s immediate surroundings (microsystem) to broader societal and cultural contexts (macrosystem).⁶⁰ This perspective reinforces the importance of addressing challenges not only at the legal and policy level but also within individuals, organisations, and societies, while acknowledging the interconnectedness between these levels. To provide a broader context for this study, the following sub-section examines these dimensions by drawing on literature from different disciplines.

At the micro-level, individuals working within organisations may have personal fears, limited knowledge, and time constraints that hinder effective child safeguarding.⁶¹ At an organisational level, these issues can be compounded by a lack of time and expertise, inadequate financial resources, staff turnover, diffuse operations, and problematic cultures.⁶² These challenges manifest across various levels and cover a wide spectrum of behaviours, ranging from unintentional lapses, such as ignorance or denial at the individual level, to deliberate misconduct at the organisational level, including cover-ups and reputational management driven by self-preservation.⁶³

While organisational policies and procedures establish standards and accountabilities, an organisational culture that prioritises the protection of

58 William Myers and Michael Bourdillon, ‘Introduction: Development, Children, and Protection’ (2012) 22 *Development in Practice* 437; Michael G Wessells, ‘Bottom-up Approaches to Strengthening Child Protection Systems: Placing Children, Families, and Communities at the Center’ (2015) 43 *Child Abuse & Neglect* 8.

59 Urie Bronfenbrenner, ‘Toward an Experimental Ecology of Human Development’ (1977) 32 *American Psychological Association* 513.

60 *ibid.*

61 Ben Mathews, ‘Optimising Implementation of Reforms to Better Prevent and Respond to Child Sexual Abuse in Institutions: Insights from Public Health, Regulatory Theory, and Australia’s Royal Commission’ (2017) 74 *Child Abuse & Neglect* 86, 92.

62 *ibid.*

63 Kenneth V Lanning and Park Dietz, ‘Acquaintance Molestation and Youth-Serving Organizations’ (2014) 29 *Journal of Interpersonal Violence* 2815.

children is essential for implementation. Organisational theory posits that culture can be ‘seen’ through visible behaviours, shaped by (unseen) beliefs, values, and assumptions about ‘the way we do things around here.’⁶⁴ Culture provides both explicit and implicit guidance on what actions are taken or avoided within organisations, how these actions are carried out, and the underlying reasons for them.⁶⁵ This can impact how individuals interact with children, define what is deemed appropriate or inappropriate behaviour, and determine if and how children’s well-being and safety are prioritised.⁶⁶ A strong safeguarding culture should foster openness and accountability, thereby reducing the risk of practices such as failing to listen to children or prioritising institutional reputation over children’s welfare.⁶⁷

One pervasive challenge is how reputational concerns can influence the ways in which organisations respond to incidents of child abuse. In some cases, the desire to maintain a good reputation leads to covering up incidents rather than addressing them appropriately and prioritising children’s best interests.⁶⁸ Organisations reliant on public trust and funding may be especially prone to such practices as their reputations, and the funding tied to them, can be jeopardised by public exposure of child abuse allegations through media reports or legal proceedings.⁶⁹ However, some literature suggests that organisations that successfully cultivate a culture of openness and accountability can demonstrate that addressing abuse effectively strengthens trust rather than undermining it. Such organisations consciously move beyond risk aversion and self-protection, embracing self-reflection and continuous improvement.⁷⁰

64 Tosca Bruno-van Vijfeijken, ‘“Culture Is What You See When Compliance Is Not in the Room”: Organizational Culture as an Explanatory Factor in Analyzing Recent INGO Scandals’ (2019) 10 Nonprofit Policy Forum 2.

65 *ibid.*

66 Commonwealth of Australia, ‘Final Report, Volume 2: Nature and Cause’ (Royal Commission into Institutional Responses to Child Sexual Abuse 2017) 16.

67 *ibid.*

68 *ibid.* See also: Independent Inquiry into Child Sexual Abuse, ‘The Report of the Independent Inquiry into Child Sexual Abuse’ (2022) 62-66, 217 (identifying a desire to protect an individual or institution from reputational damage as a prominent reason why individuals and organisations failed to report abuse to statutory authorities).

69 Commonwealth of Australia, ‘Final Report, Volume 7: Improving Institutional Responding and Reporting’ (Royal Commission into Institutional Responses to Child Sexual Abuse 2017). See also: Aseem Prakash, ‘Nonprofit Governance, Public Policy, and the Oxfam Scandal: An Introduction’ (2019) 10 Nonprofit Policy Forum; Vijfeijken (n 64). In the case of Larry Nassar, fear of putting off sponsors and losing Olympic medals is said to have contributed to the cover up by USA Gymnastics and the US Olympic Committee: Hadley Freeman, ‘How Was Larry Nassar Able to Abuse so Many Gymnasts for so Long?’ *The Guardian* (26 January 2018) <<https://www.theguardian.com/sport/2018/jan/26/larry-nassar-abuse-gymnasts-scandal-culture>>.

70 Blunden and others (n 57) 74. See also Smith and Freyd (n 21) 584 (explaining that recognising and reporting abuse must be reframed as an ‘honourable’ action to foster a shift in organisations from ‘damage control’ to genuine accountability for abuse within their ranks).

The broader societal context at the macrosystem level also shapes organisational cultures and individual behaviours.⁷¹ Assumptions, values, beliefs, and norms relating to the status of children, gender, ethnicity, disability, sexual orientation, and power hierarchies can exacerbate the vulnerability of children to abuse and affect how organisations respond.⁷² Feminist theories highlight how the internal dynamics of organisations often reflect and perpetuate longstanding biases and structural inequalities such as those related to gender, race, and colonial legacies, particularly pronounced in the humanitarian and development sectors.⁷³ Intersectionality theory can help in understanding the multiple societal processes and structural sources of bias and discrimination that shape children's experience.⁷⁴ Structural violence helps explain how systemic inequalities, rooted in historical, political, and economic structures, perpetuate harm within certain groups and communities.⁷⁵ These issues are not isolated to specific regions but are a global concern as countries worldwide grapple with the ongoing effects of racism and inequality.

Legal frameworks and economic conditions also influence how child safeguarding policies and practices are prioritised and implemented within organisations. While this study covers various regions, chapters 2, 3 and 4 specifically address low- and middle-income countries in Africa to understand their unique contexts. In many countries in Africa, services for children are largely delivered by non-state entities including NGOs, faith-based organisations, volunteer networks, social enterprises, or philanthropic projects connected to for-profit companies.⁷⁶ These organisations often operate with minimal external oversight. Domestic legislation creating obligations for

71 Donald Palmer and others, 'The Role of Organisational Culture in Child Sexual Abuse in Institutional Contexts' (Royal Commission into Institutional Responses to Child Sexual Abuse 2016) 31.

72 *ibid.*, 31–35; Sarah Morton, 'Getting Evidence into Action to Tackle Institutional Child Abuse' (2017) 74 *Child Abuse & Neglect* 111, 112.

73 Gabrielle Daoust and Synne Dyvik, 'Reconceptualizing Vulnerability and Safeguarding in the Humanitarian and Development Sector' [2021] *Social Politics: International Studies in Gender, State & Society* jxaa040 4. See also: Elizabeth Gillespie, Roseanne Mirabella and Angela Eikenberry, '#MeToo/#AidToo and Creating an Intersectional Feminist NPO/NGO Sector' (2019) 10(4) *Nonprofit Policy Forum*.

74 Intersectionality was first defined by Kimberlé Crenshaw in the late 1980s and further developed by US Black feminists and other scholars. See: Kimberlé Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women' (1991) 43 *Stanford Law Review* 1241. See further: Nadan Y, Spilsbury JC and Korbin JE, 'Culture and Context in Understanding Child Maltreatment: Contributions of Intersectionality and Neighborhood-Based Research' (2015) 41 *Child Abuse & Neglect* 40 (exploring how intersectionality can support research and policy in the area of child maltreatment).

75 Jonathan Todres, 'Violence, Exploitation, and the Rights of the Child' in Ursula Kilkelly and Ton Liefwaard (eds), *International human rights of children* (Springer Nature Singapore Pte Ltd 2019).

76 Ben Parker, '#MeToo Sex Scandals Spur Interest in Standards for the Aid Sector' (*The New Humanitarian*, 2 May 2018) 2 <<https://www.thenewhumanitarian.org/analysis/2018/05/02/metoo-sex-scandals-spur-interest-standards-aid-sector>>.

organisations working with children, such as mandatory reporting laws, background checks for people working with children, data protection, and safety standards for buildings, playgrounds, and other physical facilities that children use, may be lacking or rarely enforced.

The implementation of child safeguarding is further complicated by the environments in which organisations operate. They may be under high pressure in complex and volatile circumstances, including conflict, natural disasters, mass displacement, and a lack of rule of law, all of which can lead to significant dysfunction and disorder in organisational operations and activities.⁷⁷ Moreover, insufficient investment in child protection systems and services can leave children acutely vulnerable, sometimes forcing them into sexual exploitation perpetrated by persons in a position of power or trust as a means of survival.⁷⁸ When cases are reported to authorities, weak justice systems can create an environment with little accountability, perpetuating cycles of vulnerability and exploitation.⁷⁹

This highlights the critical interplay between child safeguarding and wider child protection and justice systems, which intersect in a myriad of ways. For example, children may be left vulnerable to abuse and exploitation in organisational settings due to child protection services failing to reach those in need, a lack of safe alternative care placing children in high-risk settings, or insufficient responses from state authorities to reported cases of abuse within organisational settings. While inadequate state responses to reports of child abuse may be particularly apparent in less developed countries, they have also been found to be deeply flawed in high-income settings.⁸⁰

Ultimately, protecting children from harm in organisational settings requires a comprehensive approach that moves beyond the confines of legal and policy frameworks. It requires a deliberate transformation of organisational cultures

77 David Lewis, 'Oxfam Crisis: We Need a More Informed Debate about NGOs and International Aid,' London School of Economics, February 20, 2018, <<https://blogs.lse.ac.uk/politicsandpolicy/oxfam-crisis-we-need-a-more-informed-debate-about-ngos-and-international-aid/>>.

78 Corinna Csáky, 'No One to Turn to: The Under-Reporting of Child Sexual Exploitation and Abuse by Aid Workers and Peacekeepers' (Save the Children, 2008), 20.

79 *ibid*; Blakemore, Freedman and Lemay-Hébert (n 43) 740.

80 For example, the Australian Royal Commission revealed that institutional failures extended beyond individual organisations to include key state entities such as law enforcement, child protection agencies, and the criminal justice system: Commonwealth of Australia, 'Final Report: Preface and Executive Summary' (Royal Commission into Institutional Responses to Child Sexual Abuse 2017) 5–6. Similarly, the US Department of Justice Office of the Inspector General found fundamental flaws in the response of the Federal Bureau of Investigation's handling of abuse allegations against the USA Gymnastics physician, Gerard Nassar: United States Department of Justice Office of the Inspector General, 'DOJ OIG Releases Report of Investigation and Review of the FBI's Handling of Allegations of Sexual Abuse by Former USA Gymnastics Physician Lawrence Gerard Nassar' (14 July 2021) <<https://oig.justice.gov/news/doj-oig-releases-report-investigation-and-review-fbis-handling-allegations-sexual-abuse-former>>.

to prioritise children's safety through openness, self-reflection, and accountability. This shift must be supported by strong child protection and justice systems including oversight of organisations in contact with children, and a recognition of how societal norms and structural inequalities influence both the risks children face and the effectiveness of organisational responses.

1.2.5 Child safeguarding and children's rights

While various 'international' standards for child safeguarding have been advanced, such as for sports, in development and humanitarian contexts, and others, these have been largely driven by non-governmental organisations, lacking legal authority, and focused on the responsibilities of organisations alone. This study aims to strengthen the connection between international children's rights law and child safeguarding. The link between international children's rights law and child safeguarding is not merely a vague aspiration to realise children's rights. Rather, this study sets out to demonstrate that child safeguarding is grounded in clear legal obligations under international children's rights law.

This study takes the near-universally accepted rights of children set out in the CRC as the foundation for child safeguarding. Children are, of course, beneficiaries of the human rights articulated under all international human rights treaties, but the CRC uniquely recognises children as distinct subjects and holders of rights.⁸¹ The necessity for children's rights emerges from historical failures to protect children from harm. The field of child protection and 'the philosophy of the rights of the child' exist because children's need for care and protection has not always been met.⁸²

Child safeguarding fundamentally aligns with children's rights to respect for their human dignity, physical and psychological integrity, and equal protection under the law. These rights have been recognised in several international human rights law instruments, including the Declarations of the Rights of the Child in 1924 and 1959,⁸³ the International Covenants,⁸⁴ and the

81 Jaap E Doek, 'The Human Rights of Children: An Introduction' in Ursula Kilkelly and Ton Liefwaard (eds), *International human rights of children* (Springer Nature Singapore Pte Ltd 2019) 12.

82 Juha Hämäläinen, 'The Origins and Evolution of Child Protection in Terms of the History of Ideas' (2016) 52 *Paedagogica Historica* 734, 745.

83 League of Nations, Geneva Declaration of the Rights of the Child (adopted 26 September 1924) ('the child ... must be protected against every form of exploitation'); UNGA, 'Declaration of the Rights of the Rights of the Child (adopted 20 November 1959 (UNGA Res 1386(XIV) principle 9 ('The child shall be protected against all forms of neglect, cruelty and exploitation').

Universal Declaration of Human Rights.⁸⁵ These rights have also been recognised in regional human rights instruments including the American Convention on Human Rights⁸⁶ and the African Charter on Human and People's Rights.⁸⁷ The CRC reinforces these rights and marks a 'paradigm shift' in seeing children as rights-bearing individuals.⁸⁸ The African Charter on the Rights and Welfare of the Child (ACRWC)⁸⁹ is the only other comprehensive instrument dedicated to children's rights.

While the text of the CRC does not expressly use the term 'safeguarding', several of its provisions are relevant. These provisions address the wide range of risks children may face through organisational operations, programmes, and personnel. They include the protection from all forms of violence (article 19), the prohibition against torture or other cruel, inhuman or degrading treatment or punishment (article 37(a)), the right to respect privacy which extends to the protection of a child's bodily integrity (article 16), the right to survival and development (article 6), the right that school discipline is administered consistently with a child's dignity (article 28(2)) and rights that protect children against economic exploitation (article 32), sexual exploitation and abuse (article 34), and other forms of exploitation (article 36).⁹⁰

84 See International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Art. 24(1) ('Every child shall have ... the right to such measures of protection as are required by his status as a minor'); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, Art. 10(3) ('Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation') and Art. 12 (on the 'right of everyone to the enjoyment of the highest attainable standard of physical and mental health' and the 'steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for ... the healthy development of the child').

85 Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A(III), Art. 25 ('...childhood are entitled to special care and assistance.').

86 American Convention on Human Rights (adopted 21 November 1969, entered into force 18 July 1978) 1144 UNTS 123 Art. 19 ('Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state').

87 African Charter on Human and People's Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217 Art. 18(3) ('The State shall... ensure the protection of the rights of ... the child as stipulated in international declarations and conventions'). The European Convention on Human Rights does not contain specific protections for children. 'Minors' or 'juveniles' appear only twice in the main body of the text.

88 United Nations Committee on the Rights of the Child, 'General comment No. 13' (n 53) at para. 3(b).

89 The African Charter on the Rights and Welfare of the Child, adopted 11 July 1990, entered into force 29 November 1999, OAU Doc CAB/LEG/24.9/49.

90 Many of the substantive articles of the ACRWC cover similar risks to children's physical and psychological integrity, with Art. 16 (protection of the child against abuse and torture) as the most pertinent. These provisions are discussed in Chapter 3.

Particular attention should be given to article 19 of the CRC, which the CRC Committee views as the 'core provision' guiding discussions and strategies to address and eliminate all forms of violence in the context of the CRC.⁹¹ Article 19 states that:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.'

The CRC Committee has made significant interpretations of article 19 that are relevant to child safeguarding. While respecting children's evolving capacities, the CRC Committee emphasises that all individuals under 18 should always be 'in the care of' someone – whether primary or proxy caregivers, or under the de facto care of the state.⁹² The CRC Committee further states that the phrase 'parent(s), legal guardian(s) or any other person who has the care of the child' covers those with 'clear, recognized legal, professional-ethical and/or cultural responsibility' for the child.⁹³ As well as parents, foster and adoptive parents, and guardians under various legal systems, such as *kafalah* of Islamic law, the CRC Committee includes extended family, community members, educational staff, early childhood personnel, child caregivers employed by parents, recreational and sports coaches, youth group leaders, those overseeing work environments, and institutional staff (both governmental and non-governmental) in caregiving roles across healthcare, juvenile justice, and residential care settings.⁹⁴

Moreover, the CRC Committee's interpretation makes article 19 applicable in all settings. It defines 'care settings' as places where children spend time under the supervision of their 'permanent' primary caregiver, like a parent or guardian, or a 'temporary' proxy caregiver, such as a teacher or youth group leader, covering short-term, long-term, one-time, or recurring periods.⁹⁵ Three

91 United Nations Committee on the Rights of the Child, General comment No. 13 (n 53), para 7(a).

92 *ibid*, para. 33.

93 *ibid*.

94 *ibid*.

95 *ibid*, para. 34.

types of care settings are identified: conventional environments like family homes, schools, early childhood care, after-school programmes, and places for leisure, sports, cultural and recreational activities, and religious worship; medical, rehabilitative and care facilities, alongside workplace and justice-related settings; and neighbourhoods, communities and camps or settlements for refugees and people displaced by conflict or natural disasters.⁹⁶ The CRC Committee expressly states that article 19 covers the perpetration of violence against children by professionals and state actors who have misused their power over children within settings such as schools, residential homes, police stations and justice institutions.⁹⁷

The CRC Committee's interpretation, reflecting a contemporary understanding of the wide range of settings in which children are vulnerable to abuse, makes article 19 applicable in all settings, including familial, organisational and community settings.

The CRC contains other provisions highly relevant to child safeguarding that extend beyond the direct context of violence. These include article 3 (best interests), article 3(3) (standard setting for organisations responsible for care and protection), article 12 (children's right to express their views and be heard), and article 39 (remedies). These are analysed further in Chapter 6. For the purposes of the introduction, it is sufficient to draw attention to article 3(3), which is often overlooked by its 'omnipresent sibling' article 3(1).⁹⁸ Article 3(3) requires states to:

'... ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.'

The existing academic commentary on this provision suggests it aims to apply the best interests' principle to the specific domain of residential care and

⁹⁶ *ibid*, para. 34.

⁹⁷ *ibid*, para. 36.

⁹⁸ Elaine E Sutherland, 'Article 3 of the United Nations Convention on the Rights of the Child: The Challenges of Vagueness and Priorities' in Elaine E Sutherland and Lesley-Anne Barnes Macfarlane (eds), *Implementing Article 3 of the United Nations Convention on the Rights of the Child* (Cambridge University Press 2016) 23. There is a large body of existing academic literature and jurisprudence relating to the best interests' principle. The CRC Committee has also issued a General comment on the same: United Nations Committee on the Rights of the Child, General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art 3, Para 1), UN Doc CRC/C/GC/14 (29 May 2013). Interestingly, Art. 3(3) is not within scope of the CRC Committee's interpretative guidance on Art.3(1): United Nations Committee on the Rights of the Child, General Comment No. 14 (para. 8).

service provision.⁹⁹ However, it arguably has broader application. If one accepts the CRC Committee's expansive interpretation of 'care settings' in relation to article 19, article 3(3) should have a similar wide application for 'internal system coherence.'¹⁰⁰ This broader interpretation would support the proposition that states have a specific obligation under the CRC to establish and monitor standards for all organisations working with children including, but not limited to, residential facilities, schools, sports clubs, religious associations, as well as organisations involved in humanitarian and development efforts.

1.3 AIMS OF THE STUDY AND RESEARCH QUESTIONS

The abuse of children in organisational settings, particularly in residential care, has been studied across various disciplines including history, sociology, social work, criminology, and public health.¹⁰¹ However, the concept and practice

99 John Eekelaar and John Tobin, "Art.3 The Best Interests of the Child," in *The UN Convention on the Rights of the Child: A Commentary* (Oxford, United Kingdom: Oxford University Press, 2019), 104; Sutherland (n 104) 43.

100 John Tobin, 'Introduction: The Foundation for Children's Rights' in J Tobin (ed), *The UN Convention on the Rights of the Child: a commentary* (Oxford University Press 2019) 15 (using the phrase 'internal system coherence' to describe an interpretative outcome that achieves coherence within the context of other provisions of the CRC).

101 For example: A Bingham and others, 'Historical Child Sexual Abuse in England and Wales: The Role of Historians' (2016) 45 *History of Education* 411; B Conway, 'Religious Institutions and Sexual Scandals: A Comparative Study of Catholicism in Ireland, South Africa, and the United States' (2014) 55 *International Journal of Comparative Sociology* 318; Daly (n 14); J Death, 'Bad Apples, Bad Barrel: Exploring Institutional Responses to Child Sexual Abuse by Catholic Clergy in Australia,' *International Journal for Crime, Justice and Social Democracy* 4, no. 2 (June 24, 2015): 94–110; E Gil and K Baxter, 'Abuse of Children in Institutions' (1979) 3 *Child Abuse & Neglect* 693; K Gleeson, 'Responsibility and Redress: Theorising Gender Justice in the Context of Catholic Clerical Child Sexual Abuse in Ireland and Australia' (2016) 39 *University of New South Wales Law Journal* 779; N Martschuk and others., 'Similarities in Modi Operandi of Institutional and Non-Institutional Child Sexual Offending: Systematic Case Comparisons' (2018) 84 *Child Abuse & Neglect* 229; Smith and Freyd (n 21); D Palmer and V Feldman, *Comprehending the Incomprehensible: Organization Theory and Child Sexual Abuse in Organizations* (Cambridge University Press, 2018); S Raine and SA Kent, 'The Grooming of Children for Sexual Abuse in Religious Settings: Unique Characteristics and Select Case Studies' (2019) 48 *Aggression and Violent Behavior* 180; Wright, Swain and Sköld (n 19); K Wright and A Henry, 'Historical Institutional Child Abuse: Activist Mobilisation and Public Inquiries' (2019) 13 *Sociology Compass* e12754. Published literature is dominated with evidence from the 'global north' however there is growing literature examining the abuse of children in educational and religious settings as well as in residential care in parts of Africa, Asia, and Latin America. For example: MCL Bingemer, 'Concerning Victims, Sexuality, and Power: A Reflection on Sexual Abuse from Latin America' (2019) 80 *Theological Studies* 916; S Lyneham S and L Facchini, 'Benevolent Harm: Orphanages, Voluntourism and Child Sexual Exploitation in South-East Asia' [2019] *Trends & issues in crime and criminal justice* 16; P Braitstein, S Ayaya, D Ayuku, A DeLong, and L Atwoli (2017) 'Child Abuse and Neglect in Charitable Children's Institutions in Uasin Gishu County,

of 'child safeguarding' have received comparatively minimal academic attention, especially from an international human rights law perspective. This study seeks to fill this gap by exploring how international children's rights law can be used or developed to articulate child safeguarding obligations and enhance the accountability of organisations that work with children.

This study primarily focuses on non-state entities, specifically NGOs, considering the plethora of NGOs providing services for children and their relatively 'underregulated' status in international human rights law.¹⁰² At the same time, it examines state obligations to protect children from abuse within both state and non-state organisational settings. This study excludes UN agencies and peacekeeping missions from scope. This decision is guided by the fact that UN agencies and peacekeeping missions operate under distinct regulatory frameworks and there is vast scholarly attention already dedicated to these actors.

The subject of child safeguarding is complex. There are multiple variables contributing to children's vulnerability, and the dynamics of abuse, in certain organisational contexts. There are also a wide range of approaches that countries have taken to regulating organisations working with children, and specifically, the non-governmental sector, also known as the third sector, non-profit sector, or charitable sector. This study does not aim to provide an exhaustive or historically complete account of child safeguarding, but instead explores certain aspects where international children's rights law can be used or developed to improve the protection of children from harm in organisational settings. It examines how children's rights law may directly guide organisational policies and practices, while also addressing state obligations to oversee and establish standards for organisations working with children, including non-state entities.

The study also considers the influence of other laws on organisational practices and looks at two specific examples that address systemic practices in organisations – mandatory reporting laws and laws relating to the grooming of children for sexual abuse. Mandatory reporting laws can be an important enabler for child safeguarding by contributing towards breaking the culture of silence in organisational cases of child abuse. The case of USA Gymnastics at the start of this introductory chapter serves as one of many examples. Several victims testified that, over more than two decades of abuse, they had informed adults including coaches and athletic trainers about what was happening. Despite this, their reports went unreported to authorities. As a

Kenya: A Challenge of Context' in AV Rus, SR Parris & E Stativa (eds) *Child Maltreatment in Residential Care: History, Research, and Current Practice*, Springer International Publishing AG; A Shumba, 'Reasons and Justifications Used by Child Abuse Perpetrators in Zimbabwean Schools' (2009) 19 *Journal of Psychology in Africa* 19.

102 Domenico Carolei, 'An International Ombudsman to Make Non-Governmental Organizations More Accountable? Too Good to Be True ...' (2022) 35 *Leiden Journal of International Law* 867, 872.

result of this case, the State of Michigan has mandated that therapists and trainers, alongside other professionals, report any suspicions or knowledge of abuse under mandatory reporting legislation.¹⁰³

Grooming laws can also contribute towards improving organisational practices and accountability. While recent government inquiries and high-profile cases of institutional abuse reveal extensive accounts of the role that grooming has played in child sexual abuse, analysis of legislative responses tends to focus on criminalisation of individual perpetrators. How the law may be used to catalyse change within organisations and create conditions supportive of children's rights is relatively underexplored. The term grooming is often linked to the internet and online behaviour, but its origins precede the digital age. There is limited public awareness about how perpetrators groom not only children, but also families, communities, and organisations. These gaps in knowledge may prevent organisations from identifying 'warning signs' and may undermine their ability to respond appropriately to suspected abuse. Perpetrators may groom their professional environments to evade safety measures and exploit weaknesses, enabling them to sexually abuse children without detection.¹⁰⁴ Moreover, the grooming of people within the child's circle can lead to a child's isolation and may decrease the likelihood that a child is believed if they disclose the abuse.¹⁰⁵

This study is guided by a central research question and five sub-questions as follows:

Main research question

How can international children's rights law – especially the norms and standards established by the United Nations Convention on the Rights of the Child (CRC) and related relevant standards including the African Charter on the Rights and Welfare of the Child (ACRWC) – be used or developed to improve child safeguarding in organisational settings?

103 Anna Liz Nichols, 'Michigan Law Adds Mandatory Reporters after Nassar Scandal' (AP News, 24 March 2022) <<https://apnews.com/article/sports-michigan-gretchen-whitmer-child-abuse-sexual-abuse-5f9b78901f56e05a687e5e39578013fa>>.

104 Anne-Marie McAlinden, 'Institutional Grooming' and Abuse' in Anne-Marie McAlinden, *'Grooming' and the Sexual Abuse of Children: Institutional, Internet, and Familial Dimensions* (Oxford University Press 2012) 148; Patrick O'Leary and others, 'Grooming and Child Sexual Abuse in Institutional Contexts: Research Paper' (Royal Commission into Institutional Responses to Child Sexual Abuse 2017) 12; Marcus Erooga, Keith Kaufman and Judith G Zatzkin, 'Powerful Perpetrators, Hidden in Plain Sight: An International Analysis of Organisational Child Sexual Abuse Cases' (2020) 26 *Journal of Sexual Aggression* 62; Lanning and Dietz (n 63).

105 Samantha Craven, Sarah Brown and Elizabeth Gilchrist, 'Sexual Grooming of Children: Review of Literature and Theoretical Considerations' (2006) 12 *Journal of Sexual Aggression* 287, 293.

Sub-questions

- a) *How can models of self-regulation and standard setting within humanitarian and development contexts be aligned with norms and standards established by the CRC and the ACRWC to improve child safeguarding in those contexts? What are the challenges for child safeguarding in contexts with less developed child protection systems?*
- b) *How have child protection and child safeguarding evolved since the adoption of the ACRWC, and through the work of the African Committee of Experts on the Rights and Welfare of the Child (ACRWC Committee)?*
- c) *How can mandatory reporting laws and laws relating to the grooming of children for sexual abuse be strengthened, with reference to international children's rights law norms and standards, to improve child safeguarding in organisational contexts?*
- d) *How does international children's rights law address state obligations to oversee and establish safeguarding standards for organisations working with children, including non-state entities? Can non-state entities be held accountable independently of state oversight?*
- e) *What specific guidance does international children's rights law provide to inform organisational policies and practices related to child safeguarding?*

1.4 METHODOLOGICAL APPROACH AND SCOPE

This research largely employs a traditional legal research methodology within a public international law framework. Often referred to as doctrinal or 'black letter' research, this methodology provides a 'systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps, predicts future developments.'¹⁰⁶ The CRC forms the cornerstone of this research and is the primary legal instrument from which this study derives its foundational legal principles. The CRC stands as a significant marker of legitimacy.¹⁰⁷ Its near-universal ratification makes it an essential point of departure for any scholarly inquiry into children's rights.

In addition to the CRC, this study incorporates other relevant international and regional human rights instruments to construct a framework for the analysis. The chapters analyse and reflect on various sources including the

¹⁰⁶ Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Australian Government Publishing Service 1987) cited in Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17 *Deakin Law Review* 83, 101.

¹⁰⁷ Michael Freeman, 'Why It Remains Important to Take Children's Rights Seriously' (2007) 15 *The International Journal of Children's Rights* 5, 17.

ACRWC as the only other international children's rights treaty, the CRC's Optional Protocol on the sale of children, child prostitution and child pornography,¹⁰⁸ and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.¹⁰⁹ Examples of national legislation are also examined, with each chapter explaining the rationale behind the selection of specific legislative sources.

Beyond legal instruments, this research extensively utilises the work of the CRC Committee and other human rights treaty bodies, including the ACRWC Committee, the Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, and existing legal academic scholarship relating to children's rights. This study also examines quasi-legal instruments and other normative documents such as public policies, sectoral standards, and organisational policies.

Doctrinal legal methods have limitations; legal concepts evolve through practice and are influenced by context.¹¹⁰ Recognising this, the study considers interdisciplinary perspectives. In doing so, this study does not aim to recapitulate the extensive literature concerning the abuse of children in institutional settings or child abuse generally but draws on an interdisciplinary approach to situate the analysis and align findings more closely with societal needs.¹¹¹

Sources for this research were accessed via extensive research through digital platforms and databases. Each chapter details the specific research methods used. The sources were current at the time of the chapter's submission for publication. Sources were chosen based on their relevance to the research questions, their authority within their respective fields, and their potential to contribute new insights or challenge existing perspectives relating to the field of inquiry. Further, the author's professional experience of over 15 years working in international children's rights and protection has also influenced the study.¹¹² Only publicly available information is used in this research.

This study primarily relies on legal theory to interpret and evaluate sources. However, it also references other theoretical perspectives to illuminate complexities in child safeguarding. Feminist theories, for instance, provide insights into power dynamics and systemic biases that underpin abuse. In the UK,

108 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, entered into force 18 January 2002, adopted by UN General Assembly Resolution, A/RES/54/263, 25 May 2000.

109 Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, adopted 25 October 2007, entered into force 1 July 2010, CETS No. 201.

110 Rossana Deplano and Nicholas Tsagourias, 'Introduction' in Rossana Deplano and Nicholas Tsagourias (eds), *Research Methods in International Law* (Edward Elgar Publishing 2021) 3.

111 Andria Naudé Fourie, 'Expounding the Place of Legal Doctrinal Methods in Legal-Interdisciplinary Research: Experiences with Studying the Practice of Independent Accountability Mechanisms at Multilateral Development Banks' [2015] *Erasmus Law Review* 97.

112 The information in this study expresses the author's personal views and opinions and does not represent the views of any organisation.

feminist movements of the 1970s and 1980s shifted the narrative from seeing abusers as individuals with ‘deviant’ behaviours to recognising the influence of patriarchal power structures and societal norms.¹¹³ Sexual violence in organisational contexts is viewed therefore not only as a product of weak internal governance or underreporting, but is shaped by the larger societal context that oppresses women, people of colour, and other marginalised groups.¹¹⁴ Feminist scholars have consistently emphasised how power imbalances and intersecting systems of oppression, such as racism and sexism, manifest in the aid sector, perpetuating harm.¹¹⁵ Concurrently, organisational theory offers tools to understand better the perpetration, detection, and response to child abuse in organisational contexts.¹¹⁶ As already noted, Bronfenbrenner’s ecological systems theory helps in understanding the interconnected factors that influence child safeguarding in organisational settings.¹¹⁷

This study has been conducted between January 2020 and March 2024. The documents reviewed were confined to English-language sources and the author acknowledges the inherent limitations associated with this choice in terms of regional and linguistic diversity. Undertaking this study as a thesis by published articles has enabled the chapters presented in this doctoral thesis to be relevant and have a practical application and influence in ‘real time’ over the time that the study has occurred.

1.5 Outline of the study

This study has been undertaken as a PhD by publication, which is reflected in the structure of the doctoral thesis. The thesis is presented through seven chapters, including this introduction (Chapter 1) and a conclusion (Chapter 7). All the substantive chapters originated as individual articles that were either published or submitted for publication as articles in academic journals. This study occasionally repeats information because each article necessitated preliminary exposition due to the limited scholarly focus on child safeguarding within the context of international human rights and children’s rights law.

113 Lucy Delap, “‘Disgusting Details Which Are Best Forgotten’: Disclosures of Child Sexual Abuse in Twentieth-Century Britain” (2018) 57 *Journal of British Studies* 79, 99. Delap points out that feminist campaigning on sexual abuse had certain limitations, such as overlooking the sexual abuse of boys and the role of women as perpetrators. Even with an awareness of power disparities, there remained a tension between the needs of children and those of mothers: 99-101.

114 Gillespie, Mirabella and Eikenberry (n 73) 1.

115 For example: *ibid*; Daoust and Dyvik (n 73).

116 Palmer and others (n 71).

117 Bronfenbrenner (n 59).

There are also some stylistic and substantive differences in each chapter to reflect the distinct audience and focus of the academic journals.

Chapter 2 discusses child safeguarding in the specific context of humanitarian and development assistance. It examines self-regulatory and standard-setting initiatives by NGOs and bilateral donors and the relevant standards in the CRC and the ACRWC and respective treaty body guidance. The chapter discusses some of the key dilemmas and challenges for child safeguarding in the 'developing world'.¹¹⁸

Chapter 3 examines the child rights normative framework in Africa 30 years after the adoption of the ACRWC. The chapter charts the paradigm shift in the child protection sector that occurred since its adoption and the gradual development of African jurisprudence on child protection and child safeguarding. The chapter posits future directions for child protection and safeguarding.

Chapter 4 is a focused examination of mandatory reporting legislation. Such legislation can be an important enabler for child safeguarding by requiring persons working with children to report suspected abuse to the authorities. Employing a comparative legal analysis of mandatory reporting duties in four countries in Southern and Eastern Africa, the chapter explores the complexities of introducing mandatory reporting in countries where the formal capacity to respond to child abuse is constrained. This reinforces themes from Chapters 2 and 3 on the interplay between child safeguarding and child protection in resource-constrained contexts.

Chapter 5 examines another law with the potential to influence child safeguarding practices: the criminal law offence of grooming for child sexual abuse. A lack of understanding of how perpetrators groom children, families, communities, and organisations may prevent organisations from taking proactive steps to protect children and may undermine suitable responses to disclosures of abuse.

Chapter 6 examines the role of the state vis-à-vis non-state actors in international human rights law and analyses the work of the CRC Committee, other treaty bodies, and courts to build an understanding of respective child safeguarding responsibilities. The chapter reinforces how international children's rights law assists in clarifying child safeguarding responsibilities of both states

118 Terms like 'developing world' and the 'global south' are placed within quotation marks, recognising their limitations and contentious origins. The 'developing world' is critiqued for its binary implications and oversimplification, implying that some countries have reached their potential. The 'global south' is preferred by some for its geopolitical emphasis but is not strictly geographical. For instance, Australia is geographically in the Southern Hemisphere but is excluded from discussions of the global south due to its socio-economic status. Even though 'low- and middle-income countries' have a clear methodology based on the World Bank classification for lending based on GNP per capita, it is a very heterogeneous group and the dichotomy between high-income countries versus low- and middle-income countries says little that is useful: Themrise Khan and others, 'How We Classify Countries and People – and Why It Matters' (2022) 7 *BMJ Global Health* e009704.

and non-state actors. The chapter engages with the ongoing debate about whether non-state actors have direct legal obligations under international law and explores opportunities to enhance accountability for child safeguarding through international human rights and children's rights law mechanisms.

Chapter 7 presents the conclusion of this study drawing upon the preceding chapters to answer each research sub-question and the main research question, while also presenting broader policy and practice implications.

The title of each chapter, its principal focus, as well as its publication status are summarised in the following schematic outline of the thesis.

<i>Ch.</i>	<i>Title</i>	<i>Key focus</i>	<i>Publication status</i>
1	Introduction	Provides an overarching introduction to the doctoral thesis. Clarifies the concept of 'child safeguarding' and explains its distinction from 'child protection'. Commences an initial analysis of the interlinkages between child safeguarding and children's rights, setting the stage for a deeper exploration of its implications and applications.	Published as part of the doctoral thesis.
2	Safeguarding children in the developing world – Beyond intra-organisational policy and self-regulation	Discusses child safeguarding in humanitarian and development contexts and self-regulatory and standard-setting initiatives by NGOs and bilateral donors. Examines relevant standards in the CRC and the ACRWC and respective treaty body observations to enrich the safeguarding discussion. Posits key dilemmas and remaining challenges for safeguarding children in the 'developing world'.	Published in <i>Social Sciences</i> , 2020, vol. 9, issue 6
3	Child protection, safeguarding and the role of the African Charter on the Rights and Welfare of the Child: Looking back and looking ahead	Examines the impetus for the ACRWC in the context of an emerging field of child protection on the continent. Charts the shift in the child protection sector that occurred after the adoption of the ACRWC and the gradual development of African jurisprudence on child protection and safeguarding. Suggests future directions for child protection and safeguarding.	Published in <i>African Human Rights Law Journal</i> , 2020, vol. 20

<i>Ch.</i>	<i>Title</i>	<i>Key focus</i>	<i>Publication status</i>
4	All care, no responsibility: Legislation for mandatory reporting of child abuse in the “developing world”	Focuses on the duties imposed by international law and domestic legislation to facilitate the reporting of child abuse. Examines mandatory reporting legislation in four countries in Eastern and Southern Africa and elaborates on the complexities of introducing mandatory reporting in countries where the formal capacity to respond to child abuse is constrained and where child protection legislation may not align with the socio-cultural reality.	Published in <i>The International Journal of Children’s Rights</i> , 2022, vol. 30, issue 3
5	Grooming and child sexual abuse in organisational settings – an expanded role for international human rights law	Focuses on grooming for sexual abuse in organisational contexts. Analyses international and regional human rights laws, along with guidance from treaty bodies, to outline existing standards on child sexual abuse and grooming. Suggests key areas for updated global guidance to support child safeguarding in organisational contexts.	Published in <i>Journal of Human Rights Practice</i> , 2024, vol. 16, issue 1
6	Global norms, organisational action: Leveraging international children’s rights law for advancing child safeguarding	Examines the substantive provisions of the CRC and the guidance of the CRC Committee to elaborate on state obligations to protect children in organisational settings (including state and non-state entities) and the responsibilities of organisations themselves. Suggests pathways within human rights and child rights mechanisms for advancing child safeguarding.	Submitted to <i>Leiden Journal of International Law</i> in April 2024. Under review as of time of finalising the PhD manuscript.
7	Conclusion	Provides an overarching conclusion to the doctoral study.	Published as part of the doctoral thesis.

2 | Safeguarding children in the developing world

Beyond intra-organisational policy and self-regulation¹

2.1 INTRODUCTION

The global community has less than a decade to achieve the Agenda for Sustainable Development and Sustainable Development Goals (SDGs). Agenda 2030 envisages a ‘world which invests in its children and in which every child grows up free from violence and exploitation’² and expressly includes several targets to end all forms of violence against children.³ Unlike the preceding Millennium Development Goals, Agenda 2030 is grounded in human rights standards and requires that the goals ‘be implemented in a manner that is consistent with the rights and obligations of States under international law.’⁴ Those obligations relating to children’s right to be protected from violence are articulated under several international instruments – most notably the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. The Convention has near universal ratification, except for the United States of America (US). Most African countries have ratified the Optional Protocol.⁵ In the regional context, the African Charter on the Rights and Welfare of the Child has comparative articles expounding children’s

1 This chapter was originally published as Afroz Kaviani Johnson and Julia Sloth-Nielsen, ‘Safeguarding Children in the Developing World – Beyond Intra-Organisational Policy and Self-Regulation’ (2020) 9 Soc. Sci. 19. A.K.J. drafted the article with conceptual inputs and supervision from J.S.-N. This chapter has had minor edits since publication.

2 United Nations General Assembly, ‘Transforming Our World: The 2030 Agenda for Sustainable Development, Resolution Adopted by the General Assembly on 25 September 2015, UN Doc A/RES/70/1’ (2015) para 8.

3 Including to eliminate all forms of violence against all women and girls (target 5.2), to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms (target 8.7) and to end abuse, exploitation, trafficking and all forms of violence against and torture of children (target 16.2).

4 United Nations General Assembly (n 2) para 18.

5 United Nations Human Rights Office of the High Commissioner, ‘Status of Ratification Interactive Dashboard’ (*United Nations Human Rights Office of the High Commissioner*, 9 April 2020) <<https://indicators.ohchr.org/>>.

right to be protected from violence. Regional policy frameworks include the African Union Agenda 2063 and Africa's Agenda for Children 2040.⁶

Despite the global and regional aspirations, high rates of violence against children persist. There is insufficient investment in tackling root causes and drivers of violence, as well as in those specialised services to support children and families affected by violence. In much of Africa, social welfare and child protection services are largely delivered by non-state actors including non-government organisations (NGOs), faith-based organisations, and community actors. Formal legal systems do not function optimally. In many cases, this enables a culture of impunity for perpetrators.⁷ Not surprisingly, in the least developed countries, cases of child abuse and exploitation perpetrated by those meant to 'help' communities are met with heightened public outrage. This outrage ripples across the Global North in cases which implicate 'Western' offenders, international NGOs, and Official Development Assistance.

In early 2018, allegations of sexual exploitation of women and girls by a senior Oxfam staff member following the 2010 earthquake in Haiti made global headlines.⁸ The revelations triggered critical introspection within the humanitarian and development sector and a flurry of consequent activity. Like the reactions following the 2002 West African 'sex-for-food' scandal,⁹ several significant policy commitments on 'safeguarding' emerged, largely from the components of the 'aid chain' headquartered in the Global North. Scholarly engagement with the concept of safeguarding is just emerging,¹⁰ and literature has not yet explored the extent to which responses are evolving in the best interests of the child, in line with the treaty-based rights of children. Although the Oxfam investigations were reportedly unable to substantiate the allegations concerning girls,¹¹ the risks to children arising from development and humanitarian activity are well known to child protection practitioners and documented by Csáky,¹² amongst others.

6 African Union Commission, 'AU's Agenda 2063: The Africa We Want, Framework Document (2015)' <https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf>; African Children's Committee, 'Africa's Agenda for Children 2040, Fostering an Africa Fit for Children' (2016) 9 <https://www.acerwc.africa/wp-content/uploads/2018/06/Agenda_2040_for_Children_Rights_in_Africa_15x24.pdf>.

7 Corinna Csáky, 'No One to Turn to: The Under-Reporting of Child Sexual Exploitation and Abuse by Aid Workers and Peacekeepers' (Save the Children 2008) 20.

8 'How the Oxfam Scandal Unfolded' *BBC News* (21 February 2018) <<https://www.bbc.com/news/uk-43112200>>.

9 United Nations High Commissioner for Refugees and Save the Children UK, 'Sexual Violence and Exploitation: The Experience of Refugee Children in Liberia, Guinea and Sierra Leone' (2002) <<https://www.parliament.uk/documents/commons-committees/international-development/2002-Report-of-sexual-exploitation-and-abuse-Save%20the%20Children.pdf>>.

10 Kristin Bergtora Sandvik, "'Safeguarding" as Humanitarian Buzzword: An Initial Scoping' (2019) 4 *Journal of International Humanitarian Action* 3, 2.

11 Charity Commission for England and Wales, 'Inquiry Report, Summary Findings and Conclusions, Oxfam' (2019).

12 Csáky (n 7).

This article makes a unique contribution by applying a child rights lens to safeguarding efforts in the aid sector, with a focus on the least developed countries in Africa, from a view in the developing world. The article examines child safeguarding within the public international law framework, taking a child rights, legal theory-based approach, and drawing on international human rights standards and norms set out in the Convention on the Rights of the Child and other relevant instruments. The article also draws on the observations of the Committee on the Rights of the Child and the African Committee of Experts on the Rights and Welfare of the Child and existing legal academic scholarship relating to children's rights. The methodology necessarily employed both legal and interdisciplinary research. The sources reviewed and analysed were identified through comprehensive desk research via databases, journal tracking and review of grey literature including research reports, conference proceedings, and government documents on thematic areas of child abuse and exploitation, child safeguarding, safeguarding, institutional child abuse, child protection and abuse of power in development and humanitarian contexts, with a focus on Africa. The article is also informed by the authors' professional experience in child rights and protection in Africa and internationally. The article first reviews the safeguarding landscape – providing a snapshot of self-regulatory and standard setting initiatives by the sector over the last three decades. Next, the article examines the relevant standards in the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child and respective Committee observations to enrich the safeguarding discussion. Finally, the article discusses key dilemmas and remaining challenges for safeguarding children in the developing world.

The article suggests that a rights-based approach provides for a more nuanced and contextualised response, avoiding the temptation of 'tick-box' exercises driven by reputational management and 'programming siloes' imposed by humanitarian and development actors. To support sustained and consistent progress, efforts should go beyond intra-organisational policy and sectoral self-regulation. Child rights law monitoring mechanisms can be leveraged to encourage effective government oversight of NGOs in contact with children, as part of national frameworks for child protection. While safeguarding discourse in certain policy arenas has focused on sexual exploitation and abuse, an especially egregious violation of children's rights, a rights-based approach should consider the various intersections between humanitarian and development activity and children's treaty-based rights. This should encompass all risks and harms including those arising in the digital era. Intra-organisational efforts are interlinked and dependent on local and national systems. As such, donor governments should consider and increase investment in child protection systems to address risk factors to child abuse and ensure appropriate responses for any child that experiences harm. At the time of writing, countries in Africa are beginning to deal with secondary impacts of

the COVID-19 pandemic and more than ever, robust social services are required to protect the most vulnerable children.

2.2 THE SAFEGUARDING LANDSCAPE – EVOLVING SELF-REGULATION AND STANDARD SETTING

Safeguarding means different things to different people.¹³ Until relatively recently, the term was almost exclusively used in the United Kingdom (UK) as a legal definition applied to vulnerable adults and children.¹⁴ In the context of aid, the term has evolved to focus on the organisational ‘duty of care’ and responsibility to ‘do no harm’. Walker-Simpson suggests the term ‘child safeguarding’ is not well understood in the Global South, where the term ‘child protection’ is more commonly recognised and used.¹⁵ While different organisations use different terminologies,¹⁶ the broader issue of NGO accountability to the people they serve can be positioned within a context of at least three decades of evolving NGO self-regulation and standard setting. This section provides a snapshot of these efforts.

2.2.1 Self-regulatory and standard setting initiatives and the West Africa ‘sex-for-food’ scandal

The demand for humanitarian relief following the end of the Cold War saw a proliferation of new organisations that were often ‘inexperienced and unprofessional.’¹⁷ Attention was drawn to NGO accountability and the lack of professional standards following a series of ‘problematic’ emergency relief operations, particularly in Ethiopia, Somalia, and Rwanda.¹⁸ Industry-wide standards emerged for NGOs to distinguish themselves from ‘low-quality’

13 Sandvik (n 10) 4.

14 ‘Progress Report – One Year on from the October 2018 London Safeguarding Summit’ (UK Department for International Development 2019) 23 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840063/Cross-sector-Safeguarding-Progress-Report-Oct_19.pdf>; HM Government, ‘Working Together to Safeguard Children: Statutory Framework: Legislation Relevant to Safeguarding and Promoting the Welfare of Children’ (2018) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722307/Working_Together_to_Safeguard_Children_Statutory_framework.pdf>.

15 Karen Walker-Simpson, ‘The Practical Sense of Protection: A Discussion Paper on the Reporting of Child Abuse in Africa and Whether International Standards Actually Help Keep Children Safe: The Practical Sense of Protection’ (2017) 26 *Child Abuse Review* 252, 254.

16 Sandvik (n 10) 2.

17 Maryam Zarnegar Deloffre, ‘Global Accountability Communities: NGO Self-Regulation in the Humanitarian Sector’ (2016) 42 *Review of International Studies* 724, 729.

18 *ibid.*

organisations.¹⁹ These standards included the Sphere Humanitarian Charter and Minimum Standards, People in Aid Code of Conduct, and the Code of Conduct for International Red Cross and Red Crescent Movement.²⁰ The Humanitarian Accountability Project was established in 2000, with the aim of piloting an international aid ombudsman.²¹

The issue of child exploitation perpetrated by humanitarian workers first came to global attention in 2002, with the West African 'sex-for-food' scandal. A United Nations High Commissioner for Refugees (UNHCR) and Save the Children report implicated 67 personnel from 42 agencies in Liberia, Sierra Leone and Guinea in the sexual exploitation of refugee children.²² The revelations precipitated the development of several policies, codes and procedures by the UN and civil society. While not the focus of this article, those key UN developments deserve mention as they have also guided the policies and standards of NGOs. These include the establishment of the Inter-Agency Standing Committee on sexual exploitation and abuse and subsequent guidance for protection from and response to sexual exploitation and abuse,²³ the UN General Assembly resolution on the investigation into sexual exploitation of refugees by aid workers in West Africa,²⁴ and the issuance of a global policy in the form of the Secretary-General's Bulletin, Special measures for protection from sexual exploitation and sexual abuse.²⁵ Importantly the Bulletin provides that sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally, and that mistaken belief in the age of a child is not a defence. The safeguarding policies of many NGOs and bilateral donors mirror these standards.

Around the same time, a coalition of humanitarian and development NGOs in the UK came together to establish the Keeping Children Safe coalition. The first version of the Child Safeguarding Standards was launched in 2002. The standards call for organisations to: i) develop a policy describing commitment to prevent and respond appropriately to harm to children; ii) place clear responsibilities and expectations on staff and associates and support them to understand and act in line with these; iii) create a child-safe environment

19 *ibid.*

20 Sandvik (n 10) 2.

21 Dorothea Hilhorst, Asmita Naik and Andrew Cunningham, 'International Ombuds for Humanitarian and Development Aid Scoping Study' (Netherlands Ministry of Foreign Affairs/Erasmus University – International Institute of Social Studies 2018) 15.

22 United Nations High Commissioner for Refugees and Save the Children UK (n 9).

23 Inter-Agency Standing Committee, 'IASC Products on Protection from Sexual Exploitation and Abuse' (*Inter-Agency Standing Committee*) <https://interagencystandingcommittee.org/resources/iasc-products?f%5B0%5D=product_category%3AProtection%20from%20Sexual%20Exploitation%20and%20Abuse>.

24 United Nations General Assembly, 'Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa, Resolution Adopted by the General Assembly'.

25 United Nations Secretariat, Secretary-General's Bulletin, Special Measures for Protection from Sexual Exploitation and Sexual Abuse, UN Doc ST/SGB/2003/13.

through implementing child safeguarding procedures across the organisation; and iv) monitor and review safeguarding measures.²⁶ Keeping Children Safe has evolved into an independent NGO, which also provides consultancy services to organisations to improve child safeguarding internationally.²⁷

The protection of beneficiaries (adults and children) from sexual exploitation and abuse was also integrated into the work of the Humanitarian Accountability Project (HAP) and its successor Core Humanitarian Standards Alliance.²⁸ The Core Humanitarian Standard on Quality and Accountability sets out nine commitments that organisations and individuals involved in humanitarian response can use to improve the quality and effectiveness of the assistance they provide. The Core Humanitarian Guidance Note draws attention to the issue in five of the nine commitments. Commitment 1 (to ensure assistance appropriate to needs) calls for consideration of protection concerns, such as preventing sexual exploitation and violence. Commitment 3 (to ensure no negative impacts) recognises the 'high value of aid resources and the powerful position of aid workers' and requires identification and timely action upon unintended negative effects including sexual exploitation and abuse by staff. Commitment 4 (to provide access to information and participation) explains that people may be vulnerable to exploitation and abuse (including sexual abuse) if they do not know their entitlements, the standards of behavior for humanitarian workers, and how to make a complaint. A child safeguarding policy is expressly recommended under Commitment 5 (complaints mechanisms). As part of guidance to monitor organisational responsibilities, Commitment 8 (well-managed staff and volunteers) includes a question on whether all staff and contractors are required to sign a code of conduct that covers the prevention of sexual exploitation and abuse.²⁹

At a national level in the Global North, NGO umbrella bodies (such as the Australian Council for International Development in Australia, Bond in the UK, and InterAction in the US) championed codes of conduct, and accreditation, risk management and contracting arrangements of some govern-

26 Keeping Children Safe, 'Child Safeguarding Standards and How to Implement Them' 10 <<https://www.keepingchildrensafe.global/wp-content/uploads/2020/02/KCS-CS-Standards-ENG-200218.pdf>>.

27 Keeping Children Safe, 'Strategic Plan 2019-2022' <<https://www.keepingchildrensafe.global/wp/wp-content/uploads/2019/12/Strategy-Report-191018-singles-2.pdf>>.

28 HAP joined with Sphere and People in Aid to become part of the Joint Standards Initiative. In December 2014, the Core Humanitarian Standard (CHS) was launched in Copenhagen. In 2015, HAP and People in Aid merged to form the CHS Alliance: Hilhorst, Naik and Cunningham (n 21) 15.

29 CHS Alliance, Groupe URD and Sphere Association, 'Core Humanitarian Standard on Quality and Accountability: Updated Guidance Notes and Indicators 2018' (2018) <<https://corehumanitarianstandard.org/>>.

ments were utilised to enforce standards.³⁰ The Australian Government was the first bilateral donor to implement child protection standards for staff and funded partners under its Child Protection Policy, introduced in 2008.³¹ The mandatory child protection standards follow five key principles: zero tolerance of child exploitation and abuse; recognition of the best interests of the child; sharing responsibility for child protection; procedural fairness; and a risk management approach to reduce the risks of child exploitation and abuse with aid activities. The United States Agency for International Development (USAID) also introduced Child Safeguarding Standards to cover 'all activities intended to prevent and respond to abuse, exploitation, or neglect by USAID personnel, contractors, and recipients or as a result of USAID-supported programming.'³² The Standards complement the USAID Counter Trafficking in Persons Code of Conduct. At an organisational level, policies and standards on child protection/ safeguarding, gender equality, and codes of conduct were developed and implemented in many aid organisations to varying degrees.

2.2.2 New and emerging initiatives – post Oxfam, #MeToo and #AidToo

In February 2018, The Times newspaper published a front-page article headlined 'Top Oxfam staff paid Haiti survivors for sex', which alleged that Oxfam covered up claims that senior staff working in Haiti following the 2010 earthquake used prostitutes, some of whom may have been under 18.³³ Around the same time, #MeToo and then #AidToo revelations snowballed.³⁴ These included accounts of rape, assault, and harassment in the workplace that were seen to be badly handled, denied or concealed by NGOs.³⁵ The parameters

30 Humanitarian Advisory Group, 'From an Ombudsman to a Humanitarian Passport: How Should We Be Addressing Abuse in the International Aid Sector? Independent Think Piece' <<https://humanitarianadvisorygroup.org/wp-content/uploads/2018/05/HAG-Safeguarding-Thinkpiece-May-2018.pdf>>.

31 AusAID, 'Child Protection Policy – January 2013 – World' (*ReliefWeb*, 8 February 2013) <<https://reliefweb.int/report/world/child-protection-policy-january-2013>>.

32 USAID, 'Policy/GuidaPolicy/Guidance on the Implementation of USAID Child Safeguarding Standards: A Mandatory Reference for ADS Chapter 200' <<https://www.usaid.gov/sites/default/files/documents/1864/200mbt.pdf>>.

33 'How the Oxfam Scandal Unfolded' (n 8).

34 The #MeToo movement started over a decade ago in the US as a grassroots effort to show support for survivors of sexual violence, particularly young women of colour from low socio-economic backgrounds, and gained near global prominence from 2017 when the #MeToo hashtag went viral. Women in the international aid sector used the hashtag #AidToo to bring attention to sexual violence within the sector: Elizabeth Gillespie, Roseanne Mirabella and Angela Eikenberry, '#Metoo/#Aidtoo and Creating an Intersectional Feminist NPO/NGO Sector' (2019) 10(4) Nonprofit Policy Forum.

35 Ben Parker, 'Schemes to Stop Sex Abuse in the Aid Sector off to a Shaky Start' (*The New Humanitarian*, 18 October 2018) <<https://www.thenewhumanitarian.org/news-feature/2018/10/18/safeguarding-aid-sector-sex-abuse-shaky-start>>.

of safeguarding in the aid sector thus expanded to include workplace relations and harassment within organisations. The rationale was that both were enabled by power imbalances, especially gender inequality.³⁶

In March 2018, the UK Parliamentary International Development Committee launched an inquiry on sexual exploitation and abuse in the aid sector.³⁷ In its final report, the Committee was highly critical of the failure of the international system to tackle these abuses, and accused the sector generally of 'complacency, verging on complicity.'³⁸ The report made a number of recommendations, largely directed at the UK Department for International Development (DFID), including the creation of an international register of aid workers to function 'as one barrier to sexual predators seeking to enter the international aid profession,' and the establishment of an independent aid ombudsman 'to provide a right to appeal, an avenue through which those who have suffered can seek justice by other means.'³⁹ The Committee encouraged DFID to use a forthcoming 'Safeguarding Summit' to secure commitments from across the sector to move the measures forward.

The Safeguarding Summit, convened by DFID in October 2018, brought together over 500 delegates including government donors (representing 90 per cent of global Official Development Assistance), the UN, international financial institutions, UK NGOs, and UK private sector supply partners.⁴⁰ The summit faced some controversy and criticism, including the lack of diversity in the speakers and near absence of voices from the Global South.⁴¹ At the summit, the UK International Development Secretary launched several initiatives including a DFID scheme to work with Interpol to vet aid workers against criminal records, a Misconduct Disclosure Scheme to allow employers to check for previous misconduct linked to sexual abuse and exploitation, and

36 UK Department for International Development, 'Progress Report on Delivering the Donor Commitments from the October 2018 London Safeguarding Summit' (2018) 15 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840067/Progress-report-on-delivering-donor-commitments.pdf>.

37 UK Parliament, 'Sexual Exploitation and Abuse in the Aid Sector Inquiry Launched – News from Parliament' (*UK Parliament*, 5 March 2018) <<https://www.parliament.uk/business/committees/committees-a-z/commons-select/international-development-committee/news-parliament-2017/sexual-exploitation-launch-17-19-/>>.

38 House of Commons, International Development Committee, 'Sexual Exploitation and Abuse in the Aid Sector' (2018) Eighth Report of Session 2017–19 29 <<https://publications.parliament.uk/pa/cm201719/cmselect/cmintdev/840/840.pdf>>.

39 *ibid.*, 79, 64.

40 'Commitments Made by Donors to Tackle Sexual Exploitation and Abuse and Sexual Harassment in the International Aid Sector' <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/749632/donor-commitments1.pdf>.

41 Parker (n 35); Paula Donovan, 'Open Letter to the Rt Hon Penny Mordaunt, MP' (17 October 2018) <<https://static1.squarespace.com/static/514a0127e4b04d7440e8045d/t/5bc777b99140b756d661e476/1539798969879/2018-10-17%2C+Letter+to+Minister+Mordaunt.pdf>>.

a Humanitarian Passport Scheme to prove an individual's identity and vetting status.⁴²

Promising commitments were made by all constituencies at the conclusion of the summit. This included pledges by NGOs to address organisational culture and improve existing processes for safeguarding.⁴³ Perhaps most significant were the commitments made by 22 donors⁴⁴ designed to bring about four 'long-term strategic shifts,' namely: (i) ensuring support for survivors, victims and whistle-blowers, enhancing accountability and transparency, strengthening reporting and tackling impunity; (ii) incentivising cultural change through strong leadership, organisational accountability and better human resource processes; (iii) agreeing minimum standards and ensuring donors and their partners meet them; and (iv) strengthening organisational capacity and capability across the international aid sector, including building the capability of implementing partners to meet the minimum standards.⁴⁵

Subsequently, 30 members⁴⁶ of the Organisation for Economic Cooperation and Development (OECD) adopted the Development Assistance Committee (DAC) Recommendation on Ending Sexual Exploitation, Abuse, and Harassment in Development Co-operation and Humanitarian Assistance in July 2019.⁴⁷ This is the first international instrument to address sexual exploitation, abuse, and harassment across the sector. The preamble of the DAC Recom-

42 'International Development Secretary Penny Mordaunt Gives Key-Note Speech at the Safeguarding Summit 2018' (GOV.UK, 18 October 2018) <<https://www.gov.uk/government/speeches/international-development-secretary-penny-mordaunt-gives-key-note-speech-at-the-safeguarding-summit-2018>>.

43 Bond, 'Our Commitment to Change in Safeguarding' <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/851112/bond-safeguarding-commitments-nov2019.pdf>.

44 Australia, Austria, Belgium (Ministry of Development Cooperation), Canada, Denmark, Finland, France (Ministry for Europe and Foreign Affairs of France), Germany, Iceland, Ireland, Italy, Japan (Ministry of Foreign Affairs of Japan), Luxembourg (Ministry of Foreign and European Affairs), Mexico (AMEXID), The Netherlands (Ministry for Foreign Trade and Development Cooperation), New Zealand (Ministry of Foreign Affairs and Trade), Norway, Spain, Sweden, Switzerland, United Kingdom (including the Scottish Government), and the United States of America (U.S Agency for International Development).

45 'Commitments Made by Donors to Tackle Sexual Exploitation and Abuse and Sexual Harassment in the International Aid Sector' (n 40).

46 Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, United Kingdom, United States and the European Union.

47 OECD Development Assistance Committee, 'DAC Recommendation on Ending Sexual Exploitation, Abuse, and Harassment in Development Co-Operation and Humanitarian Assistance: Key Pillars of Prevention and Response' (2019) <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-5020>>. The Recommendation encompasses six pillars: (i) policies, professional conduct standards, organisational change and leadership; (ii) survivor/victim-centred response and support mechanisms; (iii) organisational reporting, response systems and procedures; (iv) training, awareness raising and communication; (v) international coordination; and (v) monitoring, evaluation, shared learning and reporting.

mentation recognises the Inter-Agency Standing Committee's Principles and Minimum Operating Standards on Prevention of Sexual Exploitation and Abuse and the Core Humanitarian Standard on Quality and Accountability as essential international standards. The rights and needs of children come out expressly in the preamble of the DAC Recommendation, with the recognition 'that child survivors require particular attention to ensure their safety, protection, and well-being.' Paragraph 2(d) of the DAC Recommendation also calls for the strengthening of 'existing local services and networks and coordination with gender-based violence and child-protection services.'

The Dutch Ministry of Foreign Affairs took forward a scoping study to assess whether there is a need for an aid ombudsman and, if so, how it might function and fit with existing governance mechanisms in the sector. The study, published in September 2018, found strong consensus on the need for an ombudsman mechanism in the sector to provide independent recourse for complainants.⁴⁸ While the ombudsman concept has reportedly since been abandoned by the UK Government,⁴⁹ other initiatives have progressed. For example, the Misconduct Disclosure Scheme to check for previous misconduct linked to sexual exploitation, abuse or harassment is operating. As of October 2019, 10 people have reportedly been prevented from being re-hired,⁵⁰ and 15 organisations are using the scheme.⁵¹ Some donors are also working with the Core Humanitarian Standards Alliance and Humanitarian Quality Assurance Initiative to strengthen verification options for CHS quality assurance and to develop models that better reflect the needs of organisations.⁵²

2.3 INTERNATIONAL AND REGIONAL CHILD RIGHTS FRAMEWORKS TO GUIDE SAFEGUARDING

There are clear intersections between violence against women and violence against children and strong arguments for improved convergence in programming.⁵³ However, there is also a need for a dedicated discussion on the specific rights and needs of children, which has been somewhat diluted

48 Hilhorst, Naik and Cunningham (n 21).

49 Sophie Edwards, 'DFID Gives up on Idea for an International Safeguarding Ombudsman' (*Devex*, 23 October 2019) <<https://www.devex.com/news/dfid-gives-up-on-idea-for-an-international-safeguarding-ombudsman-95886>>.

50 'Progress Report – One Year on from the October 2018 London Safeguarding Summit' (n 14) 4.

51 'Misconduct Disclosure Scheme' (*Steering Committee for Humanitarian Response*) <<https://www.schr.info/the-misconduct-disclosure-scheme>>.

52 'Progress Report – One Year on from the October 2018 London Safeguarding Summit' (n 14) 13.

53 Alessandra Guedes and others, 'Bridging the Gaps: A Global Review of Intersections of Violence against Women and Violence against Children' (2016) 9 *Global Health Action* 31516.

in some policy arenas. While the Convention on the Rights of the Child (CRC) is referred to cursorily in the safeguarding discussion as a reference point for guidance and minimum standards, mentions are largely aspirational and transitory. This section explores how child rights standards and existing monitoring mechanisms for human rights law could support a more sustainable and consistent effort to ensure children's protection in the context of humanitarian and development activity.

2.3.1 Relevant treaties and articles for safeguarding children

The CRC is the primary instrument relating to children's right to protection from violence.⁵⁴ In the regional context, the African Charter on the Rights and Welfare of the Child (ACRWC) has comparative articles setting out children's rights to protection. The focus on children's rights is important in framing the response to the issue and rejects approaches where children are characterised only as 'objects in need of assistance rather than as subjects with rights.'⁵⁵ The child rights approach also recognizes that children are human beings in their own right and not 'adults in waiting.'⁵⁶

Monitoring of state party compliance with obligations under the CRC involves external oversight by the Committee on the Rights of the Child (the CRC Committee). African states are also subject to oversight by the African Committee of Experts on the Rights and Welfare of the Child (the African Committee) with regards to compliance with the ACRWC. State parties are required to report periodically to the Committees and Committees thereafter issue Concluding Observations and Recommendations. Although these observations and recommendations impose no legal obligation, they are often an agenda for action and have had an 'intensifying or catalyst effect' to support political and legal processes in countries.⁵⁷

While safeguarding discourse in certain policy arenas has focused on sexual exploitation and abuse, an especially egregious violation of children's rights,

54 Other international instruments include the Protocol to Prevent, Suppress and Punish Human Trafficking in Persons, especially Women and Children, supplementing the Convention against Transnational Organised Crime, the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The relationship between the instruments should be understood as complementary: John Tobin and Florence Seow, 'Art.34 Protection from Sexual Exploitation and Sexual Abuse' in John Tobin, *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press 2019) 1314.

55 *ibid.*, 1312.

56 The authors are grateful to an anonymous reviewer for emphasizing this point.

57 Julia Sloth-Nielsen, 'Monitoring and Implementation of Children's Rights' in Ursula Kilkelly and Ton Liefaard (eds), *International Human Rights of Children* (Springer Nature Singapore Pte Ltd 2019) 14-16 <http://link.springer.com/10.1007/978-981-10-3182-3_2-1>.

a rights-based approach should consider the various intersections between humanitarian and development activity and children's treaty-based rights. This should encompass all risks and harms. By way of example, the 2002 UNHCR and Save the Children report also highlighted other forms of exploitation such as child labour. An adolescent boy in Sierra Leone is quoted as saying: 'I have no father and no mother and there are jobs that I am being made to do like washing underpants in exchange for food which I do because I have no parents. I wish I had my parents because I do not have any support and I am exposed to so much abuse.'⁵⁸ Issues of safeguarding would fall primarily under the CRC theme (or 'cluster') related to violence against children.⁵⁹ The CRC Committee⁶⁰ explains that this cluster includes abuse and neglect (article 19),⁶¹ measures to prohibit and eliminate all forms of harmful practices, including, but not limited to, female genital mutilation and early and forced marriages (article 24), sexual exploitation and sexual abuse (article 34),⁶² the right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment, including corporal punishment (articles 37 (a) and 28), measures to promote the physical and psychological recovery and social reintegration of child victims (article 39), and the availability of helplines for children. Other forms of exploitation, including child labour, are to be reported under the special protection measures cluster.⁶³ The relevant articles in the ACRWC include articles 14 (child labour), 16 (child abuse and torture), 21 (harmful social and cultural practices), 22 (armed conflicts) and 27 (sexual exploitation) in particular. In its General Comment No. 5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection, the African Committee elaborates on the measures required to improve implementation of the ACRWC and in particular calls for states 'to adopt a holistic approach'

58 United Nations High Commissioner for Refugees and Save the Children UK (n 9) 43.

59 In 2015, the Committee on the Rights of the Child revised the guidelines for periodic reports to reflect the new cluster on violence against children and to update references to general comments: United Nations Committee on the Rights of the Child, Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child, UN Doc CRC/C/58/Rev.3.

60 *ibid.*, 30.

61 Art. 19 is regarded as 'the core provision for discussions and strategies to address and eliminate all forms of violence in the context of the Convention more broadly': United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence, UN Doc CRC/C/GC/13 (2011) para 7(a).

62 In contrast to Art. 19, Art. 34 imposes a blanket obligation on states to protect children from sexual abuse and exploitation irrespective of whether they are in the care of their parents: Tobin and Seow (n 54) 1312.

63 United Nations Committee on the Rights of the Child, Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child (n 59) para 40.

to realise children's right to survival, development and protection provided by article 5 of the ACRWC. The African Committee explains that this is enabled by adopting a systems- strengthening approach to child protection.⁶⁴ A systems-strengthening approach would include both formal and informal local contexts around the child.⁶⁵

2.3.2 Domestic implementation and the role of international cooperation

The observations of the CRC Committee are useful to articulate the respective responsibilities of developing vis-à-vis donor countries. The CRC Committee is cognisant of the different starting points of state parties in implementing the CRC and obligations relating to protection of children from violence. The CRC Committee acknowledges that protecting children from all forms of violence is highly challenging in most countries and that states parties are designing and implementing measures from 'very different starting points' with respect to existing legal, institutional and service infrastructures, cultural customs and professional competencies, and levels of resources.⁶⁶

While recognising different starting points, the CRC Committee highlights that the right to protection from all forms of violence outlined in article 19 is a civil right and freedom. As such, in applying article 4 of the CRC (taking all appropriate legislative, administrative, and other measures for the implementation of the rights), implementation of article 19 is 'an immediate and unqualified obligation' of states parties.⁶⁷ This means that in spite of economic circumstances, states are required to undertake all possible measures towards the realisation of children's rights, paying special attention to the most disadvantaged and using available resources 'to the maximum extent.'⁶⁸ The African Committee likewise emphasises that 'whatever their economic circumstances, States Parties are required to undertake all possible positive measures towards the realisation of the rights of the child' and to pay 'special attention to the most disadvantaged and marginalised groups.'⁶⁹ On child protection specifically, the African Committee notes 'State Party spending on child protection and systems strengthening is far too low, and lacks visibility in government budgets.'⁷⁰

The CRC Committee is explicit that 'resource constraints cannot provide a justification for a State party's failure to take any, or enough, of the measures

64 African Committee of Experts on the Rights and Welfare of the Child (n 6) 12.

65 *ibid.*, 33.

66 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 61) para 70.

67 *ibid.*, 65.

68 *ibid.*

69 African Committee of Experts on the Rights and Welfare of the Child (n 6) 6.

70 *ibid.*, 36.

that are required for child protection' taking into consideration State parties' obligations under articles 4 and 19.⁷¹ While acknowledging fiscal realities in Africa, the African Committee states that the ACRWC standards 'were set intentionally' and 'do not allow states parties to claim that they do not have any resources for the implementation of social and economic goods for the fulfilment of children's rights.'⁷² Further, the African Committee explains it will 'scrutinise diligently claims that non-fulfilment of rights is linked to non-availability of resources' and expects that states parties show 'rapid forward progress in extending the reach and impact' of measures to realise children's rights.⁷³

The CRC Committee urges states 'to adopt comprehensive, strategic and time-bound coordinating frameworks for child caregiving and protection.'⁷⁴ Similarly, the African Committee calls for 'a national policy for children that provides a common, unifying, comprehensive and rights-based framework of action for all role-players,' which is costed, has measurable targets and budget allocations.⁷⁵ It is within such frameworks that responsibilities of NGOs in contact with children can be embedded.

In view of 'different starting points,' and on the understanding that budgets at national and decentralised levels should be the primary source of funds for child protection, the CRC Committee has drawn the attention of states parties to the avenues of international cooperation and assistance outlined in articles 4 and 45 of the CRC.⁷⁶ The CRC Committee states that implementation of the CRC is 'a cooperative exercise for the States of the world' and that the CRC 'should form the framework for international development assistance related directly or indirectly to children and that programmes of donor States should be rights-based.'⁷⁷ The African Committee also encourages states parties to ensure children's rights are 'deliberately reflected and adequately catered for in all donor aid agreements, including with global finance institutions.'⁷⁸ In General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence, the CRC Committee reiterates that child rights-based protection programmes should be one of the main components

71 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 61) para 73.

72 African Committee of Experts on the Rights and Welfare of the Child (n 6) 7.

73 *ibid.*, 8–9.

74 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 61) para 73.

75 African Committee of Experts on the Rights and Welfare of the Child (n 6) 35.

76 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 61) para 74.

77 United Nations Committee on the Rights of the Child, General Comment No. 5 (2003), General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, Para. 6), UN Doc CRC/GC/2003/5 (2003) paras 60, 61.

78 African Committee of Experts on the Rights and Welfare of the Child (n 6) 41.

in assisting sustainable development in countries receiving international assistance.⁷⁹ This is reflected in part in the DAC Recommendation, in which signatories have expressly acknowledged the importance of strengthening child protection services. While forming part of recommendations by UNHCR and Save the Children⁸⁰ and Csáky,⁸¹ this important element has not received significant attention in recent safeguarding discussions.

2.3.3 Applicability to non-state actors

At the very least, there are 'indirect' children's rights obligations for non-state actors to comply with children's treaty-based rights. In General Comment No. 5 (2003) on General Measures of Implementation, the CRC Committee emphasises that the legal obligation of state parties 'to respect and ensure the rights of children as stipulated in the Convention' includes the 'obligation to ensure that non-State service providers operate in accordance with its provisions, thus creating indirect obligations on such actors.'⁸²

The CRC Committee further elaborates that child rights responsibilities extend in practice 'beyond the State and State-controlled services and institutions to include children, parents and wider families, other adults, and non-State services and organisations.'⁸³ The CRC Committee has taken a broad view of NGOs constituting, for example, human rights NGOs, child- and youth-led organisations and youth groups, parent and family groups, faith groups, academic institutions and professional associations.⁸⁴ This broad view is particularly relevant in the African context where most services to children are delivered by non-state actors. These can include NGOs, faith-based organisations, volunteer networks, social enterprises, or philanthropic projects connected to for-profit companies.⁸⁵ Organisations that encounter children are not only those that provide social services such as education, health, nutrition, recreation, alternative care, and protection but also, other services including water and sanitation, infrastructure, as well as humanitarian relief.

The CRC Committee has also expressed its agreement with the Committee on Economic, Social and Cultural Rights in its General Comment No. 14 (2000)

79 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 61) para 74.

80 (n 9).

81 (n 7).

82 United Nations Committee on the Rights of the Child, General Comment No. 5 (2003), General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, Para. 6) (n 77) para 43.

83 *ibid.*, 56.

84 *ibid.*, 58.

85 Ben Parker, '#MeToo Sex Scandals Spur Interest in Standards for the Aid Sector' (*The New Humanitarian*, 2 May 2018) 2 <<https://www.thenewhumanitarian.org/analysis/2018/05/02/metoo-sex-scandals-spur-interest-standards-aid-sector>>.

of the right to the highest attainable standard of health. Paragraph 42 of the General Comment reiterates that as parties to the Covenant, states are 'ultimately accountable for compliance with it' but responsibilities for realisation of the right to health fall to all members of society, including health professionals, families, local communities, intergovernmental and NGOs, CSOs, and the private business sector. States parties are therefore called to 'provide an environment which facilitates the discharge of these responsibilities.'⁸⁶

2.3.4 Best interests of the child

The best interests' principle is fundamental and especially relevant for child safeguarding in the aid sector. Article 3(1) of the CRC provides that the best interests of the child shall be a primary consideration in 'all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.' Importantly, the CRC Committee elaborates that 'public or private social welfare institutions' should not be narrowly construed or limited to strictly social institutions but would apply to 'all institutions whose work and decisions impact on children and the realisation of their rights.'⁸⁷

The CRC Committee notes these would be bodies 'not only those related to economic, social and cultural rights (e.g. care, health, environment, education, business, leisure and play, etc.), but also institutions dealing with civil rights and freedoms (e.g. birth registration, protection against violence in all settings, etc.).'⁸⁸ Private bodies include 'either for-profit or non-profit – which play a role in the provision of services that are critical to children's enjoyment of their rights, and which act on behalf of or alongside Government services as an alternative.'⁸⁹ This extension of this obligation to *private* social welfare organisations is quite unusual in an international treaty.⁹⁰

The CRC Committee explains that article 3 has implications for all implementation measures taken by governments, individual decisions made by judicial or administrative authorities or public entities through their agents, decisions made by civil society entities and the private sector, including profit and non-profit organisations, which provide services concerning or impacting

86 United Nations Committee on the Rights of the Child, General Comment No. 5 (2003), General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, Para. 6) (n 77) para 56.

87 United Nations Committee on the Rights of the Child, General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art 3, Para 1) (2013) para 26.

88 *ibid.*

89 *ibid.*

90 John Eekelaar and John Tobin, 'Art.3 The Best Interests of the Child' in John Tobin, *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press 2019) 80.

on children, and guidelines for actions undertaken by persons working with and for children, including parents and caregivers.⁹¹ The best interests' principle should therefore be the primary consideration in all actions concerning children undertaken by humanitarian and development organisations. Guidance from the African Committee reinforces the broad application of the best interests' principle. In its General Comment No. 5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection, the African Committee states that article 4(1) of the ACRWC provides that the best interests of the child shall be the primary consideration and this applies to both private and public institutions.⁹² The African Committee explains it is therefore 'the responsibility of the State Party to ensure to the maximum extent possible that private actors, including ...various non-state actors engaged with children's rights and services, are aware of and apply the best interests of the child in all of their endeavours.'⁹³

Further, article 3(3) of the CRC provides: 'State Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.' While some doubt was expressed as to the appropriateness of this provision, the legislative history suggests the rationale was to apply the best interests' principle to the very specific area of institutional care and service provision.⁹⁴ The application in alternative care settings is also explicit in the commentary of the African Committee.⁹⁵

There has been little exploration of this article, yet it is highly relevant to safeguarding discourse. In Africa, most institutional care is provided by NGOs and faith-based organisations, many of which are funded by faith communities or individual donors from the Global North, and which often fail to register or comply with relevant government regulations.⁹⁶ In its General Comment No. 5 (2003) on General Measures of Implementation, the CRC Committee

91 United Nations Committee on the Rights of the Child, General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art 3, Para 1) (n 87) pt II.

92 African Committee of Experts on the Rights and Welfare of the Child (n 6) 11.

93 *ibid.*

94 Office of the United Nations High Commissioner for Human Rights, 'Legislative History of the Convention on the Rights of the Child, Volume I' (United Nations 2007) HR/PUB/07/1 347–348.

95 African Committee of Experts on the Rights and Welfare of the Child (n 6) 12.

96 see for example Alister Munthali, 'Reintegrating Children from Institutional Care: A Feasibility Study on a Model for Malawi' (Government of Malawi, Ministry of Gender, Children, Disability and Social Welfare, UNICEF 2019) 13 <<https://www.unicef.org/malawi/media/1291/file/UNICEF%20Reintegration%20Children%20Feasibility%20Study.pdf>>.

emphasises that ‘enabling the private sector to provide services, run institutions and so on does not in any way lessen the State’s obligation to ensure for all children within its jurisdiction the full recognition and realisation of all rights in the Convention.’ In relation to article 3 (3), the CRC Committee explains rigorous inspection is required to ensure compliance and proposes ‘a permanent monitoring mechanism or process aimed at ensuring that all State and non-State service providers respect the Convention.’⁹⁷

2.3.5 Intra-organisational processes and codes of conduct

In General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence, the CRC Committee explains that administrative measures under article 19 of the CRC ‘should reflect governmental obligations to establish policies, programmes, monitoring and oversight systems required to protect the child from all forms of violence.’⁹⁸ These include the development and implementation ‘through participatory processes which encourage ownership and sustainability’ of intra- and inter-agency child protection policies and professional ethics codes, protocols, memoranda of understanding and standards of care for all childcare services and settings, for all levels of government and civil society institutions. Settings include daycare centres, schools, hospitals, sport clubs and residential institutions.⁹⁹ The implementation by government and civil society of rights-based child protection policies and procedures and professional ethics codes and standards of care are also mentioned by the CRC Committee in relation to ‘prevention measures’.¹⁰⁰

The emphasis on ownership and sustainability is important, otherwise there is a risk that the endeavour becomes a ‘tick-box’ exercise. In other words, if the codes and policies are to impact positively on children’s protection, the process will require more than preparing paperwork that is filed and forgotten. There is a need for meaningful consultation among stakeholders and consideration of how international and regional standards can be implemented in a local context, in the best interests of the child. The values and behaviours elaborated within codes and policies must be owned and championed by organisational leaders and staff, and safeguarding policies and practice continually monitored, assessed and adapted. Pressure to produce a checklist of policies and procedures driven by a compliance imperative is unlikely to lead to change that improves children’s protection.

97 United Nations Committee on the Rights of the Child, General Comment No. 5 (2003), General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, Para. 6) (n 77) para 27.

98 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 61) para 42(b).

99 *ibid.*

100 *ibid.*, 47.

The African Committee has echoed the importance of policies and personnel of NGOs in its recent General Comment No. 5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection. The African Committee requires civil society organisations and international organisations working with children to adopt child safeguarding policies. Further, the Committee suggests persons who have abused children should not be able to work with children, even as volunteers. Importantly, especially for the African context where NGO–government relationships in some countries are ‘characterised by a large amount of distrust, cooptation, and outright repression,’¹⁰¹ the African Committee urges ‘State Parties to review the legislation governing the registration and operation of CSOs to ensure that it does not provide any impediment to their optimal functioning.’¹⁰² While different legal frameworks and self-regulatory mechanisms exist for NGOs across the continent,¹⁰³ child protection and safeguarding measures are not yet incorporated. Both the CRC and African Committees could raise questions on such standards in its list of issues for state party reports as part of their external oversight role.

2.4 KEY DILEMMAS AND CHALLENGES FOR CHILD SAFEGUARDING

This final section sets out key areas for further consideration and critical debate by practitioners and policymakers in the effort to safeguard children from harm in the context of humanitarian and development activity. Recent developments and commitments are significant and promising. However, to harness the current momentum and ensure initiatives in the Global North positively impact children’s safety in the least developed countries, there is arguably scope for a more nuanced and contextualised approach, guided by children’s treaty-based rights and the best interests’ principle.

Current sectoral efforts appear to largely focus on international NGOs with headquarters in the Global North and the risk of a ‘Western’ offender harming children in the world’s poorest countries. This does not reflect the variety of organisations inhabiting the aid space and in contact with children. The focus on ‘Western’ staff is arguably disproportionate given that local staff make up the majority of the workforce in the developing world and both local and ‘foreign’ staff (of all levels) have been implicated in cases of child abuse.¹⁰⁴ This reality suggests that high-profile initiatives such as the global criminal records register may have a limited impact on the protection of children in

101 Mary Kay Gugerty, ‘The Emergence of Nonprofit Self-Regulation in Africa’ (2010) 39 *Nonprofit and Voluntary Sector Quarterly* 1087, 1090.

102 African Committee of Experts on the Rights and Welfare of the Child (n 6).

103 Gugerty (n 101).

104 Csáky (n 7) 9.

the developing world. Firstly, a global criminal records register assumes that the person has already come to the attention of the police and justice systems. It is well evidenced that 'much abusive behaviour has historically gone unreported' and the majority of 'perpetrators detected do not have prior convictions for any form of child maltreatment.'¹⁰⁵ Secondly, the register assumes that there are functioning information management systems in the countries in which personnel have resided in order to be able to feed into the global database. This is not the case in most developing countries in Africa.

By way of example, even in one of the most developed countries on the continent, South Africa, implementing a scheme to identify persons unsuitable to work with children has proved largely unsuccessful. South Africa's Children's Act (Act No. 38 of 2005) mandates the Department of Social Development to keep and maintain a Child Protection Register (section 111), which consists of two parts. Part A records all reports of abuse or deliberate neglect of a child and Part B lists persons declared unsuitable to work with children. The Act requires all organisations to assess and verify the suitability of employees and potential employees who will 'work with or have access to children' (section 126). As of March 2019, the register has 509 names of persons declared unsuitable to work with children and the department has only received 140,029 suitability check enquiries from employers and individuals. With over 10 million people in South Africa employed in the formal non-agricultural sector,¹⁰⁶ the small number of suitability checks makes it clear that the register is not functioning optimally. Among other challenges, the Register is constrained in that it does not align with the National Register for Sexual Offenders, resulting in critical omissions in the list of crimes that warrant inclusion on the Register such as attempted rape.¹⁰⁷

Even high-income countries with functional and routine criminal records checks for determining the suitability of working with children are increasingly cognisant of their limitations. In Australia, for example, some commentators suggest the scope of screening regimes risks being 'too big and too expensive to be sensible.'¹⁰⁸ At worst, an overreliance on such mechanisms can be detrimental to children's safety. The Royal Commission into Institutional Responses to Child Sexual Abuse in Australia – one of the most probing government inquiries to have taken place – found that Australia's Working

105 Clare Tilbury, 'Working with Children Checks -Time to Step Back?' (2014) 49 *Australian Journal of Social Issues* 87, 92.

106 Department of Statistics, South Africa, '28 000 Jobs Lost in SA Formal Sector Third Quarter of 2019 | Statistics South Africa' (*Statistics South Africa*, 12 December 2019) <<http://www.statssa.gov.za/?p=12842>>.

107 KPMG, 'Report on Diagnostic Review of the State Response to Violence against Women and Children' (Department of Planning, Monitoring and Evaluation, Department of Social Development (South Africa) 2016) 42–43 <<https://genderjustice.org.za/wp-content/uploads/2017/12/Report-Diagnostic-Review-State-Response-VAWC.pdf>>.

108 Tilbury (n 105) 92.

with Children Checks can provide a 'false sense of comfort to parents and communities and may cause organisations to become complacent' due to the mistaken belief that people who have undergone these checks do not pose any risks to children.¹⁰⁹

Screening is only one in a range of strategies needed to make organisations child safe. Rather than a sole focus on trying to identify individuals and prevent them entering organisations, lessons from other jurisdictions emphasise to the need 'to modify environments, thereby reducing the likelihood that anyone could engage in abusive behaviour.'¹¹⁰ There should also be attention on the structures and opportunities within the sector that enable abuse to occur. Lessons may be drawn from the large body of literature about the role of institutions (both government and non-government) with responsibility for children in preventing and responding to child sexual abuse. The UK Independent Inquiry into Child Sexual Abuse, for example, commissioned a Rapid Evidence Assessment and identified structural and organisational factors shown to facilitate child sexual abuse.¹¹¹ These included privacy and the offender being alone with the child, persons in positions of trust having little supervision or monitoring, lack of safeguarding policies, failure to report or to sanction offenders, a culture where abuse is normalised, hierarchical organisations where it is difficult for junior staff to complain, lack of an adequate complaints system, and a lack of safe space for children who are victimised to tell anyone about the abuse, and to have complaints acted on appropriately.¹¹² This highlights the limitations of 'tick-box' exercises focused on paperwork and calls for a localised and thorough assessment of how NGOs in the developing world interact with children and what risks these interactions present.

On a larger scale, this also requires the sector to grapple with the inequitable power relations that characterise their interactions with communities and children. In the 2008 Humanitarian Accountability Partnership report of consultations with aid beneficiaries on their perceptions of efforts to prevent and respond to sexual exploitation and abuse, Lattu¹¹³ concluded that the single most important reason for the 'humanitarian accountability deficit' is

109 Commonwealth of Australia, 'Working with Children Checks Report' (Sydney, New South Wales: Royal Commission into Institutional Responses to Child Sexual Abuse 2015) 3.

110 Daryl J Higgins, Keith Kaufman and Marcus Erooga, 'How Can Child Welfare and Youth-Serving Organisations Keep Children Safe?' [2016] *Developing Practice* 54–55.

111 Lorraine Radford and others, 'Rapid Evidence Assessment: What Can Be Learnt from Other Jurisdictions about Preventing and Responding to Child Sexual Abuse, Report for the Independent Inquiry into Child Sexual Abuse' (Connect Centre for International Research on Interpersonal Violence Faculty of Social Work, Care & Community, University of Central Lancashire 2016).

112 *ibid.*, 17.

113 'To Complain or Not to Complain: Still the Question' (Humanitarian Accountability Partnership 2008) 52 <http://www.pseataaskforce.org/uploads/tools/tocomplainornottocomplainstillthequestion_hapinternational_english.pdf>.

the uneven relationship between agencies delivering aid and users of humanitarian assistance which puts the users 'at a structural disadvantage in their relationship with humanitarian aid providers.' This inequitable relationship is echoed in the voices of children, captured in empirical evidence on the subject. For example, an adolescent girl in Liberia is quoted as saying: 'These NGO workers they are clever they use the ration as bait to get you to have sex with them.'¹¹⁴ Similarly, the following quote from an adolescent girl in Cote d'Ivoire, 'He's using the girl but without him she won't be able to eat,' and an adolescent boy in South Sudan, 'People don't report it because they are worried that the agency will stop working here, and we need them.'¹¹⁵ This observation is not new, nor limited to children, but it is one that has arguably not yet been adequately addressed. It calls for transformative change in the sector. There are indications of some organisations starting to contend with these entrenched power dynamics.

In addition to inequitable power relations, safeguarding efforts need to pay greater attention to longstanding attitudes and beliefs on child abuse and appropriate responses to it. These social and cultural norms form part of the 'very different starting points' in the implementation of children's rights as highlighted by the CRC Committee.¹¹⁶ Social and cultural norms relating to children and child abuse may be either protective of children or enhance their vulnerability. These norms need to be considered in safeguarding efforts as they are both risk factors and barriers to help seeking. While not representative across the continent or within countries, the following harmful norms have been identified in the literature: gender norms and gender socialisation including about social roles or expectations that differentiate males and females and place children at increased risk of sexual abuse;¹¹⁷ patriarchy including male dominance or perceived superiority that can perpetuate abuse, male violence and traditional notions of masculinity and normalisation of interpersonal violence,¹¹⁸ a 'culture of silence' relating to sexual matters and discouraging speaking up about sexual violence,¹¹⁹ and sexual norms including sexual initiation rites or harmful practices including female genital mutilation

114 United Nations High Commissioner for Refugees and Save the Children UK (n 9) 44.

115 Csáky (n 7) 7.

116 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 61) para 70.

117 Carol A Plummer and Wambui Njuguna, 'Cultural Protective and Risk Factors: Professional Perspectives about Child Sexual Abuse in Kenya' (2009) 33 *Child Abuse & Neglect* 524; Pesanayi Gwirayi, 'The Role of Macro-Systemic Contexts in Understanding the Aetiology and Epidemiology of Child Sexual Abuse in Southern Africa' (2010) 12 *Journal of Sustainable Development in Africa* 16.

118 Plummer and Njuguna (n 117); Gwirayi (n 117); Inge Petersen, Arvin Bhana and Mary McKay, 'Sexual Violence and Youth in South Africa: The Need for Community-Based Prevention Interventions' (2005) 29 *Child Abuse & Neglect* 1233; Kevin Lalor, 'Child Sexual Abuse in Sub-Saharan Africa: A Literature Review' (2004) 28 *Child Abuse & Neglect* 439.

119 Plummer and Njuguna (n 117).

and child marriage,¹²⁰ and the myth of sexual intercourse with a young child to 'cure' sexually transmitted diseases including HIV/AIDs.¹²¹ Many of these norms intersect with norms that enable violence against women but there are also distinct norms relating to children including their low status and socialisation for obedience and acquiescence.¹²² By way of example, the following quote from a South Sudanese girl is illustrative of various attitudes and practices at play that contribute to individual and community responses to abuse: 'The father would try to persuade the man to take the girl as a bride and to pay cattle for her. He would not ask the girl whether she wants this. So really the girl gets no advantage from telling anyone about the abuse.'¹²³ Norms on masculinity also contribute to low disclosure rates by boys that experience sexual abuse.¹²⁴ Importantly, those beliefs and norms found at community level also manifest amongst the local staff of aid organisations as well as the staff and volunteers of their implementing partners.¹²⁵ And, they will be found amongst duty-bearers or service providers that will be called upon to respond when allegations of child abuse emerge and are reported.

Closely linked to this point, in most of Africa's least developed countries, the institutional dimensions to address child abuse (such as infrastructure in law enforcement, judiciary, health and social welfare) are constrained. Victim and witness protections are weak and reporting to formal services may put children and communities at further risk. This raises potential ethical dilemmas for reporting abuse. Walker-Simpson argues that 'the very act of reporting abuse may actually expose the child to additional risk' in contravention to the 'do no harm' principle.¹²⁶ Informal community practices are often the prevailing system employed for dealing with child abuse. While these may not always seem to provide adequate protection when 'judged through a Western lens', they are 'often considered the least stigmatising, most accessible, and most helpful of interventions by communities.'¹²⁷ This highlights the criticality of meaningful consultation and addressing the attitudes and expectations of local people, otherwise 'no matter how strong an NGO's internal safeguards, if children and their caregivers are unwilling or unable to report abuse, protection procedures will remain "fatally flawed"'.¹²⁸

120 *ibid.*

121 Lalor (n 118).

122 Plummer and Njuguna (n 117); Lalor (n 118).

123 Csáky (n 7) 17.

124 Guedes and others (n 53) 6.

125 Julia Sloth-Nielsen, 'Regional Frameworks for Safeguarding Children: The Role of the African Committee of Experts on the Rights and Welfare of the Child' (2014) 3 *Social Sciences* 948, 957.

126 Walker-Simpson (n 15) 258.

127 Alexander Krueger and others, 'Child Protection in Development: Evidence-Based Reflections & Questions for Practitioners' (2015) 50 *Child Abuse & Neglect* 15, 22.

128 Walker-Simpson (n 15) 259.

The push to establish complaints mechanisms for specific projects or organisations can also be problematic, especially in the absence of a functioning system at local or national level. Parallel systems risk creating perverse situations, where there is a system in place to refer, investigate, report, and act upon cases of violence *only* if it is perpetrated by an aid worker. Violence against children in the context of aid cannot be detached from child protection generally, just as sexual exploitation and abuse by aid workers cannot be detached from gender-based violence generally.¹²⁹ There is a need to ‘move away from programming silos focused on perpetrators and their acts,’ and instead focus ‘on victims and their harm.’¹³⁰ There is some parallel to efforts to disrupt child sexual abuse and exploitation in the context of tourism, especially in South East Asia, where international advocacy and programmes focused more on the foreign sex offender and less on the underlying and interlinked factors contributing to children’s vulnerability.¹³¹ Similarly, research shows that those children vulnerable to abuse by aid workers are ‘already vulnerable children’ including orphans, children with disabilities, children separated from their parents, children from especially poor families, children who are discriminated and marginalised, children displaced from their home communities, migrant, refugee and asylum-seeking children, and children from families who depend on humanitarian assistance.¹³² The African Committee calls for a systems-strengthening approach to child protection and explains that an issues-based approach has, in the past, ‘resulted in a fragmented child protection response, marked by numerous inefficiencies and pockets of unmet need.’¹³³ It follows that investment in child protection systems strengthening is strongly interlinked with the responsibility of delivering aid in a way that does no harm and would sustain efforts to ensure protection of children in the developing world.

Finally, there are new challenges for children’s rights, which arise from development and humanitarian activity in the digital era. The Committee on the Rights of the Child is currently drafting a General Comment on children’s rights in relation to the digital environment. One group of rights to be realised in a digital world is the protection of privacy, identity and data processing. This is highly relevant for aid organisations in the developing world. The aid sector uses mobile telecommunications, messaging apps and social media to coordinate their work, communicate with staff and volunteers, and engage

129 Orly Stern, ‘First Person: Two Nearly Identical Cases of Sex Abuse; Two Very Different Responses’ (*The New Humanitarian*, 27 June 2018) <<http://www.thenewhumanitarian.org/opinion/2018/06/27/first-person-two-nearly-identical-cases-sex-abuse-two-very-different-responses>>.

130 *ibid.*

131 Afrooz Kaviani Johnson, ‘Protecting Children’s Rights in Asian Tourism’ (2014) 22 *The International Journal of Children’s Rights* 581.

132 Csáky (n 7) 7.

133 African Committee of Experts on the Rights and Welfare of the Child (n 6) 33.

with the people they serve.¹³⁴ Many African countries are also seen as a ‘testing ground’ for technologies produced elsewhere and as a consequence, the personal data of people on the continent, including children, are increasingly stored in hundreds of databases.¹³⁵ This is especially relevant with current digital health surveillance in the response to COVID-19. The way in which data, including children’s data, is collected and is used is changing quickly and the ongoing accumulation of data about children throughout their lifetime can create a variety of unforeseen risks and challenges.¹³⁶ Some children, for example refugee children, may be particularly vulnerable to invasions of privacy in the form of data surveillance as well as dangers resulting from data-leaks or misuses.¹³⁷ This is an area for further examination and focus for the sector.

2.5 CONCLUSION

The increased attention and strong consensus and commitment to address sexual exploitation and abuse in the aid sector is commendable. The suite of standards may coordinate and socialise NGOs in advancing child safeguarding and reducing organisational risk, especially for those NGOs with headquarters – or funded by donors – in the Global North. This is an important endeavour given the fact that, in many of the world’s least developed countries, non-state actors deliver the majority of services to children and thus have an important role to play in contributing towards their protection. Further, as discussed, non-state actors have – at the very least – ‘indirect’ obligations to comply with children’s treaty-based rights. Going forward, it is suggested that the safeguarding discourse applies a child rights-based approach should consider the various intersections between humanitarian and development activity and children’s treaty-based rights. This should encompass all risks and harms, including those emerging in the digital age. Further, given the strong links and dependency between intra-organisational efforts and national systems, there is a need to go beyond intra-organisational policies and self-regulation.

134 International Committee of the Red Cross (ICRC) and Privacy International, ‘The Humanitarian Metadata Problem: “Doing No Harm in the Digital Era”’ (2018) 11 <<https://privacyinternational.org/sites/default/files/2018-12/The%20Humanitarian%20Metadata%20Problem%20-%20Doing%20No%20Harm%20in%20the%20Digital%20Era.pdf>>.

135 Privacy International, ‘2020 Is a Crucial Year to Fight for Data Protection in Africa’ (*Privacy International*, 3 March 2020) <<https://privacyinternational.org/long-read/3390/2020-crucial-year-fight-data-protection-africa>>.

136 Mario Viola de Azevedo Cunha, ‘Child Privacy in the Age of Web 2.0 and 3.0: Challenges and Opportunities for Policy’ (UNICEF Office of Research 2017) 2017–03 <https://www.unicef-irc.org/publications/pdf/Child_privacy_challenges_opportunities.pdf>.

137 Peace Research Institute Oslo, ‘Smart Phones for Refugees: Tools for Survival, or Surveillance?’ (2018) <<https://www.prio.org/utility/DownloadFile.ashx?id=1597&type=publicationfile>>.

NGOs and governments must be jointly and severally responsible for child safeguarding. In the case of national governments, progressive improvement of child protection standards and oversight of non-state actors working with children is required. To do this, national and international investment is needed for strengthening child protection systems at national and local levels in the developing world. To be sustainable and contribute to meaningful change for children, efforts cannot be driven by the latest scandal, but must be motivated by a genuine commitment to children's treaty-based rights. With less than ten years to achieve Agenda 2030 and at a time where the world is battling COVID-19 which rapidly risks becoming a child rights crisis,¹³⁸ this is more important than ever before.

138 UNICEF, 'Don't Let Children Be the Hidden Victims of COVID-19 Pandemic' (UNICEF, 9 April 2020) <<https://www.unicef.org/press-releases/dont-let-children-be-hidden-victims-covid-19-pandemic>>; United Nations Committee on the Rights of the Child, 'The Committee on the Rights of the Child Warns of the Grave Physical, Emotional and Psychological Effect of the COVID-19 Pandemic on Children and Calls on States to Protect the Rights of Children' <https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/1_Global/INT_CRC_STA_9095_E.pdf>.

3 | Child protection, safeguarding and the role of the African Charter on the Rights and Welfare of the Child

Looking back and looking ahead¹

3.1 INTRODUCTION

‘Child protection’ is generally defined as the protection of children from all forms of violence, abuse, exploitation and neglect, as well as the various measures for responding to harm.² The term is broad, encompassing abuse and exploitation that occurs in all settings both within and outside the child’s home and in the digital environment. It includes areas that are not necessarily violations of children’s rights but that may heighten children’s risk of harm, such as children on the streets or in conflict with the law.³ In contrast to child protection efforts that work to prevent and respond to all forms of violence against children in all contexts, ‘child safeguarding’ focuses on the realm of organisational responsibility. The term is becoming more commonly understood with reference to the organisational ‘duty of care’ and the responsibility to ‘do no harm’.⁴ There has been greater scrutiny of safeguarding following the 2018 ‘Oxfam scandal’⁵ and several inquiries into institutional child abuse in the ‘global North’.⁶ While it is possible to conceptually differentiate ‘child

1 This chapter was originally published as Afroz Johnson and Julia Sloth-Nielsen, ‘Child Protection, Safeguarding and the Role of the African Charter on the Rights and Welfare of the Child: Looking Back and Looking Ahead’ (2020) 20 *African Human Rights Law Journal* 643. A.K.J. drafted most of the article and edited the full article for publication. J.S-N provided conceptual inputs and the first draft of parts 3.2 and 3.3.3. This chapter has had minor edits since publication.

2 Refer Myers and Bourdillon’s critique of the usefulness of ‘child protection’ as a category for policy and programmes: W Myers and M Bourdillon, ‘Introduction: Development, Children, and Protection’ (2012) 22 *Development in Practice* 437, 442.

3 K Landgren, ‘Protection: The United Nations Children’s Fund Experience’ in M O’Flaherty (ed), *The Human Rights Field Operation: Law, Theory and Practice* (2007) 184.

4 The origins of safeguarding in the context of aid can be traced back to the 2002 West African ‘sex-for-food’ scandal: UNHCR and Save the Children UK, ‘Sexual Violence and Exploitation: The Experience of Refugee Children in Liberia, Guinea and Sierra Leone’ (2002) <<https://www.parliament.uk/documents/commons-committees/international-development/2002-Report-of-sexual-exploitation-and-abuse-Save%20the%20Children.pdf>>.

5 For further discussion of safeguarding in humanitarian and development activities, refer A Kaviani Johnson and J Sloth-Nielsen, ‘Safeguarding Children in the Developing World – Beyond Intra-Organisational Policy and Self-Regulation’ (2020) 9 *Social Sciences* 19.

6 For example: Royal Commission of Inquiry into Abuse in Care (New Zealand), Royal Commission into Institutional Responses to Child Sexual Abuse (Australia); Independent

safeguarding' and 'child protection', they are highly interdependent in practice – especially in countries where the child protection system is not well-resourced or functioning. Considering the various state and non-state organisations delivering services for children in Africa, child safeguarding measures are essential to support the realisation of children's rights to protection.

Thirty years since the adoption of the African Charter on the Rights and Welfare of the Child (ACRWC),⁷ it is timely to reflect on how the Charter has contributed to understanding and addressing children's rights to protection. This article aims to undertake this endeavour – looking back and looking ahead. The article is divided into three parts. The first is retrospective and examines the impetus for the ACRWC in the context of an emerging field of child protection on the continent. The second part charts the paradigm shift in the child protection sector that occurred after the adoption of the ACRWC and the gradual development of African jurisprudence on the Charter and child protection and safeguarding obligations. This is based on a comprehensive review of Concluding Observations and Recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACRWC Committee) up until the end of 2019 and an analysis of General Comment 5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child (article 1) and Systems Strengthening for Child Protection⁸ (General Comment 5) and other regional measures aimed at introducing safeguarding principles. The third part of the article posits future directions for child protection and safeguarding on the continent including addressing new risks and harms enabled by digital technology. In conclusion, the article underscores the importance of the ACRWC Committee in articulating African perspectives and catalysing state party action to realise children's rights to protection in accordance with the Children's Charter. With General Comment 5, the ACRWC Committee has clearly set out its position on child protection systems, including safeguarding measures. Through the state party reporting process and with reference to General Comment 5 and forthcoming guidance, the ACRWC Committee can continue meaningful dialogue with state parties to address persistent and new challenges to child protection taking a systemic approach.

Inquiry into Child Sexual Abuse in England and Wales; De Winter Commission about violence towards minors in the Dutch child protection system (The Netherlands).

7 African Member States of the Organisation of African Unity, 'African Charter on the Rights and Welfare of the Child', OAU Doc. CAB/LEG/24.9/49, <https://www.un.org/en/africa/osaa/pdf/au/afr_charter_rights_welfare_child_africa_1990.pdf>.

8 African Committee of Experts on the Rights and Welfare of the Child, 'General Comment No 5 on 'State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection.'

3.2 LOOKING BACK – THE IMPETUS FOR THE ACRWC

3.2.1 Child protection and the adoption of the ACRWC

Although the origins of the ACRWC are known in broad terms, *travaux préparatoires* and other documentation no longer exist.⁹ What is known is that the impetus for the treaty originated from a conference held in Nairobi in 1988, a year before the finalisation of the United Nations (UN) Convention on the Rights of the Child (CRC). Only three African states had participated for the bulk of the decade-long drafting process of the CRC. By the time it reached the final stage, nine African countries were involved. Viljoen records that the African initiative to draft a regional treaty was born partly out of frustration with the UN process.¹⁰ The failures of the UN drafting process are regarded as three-fold: Africans were underrepresented during the drafting process;¹¹ potentially divisive and emotive issues were omitted during consensus-building between states from diverse backgrounds; and the aim of reaching a compromise meant that specific provisions on aspects peculiar to Africa were ignored. Concern for children's rights in the African human rights systems was not novel. In 1979, the Assembly of Heads of State and Government of the Organisation of African Unity (OAU) had adopted a Declaration on the Rights and Welfare of the African Child at its 16th ordinary session in Monrovia, Liberia. The Declaration recognised the need to take all appropriate measures to promote and protect the rights and welfare of the African child.¹²

In 1988, the African Network for the Prevention and Protection Against Child Abuse and Neglect (ANPPCAN) and the United Nations Children's Fund (UNICEF) hosted a conference on 'Children in situations of armed conflicts in Africa'. One of the conference objectives was to consider whether there were gaps in CRC that needed to be filled with a regional-specific treaty. Some of

9 Having worked on aspects related to the Charter for two decades, and fielded queries from numerous researchers over the years seeking access to any form of background documentation from this pre-digital era, Sloth-Neilsen can confirm readily that no such documentation can be found.

10 F Viljoen, 'Supra-National Human Rights Instruments for the Protection of Children in Africa: The Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child' (1998) 31 *Comparative and International Law Journal of Southern Africa* 199 <https://journals.co.za/content/cilsa/31/2/AJA00104051_309>. See also F Viljoen 'The African Charter on the Rights and Welfare of the Child' in CJ Davel (ed) *Introduction to Child Law in South Africa*, 1st edition, 2009, 214 (Cape Town: Juta and Co 2009). See also: BD Mezmur, 'The African Children's Charter versus the UN Convention on the Rights of the Child: a zero-sum game?' (2008) 230 *South African Public Law* 1 and sources cited at note 22.

11 Only Algeria, Morocco, Senegal, and to some extent Egypt, participated meaningfully.

12 A Lloyd, 'Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: Raising the Gauntlet' (2002) 10 *The International Journal of Children's Rights* 179 <https://brill.com/view/journals/chil/10/2/article-p179_4.xml>.

the peculiarities of the African situation omitted from CRC were identified.¹³ In collaboration with the two organisations that had organised the workshop, the OAU set up a working group of African experts, chaired by Lee Muthoga to develop a draft charter. The draft followed the usual route of scrutiny by the Secretary-General and consideration by the Council of Ministers. There was some debate¹⁴ at the Assembly of Heads of States and Governments, but the ACRWC was adopted without dissension on 11 July 1990. The treaty entered into force in 1999 upon receipt of the requisite minimum number of ratifications by member states. The monitoring body provided for in the ACRWC was established in 2002.

Many substantive articles of the ACRWC are geared towards child protection. The most pertinent is article 16 (protection of the child against abuse and torture),¹⁵ but many other articles revolve around specific child protection

13 These were identified as follows: the situation of children living under apartheid was not addressed; disadvantages influencing the female child were not sufficiently considered; practices which are prevalent in African society, such as female genital mutilation and circumcision, were not mentioned explicitly; problems of internal displacement arising from internal conflicts did not receive attention; socio-economic conditions such as illiteracy and low levels of sanitary conditions, posed specific problems in Africa; the African conception of the community's responsibilities and duties had been neglected; in Africa, the use of children as soldiers and a compulsory minimum age for military service is of great importance; the position of children in prison and that of expectant mothers had not been given attention; and the CRC negates the role of the family (also in its extended sense) in the upbringing of the child and in matters of adoption and fostering. See L Muthoga (1992) 'Introducing the African Charter on the Rights and Welfare of the African Child and the Convention on the Rights of the Child', paper delivered at the International Conference on the Rights of the Child, Community Law Centre, University of the Western Cape.

14 The delegate from Sudan commented on the vagueness of the ACRWC and its similarity to the CRC, while the delegate from Senegal stated that the Preamble was unsatisfactory and that the text should reflect the social and economic conditions in Africa more adequately. The representative from Nigeria mentioned that the rights of 'illegitimate children' were not covered by the draft Charter. The representative of Swaziland wanted parents' rights to be mentioned, and that of Botswana wanted the draft rewritten to be comprehensible to children. The representatives of Uganda, Lesotho, Tunisia and Ethiopia had comments about the need for an implementation strategy. See P Veerman, *The Rights of the Child and the Changing Image of Childhood* (Marthinus Nijhoff 1991) 279.

15 Art. 16 provides: '1. State parties to the present Charter shall take specific legislative, administrative, social and educational measures designed to protect the child from all forms of torture, inhuman and degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse whilst in the care of the child; 2. Protective measures under this article include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention, and for identification, reporting, referral, investigation, treatment and follow-up of all instances of child abuse and neglect.' The reference to the phrase 'whilst in the care of the child' is an unfortunate typographical error which should have read something to the effect that it occurred whilst in the care of parents and other persons caring for the child (cf. Art. 19(1) CRC). The reference in the heading to 'torture' appears to indicate that this article is a (partial) amal-

themes. These include: prohibition on child marriage;¹⁶ on harmful cultural practices detrimental to the welfare, dignity, normal growth and development of the child;¹⁷ protection against involvement in armed conflict;¹⁸ a prohibition on begging;¹⁹ protection against sexual exploitation;²⁰ and protection against all forms of economic exploitation (in an article titled 'child labour').²¹ A cursory examination of the provisions of article 16 suggests that at the time of its adoption, it was almost entirely aspirational. While some countries had child protection laws, these neither provided any detail on investigation, reporting, monitoring, follow up and so forth, nor was there in practice any form of specialisation in the child protection services. This will be discussed further in part 3.3 below.

3.2.2 Child protection: policy and programming in the 1990s

The 'discovery' of child abuse and neglect in the home is of relatively recent provenance, stemming from the seminal 1962 publication by Kempe et al, *The battered child syndrome*.²² The initial research was largely epidemiological, resulting in ad-hoc social and legal responses. Reporting requirements for professionals such as doctors and teachers were already in place in the 'North' from the 1980s. However, writing in 2002 Lachman et al express the view that:

'[w]hile progress may have been made in North America, Australasia, and Western Europe, the position of children in the countries of Asia, South America, Eastern Europe, and Africa remains tenuous. The concept of child protection is often a distant dream, and the very structures²³ of society negate the attempts to alleviate the position children find themselves in.'²⁴

gam of Arts. 37 and 19 of the CRC. Sub-article 2 is close in wording to Art. 19(2) CRC, but absent is the provisions for judicial involvement, as appropriate, as a conceivable response to reports of child abuse and neglect.

16 Art. 21(2).

17 Art. 21(1).

18 Art. 22(2).

19 Art. 29(1).

20 Art. 27.

21 Art. 15.

22 <<https://www.kempe.org/about/history/>>.

23 Including poverty and resource scarcity, HIV/Aids (although this mostly post-dates the adoption of the African Children's Charter), conflict and war, gender discrimination and patriarchy, and so forth.

24 P Lachman and others, 'Challenges Facing Child Protection I. Overview – Lessons from the "South"' (2002) *Child Abuse* 31, 589. Writing a decade earlier, Lachman correctly notes that not all child abuse can be attributed to structural or societal factors: P Lachman, 'Child Protection in Africa – The Road Ahead' (1996) 20 *Child Abuse & Neglect* 543, 544.

Lachman et al observe that the literature in Africa was largely limited to documentation of the incidence and prevalence of different types of child abuse. Unlike high-income countries, research had not yet moved to programme evaluation, risk assessment and intervention. They suggested that this was due to the scale of child abuse, the lack of resources to undertake research, and the limited number of trained researchers in the region. Lalor, citing Ennew et al, claimed that academic and grey literature on child sexual abuse in Africa consisted of 'an almost total vacuum'.²⁵ Clinical²⁶ and survey research findings published during the 1980s and early 1990s were almost exclusively undertaken in South Africa.²⁷ Some commentators were of the view that child sexual abuse did not occur in the region due to the close-knit communal living structures of 'pre-modern' African culture. Where it did occur, it was purportedly linked to labour migration and changing family and social structures. This view is disputed by Lalor. He attributes the 'discovery' of child sexual abuse to the previous lack of knowledge among child protection professionals and society in general, and the lack of child protection structures to detect, record and treat victims of child abuse.²⁸

It is not surprising that systemic responses to child abuse in the region were absent due to a failure to situate child abuse and neglect in any coherent societal context. The 'tertiary interventions' that did occur aimed at removing children from allegedly harmful situations after the situation had reached the point where removal was the only safe option.²⁹ Given the chronic underdevelopment of governmental social workers and auxiliary systems, most interventions were driven by charities and church groups. This continues as child protection systems in Africa depend heavily on non-governmental and faith-based organisations to deliver the preponderance of services to respond to child abuse and neglect. It may therefore be concluded that child protection, outside of specific interventions with targeted groups,³⁰ was barely a discipline at the time of the adoption of the ACRWC. The next part will chart

25 K Lalor, 'Child Sexual Abuse in Sub-Saharan Africa: A Literature Review' (2004) 28 *Child Abuse & Neglect* 439, 441 <<https://linkinghub.elsevier.com/retrieve/pii/S0145213404000547>>.

26 Undertaken at hospitals where sexually abused children had been presented for treatment.

27 The 'initial "discovery" of child sexual abuse in the United States in the 1970s was followed by a similar "discovery" in South Africa 15–20 years later (references omitted). Outside of South Africa, it is only in the last 5 years that other countries in sub-Saharan Africa have begun to address the problem of child sexual abuse in their practice and professional literature (references omitted)', Lalor (n 25) 456.

28 *ibid.*, 451.

29 Human Sciences Research Council, 'South Africa Country Report on the Situation on Prevention of Child Maltreatment Study,' Final report submitted to the Prevention of Violence, Department of Violence and Injury Prevention and Disability Noncommunicable Diseases and Mental Health (Geneva: World Health Organisation 2009) v.

30 Children recruited as child soldiers, female genital mutilation (FGM) and child labour are three of the most prominent, although evidence for this is rather anecdotal.

major developments that occurred in the years after the ACRWC entered into force.

3.3 SHIFTS IN THE CHILD PROTECTION LANDSCAPE AND THE EMERGING JURISPRUDENCE OF THE ACRWC COMMITTEE

3.3.1 A 'systems' approach to child protection

By the time of the new millennium, a conceptual framework for a 'systems' approach to child protection was starting to take shape. Developed by international agencies such as UNICEF, Save the Children, and the UN High Commissioner for Refugees (UNHCR), it represented a paradigm shift in the sector. Writing in 2005, Landgren highlighted that child protection approaches to date had focused largely on legislative reform and curative responses instead of the underlying systems that failed to protect children. She argued that these approaches, such as small-scale projects providing care and rehabilitation for 'street children', orphans and victims of trafficking and sexual exploitation, even if significantly scaled up, would be 'unlikely to make a dent in the incidence of abuse.'³¹ While such 'issues-based' efforts had produced benefits, Wulczyn et al remarked that it resulted in a fragmented and inefficient response, which left 'pockets of unmet need.'³² Issues-based efforts did not account for the realities of children's lives and the multiple and overlapping forms of abuse and exploitation that children faced.³³ The systems approach was put forward to address these limitations and to take a systemic approach to systemic issues.³⁴ Krueger et al observe that this paradigm shift brought the child protection discourse closer to the comprehensive public sector reform that had occurred in the health and education sectors.³⁵

31 K Landgren, 'The Protective Environment: Development Support for Child Protection' (2005) 27 *Human Rights Quarterly* 214, 222 <http://muse.jhu.edu/content/crossref/journals/human_rights_quarterly/v027/27.1landgren.html>.

32 F Wulczyn and others, 'Adapting a Systems Approach to Child Protection: Key Concepts and Considerations' (UNICEF 2010) 1 <https://www.unicef.org/protection/files/Adapting_Systems_Child_Protection_Jan_2010.pdf>.

33 MG Wessells, 'Bottom-up Approaches to Strengthening Child Protection Systems: Placing Children, Families, and Communities at the Center' (2015) 43 *Child Abuse & Neglect* 8, 9 <<https://linkinghub.elsevier.com/retrieve/pii/S0145213415001246>>.

34 *ibid.*

35 A Krueger, G Thompstone and V Crispin, 'Learning from Child Protection Systems Mapping and Analysis in West Africa: Research and Policy Implications' (2014) 5 *Global Policy* 47, 48. See also Myers and Bourdillon's critique that attempts to organise child protection as a public service like health and education has produced unsatisfactory experiences globally. They suggest there 'appears to be something inherently relational and situational about the protection of children that resists universalisation and standardisation, which is one reason for growing interest in placing more activity related to protection within the context

Landgren elaborated a 'Protective Environment Framework'³⁶ with eight broad and interconnected elements that could strengthen children's protection and reduce their vulnerability to risks. The eight elements constituted: government commitment and capacity; legislation and enforcement; culture and customs; open discussion; children's life skills, knowledge, and participation; the capacity of families and communities; essential services; and monitoring, reporting, and oversight.³⁷ These elements were reshaped in UNICEF's 2008 Child Protection Strategy adopting two main approaches, namely, strengthening child protection systems and supporting social change for improved protection.³⁸ Subsequently, there were various efforts to map and assess national child protection systems around the world. In Africa this was particularly important to ensure that African perspectives and the prominent role of communities were integrated into the dialogue on national child protection systems.³⁹

By the next decade, there was a growing body of research and practice on the strengthening of child protection systems in the region. In 2013, a Joint Interagency Group representing the African Child Policy Forum, the ANPPCAN and others⁴⁰ issued a 'call to action' for sub-Saharan Africa.⁴¹

of community.' W Myers and M Bourdillon, 'Concluding Reflections: How Might We Really Protect Children?' (2012) 22 *Development in Practice* 613, 616.

36 The Protective Environment Framework was first set out in the 2002 UNICEF Operational Guidance Note: UNICEF, 'UNICEF Child Protection Strategy, E/ICEF/2008/5/Rev.1' <[https://www.unicef.org/protection/CP_Strategy_English\(1\).pdf](https://www.unicef.org/protection/CP_Strategy_English(1).pdf)>.

37 Landgren (n 31) 227–242.

38 United Nations Children's Fund, 'UNICEF Child Protection Strategy, E/ICEF/2008/5/Rev.1' (n 36). See also: Save the Children Sweden, 'Why Effective National Child Protection Systems Are Needed: Save the Children's Key Recommendations in Response to the UN Secretary General's Study on Violence against Children' (2006) <<https://resourcecentre.savethechildren.net/node/2754/pdf/2754.pdf>>; Save the Children UK, 'A "Rough Guide" to Child Protection Systems' (2009) <<https://resourcecentre.savethechildren.net/node/5103/pdf/5103.pdf>>.

39 Child Frontiers Ltd, 'Mapping and Assessing Child Protection Systems in West and Central Africa, A Five-Country Analysis Paper' (Plan International, Save the Children International, UNICEF 2011) iii <http://www.socialserviceworkforce.org/system/files/resource/files/Mapping%20and%20Assessing%20CP_Systems_5_Countries_Analysis_Paper_FINAL.pdf>. For example: Maestral International, 'Child Protection Systems: Mapping and Assessing Eastern and Southern Africa' (2011) <<https://resourcecentre.savethechildren.net/library/child-protection-systems-mapping-and-assessing-eastern-and-southern-africa>>; African Network on Prevention and Protection against Child Abuse and Neglect, 'Desk Review and Analysis of Literature on Child Protection Systems in the Eastern Africa Region (Ethiopia, Kenya, Rwanda, South Sudan, Sudan, Tanzania and Uganda)' (Save the Children Sweden 2012) <<https://resourcecentre.savethechildren.net/sites/default/files/documents/7032.pdf>>.

40 Environnement et Développement du Tiers-monde; International Social Service; Mouvement Africain des Enfants et Jeunes Travailleurs; Plan International; Regional Inter-agency Task Team on Children and AIDS; Regional Psychosocial Support Initiative; Save the Children; SOS Children's Villages International; Terre des hommes; UNICEF; and World Vision International.

The call to action presented elements necessary for an effective child protection system, namely, appropriate policies, legislation and regulations; well-defined structures and functions and adequate capacities; supportive social norms; effective promotion, prevention and response actions; high-quality evidence and data for decision making; and efficient fiscal management and sufficient resource allocation.⁴² Five years later, the ACRWC Committee articulated its approach to child protection systems strengthening in General Comment 5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection. The next part traces the gradual development of African jurisprudence on child protection up until the issuance of General Comment 5.

3.3.2 Emerging ACRWC Committee jurisprudence on child protection

Child protection featured on the agenda of the ACRWC Committee from its inception.⁴³ However, it took some years before the Children's Committee could play its role in substantively promoting and protecting children's rights. The initial term of office of the Children's Committee was largely spent drafting Rules of Procedure and reporting guidelines for state parties. State parties did not provide reports to the ACRWC Committee until 2005⁴⁴ and the ACRWC Committee finally held its first pre-session for consideration of state party reports in 2008.⁴⁵ In 2009, the ACRWC Committee issued its first Concluding Observations and Recommendations for Egypt and Nigeria.⁴⁶ The

41 Joint Inter-Agency Group, 'Strengthening Child Protection Systems in Sub-Saharan Africa: A Call to Action' (2013).

42 *ibid.*, 7.

43 During its inaugural meeting at the African Union (AU) headquarters in Addis Ababa, Ethiopia, in 2002, the African Children's Committee collectively highlighted issues requiring priority attention – the majority of which concerned child protection. Namely children in armed conflicts, child labour, child trafficking, sexual abuse and exploitation of children, orphans affected and infected by HIV/AIDS, children's right to education, the formulation of a National Plan for Children, and resource mobilisation: A Lloyd, 'The First Meeting of the African Committee of Experts on the Rights and Welfare of the Child' (2002) *African Human Rights Law Journal* 7, 324.

44 BD Mezmur, 'The African Committee of Experts on the Rights and Welfare of the Child: An Update' (2006) *African Human Rights Law Journal* 23, 561. Pursuant to Art 43 of the African Children's Charter, State party reports are to be submitted 'within two years of the entry into force of the Charter for the State Party concerned; and thereafter, every three years.'

45 BD Mezmur and J Sloth-Nielsen, 'An Ice-Breaker: State Party Reports and the 11th Session of the African Committee of Experts on the Rights and Welfare of the Child' (2008) *African Human Rights Law Journal* 21.

46 Both Egypt and Nigeria's Concluding Observations and Recommendations are undated but Sloth-Nielsen and Mezmur highlight that they were issued shortly before the 14th session in November 2009, a full year after they were debated: J Sloth-Nielsen and BD Mezmur, 'Like Running on a Treadmill? The 14th and 15th Sessions of the African Commit-

documents were brief and lacked sufficient detail. For example, the ACRWC Committee recommended to Egypt to adopt 'very severe' criminal penalties for child sexual exploitation and 'mechanisms' for victim support. Despite the limitations of these initial recommendations, the advantages of a regionally specific child rights treaty were immediately apparent. Members of the ACRWC Committee were 'sufficiently familiar with local exigencies to be able to engage immediately and with authority on African issues.'⁴⁷

Over time, the length of Concluding Observations increased and more concrete recommendations for state parties to realise children's rights to protection emerged.⁴⁸ The following analysis of Concluding Observations and Recommendations until 2018⁴⁹ is grouped by major and recurring themes relating to child protection that arose from the comprehensive review.⁵⁰ Although beyond the scope of this article, it should also be noted that the communications procedure pursuant to article 44 of the ACRWC has also significantly influenced issues of child protection.⁵¹ Many of the General Comments of the ACRWC Committee also elaborate on child protection themes.⁵²

tee of Experts on the Rights and Welfare of the Child,' *African Human Rights Law Journal*, 2010, 545.

47 J Sloth-Nielsen and BD Mezmur, 'Out of the Starting Blocks: The 12th and 13th Sessions of the African Committee of Experts on the Rights and Welfare of the Child' (2009) *African Human Rights Law Journal* 17, 345.

48 To date, the Concluding Observations and Recommendations on Senegal's periodic report are the longest at 20 pages (July 2019). The average number of pages is 12. The review undertaken for this article revealed a lack of consistency in length and format.

49 During the period up to and including 2017, the African Children's Committee has issued Concluding Observations and Recommendations for 32 countries, namely: Egypt, Nigeria, Burkina Faso, Mali, Tanzania, Kenya, Uganda, Rwanda, Togo, Senegal, Niger, Sudan, Liberia, Ethiopia, Guinea, Kenya, Mozambique, Madagascar, Namibia, Zimbabwe, Rwanda, Lesotho, Algeria, Gabon, Ghana, Cameroon, Eritrea, Cote d'Ivoire, Chad, Comoros, Angola and Sierra Leone. All recommendations were obtained from the African Children's Committee website <<https://www.acerwc.africa/reporting-table/>>, except for Kenya's which was not available. Most recommendations are undated but mention the African Children's Committee session in which the State Party report was considered.

50 Note: These categories are not exclusive and there is overlap between them. Civil rights and freedoms, including birth registration, is not included in this analysis.

51 Covering issues of name and nationality, protection against child abuse and torture, and recruitment of children in armed conflict: UNICEF, 'Review of Progress in the Advancement of Child Rights in Africa: Reflecting on the Past and Future Challenges and Opportunities' (2020) 24–25 <https://www.unicef.org/evaldatabase/files/Review_of_child_rights_in_Africa.pdf>.

52 See: General Comment on article 30 of the ACRWC on 'children of incarcerated and imprisoned parents and primary caregivers' (2013); General Comment on article 6 on the 'right to birth registration, name and nationality' (2014); General Comment on article 31 on 'the responsibilities of the child' (2017); Joint General Comment of the African Commission on Human and People's Rights and the African Children's Committee on ending child marriage (2017).

3.3.2.1 Policy, legislation and enforcement

Legislation and policy frameworks for child protection feature prominently in the ACRWC Committee's recommendations. Harmonising the age of the child in various laws (including customary and religious laws) in line with article 2 of the ACRWC appears in all recommendations to date. This relates to the minimum age of marriage, employment, criminal responsibility, sexual consent, and recruitment in armed forces. Many state parties are urged to introduce laws to ban corporal punishment in all settings.⁵³ This recurring theme is not surprising given the normative function of the ACRWC Committee.

Beyond normative frameworks, the ACRWC Committee recommends the enforcement of legislation including the investigation and prosecution of various forms of child abuse and exploitation. By 2014, there was mention of some countries with specialised sections in the police (such as Liberia, Ethiopia and Kenya) indicating progress since the time of drafting of the ACRWC where any form of specialisation in the services was rare. State parties are recommended to continue various efforts to ensure that perpetrators 'are not met with impunity.'⁵⁴ The ACRWC Committee also draws attention to holding both formal and informal private sector actors accountable for economic exploitation – specifically in the form of child labour.⁵⁵

3.3.2.2 Adequate capacities and sufficient resource allocation

The ACRWC Committee pays progressively more attention to ensuring adequate capacities and sufficient resource allocation over the years. The 2014 recommendations for Liberia are notable as the first explicit discussion of the various elements of the system that need to be in place for children's protection and the capability of the state to deliver the system. The ACRWC Committee observes that implementation of the law is constrained because the 'structure devised by the law is not compatible with the available human resources available for social welfare', recommending that Liberia adopt a 'coherent policy framework to meet the welfare needs of children.'⁵⁶ This realistic

53 For example: Concluding Observations and Recommendations for Sudan; Liberia; Mozambique; Madagascar; Namibia para 25; Zimbabwe, para 26; Rwanda, para 19; Lesotho, para 27; Gabon, para 26; Eritrea, para 10; Cote d'Ivoire, para 23; Chad, para 24; Comoros, para 18; Angola, para 26.

54 For example: Concluding Observations and Recommendations for Liberia (to investigate cases and bring perpetrators before justice); Ethiopia (to continue to build capacity of specialised police units so perpetrators are not met with impunity); Kenya (to continue actions towards a child friendly justice system).

55 For example: Concluding Observations and Recommendations for Liberia; Ethiopia; Guinea; Kenya; Madagascar; Comoros.

56 Concluding observations and recommendations for Liberia, 4.

assessment by the ACRWC Committee does not appear to be reiterated in any other recommendations.

3.3.2.3 Supportive social norms

Fostering supportive social norms is part of building and strengthening a country's child protection system. It is important to recognise that social and cultural norms may either be protective of children or enhance their vulnerability to abuse and exploitation. The ACRWC Committee frequently draws attention to community attitudes and practices that enable or tolerate various forms of child abuse and exploitation. Examples are the practice of parents of forcing their pregnant daughters to marry perpetrators of sexual abuse,⁵⁷ the treatment of domestic violence as a 'family affair' it from being reported to authorities,⁵⁸ and the stigmatisation of those who report sexual abuse by family members.⁵⁹ The ACRWC Committee's recommendations to address these attitudes and harmful practices focus on awareness-raising and sensitisation for a 'change of mentality'.⁶⁰ They encourage the involvement of schools and traditional and religious leaders at the grassroots level.⁶¹ Since 2017, the ACRWC Committee has encouraged state parties to implement the African Union (AU) campaign on ending child marriage.⁶²

The ACRWC Committee frequently recommends widespread awareness-raising to address child labour.⁶³ They recommend dedicated sensitisation for community leaders and religious teachers to address the 'Alamajiri' system.⁶⁴ Since 2016, the ACRWC Committee has provided guidance beyond simply raising awareness and discusses how barriers to change can be overcome through community-level interventions. This is particularly important and addresses critiques of the 'disconnect' between formal national child protection systems and the realities of communities in Africa.⁶⁵ In its recommendations for Sierra Leone, for example, the ACRWC Committee recommends

57 For example: Concluding Observations and Recommendations for Uganda; Guinea; Kenya.

58 For example: Concluding Observations and Recommendations for Liberia and Lesotho.

59 Concluding observations and recommendations for Madagascar.

60 Concluding observations and recommendations for Uganda, 7.

61 For example: Concluding Observations and Recommendations for Uganda; Rwanda; Guinea; Namibia; Zimbabwe; Lesotho; Algeria; Gabon; Eritrea; Cote d'Ivoire; Sierra Leone.

62 For example: Concluding Observations and Recommendations for Cote d'Ivoire and Angola.

63 For example: Concluding Observations and Recommendations for Uganda and Liberia.

64 Where children are attached to Imams (religious leaders) for religious teaching and instruction but end up on the streets as beggars: Concluding observations and recommendations for Nigeria. This is also raised in Concluding Observations and Recommendations for Senegal and Guinea.

65 For example: Child Frontiers Ltd (n 38 above) 32–37; Training Resources Group and Play Therapy Africa, 'Strengthening Child Protection Systems in Sub-Saharan Africa: A Working Paper' (Inter Agency Group on Child Protection Systems in Sub-Saharan Africa 2012) 10 <https://www.unicef.org/protection/files/strengthening_child_protection_systems_in_sub-saharan_africa_-_August_2012.pdf>; Wessells (n 32 above); Krueger and others (n 34 above).

developing a strategy for addressing social norms and behaviour that ‘underpin vulnerability to child labour’ and to support and capacitate community-based early warning and early intervention mechanisms.⁶⁶

3.3.2.4 *Effective prevention actions*

The ACRWC Committee frequently calls for an examination of ‘root causes’ to prevent child abuse and exploitation. This is closely linked to social norms and aligns with a systems approach to examine underlying vulnerabilities. In this regard, the ACRWC Committee has progressively made more specific and actionable recommendations.⁶⁷ For example, the ACRWC Committee recommends Guinea consider alternative income-generating activities for those who perpetrate female genital mutilation (FGM). More recent recommendations elaborate on the complex and overlapping factors contributing to children’s vulnerability. This indicates a deepening understanding by the Committee of the challenges that children face. For example, the ACRWC Committee’s Observations for Gabon highlight poverty, social exclusion, the absence of legal identity or lack of citizenship, child labour and organised crime as factors making children vulnerable to sexual exploitation.⁶⁸

3.3.2.5 *Essential services*

The ACRWC Committee provides progressively more comprehensive recommendations for support to child victims of abuse and exploitation. For example, in its recommendations for Namibia and Zimbabwe, the ACRWC Committee makes the same recommendation for state parties to:

‘... set in place a child friendly reporting mechanism for victims of abuse and torture, to increase the work pool of psychologists and social workers in the criminal justice system, to build the capacity of the police to adequately respond to rape cases, to improve the conviction rate of offenders, established victim support programs, and to promote community outreach efforts with a view of raising awareness.’⁶⁹

66 Concluding recommendations by the African Children’s Committee on the initial report of the Republic of Sierra Leone on the status of implementation of the African Children’s Charter, 2017, para 32.

67 For example: Concluding Observations and Recommendations for Ethiopia; Guinea; Rwanda.

68 Concluding Observations and Recommendations by the African Children’s Committee on the Republic of Gabon report on the status of implementation of the African Children’s Charter, para 50.

69 Concluding Observations and Recommendations by the African Children’s Committee on the Namibia report on the status of implementation of the African Children’s Charter, para 26; Concluding Observations and Recommendations by the African Children’s Committee on the Republic of Zimbabwe report on the status of implementation of the ACRWC para 27.

Since 2017, the ACRWC Committee has discussed the importance of accessible toll-free helplines for child victims.⁷⁰ The ACRWC Committee also elaborates on specialist services for child victims of trafficking,⁷¹ child victims of sexual exploitation in refugee camps⁷² and children affected by armed conflict in many concluding recommendations.⁷³

3.3.2.6 *Children in conflict with the law*

The ACRWC Committee recommends specialist training for the justice work force to support children in conflict with the law.⁷⁴ The ACRWC Committee also recommends improving legislative and policy standards for child justice, promoting diversion, and ensuring sufficient human and physical resources for child justice.⁷⁵ There are recommendations for dedicated areas for women who are pregnant or with small children in detention in situations where alternatives to detention cannot be found.⁷⁶ The ACRWC Committee highlights the importance of consulting children and meaningfully considering

See also Concluding recommendations for Gabon (recommending a child friendly and accessible reporting and rehabilitation mechanism for victims), para 26.

70 See Concluding Observations and Recommendations for Cameroon, para 16.

71 For example: Concluding Observations and Recommendations for Madagascar and Ghana.

72 For example: Concluding Observations and Recommendations for Rwanda para 28; Eritrea para 23.

73 For example: Concluding Observations and Recommendations to Liberia; Kenya; Rwanda.

74 For example: Concluding Observations and Recommendations for Togo; Rwanda; Lesotho; Cote d'Ivoire.

75 For example: Concluding Observations and Recommendations for Tanzania (to allocate enough human and physical resources); Togo (to establish child justice courts and structures); Sudan (to establish specialist courts and dedicated areas for children in detention centres); Liberia (to ensure 'well-resourced courts' and reform its system to implement the new law); Ethiopia (to develop laws and policies to see all forms of detention as a last resort and for the shortest period of time); Guinea (to have cases in camera, separation of children and adults and supply of facilities to prisons accommodating children); Mozambique (to make its system child friendly and introduce diversion and ensure detention remains an option of last resort); Madagascar (to increase the number of specialised judges and establish rehabilitation centres for children nationwide); Namibia (to train officials and recruit psychologists and social workers to establish more child-friendly courts nationwide); Algeria and Gabon (to increase the pool of psychologists and social workers in the child justice system); Ghana (to advocate the use of detention as a measure of last resort and where children are detained, ensure they are not detained with adults and undertake to develop alternatives to detention); Chad (to train enough judges, prosecutors and police and improve conditions for children in detention); Comoros (to create separate detention centres for children); Angola (to establish juvenile courts, implement diversion, provide legal aid, and establish rehabilitation centres); Sierra Leone (to allocate adequate resources to family courts and child panels, legal aid for children, guidelines for non-custodial sentences, and ensure sentencing children to imprisonment is done as a measure of last resort and where they are imprisoned, ensure children are kept separately and provide necessary support).

76 For example: Concluding Observations and Recommendations for Sudan.

their views in the context of administrative and judicial proceedings that concern them.⁷⁷

3.3.2.7 *Alternative care*

With respect to family environment and alternative care, the ACRWC Committee makes wavering indications on institutional care. The 2014 Concluding Observations for Liberia contain the first clear statement on prioritising family-based care and ensuring institutional care is a last resort. The ACRWC Committee discourages, or suggests the regulation of, informal adoption and traditional fostering arrangements.⁷⁸ State parties are recommended to introduce monitoring and minimum standards for institutions, including those that are privately run.⁷⁹

3.3.3 General Comment 5 and measures introducing safeguarding principles

Except for the 2014 Concluding Observations and Recommendations for Liberia, the ACRWC Committee does not expressly discuss the elements of a child protection system or encourage state parties to adopt a systems approach. This is likely to be influenced by the format of state party reporting, which aligns with the articles of the ACRWC Charter. The ACRWC Committee's position on child protection systems strengthening is articulated for the first time in General Comment 5 of 2018. The General Comment was inspired by a seminar hosted for the ACRWC Committee in 2013 on systems strengthening for child protection in sub-Saharan Africa. There was a request from international partners for a dedicated General Comment on systems strengthening. However, the topic was ultimately combined with that of the ACRWC Charter's General Measures of Implementation as a whole.

The General Comment recognises that all systems reflect a nested structure. In the case of child protection, the ACRWC Committee explains that children are embedded in families or kin, living in communities that exist within a

⁷⁷ For example: Concluding Observations and Recommendations for Namibia and Angola.

⁷⁸ See also Concluding Observations and Recommendations for Ethiopia (family reunification is recommended as a priority for orphans and vulnerable children and where this is not possible, these children should be provided with necessary care until an alternative family environment is found).

⁷⁹ For example: recommendations for Namibia and Zimbabwe 'to increase its social workers work pool, to build the capacity of existing social workers, to strengthen already existing in to establish new public alternative care facilities, to effectively supervisor monitor alternative care institutions, enter collaborate with CSOs' (paras 29 and 31, respectively). See also Rwanda (to standardise and closely monitor foster care and social welfare institutes) para 23; Gabon (to improve childcare services and monitor and supervise institutional facilities) para 31; Lesotho (to work with privately run institutes to assist in record-keeping and tracking children in their care) para 30.

wider societal system. Given the nested nature of systems, specific attention needs to be paid to coordinating the interaction of these sub-systems so that the work of each system is mutually reinforcing to the purpose, goals, and boundaries of related systems. Well-functioning systems pay attention to developing and fostering cooperation, coordination, and collaboration among all levels of stakeholders, from community level upwards.⁸⁰ Systems may be formal and informal, and protection systems may interact with other systems such as health and education.

General Comment 5 for the first time introduces safeguarding principles. The ACRWC Committee explains that

‘states parties should ensure that CSOs [civil society organisations] and international organisations that work directly with children must be required to adopt child safeguarding policies. Persons who have abused children should be prevented from working with them, including in civil society organisations, even as volunteers.’⁸¹

This is an important directive for state parties, which has not yet been considered in Concluding Observations. The issues are highly relevant given the preponderance of organisations delivering services for children in the region. The ACRWC Committee frequently recommends state party collaboration with CSOs and non-governmental organisations (NGOs)⁸² but with no associated safeguarding measures. Safeguarding measures are necessary for all organisations – state and non-state. As this directive falls in a section of the General Comment directed at NGOs, community-based organisations and international NGOs, it might erroneously be taken to imply that state structures and their employees are exempted from safeguarding measures. Since direct contact with children is frequently found at county, provincial regional and district/local level,⁸³ it should be an explicit injunction by the ACRWC Com-

⁸⁰ African Committee of Experts on the Rights and Welfare of the Child, ‘General Comment No 5’ (n 8), para 6.1.

⁸¹ *ibid*, para 6.7.

⁸² For example: Concluding Observations and Recommendations for Nigeria (to cooperate with NGOs working on child protection); Burkina Faso (to coordinate with government ministries, NGOs and CSOs to tackle harmful practices); Liberia (to work with CSOs to facilitate social welfare services to unaccompanied children); Ghana (in partnerships with CSOs to launch a comprehensive programme of rescue, rehabilitation and reintegration of children in child labour).

⁸³ For example: in schools, shelters, places of safety, state run orphanages, and health and primary health care facilities. A recurring issue identified in concluding observations was sexual violence and other forms of child exploitation perpetrated by teachers. For example: concluding observations for Cote d’Ivoire, para 23; Comoros, para 30; and Angola, para 49. See also: Concluding Observations and Recommendations for Malawi (to harmonise provisions of the Penal Code and Teaching Service Commission Act so that sexual offenses committed against students by children are appropriately handled), para 27; Senegal (to ensure investigations and prosecutions of Koranic teachers who force children to beg or inflict other abuse, and to implement a binding national code of conduct for teachers and

mittee to state parties to identify safeguarding policies within government agencies in their remit. The ACRWC Committee should also request state parties to explain how the implementation of these policies is pursued at national, regional and district levels.

With respect to emerging measures on safeguarding, brief mention must also be made of Africa's Agenda for Children 2040: Fostering an Africa Fit for Children (Agenda 2040). Agenda 2040 is the ACRWC Committee's vision and elaborates on paragraph 53 of the AU's Agenda 2063: The Africa We Want, that 'African children shall be empowered through the full implementation of the African Charter on the Rights of the Child'.⁸⁴ Agenda 2040 sets ambitious targets and goals under 10 aspirations, four of which directly concern children's rights to protection.⁸⁵ Agenda 2040 is to be implemented in each state party over five consecutive phases, the first of which concludes this year (2020). There are numerous targets to achieve by 2020, including that state parties

'should have engaged with the UN, AU and aid agencies to ensure that children are protected from being sexually exploited by aid workers, military personnel and peacekeepers, and that the perpetrators of such acts be prosecuted and punished.'⁸⁶

The targets also state that national partners working with children 'should have a child protection policy and safeguarding policy in place, in order to ensure a safe environment for children by, for example, minimising risks of child abuse.'⁸⁷

school officials as well as other measures to address ongoing abuse of girls in school settings), paras 44 and 62; Benin (to ensure children are not forced to beg or undertake any child labour while enrolled in Koranic schools), para 40. This presents another opportunity for the African Children's Committee to elaborate on institutional safeguards that schools and other institutions should put into place to prevent child abuse.

84 African Children's Committee, 'Africa's Agenda for Children 2040, Fostering an Africa Fit for Children' (2016) 9 <https://www.acerwc.africa/wp-content/uploads/2018/06/Agenda_2040_for_Children_Rights_in_Africa_15x24.pdf>.

85 The 10 aspirations constitute: (1) The African Children's Charter, as supervised by the African Children's Committee, provides an effective continental framework for advancing children's rights; (2) An effective child-friendly national legislative, policy and institutional framework is in place in all member States; (3) Every child's birth and other vital statistics are registered; (4) Every child survives and has a healthy childhood; (5) Every child grows up well-nourished and with access to the basic necessities of life; (6) Every child benefits fully from quality education; (7) Every child is protected against violence, exploitation, neglect and abuse; (8) Children benefit from a child-sensitive criminal justice system; (9) Every child is free from the impact of armed conflicts and other disasters or emergency situations; and (10) African children's views matter.

86 African Committee of Experts on the Rights and Welfare of the Child, 'Africa's Agenda for Children 2040, Fostering an Africa Fit for Children' (n 84) 97-99.

87 *ibid.*, 101.

Safeguarding has also recently surfaced in the AU Policy on Addressing Sexual Abuse and Exploitation in Peace Support Operations (PSO).⁸⁸ Although not explicitly mentioned by name, the document refers to the obligation for 'all mission personnel ... to create and maintain an environment that prevents SEA [sexual exploitation and abuse] and have the duty to promote the implementation of the present policy'.⁸⁹ According to paragraph 10.9

'The AUC [African Union Commission] shall establish a mechanism to verify prior perpetrators of SEA are not deployed or redeployed to AU PSOs, in compliance with applicable laws and to the best of the AU's abilities. This should include engaging with AU member states to ensure that they perform thorough vetting and screening as well as background and criminal reference checks of military and police personnel during pre-deployment verifications and of civilian personnel upon a request from the AUC.'

The establishment of complaints mechanisms is also addressed in considerable detail. These build on safeguarding and child protection principles, albeit in the specific context of sexual abuse and exploitation in humanitarian operations. While not yet referenced by the ACRWC Committee in its Concluding Observations and Recommendations, General Comment 5, Agenda 2040 and the AU Policy on Addressing Sexual Abuse and Exploitation in PSO set out clear child protection and safeguarding standards for state parties.

3.4 FUTURE DIRECTIONS FOR CHILD PROTECTION IN AFRICA

Although it is now 30 years after the adoption of the ACRWC, it is only in the last decade that state parties have systematically engaged in meaningful dialogue with the ACRWC Committee to harmonise domestic law, policies and practice in line with its provisions. There is progress across the region to develop more systemic responses to child protection based on strong normative frameworks. The development of the normative framework is one of the most important contributions of the ACRWC and the African Children's Committee. Some discriminatory laws and provisions inconsistent with the ACRWC remain, but it is commonly agreed that the 'child protection architecture, covering laws, policies and institutions, is by and large well developed and fairly well established in Africa.'⁹⁰

The major work remaining is to translate law reform and policies into practice. Instead of focusing on responses to situations of harm, prevention

88 AU Policy on Prevention and Response to Sexual Abuse and Exploitation in Peace Support Operations.

89 para 7.1.

90 African Child Policy Forum, 'The African Report on Child Wellbeing 2018: Progress in the Child-Friendliness of African Governments' (2018) xix <<https://www.africanchild.report/>>.

must be the foundation. The ACRWC Committee's more recent recommendations elaborate on the complex and overlapping factors contributing to children's vulnerability and call for an examination of underlying vulnerabilities to inform effective preventive actions. This is important and reflects a deepening understanding of the challenges that children face and the gradual maturity of the sector on the continent. The demand for realistic budgets and human resources to accompany legal and policy frameworks is another more recent but critical component.⁹¹ Finally, there is a need for increased and sustained evidence-based investment to promote positive social norms. This must move beyond merely raising awareness-raising. Without supportive social norms and adequate financial and human resources for national and local child protection systems, population level changes in child protection will be elusive, and the achievement of Agenda 2040 unlikely.

Looking to the immediate and longer-term future of child protection and safeguarding on the continent, it is evident that there are new challenges that were not foreseen at the time of the ACRWC development. The region is relatively more peaceful now than at any time in the recent past but there are increasingly intense domestic conflicts⁹² in which children are direct targets.⁹³ Increasing climate-induced disasters also negatively and disproportionately impact children and heighten children's vulnerability to various forms of exploitation.⁹⁴ While the digital revolution is presenting enormous opportunities for learning, entertainment, social inclusion and civic engagement for children and young people on the continent, it has also created new risks and forms of harm.⁹⁵ This also has implications for child safeguarding and child protection. In 2020, the ACRWC Committee is debating a draft General Com-

91 A critique of child protection interventions in low-income countries is that they are based on unrealistic expectations including that 'serious human resource and capacity gaps, such as the absence of a cadre of professional social workers, can be bridged within the lifespan of the program': A Krueger and others, 'Child Protection in Development: Evidence-Based Reflections & Questions for Practitioners' (2015) 50 *Child Abuse & Neglect* 15, 20.

92 African Child Policy Forum (n 90) xx.

93 See African Children's Committee, 'Continental Study on the Impact of Conflict and Crisis on Children in Africa' (2016) <https://www.acerwc.africa/wp-content/uploads/2018/07/Study_on_the_impact_of_armed_conflict_and_crises_on_children_in_Africa_ACERWC_FINAL_ENGLISH.pdf> based on research in seven countries experiencing active conflict as of the time of writing (Burundi, Central African Republic, Kenya, Libya, Nigeria, Somalia and South Sudan) and six in fragile post-conflict situations or major humanitarian crisis (Democratic Republic of the Congo, Guinea-Bissau, Liberia, Mali, Sierra Leone and Sudan). See also UNICEF, 'How the World Failed Children in Conflict in 2018' (UNICEF, 2018) <<https://www.unicef.org/stories/how-world-failed-children-2018>>.

94 See further E Boshoff, 'Protecting the African Child in a Changing Climate: Are Our Existing Safeguards Adequate?' (2017) 1 *African Human Rights Yearbook / Annuaire Africain des Droits de l'Homme* Volume 1 (2017) 23 <<http://www.pulp.up.ac.za/images/pulp/books/journals/AHRY/Boshoff.pdf>>.

95 United Nations Children's Fund, 'Children in a Digital World' (UNICEF 2017) <https://www.unicef.org/publications/files/SOWC_2017_ENG_WEB.pdf>.

ment on article 27 of the ACRWC, which elaborates measures required to be taken by state parties to combat ‘offline’ and online sexual exploitation and abuse of children. As explained in the ACRWC Committee’s General Comment 5, child protection systems that contain the full array of measures to prevent and respond to all forms of child abuse and exploitation are integral to the implementation of the ACRWC, including to address forms of violence not contemplated at its inception.

The COVID-19 pandemic has also presented numerous and unprecedented challenges to existing child protection systems. The ACRWC Committee has warned that beyond the immediate health impacts of COVID-19, the social and economic disruptions will harm children’s rights and welfare.⁹⁶ To date, evidence of the impact of COVID-19 on children’s protection in the region has mostly emanated from news articles and reports from international organisations, NGOs and CSOs.⁹⁷ There are indications of negative impacts of the rapid de-institutionalisation of children in various alternative care settings,⁹⁸ increased gender-based violence (including child marriage and FGM) due to prolonged school closures,⁹⁹ the criminalisation of children in street situations,¹⁰⁰ the increased risk of online abuse and exploitation,¹⁰¹ and collapsing systems of family and community support. There are also reports of sexual exploitation by state officials and community members charged with enforcing community level quarantine, as well as increased risks of sexual exploitation and abuse associated with ‘outsiders’ transporting goods or providing services.¹⁰² Data is continuing to emerge and confirms warnings

96 African Children’s Committee, ‘COVID-19 and Its Implication on Children’s Rights and Welfare- Guiding Note to Member States of the African Union’ 1 <https://www.acerwc.africa/wp-content/uploads/2020/04/Guiding-Note-on-Child-Protection-during-COVID-19_English-1.pdf>. See also Peace and Security Council, African Union, ‘Communique on Impact of the Novel Coronavirus Disease (COVID-19) Pandemic on the Security and Welfare of Children in Africa’ <<http://www.peaceau.org/uploads/com-psc-924th-psc-meeting-on-the-impact-of-covid-19-on-children-in-africa-12-may-2020.pdf>>.

97 E Fraser, ‘Impact of COVID-19 Pandemic on Violence against Women and Girls’ (UK Aid from the Department for International Development) 284 1 <<http://www.sddirect.org.uk/media/1881/vawg-helpdesk-284-covid-19-and-vawg.pdf>>.

98 Philip S Goldman and others, ‘The Implications of COVID-19 for the Care of Children Living in Residential Institutions’ (2020) 4 *The Lancet Child & Adolescent Health* e12.

99 ‘“Many Girls Have Been Cut”: How Global School Closures Left Children at Risk’ (*The Guardian*, 1 June 2020) <<https://www.theguardian.com/global-development/2020/jun/01/many-girls-have-been-cut-how-coronavirus-global-school-closures-left-children-at-risk>>.

100 ‘“Will We Die of Hunger?”: How Covid-19 Lockdowns Imperil Street Children’ (*The Guardian*, 15 April 2020) <<https://www.theguardian.com/global-development/2020/apr/15/will-we-die-of-hunger-how-covid-19-lockdowns-imperil-street-children>>.

101 INTERPOL, ‘Threats and Trends, Child Sexual Exploitation and Abuse: COVID-19 Impact’ (2020) <<https://www.interpol.int/en/News-and-Events/News/2020/INTERPOL-report-highlights-impact-of-COVID-19-on-child-sexual-abuse>>.

102 Fraser (n 97) 3.

of increased child protection risks and impacts of containment measures on service delivery.¹⁰³

Although COVID-19 risks the regression of child protection gains, it also presents unprecedented opportunities to 'build back better'¹⁰⁴ child protection systems. The nature of the pandemic requires localised and dynamic mechanisms and means of support to vulnerable families and children, including through technology and engagement of children and young people who constitute almost half of Africa's population. The crisis demands improved coordination between various sectors (such as health, education, labour, and social welfare) and actors supporting the emergency response, including across borders, and new collaborations with academia and the industry. COVID-19 has exposed weak systems on and across the continent (and the world) and is a renewed call for states to use the maximum available resources to invest and refocus action on child protection,¹⁰⁵ including to address underlying vulnerabilities that have exacerbated the effects of the pandemic.

3.5 CONCLUDING REMARKS

This article has traversed the origins, development, and implementation of the ACRWC and its contribution to understanding and addressing children's rights to protection over the last 30 years. The issues that precipitated the development of a regionally specific child rights treaty largely related to child protection. Accordingly, it is not surprising that many of the substantive articles of the ACRWC are geared towards child protection. There was a major shift in the child protection sector from an issues-based to a systems approach after the adoption of the ACRWC, but this took time to be propagated by the ACRWC Committee.

After a decade of dialogue between the ACRWC Committee and state parties, the basic child protection architecture now is relatively well-developed across the region. However, increased political will and investment are required to translate laws and policies into practice and realise the ambitious Agenda 2040 vision. New challenges include increasingly intense domestic conflicts, climate-induced disasters, new risks and harms enabled by digital technology, as well as the unprecedented impacts of COVID-19. These

103 United Nations Children's Fund, 'Protecting Children from Violence in the Time of COVID-19: Disruptions in Prevention and Response Services' (UNICEF 2020) <<https://www.unicef.org/media/74146/file/Protecting-children-from-violence-in-the-time-of-covid-19.pdf>>.

104 UN, 'COVID-19 and Human Rights: We Are All in This Together' (2020) 21.

105 Refer African Children's Committee's General Comment 5: '...whilst being aware of fiscal realities, the Charter standards were set intentionally – they do not allow states parties to claim that they do not have any resources for the implementation of social and economic goods for the fulfilment of children's rights.'

challenges demand a systemic approach and will require the maximum available resources to invest and refocus action.

The article underscores the vital role of the ACRWC Committee in articulating African perspectives and catalysing state party action to realise children's rights to protection in accordance with the Charter. Through the state party reporting process and with reference to General Comment 5 and forthcoming guidance, the Committee can continue meaningful dialogue with state parties to address persistent and new challenges to child protection by adopting a systemic approach.

4 | All care, no responsibility

Legislation for mandatory reporting of child abuse in the 'developing world'¹

4.1 INTRODUCTION

In line with the United Nations (UN) Convention on the Rights of the Child and the regional child rights treaty, the African Charter on the Rights and Welfare of the Child, many African states have strengthened legislation to protect children from violence, abuse, exploitation, and neglect. Whilst legislation is only one means to support a movement towards ending violence against children, it can challenge and contribute towards shifting the status quo by providing legitimacy to new behaviours. Legislation must be accompanied by other measures to shift social and cultural norms that perpetuate violence, prevent people from speaking up about child abuse, and leave children in abusive environments.

This article focuses on the duties imposed by international law and domestic legislation to facilitate the reporting of child abuse by persons in contact with children. Commonly referred to as mandatory reporting legislation, such legislation has its origins in the seminal 1962 work of United States' (US) paediatrician C. Henry Kempe and his colleagues. Kempe et al. drew attention to cases of severe physical abuse inflicted upon children by their parents or caregivers and conceptualised this as 'the battered-child syndrome'. They highlighted the reluctance and apparent inability of many medical practitioners to recognise child abuse and deal with it appropriately by reporting it to authorities.² Their work was followed by intensive lobbying that resulted in mandatory reporting legislation being enacted in almost every US state between 1962 and 1967.³

1 This chapter was originally published as Afroz Kaviani Johnson, 'All Care, No Responsibility: Legislation for Mandatory Reporting of Child Abuse in the "Developing World"' (2022) 30 *The International Journal of Children's Rights* 818. This chapter has had minor edits since publication.

2 C Henry Kempe and others, 'The Battered-Child Syndrome' (1985) 9 *Child Abuse & Neglect* 143; Ben Mathews, 'Mandatory Reporting Laws: Their Origin, Nature, and Development over Time' in Ben Mathews and Donald C Bross (eds), *Mandatory Reporting Laws and the Identification of Severe Child Abuse and Neglect*, vol 4 (Springer Netherlands 2015) <http://link.springer.com/10.1007/978-94-017-9685-9_1>.

3 Mathews, 'Mandatory Reporting Laws' (n 2).

Today, there is a spectrum of approaches for mandatory reporting legislation across the world. The laws are based on the fact that many cases of child abuse occur in the private sphere and are unlikely to be brought to the attention of authorities, leaving children in situations of harm.⁴ Mandatory reporting legislation primarily relies on professionals who are most likely to encounter children and families. This includes healthcare personnel, teachers, social workers, and more recently, officers in organisations serving children and young people.⁵ With the confidentiality ethics that apply to many professions, the right to report sometimes serves as the first step before mandatory reporting to authorities in many jurisdictions.

Existing literature on mandatory reporting largely focuses on the US, Canada, and Australia – so-called ‘early adopters’ of mandatory reporting. This article fills a gap in existing literature and seeks to examine mandatory reporting legislation in four countries in Eastern and Southern Africa. South Africa, Uganda, Namibia, and Malawi were selected because the child protection systems in all four jurisdictions are underpinned, at least in part, by a forensic-legal model. This model establishes statutory child protection services under child protection legislation with authority to investigate and take action to protect children from harm. At the same time, all four countries have mixed legal systems and ‘informal’ systems and structures that play a role in children’s protection. There is a broad range of comparative scope amongst these countries with differences in the maturity of the formal child protection systems and socio-economic contexts. Uganda and Malawi are among the 46 countries currently designated by the UN as ‘Least Developed Countries’.⁶ Namibia and South Africa have upper-middle-income status, but extreme inequalities.⁷

The article aims to answer two main questions: first, what mandatory reporting requirements exist in legislation in South Africa, Uganda, Namibia, and Malawi? Second, in these countries with less developed child protection systems, what needs to be considered to strengthen mandatory reporting legislation and its implementation? To answer these questions, the article employs legal and interdisciplinary research through analysis of international, regional, and domestic legislation and explanatory materials, as well as literature review. To begin, the article analyses international and regional child rights law, as well as commentary and recommendations of respective treaty bodies and mandate holders, on violence against children and specifically the mandatory duty to report child abuse. The article then undertakes a comparative

4 *ibid.*

5 Ben Mathews, ‘A Taxonomy of Duties to Report Child Sexual Abuse: Legal Developments Offer New Ways to Facilitate Disclosure’ (2019) 88 *Child Abuse & Neglect* 337.

6 United Nations Conference on Trade and Development, ‘UN List of Least Developed Countries’ (UNCTAD, 2022) <<https://unctad.org/topic/least-developed-countries/list>>.

7 The World Bank, ‘Gini Index (World Bank Estimate) | Data’ (*The World Bank*, 2019) <<https://data.worldbank.org/indicator/SI.POV.GINI>>.

legal analysis of mandatory reporting duties in the four countries and highlights the similarities and differences between them. This section looks at the key areas of legislative choice in mandatory reporting legislation, namely who should report child abuse and in what circumstances. Other areas include to whom reports should be made; penalties for breach; the extent to which the legislation provides a reporter with confidentiality regarding their identity and with immunity from liability; and the response triggered by a mandatory report. The final part of the article examines the complexities of introducing mandatory reporting in countries where the formal capacity to respond to child abuse is constrained and where child protection legislation may not align with the socio-cultural reality. In concluding, the article posits that mandatory reporting legislation can be useful in contributing towards an enabling environment to end violence against children, but such legislation may be tokenistic and potentially undermine the rule of law if it is not accompanied by strengthening of systems of protection, both formal and informal. The article suggests a potential role for the African Committee of Experts on the Rights and Welfare of the Child to elaborate on guidance for African states and facilitate learning across the region on mandatory reporting legislation.

4.2 PERSPECTIVES OF INTERNATIONAL AND REGIONAL CHILD RIGHTS LAW ON MANDATORY REPORTING

Collective understanding of the extent of violence against children has significantly improved over the last decade due to the increasing availability of data from nationally representative population-based surveys. These data confirm violence as a common occurrence in the lives of children worldwide. In South Africa, 14.6 per cent of girls and 9.9 per cent of boys reported some lifetime sexual victimization,⁸ and child abuse and neglect preceded nearly half of all child homicides.⁹ In Uganda, 35 per cent of females and 17 per cent of males reported experiencing sexual violence during childhood, and 59 per cent of females and 68 per cent of males reported experiencing physical violence.¹⁰ In Namibia, 11.8 per cent of females and 7.3 per cent of males experienced sexual violence before the age of 18, and 32.9 per cent of females

8 Catherine L Ward and others, 'Sexual Violence against Children in South Africa: A Nationally Representative Cross-Sectional Study of Prevalence and Correlates' (2018) 6 *The Lancet Global Health* e460.

9 Shanaaz Mathews and others, 'The Epidemiology of Child Homicides in South Africa' (2013) 91 *Bulletin of the World Health Organization* 562.

10 Ministry of Gender, Labour and Social Development, 'Uganda Violence against Children Survey: Findings from a National Survey 2015' (UNICEF 2017) <<https://www.togetherforgirls.org/wp-content/uploads/VACS-REPORT-FINAL-LORES-2-1.pdf>>.

and 41.2 per cent of males experienced physical violence.¹¹ In Malawi, 21.8 per cent of females and 14.8 per cent of males experienced sexual abuse before the age of 18, and 42.4 per cent of females and 64.5 per cent experienced physical violence.¹²

Other forms of violence against children, especially relevant to the continent, include child labour, female genital mutilation (FGM), and societal violence including war and economic deprivation. Of the focus countries for this article, the issue of FGM is most pronounced in Uganda, although the rate is one of the lowest in Eastern Africa at 0.3 per cent among women aged 15 to 49 years of age.¹³ Uganda also hosts almost 1.5 million refugees and asylum-seekers, over sixty per cent of whom are children, fleeing from conflict and persecution in South Sudan, Democratic Republic of Congo, and the Great Lakes Region.¹⁴ Against this background, this section analyses international and regional child rights law, as well as commentary and recommendations of respective treaty bodies and mandate holders, on addressing violence against children and specifically the mandatory duty to report child abuse

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

The UNCRC is the primary instrument relating to children's right to protection from violence. The core provision covering violence against children is article 19. Other related provisions include article 24 (harmful practices); article 34 (sexual exploitation and abuse); articles 37(a) and 28 (torture or other cruel, inhuman, or degrading treatment or punishment); article 39 (recovery and reintegration of child victims); and article 32 (economic exploitation and hazardous or harmful work). The Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography is complementary as it relates to some specific forms of child exploitation. Ratification of Optional

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- 11 Ministry of Gender Equality, Poverty Eradication and Social Welfare, Namibia Statistics Agency and International Training and Education Center for Health at the University of Washington, 'Violence against Children and Youth in Namibia: Findings from the Violence against Children and Youth Survey, 2019' (Government of the Republic of Namibia 2020) <<https://www.togetherforgirls.org/wp-content/uploads/2021/09/Namibia-VACS-Report-2020.pdf>>.
 - 12 Ministry of Gender, Children, Disability and Social Welfare of the Republic of Malawi and others, 'Violence against Children and Young Women in Malawi: Findings from a National Survey 2013' (Government of Malawi 2014) <https://www.togetherforgirls.org/wp-content/uploads/2017/10/MLW_resources_violencereport_final.pdf>.
 - 13 Uganda Bureau of Statistics and UNICEF Uganda, 'Female Genital Mutilation in Uganda' (2020) <https://www.unicef.org/uganda/media/7996/file/FGM%20Evidence%20from%20Uganda_Policy%20Brief_29th%20Sept%202020.pdf>.
 - 14 Uganda Child Protection Sub-Working Group, 'Terms of Reference, Child Protection Sub Working Group – National Level, Uganda Refugee Response' <<https://data2.unhcr.org/en/documents/download/85579>>.

Protocol is not as widespread as the UNCRC which has almost universal ratification. The UNCRC, its Optional Protocol on the Sale of Children, and the guidance issued by the Committee on the Rights of the Child provides authoritative direction to state parties to end all forms of violence against children.

The Committee on the Rights of the Child has made increasing reference to mandatory reporting schemes over time. A requirement for institutions to report and review any violent incidents was briefly mentioned in General Comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.¹⁵ In 2011, the Committee issued General Comment No. 13 on the right of the child to freedom from all forms of violence to guide states parties on their obligations under article 19 of the UNCRC. General Comment No. 13 provides a non-exhaustive list of forms of violence including neglect or negligent treatment; mental violence; physical violence; corporal punishment; sexual abuse and exploitation; torture and inhuman or degrading treatment or punishment; violence among children; self-harm; harmful practices; violence in the mass media and through information and communications technologies; and institutional and system violations of child rights. The Committee elaborates on all of the protective measures set out in paragraph 2 of article 19, from prevention to identification, reporting, referral, investigation, treatment, follow-up, and judicial involvement as appropriate.¹⁶ In explaining the various aspects of reporting, the Committee states that:

‘In every country, the reporting of instances, suspicion or risk of violence should, at a minimum, be required by professionals working directly with children. When reports are made in good faith, processes must be in place to ensure the protection of the professional making the report.’¹⁷

The Committee, therefore, endorses some form of mandatory reporting as a link in the chain of protective measures required under article 19. The Committee does not prescribe any limitations on the *types* of cases that should activate the duty and the duty is very broad relating to ‘instances, suspicion or risk of violence’. While the duty is limited to ‘professionals working directly with children’, the Committee implies this could be extended to other members

15 United Nations Committee on the Rights of the Child, ‘General Comment No. 8 (2006), The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, Inter Alia), UN Doc CRC/C/GC/8’ (2007) paras 40, 43.

16 United Nations Committee on the Rights of the Child, ‘General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence’, UN Doc CRC/C/GC/13 (2011) paras 48–56.

17 *ibid.*, 49.

of the community. The Committee stresses the importance of ensuring the protection of those professionals mandated to report.

More recently, the Committee has recommended a legislative obligation to report as a key element of a holistic strategy for addressing harmful practices in Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices. The Committees observe that:

‘Individuals providing services for women and children, especially medical personnel and teachers, are uniquely placed to identify actual or potential victims of harmful practices. They are, however, often bound by rules of confidentiality that may conflict with their obligation to report the actual occurrence of a harmful practice or the potential for it to occur. This must be overcome with specific regulations that make it mandatory for them to report such incidents.’¹⁸

The obligation to report on the Joint General Recommendation/Comment is limited to ‘professionals and institutions working for and with children and women’ and a reporter must have ‘reasonable grounds’ to believe a harmful practice has or may occur. The Committees emphasise that mandatory reporting responsibilities should ensure the privacy and confidentiality of mandated reporters.¹⁹

The Committee on the Rights of the Child has also recommended the introduction of mandatory reporting obligations in its Concluding Observations to many state parties. In some instances, the recommendation to ensure mandatory reporting relates to all forms of violence, abuse and neglect.²⁰ In others, it is raised in relation to cases of violence against children with disabilities.²¹

18 Committee on the Elimination of Discrimination Against Women and Committee on the Rights of the Child, ‘Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child (2019) on Harmful Practices, CEDAW/C/GC/31/Rev.1–CRC/C/GC/18/Rev.1’ para 49 <<https://undocs.org/en/CRC/C/GC/18/REV.1>>.

19 *ibid.*, 55(j).

20 For example: United Nations Committee on the Rights of the Child, ‘Concluding Observations on the Fifth Periodic Report of the Syrian Arab Republic’ (2019) UN Doc CRC/C/SYR/CO/5 para 28; United Nations Committee on the Rights of the Child, ‘Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Belarus’ (2020) UN Doc CRC/C/BLR/CO/5-6 para 21(g); United Nations Committee on the Rights of the Child, ‘Concluding Observations on the Initial Report of the State of Palestine’ (2020) UN Doc CRC/C/PSE/CO/1 para 39(b); United Nations Committee on the Rights of the Child, ‘Concluding Observations on the Sixth Periodic Report of Hungary’ (2020) UN Doc CRC/C/HUN/CO/6 para 39(d).

21 United Nations Committee on the Rights of the Child, ‘Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Rwanda’ (2020) UN Doc CRC/C/RWA/CO/5-6 para 30(d); United Nations Committee on the Rights of the Child, ‘Concluding Observations on the Combined Second to Fifth Periodic Reports of the Cook Islands’ (2020) UN Doc CRC/C/COK/CO/2-5 para 35(c).

In many instances, the recommendation relates to mandatory reporting of cases of child sexual abuse and exploitation.²² The Committee does not expressly state whether mandatory reporting obligations should be codified in legislation but refers to mechanisms, procedures, guidelines, and protocols.

The UN Special Representative of the Secretary-General on Violence against Children has unequivocally called for mandatory reporting for professionals working with children as part of legislative frameworks to end violence against children.²³ The Special Representative and the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography have also stated that some form of mandatory reporting, including by professionals who work with children, is appropriate for all societies. Notably, they limit the forms of violence to 'sexual abuse and acts of violence causing physical injury and psychological violence'.²⁴ The Special Representative and the Special Rapporteur highlight that mandatory reporting should be defined as taking into account children's rights, including confidentiality and privacy.²⁵ This contemplates potential tensions that could arise through mandatory reporting obligations, such as the need to balance children's rights to privacy with their rights to protection. This becomes especially relevant with children's access

22 For example: United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Bahrain' (2019) UN Doc CRC/C/BHR/CO/4-6 para 31(d); United Nations Committee on the Rights of the Child, 'Concluding Observations on the Fifth Periodic Report of the Syrian Arab Republic' (n 20) para 31(a); United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Third to Sixth Periodic Reports of Malta, UN Doc CRC/C/MLT/CO/3-6' (2019) para 27(b); United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Second and Third Reports of Botswana' (2019) UN Doc CRC/C/BWA/CO/2-3 para 37(a); United Nations Committee on the Rights of the Child, 'Concluding Observations on the Second Periodic Report of Cabo Verde' (2019) UN Doc CRC/C/CPV/CO/2 para 46(c); United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Italy' (2019) UN Doc CRC/C/ITA/CO/5-6 para 21(g); United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Rwanda' (n 21) para 26(a); United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Second to Fifth Periodic Reports of the Cook Islands' (n 21) para 30(e).

23 Office of the Special Representative of the Secretary-General on Violence against Children, 'Keeping the Promise: Ending Violence against Children by 2030' (United Nations 2019) 30 <https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/keeping_the_promise.pdf>.

24 Office of the Special Representative of the Secretary-General on Violence against Children and Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, 'Safe and Child-Sensitive Counselling, Complaint and Reporting Mechanisms to Address Violence against Children' (United Nations 2016) 11 <https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/documents/publications/9_safe_and_child-sensitive_counselling_complaint_and_reporting_mechanisms_to_address_violence_against_children.pdf>.

25 *ibid.*, 20.

to confidential medical advice and counselling, including reproductive health-care.²⁶

4.2.2 African Charter on the Rights and Welfare of the Child (ACRWC)

The ACRWC has several articles setting out children's rights to protection from violence. The most relevant is article 16 (abuse and torture), with significant parallels to article 19 of the UNCRC. In addition, many dedicated articles of the ACRWC revolve around specific areas of concern for the continent. These include article 21(2) (child marriage); article 21(2) (harmful cultural practices); article 22(2) (armed conflict); article 29(1) (begging); article 27 (sexual exploitation); and article 15 (child labour).

The African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child oblige states parties to protect mandated reporters or any other person who in good faith reports an actual or suspected child marriage in their 2017 Joint General Comment on child marriage.²⁷ In General Comment No. 5 on state party obligations under the African Charter on the Rights and Welfare of the Child (article 1) and systems strengthening for child protection, the Committee elaborates on the inclusion of mandatory reporting as part of child protection legislation but does not go as far as to recommend its inclusion.²⁸

4.3 MANDATORY REPORTING LEGISLATION IN FOUR COUNTRIES IN EASTERN AND SOUTHERN AFRICA

Over the last decade or so, many countries in the region have started to professionalise the workforce responsible for child protection and introduced or updated relevant legislation providing detail on investigation, reporting,

26 Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (Fully rev 3 ed, UNICEF 2007) 267 <https://www.unicef.org/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child.pdf>.

27 African Commission on Human and Peoples' Rights and African Committee of Experts on the Rights and Welfare of the Child, 'Joint General Comment of the African Commission on Human and Peoples' Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACRWC) on Ending Child Marriage' para 30 <https://www.acerwc.africa/wp-content/uploads/2018/04/ENGLISH_Joint_GC_ACRWC-ACHPR_Ending_Child_Marriage_14_March_2018.pdf>.

28 African Committee of Experts on the Rights and Welfare of the Child, General Comment No 5 on 'State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection' 22.

monitoring, and follow-up of cases of child abuse and neglect.²⁹ Despite high rates of violence against children reported in nationally representative surveys, the number of official reports to authorities is low. This section identifies and critically examines legislation that obligates professionals or community members to disclose child abuse in South Africa, Uganda, Namibia, and Malawi.

South Africa has provided for mandatory reporting since the adoption of the Child Care Act of 1983. The relevant provision was amended in 1991 and again in 1996 to provide for a more extensive system with criminal sanctions for breach.³⁰ Mandatory reporting was also included in the superseding Children's Act of 2005. South Africa's Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (commonly referred to as the 'Sexual Offences Act') also requires persons to report knowledge of a sexual offence against a child. Malawi introduced mandatory reporting in the Child Care, Protection and Justice Act of 2010. Uganda introduced an express obligation for professional groups in the Children Act of 2016, although a general duty for community members to report infringements of children's rights existed in earlier legislation. Uganda's Prohibition of Female Genital Mutilation (FGM) Act 2010 also mandates reporting. In Namibia, the duty was introduced in the Child Care and Protection Act of 2015, which came into force in January 2019.³¹ See summary in Table 1.

Table 1: Legislation containing reporting duties in South Africa, Uganda, Namibia and Malawi (as of March 2021)

<i>Country</i>	<i>Legislation</i>
<i>South Africa</i>	Children's Act No. 35 of 2005 and its amendment 41 of 2007, section 110 Criminal Law (Sexual Offences and Related Matters) Amendment Act ('Sexual Offences Act') 2007, section 54
<i>Uganda</i>	The Children Act (Chapter 59) 2016, sections 42A, 11 Prohibition of Female Genital Mutilation Act 2010, section 16
<i>Namibia</i>	Child Care and Protection Act 3 of 2015, section 132
<i>Malawi</i>	Child Care, Protection and Justice Act 2010, sections 33-36, 75

29 Afroz Kaviani Johnson and Julia Sloth-Nielsen, 'Child Protection, Safeguarding and the Role of the African Charter on the Rights and Welfare of the Child: Looking Back and Looking Ahead' (2020) 20 African Human Rights Law Journal 643.

30 Julia Sloth-Nielsen, 'Chapter 7 Child Protection' in CJ Davel and A Skelton (eds), *Commentary on the Children's Act* (6th edn, Juta & Company 2013).

31 Republic of Namibia, 'Government Gazette No. 6829' <https://laws.parliament.na/cms_documents/6829-868a18e3f3.pdf>.

4.3.1 Mandated reporter groups

In all four jurisdictions, medical practitioners are prescribed as mandated reporters in child protection legislation. Aside from this similarity, there is significant variation in each country on who must report. South Africa's legislation has followed the US approach of progressively increasing the range of mandated reporters.³² The occupations currently mandated to report constitute:

'... any correctional official, dentist, homoeopath, immigration official, labour inspector, legal practitioner, medical practitioner, midwife, minister of religion, nurse, occupational therapist, physiotherapist, psychologist, religious leader, social service professional, social worker, speech therapist, teacher, traditional health practitioner, traditional leader or member of staff or volunteer worker at a partial care facility, drop-in centre or child and youth care centre (section 110(1)).'

Proposed amendments expand this list to include any 'officer of the court', 'official working for home affairs', 'ward councillors', 'social service practitioner' (replacing social service professional and social worker) and 'any person working with children'.³³ While South Africa has an expansive list, it appears to be the most restricted compared to the other three countries.

Namibia's list is arguably broader as it is non-exhaustive, making the duty mandatory for:

'... a person who performs professional or official duties with respect to children *inclusive of* school principal, teacher, medical or dental practitioner, pharmacist, school counsellor, dentist, psychologist, psychological counsellor, nurse, physiotherapist, speech therapist, occupational therapist, traditional leader, traditional health practitioner, legal practitioner, religious leader, labour inspector, social worker in private practice or employed by a child protection organisation or a member of staff at a place of safety or a facility.' (*emphasis added*) (section 132(2))

Both South Africa and Namibia's legislation provides for voluntary reporting by so-called 'community reporters' (i.e. members of the general public) (sections 110(2) and 132(3), respectively). During the consultation process for the legislation, the South African Law Commission recommended that mandatory reporting be confined to the categories of persons set out in the former Act and that the emphasis for the general population be on voluntary reporting

32 South African Law Commission, 'Review of the Child Care Act, Discussion Paper 103, Project 110' (South African Law Commission 2001) 427 <<https://www.justice.gov.za/salrc/dpapers/dp103.pdf>>.

33 Department of Social Development, 'Invitation to Comment on the Children's Amendment Bill 2018' <https://www.gov.za/sites/default/files/gcis_document/201810/42005gon1185.pdf>.

based on public education and awareness-raising.³⁴ This was motivated by research from other countries that indicated community reporting had led to large numbers of unsubstantiated reports, which took up resources for investigation and follow up.³⁵ During consultations for Namibia's legislation, public opinion was divided on whether mandatory reporting should apply only to professionals or to the general population. Ultimately, the legislation only included mandatory reporting for professionals and voluntary reporting for other people. The rationale was two-fold: to focus resources on assisting children rather than prosecuting members of the public for failing to report abuse; and that public awareness campaigns would be more effective than criminal sanctions to encourage voluntary reporting.³⁶

In Uganda, mandatory reporting is only applicable to doctors, teachers, social workers and Local Councillors at 'LC I' or village level, the lowest political-administrative unit (section 42A(3)). Malawi mandates only two occupations: medical officer and childcare provider (sections 33(1) and 35(1)). However, the reporting duty is also applied to a family member of a child, as well as a community member (sections 34(1) and 36(1)). With no definition of a 'community member', this arguably makes all residents of Malawi mandated reporters. As well as these specific provisions that appear to focus on cases of child abuse and neglect, Uganda and Malawi have another provision for community members under sections 11 and 75, respectively. Community members are required to report infringements of a child's rights and neglect. This provision is difficult to reconcile with the narrower duty. The motivation or justification for the inclusion of this provision is not discussed in any of the available documentation.

Aside from child protection legislation, South Africa's Sexual Offences Act mandates 'a person' to report sexual offences against children (sections 54(1)(a)). This blanket approach has been critiqued as imposing reporting obligations on persons who cannot have been contemplated by the legislature, such as the child themselves and their parents.³⁷ Uganda's Prohibition of FGM Act similarly mandates reporting of offences or intent to commit offences under the Act by 'a person' (section 16(1)).

34 South African Law Commission (n 32) 449.

35 Julia Sloth-Nielsen, 'Section 54: Obligation to Report Commission of Sexual Offences against Children or Persons Who Are Mentally Disabled', *Sexual Offences Commentary: Revision Service 2* (JUTA 2019) ss 18–5.

36 Legal Assistance Centre, 'Public Participation in Law Reform: Revision of Namibia's Draft Child Care and Protection Bill: Final Report' (Ministry of Gender Equality and Child Welfare, Legal Assistance Centre, UNICEF 2010) 25 <http://www.lac.org.na/projects/grap/Pdf/ccpa-revision_of_draft.pdf>.

37 Sloth-Nielsen (n 35) 18–5.

4.3.2 Circumstances and thresholds for reporting

The types of abuse and neglect (or the harm caused by them) that activates a reporting duty differs in each country. In South Africa, mandatory reporting under the Children's Act focuses on abuse that causes physical injury, any form of sexual abuse, and deliberate neglect (section 110(1)). Any person can report if there is a child 'in need of care and protection' (section 110(2)), but this does not activate a mandatory reporting obligation for professional occupations. In comparison to the other countries, South Africa's legislation has the narrowest scope in this dimension.

Malawi's child protection legislation similarly focuses on injury (physical, psychological, or emotional) because of abuse or neglect (sections 33-36). However, as noted, Malawi has another provision mandating community members to report infringement of a child's rights or a parent or caregiver's refusal or neglect in providing adequate food, shelter, clothing, medical care, or education (section 75(1)). This provision widens the scope of circumstances that activate mandatory reporting for community members. Uganda has extremely wide circumstances activating the reporting duty. Mandated professionals must report 'any matter which affects the wellbeing of a child under their charge' (section 42A(3)). Voluntary reporting is arguably narrower as it relates to a child in need of care and protection or abuse which may result in injury (section 42A(2)). Uganda also has the same provision as Malawi concerning community members having to report an infringement of a child's rights or a parent or caregivers' refusal or neglect (section 11).

Namibia's mandatory reporting obligations have broad application to a child that 'may be or is in need' of care and protection (section 132(1)). A child in need of protective services is defined as inclusive of a child that is abandoned or orphaned; engaged in harmful or likely harmful behaviour; living or working on the streets; neglected, maltreated or physically or mentally abused or likely to be; addicted to alcohol or drugs; in conflict with the law; an unaccompanied foreign child; chronically or terminally ill without a suitable caregiver; or kept in overcrowded, unsanitary or dangerous premises. A child *may* be a child in need of protective services if they are a victim of child labour or trafficking; in a child-headed household; exposed to circumstances that may seriously harm their physical, mental, emotional or social well-being; without a suitable caregiver; below 16 years and pregnant or with any sexually transmitted infection; the victim of a serious crime; subjected to sexual exploitation; living in a violent family environment; below 16 and habitually absent from school; whose parent, guardian or caregiver unreasonably withholds consent to necessary medical or therapeutic intervention; and reasonably suspected of being a child in need of protective services (section 131).

4.3.3 States of mind and temporal situation that activate the reporting duty

There are also differences across the region about the state of mind and temporal situation that activate the reporting duty. South Africa's legislation has a high threshold, with the concept of a 'conclusion on reasonable grounds.' This implies that some investigation must have taken place for a reporter to weigh up "'evidence" to determine whether the required "conclusion" has resulted in his or her (professional) opinion'.³⁸ The concept of 'belief on reasonable grounds' is used for voluntary reporting by community members in South Africa, voluntary reporting by any person in Uganda and Namibia, and professional mandated reporters in Malawi. Other concepts used are 'information that gives rise to a suspicion' (Namibia) and an extremely wide ambit for professional mandated reporters in Uganda with 'any matter that affects child wellbeing'. Malawi and Uganda's provision relating to infringement of a child's rights provision requires 'evidence'. Without dedicated guidance, training and mentoring on these standards, it is questionable whether they would be understood by professional mandated reporters, let alone community reporters.

There are also differences in whether the reporting duty is applied to past, currently occurring, or perceived risk of future abuse. In general, the reporting duty focuses on cases of suspected past abuse. There are two exceptions. First, the infringement of a child's rights provisions in Uganda and Malawi appears only to relate to present circumstances by the use of the present tense (i.e. 'are being'). Second, Namibia extends the duty for professionals for possible future harm as it applies where the reporter has information that gives rise to a suspicion 'is being or likely to be' harmed. Again, mandated reporters would require dedicated guidance, training and mentoring to develop the capacity to assess the probability of future harm.

4.3.4 When, to whom and in what form must the report be made?

South Africa's Children's Act is silent on when a report must be made, although Hendricks suggests section 110 and the reporting Form 22 imply that reporting of the suspicion of abuse must be done as soon as the suspicion is formed on reasonable grounds.³⁹ The Sexual Offences Act provides that reporting of a sexual offence must be done 'immediately'. Likewise, Malawi's Child Care, Protection and Justice Act requires medical officers, family members and community members 'immediately' to report. Curiously, the word 'immediately' is missing from the clause for childcare providers. In the absence

38 Sloth-Nielsen (n 30).

39 Melany Leonie Hendricks, 'Mandatory Reporting of Child Abuse in South Africa: Legislation Explored' (2014) 104 South African Medical Journal 550, 551.

of any documentation to articulate why it would be different for childcare providers, this is assumed to be a typographical error. Uganda and Namibia's child protection legislation do not specify a timeframe. Under Uganda's Prohibition of FGM Act, failure to make a report within 24 hours exposes a person to a penalty.

Across the four countries, reports should generally be made to police or social welfare/child protection authorities. Malawi's legislation also enables community members to make reports to chiefs, in recognition of the important role of traditional leaders. Uganda's and Malawi's provisions on infringement of a child's rights mandate community members to make the report to local government authorities. No detail is specified on the form of reports for Uganda or Malawi. However, South Africa and Namibia refer to a prescribed form in the legislation. South Africa's five-page Form 22 is quite extensive and contains many elements to be provided including the child's details; evidence of the alleged abuse or neglect (bruises, cuts, abrasions, fractures, fatal injuries, welts, head injuries etc); the possible perpetrator and his or her identifying details; any previous history of abuse known to the informant; any prior children's court interventions; details of the circumstances in which the present abuse occurred; medical interventions; previous social work or police interventions; and the capacity in which the informant is making the report. Namibia does not appear to have yet gazetted the form to be used by professional reporters.

4.3.5 Penalties for non-compliance and protection for reporters

Penalties for non-compliance with mandatory reporting obligations are present in all countries, but not necessarily under child protection legislation. In South Africa, failure to report when legally obligated to do so can give rise to a criminal sanction under section 305(c) of the Children's Act. Under the Sexual Offences Act, penalty for non-compliance is a fine or imprisonment for a period not exceeding five years or both. Medical professionals may also be subject to a fine under the Health Professions Council of South Africa guidelines and the Health Professions Act No. 56 of 1974. The guidelines urge members to report any unethical or illegal conduct, and the Act provides that the Council can order a fine or a suspension for a period of time, or remove a member's name from the register in the case of a guilty finding.⁴⁰

There is no penalty under Uganda's child protection legislation. Under the Prohibition of FGM Act, the penalty for non-compliance is a fine not exceeding twelve currency points or imprisonment not exceeding six months or both (section 16(2)). In Namibia, the penalty for non-compliance is a fine not exceeding N\$20,000 or imprisonment for a period not exceeding five years

40 *ibid.*, 552.

or both (section 132(6)). In Malawi, the penalty differs according to the reporter – for medical officers, the penalty is a fine of K20,000 and imprisonment for six months (section 33(2)); for members of the family, they shall be released on a binding agreement on conditions to be determined by the court (section 34(2)); for a childcare provider or community members, the penalty is a fine of K10,000 and imprisonment for three months (sections 35(2) and 36(2)). There is no penalty for section 75 of Malawi’s legislation nor section 11 of Uganda’s child protection legislation with respect to infringement of a child’s rights. This suggests the provisions seek to connect vulnerable children and families with the local authorities for assistance rather than pursue punitive action.

Confidentiality and immunity for reporters are not universal features. Only Namibia provides that the reporter is entitled to have their ‘identity kept confidential if the report is made in good faith unless the interests of justice require otherwise and are not subject to civil liability... unless the person makes the report knowing it to be false or misleading’ (section 132(5)). Namibia also directly addresses professional privilege stating the obligation still applies if the belief is based on privileged information under any law except legal professional privilege (section 132(4)). South Africa provides that a person who makes a report in good faith is not liable to civil action (section 110(3)(b)). The protection does not appear to be extended to a person who makes a report concerning a child under the Sexual Offences Act but does apply to a person who makes a report concerning someone with a mental disability (section 54(2)(c)).

Uganda’s Prohibition of FGM Act makes it an offence to threaten, harm or in any way inhibit a person who is reporting or about to report an offence under the Act (section 16(3)). Malawi provides no protections to reporters.

4.3.6 Response triggered by a mandatory report

The legislative provisions relating to the response triggered by a mandatory report differs across the four jurisdictions. South Africa’s Children’s Act sets out clear steps for action on receipt of a report by a police official, provincial department of social development and designated child protection organisation. Under section 110(4), police officials must ensure the safety and immediate well-being of the child and then hand the matter to the department of social development or a designated child protection organisation within 24 hours. Under section 110(5), the department or designated child protection agency should commence an initial assessment followed by an investigation into the truthfulness of the report if the report is not obviously frivolous or unfounded. If substantiated, they must initiate proceedings for the child’s protection. Should a designated child protection agency receive the report, they must report the matter to the provincial department of social development (section 110(6)(a)). The provincial department is responsible for monitoring the progress

of all matters reported to it (section 110(6)(b)). After investigating, section 110(7) sets out the options available to support the child, including counselling, mediation, prevention and early intervention services, and steps contemplated in chapter 9 about a child in need of care. Police must be notified if there is a possible commission of an offence (section 110(8)). The regulations prescribe national standards and codes of good practice to guide designated state and non-state organisations and social workers providing designated child protection services; a risk assessment framework to guide decision-making; criteria for determining suitable persons who may conduct investigations into cases of child abuse or neglect; and the powers and responsibilities of such persons.

Uganda's Children Act closely mirrors South Africa's law with some notable differences. Rather than clearly differentiating the role of police officials and social welfare or designated child protection organisations, section 42A(4) provides that any of those entities who receive the report are responsible for making the initial assessment, carry out the investigation unless the report is frivolous or obviously unfounded, and if substantiated, initiate proceedings for the protection of the child. Likewise, any of the entities can take remedial measures or initiate action for longer-term protection (section 42A(7)). The probation or social welfare officer is responsible for monitoring the progress of all matters reported (section 42A(6)). The 'designated child protection organisation' is defined as including a Local Council, medical practitioner, probation and social worker (section 42A(9)). In Uganda, Local Councils operate according to customary law and the exercise of discretion, but Driscoll notes they have been largely non-existent or inoperable for much of the last two decades.⁴¹ The drafting of these clauses blurs the respective responsibilities of duty-bearers and could constrain effective monitoring and accountability under the Act.

Namibia's scheme is distinct. If a report received 'creates a reasonable suspicion that a crime has been or will be committed' the police officer or social worker must make an initial assessment of the report within 24 hours to establish whether the child's safety or wellbeing appears to be at imminent risk (section 134(2)). If in the best interests of the child, the police officer or social worker can initiate action to remove a child or an alleged offender from the home or place where they reside (section 134(2)(a) and (b)). If the report is made to a member of the police or to a social worker who is not a designated social worker, that member of the police or social worker must, in addition to the initial assessment, submit the report and information on any steps taken to a designated social worker within 48 hours (section 134(3)). The designated social worker must then report the matter and any steps taken to

41 Jennifer J Driscoll, 'The Role of Para Social Workers in Rural Communities in Uganda: Strengthening Community Resilience for the Protection of Children' (2020) 29 *Child Abuse Review* 416, 417.

the Director responsible for child welfare services in the Ministry, and start an investigation as elaborated in section 139 (section 134(4)).

Malawi has no provisions regulating what action must occur because of the report. Worthy of note is the unique provision in Malawi that chiefs can also receive mandatory reports. With no legislative or supplementary guidance, it is not clear if it is intended that chiefs make decisions themselves based on customary law. South Africa's Sexual Offences Act and Uganda's Prohibition of FGM Act do not detail any action that the receiver of the report is required to undertake.

4.4 DISCUSSION: CHALLENGES, GAPS, AND OPPORTUNITIES

The above analysis indicates significant variance in mandatory reporting legislation in each country. South Africa has had a mandatory reporting duty for the longest period and legislative amendments to that duty over time that provide for a more extensive system of mandatory reporting. The mandatory reporting provisions in child protection legislation in Uganda, Namibia and Malawi are still in the form as introduced, as part of legislative reform over the last decade to adopt more modern and comprehensive child protection legislation. Setting aside the provision that appears in both Uganda and Malawi's child protection legislation requiring community members to report infringement of a child's rights, Uganda's mandatory duty for professionals applies to the smallest category of persons (doctors, teachers, social workers, and local councillors) but arguably applies in the widest set of circumstances requiring professionals to report 'any matter which affects the wellbeing of a child under their charge'.

The application of the duty in Namibia is very broad applying to 'a person who performs professional or official duties with respect to children'. The non-exhaustive list of persons includes those who would have contact with children in community or religious organisations and institutions, reflective of more recent attention to child abuse in organisational settings. The circumstances in which a professional must report in Namibia are extremely broad. The duty in Malawi extends beyond professions to include community members giving it the widest reach. However, the circumstances in which a person must report are more narrowly defined.

South Africa's child protection legislation is the most specific with a long but definitive list of persons to whom the duty applies. From a safeguarding perspective, it is noteworthy that volunteer workers, as well as staff in institutions, are included in the Act. The duty to report in South Africa is activated when a professional concludes on reasonable grounds that a child has suffered physical injury due to abuse, been sexually abused, or deliberately neglected. These categories are the narrowest of the four countries and do not include psychological or emotional abuse. The current legislation removed 'nutritional

deficiency disease' that was included in previous legislation taking into account the high rates of child malnutrition in the country caused by poverty rather than deliberate neglect.⁴²

In Namibia and Uganda, the mandatory reporting duty for professionals encompasses an extremely wide ambit with no differentiation between different forms of abuse. None of the jurisdictions provides any guidance on the extent of suspected harm that activates the reporting duty, i.e. 'significant' or otherwise. The Committee on the Rights of the Child has not provided any guidance to state parties in this respect. However, one frequent criticism of mandatory reporting in high-income contexts is that mandatory reporting opens the system up for reports of a less serious nature and risks overloading child protection services, potentially compromising timely assistance to children at high risk.⁴³ The value of such broad schemes in countries where the formal child protection systems are still in their relative infancy is even more fraught. This section will elaborate on the key gaps and challenges in the implementation of mandatory reporting schemes in countries with less developed child protection systems and provide some policy recommendations and suggestions for further research.

4.4.1 Responsive capacities do not match legislative ambition

In considering the introduction of mandatory reporting for 'developing countries' where economic resources may be extremely limited, Mathews recommends a nuanced and focused approach. Rather, than tackle all forms of child abuse and neglect, he suggests that a state may consider focusing on one severe problem or a small number of problems in the short term to enable a 'realistic chance of success'.⁴⁴ In fact, the original conception of the duty to reports spurred by the work of Kempe et al focused on reporting cases of suspected significant and serious harm.⁴⁵ The above analysis shows that such an approach has not been taken in these four countries despite the constrained resources for child protection services in all four countries. While the guidance from the Committee on the Rights of the Child is also very broad and does

42 South African Law Commission, 'Review of the Child Care Act Report, Project 110' (2002) 131 <https://www.justice.gov.za/salrc/reports/r_pr110_01_2002dec.pdf>.

43 Beverly Chia Chi Liu and Michael S Vaughn, 'Legal and Policy Issues from the United States and Internationally about Mandatory Reporting of Child Abuse' (2019) 64 *International Journal of Law and Psychiatry* 219, 221.

44 Ben Mathews, 'Developing Countries and the Potential of Mandatory Reporting Laws to Identify Severe Child Abuse and Neglect' in Sibnath Deb (ed), *Child Safety, Welfare and Well-being* (Springer India 2016) 9.

45 Ben Mathews, 'Exploring the Contested Role of Mandatory Reporting Laws in the Identification of Severe Child Abuse and Neglect' in Michael Freeman (ed), *Law and Childhood Studies Current Legal Issues Volume 14* (Oxford University Press 2012) 306.

not prescribe any limitations on the types of cases that should activate mandatory reporting, the duty is situated within the national child protection system and multisectoral and comprehensive responsive capacities.⁴⁶

The limitations of national child protection systems and multisectoral capacities in the region are well-documented. Even South Africa, an upper-middle-income country with arguably the most developed child protection system in Eastern and Southern Africa, has low social worker to population ratios,⁴⁷ and struggles to meet the needs of child victims of violence.⁴⁸ Social workers lament inadequate supervision and overburdened caseloads.⁴⁹ A policy brief from the Children's Institute at the University of Cape Town concludes that despite South Africa's comprehensive law and policy, practitioners fail to identify children at risk, and manage cases poorly. Few children and families have access to therapeutic care and support, and different professions do not work together.⁵⁰

Even more untenable social worker to child population ratios are found in Namibia and Malawi, with one state (child) social worker serving 12,277 children in Namibia⁵¹ and one child protection worker serving 10,875 children in Malawi.⁵² In Uganda, there are probation and social welfare officers at the district level but no state social workers at lower levels providing prevention and response services.⁵³ Visible government budget allocation towards child protection services is low and this directly impacts the effective function-

46 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 16) para 49.

47 Hendricks (n 39) 550.

48 United Nations Committee on the Rights of the Child, Concluding Observations on the Initial Report Submitted by South Africa under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography CRC/C/OPSC/ZAF/CO/1 (2016) para 43.

49 Marianne Strydom, Ulene Schiller and Julie Orme, 'The Current Landscape of Child Protection Services in South Africa: A Systematic Review' (2020) 56 *Social Work/Maatskaplike Werk* 396 <<https://socialwork.journals.ac.za/pub/article/view/881>>.

50 Lucy Jamieson, Shanaaz Mathews and Lizette Berry, 'Strengthening the Child Protection System in South Africa' (Children's Institute, University of Cape Town 2017) <http://childrencount.uct.ac.za/uploads/publications/2017%20Jamieson%20et%20al_Strengthening%20the%20Child%20ProtectionSystem%20brief.pdf>.

51 UNICEF Namibia, 'Children and the Namibian Budget: Social Assistance and Welfare 2017/2018' (2017) 3 <<https://www.unicef.org/esa/media/1006/file/UNICEF-Namibia-2017-Social-Assistance-and-Welfare-Budget-Brief.pdf>>.

52 UNICEF Malawi, '2018/19 Child Protection Budget Brief' (2018) <<https://www.unicef.org/malawi/reports/child-protection-budget-brief>>.

53 Ministry of Gender, Labour and Social Development, 'Functional Review of the Government Social Service Workforce in Relation to Child Protection' (2019) <https://bettercarenetwork.org/sites/default/files/2020-10/Functional%20Review%20Final%20Report%20_April_2019.pdf>.

ing of the workforce.⁵⁴ In South Africa, non-profit organisations receive some subsidies to provide statutory services nationwide.⁵⁵ Due to limited public funding, community volunteers and civil society organisations play a large role in preventing and responding to violence at the community level in all countries.⁵⁶

Police and justice sectors are similarly constrained, and children's contact with police and the courts can compound their trauma. Research with girls and women who experienced sexual violence in Malawi, for example, found several discouraging factors that including the failure of police to arrest known perpetrators, cases being 'stuck' at various junctures in the criminal justice system, police requesting transport money or fuel from victims to take action, police allowing cases to be 'withdrawn' at the request of family members, poor administration of court case records, and humiliating treatment or disappointing outcomes of court processes.⁵⁷

Given the high rates of child abuse reported through nationally representative surveys and the limited human and financial resources allocated to protect children, it is questionable whether mandatory reporting regimes in Eastern and Southern Africa will achieve their intended aims. Bringing in mandatory reporting without investment and extensive work to improve the child protection system risks, at best, being ineffective. At worst, it could be harmful to children. There is a risk that a child could be further abused or insufficiently protected if a formal report to authorities is made. Some accounts from mandated reporters in high-income and middle-income countries reveal children whose abuse intensified after a report was filed, foster care placements that were perceived to be worse than children's home environment, and the death of children after intervention.⁵⁸ McTavish et al. suggest such concerns may be especially salient in countries where child protection systems are not well developed or do not function properly.⁵⁹ There is a related risk that

54 UNICEF Namibia (n 51); Ministry of Gender, Labour and Social Development (n 53); Strydom, Schiller and Orme (n 49); UNICEF Malawi, '2019/2020 Child Protection Budget Brief' (2020) <<https://www.unicef.org/malawi/reports/child-protection-budget-brief-20192020>>.

55 Strydom, Schiller and Orme (n 49) 384.

56 UNICEF Eastern and Southern Africa, 'Strengthening the Child Protection System to End Violence against Children in Eastern and Southern Africa' (2021) 7 <<https://www.unicef.org/esa/media/9121/file/Strengthening-CP-End-VAC-2021.pdf>>.

57 UNICEF Malawi and Judiciary of Malawi, 'Access to Criminal Justice Services: The Case of Survivors of Sexual Violence in Malawi' (2019) <<https://www.unicef.org/malawi/media/1931/file/The%20case%20of%20survivors%20of%20sexual%20violence%20in%20Malawi.pdf>>.

58 Jill R McTavish and others, 'Mandated Reporters' Experiences with Reporting Child Maltreatment: A Meta-Synthesis of Qualitative Studies' (2017) 7 *BMJ Open* e013942, 11.

59 *ibid.*

parents or caregivers will avoid formal services or avoid disclosing important information to professionals due to fears about reporting.⁶⁰

Parallels may be drawn with ethical dilemmas in the realm of child safeguarding in humanitarian and development contexts where there is a requirement from donors to introduce policies and procedures that require reporting to authorities without consideration of the capacities of the formal system to respond and community practices for dealing with child abuse.⁶¹ The constraints in the formal system have been discussed above including limited human and financial resources, poor capacity in understanding, identifying, and investigating child abuse, and unstable criminal justice processes. While legislation or policies can help frame normative practice, they must be culturally and contextually suitable. There is scope to explore if and how customary law and informal community practices could support the objectives of mandatory reporting legislation.

4.4.2 Lack of administrative data and empirical research to measure impact

With a purported aim of protecting children from harm, the key measure for determining the efficacy of mandatory reporting laws is to assess whether, on balance, they create a better situation for children. At present, there is a lack of administrative data or empirical research to conclude the efficacy of the regimes in South Africa, Uganda, Namibia, or Malawi. There are no evaluations of the effectiveness of mandatory reporting legislation. Further, statistics of reports or notifications to authorities under legislation are not available. This may be due to the under-developed administrative data systems for child protection in the region. The Committee on the Rights of the Child has highlighted gaps and recommended further action to improve data collection in its Concluding Observations for all four countries.⁶² At this stage,

60 Jill R McTavish and others, 'Children's and Caregivers' Perspectives about Mandatory Reporting of Child Maltreatment: A Meta-Synthesis of Qualitative Studies' (2019) 9 *BMJ Open* e025741, 5–6.

61 Afroz Kaviani Johnson and Julia Sloth-Nielsen, 'Safeguarding Children in the Developing World – Beyond Intra-Organisational Policy and Self-Regulation' (2020) 9 *Soc. Sci.* 19, 14.

62 United Nations Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: Uganda CRC/C/UGA/CO/2 (2005) paras 22–23; United Nations Committee on the Rights of the Child, Concluding Observations on the Consolidated Second and Third Periodic Reports of Namibia, Adopted by the Committee at Its Sixty-First Session (17 September–5 October 2012) CRC/C/NAM/CO/2-3 (2012) paras 18–19; United Nations Committee on the Rights of the Child, Concluding Observations on the Initial Report Submitted by South Africa under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (n 48) paras 13–14; United Nations Committee on the Rights of the Child, Concluding Observations on the Combined Third to Fifth Periodic Reports of Malawi CRC/C/MWI/CO/3-5 (2017) para 9.

therefore, assessment of the efficacy of mandatory reporting legislation is speculative and deserves empirical examination.

4.4.3 Guidance, support, and protection for mandated reporters

If the state mandates individuals with a duty to report child abuse, it follows that the state should also ensure those individuals are aware of the duty, provided with adequate guidance and support to discharge the duty effectively, have their identities protected and are provided immunity from legal liability including for torts.

The Committee on the Rights of the Child states that all who come in contact with children should be aware of risk factors and indicators of violence, receive guidance on how to interpret such indicators, and have the necessary 'knowledge, willingness and ability' to take suitable action.⁶³ This is not a simple task, especially with the standards and thresholds laid out in the legislation and the complex challenges that can arise in the context of competing children's rights. Previously in South Africa, for example, when providing children between the ages of 12 and 16 years with sexual and reproductive health services, doctors had to decide whether to provide these confidentially in line with the Children's Act or report the consensual but illegal sexual behaviour to the police in accordance with the Sexual Offences Act. This was largely resolved by amendments to the Sexual Offences Act which decriminalize consensual adolescent sexual activity following the Constitutional Court's decision in *Teddy Bear Clinic for Abused Children, and Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN) v. Minister Of Justice And Constitutional Development Case* (Case Number 73300/10). There is still scope for conflict, for example, in the case of a consensual sexual relationship between a 14-year old and 17-year old.⁶⁴ Strode et al suggest further debate is required on the issue in South Africa and options could include law reform to limit the nature of mandatory reporting obligations or to give service providers some discretion in determining when reporting consensual but illegal sexual activity would be in the best interests of the child.⁶⁵

In any case, there is limited information available about any educative or supportive interventions for mandated reporters in these countries. Uganda's recent functional review of the social service workforce for child protection found that 79 per cent of interviewed frontline workers had not received any orientation on amendments to the child protection legislation and that police

63 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 16) para 48.

64 Sloth-Nielsen (n 35) ss 18–6.

65 AE Strode and others, 'Reporting Underage Consensual Sex after the Teddy Bear Case: A Different Perspective' (2013) 6 South African Journal of Bioethics and Law 45, 47.

knowledge was largely limited to the penal code and police regulations.⁶⁶ These are 'professional' mandated reporters, but the legislation in all four countries also includes mandated reporters that are part of the 'informal' system such as religious leaders, traditional leaders, traditional health practitioners, local councillors and community members. This suggests a significant proportion of mandatory reporters may not be aware of their obligations and their role in protecting children from harm.

With respect to negative consequences for reporters, if individuals are legally obliged to report, it follows that they should have their identities kept confidential and be protected from adverse consequences. This is a significant gap in Uganda and Malawi's legislation with the potential to undermine its effectiveness. In line with the Committee's guidance, reporters in good faith should be reassured that the law will protect them by keeping their identity confidential and protecting them from legal liability and reprisals. Mandated reporters may also face risks to their personal safety if a report leads to adverse consequences for the child or the family. This is a significant risk in countries where the rule of law is weak and police lack basic equipment, are poorly funded and have untenable police to population ratios.

4.4.4 Improving mandatory reporting schemes in Eastern and Southern Africa

In retrospect, it could be argued that mandatory reporting legislation in the region should have been more thoroughly researched and debated before their introduction. However, the possible political and pragmatic reasons behind their inclusion should be considered. Law reform, especially in low-income countries, can be costly, complex, and infrequent. Especially in relation to children, there is frequently the desire (and pressure from development partners) to incorporate provisions that are 'best practice' and 'aspirational' rather than concerning the economic and human resources available to devote to the system at the time of drafting. Paring down the scope of mandatory reporting to focus on one form of abuse or especially severe forms of abuse on account of a lack of resources, even for the short-term, would be a difficult position to defend. In the face of widespread violence against children, it is understandable that lawmakers would seek to align domestic legislation with guidance from international treaty bodies which make no distinction between forms or thresholds of abuse.

Accordingly, it may be posited that the inclusion of the mandatory reporting obligations is – at this time – largely symbolic. There is a chasm between the system envisaged by the legislation and the practical reality of national child protection systems. Notwithstanding, the introduction of mandatory reporting may be seen as one means of catalysing social change to break the

66 Ministry of Gender, Labour and Social Development (n 53) 53.

silence about violence against children. Various cultural factors can inhibit speaking up about child abuse. In some contexts, the view prevails that child abuse is a private matter, best resolved within the family or community. While there is an important role for traditional or customary mechanisms, these can sometimes inadequately protect children's rights. The vulnerability of a child can increase when their best interests' conflict with those of their parents or family.⁶⁷

Notwithstanding some documented negative experiences of mandated reporters and caregivers in countries where research has been undertaken,⁶⁸ some argue there is not yet a better-proven system of case identification.⁶⁹ This has arguably become more apparent during the COVID-19 pandemic. Some suggest containment measures such as isolation and social distancing has impacted the identification of child abuse because those adults such as healthcare personnel, teachers and social workers who would typically recognize indicators of violence (and are mandated to report) now have more limited contact with children.⁷⁰

The sentiment behind mandatory reporting legislation may thus be viewed as part of the longer-term movement of creating an enabling environment to end violence against children. In moving towards this objective, states must ensure at least a basic level of training and professional support for mandated reporters. At a minimum, the legislation in all countries must provide necessary protections for mandated reporters and elaborate on the actions and accountabilities once a report is received by the authorities. As civil society and faith-based organisations deliver a significant proportion of services to children in the region, there should be consideration to include officers in child-serving organisations and religious ministry as mandated reporters in all jurisdictions.

States must also strengthen administrative data systems and use that data to monitor referral patterns and outcomes and understand the effectiveness and impact of mandatory reporting legislation. As resources allow, this should be complemented with dedicated research with mandated reporters and with children and families in the context of local formal and informal systems to

67 UNDP, UNICEF and UN Women, 'Informal Justice Systems: Creating a Course for Human Rights-Based Engagement' (2013) 122 <<https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2013/1/Informal-Justice-Systems-Charting-a-Course-for-Human-Rights-Based-Engagement.pdf>>.

68 McTavish and others (n 58); McTavish and others (n 60).

69 Ben Mathews and Donald C Bross, 'Mandated Reporting Is Still a Policy with Reason: Empirical Evidence and Philosophical Grounds' (2008) 32 *Child Abuse & Neglect* 511, 513.

70 Mark L Kovler and others, 'Increased Proportion of Physical Child Abuse Injuries at a Level I Pediatric Trauma Center during the Covid-19 Pandemic' [2020] *Child Abuse & Neglect* 104756, 5; United Nations Children's Fund, 'Protecting Children from Violence in the Time of COVID-19: Disruptions in Prevention and Response Services' (UNICEF 2020) 3 <<https://www.unicef.org/media/74146/file/Protecting-children-from-violence-in-the-time-of-covid-19.pdf>>.

address abuse. By building up reliable national evidence, states can develop and refine the policy and legislative responses. Informed by data and research, jurisdictions may then consider the effectiveness of mandatory reporting across abuse types and severity and make necessary amendments or improvements. Genuine and meaningful child participation in future policy development would also support improving the effectiveness of the child protection system and inform the potential focus of training and capacity building for mandated reporters.

There is also arguably scope for the African Committee of Experts on the Rights and Welfare of the Child to elaborate on guidance for African states with more regional specific nuances and to facilitate learning across the region. As of the time of writing there is an interesting example of intergovernmental cooperation with the Council of Europe drafting a recommendation on mandatory reporting containing possible guidelines.⁷¹ Such international and regional guidance and dialogue can be catalytic for domestic legal and policy reform, especially in low-income contexts with limited resources to invest in legal and policy research.

4.5 CONCLUSION

This paper has examined international and regional child rights law as well as commentary and recommendations of respective treaty bodies and mandate holders as they relate to the mandatory obligations to report violence against children. Employing comparative legal analysis, this article scrutinised legislative mandatory reporting duties that exist in four jurisdictions in Eastern and Southern Africa. By and large, the schemes proposed by the legislation do not reflect the resource capacity of the countries and no data exist to indicate whether the laws have achieved their aim in identifying children at risk and protecting children from harm.

Despite these limitations, it is acknowledged that there can be a desire in the legislative drafting process in low- and middle-income countries to articulate aspirational provisions rather than ones that can be feasibly implemented within the country's available resources at the time of drafting. In this respect, this article suggests that mandatory reporting legislation is useful in that it contributes towards building an enabling environment to end violence against children. However, such legislation may be tokenistic and potentially under-

71 Council of Europe, Children's Rights Division, Directorate of Anti-Discrimination, and Directorate General II Democracy, 'Steering Committee for the Rights of the Child (CDENF) Working Group on the Responses to Violence against Children (CDENF-GT-VAE) Meeting by Videoconference, First Meeting (23-24 June 2020, Respectively from 10 to 13 Am)' (2020) Meeting Report 6 <<https://rm.coe.int/meeting-report-of-the-first-online-meeting-cdenf-gt-vae/16809ee5fd>>.

mine the rule of law if it is not accompanied by strengthening systems of protection and addressing any conflict between formal and informal systems.

State parties must continue to invest in child protection systems to build responsive capacities. This includes building the capacity of the formal system and ensuring there are effective links with community members and informal or traditional structures that support the child protection system.⁷² Existing legislation could be strengthened by ensuring that all mandatory reporters are protected from any reprisals or liability for reports made in good faith. There is also a need to elaborate on actions to be taken by relevant duty-bearers after a report is received and to ensure the full range of people with access to children are educated and supported in complying with the legislation. This calls for continued capacity building as well as social norm change and work with communities. Finally, improving administrative data systems and use of that data to understand the effectiveness and impact of the legislation can inform future policy and legislative reform. A further stream of research concerns how customary laws and practices can complement or conflict with child protection legislation and strategies to ensure traditional and community leaders and structures are supportive of children's best interests. This calls for research with children, families, and communities, including traditional leaders, and ensuring meaningful children's participation in future policy development. There is also a potential role for the African Committee of Experts on the Rights and Welfare of the Child to elaborate on guidance for the region and global and regional sharing of experience. During the Decade of Action to deliver the Sustainable Development Goals, including target 16.2 to end all forms of violence against children, this should be a high priority.

72 UNICEF Eastern and Southern Africa (n 56) 7.

5 | Grooming and child sexual abuse in organisational settings

An expanded role for international human rights law¹

5.1 INTRODUCTION

‘Child sexual abuse and cultures that enable it still exist. Grooming and its lasting impacts are not widely understood. Predators manipulate all of us. Family, friends, colleagues, strangers, in every class, culture and community. They thrive when we fight amongst ourselves and weaponise all of our vulnerabilities.’²

The right for children to be free from sexual abuse became a recognised human rights issue with the adoption of the United Nations Convention on the Rights of a Child (CRC).³ Despite this milestone, child sexual abuse remains alarmingly prevalent worldwide. For instance, a meta-analysis of 217 studies between 1980 and 2008 found that 1 in 8 (12.7%) of the world’s children experience sexual abuse and/or exploitation before the age of 18.⁴

This article focuses on child sexual abuse in organisational contexts, with a particular emphasis on the role of ‘grooming’. While grooming is often associated with the internet and online behaviour, its origins precede the digital age. Consequently, this article aims to challenge the misconception of solely linking grooming to online platforms and emphasises its broader recognition. Not all cases of child sexual abuse in organisational contexts involve grooming but many do. There are organisational structures and cultures that can enable or endorse grooming behaviours.

The article is timely given the cases of child sexual abuse within organisational settings that continue to emerge, exemplified by high-profile cases involving the Catholic Church, USA Gymnastics, and Boy Scouts America. These incidents, along with the #MeToo movement, have prompted public

1 This chapter was originally published as Afroz Kaviani Johnson, ‘Grooming and Child Sexual Abuse in Organizational Settings – an Expanded Role for International Human Rights Law’ (2024) 16 *Journal of Human Rights Practice* 355. This chapter has had minor edits since publication.

2 Grace Tame, “‘Hear Me Now’”: Australian of the Year Grace Tame’s Speech in Full – ABC News’ (25 January 2021) <<https://amp.abc.net.au/article/13091710>>.

3 Van Bueren, ‘Child Sexual Abuse and Exploitation: A Suggested Human Rights Approach’ (1994) 2 *The International Journal of Children’s Rights* 17, 46.

4 Marije Stoltenborgh and others, ‘A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World’ (2011) 16 *Child Maltreatment* 79.

outcry and shifted the discourse on sexual violence from individual perpetrators alone to the wider systems that enable child sexual abuse to occur.

To address this pressing issue, this article poses two main research questions: First, what guidance can international human rights law offer to address the grooming of children for sexual abuse, including within organisational settings? Second, how can the international human rights law framework be used and enhanced to guide context-specific responses to combat grooming and protect children from abuse in organisational settings?

This article employs a legal and interdisciplinary research methodology. It analyses international human rights standards and norms set out in the CRC and other relevant instruments, including the Council of Europe's Convention on the Protection of Children Against Sexual Exploitation and Abuse (Lanzarote Convention). It draws on the interpretative guidance of the Committee on the Rights of the Child, the Committee of Parties to the Lanzarote Convention, and academic scholarship. Comprehensive desk research, using keyword searches for 'grooming' and 'solicitation' in databases, identified the sources reviewed and analysed, focusing on materials available at the time of writing the article in 2022. The article also examines examples of grooming legislation in three countries, selected due to their relevance to recent high-profile cases of organisational abuse and/or government inquiries. While existing analysis often focuses on how the law criminalises individual perpetrators, this article is concerned with how legislation may also catalyse change within organisations to foster conditions that keep children safe from harm.

By situating the issue within human rights discourse, this article challenges prevailing paradigms that prioritise risk aversion and compliance, urging practitioners to centre their efforts on recognising and respecting the rights and agency of children.⁵ A human rights-based approach opens avenues for enhancing state and organisational accountability. Moreover, it holds the potential to catalyse change within organisations fostering conditions supportive of children's rights.

This article is divided into three main parts. The first discusses sexual grooming, including in organisational contexts, based on scientific and theoretical literature, case reviews and government inquiries. The second section analyses international and regional human rights laws, along with authoritative guidance ('soft law') from treaty-based human rights mechanisms, to outline existing standards related to child sexual abuse and grooming. It also highlights opportunities for enhancing global norms and promoting state and organisational accountability. Finally, the article examines domestic legislation on grooming and elaborates on recommendations from Australia's Royal

5 Mary Ann Powell and others, 'Child Safety in Policy: Who Is Being Kept Safe and from What?' (2020) 54 *Social Policy & Administration* 1160.

Commission into Institutional Abuse (Australia's Royal Commission)⁶ in support of broad grooming offences. It emphasises the need for increased attention to grooming and proposes five key areas that require updated and comprehensive global guidance to build public consciousness in support of safer organisations as well as to hold perpetrators accountable. In conclusion, the article encourages practitioners to utilise the human rights system as an important tool for driving change, increasing state and organisational accountability, and ensuring every child's right to be free from sexual abuse.

5.2 SEXUAL GROOMING IN ORGANISATIONAL SETTINGS: DEFINITIONS AND COMPLEXITIES

The literature on grooming is still developing, mainly consisting of single studies with small sample sizes involving known or convicted perpetrators.⁷ Geographically, the literature is dominated by evidence from the 'Global North' particularly the United Kingdom, Canada, the United States of America and Australia. Grooming, also known as 'entrapment', 'engagement', 'subjection', 'emotional seduction', 'enticement' and 'solicitation', poses challenges in achieving consensus on its definition.⁸ Broadly, it refers to how some perpetrators interact with and engage a child, and sometimes others around the child, to enable sexual abuse while decreasing the likelihood of disclosure.

Though most grooming literature is not specific to organisational contexts, similarities exist across different typologies of offenders.⁹ Grooming is gen-

6 Australia's Royal Commission is one of the most comprehensive national inquiries on child sexual abuse in institutional contexts to date. The Royal Commission took over five years to complete its work, including a two-year extension, with a total estimated expenditure of AUD342.3 million. More than 680 people worked for the Royal Commission during its life. The Royal Commission held 57 public hearings and 8,013 private sessions across Australia. The Royal Commission's Final Report comprises 17 volumes Royal Commission into Institutional Responses to Child Sexual Abuse, 'Royal Commission into Institutional Responses to Child Sexual Abuse' (*Royal Commission into Institutional Responses to Child Sexual Abuse*, 2 September 2022) <<https://www.childabuseroyalcommission.gov.au/front>>.

7 Patrick O'Leary and others, 'Grooming and Child Sexual Abuse in Institutional Contexts: Research Paper' (Royal Commission into Institutional Responses to Child Sexual Abuse 2017) 6 <<https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/Research%20Report%20-%20Grooming%20and%20child%20sexual%20abuse%20in%20institutional%20contexts%20-%20Prevention.pdf>>.

8 Natalie Bennett and William O'Donohue, 'The Construct of Grooming in Child Sexual Abuse: Conceptual and Measurement Issues' (2014) 23 *Journal of Child Sexual Abuse* 957; Georgia M Winters, Leah E Kaylor and Elizabeth L Jeglic, 'Toward a Universal Definition of Child Sexual Grooming' (2021) 43 *Deviant Behavior* 1.

9 Keith L Kaufman and others, 'Risk Profiles for Institutional Child Sexual Abuse: A Literature Review' (Royal Commission into Institutional Responses to Child Sexual Abuse 2016) 41 <<http://www.childabuseroyalcommission.gov.au/policy-and-research/our-research/published-research/risk-profiles-for-institutional-child-sexual-abuse>>.

erally understood as an incremental process, and several models have been proposed to explain it.¹⁰ Winters et al.¹¹ propose five overarching stages: victim selection; gaining access and isolating a child; trust development; desensitisation to sexual content and physical contact; and maintenance following the abuse. Initial stages may appear innocent and 'normal', but later ones may involve more explicit attempts to desensitise a child to sexual activity, such as offering alcohol, drugs, exposing them to pornography or sexually explicit dialogue.¹²

Identifying grooming behaviours is challenging as they may not be explicitly sexual or criminal when viewed in isolation.¹³ Some suggest that grooming is easier to identify retrospectively than before sexual abuse occurs.¹⁴ Grooming patterns are non-uniform and may vary depending on factors like perpetrator and victim characteristics, the context in which it occurs, and technology-usage.¹⁵

The widespread use and acceptance of technology in some organisational contexts have introduced new ways for adults to groom children for sexual abuse.¹⁶ It can facilitate the progression of grooming tactics from non-sexualised contact to sexual contact, especially when the perpetrator already knows the child. For instance, an analysis for the Independent Inquiry into Sexual Abuse for England and Wales found that alleged perpetrators used various social media platforms and emails for unsupervised and regular contact with children.¹⁷

Perpetrators may also groom significant people in the child's life, such as their parents, siblings, other family members, caregivers, and community members, to initiate and/or maintain abuse.¹⁸ For instance, Australia's Royal Commission uncovered cases where children were sexually abused by people in religious ministry after the perpetrator had groomed their family members. Perpetrators would ingratiate themselves into the family, assuming roles like a 'father figure', and exploiting vulnerable families such as those facing marital

10 O'Leary and others (n 7) 10.

11 'Validation of the Sexual Grooming Model of Child Sexual Abusers' (2020) 29 *Journal of Child Sexual Abuse* 855.

12 O'Leary and others (n 7) 10.

13 Commonwealth of Australia, 'Final Report, Volume 2: Nature and Cause' (Royal Commission into Institutional Responses to Child Sexual Abuse 2017) 40.

14 Samantha Craven, Sarah Brown and Elizabeth Gilchrist, 'Sexual Grooming of Children: Review of Literature and Theoretical Considerations' (2006) 12 *Journal of Sexual Aggression* 287, 292.

15 Winters, Jeglic and Kaylor (n 11) 856.

16 Julienne Zammit and others, 'Child Sexual Abuse in Contemporary Institutional Contexts: An Analysis of Disclosure and Barring Service Discretionary Case Files' (Independent Inquiry Child Sexual Abuse 2021) 17 <<https://www.iicsa.org.uk/key-documents/26611/view/csa-contemporary-institutional-contexts-july-2021.pdf>>.

17 *ibid.* 46.

18 Craven, Brown and Gilchrist (n 14) 293; O'Leary and others (n 7) 11.

issues or mourning.¹⁹ This grooming of people within the child's circle can lead to the children's isolation and decrease the likelihood that a child is believed if they disclose the abuse.²⁰

In organisational contexts, perpetrators may also groom their professional environments to evade safety measures and exploit weaknesses, enabling them to sexually abuse children without detection.²¹ Perpetrators gain 'insider' status by manipulating their environment or position of trust, making it difficult to address concerns if detection or disclosure does occur.²² Secretive, autonomous, or poorly supervised organisations are particularly susceptible to 'organisational grooming'.²³ A review of cases involving 'powerful perpetrators' revealed common patterns of grooming within organisations, where individuals leveraged their power or celebrity status to manipulate the organisation's rules.²⁴

Certain organisational cultures can enable grooming behaviours, making it difficult to distinguish grooming from acceptable behaviours. For example, in sports clubs, physical contact with children and intimate psychological relationships may be viewed as necessary; in educational settings, extended time between teachers and students may be considered as going 'above and beyond the call of duty'; and in childcare institutions, showing affection through hugs and kisses may be seen as desirable.²⁵ Zammit et al. describe such cultures as 'informal' institutional cultures, where informal social relationships and contact with children are normalised.²⁶ This normalisation makes it challenging to distinguish between grooming, benign actions, or even desirable behaviours, allowing perpetrators to manipulate norms and sexually abuse children undetected.²⁷

Organisational cultures that discourage discussion of sex-related matters may hinder children from recognising grooming and delay abuse detection.²⁸

19 Commonwealth of Australia, 'Final Report: Preface and Executive Summary' (Royal Commission into Institutional Responses to Child Sexual Abuse 2017) 51.

20 Craven, Brown and Gilchrist (n 14) 293.

21 Anne-Marie McAlinden, "'Institutional Grooming' and Abuse' in Anne-Marie McAlinden, *'Grooming' and the Sexual Abuse of Children: Institutional, Internet, and Familial Dimensions* (Oxford University Press 2012) 148.

22 O'Leary and others (n 7) 12.

23 McAlinden (n 21) 148.

24 Marcus Erooga, Keith Kaufman and Judith G Zatzkin, 'Powerful Perpetrators, Hidden in Plain Sight: An International Analysis of Organisational Child Sexual Abuse Cases' (2020) 26 *Journal of Sexual Aggression* 62.

25 Donald Palmer and others, 'The Role of Organisational Culture in Child Sexual Abuse in Institutional Contexts' (Royal Commission into Institutional Responses to Child Sexual Abuse 2016) 57–59 <<https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/Research%20Report%20-%20The%20role%20of%20organisational%20culture%20in%20child%20sexual%20abuse%20in%20institutional%20contexts%20-%20Causes.pdf>>.

26 Zammit and others (n 16) 89.

27 *ibid.* 90.

28 Palmer and others (n 25) 60.

In some instances, children may be groomed to believe they are in consensual 'romantic' relationships with the perpetrator, making it harder for them to recognise and disclose the abuse.²⁹ For instance, a case file analysis for the Independent Inquiry into Sexual Abuse for England and Wales found that informal social relationships between adults and children created 'cultures of silence', leading children to refrain from reporting abuse due to fear of not being believed or of triggering a formal response that would get the perpetrator 'into trouble' or end the relationship.³⁰

Perpetrators accessing and sexually abusing children in contemporary organisational contexts closely resemble historical child sexual abuse cases, except for the increasing use of technology.³¹ This raises the crucial question of why states have been unable to improve safeguards for children in organisational settings, despite numerous government inquiries and high-profile scandals over the years. The enduring misperceptions surrounding child sexual abuse, including grooming, may be a contributing factor to this issue. Grooming challenges dominant stereotypes, such as 'childhood innocence' and 'predatory molesters',³² making it difficult for some professionals and community members to reconcile the concept of grooming with their idea of sexual violence.³³ These enduring misperceptions impact policy priorities and resource allocation and can lead to interventions based on misguided 'stranger danger' narratives. At an organisational level, these stereotypes may hinder the identification of warning signs and result in inadequate responses to cases of child sexual abuse. This information is relevant to practitioners as it sheds light on the barriers and challenges in addressing child sexual abuse, including in organisational contexts, urging a shift in approach and understanding to ensure every child's right to be free from sexual abuse.

5.3 CHILD SEXUAL ABUSE AND GROOMING AS A HUMAN RIGHTS CONCERN

5.3.1 United Nations Convention on the Rights of the Child

The right for children to be free from sexual abuse is enshrined in the CRC, adopted in 1989 and coming into force in 1990. The CRC requires states parties to take action to protect the child from all forms of sexual abuse and exploitation and opens state party action or inaction to international scrutiny.³⁴ It

29 Zammit and others (n 16) 90.

30 *ibid.*

31 *ibid.* 93.

32 Park Dietz, 'Grooming and Seduction' (2018) 33 *Journal of Interpersonal Violence* 28, 29.

33 Kenneth Lanning, 'The Evolution of Grooming: Concept and Term' [2018] *Journal of Interpersonal Violence* 12, 12.

34 Roger JR Levesque, 'Sexual Use, Abuse and Exploitation of Children: Challenges in Implementing Children's Human Rights' (1994) 60 *Brooklyn Law Review* 41, 997-998.

marks a paradigm shift in viewing children as rights-holders entitled to non-negotiable rights to protection, rather than as 'objects' in need of assistance.³⁵ Today, the CRC has near-universal ratification, except for the USA.

Articles 34 and 19 of the CRC impose mandatory obligations for states to take measures to ensure the protection of children from sexual abuse. Article 34 requires states to protect the child from 'all forms' of sexual exploitation and abuse. This general obligation is complemented by a specific obligation to:

- 'take all appropriate national, bilateral and multilateral measures to prevent:
- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
 - (b) The exploitative use of children in prostitution or other unlawful sexual practices;
 - (c) The exploitative use of children in pornographic performances and materials.'

Article 19(1) requires states to 'take all appropriate legislative, administrative, social and educational measures to protect' children from all forms of exploitation and abuse, including sexual abuse. Subparagraph (2) elaborates on the protective measures as inclusive of:

'effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment.'

Articles 19 and 34 are closely linked and their differences in scope appear to have diminished over time. Article 34 specifically addresses *sexual* abuse and exploitation, while article 19 covers all forms of violence *inclusive* of sexual abuse and exploitation. The drafting process suggests states were focused more on sexual exploitation in article 34 as sexual abuse had already been addressed in article 19.³⁶ At the same time, the legislative history indicates that the language in subparagraph (a) of article 34 was proposed by the USA to provide content to the term 'sexual abuse' and distinguish it from 'sexual exploitation' which had commercial connotations.³⁷ The Committee on the Rights of the Child (CRC Committee), responsible for monitoring state party compliance

35 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence, UN Doc CRC/C/GC/13 (2011) para 59.

36 Vitit Muntarbhorn, 'Article 34: Sexual Exploitation and Sexual Abuse of Children' in Andre Alen and others, *A Commentary on the United Nations Convention on the Rights of the Child*, vol 16 (Martinus Nijhoff Publishers 2007) 23.

37 Office of the United Nations High Commissioner for Human Rights, 'Legislative History of the Convention on the Rights of the Child, Volume II' (United Nations 2007) 720.

under the CRC, has used subparagraph (a) of article 34 to define sexual abuse and exploitation for interpreting article 19.³⁸

Neither article 19 nor 34 expressly mentions grooming or related terms. However, the obligation in article 34 to prevent the ‘inducement or coercion’ of a child in unlawful sexual activity could potentially be interpreted to protect children from grooming behaviours that compel them to engage in sexual activity. In their commentary on article 34, Tobin and Seow suggest that the ordinary meaning of inducement could ‘arguably extend to the manner of techniques used to induce a child to participate in an unlawful sexual activity, ranging from the offer of financial compensation to the promise of care and affection’.³⁹ Interestingly, neither they nor other existing major commentaries on article 34⁴⁰ explicitly reference grooming. Unfortunately, the legislative history of the CRC does not provide interpretative guidance for this phrase.

Articles 19 and 34 should be considered alongside other articles of the CRC and the guiding principles that underpin a child rights approach. These principles include non-discrimination (article 2), the best interests of the child as a primary consideration (article 3(1)), and the child’s right to direction and guidance from caregivers and parents in accordance with their evolving capacity (article 5), the child’s inherent right to life, survival and development (article 6), and the child’s right to be heard (article 12).

Additionally, the specific obligations in articles 19 and 34 are reinforced by general obligations under article 4. Similar to provisions in the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic Social and Cultural Rights, article 4 of the CRC requires that states take ‘all appropriate legislative, administrative, and other measures’ to implement the rights enshrined in the CRC. The right to protection from sexual abuse, being a civil right and freedom, requires immediate implementation.⁴¹ In light of article 4, states must undertake all possible measures towards the realisation of the rights of the child, irrespective of their economic circumstances, and use available resources to the maximum extent.⁴²

38 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 35) para 25.

39 John Tobin and Florence Seow, ‘Art.34 Protection from Sexual Exploitation and Sexual Abuse’ in John Tobin, *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press 2019) 1320.

40 e.g., Muntarhorn (n 36); Adem Arkadas-Thibert, ‘Article 34: The Right to Protection from All Forms of Sexual Exploitation and Sexual Abuse’ in Ziba Vaghri and others, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes*, vol 25 (Springer International Publishing 2022).

41 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 35) para 65; Tobin and Seow (n 39) 1330.

42 United Nations Committee on the Rights of the Child, General Comment No. 5 (2003), General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, Para. 6), UN Doc CRC/GC/2003/5 (2003) para 8; United Nations Committee

In the analysis of relevant provisions of the CRC, articles 3(3) and 25 are worth mentioning, especially in the context of sexual abuse in organisational contexts. Article 3(3) requires states to ensure that the ‘institutions, services and facilities responsible for the care or protection of children...conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.’ Article 25 is an overarching right for children that are placed in alternative care by ‘competent authorities’ for their ‘care, protection or treatment’ to a periodic review of the treatment provided to the child and all other circumstances.

5.3.2 Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC), adopted in 2000 and entered into force in 2002, enhances the provisions under the CRC, particularly relating to articles 34 and 35. As of March 2022, the OPSC has 177 states parties.⁴³ Article 1 of the OPSC defines practices which must be prohibited by states, namely ‘child prostitution’, ‘child pornography’, and the sale of a child. It also specifies acts associated with these practices that must be criminalised domestically (article 3). The OPSC covers the circumstances in which states must exercise jurisdiction over these offences (article 4), extradition (article 5), forms of mutual assistance (article 6), measures to protect the rights of child victims (article 8), and preventive measures and international cooperation obligations (article 10).

In 2019, the CRC Committee published guidelines on the implementation of OPSC. According to these guidelines, grooming is defined as ‘the process of establishing a relationship with a child either in person or through the use of ICT to facilitate online or offline sexual contact’.⁴⁴ While grooming for sexual purposes is not covered explicitly in the OPSC, the guidelines state that it is a form of child sexual exploitation that ‘may’ constitute an OPSC offence if it involves the production and dissemination of child sexual abuse material

on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 35) para 65.

43 United Nations Human Rights Office of the High Commissioner, ‘Status of Ratification Interactive Dashboard: Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography’ (OHCHR, 9 March 2022) <<https://indicators.ohchr.org/>>.

44 United Nations Committee on the Rights of the Child, Guidelines Regarding the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, UN Doc CRC/C/156 (2019) para 68.

(i.e. 'child pornography').⁴⁵ However, this interpretation raises some questions as producing or disseminating child abuse material should not be regarded as grooming, as it is abuse in itself. This interpretation may reflect earlier research that viewed sexual grooming as an element of offending behaviour and focused on the link between specific offences and child sexual abuse material, rather than viewing online grooming as an 'offence-specific process'.⁴⁶

5.3.3 CRC Committee guidance and recommendations

5.3.3.1 General comments

The CRC Committee issues 'general comments' to help guide the interpretation of the CRC and states parties' implementation. Although grooming is not explicitly mentioned in the CRC or the OPSC, the CRC Committee has referred to grooming in various general comments. In General comment No. 13 on the right of the child to freedom from all forms of violence, grooming for sexual activities is recognised as a child protection risk in the digital environment.⁴⁷ General comment No. 16 on state obligations regarding the impact of the business sector on children's rights mentions 'cyber-grooming' as one of the criminal acts in which companies may be complicit.⁴⁸ General comment No. 20 on the implementation of the rights of the child during adolescence includes 'grooming for sexual exploitation' as one of the risks that adolescents may face in the digital environment.⁴⁹ Most recently, General comment No. 25 on children's rights in relation to the digital environment highlights that perpetrators may use digital technologies to 'solicit children for sexual purposes'.⁵⁰

45 *ibid.*

46 International Centre for Missing & Exploited Children, 'Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review (1st Edition)' (2017) 11 <https://www.icmec.org/wp-content/uploads/2017/09/Online-Grooming-of-Children_FINAL_9-18-17.pdf>.

47 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 35) para 3.

48 United Nations Committee on the Rights of the Child, General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children's Rights (2013) para 60.

49 United Nations Committee on the Rights of the Child, General Comment No. 20 (2016) on the Implementation of the Rights of the Child during Adolescence, UN Doc CRC/C/GC/20 (2019) para 48.

50 United Nations Committee on the Rights of the Child, 'General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment, UN Doc CRC/C/GC/25' (2021) para 81.

The CRC Committee's general comments to date seem to focus solely on grooming within the digital environment, leaving a gap in addressing grooming behaviours outside of this context. A clear and authoritative interpretation of 'inducement or coercion' in article 34 is needed to explicitly protect children from grooming practices across all settings.

5.3.3.2 Concluding observations and recommendations

States parties must submit regular reports to the CRC Committee, detailing their efforts to implement the CRC and the progress of children's rights within their jurisdictions (article 44). Non-state party stakeholders, including non-governmental organisations, children's organisations, national human rights institutions, UN agencies, and others including academics and civil society, can also submit written reports on the situation of children's rights in a country. Upon reviewing these reports, the CRC Committee provides recommendations to the state Party in the form of 'concluding observations'. A review of concluding observations from the past decade indicates that the CRC Committee has acknowledged instances of domestic legislation criminalising grooming (or 'solicitation') of children for sexual purposes, primarily focusing on online grooming.

Despite some ambiguity in the OPSC guidelines regarding grooming, the CRC Committee has made repeated recommendations for state parties criminalise online grooming to achieve 'full compliance' with the OPSC.⁵¹ The CRC Committee has recommended state parties amend their criminal law to criminalise online grooming of all children up to the age of 18, in countries where

51 e.g., United Nations Committee on the Rights of the Child, 'Concluding Observations on the Report Submitted by Portugal under Article 12, Paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' (2014) CRC/C/OPSC/PRT/CO/1 paras 25, 26; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Report Submitted by Switzerland under Article 12, Paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' (2015) CRC/C/OPSC/CHE/CO/1 paras 21, 22; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Report Submitted by Angola under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' (2018) CRC/C/OPSC/AGO/CO/1 para 26; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Report Submitted by the Russian Federation under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' (2018) CRC/C/OPSC/RUS/CO/1 paras 27, 28; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Report Submitted by Saudi Arabia under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' (2018) CRC/C/OPSC/SAU/CO/1 para 27; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia' (2019) CRC/C/AUS/CO/5-6 para 50.

the offence of online grooming does not cover children between 16 and 18 years of age.⁵² In recent concluding observations, the CRC Committee has urged state parties to criminalise online grooming in domestic legislation as part of their efforts to address all forms of child sexual exploitation and abuse.⁵³ The CRC Committee has also recommended the development of guidelines and other practical measures to improve the investigation and prosecution of cases of online grooming.⁵⁴

The recent concluding observations for Cambodia present the most expansive view of grooming so far. The CRC Committee expresses concern over the absence of a specific prohibition on grooming and urges the state party to criminalise grooming explicitly. They emphasise the need for 'effective investigation of and intervention in all cases of sexual exploitation and abuse of children in and outside the home, and in the digital environment, including cases involving grooming'.⁵⁵ While addressing sexual offences facilitated by technology is critical, the CRC Committee's latest framing ensures that grooming is not limited to the digital environment. It emphasises the importance

52 e.g., United Nations Committee on the Rights of the Child, 'Concluding Observations on the Initial Report of the Republic of Moldova Submitted under Article 12 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' (2013) CRC/C/OPSC/MDA/CO/1 paras 22, 23; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Report Submitted by Georgia under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' (2019) CRC/C/OPSC/GEO/CO/1 paras 28, 29.

53 e.g., United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of the Republic of Korea' (2019) CRC/C/KOR/CO/5-6 paras 28, 29; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Belarus' (2020) UN Doc CRC/C/BLR/CO/5-6 para 23; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Second to Fifth Periodic Reports of the Cook Islands' (2020) UN Doc CRC/C/COK/CO/2-5 para 30.

54 e.g., United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Austria' (2020) CRC/C/AUT/CO/5-6 para 25; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Switzerland, UN Doc CRC/C/CHE/CO/5-6' (2021) para 28; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of the Kingdom of the Netherlands, UN Doc CRC/C/NLD/CO/5-6' (2022) para 22.

55 United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Cambodia, UN Doc CRC/C/KHM/CO/4-6 (2022) paras 27, 28.

of addressing grooming in all settings, including organisational contexts, whether or not it is partially or fully enabled by technology.

5.3.3.3 *Individual communications and inquiries*

The CRC Committee can initiate an inquiry procedure under article 13 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OPIC) if it receives reliable information indicating grave or systematic violations of any rights in the CRC, or its Optional Protocol on the involvement of children in armed conflict, or the OPSC by a state party. The CRC Committee has conducted only one investigation so far, focusing on the situation of children and adolescents in residential care centres in Chile. In addition to other violations of the CRC, the investigation found that the state party breached article 34 by failing to prevent sexual violence, respond in a timely and effective manner to reported sexual violence, implement specific protocols for dealing with sexual abuse in some centres, and train staff in sexual abuse prevention.⁵⁶

Grooming is not mentioned in the CRC Committee's findings, and it may not have been used by the perpetrators. In certain institutional settings (for example 'closed' institutions such as detention facilities and children's homes) where there is less supervision and infrequent contact with family or supportive adults, perpetrators may not need to groom their victims and could rely on threats or force instead.⁵⁷ Nevertheless, the CRC Committee's observations have significant ramifications for children in care and potentially for other organisational contexts.⁵⁸ The CRC Committee clearly holds the state responsible for violations occurring in the centres under its direct control, those administered by partner organisations, and other centres. The state's responsibility derives from its failure to exercise oversight and its delegated capacity to privately managed centres.⁵⁹

56 United Nations Committee on the Rights of the Child, Inquiry Concerning Chile under Article 13 of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, CRC/C/CHL/IR/1 (2020) para 102.

57 Commonwealth of Australia, 'Final Report, Volume 2: Nature and Cause' (n 13) 46.

58 Nicolás Espejo Yaksic, 'Case Note 2018/2: Report of the Investigation in Chile under Article 13 of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, CRC/C/CHL/INQ/1' <<https://www.childrensrightsobservatory.nl/casenotes/casenote2018-2>>.

59 United Nations Committee on the Rights of the Child, General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children's Rights, (n 48) para 25; United Nations Committee on the Rights of the Child, Inquiry Concerning Chile under Article 13 of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (n 56) para 108.

The CRC Committee can also receive and consider individual communications from individuals or groups within the jurisdiction of a state party to OPIC. While the Committee's views (or decisions on merit) of individual communications have not yet substantively addressed child sexual abuse and exploitation, this could be a potential avenue for clarifying state party obligations and increasing accountability in the future.

5.3.4 European human rights frameworks and mechanisms

This sub-section analyses European human rights frameworks, which expressly consider online and in-person grooming, which can potentially clarify or enhance the international framework.

5.3.4.1 *Lanzarote Convention*

The Council of Europe's Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), which opened for signature in 2007 and entered into force in 2010, is regarded as the most comprehensive standard concerning child sexual abuse. It is open for accession by both the European Union and non-member states of the Council of Europe and has 48 ratifications or accessions as of August 2022.⁶⁰

The Lanzarote Convention requires states parties to criminalise all forms of sexual offences against children, aiming to enhance the protections afforded by the CRC and OPSC (article 42). Moreover, it is the first international instrument expressly requiring states to criminalise the grooming of children for sexual purposes. Article 23 provides:

'Each Party shall take the necessary legislative or other measures to criminalise the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting.'

The Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Committee) is responsible for monitoring implementation of the Convention,

⁶⁰ Council of Europe, 'Chart of Signatures and Ratifications of Treaty 201: Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201)' (*Council of Europe*, 28 August 2022) <<https://www.coe.int/en/web/conventions/full-list>>.

facilitating information exchange, and expressing opinions on the Convention's implementation (article 41). In 2015, the Lanzarote Committee acknowledged that 'no static definition of online grooming is possible' and recommended that parties consider extending criminalisation in cases where sexual abuse occurs online without in-person meetings.⁶¹ In their 2017 interpretative opinion, the Committee affirmed that the offences 'remain criminalised by national law in the same way, whatever the means used by sexual offenders to commit them, be it through the use of ICTs or not, even when the text of the Lanzarote Convention does not specifically mention ICTs'.⁶²

Article 18 of the Convention is relevant in the context of abuse in organisational settings. It ensures that children in certain relationships are protected from sexual abuse, even when they have already reached the legal age for sexual activities and the person involved does not use coercion, force, or threat. The Explanatory Report gives examples of relationships where such protection applies, including family members, caretakers, persons who provide education, emotional, pastoral, therapeutic or medical care, as well as individuals who employ or have financial or other control over a child. Specific reference is also made to volunteers, such as those involved in holiday camps or youth organisations.⁶³ Abuse of authority is also considered an aggravating circumstance in sentencing for sexual offences against a child (article 28).

In 2019, the Lanzarote Committee adopted a Declaration on protecting children in out-of-home care from sexual abuse and exploitation. The Declaration considered articles 18 and 28 and acknowledged extensive research on sexual abuse by volunteers and professionals in residential care and institutional settings. Among other things, the Committee called for states parties to ensure comprehensive screening procedures for all caregivers, specific measures to prevent abuse due to children's increased vulnerability and dependence, mechanisms to support children in disclosing sexual violence, protocols for effective follow-up in case of disclosure, clear procedures for removing alleged perpetrators from the out-of-home care setting during

61 Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, 'Opinion on Article 23 of the Lanzarote Convention and Its Explanatory Note: Solicitation of Children for Sexual Purposes through Information and Communication Technologies (Grooming)' (2015) para 20 <<https://edoc.coe.int/en/children-s-rights/7064-lanzarote-committee-opinion-on-article-23-of-the-lanzarote-convention-and-its-explanatory-note.html>>.

62 Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, 'Interpretative Opinion on the Applicability of the Lanzarote Convention to Sexual Offences against Children Facilitated through the Use of Information and Communication Technologies (ICTs)' (2017) <<https://rm.coe.int/t-es-2017-03-en-final-interpretative-opinion/168071cb4f>>.

63 Council of Europe, 'Explanatory Report to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse' (2007) para 124 <<https://rm.coe.int/16800d3832>>.

investigations, and effective monitoring of practices and standards to prevent and combat child sexual abuse.⁶⁴

5.3.4.2 *Child Sexual Abuse Directive*

Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (the Directive) provides additional guidance on grooming offences. The Directive aims to combat child sexual abuse and exploitation, building on the provisions of the Lanzarote Convention.⁶⁵ The Directive ‘encourages’ member states to criminalise grooming occurring outside of the digital environment where the solicitation ‘takes place in the presence or proximity of the child’ (recital 19). It also requires the criminalisation of ‘solicitation’ through information and communication technology by an adult to meet a person who has not yet reached the age of sexual consent, where the proposal to meet in person is followed by material acts leading to such a meeting (article 6). Aggravating circumstances include abuse of a recognised position of trust or authority (article 9).

During the negotiations for the Directive, policymakers highlighted the importance of addressing ‘real-life’ solicitation of children for sexual purposes. Member states were asked ‘to check carefully their criminal law definitions as regards the criminalisation of ‘real-life’ solicitation of children for sexual purposes and to improve and correct their criminal law, if necessary’, in line with recital 19 of the Directive.⁶⁶ While in-person grooming was not mandatory, many member states chose to criminalise this practice as well.⁶⁷

64 Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, ‘Declaration of the Lanzarote Committee on Protecting Children in Out-of-Home Care from Sexual Exploitation and Sexual Abuse’ (2019) <<https://rm.coe.int/declaration-of-the-lanzarote-committee-on-protecting-children-in-out-o/1680985874>>.

65 European Parliament, Directorate General for Parliamentary Research Services, ‘Combating Sexual Abuse of Children: Directive 2011/93/UE: European Implementation Assessment’ (Publications Office 2017) 22 <<https://data.europa.eu/doi/10.2861/23810>>.

66 European Parliament, ‘Annex: Joint Statement of the European Parliament and of the Council on Solicitation of Children for Sexual Purposes, P7_TA(2011)0468’ (27 October 2011) <https://www.europarl.europa.eu/doceo/document/TA-7-2011-0468_EN.html>.

67 European Parliament, Directorate General for Parliamentary Research Services (n 65) 26. The European Commission is presently undertaking an evaluation of the 2011 Directive for possible revision.

5.4 DOMESTIC LEGISLATIVE RESPONSES AND AN EXPANDED ROLE FOR INTERNATIONAL HUMAN RIGHTS LAW

This section briefly examines some examples of domestic legislation before discussing a possible expanded role for international human rights law.

5.4.1 Grooming legislation in the US, UK and Australia

This sub-section provides an overview of grooming legislation in different jurisdictions, focusing on the USA, UK and Australia. The article delves into Australian legislation in more detail, as government inquiries into institutional abuse have prompted significant reforms in some Australian jurisdictions, making them particularly pertinent to this discussion.

In the USA, the federal 'coercion and enticement' statute, section 2422(a) of the Criminal Code, makes it an offence to knowingly persuade, induce, entice, or coerce a person to travel over state lines or out of the country to engage in any sexual activity that constitutes a criminal offence. Although the phrase 'grooming' is not explicitly used in the federal law, but the tactics associated with grooming are encompassed in the offence of 'coercion and enticement'. It is also illegal for a person to attempt to engage in such behaviour. Section 2422(b) makes it an offence to use the mail or internet, or any other means of interstate commerce, to intentionally persuade, coerce, or entice a child to engage in illegal sex acts. In addition to the federal statute, 42 states have enacted grooming legislation.⁶⁸ Both federal and state statutes primarily apply to cases of sexual grooming which involve an electronic device or travel.⁶⁹ While the federal statute appears to require travel for the offence, case law has clarified that the crime is complete at the point of persuasion or attempted persuasion, even if no travel occurs.⁷⁰ However, there remains some ambiguity across the different legislative schemes, and in-person grooming does not seem to be adequately covered.

In the UK, section 14 of the Sexual Offences Act 2003 criminalises arranging a meeting with a child under 16, whether for oneself or another person, with the intention of sexually abusing the child. A person commits this offence if they intentionally arrange or facilitate something they intend to do, intend for another person to do, or believe another person will do, anywhere in the world, that would involve committing an offence under specific sections of the Act. Section 15 makes it an offence to meet a child on one or more occasions following sexual grooming. In 2017, section 15A was added to the law,

68 Leah E Kaylor and others, 'An Analysis of Child Sexual Grooming Legislation in the United States' (2022) 29 *Psychology, Crime & Law* 1, 4.

69 *ibid.* 9–10.

70 *ibid.* 10.

making it an offence for a person aged 18 or over to communicate sexually with a child under 16 to obtain sexual gratification. The addition allows authorities to intervene earlier to prevent more serious offending against children and applies to both online and offline communications.⁷¹

The Sexual Offences Act includes civil preventative orders that can prohibit specified behaviours, including grooming of children that do not meet criminal thresholds. The orders can apply to individuals convicted or cautioned for sexual or violent offences, posing a risk of sexual harm, or to anyone posing a risk of harm, even without relevant convictions or cautions. The risk of harm may relate to the public in the UK and/or children or vulnerable adults abroad. The orders may impose restrictions like limiting internet use or travel and require a careful balancing of the human rights of persons subject to them and children's rights to protection. This could be particularly challenging in the context of grooming, where distinguishing between innocuous and predatory behaviour can be difficult. The government guidance specifies that befriending or sharing hobbies with a child is not sufficient for a civil order unless 'there is explicitly sexual content or other disturbing aspects to the behaviour such as excessive secrecy, activities taking place in a locked room etc.'⁷² The use of civil orders in sexual offending cases is still relatively new, with limited evidence regarding their effectiveness.⁷³

In Australia, all jurisdictions have grooming offences. The Commonwealth (federal) Criminal Code Act 1995 includes various grooming offences related to 'using a carriage service' and targeting children under 16 years of age (section 474.27). There are arrangements between Australian states and territories and the Commonwealth to prosecute online grooming under Commonwealth provisions and to use state or territory offences for attempts to meet children in person following online grooming.⁷⁴ State and territory legislation falls into three main categories: conduct involving online or other electronic communication; specific conduct such as sharing indecent images or supplying the child with drugs or alcohol (for example state of New South Wales); and broader grooming offences criminalising any conduct that aims to groom a

71 Ministry of Justice, Criminal Law and Sentencing Policy Unit, 'Circular No. 2017/01 – SEXUAL COMMUNICATION WITH A CHILD: IMPLEMENTATION OF SECTION 67 OF THE SERIOUS CRIME ACT 2015' 5 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604931/circular-commencement-s67-serious-crime-act-2015.pdf>.

72 Home Office, 'Guidance on Part 2 of the Sexual Offences Act 2003' (2018) 49 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/755142/11.18guidanceonpart2ofthesexualoffencesact2003.pdf>.

73 Sarah Kingston and Terry Thomas, 'The Sexual Risk Order and the Sexual Harm Prevention Order: The First Two Years' (2018) 65 *Probation Journal* 77.

74 Commonwealth of Australia, 'Criminal Justice Report: Parts III to VI' (Royal Commission into Institutional Responses to Child Sexual Abuse 2017) 78.

child for later sexual activity (for example in the states of Victoria and Queensland).⁷⁵

Victoria's Crimes Act 1958 includes a broad grooming offence, introduced following recommendations from a government inquiry into child abuse by religious and other non-government organisations.⁷⁶ The offence encompasses communication by 'any words or conduct' with a child under the age of 16 with the intention of facilitating their engagement or involvement in a sexual offence with the person or another person who is 18 years of age or over. 'Communication' includes electronic communication. The offence also covers the grooming of a person who has care, supervision, or authority over the child (section 49M), such as a parent, stepparent, teacher, legal guardian, religious leader, employer, youth worker, sporting coach, foster parent or corrections officer (section 37). The extension to persons around the child was included in the legislation due to the inquiry's findings that child sexual abuse often involves multiple secondary victims, typically parents and other family members who allowed and encouraged the perpetrator to develop a relationship with the child, leading to long-term trauma.⁷⁷

Victoria's legislation also includes an offence of 'encouraging' sexual activity of a child under the age of 16 (section 49K), targeting sexualised grooming behaviour. Unlike the grooming offence, this provision does not require a connection to sexual activity, touching or penetration offences with the perpetrator.⁷⁸ A similar offence applies to children aged 16 or 17 who are under care, supervision or authority (section 49L). However, there is no equivalent section 49M grooming offence covering children aged 16 or 17 years of age, which has been highlighted as an issue in a recent report by the Victorian Law Reform Commission on improving the justice system response to sex offences.⁷⁹

75 *ibid.* 77.

76 Parliament of Victoria, Family and Community Development Committee, 'Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and Other Non Government Organisations, Volume 1 of 2' (Victorian Parliament 2013).

77 Parliament of Victoria, Family and Community Development Committee, 'Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and Other Non Government Organisations, Volume 2 of 2' (Victorian Parliament 2013) 470 <https://www.parliament.vic.gov.au/file_uploads/Inquiry_into_Handling_of_Abuse_Volume_2_FINAL_web_y78t3Wpb.pdf>.

78 Commonwealth of Australia, 'Criminal Justice Report' (n 74) 83–85.

79 Victorian Law Reform Commission, 'Improving the Justice System Response to Sexual Offences: Report' (2021) 317 <https://www.lawreform.vic.gov.au/wp-content/uploads/2022/04/VLRC_Improving_Justice_System_Response_to_Sex_Offences_Report_web.pdf>.

5.4.2 Utility of a broader grooming offence

As discussed in the review of scientific and theoretical literature, grooming is not only about behaviours that precede sexual abuse but also includes actions that conceal abuse and prevent detection. However, legislation has tended to focus on the former aspect.⁸⁰ Even with this focus, it remains challenging for legislators to determine the threshold for when a crime has been committed. Initially, legal definitions concentrated on the intent to meet, but they have evolved in many jurisdictions to include communications with the intent to commit a sexual offence.⁸¹ While in-person communication is technically covered by these offences, available information suggests that the focus has been on charging grooming offences in relation to online communications, as they tend to be easier to charge and prosecute due to a record of the communication.⁸² Other specific conduct grooming offences, such as sharing indecent images or the supply of drugs or alcohol, may also be more easily detected and relatively easy to prove.⁸³ In the absence of a contact offence being committed following grooming, other grooming behaviour is more difficult to prosecute, especially where those behaviours may in themselves be harmless, appropriate, and even desired behaviours.⁸⁴

Despite these challenges, the Australian Royal Commission recommended that each state and territory government amend its criminal legislation to adopt a broad grooming offence that captures any communication or conduct with a child undertaken with the intent to groom the child to be involved in a sexual offence. The Royal Commission acknowledged that this broader offence would likely only be prosecuted in narrower circumstances of online grooming, including police uncover operations, but concluded that a broader offence would emphasise the 'wrongfulness of grooming behaviour' and perform an educative function for institutions, their staff, parents, children and the broader community.⁸⁵ Additionally, the Royal Commission saw the potential for this broader offence to provide the criminal law context for institutional codes of conduct, which could prohibit risky conduct that creates the opportunity for abuse.⁸⁶

The Royal Commission also recommended states and territories adopt an offence that covers grooming persons other than the child. While they did not expect frequent charges under this provision, they considered it important

80 Commonwealth of Australia, 'Final Report, Volume 2: Nature and Cause' (n 13) 40.

81 Sections 49K and 49L of Victoria's *Crimes Act* and section 15A of the UK Sexual Offences Act go even further in targeting sexualised grooming behaviour that does not require intent for the sexual activity to occur.

82 Commonwealth of Australia, 'Criminal Justice Report' (n 74) 42.

83 *ibid.*

84 Winters, Kaylor and Jeglic (n 8) 3.

85 Commonwealth of Australia, 'Criminal Justice Report' (n 74) 42-43.

86 *ibid.* 43.

to acknowledge the damage grooming behaviour can cause to those around a child.⁸⁷

Australia's Royal Commission suggests a broader role for the law, going beyond criminalising predatory behaviour. The approach recognises the law's potential to articulate and shape community expectations and societal norms. By adopting a broader grooming offence, the law underscores the wrongfulness of such behaviour and its impact on individuals and communities, sending a clear message to institutions, staff, parents, children, and society at large. It recognises the harm caused by grooming and offers victims and survivors a way to address their trauma and find support on their path to healing.⁸⁸ While this expanded approach may not lead to frequent charges and prosecutions for grooming without electronic communications, it serves a crucial purpose in affirming the gravity of such behaviour and its consequences and the potential for fostering a safer environment for children.

5.4.3 Enhancing the global human rights framework

Human rights instruments and treaty bodies are instrumental in advancing our collective understanding of child sexual abuse and the right of every child to be free from sexual abuse. Though not legally binding, the recommendations of bodies like the CRC Committee hold significant weight and often act as a catalyst for action, influencing political and legal processes in countries.⁸⁹ However, as this analysis has shown, there has been limited discussion of grooming by the treaty body, despite the growing scientific and theoretical literature, state inquiries and high-profile cases. To address this gap, this article proposes five key areas that require updated and elaborated global guidance: the scope of criminal law offences, the right to protection for all children up to the age of 18, addressing grooming in organisational settings, setting standards for staff and volunteers, and ensuring children's right to be heard. Practitioners can leverage these recommendations in their work to advocate for comprehensive laws to address grooming and preventive measures at both local and global levels.

⁸⁷ *ibid.* 43.

⁸⁸ Nicole van Zyl, 'Sexual Grooming of Young Girls: The Promise and Limits of Law' (2017) 31 *Agenda* 44, 52.

⁸⁹ Julia Sloth-Nielsen, 'Monitoring and Implementation of Children's Rights' in Ursula Kilkelly and Ton Liefaard (eds), *International Human Rights of Children* (Springer Nature Singapore Pte Ltd 2019) 14–16.

5.4.3.1 *Scope of criminal law offences*

The CRC Committee's guidance on grooming focuses mainly on the digital environment, except for recent concluding observations for Cambodia. However, the absence of legislative measures to address in-person grooming may hinder effective implementation of articles 19 and 34, specifically the obligation to prevent the 'inducement or coercion' of a child in unlawful sexual activity (article 34(a)).

Comprehensive guidance on using criminal law to address grooming in all contexts is critical. Such guidance should acknowledge the challenges in charging and prosecuting grooming behaviour before a contact offence occurs, particularly without online communications. Nevertheless, having a specific offence that can be charged and prosecuted, even after a contact offence, is vital to recognise the harm to victims and survivors. Additionally, considering offences that include grooming persons other than the child would acknowledge the damage of grooming behaviour to parents and other caregivers. Conducting independent research, continuous monitoring, and evaluation of legislation are vital to building collective understanding other functions of broader grooming offences, such as their potential educative impact on organisations, staff, parents, children, and the broader community.

5.4.3.2 *The right to protection for every child*

The CRC Committee's guidance indicates that legislative measures should, at a minimum, criminalise online grooming as a standalone offence and apply to children up to the age of 18. Addressing the complexities of cases involving children above the age of consent, where they may be groomed to believe they are in a consensual relationship, requires further attention. While the examples of domestic legislation examined above have made progress in tackling grooming, there remains a gap in addressing the grooming of children above the age of sexual consent. Reference to article 18 of the Lanzarote Convention, which protects children in certain relationships, even when they have reached the age of consent and no coercion, force or threat is used, could be beneficial. The CRC Committee has been unambiguous in other contexts that state parties must recognise that persons up to the age of 18 are entitled to 'continuing protection from all forms of exploitation and abuse'⁹⁰ and that respecting the evolving capacities of adolescents 'does not obviate States' obligations to guarantee protection'.⁹¹ The level of legal protection for all children up until the age of 18 will greatly influence how victims and survivors are treated and

90 United Nations Committee on the Rights of the Child, General Comment No. 20 (2016) on the Implementation of the Rights of the Child during Adolescence (n 49) para 40.

91 *ibid.* 19, 20.

their experiences of justice and the justice system. Accordingly, guidance is needed to ensure that children over the age of consent are not left unprotected.

5.4.3.3 *Organisational settings and change*

The CRC Committee has yet to comprehensively address grooming and abuse in organisational contexts and by persons in 'positions of trust'. The Lanzarote Committee's elaboration of offences relating to abuse of a position of trust and child sexual abuse in organisational contexts, as discussed in section 5.3.4, offer helpful guidance in this regard. While the CRC Committee's findings on Chile reiterated state responsibilities in protecting children from sexual abuse by non-state actors, further elaboration on state party and organisational responsibilities could drive positive change across multiple state parties. At a minimum, state parties should be encouraged to ensure adequate oversight, compel organisations to take proactive steps before children are harmed, and ensure appropriate responses to disclosures of abuse by organisations and other duty-bearers. To achieve this effectively, widespread understanding of how perpetrators groom children, families, communities, and organisations is crucial. Alongside existing scientific and theoretical literature on grooming, additional research is needed to understand the similarities and differences in perpetrators' modus operandi in various contexts, including in the 'Global South'. This evidence can inform effective prevention and intervention strategies to combat grooming and protect children.

5.4.3.4 *Standards for staff and volunteers*

Organisations can take proactive steps to protect children from sexual abuse and grooming by implementing intra-organisational policies and codes of conduct. The CRC Committee has emphasised the importance of developing and implementing intra- and inter-agency child protection policies, professional ethics codes, protocols, memoranda of understanding, and standards of care for all childcare services and settings, for all levels of government and civil society institutions.⁹² Legislation can provide the criminal law context for these policies and codes, but explicitly incorporating grooming behaviours as inappropriate or harmful within child protection policies and codes of conduct sets a clear standard for staff and volunteers, reducing the risk of fostering organisational cultures and environments that enable grooming. To ensure a comprehensive approach, staff and volunteers working with children should receive training on child sexual abuse and grooming behaviours. It is essential that staff, volunteers, parents, caregivers, and the wider community are aware of grooming tactics to create organisational conditions supportive

⁹² United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 35) para 42(b).

of children's rights. By equipping all stakeholders with knowledge about grooming and child sexual abuse, organisations can create safer environments for children and deter potential perpetrators.

5.4.3.5 *Children's right to be heard*

Creating cultural conditions to improve children's protection includes recognition of children as having rights and agency. The CRC Committee has emphasised the significance of children's right to be heard, especially in cases of sexual abuse and other forms of violence.⁹³ However, the application of this right in organisational contexts remains relatively unexplored. This could involve supporting children's active participation in decision-making that affects their rights, such as legislative or policy development at national and/or organisational levels as well as providing an organisational environment where children can speak up, be supported, and receive appropriate responses to their concerns. It should also include informing children about their rights and empowering and equipping them with skills necessary to protect and defend those rights, in accordance with their evolving capacities.

The CRC Committee has recommended providing children with 'accurate, accessible and age-appropriate information and empowerment on life skills, self-protection and specific risks'.⁹⁴ However, it should be acknowledged that teaching children about grooming behaviours may be particularly complex. This complexity arises from the nature of grooming, where some tactics appear to be appropriate or even desired behaviours. Additionally, the extreme power imbalance between perpetrators and children, often amplified by the grooming process, further complicates the matter. Dealing with these complexities requires investing in empirically tested curricula and interventions to ensure meaningful empowerment of children as rights-holders.

5.5 CONCLUSION

This article aimed to explore how international human rights law addresses grooming for child sexual abuse and how it can be further used and enhanced to combat this issue effectively. While the scientific and theoretical literature on grooming is still developing, it offers crucial evidence for legislators, policymakers, and practitioners seeking to improve responses to child sexual

93 United Nations Committee on the Rights of the Child, General Comment No. 12 (2009) The Right of the Child to Be Heard, UN Doc CRC/C/GC/12 (2009) paras 118–121; United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 35) para 63.

94 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 35) para 44.

abuse. To improve legislative and policy measures, additional research is necessary to deepen our understanding of grooming, particularly in the 'Global South'.

The findings of this article highlight that current global human rights guidance on sexual grooming is predominantly focused on the digital environment and overlooks the broader impact of grooming on individuals and environments beyond the child. At a national level, such narrow perspectives on grooming could influence legislative decisions, policy formulations, and resource allocation, potentially leading to missed opportunities in preventing child sexual abuse and inadequate responses when abuse is disclosed or discovered.

Drawing on this broader understanding, practitioners can advocate for more comprehensive approaches at both local and global levels to catalyse change within organisations and create conditions supportive of children's rights. The human rights system offers additional avenues for advocates to drive change, fostering greater state and organisational accountability and ensuring the right of every child to be free from sexual abuse.

6 Global norms, organisational action

Leveraging international children's rights law for advancing child safeguarding¹

6.1 INTRODUCTION

Tragically, the abuse of children within organisational contexts continues to persist across time and geographies. Various institutions established for children's care and protection, such as orphanages, foster care systems, and reformatory schools, have repeatedly been exposed as epicentres of abuse.² Recent public inquiries in high-income countries like New Zealand,³ Australia,⁴ England and Wales,⁵ and the Netherlands,⁶ alongside high-profile public scandals involving organisations like USA Gymnastics⁷ and Boy Scouts of America,⁸ highlight the pervasive nature of child abuse in different organisational settings. Child abuse within the Catholic Church across many

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- 1 Authored by Afrooz Kaviani Johnson and submitted to the *Leiden Journal of International Law*, 2024.
 - 2 K Wright and A Henry, "Historical Institutional Child Abuse: Activist Mobilisation and Public Inquiries," *Sociology Compass* 13, no. 12 (2019): 2; K Daly, "Conceptualising Responses to Institutional Abuse of Children," *Current Issues in Criminal Justice* 26, no. 1 (July 2014): 5–29.
 - 3 Abuse in Care Royal Commission of Inquiry, 'Whanaketia – Through Pain and Trauma, from Darkness to Light: The Final Report on the Abuse and Neglect of Children, Young People and Adults in the Care of the State and Faith-Based in Institutions in Aotearoa New Zealand between 1950 and 1999' (Crown New Zealand, 2024), <https://www.abuseincare.org.nz/>.
 - 4 Royal Commission into Institutional Responses to Child Sexual Abuse, 'Final report' (Commonwealth of Australia, 2017), <https://www.childabuseroyalcommission.gov.au/>.
 - 5 Independent Inquiry into Child Sexual Abuse, 'The Report of the Independent Inquiry into Child Sexual Abuse' (UK Government, 2022), <https://www.iicsa.org.uk/index.html>.
 - 6 Commissie Onderzoek naar Geweld in de Jeugdzorg, 'Onvoldoende beschermd – Geweld in de Nederlandse jeugdzorg van 1945 tot heden' (Rijksoverheid, 2019) <https://www.rijks-overheid.nl/documenten/rapporten/2019/06/12/onvoldoende-beschermd-geweld-in-de-nederlandse-jeugdzorg-van-1945-tot-heden>.
 - 7 H Udowitch, 'The Larry Nassar Nightmare: Athletic Organizational Failures to Address Sexual Assault and a Call for Corrective Action'. 16 *DePaul Journal of Sports Law* (2020): 93.
 - 8 MB Mackinem and D Laufersweiler-Dwyer, 'A Deeper Look at the Boy Scouts of America "Perversion" Files: Structural Factors Related to Access and Abuse' (2024) 39 *Journal of Interpersonal Violence* 3352.

countries,⁹ as well as abuse and exploitation in humanitarian settings,¹⁰ reveal the global challenge of protecting children from violence within environments intended to provide care.

Across the spectrum of cases, despite their unique contexts and circumstances, a pattern of systemic failures becomes apparent. Rather than being a case of a 'few bad apples', it is increasingly understood that individual behaviours emerge from a 'bad barrel' of organisational cultures and structures that enable – or at least, do not take steps to prevent – child abuse.¹¹ Frequently, organisations fail to establish or adhere to essential policies and procedures outlining their commitment to child safety, how they will create safe environments, and how they will address safety concerns, including reporting suspected abuse.¹² The prevailing culture and environment of organisations, including strong hierarchical power structures linked with the status of children in their care and also among personnel, can inadvertently enable child

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- 9 For example: John Jay College of Criminal Justice, 'The Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States, 1950-2002' (United States Conference of Catholic Bishops 2004); B Böhm *et al.*, 'Child Sexual Abuse in the Context of the Roman Catholic Church: A Review of Literature from 1981–2013' (2014) 23 *Journal of Child Sexual Abuse* 635; KJ Terry, 'Child Sexual Abuse within the Catholic Church: A Review of Global Perspectives' (2015) 39 *International Journal of Comparative and Applied Criminal Justice* 139; Independent Inquiry into Child Sexual Abuse, IICSA Research Team, 'Child Sexual Abuse within the Catholic and Anglican Churches: A Rapid Evidence Assessment' (Independent Inquiry into Child Sexual Abuse 2017); Royal Commission into Institutional Responses to Child Sexual Abuse, 'Analysis of Claims of Child Sexual Abuse Made with Respect to Catholic Church Institutions in Australia' (Commonwealth of Australia 2017).
- 10 For example: International Development Committee, 'Sexual Exploitation and Abuse in the Aid Sector: Final Report (House of Commons, 2018), <https://committees.parliament.uk/work/3401/sexual-exploitation-and-abuse-in-the-aid-sector-inquiry/>.
- 11 J Death, 'Bad Apples, Bad Barrel: Exploring Institutional Responses to Child Sexual Abuse by Catholic Clergy in Australia,' *International Journal for Crime, Justice and Social Democracy* 4, no. 2 (June 24, 2015): 94–110; J Lovett, M Coy, and L Kelly, 'Deflection, Denial and Disbelief: Social and Political Discourses about Child Sexual Abuse and Their Influence on Institutional Responses, A Rapid Evidence Assessment' (Independent Inquiry into Child Sexual Abuse, February 2018); P Crofts, 'Criminalising Institutional Failures to Prevent, Identify or React to Child Sexual Abuse,' *International Journal for Crime, Justice and Social Democracy* 6, no. 3 (August 28, 2017): 400.
- 12 This – and the following themes – come out in successive inquiries and cases relating to child abuse in institutional settings. For example: Royal Commission into Institutional Responses to Child Sexual Abuse, 'Final Report, Volume 6: Making Institutions Safe' (Commonwealth of Australia 2017) 206-211 (observing that many institutions failed to protect children because their policies and procedures did not exist, were inadequate or were not implemented effectively); Independent Inquiry into Child Sexual Abuse, 'The Report of the Independent Inquiry into Child Sexual Abuse' (2022) 200 (finding that many institutions had incomplete or out of date policies).

abuse.¹³ Safe avenues for children to report abuse are often non-existent or children are not aware of them.¹⁴ Too often, when cases of abuse come to light, organisational responses are inadequate: ranging from disbelief and victim-blaming to prioritising the reputation of the organisation or individuals above children's best interests.¹⁵ In this landscape, the concept and practice of 'child safeguarding' has emerged as an approach to address these systemic failures.

Child safeguarding focuses on the responsibilities of organisations to proactively identify and mitigate risks to children stemming from their operations, programmes, and personnel, to respond appropriately to concerns, and to report suspected abuse to relevant authorities. The term 'child safeguarding'

13 For example: Royal Commission into Institutional Responses to Child Sexual Abuse, 'Final Report, Volume 2: Nature and Cause' (Commonwealth of Australia 2017) 150-153, 159-168 (finding that institutional culture plays a significant role in explaining how organisations enable child abuse and why so many fail to respond appropriately and that strict hierarchical lines in some organisations make it difficult for personnel to challenge practices and make complaints). See also: D Palmer and V Feldman, 'Toward a More Comprehensive Analysis of the Role of Organizational Culture in Child Sexual Abuse in Institutional Contexts' (2017) 74 *Child Abuse & Neglect* 23; Böhm *et al.*, *supra* note 9 at 650; Vijfeijken TB, "'Culture Is What You See When Compliance Is Not in the Room": Organizational Culture as an Explanatory Factor in Analyzing Recent INGO Scandals' (2019) 10 *Nonprofit Policy Forum*; SK Wurtele, 'Preventing the Sexual Exploitation of Minors in Youth-Serving Organizations' (2012) 34 *Children and Youth Services Review* 2442; J Zammit *et al.*, 'Child Sexual Abuse in Contemporary Institutional Contexts: An Analysis of Disclosure and Barring Service Discretionary Case Files' (Independent Inquiry Child Sexual Abuse 2021).

14 For example: Royal Commission into Institutional Responses to Child Sexual Abuse, 'Final Report, Volume 4: Identifying and Disclosing Child Sexual Abuse' (Commonwealth of Australia 2017) 142-143 (observing a lack of clear or supportive pathways within many institutions for victims to disclose or make a complaint); Abuse in Care Royal Commission of Inquiry, 'Whanaketia – Through Pain and Trauma, from Darkness to Light: The Final Report on the Abuse and Neglect of Children, Young People and Adults in the Care of the State and Faith-Based in Institutions in Aotearoa New Zealand between 1950 and 1999, Part 7 – Factors' (Crown New Zealand 2024) 129-135 (finding complaints processes for children, young people and adults in State and faith-based care were absent or easily undermined).

15 For example: Royal Commission into Institutional Responses to Child Sexual Abuse, 'Final Report, Volume 2: Nature and Cause', *supra* note 13 (finding many instances where an institution's leadership prioritised the reputation of the institution over children); Independent Inquiry into Child Sexual Abuse, *supra* note 12 at 62-66, 217 (describing a range of inadequate institutional responses to children's attempts to tell someone about their abuse, and identifying a desire to protect an individual or institution from reputational damage as a prominent reason why individuals and organisations failed to report abuse to statutory authorities); Udowitch, *supra* note 7 (analysing claims that many of the girls and young women raised concerns about Nassar's actions and were either disregarded or dismissed by the organisations in power); M Baker, "'Staggering" Legal Fees in Boy Scouts Bankruptcy Case' *The New York Times* (11 May 2021) <https://www.nytimes.com/2021/05/11/us/boy-scouts-bankruptcy-legal-fees.html> (reporting that the organisation kept allegations of sexual abuse committed by scout leaders dating back several decades hidden from the public).

originates from the UK¹⁶ and appears to have entered international discourse after the 2002 ‘sex-for-food’ scandal in West Africa, when a report from the UN High Commissioner for Refugees and Save the Children implicated humanitarian workers in the sexual exploitation of refugee children.¹⁷ The 2002 scandal led several UK-based non-governmental organisations (NGOs) to form the ‘Keeping Children Safe’ coalition and establish ‘Child Safeguarding Standards’.¹⁸ The coalition used the term ‘child safeguarding’ to describe an organisation’s duty to ensure that its staff, operations, and programmes ‘do no harm’ to children. Since then, there have been various efforts within the humanitarian community to protect children from harm linked with humanitarian programmes and personnel. For instance, the humanitarian sector has included responsibilities to safeguard children in its self-regulatory standards in line with the humanitarian imperative to ‘do no harm’.¹⁹ Some bilateral

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- 16 ‘Child safeguarding’ emerged in the 1990s in response to changes to UK child welfare policy and practice. It reflected a more comprehensive approach to child welfare aimed at ensuring children’s overall safety and well-being, in contrast to the narrower term ‘child protection’ focused on identifying and intervening in situations in which children were suffering, or likely to suffer, significant harm. See further: N Parton, ‘Child Protection and Safeguarding in England: Changing and Competing Conceptions of Risk and Their Implications for Social Work’ (2011) 41 *British Journal of Social Work* 854; H Owen, ‘From Protection to Safeguarding: Bringing You up to Date on Statutory Responsibilities’ in L Hughes and H Owen, *Good practice in safeguarding children: Working effectively in child protection* (Jessica Kingsley Publishers 2009). This UK statutory definition differs from how the term is commonly used in the international development sector.
- 17 United Nations High Commissioner for Refugees and Save the Children UK, ‘Sexual Violence and Exploitation: The Experience of Refugee Children in Liberia, Guinea and Sierra Leone’ (2002) <https://www.parliament.uk/documents/commons-committees/international-development/2002-Report-of-sexual-exploitation-and-abuse-Save%20the%20Children.pdf>. Among other things, the report documented a lack of adequate control of people working for international and local humanitarian agencies, as well as an absence of regulation, monitoring, and retribution for personnel who abuse their power and organisational resources to exploit children (p 11).
- 18 Keeping Children Safe, ‘Child Safeguarding Standards and How to Implement Them,’ 2014, www.keepingchildrensafe.global/wp-content/uploads/2020/02/KCS-CS-Standards-ENG-200218.pdf. Keeping Children Safe has evolved into an independent NGO, which also provides consultancy services to organisations to improve child safeguarding internationally. For a critical perspective on the application of these standards in different settings in Africa, see: K Walker-Simpson, ‘The Practical Sense of Protection: A Discussion Paper on the Reporting of Child Abuse in Africa and Whether International Standards Actually Help Keep Children Safe: The Practical Sense of Protection’ (2017) 26 *Child Abuse Review* 252.
- 19 See further: A Kaviani Johnson and J Sloth-Nielsen, ‘Safeguarding Children in the Developing World – Beyond Intra-Organisational Policy and Self-Regulation,’ *Soc. Sci.* 9, no. 6 (2020): 19.

donors have introduced child safeguarding requirements for their grantees in the context of international development assistance.²⁰

The term ‘child safeguarding’ has also gained prominence in other sectors. For example, in sports, high-profile cases of child sexual abuse in the 1990s prompted organisations, initially in the UK, Canada and Australia, to develop child safeguarding measures.²¹ In the United States, while the term is less common, efforts to prevent child abuse within ‘youth-serving organisations’ are well-established.²² Australia has adopted the concept of ‘child safe organisations’, propelled by a growing public consciousness about the risks to children in institutional care.²³ Internationally, the Pontifical Commission for the Protection of Minors, established in 2013 as an advisory body to the Pope, is developing universal child safeguarding guidelines for the Church.²⁴ The African Committee of Experts on the Rights and Welfare of the Child has expressly advised state parties to ensure that organisations working with children adopt ‘child safeguarding’ policies.²⁵ The UN Committee on the Rights of the Child (CRC Committee) has started referencing the term ‘safeguarding’ in the context of preventing violence against children in organisational settings in its recommendations since 2021.²⁶

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- 20 For example: Australian Government, Department of Foreign Affairs and Trade (DFAT), ‘DFAT Child Protection Policy’, <https://www.dfat.gov.au/sites/default/files/child-protection-policy.pdf>; United States Agency for International Development, ‘USAID’s Guidance on Child Safeguarding for Implementing Partners’ (11 July 2023), <https://www.usaid.gov/safeguarding-and-compliance/partners/child-safeguarding/FAQs>; Foreign, Commonwealth & Development Office, ‘Child Safeguarding Due Diligence: For External Partners’ (GOV.UK, 7 November 2022) <https://www.gov.uk/government/publications/dfid-enhanced-due-diligence-safeguarding-for-external-partners/child-safeguarding-due-diligence-for-external-partners>.
- 21 G Kerr, A Stirling, and E MacPherson, ‘A Critical Examination of Child Protection Initiatives in Sport Contexts’ (2014) 3 Social Sciences 742; CH Brackenridge and D Rhind, ‘Child Protection in Sport: Reflections on Thirty Years of Science and Activism’ (2014) 3 Social Sciences 326. Like the humanitarian sector, sport was historically ‘autonomous, unregulated, self-policing and dominated by a large unscrutinised workforce’: Kerr, Stirling, and MacPherson, 744.
- 22 J Saul and NC Audage, ‘Preventing Child Sexual Abuse Within Youth-Serving Organizations: Getting Started on Policies and Procedures’ (Atlanta, Georgia: Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 2007).
- 23 Commonwealth of Australia, ‘Final Report, Volume 6: Making Institutions Safe’, *supra* note 12 at 135.
- 24 Tutelaminorum, Pontifical Commission for the Protection of Minors, Universal Guidelines Framework, <<https://www.tutelaminorum.org/universal-guidelines-framework/>>.
- 25 African Committee of Experts on the Rights and Welfare of the Child, General Comment No 5 on ‘State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection,’ 2018, 47.
- 26 For example: United Nations Committee on the Rights of the Child, Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Poland, CRC/C/POL/CO/5-6 (2021) para. 25 (urging Poland to legally mandate care and educational facilities to establish internal safeguarding standards); Concluding Observations on the Combined Second to Fourth Periodic Reports of Kiribati, UN Doc CRC/C/KIR/CO/2-4 (2022) para. 51 (recom-

Although ‘child safeguarding’ and ‘child protection’ are sometimes used interchangeably, this article conceptualises ‘child safeguarding’ as a distinct *subset* within ‘child protection’. The term ‘child protection’ has become very broad in international discourse, encompassing a wide range of activities aimed at preventing and responding to violence, exploitation, abuse, and neglect. This broad usage has been influenced by Article 19 of the UN Convention on the Rights of the Child²⁷ (CRC) and the CRC Committee’s interpretative guidance that a ‘holistic child protection system’ integrates a spectrum of integrated measures that span prevention, identification, reporting, referral, investigation, treatment, and follow-up of instances of child maltreatment.²⁸ Operationalising such a system requires enhancing laws, policies, and systems that address risks to children in all settings, as well as paying attention to family and community dynamics that impact individual children.²⁹ Thus, the term ‘child protection’ has come to include the broad scope of actions to improve laws, policies, and mechanisms in support of a ‘holistic child protection system’.³⁰

mending Kiribati proceed with adopting and implementing various child protection policies and protocols within schools including child safeguarding).

27 United Nations Convention on the Rights of the Child, adopted 20 November 1989, entered into force 2 September 1990, 1577 UNTS 3.

28 United Nations Committee on the Rights of the Child, General comment No. 13 (2011), The right of the child to freedom from all forms of violence, UN Doc CRC/C/GC/13 (April 18, 2011) para. 45. See: T Spratt *et al.*, ‘Child Protection in Europe: Development of an International Cross-Comparison Model to Inform National Policies and Practices’ (2015) 45 *British Journal of Social Work* 1508, 1513 (discussing the influential role of the CRC in shaping countries child protection legislation and systems).

29 United Nations Children’s Fund, ‘Child Protection Systems Strengthening’ (UNICEF 2021) 9. Within the global development context, the scope of actions under ‘child protection’ has expanded even further through initiatives supported by international NGOs and UNICEF, the UN specialised agency for children: Karin Landgren, ‘Protection: The United Nations Children’s Fund Experience’ in Michael O’Flaherty (ed), *The Human Rights Field Operation: Law, Theory and Practice* (2007) 184. ‘Child protection’ now encompasses a diverse range of activities, including improving birth registration systems, developing alternative care frameworks, and implementing measures to support children in conflict with the law. This broad approach is justified by the links between child maltreatment and the increased vulnerability of certain groups of children – children not registered at birth, living in alternative care, in actual or perceived conflict with the law who are at greater risk of violence: Landgren, 184; United Nations Committee on the Rights of the Child, General Comment No. 13, *supra* note 27, para 72(g).

30 It is important to recognise that child protection systems are context-specific, with varying approaches implemented across different countries. See for example: P Welbourne and J Dixon, ‘Child Protection and Welfare: Cultures, Policies, and Practices’ (2016) 19 *European Journal of Social Work* 827 (emphasising that national child protection and welfare services are shaped by culturally and religiously informed values about child-rearing, resulting in significant cross-country differences); J Hearn *et al.*, ‘What Is Child Protection? Historical and Methodological Issues in Comparative Research on Lastensuojelu/Child Protection’ (2004) 13 *International Journal of Social Welfare* 28 (highlighting how fundamental concepts like ‘child protection’ and ‘child protection case’ are deeply influenced by historical, social,

This article suggests 'child safeguarding' can be distinguished from 'child protection' in three main ways. First, it focuses on organisational settings, including state and non-state entities working with children. Second, child safeguarding takes a proactive, preventative approach, in contrast to the traditionally reactive nature of child protection. This approach calls for organisations to anticipate potential risks to children and to implement measures to mitigate these risks before harm occurs. Third, child safeguarding emphasises a clear accountability framework. Organisations must establish clear reporting channels and procedures for handling concerns about a child's safety. The semantic distinction between 'child safeguarding' and 'child protection' may seem minor in some contexts, but it is crucial for clarifying the specific responsibilities to protect children from harm in organisational settings, as distinct from the broader child protection systems that states are obligated to establish.

Child safeguarding is relevant to both state and non-state entities. However, the article largely focuses on non-state entities and specifically NGOs given the plethora of NGOs providing services for children and their 'under-regulated' status in international human rights law.³¹ The article seeks to fill

cultural and linguistic issues); W Myers and M Bourdillon, 'Concluding Reflections: How Might We Really Protect Children?' (2012) 22 *Development in Practice* 613 (advocating for a greater focus on community and social relationships as central to child protection, rather than relying solely on legal and normative frameworks).

- 31 D Carolei, 'An International Ombudsman to Make Non-Governmental Organizations More Accountable? Too Good to Be True ...' (2022) *Leiden Journal of International Law* 35, no. 4, at 872. The present article excludes UN agencies and peacekeeping missions from scope given UN agencies and peacekeeping missions operate under distinct regulatory frameworks and there is scholarly attention already dedicated to these actors. See, for example: J Anania, 'Transitional Justice and the Ongoing Exclusion of Sexual Exploitation and Abuse by International Intervenors' (2022) 98 *International Affairs* 893; S Blakemore, R Freedman and N Lemay-Hébert, 'Child Safeguarding in a Peacekeeping Context: Lessons from Liberia' (2019) 29 *Development in Practice* 735; S Blakemore, R Freedman and N Lemay-Hébert, 'Safeguarding Children from Sexual Exploitation and Abuse in Peace Operations: Lessons for the Future' in Alexander Gilder and others (eds), *Multidisciplinary Futures of UN Peace Operations* (Springer International Publishing 2023); LG Blaut, 'Victimizing Those They Were Sent to Protect: Enhancing Accountability for Children Born of Sexual Abuse and Exploitation by UN Peacekeepers' 44 *Syracuse Journal of International Law and Commerce* 121; K Grady, 'Sex, Statistics, Peacekeepers and Power: UN Data on Sexual Exploitation and Abuse and the Quest for Legal Reform' (2016) 79 *Modern Law Review* 931; AJ Miller, 'Legal Aspects of Stopping Sexual Exploitation and Abuse in U.N. Peacekeeping Operations' (2006) 39 *Cornell International Law Journal* 71; C Morris, 'Peacekeeping and the Sexual Exploitation of Women and Girls in Post-Conflict Societies: A Serious Enigma to Establishing the Rule of Law' (2010) 14 *Journal of International Peacekeeping* 184; G Simm, 'International Law as a Regulatory Framework for Sexual Crimes Committed by Peacekeepers' (2011) 16 *Journal of Conflict and Security Law* 473; J Van Leeuwen, 'Addressing the Gap: Accountability Mechanisms for Peacekeepers Accused of Sexual Exploitation and Abuse' (2019) 50 *Victoria University of Wellington Law Review* 135; J-K Westendorf and L Searle, 'Sexual Exploitation and Abuse in Peace Operations: Trends, Policy Responses and Future Directions' (2017) 93 *International Affairs* 365.

a gap in the literature and provide a unique analysis aimed at promoting an approach to child safeguarding grounded in international children's rights law. While the abuse of children in organisational settings has been extensively studied across various disciplines including history, sociology, social work, criminology, and public health,³² the concept and practice of 'child safeguarding' have received comparatively minimal academic attention, especially from an international human rights law perspective. Accordingly, the aim of this article is two-fold: first, to introduce the practice of child safeguarding into the domain of international legal scholarship; and second, to examine if and how international children's rights law can clarify the respective child safeguarding responsibilities of states vis-à-vis NGOs. This prompts the question of how international human rights law applies to non-state actors like NGOs – a subject that has seen extensive discussion and varying viewpoints among legal scholars.³³ This article does not attempt to recapitulate this expansive

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- 32 For example: A Bingham and others, 'Historical Child Sexual Abuse in England and Wales: The Role of Historians' (2016) 45 *History of Education* 411; B Conway, 'Religious Institutions and Sexual Scandals: A Comparative Study of Catholicism in Ireland, South Africa, and the United States' (2014) 55 *International Journal of Comparative Sociology* 318; Daly, *supra* note 2; Death, *supra* note 11; E Gil and K Baxter, 'Abuse of Children in Institutions' (1979) 3 *Child Abuse & Neglect* 693; K Gleeson, 'Responsibility and Redress: Theorising Gender Justice in the Context of Catholic Clerical Child Sexual Abuse in Ireland and Australia' (2016) 39 *University of New South Wales Law Journal* 779; N Martschuk *et al.*, 'Similarities in Modi Operandi of Institutional and Non-Institutional Child Sexual Offending: Systematic Case Comparisons' (2018) 84 *Child Abuse & Neglect* 229; CP Smith and JJ Freyd, 'Institutional Betrayal' (2014) 69 *American Psychologist* 575; D Palmer and V Feldman, *Comprehending the Incomprehensible: Organization Theory and Child Sexual Abuse in Organizations* (Cambridge University Press, 2018); S Raine and SA Kent, 'The Grooming of Children for Sexual Abuse in Religious Settings: Unique Characteristics and Select Case Studies' (2019) 48 *Aggression and Violent Behavior* 180; K Wright, S Swain and J Sköld, *The Age of Inquiry: A Global Mapping of Institutional Abuse Inquiries*. (La Trobe University 2020); K Wright and A Henry, 'Historical Institutional Child Abuse: Activist Mobilisation and Public Inquiries' (2019) 13 *Sociology Compass* e12754. Published literature is dominated with evidence from the 'global north' however there is growing literature examining the abuse of children in educational and religious settings as well as in institutional care in parts of Africa, Asia, and Latin America. For example: MCL Bingemer, 'Concerning Victims, Sexuality, and Power: A Reflection on Sexual Abuse from Latin America' (2019) 80 *Theological Studies* 916; S Lyneham S and L Facchini, 'Benevolent Harm: Orphanages, Voluntourism and Child Sexual Exploitation in South-East Asia' [2019] *Trends & issues in crime and criminal justice* 16; P Braitstein, S Ayaya, D Ayuku, A DeLong, and L Atwoli (2017) 'Child Abuse and Neglect in Charitable Children's Institutions in Uasin Gishu County, Kenya: A Challenge of Context' in AV Rus, SR Parris & E Stativa (eds) *Child Maltreatment in Residential Care: History, Research, and Current Practice*, Springer International Publishing AG; A Shumba, 'Reasons and Justifications Used by Child Abuse Perpetrators in Zimbabwean Schools' (2009) 19 *Journal of Psychology in Africa* 19.
- 33 For instance: P Alston (ed), *Non-State Actors and Human Rights* (Oxford University Press 2005), 37-90; A Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press 2006); JH Knox, 'Horizontal Human Rights Law' (2008) 102 *The American Journal of International Law* 1; J Fraser, *Social Institutions and International Human Rights Law Implementation: Every Organ of Society* (Cambridge University Press 2020); M Monnheimer, 'Why to Analyze State Responsibility for Human Rights Violations: The Flawed Debate on Direct

literature but rather to offer a new perspective by focusing on the CRC and the work of its treaty body, the CRC Committee. Reference is also made to the African Charter on the Rights and Welfare of the Child³⁴ (ACRWC) as the only other comprehensive instrument dedicated to children's rights³⁵ and the work of its treaty body, the African Committee of Experts on the Rights and Welfare of the Child (ACRWC Committee).

This article comprises four main sections. Following this introduction, Section 6.2 presents a normative foundation for child safeguarding based on international children's rights law. Section 6.3 analyses the state's responsibility vis-à-vis non-state actors in international human rights law, discussing whether the state can be held accountable for violations by non-state entities. It also examines the content and scope of state obligations to protect children in organisational settings, drawing on guidance from the CRC Committee, other treaty bodies, as well as illustrative cases from other legal systems to start to build a common set of minimum standards across all organisational settings. Section 6.4 analyses the CRC Committee's guidance on non-state actors' responsibilities within the context of the ongoing debate about whether NGOs have direct legal obligations under international human rights law. It suggests opportunities to enhance accountability for child safeguarding through existing human rights and children's rights law mechanisms. Section 6.5 offers concluding remarks.

6.2 ALIGNING CHILD SAFEGUARDING WITH INTERNATIONAL CHILDREN'S RIGHTS LAW

Child safeguarding fundamentally aligns with children's rights to respect for their human dignity, physical and psychological integrity, and equal protection

Human Rights Obligations for Non-State Actors', *Due Diligence Obligations in International Human Rights Law* (Cambridge University Press 2021); M Nowak and K M Januszewski, 'Non-State Actors and Human Rights,' in *Non-State Actors in International Law*, ed. M Noortmann, A Reinisch, and C Ryngaert (Hart Publishing, 2015), 113-143; C Ryngaert, 'Non-State Actors: Carving out a Space in a State-Centred International Legal System' (2016) 63 *Netherlands International Law Review* 183; J Summers and A Gough (eds), *Non-State Actors and International Obligations: Creation, Evolution and Enforcement* (Brill Nijhoff 2018); W Vandenhoe, 'Beyond Territoriality: Symposium on Jurisdictional "Hooks" for (Extraterritorial) Human Rights Obligations – Back to the Drawing Board: Debordering Human Rights Law' (*Opinio Juris*, 3 May 2024) <https://opiniojuris.org/2024/05/03/beyond-territoriality-symposium-on-jurisdictional-hooks-for-extraterritorial-human-rights-obligations-back-to-the-drawing-board-debordering-human-rights-law/>.

34 The African Charter on the Rights and Welfare of the Child, adopted 11 July 1990, entered into force 29 November 1999, OAU Doc CAB/LEG/24.9/49.

35 A Skelton, 'International Children's Rights Law: Complaints and Remedies' in U Kilkelly and T Liefaard (eds), *International human rights of children* (Springer Nature Singapore Pte Ltd 2019) 89.

under the law. These rights have been recognised in several international human rights law instruments, including the Declarations of the Rights of the Child in 1924 and 1959,³⁶ the International Covenants,³⁷ and the Universal Declaration of Human Rights.³⁸ These rights have also been recognised in regional human rights instruments including the American Convention on Human Rights³⁹ and the African Charter on Human and People's Rights.⁴⁰ The CRC reinforces these rights and marks a 'paradigm shift' in seeing children as rights-bearing individuals.⁴¹ The ACRWC is the only other comprehensive instrument dedicated to children's rights.

While the text of the CRC does not expressly use the term 'safeguarding', several of its provisions are relevant. These provisions address the wide range of risks children may face through organisational operations, programmes, and personnel. They include the protection from all forms of violence (Article 19), the prohibition against torture or other cruel, inhuman or degrading treatment or punishment (Article 37(a)), the right to respect privacy which extends to the protection of a child's bodily integrity (Article 16), the right to survival and development (Article 6), the right that school discipline is administered consistently with a child's dignity (Article 28(2)) and rights that

36 League of Nations, Geneva Declaration of the Rights of the Child (adopted 26 September 1924) ('the child ... must be protected against every form of exploitation'); UNGA, 'Declaration of the Rights of the Child (adopted 20 November 1959 (UNGA Res 1386(XIV) principle 9 ('The child shall be protected against all forms of neglect, cruelty and exploitation').

37 See International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Art. 24(1) ('Every child shall have ... the right to such measures of protection as are required by his status as a minor'); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, Art. 10(3) ('Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation') and Art. 12 (on the 'right of everyone to the enjoyment of the highest attainable standard of physical and mental health' and the 'steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for ... the healthy development of the child').

38 Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A(III), Art. 25 ('...childhood are entitled to special care and assistance.').

39 American Convention on Human Rights (adopted 21 November 1969, entered into force 18 July 1978) 1144 UNTS 123 Art. 19 ('Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state').

40 African Charter on Human and People's Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217 Art. 18(3) ('The State shall... ensure the protection of the rights of ... the child as stipulated in international declarations and conventions'). The European Convention on Human Rights does not contain specific protections for children. 'Minors' or 'juveniles' appear only twice in the main body of the text.

41 United Nations Committee on the Rights of the Child, General comment No. 13, *supra* note 28 at para. 3(b).

protect children against economic exploitation (Article 32), sexual exploitation and abuse (Article 34), and other forms of exploitation (Article 36).⁴²

Particular attention should be given to Article 19 of the CRC, which the CRC Committee views as the 'core provision' guiding discussions and strategies to address and eliminate all forms of violence in the context of the CRC.⁴³ Article 19 states that:

- '1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.'

The CRC Committee has made significant interpretations of Article 19 that are relevant to child safeguarding. While respecting children's evolving capacities, the CRC Committee emphasises that all individuals under 18 should always be 'in the care of' someone – whether primary or proxy caregivers, or under the de facto care of the state.⁴⁴ The CRC Committee further states that 'parent(s), legal guardian(s) or any other person who has the care of the child' covers those with 'clear, recognized legal, professional-ethical and/or cultural responsibility' for the child.⁴⁵ As well as parents, foster and adoptive parents, and guardians under various legal systems, such as *kafalah* of Islamic law,⁴⁶ the CRC Committee includes extended family, community members, educational staff, early childhood personnel, child caregivers employed by parents, recreational and sports coaches, youth group leaders, those overseeing work environments, and institutional staff (both governmental and non-governmental) in caregiving roles across healthcare, juvenile justice, and residential

42 Many of the substantive articles of the ACRWC cover similar risks to children's physical and psychological integrity, with Art. 16 (protection of the child against abuse and torture) as the most pertinent. See further: A Kaviani Johnson and J Sloth-Nielsen, 'Child Protection, Safeguarding and the Role of the African Charter on the Rights and Welfare of the Child: Looking Back and Looking Ahead' (2020) 20 *African Human Rights Law Journal* at 648.

43 United Nations Committee on the Rights of the Child, General comment No. 13, *supra* note 28 at para. 7(a).

44 *ibid.*, para. 33.

45 *ibid.*, para. 33.

46 On the concept of *kafalah*, how it is practiced, and its legal implications, see further: UM Assim and J Sloth-Nielsen, 'Islamic *kafalah* as an Alternative Care Option for Children Deprived of a Family Environment' (2014) 14 *African Human Rights Law Journal* 322.

care settings within this definition.⁴⁷ The CRC Committee identifies the state as the de facto caregiver for children without primary or proxy caregivers, including child-headed households, children in street situations, children of migrating parents, or unaccompanied children.⁴⁸

Moreover, the CRC Committee's interpretation makes Article 19 applicable in all settings. It defines 'care settings' as places where children spend time under the supervision of their 'permanent' primary caregiver, like a parent or guardian, or a 'temporary' proxy caregiver, such as a teacher or youth group leader, covering short-term, long-term, one-time, or recurring periods.⁴⁹ Three types of care settings are identified: conventional environments like family homes, schools, early childhood care, after-school programmes, and places for leisure, sports, cultural and recreational activities, and religious worship; medical, rehabilitative and care facilities, alongside workplace and justice-related settings; and neighbourhoods, communities and camps or settlements for refugees and people displaced by conflict or natural disasters.⁵⁰ The CRC Committee expressly states that Article 19 covers the perpetration of violence against children by professionals and state actors who have misused their power over children within settings such as schools, residential homes, police stations, and justice institutions.⁵¹

This broad interpretation of Article 19(1) arguably renders the phrase 'in the care of ...' unnecessary and blurs the distinction between this article and other CRC provisions addressing children's right to physical and psychological integrity. The legislative history of the CRC indicates that Article 19 originated from an initial Polish draft with a wide scope, stating that 'The child shall be protected against all forms of neglect, cruelty, and exploitation....'⁵² However, subsequent proposals after the first reading narrowed its scope specifically to abuse and neglect by the child's parent, legal guardian, or other person responsible for the child's care. Furthermore, the legislative history indicates that the NGO Ad Hoc Group referred to this provision as the 'Article dealing with intra-familial child maltreatment,' suggesting it may have been intended to be limited in scope to family settings.⁵³ The legislative history provides

47 United Nations Committee on the Rights of the Child, General comment No. 13, *supra* note 28 at para. 33.

48 *ibid.*, paras. 33, 35.

49 *ibid.*, para. 34.

50 *ibid.*, para. 34.

51 *ibid.*, para. 36.

52 Office of the United Nations High Commissioner for Human Rights, Legislative History of the Convention on the Rights of the Child, Volume II (United Nations 2007), 512.

53 *ibid.*, pp. 514-516.

no further elaboration, and existing scholarship endorses, rather than critiques, the CRC Committee's broad interpretation.⁵⁴

At its widest, therefore, Article 19 reflects a contemporary understanding of the wide range of settings in which children are vulnerable to abuse and the necessity to protect all children from harm. This interpretation makes Article 19 applicable in all settings including familial, organisational, and community settings. At its narrowest, however, it applies only in family and residential settings providing alternative care.⁵⁵

The CRC contains other provisions highly relevant to child safeguarding that extend beyond the direct context of violence. These include Article 3 (best interests), Article 3(3) (standard setting for organisation responsible for care and protection), Article 12 (children's right to express their views and be heard), and Article 39 (remedies). Each of these provisions will be briefly examined in turn. Article 3(1) stipulates that the best interests of the child should be a primary consideration in all actions concerning children, whether undertaken by state or non-state entities. Notably, Article 4 of the ACRWC provides that the best interests of the child should be '*the primary consideration*' [*emphasis added*]. The best interests' principle cannot be used to justify practices that conflict with children's human dignity and right to physical integrity.⁵⁶ The prioritisation of children's best interests is justified due to their unique situation, including dependency, maturity, legal status, and limited ability to advocate for themselves.⁵⁷ Without explicit attention to their best interests, they may be overlooked by those involved in decisions affecting them.⁵⁸ Article 3(1) has been extensively analysed in academic literature,⁵⁹

54 For example: K A Svevo-Cianci *et al.*, 'The New UN CRC General Comment 13: "The Right of the Child to Freedom from All Forms of Violence" – Changing How the World Conceptualizes Child Protection' (2011) 35 *Child Abuse & Neglect* 979, 981–982; J Tobin and J Cashmore, 'Art.19 The Right to Protection against All Forms of Violence,' in *The UN Convention on the Rights of the Child: A Commentary (Art 19 Violence)*, by J Tobin, Oxford Commentaries on International Law (Oxford: Oxford University Press, 2019) at 703-704.

55 'Alternative care' is necessary for children deprived of parental care or who are at risk of being so. Residential care is '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 long-term residential care facilities, including group homes': United Nations General Assembly, Guidelines for the Alternative Care of Children, UN Doc A/RES/64/142 (February 24, 2010) para. 29.

56 United Nations Committee on the Rights of the Child, General comment No. 13, *supra* note 28 at para. 61. See also: United Nations Committee on the Rights of the Child, General comment No. 8 (2006), The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (Arts. 19; 28, Para. 2; and 37, Inter Alia), UN Doc CRC/C/GC/8 (March 2, 2007) at para. 26.

57 United Nations Committee on the Rights of the Child, General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art 3, Para 1), UN Doc CRC/C/GC/14 (29 May 2013), para. 37.

58 *ibid.*, para. 37.

and will not be addressed in detail here, except to emphasise that imposing obligations on non-state entities within an international treaty is significant.⁶⁰ Notably, earlier drafts of this article referred to ‘official’ bodies, but this term was removed during the drafting process without any explanation for the change.⁶¹

Critical to child safeguarding but often overlooked by its ‘omnipresent sibling’ Article 3(1),⁶² Article 3(3) establishes states’ duty to establish and oversee standards for organisations responsible for children’s care and protection. Article 3(3) requires states to:

‘...ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.’

The CRC legislative history reveals an interesting debate regarding this provision, starting with the revised Polish draft, which called for the creation of ‘special organs’ to ‘supervise persons and institutions directly responsible for the care of children.’⁶³ The text was modified to extend to ‘officials and personnel of institutions’ to cover, for example, the board of directors of a hospital or an orphanage.⁶⁴ During the second reading, further amendments were proposed to reflect the shift in many countries away from the institutionalised

59 For example: M Freeman, ‘Article 3. The Best Interests of the Child’ in A Alen and others (eds), *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers 2007); D Archard and M Skivenes, ‘Balancing a Child’s Best Interests and a Child’s Views’ (2009) 17 *The International Journal of Children’s Rights* 1; J Zermatten, ‘The Best Interests of the Child Principle: Literal Analysis and Function’ (2010) 18 *The International Journal of Children’s Rights* 483; J Eekelaar, ‘The Role of the Best Interests Principle in Decisions Affecting Children and Decisions about Children’ (2015) 23 *The International Journal of Children’s Rights* 3; EE Sutherland, ‘Article 3 of the United Nations Convention on the Rights of the Child: The Challenges of Vagueness and Priorities’ in EE Sutherland and L Barnes Macfarlane (eds), *Implementing Article 3 of the United Nations Convention on the Rights of the Child* (Cambridge University Press 2016) 21-50; J Eekelaar and J Tobin, ‘Art.3 The Best Interests of the Child,’ in *The UN Convention on the Rights of the Child: A Commentary* (Oxford, United Kingdom: Oxford University Press, 2019) 73-107; R Ruggiero, ‘Article 3: The Best Interest of the Child’ in Ziba Vaghri and others (eds), *Monitoring State Compliance with the UN Convention on the Rights of the Child*, vol 25 (Springer International Publishing 2022).

60 Eekelaar and Tobin, *supra* note 59, 80.

61 Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the Rights of the Child*, Volume I (United Nations, 2007), 338.

62 Sutherland, *supra* note 59, 23. Interestingly, Art. 3(3) is not within scope of the CRC Committee’s interpretative guidance on Art. 3(1): United Nations Committee on the Rights of the Child, General Comment No. 14, *supra* note 57 at para. 8.

63 Office of the United Nations High Commissioner for Human Rights, *supra* note 61, 338.

64 *ibid.*, 340-43.

care of children.⁶⁵ '[I]nstitutions, services and facilities' was ultimately included in the text.

The phrase 'shall conform with the standards...' appears to derive from the International Labour Organization's proposed text, which included '(appropriate) training, qualifications and competent supervision.'⁶⁶ Initial concerns arose due to its overlap with what was to become Article 18(2)⁶⁷ and potential bureaucratic burdens on volunteer-run institutions.⁶⁸ The final proposal included 'suitability of their staff,' understood to encompass appropriate training and qualifications.⁶⁹

Subsequent interpretative guidance of the CRC Committee sheds some light on Article 3(3). In 2002, the Committee became the first UN human rights treaty body to address the role of the 'private sector', including businesses, NGOs, and profit and non-profit private associations,⁷⁰ as service providers.⁷¹ The CRC Committee explained that Article 3(3) requires states to set and enforce standards in line with the CRC through monitoring public and private institutions, services, and facilities.⁷² It recommended legislative measures and a permanent monitoring mechanism to ensure compliance of non-state service providers, irrespective of whether the service has been specifically contracted by the state.⁷³ This was reiterated in General comment No. 5⁷⁴ and again in General comment No. 16, in which the CRC Committee highlighted that inadequate oversight, inspection, and monitoring of these business enterprises and non-profit organisations delivering services for children can

65 *ibid.*, 347.

66 *ibid.*, 347.

67 Art. 18(2) provides 'For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.' This was opposed by the representative from India, pointing out that Art. 18(2) applied only to children who had parents or guardians and that children who did not would be left out if Art. 3(3) was not included: Office of the United Nations High Commissioner for Human Rights, *supra* note 61, 347

68 *ibid.*, 347.

69 *ibid.*, 348.

70 United Nations Committee on the Rights of the Child, Day of General Discussion: The Private Sector as Service Provider and Its Role in Implementing Child Rights, UN Doc CRC/C/121, Annex II (December 11, 2002) at 146 (note 1).

71 Fraser, *supra* note 33 at 138; United Nations Committee on the Rights of the Child, Day of General Discussion: The Private Sector as Service Provider and Its Role in Implementing Child Rights, *supra* note 61.

72 United Nations Committee on the Rights of the Child, Day of General Discussion: The Private Sector as Service Provider and Its Role in Implementing Child Rights, UN Doc CRC/C/121, Annex II (December 11, 2002) at para. 3.

73 *ibid.*, para. 8.

74 United Nations Committee on the Rights of the Child, General Comment No. 5 (2003), General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, Para. 6), UN Doc CRC/GC/2003/5 (November 27, 2003) at para. 44.

lead to serious child rights violations, including violence, exploitation, and neglect.⁷⁵

Eekelaar and Tobin suggest that Article 3(3) aims to apply the best interests' principle to the specific domain of 'institutional' care and related services.⁷⁶ This is supported by the legislative history, which suggests the focus was on entities working with children 'in need of care and protection' or similar categories defined by law. Article 20 of the CRC, which provides that children deprived of their family environment shall be entitled to special protection and assistance by the state, further supports this interpretation. Moreover, the subsequent development of the UN Guidelines for the Alternative Care of Children, welcomed by the UN General Assembly in 2010,⁷⁷ provides an international benchmark for such standards.⁷⁸

However, it is also arguable that the scope of Article 3(3) is not strictly limited to residential care and related services. In General comment No. 8, the CRC Committee highlights the increasing visibility of violence against children in various settings since the adoption of the CRC and emphasises that the CRC, like all human rights instruments, is a 'living instrument' whose interpretation evolves.⁷⁹ The CRC Committee also refers to Article 3(3) in

75 United Nations Committee on the Rights of the Child, General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, UN Doc CRC/C/GC/16 (April 17, 2013) at para. 33-34. Although the CRC Committee does not explicitly cite Art. 3(3), it cites General comment No. 5, para. 44, which does expressly refer to the article.

76 J Eekelaar and J Tobin, "Art.3 The Best Interests of the Child," in *The UN Convention on the Rights of the Child: A Commentary* (Oxford, United Kingdom: Oxford University Press, 2019), 104. Sutherland's commentary implicitly links Art. 3(3) with institutions and services for alternative care with reference to the UN Guidelines for the Alternative Care of Children: *supra*, note 59, 43.

77 United Nations General Assembly, Guidelines for the Alternative Care of Children, *supra* note 55.

78 On the genesis, adoption, and implementation of the guidelines, see: J Davidson, 'Closing the Implementation Gap: Moving Forward with the United Nations Guidelines for the Alternative Care of Children' (2015) 6 *International Journal of Child, Youth and Family Studies* 379. Curiously, Art. 3(3) is not cited in the Guidelines nor its implementation handbook, N Cantwell *et al.*, "Moving Forward: Implementing the 'Guidelines for the Alternative Care of Children'" (Centre for Excellence for Looked After Children in Scotland at the University of Strathclyde; International Social Service; Oak Foundation; SOS Children's Villages International; and United Nations Children's Fund, 2012).

79 United Nations Committee on the Rights of the Child, General Comment No. 8, *supra* note 56 at para. 20. See also: J Tobin, 'Introduction: The Foundation for Children's Rights' in J Tobin (ed), *The UN Convention on the Rights of the Child: a commentary* (Oxford University Press 2019) 12 (describing the widespread, though contested, special interpretative methodology for human rights treaties largely developed by the European Court of Human Rights which include adopting a dynamic interpretation that responds to evolving standards).

other guidance not focused on residential care and related services.⁸⁰ If one accepts the Committee's expansive interpretation of 'care settings' in relation to Article 19, Article 3(3) should arguably have a similar wide application for 'internal system coherence'.⁸¹ This broader interpretation would support the proposition that states have a specific obligation under the CRC to establish and monitor standards for all organisations working with children including, but not limited to, residential care facilities, schools, sports clubs, and religious associations, as well as organisations involved in humanitarian and development efforts.⁸²

While it remains to be authoritatively settled, a broader interpretation of Article 3(3) strengthens the connection between the CRC text and the practice of child safeguarding in all organisations working with children. However, this interpretation must not overshadow the heightened vulnerability of children without family-based care, who face significant risks of severe

80 For example: In General comment No. 16, *supra* note 75, the Committee's discussion of standards and monitoring follows a paragraph articulating the broad range of services that businesses and non-profit organisations deliver, including clean water, sanitation, education, transport, health, alternative care, energy, security and detention facilities (para. 33). The Committee expressly refers to Art. 3(3) in General Comment No. 21 (2017) on Children in Street Situations, UN Doc CRC/C/GC/21 (21 June 2017) emphasising the importance of establishing, maintaining, and monitoring the quality of services by state and non-state providers (para. 47). The Committee alludes to Art. 3(3) in General Comment No. 9 (2006) The Rights of Children with Disabilities, UN Doc CRC/C/GC/9 (27 February 2007) stating that 'institutions and other facilities that provide services for children with disabilities ... are expected to conform to standards and regulations and should have the safety, protection and care of children as their primary consideration, and this consideration should outweigh any other and under all circumstances, for example, when allocating budgets' (para. 30). In General Comment No. 7 (2005) Implementing Child Rights in Early Childhood, UN Doc CRC/C/GC/7/Rev.1 (20 September 2006), the CRC Committee reiterates that 'States parties must ensure that the institutions, services and facilities responsible for early childhood conform to quality standards, particularly in the areas of health and safety, and that staff possess the appropriate psychosocial qualities and are suitable, sufficiently numerous and well-trained' (para. 23).

81 Tobin, *supra* note 79, 15 (using the phrase 'internal system coherence' to describe an interpretative outcome that achieves coherence within the context of other provisions of the CRC).

82 The Implementation Handbook for the CRC adopts this broad interpretation, stating that 'Implementation of article 3(3) requires a comprehensive review of the legislative framework applying to all such institutions and services, whether run directly by the State, or by voluntary and private bodies. The review needs to cover all services – care, including foster care and day care, health, education, penal institutions and so on. Consistent standards should be applied to all, with adequate independent inspection and monitoring': R Hodgkin and P Newell, *Implementation Handbook for the Convention on the Rights of the Child* (UNICEF 2007) 41. Additionally, it explains that much of children's care is provided by voluntary or private bodies, with some states privatizing services, removing more institutions out of direct state control. Art. 3(3) requires standards be set for these institutions by competent bodies, ensuring they align with the non-discrimination principle in Art. 2 and the rest of the CRC: 42.

mistreatment and abuse.⁸³ Institutions and services for these children demand greater oversight consistent with Article 20 of the CRC. Furthermore, preventing violence against children in ‘institutionalised’ or residential care requires targeted strategies beyond what would typically fall under child safeguarding measures.⁸⁴

Children’s right to express their views and have them taken into account, as outlined in Article 12, is also fundamental for child safeguarding. The CRC Committee and growing scholarship articulates the mutually reinforcing nature of children’s right to protection and their right to participation.⁸⁵ Much violence against children goes unchallenged, the CRC Committee explains, because children have come to accept certain forms of abusive behaviour and because child-friendly reporting mechanisms do not exist.⁸⁶ The CRC Committee calls for children’s empowerment and participation to be central to protection strategies.⁸⁷ Moore suggests that meaningful child participation is a key strategy for child safeguarding, contributing towards redressing children’s lack of physical power, their lack of resources, and limited power in relationships with adults and within institutions.⁸⁸

Finally, the CRC mandates penalties, compensation, judicial action, and measures to promote recovery after harm caused or contributed to by ‘third parties’,⁸⁹ including Article 19(2) and Article 39.⁹⁰ The CRC Committee has

83 United Nations Committee on the Rights of the Child, Day of General Discussion: State Violence against Children, UN Doc CRC/C/97, Annex VI (September 22, 2000) at 5.

84 These strategies should involve the development and implementation of community-based services, ensuring that institutionalisation and detention are considered only as a last resort and only if in the best interest of the child: United Nations Committee on the Rights of the Child, General comment No. 13, *supra* note 28 at para. 47(d)(iii). In line with Art. 25 of the CRC, states must also periodically review the treatment provided to a child and all other circumstances related to the placement of a child in these circumstances. See further: United Nations General Assembly, Guidelines for the Alternative Care of Children, *supra* note 55; United Nations Committee on the Rights of the Child, Day of General Discussion, Children without Parental Care, UN Doc CRC/C/153 (17 March 2006); United Nations Committee on the Rights of the Child, Day of General Discussion, Children’s Rights and Alternative Care, Outcome Report (2021).

85 See for example: H Kosher and A Ben-Arieh, ‘Children’s Participation: A New Role for Children in the Field of Child Maltreatment’ (2020) 110 *Child Abuse & Neglect* 104429; G Lansdown, ‘Strengthening Child Agency to Prevent and Overcome Maltreatment’ (2020) 110 *Child Abuse & Neglect* 104398; TP Moore, ‘Children and Young People’s Views on Institutional Safety: It’s Not Just Because We’re Little’ (2017) 74 *Child Abuse & Neglect* 73.

86 United Nations Committee on the Rights of the Child, General comment No. 12 (2009) The right of the child to be heard, UN Doc CRC/C/GC/12 (July 20, 2009) at para. 120.

87 United Nations Committee on the Rights of the Child, General comment No. 13, *supra* note 58 at para. 3(e).

88 Moore, *supra* note 85 at 83.

89 United Nations Committee on the Rights of the Child, General comment No. 16, *supra* note 75 at para. 30.

explained that meeting this obligation requires child-sensitive mechanisms – criminal, civil, or administrative – that are known by children and their representatives, are prompt, accessible, and provide adequate reparation for harm suffered'.⁹¹ Oversight agencies, including national human rights institutions, can also provide remedies.⁹² Although not mentioned expressly by the CRC Committee, non-profit or charitable regulators could be particularly relevant agencies in considering remedies for child safeguarding.⁹³ These agencies can proactively investigate and monitor abuses and may have regulatory powers allowing them to sanction organisations that infringe children's rights.⁹⁴

6.3 CHILD SAFEGUARDING ROLES AND RESPONSIBILITIES: THE ROLE OF THE STATE VIS-À-VIS NGOS

6.3.1 State duty to protect

Having established a normative foundation for child safeguarding under international children's rights law and outlined state obligations to protect children from harm in organisational settings, the question arises regarding the scope of these obligations – specifically, whether the state may be held accountable for violations by non-state entities.⁹⁵

Traditionally, human rights law has been viewed as binding solely on states, meaning that only actions or failures by state entities could result in

90 Art. 39 provides that states should take all appropriate measures to promote physical and psychological recovery and social reintegration for child victims of abuse, exploitation and neglect, or any other form of cruel, inhuman or degrading treatment or punishment.

91 United Nations Committee on the Rights of the Child, General comment No. 16, *supra* note 75 at para. 30. See also: United Nations Committee on the Rights of the Child, General comment No. 13, *supra* note 28 at para 56.

92 United Nations Committee on the Rights of the Child, General comment No. 16, *supra* note 75 at para. 30.

93 For example, the Charity Commission for England and Wales provides specific guidance for charities on how to safeguard children: 'Safeguarding and Protecting People for Charities and Trustees' (GOV.UK, 1 June 2022) <https://www.gov.uk/guidance/safeguarding-duties-for-charity-trustees>.

94 United Nations Committee on the Rights of the Child, General comment No. 16, *supra* note 75 at para. 30.

95 Freeman expresses doubt about the applicability of Art. 3(3) of the CRC to services outside state responsibility, such as those for street children managed by NGOs. He cites instances of foreign NGO workers abusing street-connected children and suggests that Art. 3(3) should raise concerns about the organisation, supervision, and vetting of such projects, including the responsibility for checking qualifications and issuing work permits and visas: Freeman, *supra* note 59, 74.

chillegal responsibility under international law.⁹⁶ Within this ‘state-centric’ perspective of international human rights law, scholars and human rights treaty bodies developed the concept of the state’s ‘obligation to protect.’⁹⁷ This builds upon the ‘due diligence’ doctrine in customary law, which holds a state legally responsible for the actions of private individuals or entities when the state itself is not directly culpable.⁹⁸ While the due diligence doctrine does not require the state to prevent all harmful actions by private actors within its control and jurisdiction, it does require the state to take appropriate steps to ensure that private individuals or entities will not cause harm.⁹⁹

Like the other major international human rights treaties, the CRC endorses the obligation to protect children’s rights against interference by non-state actors. This is derived from Article 2, which requires states to ‘respect and ensure’ all the rights under the CRC. In the context of child safeguarding, for instance, this means that states must take all appropriate measures to protect children from state actors engaging in acts or omissions that would constitute a violation of those articles that relate to children’s right to protection from violence (i.e. *the obligation to respect*) as well to protect children from non-state actors doing the same (i.e. *the obligation to protect*).¹⁰⁰

96 A Reinisch, “The Changing International Legal Framework for Dealing with Non-State Actors,” in *Non-State Actors and Human Rights*, ed. P Alston (Oxford University Press, 2005), 78.

97 Nowak and Januszewski, *supra* note 33 at 115–16; Knox, *supra* note 33 at 20–24; A McBeth, ‘Spring 2008 Symposium: The 60th Anniversary of the Declaration of Human Rights: A Reality Check: Every Organ of Society: The Responsibility of Non-State Actors for the Realization of Human Rights’ (2008) 30 *Hamline Journal of Public Law & Policy* 33; W Kälin and J Künzli, ‘The Legal Nature of Human Rights Obligations’, *The Law of International Human Rights Protection* (2019), 96-97. The United Nations Human Rights Committee explains that the state’s positive obligation to protect human rights will ‘only be fully discharged if individuals are protected, not just against violations of ... rights by the State and its agents, but also against acts committed by private persons or entities that would impair the enjoyment of ... rights’: United Nations Human Rights Committee, General Comment No. 31[80], *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13 (26 May 2004) para. 8.

98 T Koivurova and K Singh, “Due Diligence,” in *Max Planck Encyclopedias of International Law*, *Max Planck Encyclopedia of Public International Law* (Oxford Public International Law, August 2022), para. A.1. See also: Fraser, *supra* note 33 at 127. Scholars often reference the dictum from the *Corfu Channel* case (UK v Albania) (1949) ICJ Rep 4, which asserts ‘every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States’ (at 22). The *United States Diplomatic and Consular Staff in Tehran* case (United States of America v Iran) [1980] ICJ Rep 3 is also frequently cited. In this case, the ICJ concluded that due to their lack of diligence, the Iranian authorities had failed to protect the US embassy from an attack by private persons, and this manifest negligence triggered state responsibility (paras. 61, 63). The legal status of due diligence remains a matter of debate, defined as a principle of customary international law, a general principle of law, or a standard or concept of law: Koivurova and Singh, para. 4.

99 Koivurova and Singh, *supra* note 98 at para. A.1.

100 Tobin and Cashmore, *supra* note 54 at 705.

Interestingly, the CRC Committee's work contains few express references to due diligence, as is understood by human rights lawyers.¹⁰¹ Its limited use of the term stands in contrast to the extensive application of the standard by the Committee on the Elimination of Discrimination against Women and in jurisprudence related to violence against women.¹⁰² The CRC Committee makes one brief mention in General comment No. 13, where it explains that the obligations of the state are 'due diligence and the obligation to prevent violence or violations of human rights, the obligation to protect child victims and witnesses from human rights violations, the obligation to investigate and to punish those responsible, and the obligation to provide access to redress human rights violations.'¹⁰³

By comparison, the ACRWC Committee has expounded upon the standard of due diligence on a number of occasions.¹⁰⁴ It has interpreted duties of

101 The Committee mentions due diligence in several of its concluding observations, however, these references are primarily in the context of due diligence by the business sector. The term due diligence in the UN Guiding Principles on Business and Human Rights invokes a different concept to that used by human rights lawyers. See further: J Bonnitcha and R McCorquodale, 'The Concept of "Due Diligence" in the UN Guiding Principles on Business and Human Rights,' *European Journal of International Law* 28, no. 3 (November 13, 2017): 899–919; J G Ruggie and J F Sherman, 'The Concept of "Due Diligence" in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitcha and Robert McCorquodale,' *European Journal of International Law* 28, no. 3 (2017): 921–28; J Bonnitcha and R McCorquodale, 'The Concept of "Due Diligence" in the UN Guiding Principles on Business and Human Rights: A Rejoinder to John Gerard Ruggie and John E Sherman, III,' *European Journal of International Law* 28, no. 3 (2017): 929–33.

102 United Nations Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19: Violence against Women, UN Doc A/47/38 (January 30, 1992) para. 9 ('... discrimination under the Convention is not restricted to action by or on behalf of Governments ... Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation'). This line of reasoning has been echoed in case law from regional human rights institutions, discussed in Special Rapporteur on violence against women, its causes and consequences, Y Ertürk, The Due Diligence Standard as a Tool for the Elimination of Violence against Women, UN Doc E/CN.4/2006/61 (Commission on Human Rights, January 20, 2006), paras. 20–23. See also Reinisch, *supra* note 96 at 80–82. There is some criticism of the use of the standard of due diligence in the area of violence against women. Stoyanova, for instance, challenges the assumption that the standard of due diligence makes a helpful contribution to the framework of positive obligations under human rights law: V Stoyanova, 'Due Diligence versus Positive Obligations: Critical Reflections on the Council of Europe Convention on Violence against Women' in J Niemi, L Peroni and V Stoyanova (eds), *International Law and Violence Against Women: Europe and the Istanbul Convention* (Routledge 2020).

103 United Nations Committee on the Rights of the Child, General comment No. 13, *supra* note 28 at para. 5.

104 For example: African Committee of Experts on the Rights and Welfare of the Child, Decision on the communication submitted by Minority Rights Group International and SOS-Eslaves on behalf of Said Ould Salem and Yarg Ould Salem Against the Government of the Republic of Mauritania (Decision 003/2017) at para. 52; African Committee of Experts on the Rights

due diligence as forming part of states' obligations under Article 1 of the ACRWC to adopt such legislative or other measures as may be necessary to give effect to its provisions.¹⁰⁵ To prevent violence, the state must 'identify vulnerable groups prone to abuse and take special measures to prevent violence from occurring'.¹⁰⁶ Where the state fails to show due diligence to prevent or investigate violence perpetrated by third parties, it assumes responsibility under international law for non-state actors.¹⁰⁷

One of the ACRWC Committee's first decisions under its communications procedure addressed a state's responsibility for child rights violations by non-state actors. The case concerned children sent ostensibly to attend private Qur'anic schools (*daaras*) in urban centres of Senegal.¹⁰⁸ The children were found to be abused, forced to beg on the streets, kept in unsafe and unhygienic conditions, deprived of clean water, sanitation, and medical treatment, and the promised education. It was alleged that the state failed to take sufficient measures to protect these children, violating several provisions of the ACRWC.¹⁰⁹ The ACRWC Committee emphasised that states' obligation to protect the rights in the ACRWC includes measures to ensure that third parties (including institutions) do not infringe on children's rights.¹¹⁰ Moreover, and

and Welfare of the Child, General Comment No. 5 on 'State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection' at 5; African Committee of Experts on the Rights and Welfare of the Child, General Comment No. 7 on Article 27 of the ACRWC 'Sexual Exploitation' (2021) at para 37.

105 African Committee of Experts on the Rights and Welfare of the Child, Decision 003/2017, *supra* note 104 at para 52 citing *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR) 2006 para. 146; African Committee of Experts on the Rights and Welfare of the Child, General Comment No. 5, *ibid* at 15.

106 African Committee of Experts on the Rights and Welfare of the Child, Decision 003/2017, *supra* note 104 at para 52.

107 *ibid* citing *Social and Economic Rights Action Center (SERAC) and Another v Nigeria* (2001) AHRLR (ACHPR 2001) para. 57.

108 African Committee of Experts on the Rights and Welfare of the Child, Decision on the communication submitted by the Centre of Human Rights (University of Pretoria) and La Rencontre Africaine Pour la Defense des Droites de l'Homme (Senegal) v Government of Senegal (Decision 003/Com/001/2012). On the situation of *talibés*, or child students of the Qur'an, forced into begging in Senegal, see further: SL Macleod, "'Save the #Talibés": A State-Led Intervention to Remove Children from the Street in Dakar, Senegal' [2023] *Journal of Human Trafficking* 1; F Ouedrago, 'The Plight of Talibé Children in Senegal' (*Harvard Human Rights Journal*, 2021) <https://journals.law.harvard.edu/hrj/2021/04/the-plight-of-talibe-children-in-senegal/>.

109 Art. 4 (best interests of the child); Art. 5 (rights to life, survival, and development); Art. 11 (the right to education); Art. 12 (the right to leisure, recreation, and cultural activities); Art. 14 (the right to health and health services); Art. 15 (the prohibition of child labour); Art. 16 (protection against child abuse and torture); Art. 21 (protection against harmful cultural practices); and Art. 29 (prohibition of sale, trafficking, and abduction of children).

110 African Committee of Experts on the Rights and Welfare of the Child, Decision 003/Com/001/2012 (citing *Mouvement Burkinabe des Droits de l'Homme e des Peuples v Burkina Faso*, Comm. 204/97, 14th ACHPR AAR Annex V (2000-2001)) *supra* note 108 at para. 37.

to be discussed further below, it affirmed the individual responsibility of non-state actors to respect children's rights does not relieve the state of its obligations to respect, protect and fulfil human rights.¹¹¹ In considering Article 16 of the ACRWC (protection against child abuse and torture), the ACRWC Committee cited the Committee against Torture interpretative guidance that states are responsible when they know or should know of torture or ill-treatment by private actors and fail to exercise due diligence to prevent, investigate, prosecute, and punish such acts.¹¹²

To date, the CRC Committee, whether internationally or not, has framed its analysis of state obligations in terms of the 'obligation to protect' rather than expressly invoking the due diligence standard.¹¹³ In elaborating on state obligations to protect in General comment No. 16, the CRC Committee identifies three scenarios where states can be held responsible for child rights violations: failing to take necessary, appropriate and reasonable measures to prevent and remedy violations; collaborating with entities that violate rights; and tolerating such infringements.¹¹⁴ While failures to prevent and address violations fall under the obligation to protect, collaboration with violators

111 *ibid.*, para. 37.

112 *ibid.*, para. 66 citing the Committee against Torture, General comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, CAT/C/GC/4, 4 September 2018, para. 18. The ACRWC Committee ultimately found all these rights had been violated and made broad recommendations including for the state to send the children back to their families, establish minimum norms and standards for these schools, and ensure that all perpetrators are brought to justice. It also called for the training of duty bearers, in cooperation with UN agencies, to address challenges surrounding this group of children: para. 82.

113 Fraser suggests that these obligations are similar in practice and align with the concept of 'positive obligations': Fraser, *supra* note 33 at 127. At times, the Committee appears to blur the distinction between the obligation to protect and the attribution of actions. For example, in General comment No. 5, the Committee asserts that state parties' obligation to 'respect and ensure' children's rights include ensuring that non-state service providers adhere to its provisions, creating indirect obligations for these actors: United Nations Committee on the Rights of the Child, General comment No. 5, *supra* note 74 at para. 43. The Committee then states that outsourcing services does not lessen the state's obligations at para. 44, suggesting that the state bears responsibility solely because it has outsourced services to the private sector. This implies a breach of the state's obligation to *respect* those rights, distinct from failing to meet its obligation to *protect*. This conflation is not unique to the CRC Committee. Hakimi observes a longstanding problem of conflation between the obligation to protect and the attribution of the underlying abuse and emphasises the importance of distinguishing between these two separate human rights obligations; obligations to protect do not require that any abuse be attributable to the duty-holding state: M Hakimi, 'State Bystander Responsibility,' *European Journal of International Law* 21, no. 2 (May 1, 2010) at 353–54.

114 United Nations Committee on the Rights of the Child, General comment No. 16, *supra* note 75 at para. 28.

constitutes a breach of the obligation to respect.¹¹⁵ This interpretation seems to blur the lines between the state's direct actions (or inactions) that violate rights (i.e. *the obligation to respect*) from its failure to prevent third parties from doing so (i.e. *the obligation to protect*). While the distinction between these legal obligations requires sharpening, the CRC Committee has nonetheless provided substantial guidance on the 'necessary, appropriate and reasonable measures'¹¹⁶ states must take to prevent and address violence in organisational settings.

6.3.2 Content and scope of state responsibility

The CRC Committee's general comments, days of general discussion,¹¹⁷ and concluding observations and recommendations offer insights into the content and scope of state responsibility to protect children from harm in organisational settings. Aspects of the United Nations General Assembly 'Guidelines for the Alternative Care of Children' provide complementary guidance on measures for residential care settings specifically.¹¹⁸ This international guidance is complemented – and in some cases further developed – by the ACRWC Committee and the Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Committee).¹¹⁹

States' obligations necessarily include those basic elements for creating an enabling environment such as the ratification of international human rights instruments,¹²⁰ the prohibition of all forms of violence against children in

115 Indeed, the Committee recognises this in the preceding paragraph elaborating on the obligation to respect: *ibid.*, para. 27 ('State agencies and institutions, including security forces, should not collaborate with or condone the infringement of the rights of the child by third parties.')

116 *ibid.*, para. 28.

117 The Committee dedicated two days to discussing violence against children: the first in 2000, addressing State violence against children in institutions managed, licensed, or supervised by the State, and related to law and public order. In 2001, the discussions centred on violence experienced by children in schools and families.

118 United Nations General Assembly, Guidelines for the Alternative Care of Children, *supra* note 55.

119 The first monitoring round of the implementation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) focused on the protection of children against sexual abuse in the circle of trust. The Lanzarote Committee published implementation reports adopted on 4 December 2015 and 31 January 2018 and a related declaration on protecting children in out-of-home care from sexual exploitation and sexual abuse in 2019.

120 The United States remains the only country that has not ratified the CRC. See United Nations Treaty Series https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en accessed 4 August 2024. In addition, states should ratify the three Optional Protocols to the CRC and other international and regional human rights

all settings, and the provision of effective redress and reparation for child victims.¹²¹ They also include child-friendly legal and judicial procedures, basic and targeted services, and educative measures to shift harmful attitudes, customs, and behaviours.¹²² These obligations extend beyond organisational settings, while also influencing measures implemented at the organisational level.

Certain features more specific to organisational settings can also be distilled. These can be categorised into five primary areas. First, states should set standards and ensure oversight and monitoring of organisations working with children. This includes developing and implementing child protection policies, ethics codes, protocols, and standards of care across all state and non-state childcare services and settings, including daycare centres, schools, hospitals, sports clubs, and residential institutions.¹²³ This elaborates on states' obligations under Article 3(3) discussed earlier. The ACRWC Committee guides states to require organisations working directly with children to adopt 'child safeguarding' policies.¹²⁴ The CRC Committee has also started using the term 'safeguarding' in its more recent concluding observations and recommendations.¹²⁵ On monitoring, the CRC Committee emphasises that this should

instruments that provide protection for children: United Nations Committee on the Rights of the Child, General comment No. 13, *supra* note 28, para 41.

121 *ibid.*, para. 41.

122 *ibid.*, paras 41-58.

123 *ibid.*, para. 42(b). Specifically for organisations providing residential care, see United Nations General Assembly, *supra* note 55, paras 55, 91, 92, 96, 105-107, for example.

124 African Committee of Experts on the Rights and Welfare of the Child, General comment No. 5, *supra* note 104 at 47.

125 For example: United Nations Committee on the Rights of the Child, Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Poland, CRC/C/POL/CO/5-6 (2021) para. 25 (urging Poland to legally mandate care and educational facilities to establish internal safeguarding standards); Concluding Observations on the Combined Second to Fourth Periodic Reports of Kiribati, UN Doc CRC/C/KIR/CO/2-4 (2022) para. 51 (recommending Kiribati proceed with adopting and implementing various child protection policies and protocols within schools including child safeguarding). More frequently, the CRC Committee uses it in the context of protecting children's privacy online, a reflection of General comment No. 25 (2021) which expressly mentions 'safeguarding policies' in relation to the digital environment: United Nations Committee on the Rights of the Child, General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment, UN Doc CRC/C/GC/25 (2021) para. 26. See for example: United Nations Committee on the Rights of the Child, Concluding Observations on the Combined Third to Fifth Periodic Reports of Andorra, UN Doc CRC/C/AND/CO/3-5 (2023) para. 20; Concluding Observations on the Sixth Periodic Report of Jordan, UN Doc CRC/C/JOR/CO/6 (2023) para. 24; Concluding Observations on the Report Submitted by Finland under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, UN Doc CRC/C/OPSC/FIN/CO/1 (2023) para. 21; Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Ireland, UN Doc CRC/C/IRL/CO/5-6 (2023) para. 22; Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Mauritius, UN Doc CRC/C/MUS/CO/6-7 (2023) para. 20; Concluding Observations on the Combined Sixth and Seventh Periodic Reports

include unannounced visits and focus on children's well-being, not only on the physical conditions of facilities and adequacy of services.¹²⁶

Second, states should ensure measures for screening and recruiting individuals working with children. Although General comment No. 13 does not address these processes explicitly, earlier CRC Committee recommendations stress that individuals working with children should have proper qualifications and be screened for any background of violence.¹²⁷ It can also be recalled that Article 3(3) includes an emphasis on 'suitability of staff' as part of the standards that states should establish.¹²⁸ The ACRWC Committee recommends a legislatively based screening process to ensure that 'wholly unsuitable persons' are not employed in schools, institutions linked to the care system, or any organisation that works with children, even as volunteers.¹²⁹ The Lanzarote Committee similarly calls for states to ensure comprehensive and

of Sweden, UN Doc CRC/C/SWE/CO/6-7 (2023) para. 22; Concluding Observations on the Fifth Periodic Report of Uzbekistan, UN Doc CRC/C/UZB/CO/5 (2022) para. 25; Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Viet Nam, UN Doc CRC/C/VNM/CO/5-6 (2022) para. 26; Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Germany, UN Doc CRC/C/DEU/CO/5-6 (2022) para. 21; Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Cambodia, UN Doc CRC/C/KHM/CO/4-6 (2022) para. 23; Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Iceland, UN Doc CRC/C/ISL/CO/5-6 (2022) para. 23; Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Croatia, UN Doc CRC/C/HRV/CO/5-6 (2022) para. 22; Concluding Observations on the Combined Fifth and Sixth Periodic Reports of the Kingdom of the Netherlands, UN Doc CRC/C/NLD/CO/5-6 (2022) para. 19; Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Madagascar, UN Doc CRC/C/MDG/CO/5-6 (2022) para. 21; Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Switzerland, UN Doc CRC/C/CHE/CO/5-6 (2021) para. 24; Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Tunisia, UN Doc CRC/C/TUN/CO/4-6 (2021) para. 21.

126 United Nations Committee on the Rights of the Child, Day of General Discussion: State Violence against Children, *supra* note 83 at para. 26; United Nations Committee on the Rights of the Child, Day of General Discussion: Violence against Children within the Family and in Schools, UN Doc CRC/C/111 (November 28, 2001) at para. 733. Specifically for organisations providing residential care, see United Nations General Assembly, *supra* note 55, paras 128-130,

127 United Nations Committee on the Rights of the Child, Day of General Discussion: State Violence against Children, *supra* note 83 at para. 15; United Nations Committee on the Rights of the Child, Day of General Discussion: Violence against Children within the Family and in Schools, *supra* note 126, para. 722.

128 Specifically for organisations providing residential care, see United Nations General Assembly, *supra* note 55, para 113. See also Freeman, *supra* note 59, 72 (reflecting on the significance of this dimension given two decades of evidence challenging outdated assumptions that institutions are safe havens for at-risk children and that their caregivers will provide the care and protection children need).

129 African Committee of Experts on the Rights and Welfare of the Child, General comment No. 5, *supra* note 104, 47.

ongoing screening procedures for all caregivers, including volunteers.¹³⁰ CRC Committee observations and recommendations emphasise the importance of barring individuals convicted of child abuse from having contact with children, especially in professional roles.¹³¹

Third, all individuals working with children should receive initial and ongoing training.¹³² Training should cover policy standards, non-violent discipline, child development, and the needs and rights of vulnerable groups, including children with disabilities.¹³³ The CRC Committee has emphasised that training should promote attitudinal shifts towards non-violent discipline methods and reduce the stigma associated with victims of sexual abuse.¹³⁴ In its recommendations for the Holy See, for example, the CRC Committee recommended providing guidance to all persons in authority to prioritise the

130 Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, 'Declaration of the Lanzarote Committee on Protecting Children in Out-of-Home Care from Sexual Exploitation and Sexual Abuse' (2019), para. 2. The Declaration applies to all settings where children can be placed out of their homes for care but does not include educative placements (i.e. boarding schools) or criminal justice measures: para. b. See also: Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, 'Protection of Children against Sexual Abuse in the Circle of Trust: The Strategies, 2nd Implementation Report' (Council of Europe 2018) 3 (calling for states to go beyond the requirement of the Lanzarote Convention and regularly screen such professionals, not only at recruitment, and to do the same with all voluntary activities involving contacts with children).

131 For example: United Nations Committee on the Rights of the Child, Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Belgium, UN Doc CRC/C/BEL/CO/5-6 (2019) para. 24; Concluding Observations on the Combined Third to Sixth Periodic Reports of Malta, UN Doc CRC/C/MLT/CO/3-6 (2019) para. 27.

132 United Nations Committee on the Rights of the Child, General comment No. 13, *supra* note 28 at para. 44. Specifically for organisations providing services related to alternative care, see United Nations General Assembly, *supra* note 55, para 116.

133 United Nations Committee on the Rights of the Child, General comment No. 8, *supra* note 56 at para. 46; United Nations Committee on the Rights of the Child, Day of General Discussion: State Violence against Children, *supra* note 83 at para. 16 and 24; United Nations Committee on the Rights of the Child, Day of General Discussion: Violence against Children within the Family and in Schools, *supra* note 126 at para. 723. See also: United Nations Committee on the Rights of the Child, Concluding Observations on the Combined Second to Fourth Periodic Reports of Kiribati, *supra* note 26 at para. 27 (recommending teacher training on non-violent disciplinary alternatives to be integrated into pre- and in-service training programmes).

134 For example: United Nations Committee on the Rights of the Child, Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Peru, UN Doc CRC/C/PER/CO/4- (2016) para. 42; Concluding Observations on the Combined Third to Sixth Periodic Reports of Malta, *supra* note 131 at para. 27; Concluding Observations on the Combined Second to Fourth Periodic Reports of Kiribati, *supra* note 26 at para. 27; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Mauritius, *supra* note 125 at para. 21; Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the United Kingdom of Great Britain and Northern Ireland, UN Doc CRC/C/GBR/CO/6-7 (2023) para. 31.

best interests of the child, including in cases of child sexual abuse, across all Catholic churches, organisations, and institutions worldwide.¹³⁵

Fourth, children should be engaged and empowered in line with Article 12 of the CRC. States should provide accurate, accessible, and age-appropriate information to empower children with life skills, self-protection strategies, and guidance on positive peer relationships.¹³⁶ The CRC Committee recommends educational programmes to prevent sexual abuse by increasing children's awareness and teaching protective skills.¹³⁷ The Lanzarote Committee emphasises the need for regular awareness-raising about abuse, including drawing attention to the manipulation of children's trust by persons close to them.¹³⁸ The CRC Committee also recommends children's active participation in developing violence-prevention strategies,¹³⁹ and the necessity of developing accessible, confidential, child-friendly, and effective complaint and reporting mechanisms in organisational settings.¹⁴⁰ Additionally, it emphasises the importance of ensuring children are informed about these mechanisms, involved in their design, and that their special needs are taken into account.¹⁴¹ The Lanzarote Committee highlights the need for support mechanisms to assist children to report sexual violence in institutional settings.¹⁴²

135 United Nations Committee on the Rights of the Child, Concluding Observations on the Second Periodic Report of the Holy See, UN Doc CRC/C/VAT/CO/2 (2014) para. 30. In response to the widespread sexual abuse in Catholic places of worship and schools globally, the CRC Committee also reminded the Holy See that in ratifying the CRC, 'it made a commitment to implement it not only within the territory of Vatican City State, but also, as the supreme power of the Catholic Church, worldwide through individuals and institutions under its authority': para. 8.

136 United Nations Committee on the Rights of the Child, General comment No. 13, *supra* note 28 at para. 44.

137 *ibid.*, para. 44.

138 Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, 'Protection of Children against Sexual Abuse in the Circle of Trust: The Strategies, 2nd Implementation Report', *supra* note 130 at 3.

139 United Nations Committee on the Rights of the Child, "Day of General Discussion: Violence against Children within the Family and in Schools," *supra* note 126 at para. 724.

140 For example: United Nations Committee on the Rights of the Child, Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Italy, UN Doc CRC/C/ITA/CO/5-6 (2019) para. 21; Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Poland, *supra* note 26 at para. 27; Concluding Observations on the Combined Second to Fourth Periodic Reports of Kiribati, *supra* note 26 at para. 27. See also: Concluding Observations on the Second Periodic Report of the Holy See, *supra* note 135 at para. 42 (urging the development of safe, well-publicised, confidential, and accessible support mechanisms for children and their representatives to enable them to report incidents of violence and to provide clear guidance and training on when and how to refer instances of abuse and neglect to investigative authorities). Specifically for organisations providing residential care, see United Nations General Assembly, *supra* note 55, paras 98, 99.

141 United Nations Committee on the Rights of the Child, Day of General Discussion: State Violence against Children, *supra* note 83 at para. 26.

142 Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, Declaration, *supra* note 130 at paras. d and 2.

Finally, states should provide effective mechanisms to respond to violence against children. The CRC Committee recommends that states establish systems to report and investigate cases of suspected abuse within institutions.¹⁴³ These systems should train professionals to recognise and report violence, mandate reporting for those working with children,¹⁴⁴ protect reporters from retaliation or liability,¹⁴⁵ and ensure a coordinated, multidisciplinary response to reports of violence.

The CRC Committee's guidance, while extensive, can be challenging to navigate due to the multitude of actions it prescribes. Moreover, the determination as to whether a state has acted with the required level of diligence in a specific context can only be decided on a case-by-case basis. Until recently, the CRC lacked a formal mechanism for adjudicating complaints, which meant an absence of case law applying these standards to individual situations. However, this changed with the introduction of the Optional Protocol to the CRC on a communications procedure (OPIC).¹⁴⁶ The CRC Committee's first investigation under Article 13 of OPIC addressed the treatment of children in residential care, including some institutions run by non-state entities. The

143 United Nations Committee on the Rights of the Child, Day of General Discussion: State Violence against Children, *supra* note 83 at para. 26; United Nations Committee on the Rights of the Child, Day of General Discussion: Violence against Children within the Family and in Schools, *supra* note 126 at para. 733.

144 See also: United Nations Committee on the Rights of the Child, Concluding Observations on the Second Periodic Report of the Holy See, *supra* note 135 at para. 44 (recommending the establishment of clear rules and procedures for the mandatory reporting of all suspected cases of child sexual abuse and exploitation, ensuring that all priests, religious personnel, and those working under the Holy See understand their reporting duties, emphasising that these responsibilities take precedence over Canon law in cases of conflict); United Nations Committee on the Rights of the Child, Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Italy, *supra* note 140 at para. 21 (recommending mandating all individuals, including religious personnel, to report any suspected cases of sexual abuse to the relevant authorities).

145 See also: United Nations Committee on the Rights of the Child, General comment No. 13, *supra* note 28 at para. 49 ('In every country, the reporting of instances, suspicion or risk of violence should, at a minimum, be required by professionals working directly with children. When reports are made in good faith, processes must be in place to ensure the protection of the professional making the report.') and Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, 'Protection of Children against Sexual Abuse in the Circle of Trust: The Strategies, 2nd Implementation Report', *supra* note 130 at 3 ('Any person who knows or suspects in good faith that a child is a victim of sexual abuse or exploitation should be encouraged to report to the competent services. In this context, the Committee reiterates that confidentiality rules imposed on certain professionals should not constitute an obstacle to the possibility for those professionals to report to the services responsible for child protection.') On the challenges of mandatory reporting in countries with less-developed child protection and justice systems, see: A Kaviani Johnson, 'All Care, No Responsibility: Legislation for Mandatory Reporting of Child Abuse in the 'Developing World,'' *The International Journal of Children's Rights* 30, no. 3 (August 22, 2022): 818–48.

146 A/RES/66/138, a resolution adopted by the General Assembly on 19 December 2011.

case helps illustrate how the CRC Committee applies these standards to a specific set of facts.

6.3.2.1 Case example: Chile

The CRC Committee's investigation concerned the treatment of children in residential programmes falling under the responsibility of the state. The centres could be classified into two groups: 11 centres under direct state control, and approximately 240 state-subsidised centres run privately by accredited partner organisations. In addition, there were private centres, which were not state-accredited and over which the state exercised no control. Although not legally regulated, the courts tolerated these centres and sent children to them because of a shortage of places at the other centres. There had been complaints about rights violations in the centres for many years. The CRC Committee received a request in July 2016 to conduct an inquiry. After following the relevant procedural steps, the Committee decided to conduct a confidential inquiry into the potential grave or systematic violation of several provisions of the CRC affecting a significant proportion of children and adolescents in the care of the state party.¹⁴⁷

The Committee determined that the state violated nineteen articles of the CRC¹⁴⁸ and was directly responsible for the violations in all the centres, not only those directly under its control. The Committee explained that:

'...the State was directly responsible for violations perpetrated in centres under the direct control of the National Service for Minors, in centres administered by partner organisations and in other centres. The responsibility is the State's not only because the State has failed to exercise oversight but also because privately managed

147 United Nations Committee on the Rights of the Child, Inquiry Concerning Chile under Article 13 of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure: Report of the Committee, UN Doc CRC/C/CHL/IR/1 (May 6, 2020) paras. 3–5, 20, 21.

148 Namely, Art. 2 (non-discrimination); Art. 3(1) (best interests); Art. 3(3) (the obligation to ensure that institutions comply with relevant rules); Art. 4 (the obligation to adopt general measures of implementation); Art. 6 (the right to life, survival and development); Art. 9 (the right not be separated from the family except in the best interests of the child); Art. 12 (the right to express views freely and to be heard); Art. 18 (appropriate assistance to parents and legal guardians in respect of children); Art. 19 (protection from violence); Art. 20 (the right for special protection and assistance for children deprived of their family environment); Art. 23 (the right of the child with disabilities to adequate care for a full and decent life); Art. 24 (the right to the highest possible level of health); Art. 25 (the right of a child placed in care to a periodic review); Art. 28 (the right to education); Art. 31 (the right to rest, leisure and culture); Art. 34 (the right to be protected against sexual exploitation and abuse); Art. 37(a) (the right to be protected against torture and cruel, inhuman or degrading treatment); and Art. 39 (measures to promote physical and psychological recovery and social integration of child victims): *ibid.*, para. 109.

centres, which are delegated by the State to act in an official capacity, must be considered State agents for the purposes of attribution of responsibility.¹⁴⁹

The Committee held that the state also violated its obligation to protect, by failing to provide 'adequate care and protection for children and adolescents admitted to the residential protection system... or the care necessary for their recovery'.¹⁵⁰ The Committee's observations regarding Articles 3(3), 4, 12, 19, 34 and 37(a) are particularly instructive in considering the substance of state responsibilities to protect children from harm in organisational settings.

The Committee found Chile in breach of Article 3(3) due to inadequate infrastructure, insufficient number of specialised personnel, insufficient monitoring, storage of unreliable information about children's situation, and placing children in the care of organisations that operated without any oversight.¹⁵¹ Chile was found in breach of Article 4 (general measures of implementation) for lacking a comprehensive, rights-based children's law, poor inter-ministerial coordination, insufficient data on children's situations, and reliance on a subsidy-based funding model that shifted responsibility to partner organisations and encouraged prolonged placements.¹⁵²

Children's right to express their views and to be heard (Article 12) was violated as the state failed to inform children of their rights, respect their views before centre admissions, and provide access to a judge and lawyer. Additionally, the state failed to establish clear and recognised protocols for making complaints and reporting rights violations and did not ensure children could voice their opinions in decisions that affected their daily lives.¹⁵³

Chile was found in breach of its obligations under Article 19 as violence had become normalised both among children and adolescents and between children, adolescents, and adults. Guidelines and staff training on non-violent disciplinary techniques and peer violence were inadequate.¹⁵⁴ The prevention of sexual violence among peers and by adults was similarly deficient, in breach of Article 34. The state failed to respond in a timely and effective manner to cases. Specific protocols for managing and preventing sexual abuse were non-existent or ignored, leading to unreported cases and, even when reported, a lack of timely administrative and judicial action. There was a lack of staff training on preventing sexual abuse.¹⁵⁵ Chile was found in breach of its obligation to protect children from torture and/or cruel, inhuman or degrading

149 *ibid.*, para. 108.

150 *ibid.*, para 115.

151 *ibid.*, para. 40. The CRC Committee's consideration of Art. 3(1) was limited to best interest in relation to family separation (Art. 9) and periodic reviews of a child's placement (Art. 25).

152 *ibid.*, para. 51.

153 *ibid.*, para. 69.

154 *ibid.*, para. 77.

155 *ibid.*, para. 102.

treatment (Article 37(a)), with such practices occurring under the pretext of discipline and restraint.

The CRC Committee recommended the state close one of the centres with immediate effect,¹⁵⁶ adopt the ‘comprehensive protection paradigm’ of the CRC, assume full responsibility for the regulation, monitoring, and funding to ensure the rights of all children in the system are respected, protected, and fulfilled, as well as to establish reparation mechanisms for victims.¹⁵⁷

6.3.3 A common set of minimum standards

The findings from the inquiry, although context-specific, offer practical insights into how states can fulfil their obligations under the CRC to protect children from violence in organisational settings, including those operated by non-state entities. States cannot absolve themselves of responsibility for protecting children from harm in organisational settings, even when the care is provided by non-state entities. This principle has been reinforced in different legal systems. Illustrative examples include the ACRWC Committee’s decision on Senegal discussed earlier,¹⁵⁸ and the European Court of Human Rights (ECtHR) ruling in *O’Keeffe v Ireland* concerning the sexual abuse of a schoolgirl in a school run by the Catholic Church.¹⁵⁹ The cases acknowledge children as rights-bearing individuals and the violation of fundamental rights in contexts of a public service and where the individuals impacted were particularly vulnerable.¹⁶⁰

156 *ibid.*, paras. 117-118.

157 *ibid.*, paras. 119-132.

158 African Committee of Experts on the Rights and Welfare of the Child, Decision 003/Com/001/2012, *supra* note 108.

159 *O’Keeffe v Ireland*, App no 35810/09 (ECHR, 28 January 2014). The ECtHR has addressed violence against children in various organisational settings including schools, residential care facilities, and detention centres. The *O’Keeffe* case is particularly relevant to this inquiry as it involves a non-state service provider, offering insights into the scope and content of a state’s responsibility to protect children from harm in privately operated institutions. O’Mahony observes that it is also the only judgement to date in which a violation has been found on the basis of a general risk to unidentified children: C O’Mahony, ‘Child Protection and the ECHR: Making Sense of Positive and Procedural Obligations’ (2019) 27 *The International Journal of Children’s Rights* 660, 668. The applicant complained the state had failed, in violation of its positive obligation under Art. 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights, to put in place an adequate legal framework for the protection of children from a known or foreseeable risk. Ultimately, the ECtHR found that the state had not met its obligation, having had to have been aware of the sexual abuse of children by adults, and without putting in place any mechanism of effective state control against the risks of such abuse occurring.

160 For example, the ECtHR considered the fundamental nature of the rights guaranteed by Art. 3 and the particularly vulnerable nature of children, finding it an inherent obligation of a government to protect children from ill-treatment, especially in a primary education context: *O’Keeffe v Ireland*, App no 35810/09 (ECHR, 28 January 2014) paras. 144-146.

In each case, a lack of state oversight and regulation of the private institution was a key factor. In Chile, the state failed to monitor both state-run and privately managed centres. Additionally, more than 400 children were living in centres not subject to *any* oversight by the state. In Senegal, there were no minimum standards for *daaras*. In Ireland, the state's mechanisms for oversight in schools managed by the Catholic Church were insufficient. Specifically, the existing guidance for complaints against teachers contained no obligation for state authorities to monitor teacher conduct or facilitate complaints from children or parents.¹⁶¹ Moreover, the school inspection system did not oblige inspectors to inquire into or to monitor teacher's behaviour or engage directly with students and parents.¹⁶²

Unique to the ECtHR is the discussion of preventing 'foreseeable risks.' In addition to the obligation to establish a legislative and regulatory framework for protection, the ECtHR's case law shows that states must take reasonable measures to mitigate 'foreseeable risks' of ill-treatment, both in cases involving specific risks to identified children and in situations involving general risks to unidentified individuals.¹⁶³ The ECtHR has stated that this obligation should not impose an 'excessive burden' on authorities, particularly considering the 'unpredictability of human behaviour and operational choices ... in terms of priorities and resources.'¹⁶⁴ However, measures should at least provide effective protection, especially for children and vulnerable individuals, and should address risks the authorities knew or should have known about.¹⁶⁵

161 *O'Keeffe v Ireland*, *supra* note 159 at paras. 62, 163. On the contrary, potential complainants had been directed away from the state authorities and towards the non-state managers (generally the local priest) of the schools. Over 400 incidents of abuse had been reported, but none brought to the attention of any state authority: paras. 163, 166. The joint dissent disagreed on the method for applying the standards of the ECHR to the Irish legal system in 1973, primarily in relation to the positive obligation to 'encourage complaints' under Art. 3: *ibid.* Joint partly dissenting judgement at para. 17. See further: C O'Mahony and U Kilkelly, 'O'Keeffe v Ireland and the Duty of the State to Identify and Prevent Child Abuse' (2014) 36 *Journal of Social Welfare and Family Law* 320; J Gallen, 'O'Keeffe v Ireland: The Liability of States for Failure to Provide an Effective System for the Detection and Prevention of Child Sexual Abuse in Education' (2015) 78 *The Modern Law Review* 151.

162 *O'Keeffe v Ireland*, *supra* note 159 at paras. 61, 164.

163 *X and Others v. Bulgaria* (No. 22457/16) (ECHR, 2 February 2021) at paras. 178, 181-183. See also: O'Mahony, *supra* note 161 at 666-668 (comparing this to the concept of general or primary and targeted or secondary prevention discussed by the CRC Committee in General comment No. 13 at para. 46).

164 *O'Keeffe v Ireland*, *supra* note 159 at para. 44 citing *X and Y v. the Netherlands*, 26 March 1985, §§ 21-27, Series A no. 91; *A. v. the United Kingdom*, 23 September 1998, § 22, Reports 1998-VI; *Z and Others v. the United Kingdom*, [no. 29392/95], §§ 74-75[, ECHR 2001-V]; *D.P. and J.C. v. the United Kingdom*, no. 38719/97, § 109, 10 October 2002; and *M.C. v. Bulgaria*, no. 39272/98, § 149, ECHR 2003-XII.

165 In *O'Keeffe*, the state's detection and reporting mechanisms were inadequate to protect children attending the non-state school against the risk of sexual abuse, of which authorities had, or ought to have, knowledge in 1973. This can be contrasted with *X and Others v. Bulgaria* (No. 22457/16) (ECHR, 2 February 2021), which involved allegations of sexual

The concept of foreseeable risk enriches the CRC Committee's guidance by emphasising the need for case-by-case assessments of potential harm, reinforcing the state's duty to proactively protect children from harm while avoiding a 'one-size-fits-all' approach.

In sum, even without consolidated international guidance on child safeguarding, the work of the CRC Committee, other treaty bodies, and courts suggest the emergence of consistent minimum standards for states to meet their international obligations to protect children from harm in all organisational settings. These standards could be distilled as follows: States must establish and enforce rights-based legal frameworks to protect children in organisational settings, whether state-run or privately managed. They must rigorously monitor organisations in contact with children, including non-state entities, to ensure compliance with minimum safety standards. Where such standards are absent, states are obligated to establish them, consistent with Article 3(3) of the CRC. Additional measures may be required in response to prevent harm, depending on identified risks to specific children or groups of children. In all contexts, accessible and child-friendly complaint mechanisms must be in place, and these should be responded to promptly and appropriately. Both the CRC Committee and ACRWC Committee emphasise the importance of training personnel working with children. States are required to ensure clear protocols for managing and preventing abuse within organisations, investigate reports of violence, and remedy abuse, including those by third parties.

Even so, certain issues remain unresolved. Treaty bodies and courts have yet to examine cases involving organisations that are not traditionally viewed as 'public services', such as sports clubs or leisure facilities. However, as discussed earlier, the CRC Committee's broad definition of 'care settings' and a growing understanding of the environments where children are vulnerable to abuse support the extension of these standards to all organisations in contact with children. If such standards are to be applied universally, it raises the question of what level of monitoring and additional measures would be necessary to meet the threshold without imposing an 'excessive burden' on authorities. Moreover, while these international standards provide an important baseline, they must be adapted to national contexts, taking into account socio-legal frameworks and cultural nuances to ensure their effectiveness and relevance.

abuse committed against three children in a Bulgarian orphanage. In this case, the ECtHR found no violation of the substantive limb of Art. 3. Bulgaria had established a specialised institution to periodically inspect children's residential facilities, which was empowered to take protective actions. Inspections revealed several safety measures, including monitored access to the institution by persons from outside, regular visits by an outside doctor and the orphanage's psychologist, and access to a telephone and the number of a child helpline. There was no evidence of systemic abuse or exploitation in residential facilities or schools requiring more stringent measures by the state.

6.4 EXPANDING ACCOUNTABILITY FOR CHILD SAFEGUARDING

6.4.1 NGO responsibilities

The preceding section established that states have clear obligations to protect children in organisational settings, including those organisations run by non-state entities. However, there are contexts where states may lack the will or capacity to develop and enforce these obligations.¹⁶⁶ This is particularly evident in countries recovering from armed conflict, experiencing disasters, or where international donors engage directly with non-state actors without government oversight.¹⁶⁷ Even in countries where the state is involved, its capacity to oversee, monitor, and take direct action is generally limited to organisations it manages directly or through licensing and oversight mechanisms.¹⁶⁸ Additional challenges arise when organisations are beyond the jurisdictional control of any one state,¹⁶⁹ such as in the case of international NGOs delivering programmes for children.

In these circumstances, the reliance on the state as the ‘primary guardian’ of children’s rights against the actions of non-state actors breaks down.¹⁷⁰ Without clear standards, effective external scrutiny, and mechanisms for accountability, some organisations will have little incentive to proactively prevent the risk of harm to children and take appropriate actions if abuse occurs.¹⁷¹ This raises the question of whether NGOs have ‘real direct’ human rights legal obligations, beyond just ‘vicarious’ or ‘indirect’ obligations. This question is part of a broader, extensive scholarly debate about duty-bearers beyond the territorial state, a discussion too expansive to cover fully in this article. Nevertheless, a brief outline is necessary to situate the CRC Committee’s relevant guidance.

166 Fraser, *supra* note 33 at 114; G Erdem Türkelli, ‘Children’s Rights Obligations and Business’, *Children’s Rights and Business: Governing Obligations and Responsibility* (Cambridge University Press 2020) at 35.

167 Committee on the Rights of the Child, Day of General Discussion: The private sector as service provider and its role implementing child rights, *supra* note 70 at 151.

168 United Nations Committee on the Rights of the Child, Day of General Discussion: State Violence against Children, *supra* note 83 at 2. See also Carolei, *supra* note 31 at 871 (observing that non-profit regulators are often underfunded to perform their oversight and regulatory tasks, have limited geographical and jurisdictional scope, and do not offer reparations for victims).

169 McBeth, *supra* note 97 at 62 (observing that a ‘home state’ may regulate organisations within its jurisdiction but will face jurisdictional obstacles in trying to exercise that power in relation to human rights abuses abroad, while a ‘host state’ has jurisdiction over local events but limited power over foreign-based entities, especially subsidiaries).

170 McBeth, *supra* note 97 at 61.

171 B Mathews, ‘Optimising Implementation of Reforms to Better Prevent and Respond to Child Sexual Abuse in Institutions: Insights from Public Health, Regulatory Theory, and Australia’s Royal Commission’ (2017) 74 *Child Abuse & Neglect* 86, 92.

Many scholars have argued for expanding the scope of international human rights law to include actors beyond states, such as intergovernmental organisations, companies, NGOs, and even individuals, given the profound shifts in global governance, economic interdependence, and the increasing influence of private entities on human rights.¹⁷² Some argue that the language of human rights instruments is not exclusively limited to states, suggesting that non-state actors also bear obligations.¹⁷³ Others contend it should be undisputed that non-state actors have a negative obligation to respect the human rights of others.¹⁷⁴ Since international human rights law obligates states to protect human rights from interference by private entities – including through requiring states to proscribe certain private duties or outlaw certain harmful conduct – it inherently assigns negative obligations to non-state actors.¹⁷⁵ Yet others make the case from an effectiveness standpoint, asserting that for international law to be effective in protecting human rights, it must prohibit everyone from assisting governments in violating those principles, or committing abuses directly.¹⁷⁶

However, other scholars dispute this view, arguing that the state's positive obligation to regulate harmful conduct by non-state actors does not make the latter guarantors of human rights provisions.¹⁷⁷ They further caution that extending the range of duty bearers under existing human rights treaties could

172 For example: Alston, *supra* note 33; Clapham, *supra* note 33; Reinisch, *supra* note 96; McBeth, *supra* note 97; S Deva and D Bilchitz (eds), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge University Press, 2013); C Jochnick, 'Confronting the Impunity of Non-State Actors: New Fields for the Promotion of Human Rights' (1999) 21 *Human Rights Quarterly* 56.

173 For example, the UDHR's preamble (providing that 'every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.') and art. 29 ('[e]veryone has duties to the community'). Fraser posits that *prima facie*, under the UDHR, both states and non-state actors are responsible for the realisation of human rights: Fraser, *supra* note 33, 121-122. See also: McBeth, *supra* note 97. Notably, the CRC expressly outlines a framework for children's rights not only in relation to states but also in connection with their partners, extended family, and community. For example, Arts. 5 ('responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community'), 18 (primary responsibility of parents/legal guardians for the upbringing and development of the child) and 27 (primary responsibility of parents and others to secure conditions of living necessary for the child's development). As noted earlier, Art. 3(1) includes an explicit obligation for 'private' bodies to ensure the best interests of the child is a primary consideration in all actions concerning children.

174 Nowak and Januszewski, *supra* note 33 at 159.

175 *ibid.*, 159; Deva and Bilchitz, *supra* note 172.

176 See for example: A Clapham, 'Thinking Responsibly about the Subject of Subjects' in Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press 2006) 80.

177 Monnheimer, *supra* note 33 at 24.

create significant legal uncertainty.¹⁷⁸ In particular, some scholars view the state-centric nature of human rights mechanisms, which link obligations to jurisdiction,¹⁷⁹ and the challenge of extending ‘subjecthood’ and international legal personality to entities without recognised public functions, as key obstacles to broadening the scope of duty-bearers under international human rights law.¹⁸⁰

In tandem with this academic debate, human rights treaty bodies have provided important interpretative guidance on the roles and responsibilities of non-state actors.¹⁸¹ Fraser suggests that, in their efforts to work with states and stakeholders on human rights implementation, these treaty bodies likely encountered gaps in the binding text regarding non-state duties and sought to address them.¹⁸² In this context, the interpretive work of the CRC has been particularly bold and progressive.

In General comment No. 5, for instance, the Committee affirms that the responsibilities to respect and ensure children’s rights go ‘beyond the State and State-controlled services and institutions to include children, parents and wider families, other adults, and non-State services and organisations.’¹⁸³ In doing so, the CRC Committee expressly concurs with the Committee on Economic, Social and Cultural Rights, which has stated that:

178 *ibid.* at 22.

179 Erdem Türkelli argues that human rights obligations are not and cannot be territorial, relying on human rights treaties that do not contain a jurisdictional clause and refer explicitly to the need for international cooperation and assistance to realise human rights. For example, the general obligation provision under Art. 4 of the CRC recognizes state obligation to ‘undertake all appropriate legislative, administrative, and other measures for the implementation of the rights’ but does not link these obligations to jurisdiction: G Erdem Türkelli, M Krajewski and W Vandenhole, ‘Beyond “Global Good Samaritans”: Transnational Human Rights Obligations’ (2023) 15 *Journal of Human Rights Practice* 794, 798. See also the CRC Committee recommendations to the Holy See, *supra* note 135.

180 For an analysis of these arguments and relevant case law, see: Erdem Türkelli, *supra* note 166 at 36-48. Further on the ‘subjects’ doctrine’, see for example: Clapham, *supra* note 176; J Klabbers, ‘(I Can’t Get No) Recognition: Subjects Doctrine and the Emergence of Non-State Actors’ in Jarna Petman and Jan Klabbers (eds), *Nordic Cosmopolitanism* (Brill | Nijhoff 2003). On NGOs as subjects of international law, see for example: MT Kamminga, ‘The Evolving Status of NGOs under International Law: A Threat to the Inter-State System?’ in Gerard Kreijen and others (eds), *State, Sovereignty, and International Governance* (2002); A-K Lindblom, *Non-Governmental Organisations in International Law* (Cambridge University Press 2005); P-M Dupuy and L Vierucci (eds), *NGOs in International Law: Efficiency in Flexibility?* (Edward Elgar Publishing 2008).

181 Reinisch, *supra* note 96 at 71. See also: Fraser, *supra* note 33 at 127-141 (analysing the text of the six main human rights treaties and general comments by their respective treaty bodies to determine responsibilities and potential obligations on non-state actors).

182 Fraser, *supra* note 33 at 142.

183 United Nations Committee on the Rights of the Child, General comment No. 5, *supra* note 74 at para. 56.

‘While only States are parties to the Covenant and thus ultimately accountable for compliance with it, all members of society – individuals, including health professionals, families, local communities, intergovernmental and non-governmental organizations, civil society organizations, as well as the private business sector – have responsibilities regarding the realization of the right to health. States parties should therefore provide an environment which facilitates the discharge of these responsibilities.’¹⁸⁴

In General comment No. 14 on best interests, the CRC Committee states that the right of children to have their best interests assessed and taken as a primary consideration, pursuant to article 3(1) has implications not only on all measures undertaken by governments but also decisions made by ‘civil society entities and the private sector, including profit and non-profit organizations, which provide services concerning or impacting on children,’¹⁸⁵ reinforcing the express text of the CRC.

In General comment No. 16, the CRC Committee acknowledges that there is presently no internationally legally binding instrument on the business sector’s responsibilities towards human rights.¹⁸⁶ Nonetheless, it argues that the duties and responsibilities to respect children’s rights extend beyond state and state-controlled entities to include private actors and businesses.¹⁸⁷ To support this conclusion, the Committee draws on a mix of treaty law and soft law, including the UN Guiding Principles on Business and Human Rights.¹⁸⁸ General comment No. 16 is commonly associated with business responsibilities, however it expressly includes not-for-profit organisations within scope.¹⁸⁹ It also expressly calls upon ‘international organisations’ to have ‘standards and procedures to assess the risk of harm to children in conjunction with new projects and to take measures to mitigate risks of such harm.’¹⁹⁰

184 *ibid.*, para. 56 citing Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) on the right to the highest attainable standard of health, para. 42.

185 United Nations Committee on the Rights of the Child, General comment No. 14, *supra* note 57, para. 12(c).

186 Efforts are underway to elaborate an international human rights instrument to regulate the activities of transnational corporations and other business enterprises. See further: Office of the United Nations High Commissioner for Human Rights, ‘BHR Treaty Process: OHCHR and Business and Human Rights’ (OHCHR) <https://www.ohchr.org/en/business-and-human-rights/bhr-treaty-process>.

187 United Nations Committee on the Rights of the Child, General comment No. 16, *supra* note 75 at para. 8.

188 *ibid.*, para. 5.

189 *ibid.*, para. 3.

190 *ibid.*, para. 48. International organisations include ‘international development, finance and trade institutions, such as the World Bank Group, the International Monetary Fund and the World Trade Organization, and others of a regional scope, in which States act collectively’: para. 47. Inter-governmental organisations have been found to have the requisite legal personality to claim rights and fulfil duties on an international plane: Clapham, *supra* note 33, at 30.

While the Committee's clear position on 'private actors and businesses' has been used to advance responsible business conduct,¹⁹¹ it has not yet been leveraged for advancing the responsibilities of NGOs. As Carolei notes, NGOs are often viewed as the 'good guys' in international affairs, leading to their relative 'underregulation' in international human rights law, compared to other non-state actors such as businesses.¹⁹² Although not legally enforceable, it seems reasonable to argue that the Committee's guidance supports the view that NGOs, like businesses, have responsibilities under the CRC, including the duty to respect children's right to physical and psychological integrity.

The CRC Committee has also encouraged non-state service providers to adopt self-regulation mechanisms to ensure compliance with international human rights standards, including the CRC.¹⁹³ Importantly, in General comment No. 16, the Committee makes it clear that voluntary actions and initiatives cannot replace state action and regulation, nor do they absolve businesses of their responsibility to respect children's rights.¹⁹⁴ Existing literature primarily focuses on self-regulation within the business sector;¹⁹⁵ however, similar efforts also exist within NGOs in humanitarian and development settings.¹⁹⁶ Some of these encompass child safeguarding. For instance, in humanitarian contexts, NGOs have developed self-regulatory frameworks, leading to the

191 For example: Erdem Türkelli, *supra* note 166; UNICEF, UN Global Compact, and Save the Children. *Children's Rights and Business Principles*. 2012, <https://www.unicef.org/documents/childrens-rights-and-business-principles>.

192 Carolei, *supra* note 31 at 872.

193 United Nations Committee on the Rights of the Child, Day of General Discussion: The private sector as service provider and its role implementing child rights, *supra* note 70 at 156.

194 United Nations Committee on the Rights of the Child, General comment No. 16, *supra* note 75, para. 9.

195 For example, see Reinisch, *supra* note 96, 42-46.

196 These encompass instruments such as the Sphere Humanitarian Charter and Minimum Standards in Humanitarian Response, People in Aid Code of Conduct, and the Code of Conduct for International Red Cross and Red Crescent Movement, as well as contractual and other policies. See: *ibid.*, 48-49; K Lohne and KB Sandvik, 'Bringing Law into the Political Sociology of Humanitarianism' (2017) 1 Oslo Law Review 4; D Cubie, 'An Analysis of Soft Law Applicable to Humanitarian Assistance: Relative Normativity in Action?' (2011) 2 Journal of International Humanitarian Legal Studies 177. See also emerging scholarship on applying business and human rights law, meant to apply only for multinational corporations, to make NGOs more accountable for their human rights performance: N Schimmel, 'International Human Rights Law Responsibilities of Non-Governmental Organizations: Respecting and Fulfilling the Right to Reparative Justice in Rwanda and Beyond' (2019) 8 Cambridge International Law Journal 104; D Carolei and N Bernaz, 'Accountability for Human Rights: Applying Business and Human Rights Instruments to Non-Governmental Organizations' (2021) 13 Journal of Human Rights Practice 507.

development of guidelines and good practices.¹⁹⁷ Nevertheless, the effectiveness of these measures remains limited.¹⁹⁸

Moreover, in the context of protecting children from abuse, self-regulation is arguably inadequate.¹⁹⁹ As demonstrated by numerous cases, voluntary measures are often inconsistently followed, and without external oversight, organisations may prioritise their reputation over children's best interests, particularly when senior staff are implicated in the abuse.²⁰⁰ Given the wide variety of NGOs interacting with children in any given country, there is a need for responsibility within and among these entities.

States can, and should, establish minimum standards through legal and administrative measures, but substantial work is necessary at the organisational level. The concept of child safeguarding requires organisations to anticipate potential risks and implement measures to mitigate them before harm occurs. As such, effective safeguarding must be tailored to each organisation's unique context, considering factors such as size, structure, staff composition, governance, target demographics, missions, values, programmes, partnerships, services, funding sources, geographic locations, and cultural contexts. At the same time, child safeguarding requires clear lines of accountability and the referral of suspected abuse to relevant authorities. The investigative and judicial processes that follow are responsibilities of the state and cannot be managed by non-state actors.

The question of whether NGOs can be held accountable independently of state oversight remains crucial, especially from the perspective of a child victim whose access to justice should depend on whether the perpetrator is a state or a non-state actor.²⁰¹ The inability of current legal mechanisms to address violations by non-traditional duty-bearers does not diminish their human rights obligations, nor should the lack of recognition of NGOs as duty-bearers prevent their consideration as such as international law evolves.²⁰²

197 See further: Kaviani Johnson and Sloth-Nielson, *supra* note 42.

198 For example, the 'Oxfam scandal' highlighted the inadequacy of self-regulation in the NGO sector, leading the UK House of Commons International Development Committee to acknowledge its failure: House of Commons, International Development Committee, 'Sexual Exploitation and Abuse in the Aid Sector: Conclusions and Recommendations,' July 31, 2018, <https://publications.parliament.uk/pa/cm201719/cmselect/cmintdev/840/84019.htm>. See also: Carolei, *supra* note 31 at 872; Reinisch, *supra* note 96, 52-53.

199 For example, the wider literature of regulatory theory indicates that hard law or direct government regulation is preferable in the context of addressing child abuse within organisational settings. This is due to its high-risk nature, its classification as a major public health issue, its occurrence across multiple sectors and settings, its wide geographic spread, the need for policies to be universally applicable, the importance of having certainty, the potential for conflicting interests and cultural values within organisations, the insufficient industry capacity or commitment to respond, and the risk of non-compliance: Mathews, *supra* note 171, 148-155.

200 *ibid.*, 92.

201 Fraser, *supra* note 33 at 156.

202 Erdem Türkelli, *supra* note 166 at 35.

Some scholars argue that the debate over NGOs 'real direct' legal obligations hinges on accountability and enforcement mechanisms. While current treaty bodies cannot enforce these responsibilities for NGOs due to the state-centric nature of the human rights regime,²⁰³ the absence of a direct accountability mechanism does not negate the responsibility itself.²⁰⁴ As Knox highlights, the distinction between the existence of a responsibility and the mechanism for its enforcement is crucial.²⁰⁵ This is exemplified by the Genocide Convention, which established a direct duty not to commit genocide on individuals long before an international tribunal was established to prosecute such crimes, illustrating that responsibilities can precede enforcement mechanisms.²⁰⁶

Even so, the question of whether NGOs can be held accountable independently of state oversight is further complicated by serious objections to making non-state actors duty bearers under international human rights law,²⁰⁷ and even less enthusiasm for enhancing NGO accountability specifically.²⁰⁸ One major concern is that states might neglect their own duties, shifting responsibilities to non-state actors and thus weakening their own accountability.²⁰⁹ This was foreshadowed in the Senegal case example above where the ACRWC Committee affirmed that the individual responsibility of non-state actors to respect children's rights does not relieve the state of its obligations to respect, protect and fulfil human rights.²¹⁰ In the case of NGOs, states might even instrumentalise human rights accountability to restrict civil society space under the guise of enforcing obligations.²¹¹

To counter these risks, Monnheimer advocates for narrowly tailored and precisely defined human rights obligations for non-state actors.²¹² Arguably, there would be wide consensus for an obligation relating to child safeguarding, given the fundamental rights at stake and the almost universal consensus for the special protections that children should be afforded. The nature of the obligation could also be differentiated based on the size and scope of an organisation's activities, including whether it has subsidiaries, exercises public

203 Fraser, *supra* note 33 at 142; Nowak and Januszewski, *supra* note 33 at 159.

204 McBeth, *supra* note 97 at 66.

205 Knox, *supra* note 33 at 31.

206 *ibid.* at 31.

207 Monnheimer, *supra* note 33 at 31.

208 For instance, NGOs were omitted from the International Law Commission's study that led to the 2011 Draft articles on the responsibilities of international organisations: Carolei, *supra* note 31 at 872 citing International Law Commission, Draft articles on the responsibility of international organizations, *Yearbook of the International Law Commission*, 2011, vol. II, Part Two.

209 Monnheimer, *supra* note 33 at 41.

210 African Committee of Experts on the Rights and Welfare of the Child, Decision 003/Com/001/2012, *supra* note 108, para. 37.

211 Monnheimer, *supra* note 33 at 41; Carolei and Bernaz, *supra* note 196 at 2.

212 *ibid.* at 44.

functions, or serves specific populations.²¹³ For now, while there does appear to be a consensus that non-state actors have international human rights responsibilities, the precise scope and method of enforcement remain unclear.²¹⁴

Although not currently legally enforceable at the international level, such standards arguably have normative influence within the existing legal framework. They may serve as benchmarks for evaluation of NGO actions and contribute to fostering accountability through public scrutiny or political processes,²¹⁵ for instance. Moreover, courts and other bodies may refer to non-enforceable responsibilities for understanding legal obligations.²¹⁶ They may also act as precursors to legally binding obligations, with the potential to influence the development of customary international law or future treaty-making.²¹⁷

6.4.2 Using existing children's rights mechanisms

While the debates regarding whether NGOs can be held accountable independently of state oversight continue, the existing international human rights law framework can arguably be more effectively leveraged to improve child safeguarding. In advancing greater understanding of necessary standards, the treaty bodies could articulate through its general comments, inquiries, or the state party reporting process, the constituent elements of child safeguarding

213 For example, recalling the earlier discussion about the heightened vulnerability of children in institutional or residential based care and the need for additional measures to mitigate risks. Similar considerations would apply for children in justice settings. See also Schimmel, *supra* note 196, 121, 124 (suggesting that in the context of international development, NGOs are often better resourced than states, are not merely recipients of government directives but, like corporations, exert significant power and influence vis-à-vis the governments with whom they partner).

214 Fraser, *supra* note 33 at 143. See also: Vandenhoe, *supra* note 33 (holding hope for innovative lawyering and creative scholarship to redefine human rights law, clarify obligations of states and non-state actors, and develop principles for assigning and enforcing these responsibilities).

215 For example, see Reinisch, *supra* note 96, 67-68 (discussing increasing non-legal means of enforcing human rights compliance of non-state actors so as to protect their goodwill, reputation, and public image).

216 See for example: O'Mahony, *supra* note 159, 663 (observing that the ECtHR's interpretation is increasingly influenced by the CRC and the CRC Committee's interpretative guidance); M Ferial-Tinta, 'The CRC as a Litigation Tool Before the Inter-American System of Protection of Human Rights' in Ton Liefwaard and Jaap E Doek (eds), *Litigating the Rights of the Child* (Springer Netherlands 2015) (arguing that the CRC has been used substantively in the Inter-American system to construe provisions of the American Charter as well as procedurally in the evidentiary use of CRC Committee reports).

217 For example, Schimmel argues that, like the Ruggie Principles for corporations, a soft-law framework for NGOs could shape policies and practices over time. Such a framework, initially voluntary, may evolve into binding customary law and influence treaty development: Schimmel, *supra* note 196.

as discussed in this article, setting them apart from the broader national frameworks for child protection and clarifying the respective responsibilities of states and non-state actors. The treaty bodies should continue to interrogate the measures being undertaken by states to regulate and oversee organisations working with children,²¹⁸ as well as to investigate and respond appropriately when abuse is suspected or disclosed.

The treaty bodies could also more closely examine legal and regulatory systems impacting organisational safeguarding practices, including mechanisms to enhance oversight and ensure NGO compliance with child safeguarding standards, and encourage states to utilise international cooperation to improve legal and regulatory frameworks. The discussion around regulating NGOs must consider the context of diminishing civic space in many countries,²¹⁹ balancing an awareness of the limits of self-regulation with the risk of over-regulation that could negatively impact children's rights and human rights more broadly. Treaty bodies could also elaborate on the contours of specific legislation such as mandatory reporting laws and 'abuse of trust' provisions. These laws are crucial not only for states to fulfil their obligations to protect, but also for influencing organisational approaches to child safeguarding and providing children access to justice and remedies when their rights are violated. While the CRC Committee does not have the power to issue binding decisions, its interpretative guidance can significantly influence state practices by offering authoritative insights into how international human rights standards should be applied,²²⁰ thereby encouraging alignment in state actions and policies regarding child safeguarding.

There are also opportunities for advancing accountability for child safeguarding through other children's and human rights mechanisms. One such avenue is Article 13 of OPIC, exemplified by the Chile inquiry, which empowers the CRC Committee to launch inquiries and examine cases of grave or systematic violations of children's rights. The CRC Committee is also authorised to receive and review individual complaints against a state that

218 The original guidelines for CRC treaty reporting included the request for information on the steps taken pursuant to Art. 3(3): United Nations Committee on the Rights of the Child, General Guidelines Regarding the Form and Contents of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1(b) of the Convention, UN Doc CRC/C/58 (20 November 1996), para. 37. The obligations under Art. 3(3) do not appear in the subsequent revised versions: United Nations Committee on the Rights of the Child, Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child, UN Doc CRC/C/58/Rev.2 (25 November 2010); United Nations Committee on the Rights of the Child, Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child, UN Doc CRC/C/58/Rev.3 (3 March 2015).

219 HK Anheier and S Toepler, 'Policy Neglect: The True Challenge to the Nonprofit Sector' (2020) 10 Nonprofit Policy Forum 4 at 2.

220 Knox, *supra* note 33 at 25.

is a party to the OPIC, filed by individuals or groups within those states. The ACRWC also has a communications procedure, set out in Article 44.²²¹ In contrast to the OPIC, the ACRWC Committee can admit a communication from a state non-signatory to the ACRWC in the 'overall best interests of the child'.²²² The other treaty bodies coordinated by the Office of the High Commissioner for Human Rights are alternative avenues for enhancing accountability for child safeguarding.²²³ As Sloth-Nielsen notes, children's rights are not solely the domain of the CRC Committee at the global level.²²⁴ Other bodies, such as the CEDAW Committee and the Committee on the Rights of Persons with Disabilities, make significant contributions in areas affecting girls and children with disabilities, respectively.²²⁵ Concurrently, the Human Rights Council's Special Procedures have the authority to conduct investigations and publish reports and opinions.²²⁶

Although these mechanisms are sometimes viewed as 'weak' forms of accountability,²²⁷ they offer alternative ways of prompting state oversight of organisations working with children and promoting NGO compliance with child safeguarding standards. While neither the CRC Committee nor the UN special rapporteurs focusing on specific countries or issues have the power to enforce compliance directly, their capacity to highlight rights violations often triggers governments to take corrective actions.²²⁸

221 The Revised Complaints Guidelines include any individual or group of nature or legal persons, any intergovernmental or non-governmental organisation legally recognised in either one or more of the member states of the African Union (AU), a state party to the ACRWC or the UN, any specialised organ or agency of the AU and UN, and National Human Rights Institutions: African Committee of Experts on the Rights and Welfare of the Child, Revised Guidelines for Consideration of Communications and Monitoring Implementation of Decisions by the African Committee of Experts on the Rights and Welfare of the Child.

222 *ibid.*

223 Skelton, *supra* note 35 at 76.

224 J Sloth-Nielsen, 'Monitoring and Implementation of Children's Rights' in U Kilkelly and T Liefwaard (eds), *International Human Rights of Children* (Springer Nature Singapore Pte Ltd 2019) 55.

225 *ibid.*, 55.

226 For a comprehensive discussion of the range of complaint mechanisms available for children to obtain remedy in international law, see: Skelton, *supra* note 35.

227 Reinisch, *supra* note 96 at 41.

228 Knox, *supra* note 33 at 45. For example, in the case of Chile discussed above, Espejo Yaksic observes that the CRC Committee's decision had a considerable impact on public opinion and was instrumental in spurring significant measures to improve the system for children in care: N Espejo Yaksic, 'Case Note 2018/2: Report of the Investigation in Chile under Article 13 of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, CRC/C/CHL/INQ/1' <https://www.childrensrightsobservatory.nl/case-notes/casenote2018-2>.

6.5 CONCLUSION

Violence against children is a real and foreseeable risk in any organisational setting where adults and children, as well as peers, interact. It is a global challenge – one that transcends sectors, communities, and contexts. It is a child rights issue and deserves robust scholarly attention as such. This article offers a novel contribution to the literature by examining child safeguarding through the lens of international children’s rights law.

This article demonstrates that the link between international children’s rights law and child safeguarding is not merely a vague aspiration to realise children’s rights. Instead, child safeguarding is grounded in clear legal obligations established in the CRC. Key among these is states obligation to prevent violation of children’s rights to physical and psychological integrity in all settings, including those operated by non-state actors (‘the responsibility to protect’). Article 3 of the CRC unequivocally requires both state and non-state entities to make the best interests of the child a primary consideration in all actions affecting them. In addition, Article 3(3) imposes an obligation on states to establish and oversee standards for organisations responsible for children’s care. While academic commentary on Article 3(3) has largely confined its application to residential care and related services, this article argues for a broader interpretation. These obligations should extend to all organisations working with children, including but not limited to residential care facilities, schools, sports clubs, religious organisations, and those involved in humanitarian and development efforts. This broader application is supported by the CRC Committee’s expansive interpretation of ‘care settings’ under Article 19, the growing recognition of how organisational cultures, structures and activities can create or exacerbate risks of child abuse, and the dynamic interpretative methodology for human rights treaties.

Moreover, this article uniquely synthesises guidance from the CRC Committee, other treaty bodies, and courts to propose an outline of minimum standards applicable across diverse organisational contexts. States must establish and enforce rights-based legal frameworks to protect children in organisational settings, whether state-run or privately managed. They must ensure rigorous monitoring of organisations in contact with children, including non-state entities, to ensure compliance with minimum safety standards. Where such standards are lacking, states are obligated to establish them, consistent with Article 3(3) of the CRC. Accessible and child-friendly complaint mechanisms must be in place, and these should be responded to promptly and appropriately.

Certain issues remain unresolved, including the nature of monitoring required for sectors that have historically operated with limited oversight, and in countries facing conflict or disaster. These challenges highlight the need for further scholarly exploration into the specific responsibilities of NGOs to respect children’s rights. This article identifies an opportunity to advance NGO

child safeguarding responsibilities, leveraging the CRC Committee's progressive interpretations of non-state responsibilities. These responsibilities are distinct yet complementary to states obligations, and currently lack mechanisms for enforcement. The extensive body of work on business and human rights provides a potential framework for exploring the development of legally binding obligations and enforcement mechanisms for NGOs in the future.

This article also underscores the potential of existing human rights mechanisms to advance child safeguarding. Treaty bodies can play a crucial role by providing interpretative guidance that clearly defines the constituent elements of child safeguarding, distinguishing them from broader national frameworks for child protection, and clarifying the respective responsibilities of states and non-state actors. Treaty bodies should continue to interrogate the measures being undertaken by states to set standards for organisations working with children, as well as state efforts to oversee, monitor, investigate, and respond appropriately when abuse is suspected or disclosed. The influence of such guidance is significant, with the potential to shape both state and organisational practices.

Alternative avenues for strengthening state oversight and ensuring compliance with safeguarding standards may be found in mechanisms such as the OPIC and Human Rights Council's Special Procedures. However, the UN human rights system, including the CRC Committee, is facing an unprecedented funding crisis, which may constrain what is realistically possible.²²⁹ In this environment, the increasing references to the CRC and related standards by human rights courts, such as the ECtHR and the Inter-American Court of Human Rights, become even more significant in reinforcing children's rights and holding states and organisations accountable.²³⁰

This study contributes to a deeper understanding of how international law can be leveraged to strengthen protections for children in organisational settings worldwide. While the legal instruments and mechanisms explored in this article are essential for achieving child safeguarding objectives, they are not sufficient on their own. Some aspects of child safeguarding require legal measures, but others extend beyond the legal domain. Achieving meaningful progress in child safeguarding requires the active engagement of multiple stakeholders, including human rights treaty bodies, courts, states, researchers, and civil society. These efforts must go beyond legal compliance

229 'Committee on the Rights of the Child Opens Ninety-Sixth Session' (*Office of the United Nations High Commissioner for Human Rights*, 6 May 2024) <https://www.ohchr.org/en/news/2024/05/committee-rights-child-opens-ninety-sixth-session>. See also Knox, *supra* note 33, 46 (emphasising that these bodies do not have enough human and financial resources to 'carry out their already-massive mandates of overseeing governmental compliance with human rights law').

230 T Liefwaard and JE Doek, 'Litigating the Rights of the Child: Taking Stock After 25 Years of the CRC' in T Liefwaard and JE Doek (eds), *Litigating the Rights of the Child* (Springer Netherlands 2015) 2.

to promote approaches that respect children as rights-bearing individuals. This shift involves tackling entrenched power imbalances within many organisational settings and advocating for children's empowerment and participation strategies. Effective strategies must acknowledge children as stakeholders and actively involve them in creating solutions that address the inherent power imbalances with adults, within organisations and in the wider community.²³¹ Implementing such an approach demands time and meaningful collaboration at the local level to make child safeguarding resonate with local communities and organisations. Ultimately, this approach holds promise to contribute towards disrupting the cycle of organisational failures in safeguarding children and prioritising children's needs, voices, and rights, thereby making children's rights meaningful and actionable in practice.

231 Moore, *supra* note 85 at 81–84.

7 | Conclusion

In the wake of high-profile cases, legal actions, government inquiries, and continuous revelations of child abuse within organisational settings, child safeguarding has never been more critical on a global scale. The scope of attention has expanded from abuse within residential care facilities to include various community settings in which children spend time, such as schools, sports clubs, religious groups, and humanitarian spaces. This shift reflects a growing understanding of how organisational cultures, structures, and activities can create, amplify, or fail to mitigate the risks of child abuse. It also highlights the shared responsibility of both state and non-state actors in protecting children from violence in all environments.

This concluding chapter synthesises the findings from the preceding academic manuscripts to concisely address each research sub-question, distils these insights to answer the main research question, outlines policy and practice implications, and offers brief reflections on the study overall.

7.1 CHILD SAFEGUARDING AS A CHILD RIGHTS IMPERATIVE

7.1.2 Key findings – sub-questions

This study was guided by the central research question:

How can international children’s rights law – especially the norms and standards established by the UN Convention on the Rights of the Child (CRC) and related relevant standards including the African Charter on the Rights and Welfare of the Child (ACRWC) – be used, or developed, to improve child safeguarding in organisational settings?

Five sub-questions were formulated to explore certain aspects of the main research question. Their findings are synthesised below:

- a) *How can models of self-regulation and standard setting within humanitarian and development contexts be aligned with norms and standards established by the CRC and the ACRWC to improve child safeguarding in those contexts? What are the challenges for child safeguarding in contexts with less developed child protection systems?*

Chapter 2 explored this sub-question by analysing child safeguarding in humanitarian and development contexts.¹ This analysis is set against a backdrop of at least three decades of evolving NGO self-regulation and standard setting to ‘do no harm.’² The term ‘child safeguarding’ appears to have first emerged in international discourse following the 2002 West African ‘sex-for-food’ scandal. ‘Safeguarding’ more broadly gained renewed attention after the 2018 ‘Oxfam scandal,’ prompting numerous organisations to conduct internal audits and introduce new policies and human resources measures aimed at improving safeguarding of adults and children.

Chapter 2 identified opportunities to align these efforts more closely with children’s rights norms and standards established by the CRC and ACRWC. It recommended broadening safeguarding efforts to address the full spectrum of children’s rights risks in humanitarian and development contexts, beyond sexual exploitation; recognising the wide variety of organisations operating in the sector and the structural factors that enable abuse and exploitation, drawing on feminist scholarship that highlights power imbalances in the aid system;³ and implementing comprehensive strategies to mitigate risks aligned with children’s rights and informed by lessons from adjacent literature, including findings from government inquiries into institutional abuse.

As discussed in Chapter 1, the term ‘child safeguarding’ originated from a context with well-established child protection systems, making its application in settings with less-developed systems particularly challenging. Chapter 2 discussed how organisational-level interventions, such as child safeguarding policies, codes of conduct, and vetting procedures, must be adapted to align with the capacities and realities of broader national systems. Additionally, other systemic issues, often described as ‘macrosystem’ challenges in ecological systems theory, must be addressed. These include addressing inequitable power dynamics in the aid sector and confronting longstanding attitudes and

1 Originally published as Afrooz Kaviani Johnson and Julia Sloth-Nielsen, ‘Safeguarding Children in the Developing World – Beyond Intra-Organisational Policy and Self-Regulation’ (2020) 9 Soc. Sci. 19.

2 This includes key frameworks such as the Sphere Humanitarian Charter and Minimum Standards: Sphere Association, *The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response*, Fourth edition (Geneva, Switzerland, 2018). The principle of ‘do no harm’ is elaborated in the first Protection Principle which requires humanitarian actors to prevent and mitigate any potentially negative impact of humanitarian activities on affected populations. See also: the Core Humanitarian Standard on Quality and Accountability, which incorporates safeguarding measures largely focused on protecting people and communities from sexual exploitation: CHS Alliance, Groupe URD, and Sphere Association, ‘Core Humanitarian Standard on Quality and Accountability: Updated Guidance Notes and Indicators 2018,’ 2018, <<https://corehumanitarianstandard.org/>>. The Core Humanitarian Standard was updated in 2024.

3 See for example: Elizabeth Gillespie, Roseanne Mirabella and Angela Eikenberry, ‘#Metoo/#Aidtoo and Creating an Intersectional Feminist NPO/NGO Sector’ (2019) 10(4) Nonprofit Policy Forum.

beliefs about child abuse. These issues increase children's risk of harm and hinder effective responses by organisations as well as the authorities responsible for intervention and enforcement. The analysis emphasised the critical interplay between child safeguarding measures in organisational settings and broader efforts to improve child protection systems. This relationship is particularly evident in resource-constrained contexts. Chapters 3 and 4 further explored these interconnected challenges.

- b) How have child protection and child safeguarding evolved since the adoption of the ACRWC, and through the work of the African Committee of Experts on the Rights and Welfare of the Child?*

This sub-question was addressed in Chapter 3, which traced the shift towards a systemic response to child protection following the adoption of the ACRWC.⁴ At the time of its adoption, child protection was not yet recognised as a distinct discipline, and interventions primarily targeted specific groups, such as child soldiers, girls subjected to female genital mutilation, and children in child labour. An analysis of the African Committee of Experts on the Rights and Welfare of the Child (ACRWC Committee) concluding observations up to the time of writing Chapter 3 shows increasingly comprehensive guidance for states in realising children's rights to protection.

A key milestone in this evolution was General Comment 5, where the ACRWC Committee set out its approach to child protection systems strengthening. The General Comment acknowledged the 'nested' system of child protection, where children are embedded within families or kin, living in communities that function within a broader societal framework. Reflecting ecological systems theory, it emphasised the importance of coordinating these interconnected sub-systems to ensure their actions mutually reinforce shared goals and boundaries. Notably, General Comment 5 also included an explicit direction for state parties to ensure that organisations working with children adopt child safeguarding policies and prevent individuals who have abused children from working with them.⁵

The analysis in Chapter 3, examining the trajectory of child protection more broadly, is important for contextualising the overarching research question. Introducing responsibilities for child safeguarding in contexts where child protection systems are nascent and critically under-resourced presents significant challenges. In addition, broader issues such as weak accountability and

4 Originally published as Afrooz Kaviani Johnson and Julia Sloth-Nielsen, 'Child Protection, Safeguarding and the Role of the African Charter on the Rights and Welfare of the Child: Looking Back and Looking Ahead' (2020) 20 African Human Rights Law Journal 643.

5 African Committee of Experts on the Rights and Welfare of the Child, General Comment No. 5 on 'State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection' at 47.

judicial systems, as well as entrenched hierarchical power structures, linked to the status of children and harmful gender norms, further complicate efforts. These factors directly influence organisational practices and affect the ability of children and others to identify and challenge organisational cultures, structures, and activities that place children at risk, as well as to report suspected abuse to relevant authorities.

At the same time, the continent is pioneering child safeguarding efforts that may serve as an example for other intergovernmental bodies. Since the writing of Chapter 3 of this thesis, the ACRWC Committee has released Guidelines on Child Participation,⁶ which establish clear child safeguarding standards for all development partners and civil society organisations involved in organising sessions with children, as well as for all Committee activities or events related to the ACRWC that include children's participation. Additionally, the Executive Council of the African Union has requested the ACRWC Committee to develop a Child Safeguarding Policy for the African Union.⁷ The policy aims to protect children in relation to the 'operations' of the African Union and its Organs, marking a significant advancement in embedding child safeguarding in the AU framework and emphasising the growing recognition of child safeguarding as a critical priority.⁸

- c) *How can mandatory reporting laws and laws relating to the grooming of children for sexual abuse be strengthened, with reference to international children's rights law norms and standards, to improve child safeguarding in organisational contexts?*

6 African Committee of Experts on the Rights and Welfare of the Child, Guidelines on Child Participation, February 2022 <http://www.acerwc.africa/sites/default/files/2022-10/ACERWC%20Guidelines%20on%20Child%20Participation_English.pdf>.

7 'Validation Workshop of the African Union Child Safeguarding Policy' (ACERWC 7 November 2023) <<https://www.acerwc.africa/en/article/activity/validation-workshop-african-union-child-safeguarding-policy>>. The draft policy was presented during the ACERWC's 42nd Ordinary Session: Report of the 42nd Session of the African Committee of Experts on the Rights and Welfare of the Child, 8-17 November, ACERWC/RPT (XLII), pp 17-18 <<https://www.acerwc.africa/sites/default/files/2024-07/Report%2042nd%20Ordinary%20Session.pdf>>. As of the time of writing this conclusion, the policy has not yet been adopted by the African Union.

8 'Child safeguarding' also appears in Guidance Note of the Secretary-General on Child Rights Mainstreaming, released in July 2023. The Guidance Note calls for the UN system to develop an UN-wide child safeguarding policy to prevent and address any negative impact on children as a result of UN operations, interaction with UN personnel or organizations and personnel with which the UN collaborates, and during activities organized by the UN: United Nations, Guidance Note of the Secretary-General on Child Rights Mainstreaming (July 2023) <<https://www.ohchr.org/en/documents/tools-and-resources/guidance-note-secretary-general-child-rights-mainstreaming>>.

Chapter 4 focused on mandatory reporting legislation,⁹ which can play an important role in breaking the ‘culture of silence’ around child abuse, including in organisational cover-ups. The chapter analysed examples of such legislation in four countries in Eastern and Southern Africa, highlighting opportunities to strengthen existing laws with reference to international children’s rights law. These include designating officers of organisations working with children, including religious ministries, as mandated reporters; ensuring protection for reporters against any reprisals or liability for reports made in good faith; and clarifying the responsibilities of authorities upon receiving a report of suspected abuse.

Chapter 4 also examined the complexities of introducing mandatory reporting legislation in countries where the formal capacities to respond to child abuse are constrained, once again highlighting the importance of strengthening child protection systems and resolving potential conflicts between formal and informal protection mechanisms.

Chapter 5 focused on grooming for child sexual abuse within organisational contexts.¹⁰ It highlighted how a lack of understanding about grooming, including that perpetrators not only manipulate children but also their families and work environments, can make the detection of such behaviour challenging and contribute to inadequate responses by organisations. Drawing on organisational theory, it examined how certain organisational cultures can enable grooming behaviours. The chapter observed that in many jurisdictions and in the work of the CRC Committee, grooming is often narrowly defined, typically focused on interactions with children through digital technology.

The chapter identified the need for updated and elaborated global guidance. This includes guidance to expand the criminal definition of grooming to include grooming through personal contact with a child, their parents, and others. As suggested by the Australian Royal Commission into Institutional Responses to Child Sexual Abuse, this sends a powerful message about the wrongfulness of such behaviour and its far-reaching impact, as well as holding perpetrators accountable for their actions.¹¹ Importantly, this legal shift could also serve as a basis for improving organisational policies and standards of conduct. For instance, organisations could explicitly define grooming behaviours as inappropriate or harmful within child safeguarding policies and codes of conduct and provide targeted training for personnel, establishing clear

9 Originally published as Afroz Kaviani Johnson, ‘All Care, No Responsibility: Legislation for Mandatory Reporting of Child Abuse in the “Developing World”’ (2022) 30 *The International Journal of Children’s Rights* 818.

10 Originally published as Afroz Kaviani Johnson, ‘Grooming and Child Sexual Abuse in Organizational Settings – an Expanded Role for International Human Rights Law’ (2024) 16 *Journal of Human Rights Practice* 355.

11 Commonwealth of Australia, ‘Criminal Justice Report: Parts III to VI’ (Royal Commission into Institutional Responses to Child Sexual Abuse 2017) 42-43.

standards for staff and volunteers. Such measures could help mitigate the risk of fostering organisational cultures and environments that enable grooming.

Chapters 4 and 5 illustrate how legislation, if well-drafted and effectively enforced, can influence organisational child safeguarding practices. The focus on mandatory reporting and grooming addresses systemic flaws revealed in cases and inquiries into institutional abuse, which are central to this study. These examples reiterate the importance of multi-layered interventions (cf. ecological systems theory) and highlight the strong interdependence between child safeguarding and broader child protection systems. For example, while states have a clear obligation to prohibit all forms of violence in all settings, laws such as mandatory reporting can contribute to 'breaking the silence' around abuse, including organisational cover-ups. However, their effectiveness relies on the capacity of the child protection and justice systems to respond appropriately. This challenge is particularly evident in humanitarian and development contexts, where mandatory reporting requirements may overlook the limited resources and capacity of formal systems, as well as the role of community-based approaches to child abuse. These complexities highlight the need to explore if and how customary law and informal community practices can complement formal legal frameworks to strengthen both child safeguarding and child protection efforts.

- d) How does international children's rights law address state obligations to oversee and establish safeguarding standards for organisations working with children, including non-state entities? Can non-state entities be held accountable independently of state oversight?*

Chapter 6 examined how child safeguarding is grounded in clear obligations in the CRC. The most pertinent being the obligation for states to prevent violation of children's rights in all settings, including organisational settings operated by non-state actors ('the responsibility to protect'). Article 3 of the CRC obliges both state and non-state entities to hold the best interests of the child as a primary consideration in all actions affecting children. Further, Article 3(3) establishes states' duty to set and oversee standards for organisations responsible for children's care and protection.

The chapter synthesises guidance from the CRC Committee, other treaty bodies, and courts to propose an outline of minimum standards applicable across diverse organisational contexts. States must establish and enforce rights-based legal frameworks to protect children in organisational settings, whether state-run or privately managed. They must rigorously monitor organisations in contact with children, including non-state entities, to ensure compliance with minimum safety standards. Where such standards are absent, states are obligated to establish them, consistent with Article 3(3) of the CRC. Accessible and child-friendly complaint mechanisms must be in place, and the state should respond to these promptly and appropriately.

Some states may lack the will or capacity to develop and enforce child safeguarding standards. This is particularly evident in countries recovering from armed conflict, experiencing disasters, or where international donors engage directly with non-state actors without government oversight. Even in countries where the state is involved, its capacity to oversee, monitor, and take direct action is generally limited to organisations it manages directly or through licensing and oversight mechanisms. In these circumstances, the reliance on the state as the 'primary guardian' of children's rights against the actions of non-state actors breaks down.¹²

Chapter 6 reviewed the CRC Committee's interpretative guidance on whether non-state actors have 'real direct' human rights legal obligations, highlighting its bold and progressive stance within a broader, extensive scholarly debate. The CRC Committee's guidance supports the notion that non-state actors, including NGOs, have responsibilities under the CRC. The chapter identifies an opportunity to advance NGO child safeguarding responsibilities, leveraging the CRC Committee's progressive interpretations of non-state responsibilities. These responsibilities are distinct yet complementary to states obligations, and currently lack mechanisms for enforcement. The extensive body of work on business and human rights provides a potential framework for exploring the development of legally binding obligations and enforcement mechanisms for NGOs in the future.

Chapter 6 also underscores the potential of existing human rights mechanisms to advance child safeguarding. Alternative avenues for strengthening state oversight and ensuring compliance with safeguarding standards may be found in mechanisms such as the Optional Protocol to the CRC on a communications procedure (OPIC) and the Human Rights Council's Special Procedures.

e) What specific guidance does international children's rights law provide to inform organisational policies and practices related to child safeguarding?

Chapters 2 and 6 outline key authoritative guidance from treaty bodies that provide valuable insights for shaping organisational policies and practices. This guidance can be categorised into five main areas. First, organisations should adopt child safeguarding policies and standards grounded in children's rights.¹³ They should carry out assessments to anticipate potential risks to

12 Adam McBeth, 'Spring 2008 Symposium: The 60th Anniversary of the Declaration of Human Rights: A Reality Check: Every Organ of Society: The Responsibility of Non-State Actors for the Realization of Human Rights' (2008) 30 *Hamline Journal of Public Law & Policy* 33, 61.

13 United Nations Committee on the Rights of the Child, General comment No. 13 (2011), The right of the child to freedom from all forms of violence, UN Doc CRC/C/GC/13 (April 18, 2011) at para 42(b). See also: African Committee of Experts on the Rights and Welfare of the Child, General Comment No. 5 (n 5) at 47

children associated with the organisation's operations, programmes, or personnel, and design mitigation strategies. Policies and accompanying standards and procedures, including codes of conduct, should be tailored to the specific risks and features of the organisation, and prioritise children's best interests. Children's views should be sought and considered in the assessment and development of policies and standards.

Second, organisations should implement safe recruitment practices. These should ensure individuals are comprehensively screened for any background of violence and have the necessary qualifications and the ability to foster positive, non-violent relationships and discipline, as well as an understanding of children's rights and development, including the specific needs and rights of vulnerable groups of children.¹⁴ Individuals convicted of child abuse must be barred from having contact with children.¹⁵

Third, organisations should provide training for individuals working with children. Training should be regular and cover children's rights; relevant policies, standards, and procedures; positive, non-violent relationships, and discipline; and peer violence.¹⁶ Training should encompass additional topics that are relevant to the organisation and the needs and characteristics of the children it serves. It should go beyond 'information sharing' to promote attitudinal shifts towards children's safety.

14 United Nations Committee on the Rights of the Child, Day of General Discussion: State Violence against Children, UN Doc CRC/C/97, Annex VI (September 22, 2000) at para 15; United Nations Committee on the Rights of the Child, Day of General Discussion: Violence against Children within the Family and in Schools, UN Doc CRC/C/111 (November 28, 2001) at para 722. See also: Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, 'Protection of Children against Sexual Abuse in the Circle of Trust: The Strategies, 2nd Implementation Report' (Council of Europe 2018) 3 (calling for states to go beyond the requirement of the Lanzarote Convention and regularly screen such professionals, not only at recruitment, and to do the same with all voluntary activities involving contacts with children).

15 For example: United Nations Committee on the Rights of the Child, Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Belgium, UN Doc CRC/C/BEL/CO/5-6 (2019) para 24; Concluding Observations on the Combined Third to Sixth Periodic Reports of Malta, UN Doc CRC/C/MLT/CO/3-6 (2019) para 27.

16 United Nations Committee on the Rights of the Child, Inquiry Concerning Chile under Article 13 of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure: Report of the Committee, UN Doc CRC/C/CHL/IR/1 (May 6, 2020) at para 77; United Nations Committee on the Rights of the Child, General comment No. 13 (n 13) at para 44; United Nations Committee on the Rights of the Child, General comment No. 8 (2006), The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (Arts. 19; 28, Para. 2; and 37, *Inter Alia*), UN Doc CRC/C/GC/8 (March 2, 2007) at para 46; United Nations Committee on the Rights of the Child, Day of General Discussion: State Violence against Children (n 14) at para 16 and 24; United Nations Committee on the Rights of the Child, Day of General Discussion: Violence against Children within the Family and in Schools (n 14) at para 723.

Fourth, organisations should create safe and empowering environments for children.¹⁷ This requires actively implementing measures identified through assessments to mitigate possible risks associated with the organisation's operations, programmes, or personnel. It also involves empowering children through participation and providing accurate, accessible, and age-appropriate information to help them develop life skills, self-protection strategies, and positive peer relationships.¹⁸ It includes enabling children to express their opinions on organisational decisions affecting them.

Fifth, organisations should implement child-centred, clear, and timely processes for handling concerns, disclosures, and allegations of abuse, and reporting to relevant authorities. This includes establishing child-centred and accessible mechanisms for children to lodge complaints and ensuring child-centred support processes.¹⁹

These five areas provide a solid foundation for organisational child safeguarding efforts, representing emerging consensus on common elements needed to mitigate the risk of abuse in organisational settings and ensure appropriate responses.²⁰ Unlike other frameworks that may be prescriptive and shaped by assumptions and resource expectations that do not easily adapt across contexts, these areas – grounded in international children's rights law – offer baseline standards. They have the potential to guide diverse organisations in shaping safeguarding efforts that are both effective and responsive to local, cultural, social, and institutional realities.

7.1.2 Key findings – main research question

The findings from each sub-question collectively address the central research question of how international children's rights law can be used, or developed,

17 United Nations Committee on the Rights of the Child, General comment No. 13 (n 13) at para 3(e)

18 *ibid.*, para 44.

19 For example: United Nations Committee on the Rights of the Child, Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Italy, UN Doc CRC/C/ITA/CO/5-6 (2019) para 21; Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Poland, CRC/C/POL/CO/5-6 (2021) para. 27; Concluding Observations on the Combined Second to Fourth Periodic Reports of Kiribati, UN Doc CRC/C/KIR/CO/2-4 (2022) para 27. See also: Concluding Observations on the Second Periodic Report of the Holy See, UN Doc CRC/C/VAT/CO/2 (2014) at para. 42 (urging the development of safe, well-publicised, confidential, and accessible support mechanisms for children and their representatives to enable them to report incidents of violence and to provide clear guidance and training on when and how to refer instances of abuse and neglect to investigative authorities). See also: United Nations Committee on the Rights of the Child, Day of General Discussion: State Violence against Children (n 14) at para. 26

20 Ben Mathews, 'Oversight and Regulatory Mechanisms Aimed at Protecting Children from Sexual Abuse: Understanding Current Evidence of Efficacy' (Royal Commission into Institutional Responses to Child Sexual Abuse 2017) 93.

to improve child safeguarding in organisational settings. This study identifies several opportunities for leveraging and evolving these standards to meet contemporary challenges. A key opportunity lies in reframing child safeguarding from a practice issue to a child rights imperative. Efforts to advance child safeguarding have historically been reactive, often driven by scandals. While such events can catalyse action, they may fail to sustain long-term, meaningful change.²¹ In contrast, anchoring child safeguarding in the international children's rights framework offers an almost universally agreed framework to move from reactive to proactive measures that are monitored over time. This holds the potential to foster sustainable, context-specific policies and practices, grounded in a genuine commitment to upholding children's right to protection from violence in all settings.

International children's rights law provides multiple pathways for accountability, offering concrete mechanisms for redress and oversight. The CRC requires states to implement legal, administrative, social, and educational measures to prevent harm in organisational settings,²² and to provide remedies when harm occurs.²³ This includes harm caused or contributed to by 'third parties'.²⁴ States must establish child-sensitive mechanisms – criminal, civil, or administrative – accessible to children and their representatives.²⁵ The OPIC further enhances accountability by providing an international mechanism for children to seek justice when domestic avenues prove insufficient. In addition to the OPIC, other human rights mechanisms such as the Human Rights Council's Special Procedures and regional courts offer alternative routes to justice. Improving awareness of and access to these mechanisms is essential for enhancing the accountability of states and organisations towards children.

Treaty bodies, including the CRC Committee and the ACRWC Committee, play a critical role in promoting child safeguarding by setting standards, monitoring state compliance, and providing authoritative guidance. Through state party monitoring procedures, they can assess state efforts to regulate and oversee organisations working with children, ensuring that safeguarding measures are not only in place but effectively implemented. Their recommenda-

21 For example, see: Graham Thursby, 'Why Is No One Talking about Safeguarding Anymore?' (Bond | *The international development network*, 3 January 2024) <<https://www.bond.org.uk/news/2024/01/why-is-no-one-talking-about-safeguarding-anymore/>> (observing that safeguarding in the aid sector took a 'dramatic spike upwards' following the 2018 media stories and the FCDO's global summit, but noting a significant decline, as evidenced by Bond's safeguarding survey tracking member engagement on safeguarding practices. Survey participation peaked at 144 in 2021 but fell to just 40 in 2023, below pre-summit levels).

22 Art. 19(1), CRC.

23 Arts. 19(2), 39, CRC.

24 United Nations Committee on the Rights of the Child, General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children's Rights, UN Doc CRC/C/GC/16 at para 30.

25 *ibid.*

tions influence national laws and policies,²⁶ driving greater consistency with international standards and encouraging approaches aligned with children's rights across regions. Treaty bodies could further shape the development of norms by providing consolidated guidance on the constituent elements of child safeguarding, distinguishing them from broader child protection frameworks. Treaty bodies could also provide guidance on legislation with the potential to influence systemic practices in organisations and offer children whose rights have been violated with access to justice and remedies, such as mandatory reporting and grooming laws.

To maximise the potential impact of international children's rights law, further development is needed to clarify child safeguarding duties of organisations, both state and non-state. The nature of obligations (and duties) should arguably be differentiated based on the size and scope of an organisation's activities, including whether it has subsidiaries, exercises public functions, or serves specific populations. For example, this study has discussed the heightened vulnerability of children without parental care, particularly in institutional or residential care settings, and the need for additional measures to mitigate risks. The CRC's general principle of non-discrimination²⁷ is highly relevant here. It emphasises the need to tailor safeguarding measures to address the specific vulnerabilities of these children, while ensuring that other children are not left unprotected when interacting with informal or unregulated organisations. Furthermore, the size and operations of organisations must be considered. In the context of international development, for instance, some NGOs are often better resourced than states and are not just recipients of government directives. Like corporations, they can exert significant power and influence over the governments they partner with,²⁸ which should add another layer to their child safeguarding responsibilities. There is also fertile ground for child rights scholars to engage in the ongoing debate about the 'real direct' legal obligations of non-state actors. They could explore how the CRC Committee's progressive interpretations and the extensive body of work on business and human rights might serve as a pathway to enforcing the child safeguarding responsibilities of non-state actors.

This study consolidates existing guidance to suggest a foundation for organisational child safeguarding efforts, such as the requirement for organisational policies, safe recruitment, ongoing training, child-friendly reporting mechanisms, and accountability structures. However, deeper engagement with the cultural and structural factors that enable abuse is essential. A critical

26 John H Knox, 'Horizontal Human Rights Law' (2008) 102 *The American Journal of International Law* 1, 25.

27 Art. 2, CRC.

28 Noam Schimmel, 'International Human Rights Law Responsibilities of Non-Governmental Organizations: Respecting and Fulfilling the Right to Reparative Justice in Rwanda and Beyond' (2019) 8 *Cambridge International Law Journal* 104, 121, 124.

aspect of this effort is ensuring the meaningful participation of children. Children's voices must be central to shaping policies and responses, as they offer unique insights into the risks they face and the barriers they encounter in seeking protection and justice.²⁹ Feminist perspectives can further inform child safeguarding strategies by highlighting how systemic power imbalances contribute to children's vulnerability and impede their access to remedies.³⁰ Moving beyond an assumption of children's 'inherent' vulnerability to addressing the systemic factors that exploit vulnerability may lead to more effective and empowering child safeguarding approaches.³¹ Organisational theory provides additional insights into fostering cultures of safety and accountability. Leadership plays a pivotal role in shaping an organisational culture that prioritises children's safety and well-being.³² Leaders must cultivate an environment that encourages learning, transparency, and a commitment to continuous improvement, rather than one marked by secrecy or blame.³³ This shift is essential to dismantling cultures of silence and prioritising children's best interests.

As introduced in Chapter 1, Bronfenbrenner's ecological systems theory³⁴ emphasises the need for multi-level interventions to protect children from harm in organisational settings. This requires interventions across multiple levels: the micro-level, focusing on direct interactions between children and their caregivers; the organisational level, addressing policies, recruitment, leadership, and institutional culture; and the societal level, tackling systemic issues like inequality, cultural norms, and legal frameworks. This study has begun to

29 Tim P Moore, 'Children and Young People's Views on Institutional Safety: It's Not Just Because We're Little' (2017) 74 *Child Abuse & Neglect* 73, 83.

30 Jo Lovett, Maddy Coy and Liz Kelly, 'Deflection, Denial and Disbelief: Social and Political Discourses about Child Sexual Abuse and Their Influence on Institutional Responses, A Rapid Evidence Assessment' (Independent Inquiry into Child Sexual Abuse 2018) 97 (examining how feminist theories provide insights into how intersecting inequalities, such as age, gender, race, social class, and (dis)ability, can exacerbate the risks of abuse).

31 Gabrielle Daoust and Synne Dyvik, 'Reconceptualizing Vulnerability and Safeguarding in the Humanitarian and Development Sector' [2021] *Social Politics: International Studies in Gender, State & Society* jxaa040 4 11.

32 Tosca Bruno-van Vijfeijken, "'Culture Is What You See When Compliance Is Not in the Room": Organizational Culture as an Explanatory Factor in Analyzing Recent INGO Scandals' (2019) 10 *Nonprofit Policy Forum* 2; Stephen Smallbone, 'The Impact of Australia's Royal Commission on Child- and Youth-Serving Organizations' (2017) 74 *Child Abuse & Neglect* 99, 101. Commonwealth of Australia, 'Final Report, Volume 6: Making Institutions Safe' (Royal Commission into Institutional Responses to Child Sexual Abuse 2017) 155. See also Carly Parnitzke Smith and Jennifer J Freyd, 'Institutional Betrayal' (2014) 69 *American Psychologist* 575 (highlighting that organisational cultures valuing the courage to report abuse must be built from the top down, starting with strong leadership examples).

33 Hazel Blunden and others, 'Victims/Survivors' Perceptions of Helpful Institutional Responses to Incidents of Institutional Child Sexual Abuse' (2021) 30 *Journal of Child Sexual Abuse* 56, 57.

34 Urie Bronfenbrenner, 'Toward an Experimental Ecology of Human Development' (1977) 32 *American Psychological Association* 513.

explore these interconnected levels, but further interdisciplinary research is needed to deepen our understanding of how they interact and how they can be leveraged to foster organisational environments that prioritise children's best interests and keep children safe.

7.2 IMPLICATIONS FOR POLICY AND PRACTICE

The study has practical implications for policy and practice, tailored for different audiences, as outlined below:

- *Treaty bodies*, especially the CRC Committee and the ACRWC Committee, have an important role in further developing the norms and standards on child safeguarding. Whether through a general comment or otherwise, this should include articulating the constituent elements of child safeguarding and distinguishing these from broader national frameworks for child protection. It also includes elaborating the independent duties of non-state entities to respect children's rights to physical and psychological integrity. Treaty bodies can draw attention to child safeguarding by including it in lists of issues for state party reports. The ACRWC Committee, which has explicitly called for organisations working with children to have child safeguarding standards, can leverage the state party reporting process and its General Comment No. 5 to continue meaningful dialogue with states parties to improve child safeguarding.

Treaty bodies could also help build greater awareness of the dynamics of violence against children, aiming to challenge the simplistic, stereotyped constructions of sexual abuse for example, to consider grooming that goes beyond the child to include families, communities, and organisations themselves. Such understanding is crucial for implementing more effective prevention strategies. Treaty bodies could more closely examine legal and regulatory systems impacting organisational safeguarding practices. These include mandatory reporting laws, which can address systemic practices in organisations that can operate to preclude or discourage organisations reporting suspected child abuse to authorities.

Further guidance on oversight mechanisms for entities working with children is also essential, particularly in resource-constrained contexts. Such mechanisms can play an important role in proactively investigating, monitoring, and imposing administrative sanctions on entities, supporting children's access to justice and effective remedies.³⁵ The CRC Committee's

³⁵ United Nations Committee on the Rights of the Child, 'General comment No. 16' (n 24) para 30.

forthcoming general comment on children's rights to access to justice and effective remedies³⁶ could consider the specific responsibilities of states in supporting children's access to justice for violations of their rights in organisational settings and by non-state actors.

- *States* must, in line with their international obligations, set standards for organisations working with children, ensure robust oversight of such organisations, provide accessible mechanisms for children to lodge complaints, investigate reports of violence, and ensure effective remedies for children. This is important not only for organisations operating within their jurisdiction but also those registered or otherwise connected with their jurisdiction and working abroad, such as in development and humanitarian contexts.

Bilateral donors play an important role in promoting child safeguarding measures by requiring their adoption and implementation through contractual agreements. To enhance effectiveness and sustainability, these efforts should be consistently mandated, adopt a more contextualised approach grounded in children's treaty-based rights, and actively involve children and communities in their development and implementation. The requirement for organisations to implement child safeguarding standards should be accompanied with the necessary resources to do so effectively.³⁷

States should make necessary legislative reforms to provide an enabling environment for child safeguarding, such as introducing legislation relating to mandatory reporting. States must continue to invest in strengthening child protection systems in line with article 19 of the CRC. This includes improving the capacity of the formal system as well as establishing effective linkages with community members and informal or traditional structures that support children's protection. Such investments are critical domestically, as well as internationally as part of Official Development Assistance.³⁸

- *Organisations working with children* should identify and mitigate risks arising from their operations, programmes, or personnel as part of their respons-

36 United Nations Committee on the Rights of the Child, 'Concept Note: General Comment on Children's Rights to Access to Justice and Effective Remedies' (2024).

37 Asmita Naik, 'Tackling Sexual Exploitation and Abuse by Aid Workers: What Has Changed 20 Years On?' (*Humanitarian Practice Network*) <<https://odihpn.org/publication/tackling-sexual-exploitation-and-abuse-by-aid-workers-what-has-changed-20-years-on/>>.

38 United Nations Committee on the Rights of the Child, 'General Comment No. 13' (n 13) para 74 (stating that 'Child rights-based protection programmes should be one of the main components in assisting sustainable development in countries receiving international assistance').

ibility to respect children's rights, as well as to comply with the minimum standards established by the state. At a minimum, this should include adopting organisational child safeguarding policies and standards, implementing safe recruitment processes, providing ongoing training for personnel, creating safe and empowering environments, and ensuring child-centred complaints mechanisms and processes for handling concerns. Organisations should share good practices and lessons learned. Peak bodies and networks can facilitate collaboration, incentivising consistent application of standards across organisations and sharing across sectors and settings. By creating a culture of transparency and continuous learning, organisations can better contribute towards children's safety and well-being.

- *Researchers* have an important role to play in filling gaps in our knowledge of child safeguarding practices, particularly in low- and middle-income countries. Quality empirical research at a local level is needed with organisations and the children and families they serve to understand how customary laws and practices can complement or conflict with child safeguarding measures and relevant child protection legislation. There is also a need for developing and testing interventions that genuinely enable children's meaningful engagement and empowerment in the context of child safeguarding.

Other research gaps identified in this study include improving administrative data systems to track referral patterns and outcomes to evaluate the impact and effectiveness of mandatory reporting laws. Literature on grooming is predominantly from high-income countries, and more research is needed to explore differences in perpetrators' modus operandi across various contexts. Legal scholarship should focus on identifying the most effective regulatory and oversight models of organisations working with children, particularly in resource-constrained settings, while accountability and enforcement mechanisms for non-state actors, including NGOs working with children, should be further examined. Finally, sharing research across contexts and disciplines, as well as fostering cross-disciplinary collaboration, can contribute to a more comprehensive understanding of effective child safeguarding practices globally.

- *Civil society and advocates* should continue to drive efforts to tackle the entrenched power imbalances that remain within some organisational settings and advocate for children's empowerment and participation strategies. Such strategies must acknowledge children as stakeholders and actively involve them in creating solutions that address the inherent power imbalances with adults, both within organisations and in the wider community.

Advocates should continue to pursue accountability for child safeguarding including through children's rights and human rights mechanisms. For example, they can highlight specific sectors or organisations that require closer scrutiny by treaty bodies through submissions to shadow reports for state party reporting or communications procedures. This approach can integrate child safeguarding issues into formal mechanisms, fostering further discussion, debate, and actionable recommendations. Additionally, civil society can share research and good practices to enhance collective understanding and drive progress.

7.3 CONCLUDING REMARKS

This doctoral thesis consists of a series of articles written over a period marked by the continual emergence of cases of child abuse within organisational settings. Even within this relatively short time, similar systemic failures have repeatedly occurred across a range of organisational settings and geographies. These cases have come to light alongside the global rise of the #MeToo movement, an unprecedented feminist movement highlighting sexual harassment and exploitation across various sectors. Importantly, the movement has shifted the global discourse on sexual violence to not only focus on individual perpetrators but also on the systemic structures enabling such abuse. Opting for a thesis by publication has allowed this work to actively contribute to and engage with these global conversations. The format has also facilitated rigorous peer review, enhancing the clarity and relevance of the research for a broader audience. This approach ensures that the findings are not only timely but also resonate with ongoing efforts to prevent child abuse in organisational settings, within the broader context of the global reckoning with sexual violence and harassment.

This study has delivered on its aims and answered the research questions established at the outset. However, there is still much more to be researched and learned to understand what works to prevent child abuse from occurring within organisations in the first place. Bridging these gaps is critical to advancing the paradigm shift introduced by the CRC, which reframed children not as objects of charity but as rights-bearing individuals.³⁹ Thirty-five years on, the full realisation of this shift remains elusive, yet it is arguably pivotal to disrupting the cycle of organisational failures in child safeguarding.⁴⁰

³⁹ *ibid*, para 3(b).

⁴⁰ See also Jonathan Todres, 'Violence, Exploitation, and the Rights of the Child' in Ursula Kilkelly and Ton Liefwaard (eds), *International human rights of children* (Springer Nature Singapore Pte Ltd 2019) 227 (arguing that children's rights can only address the most significant root barriers to child well-being if governments and civil society abandon traditional constructs and recognise children's personhood).

Hamilton suggests that a deeply ingrained bias towards adult privilege and credibility exists when it comes to cases of abuse in organisations, often at the expense of children's needs, voices, and vulnerabilities.⁴¹ This adult-centred dynamic significantly constrains efforts to change organisational cultures, which goes beyond merely adjusting policies to fundamentally challenging and guarding against organisational self-interest.⁴² She contends the crux of the matter lies in the unquestioned assumption that adults' needs take precedence over children's, which obstructs the way to truly protect children.⁴³

Accordingly, the study serves as a call to action for legislators, policy-makers, and frontline workers – indeed, to every person entrusted with the care of children – to prioritise the rights and best interests of children. It is a compelling reminder that child safeguarding is not just about making policy adjustments but requires a fundamental shift in how we value and respond to children's voices and rights. To make genuine progress in child safeguarding, we must collectively commit to placing children's rights and well-being above everything else.

41 Marci A Hamilton, 'The Barriers to a National Inquiry into Child Sexual Abuse in the United States' (2017) 74 *Child Abuse & Neglect* 107, 108.

42 *ibid.*

43 *ibid.*

Summary

Tragically, the abuse and exploitation of children persist across time and geographies. While this often occurs within families, it also takes place in organisational settings that are meant to be protective, such as schools and faith-based organisations. The concept of 'child safeguarding' has emerged in response to systemic failures exposed by numerous cases and government inquiries into child abuse and exploitation in institutional and organisational settings. 'Child safeguarding' can be understood as a specific subset of 'child protection', a broader field encompassing efforts to prevent and respond to violence, exploitation, abuse, and neglect of children. It focuses on the responsibilities of organisations to proactively identify and reduce risks to children, to respond appropriately to concerns, and to report suspected abuse to relevant authorities.

'Child safeguarding' can be distinguished from the broader concept of 'child protection' in three main ways. First, it focuses on institutional and organisational settings, including state and non-state entities working with children. Second, child safeguarding takes a proactive approach to prevention, in contrast to the traditionally reactive nature of child protection. It encourages organisations to anticipate potential risks to children and to implement measures to mitigate these risks before harm occurs. Third, child safeguarding emphasises a clear accountability framework. Organisations must establish defined reporting channels and procedures for handling concerns about a child's safety.

Child safeguarding initiatives have primarily been led by non-governmental organisations (NGOs) and influenced by donor requirements. Some jurisdictions have implemented measures to mandate child safeguarding in specific sectors, such as out-of-home care, education, and childcare. The topic remains relatively underexplored in academic literature, particularly from a children's rights perspective. This study offers a unique analysis aimed at promoting an approach to child safeguarding grounded in international children's rights law. It aims to answer how international children's rights law, particularly the norms and standards established by the UN Convention on the Rights of the Child (CRC) and relevant regional standards such as the African Charter on the Rights and Welfare of the Child (ACRWC), can be used or developed to improve child safeguarding in organisational settings. The study primarily employs a traditional legal research methodology.

This study uses ‘institutions’ and ‘organisations’ interchangeably to describe entities such as residential facilities, schools, sports clubs, and religious associations, as well as organisations involved in humanitarian and development work. These include both state and non-state entities, with child safeguarding being relevant to both. The study primarily focuses on non-state entities, specifically NGOs, due to their significant role in providing services for children and their relatively ‘underregulated’ status in international human rights law.¹ It also examines state obligations to protect children from abuse in both state and non-state organisational settings.

The subject of child safeguarding is complex. There are multiple variables contributing to children’s vulnerability, and the dynamics of abuse, in certain organisational contexts. There are also a wide range of approaches that countries have taken to regulating organisations working with children, and specifically, the non-governmental sector. This study does not aim to provide an exhaustive or historically complete account of child safeguarding, but instead explores specific dimensions where international children’s rights law can be used or developed to improve the protection of children from harm in organisational settings.

Chapter 1 of the study discusses the concept ‘child safeguarding’ and its varied applications across different social, political, and geographic contexts. It links child safeguarding with children’s rights to physical and psychological integrity and states’ obligations to protect these rights in organisational settings. While the dissertation focuses on legal and policy instruments, Chapter 1 also highlights the significant implementation challenges for child safeguarding and the need for efforts at multiple levels to achieve meaningful change for children. The study then examines various contexts for child safeguarding, starting with humanitarian and development settings in Chapter 2. These contexts present several challenges for child safeguarding. Addressing these requires aligning policies, codes of conduct, and vetting procedures with the capacities and realities of national systems. Additionally, other systemic issues, or ‘macro-system’ challenges, must be addressed. These include tackling inequitable power dynamics in the aid sector and longstanding attitudes and beliefs about child abuse that increase risks and hinder effective responses. Chapter 2 also introduces a recurring theme: the interdependent nature of child safeguarding and efforts to improve child protection systems. For example, children may be left vulnerable to abuse and exploitation in organisational settings due to child protection services failing to reach those in need, a lack of safe alternative care placing them in high-risk settings, or insufficient

1 Domenico Carolei, ‘An International Ombudsman to Make Non-Governmental Organizations More Accountable? Too Good to Be True ...’ (2022) 35 *Leiden Journal of International Law* 867, 872.

responses from state authorities to reported cases of abuse within organisational settings.

Chapter 3 uses the thirtieth anniversary of the ACRWC to explore how child protection and child safeguarding have evolved since its adoption. Beyond interventions targeting groups – such as children recruited as child soldiers, girls subjected to female genital mutilation, and children engaged in child labour – child protection was barely a discipline when the ACRWC was adopted. A key normative milestone in this evolution was General Comment No. 5, in which the African Committee of Experts on the Rights and Welfare of the Child (ACRWC Committee) set out its approach to child protection systems strengthening. Notably, General Comment No. 5 also included an explicit direction for state parties to ensure that organisations working with children adopt child safeguarding policies and prevent individuals who have abused children from working with them.

Chapters 4 and 5 consider the influence of other laws on organisational practices and look at two specific examples that address systemic practices in organisations. Chapter 4 examines mandatory reporting legislation and its potential to break the silence around child abuse, including organisational cover-ups. It sets out the obligations imposed by international law and domestic legislation to facilitate the reporting of suspected child abuse to the authorities by professionals in contact with children. A comparative analysis of mandatory reporting laws in four countries in Eastern and Southern Africa reveals a gap between the goals of the legislation and the capacity of statutory services to respond, reinforcing the need for stronger formal and informal systems of child protection to fulfil the objectives of the laws. The chapter offers recommendations for strengthening mandatory reporting legislation and its implementation.

Chapter 5 examines grooming for sexual abuse in organisational settings and legislative frameworks designed to address it. Limited understanding of how perpetrators groom children, families, communities, and organisations may prevent organisations from taking proactive steps to protect children and may undermine appropriate responses by organisations to disclosures or allegations of abuse. The chapter highlights how the Committee on the Rights of the Child (CRC Committee) rarely discusses grooming outside of the context of the digital environment. It recommends expanding international standards and guidance to raise awareness of broader grooming behaviours and guide organisational standards and codes of conduct.

Chapter 6 examines the role of the state vis-à-vis non-state actors in international human rights law and analyses the work of the CRC Committee, other treaty bodies, and courts to build an understanding of respective child safeguarding responsibilities. It suggests a common set of minimum standards for states to meet their international children's rights obligations to protect children from harm in organisational settings. These include establishing and enforcing rights-based legal frameworks to protect children in all care settings,

whether state-run or privately managed; rigorously monitoring organisations in contact with children to ensure compliance with minimum safety standards, even when organisations are run by non-state actors; establishing minimum safety standards, if not already in place, in accordance with article 3(3) of the CRC; ensuring accessible mechanisms for children to lodge complaints and responding to these promptly and appropriately; and investigating reports of violence and remedying abuse, including those by ‘third parties’. The chapter engages with the ongoing debate about whether non-state actors have direct legal obligations under international children’s rights law and explores opportunities to enhance accountability for child safeguarding through international children’s rights law mechanisms.

The collective chapters of the study identify several opportunities for leveraging and evolving international children’s rights law norms and standards to improve child safeguarding in organisational settings. The most significant lies in reframing child safeguarding from a practice issue to a child rights imperative. Anchoring child safeguarding in the international children’s rights framework offers a universally agreed framework to move from reactive to proactive measures. This holds the potential to foster sustainable, context-specific policies and practices grounded in a genuine commitment to upholding children’s right to protection from violence in all settings. International children’s rights law norms and standards not only assist in clarifying child safeguarding responsibilities but also create additional avenues for accountability.

The study also provides practical implications for policy and practice, offering targeted recommendations for different audiences, as follows:

- *Treaty bodies*, especially the CRC Committee and the ACRWC Committee, have an important role in further developing the norms and standards on child safeguarding. Whether through a (joint) general comment or otherwise, this should include articulating the constituent elements of child safeguarding such as proposed in this study and distinguishing these from broader national frameworks for child protection. It also includes elaborating the independent duties of non-state entities to respect children’s rights. Treaty bodies can draw attention to child safeguarding by including it in lists of issues for state party reports. The ACRWC Committee, which has explicitly called for organisations working with children to have child safeguarding standards, can leverage the state party reporting process and its General Comment No. 5 to continue meaningful dialogue with states parties to improve child safeguarding.

Treaty bodies could also help build greater awareness of the dynamics of abuse, aiming to challenge the simplistic, stereotyped constructions of sexual abuse for example, to consider grooming that goes beyond the child to include families, communities, and organisations themselves. Such

understanding is crucial for implementing more effective prevention strategies. Treaty bodies could more closely examine legal and regulatory systems impacting organisational safeguarding practices. These include mandatory reporting laws, which can address systemic practices in organisations that can operate to preclude or discourage organisations reporting suspected child abuse to authorities. Further guidance on oversight mechanisms for entities working with children is also essential, particularly in resource-constrained contexts.

- *States* must, in line with their international obligations, set standards for organisations working with children, ensure robust oversight of those organisations, provide accessible mechanisms for children to lodge complaints, investigate reports of violence, and ensure effective remedies for children. This is important not only for organisations operating within their jurisdiction but also those registered or otherwise connected with their jurisdiction and working abroad, such as in development and humanitarian contexts. Bilateral donors play an important role in promoting child safeguarding measures by requiring their adoption and implementation through contractual agreements. To enhance effectiveness and sustainability, these efforts should be consistently mandated, adopt a more contextualised approach grounded in children’s treaty-based rights, and actively involve children and communities in their development and implementation. The requirement for organisations to implement child safeguarding standards should be accompanied with the necessary resources to do so effectively.

States should make necessary legislative reforms to provide an enabling environment for child safeguarding, such as introducing mandatory reporting legislation. States must continue to invest in child protection systems in line with article 19 of the CRC. This includes improving the capacity of the formal system as well as establishing effective linkages with community members and informal or traditional structures that support children’s protection. Such investments are critical domestically as well as internationally as part of Official Development Assistance.

- *Organisations working with children* should identify and mitigate risks arising from their operations, programmes, or personnel as part of their responsibility to respect children’s rights to physical and psychological integrity, as well as to comply with the minimum standards established by the state. At a minimum, this should include adopting organisational child safeguarding policies and standards, implementing safe recruitment processes, providing ongoing training for personnel, creating safe and empowering environments, and ensuring child-centred complaints mechanisms and processes for handling concerns. Organisations should share good practices

and lessons learned. Peak bodies and networks can facilitate collaboration, incentivising consistent application of standards across organisations and learning across sectors and settings.

- *Researchers* have an important role to play in filling gaps in our knowledge of child safeguarding practices, particularly in low- and middle-income countries. Quality empirical research at a local level is needed with organisations and the children and families they serve to understand how customary laws and practices can complement or conflict with child safeguarding measures and relevant child protection legislation. There is also a need for developing and testing interventions that genuinely enable children’s meaningful engagement and empowerment in the context of child safeguarding. Other research gaps identified in this study include improving administrative data systems to track referral patterns and outcomes to evaluate the impact and effectiveness of mandatory reporting laws. Literature on grooming is predominantly from high-income countries, and more research is needed to explore differences in perpetrators’ modus operandi across various contexts. Legal scholarship should focus on identifying the most effective regulatory and oversight models of organisations working with children, particularly in resource-constrained settings, while international accountability and ombudsman mechanisms should be further examined.
- *Civil society and advocates* should continue to drive efforts to tackle the entrenched power imbalances that remain within some organisational settings and advocate for children’s empowerment and participation strategies. Such strategies must acknowledge children as stakeholders and actively involve them in creating solutions that address the inherent power imbalances with adults, both within organisations and in the wider community. Advocates should continue to pursue accountability for child safeguarding including through children’s rights and human rights mechanisms. For example, they can highlight specific sectors or organisations that require closer scrutiny by treaty bodies through submissions to shadow reports for the state party reporting process or communications procedures. This approach can integrate child safeguarding issues into formal mechanisms, fostering further discussion, debate, and actionable recommendations.

This study has delivered on its aims and answered the research questions established at the outset. However, there is still much more to be researched and learned about what works in practice to prevent child abuse from occurring within organisations in the first place. Bridging these gaps is critical to advancing the paradigm shift introduced by the CRC, which reframed children not just as victims but as rights-bearing individuals. Thirty-five years on, the full realisation of this shift remains elusive, yet it is arguably pivotal

to disrupting the cycle of organisational failures in safeguarding children. The persistence of adult-centric dynamics continues to constrain efforts to change organisational cultures and move beyond organisational self-interest.² This study calls on legislators, policymakers, and practitioners to move beyond policy adjustments and commit to fundamentally prioritising children's rights, voices, and well-being. To make genuine progress in child safeguarding, we must collectively commit to placing children's rights and well-being above everything else.

2 Marci A Hamilton, 'The Barriers to a National Inquiry into Child Sexual Abuse in the United States' (2017) 74 *Child Abuse & Neglect* 107, 108.

Samenvatting (Dutch summary)

VAN CONCEPT NAAR TOEPASSING

Een kritische reflectie op 'child safeguarding' vanuit een kinderrechtenperspectief

Het is tragisch dat misbruik en uitbuiting van kinderen in de loop der tijd en wereldwijd blijven voorkomen. Hoewel dit vaak binnen gezinnen gebeurt, vindt het ook plaats in organisatiestructuren die geacht worden bescherming te bieden, zoals scholen en religieuze organisaties. Het concept *child safeguarding*¹ is ontstaan als reactie op systemische tekortkomingen die aan het licht zijn gekomen door talrijke zaken en onderzoeken van de overheid naar kindermisbruik en -uitbuiting in institutionele en organisatorische omgevingen. *child safeguarding* kan worden gezien als een specifieke subcategorie van 'kinderbescherming', een breder gebied dat zich bezighoudt met het voorkomen van en reageren op geweld, uitbuiting, misbruik en verwaarlozing van kinderen. Het richt zich op de verantwoordelijkheden van organisaties om risico's voor kinderen proactief te identificeren en te verminderen, op passende wijze te reageren op zorgen en vermoedelijk misbruik te melden aan de relevante autoriteiten.

Child safeguarding kan op drie belangrijke manieren worden onderscheiden van het bredere concept van 'kinderbescherming'. Ten eerste richt het zich op institutionele en organisatorische omgevingen, waaronder statelijke en niet-statale actoren die met kinderen werken. Ten tweede is er bij *child safeguarding* sprake van een proactieve benadering van preventie, in tegenstelling tot de traditionele reactieve aard van kinderbescherming. Organisaties worden aangemoedigd te anticiperen op potentiële risico's voor kinderen en maatregelen te nemen om deze risico's te beperken voordat er schade optreedt. Ten derde legt *child safeguarding* de nadruk op een duidelijk verantwoordingskader. Organisaties moeten vastomlijnde rapportagemechanismen en procedures opstellen voor het omgaan met zorgen over de veiligheid van een kind.

Initiatieven op het gebied van *child safeguarding* worden voornamelijk geleid door niet-gouvernementele organisaties (NGO's) en beïnvloed door de eisen

1 Deze samenvatting hanteert de Engelse term bij gebrek aan een eenduidige vertaling voor dit concept bedoeld om kinderen te beschermen binnen en in hun contact met organisaties. Zie verder hoofdstuk 1 waarin het concept nader worden toegelicht en geanalyseerd.

vanuit financiële donoren. In sommige rechtssystemen zijn maatregelen ingevoerd om de bescherming van kinderen in specifieke sectoren verplicht te stellen, zoals in buitenschoolse opvang, onderwijs en kinderopvang. Het onderwerp blijft relatief onderbelicht in de academische literatuur, vooral vanuit het perspectief van kinderrechten. Deze studie biedt een unieke analyse die gericht is op het bevorderen van een benadering van *child safeguarding* die gebaseerd is op internationale kinderrechten. Het doel is om de vraag te beantwoorden hoe internationale kinderrechten, in het bijzonder de normen en standaarden van het VN-Verdrag inzake de Rechten van het Kind (IVRK) en relevante regionale normen zoals het Afrikaans Handvest inzake de Rechten en het Welzijn van het Kind (African Charter on the Rights and Welfare of the Child, ACRWC), gebruikt of ontwikkeld kunnen worden om de bescherming van kinderen binnen organisaties te verbeteren. De studie maakt voornamelijk gebruik van een klassieke juridische en dogmatische onderzoeksmethodologie.

In dit onderzoek worden ‘instellingen’ en ‘organisaties’ door elkaar gebruikt om entiteiten zoals woonvoorzieningen, scholen, sportclubs en religieuze organisaties te beschrijven, evenals organisaties die betrokken zijn bij humanitair en ontwikkelingswerk. Hieronder vallen zowel statelijke als niet-statale actoren, waarbij *child safeguarding* voor beide relevant is. De studie richt zich voornamelijk op niet-statale actoren, in het bijzonder NGO's, vanwege hun belangrijke rol in de dienstverlening aan kinderen en hun relatief ‘ondergereguleerde’ status in de internationale mensenrechten.² De studie onderzoekt ook de verplichtingen van staten om kinderen te beschermen tegen misbruik door zowel statelijke als niet-statale actoren.

Child safeguarding is een complex onderwerp. Er zijn meerdere variabelen die bijdragen aan de kwetsbaarheid van kinderen en de dynamiek van misbruik in bepaalde organisatorische contexten. Er zijn ook veel verschillende benaderingen in de manier waarop landen organisaties die met kinderen werken reguleren. Dit geldt in het bijzonder in de NGO-sector. Deze studie beoogt niet om een uitputtend of historisch volledig overzicht te geven van de bescherming van kinderen. In plaats daarvan worden specifieke dimensies onderzocht waar internationale kinderrechten als juridisch kader kan worden gebruikt of verder ontwikkeld om de bescherming van kinderen tegen schade binnen organisaties te verbeteren.

Hoofdstuk 1 van het onderzoek bespreekt het concept *child safeguarding* en de uiteenlopende toepassingen ervan in verschillende sociale, politieke en geografische contexten. Er wordt een verband gelegd tussen *child safeguarding* en het recht van kinderen op fysieke en psychologische integriteit en de verplichtingen van staten om deze rechten te beschermen binnen organisaties.

2 Domenico Carolei, ‘An International Ombudsman to Make Non-Governmental Organizations More Accountable? Too Good to Be True ...’ (2022) 35 *Leiden Journal of International Law* 867, 872.

Hoewel het proefschrift zich richt op juridische en beleidsinstrumenten, belicht hoofdstuk 1 ook de belangrijke uitdagingen bij de implementatie van *child safeguarding* en de noodzaak van inspanningen op meerdere niveaus om zinvolle veranderingen voor kinderen te bewerkstelligen. De studie onderzoekt vervolgens verschillende contexten voor *child safeguarding*, te beginnen met humanitaire en ontwikkelingssettings in hoofdstuk 2. Deze contexten brengen verschillende uitdagingen voor *child safeguarding* met zich mee. Om deze aan te pakken moeten beleid, gedragscodes en screeningssystemen worden afgestemd op de mogelijkheden binnen nationale systemen. Daarnaast moeten andere systemische kwesties, of 'macrosysteem'-uitdagingen, worden aangepakt. Dit zijn onder andere het aanpakken van een onrechtvaardige machtsdynamiek in de hulpverleningssector en aloude houdingen en overtuigingen over kindermisbruik die de risico's vergroten en een effectieve aanpak belemmeren. Hoofdstuk 2 leidt ook een terugkerend thema in: de onderlinge afhankelijkheid van *child safeguarding* en inspanningen om kinderbeschermingssystemen te verbeteren. Kinderen kunnen bijvoorbeeld kwetsbaar zijn voor misbruik en uitbuiting in organisaties, omdat kinderbeschermingsinstanties mensen in nood niet bereiken, een gebrek aan veilige alternatieve zorg kinderen in risicosituaties brengt of overheidsinstanties onvoldoende reageren op gemelde gevallen van misbruik binnen organisaties.

Hoofdstuk 3 gebruikt de dertigste verjaardag van het ACRWC om te onderzoeken hoe *child safeguarding* en de bescherming van kinderen zich hebben ontwikkeld sinds de goedkeuring van het handvest. Afgezien van interventies gericht op bepaalde doelgroepen – zoals kinderen die gerekruteerd zijn als kindsoldaten, meisjes die vrouwelijke genitale verminking ondergaan en kinderen die kinderarbeid verrichten – was *child safeguarding* nauwelijks een discipline toen het ACRWC werd aangenomen. Een belangrijke normatieve mijlpaal in deze ontwikkeling was General Comment Nr. 5, waarin het Afrikaans Comité van Deskundigen inzake de Rechten en het Welzijn van het Kind (ACRWC comité) zijn aanpak uiteenzette voor de versterking van kinderbeschermingssystemen. General Comment Nr. 5 bevatte onder meer een expliciete instructie voor staten om ervoor te zorgen dat organisaties die met kinderen werken een specifiek beleid gericht op *child safeguarding* hanteren en voorkomen dat personen die kinderen hebben misbruikt met hen werken.

De hoofdstukken 4 en 5 gaan in op de invloed van andere wet- en regelgeving op organisatiepraktijken en analyseren twee specifieke voorbeelden van systemische praktijken in organisaties. Hoofdstuk 4 onderzoekt de wetgeving inzake een meldplicht en het potentieel daarvan om het stilzwijgen rond kindermisbruik, met inbegrip van organisatorische doofpotaffaires, te doorbreken. Het beschrijft de verplichtingen die worden opgelegd door internationale wetgeving en nationale wetgeving om het melden van vermoedens van kindermisbruik aan de autoriteiten door professionals die in contact komen met kinderen te vergemakkelijken. Uit een vergelijkende analyse van de wetgeving inzake een meldplicht in vier landen in oostelijk en zuidelijk Afrika

blijkt dat er een kloof bestaat tussen de doelstellingen van de wetgeving en de capaciteit van de wettelijke instanties om te reageren. Het hoofdstuk geeft aanbevelingen voor het versterken van de meldplichtwetgeving en de implementatie ervan.

In hoofdstuk 5 wordt ingegaan op kinderlokken (*grooming*) met het oog op seksueel misbruik in organisaties en op juridische kaders om dit aan te pakken. Een beperkt begrip van de manier waarop daders kinderen, gezinnen, gemeenschappen en organisaties in de val lokken, kan organisaties ervan weerhouden proactieve stappen te ondernemen om kinderen te beschermen en kan passende reacties van organisaties op meldingen of beschuldigingen van misbruik ondermijnen. Het hoofdstuk belicht hoe het Comité voor de Rechten van het Kind *grooming* zelden bespreekt buiten de context van de digitale omgeving. Het beveelt aan om internationale normen en richtlijnen uit te breiden om het bewustzijn van *grooming* in bredere zin te vergroten en als leidraad te hanteren voor organisatorische normen en gedragscodes.

Hoofdstuk 6 onderzoekt de rol van de staat ten opzichte van niet-statelijke actoren in internationale mensenrechten en analyseert het werk van het Comité voor de Rechten van het Kind, andere verdragsorganen en gerechtelijke instanties om inzicht te krijgen in de respectievelijke verantwoordelijkheden voor de bescherming van kinderen. Het stelt een reeks gemeenschappelijke minimumnormen voor die staten moeten naleven om hun internationale verplichtingen inzake kinderrechten na te komen en kinderen te beschermen tegen schade binnen organisaties. Deze omvatten: het opstellen en handhaven van op rechten gebaseerde wettelijke kaders om kinderen te beschermen in alle zorgomgevingen, ongeacht of deze door de staat of door particulieren worden beheerd; het nauwgezet controleren van organisaties die in contact komen met kinderen om ervoor te zorgen dat de minimale veiligheidsnormen worden nageleefd, zelfs wanneer organisaties worden gerund door niet-statelijke actoren; het opstellen van minimale veiligheidsnormen, indien deze nog niet bestaan, in overeenstemming met artikel 3(3) van het IVRK; het zorgen voor toegankelijke mechanismen voor kinderen om klachten in te dienen en hier snel en gepast op te reageren; en het onderzoeken van meldingen van geweld en het verhelpen van misbruik, inclusief misbruik door 'derden'. Het hoofdstuk gaat in op het lopende debat over de vraag of niet-statelijke actoren directe wettelijke verplichtingen hebben op grond van internationale kinderrechten en onderzoekt mogelijkheden om de verantwoordingsplicht voor *child safeguarding* te vergroten via internationale kinderrechten.

In de gezamenlijke hoofdstukken van het onderzoek worden verschillende mogelijkheden geïdentificeerd om internationale normen en standaarden op het gebied van kinderrechten te gebruiken en te ontwikkelen om de bescherming van kinderen binnen organisaties te verbeteren. De belangrijkste is het benaderen van *child safeguarding* als een kinderrechteneis in plaats van enkel een praktijkkwestie. Het verankeren van *child safeguarding* in het internationale kinderrechtenkader biedt een universeel overeengekomen kader om van

reactieve naar proactieve maatregelen te gaan. Dit biedt de mogelijkheid om duurzaam, contextspecifiek beleid en praktijken te stimuleren die gebaseerd zijn op een oprecht engagement om het recht van kinderen op bescherming tegen geweld in alle omgevingen te handhaven. Internationale normen en standaarden op het gebied van kinderrechten helpen niet alleen om de verantwoordelijkheden voor de bescherming van kinderen te verduidelijken, maar creëren ook extra mogelijkheden om verantwoording af te leggen.

Het onderzoek biedt ook praktische implicaties voor beleid en praktijk, met gerichte aanbevelingen voor verschillende doelgroepen:

- *Verdragsorganen*, met name het Comité voor de Rechten van het Kind en het ACRWC-comité, spelen een belangrijke rol bij de verdere ontwikkeling van de normen en standaarden voor *child safeguarding*. In een (gezamenlijk) General Comment of anderszins moeten de kernelementen van *child safeguarding*, zoals voorgesteld in deze studie, worden verwoord en moeten deze worden onderscheiden van bredere nationale kaders voor kindbescherming. Ook de onafhankelijke plichten van niet-statelijke actoren om de rechten van kinderen te respecteren, moeten worden uitgewerkt. Verdragsorganen kunnen de aandacht vestigen op *child safeguarding* door het op te nemen in de lijsten met onderwerpen waarop staten die partij zijn bij de verdragen moeten rapporteren. Het ACRWC-Comité, dat organisaties die met kinderen werken expliciet heeft opgeroepen om normen voor *child safeguarding* te hanteren, kan het rapportageproces van staten die partij zijn en zijn General Comment Nr. 5 gebruiken om een zinvolle dialoog met staten die partij zijn voort te zetten om *child safeguarding* te verbeteren.

Verdragsorganen zouden ook kunnen bijdragen aan een groter bewustzijn van de dynamiek van misbruik, door de simplistische, stereotype opvattingen over seksueel misbruik aan de kaak te stellen en bijvoorbeeld rekening te houden met *grooming* die verder gaat dan het kind en ook gezinnen, gemeenschappen en organisaties zelf omvat. Een dergelijk inzicht is cruciaal om preventiestrategieën doeltreffender uit te voeren. Verdragsorganen zouden wet- en regelgeving die van invloed zijn op de beschermingspraktijken van organisaties nader kunnen onderzoeken. Het gaat onder meer om wetten inzake een meldingsplicht die systemische praktijken kunnen aanpakken die organisaties verhinderen of ontmoedigen om vermoedelijk kindermisbruik aan de autoriteiten te melden. Verdere begeleiding van toezichthouders voor organisaties die met kinderen werken, is ook essentieel, vooral in contexten met beperkte middelen.

- *Staten* moeten, in overeenstemming met hun internationale verplichtingen, normen opstellen voor organisaties die met kinderen werken, zorgen voor stevig toezicht op deze organisaties, voorzien in toegankelijke mechanismen voor kinderen om klachten in te dienen, meldingen van geweld te onder-

zoeken en te zorgen voor effectieve rechtsmiddelen voor kinderen. Dit is niet alleen belangrijk voor organisaties die binnen hun rechtsgebied opereren, maar ook voor organisaties die in hun rechtsgebied zijn geregistreerd of er op een andere manier mee verbonden zijn en die in het buitenland werken, bijvoorbeeld in ontwikkelings- en humanitaire contexten.

Bilaterale donoren spelen een belangrijke rol bij het bevorderen van maatregelen voor de bescherming van kinderen door de goedkeuring en uitvoering ervan verplicht te stellen via contractuele overeenkomsten. Om de doeltreffendheid en duurzaamheid van deze inspanningen te vergroten, moeten ze op consistente wijze worden opgelegd, een meer gecontextualiseerde aanpak volgen die is gebaseerd op de rechten van kinderen neergelegd in verdragen, en kinderen en gemeenschappen actief betrekken bij de ontwikkeling en uitvoering ervan. De verplichting voor organisaties om *child safeguarding*-normen te implementeren moet gepaard gaan met de nodige middelen om dit effectief te doen.

Staten moeten de, waar nodig, wetshervormingen doorvoeren om een gunstig klimaat te scheppen voor de bescherming van kinderen, zoals het invoeren van een wettelijke meldplicht. Staten moeten blijven investeren in kinderbeschermingssystemen in overeenstemming met artikel 19 van het IVRK. Dit omvat het verbeteren van de capaciteit van het formele systeem en het leggen van effectieve verbanden met leden van de gemeenschap en informele of traditionele structuren die de bescherming van kinderen ondersteunen. Dergelijke investeringen zijn van cruciaal belang, zowel in eigen land als internationaal als onderdeel van officiële ontwikkelingshulp.

- *Organisaties die met kinderen werken*, moeten risico's die voortvloeien uit hun activiteiten, programma's of personeel identificeren en beperken als onderdeel van hun verantwoordelijkheid om het recht van kinderen op fysieke en psychologische integriteit te respecteren en te voldoen aan de minimumnormen die door de staat zijn vastgesteld. Dit omvat ten minste het aannemen van organisatorisch beleid en normen voor de bescherming van kinderen, het implementeren van veilige wervingsprocessen, het voorzien in voortdurende training voor het personeel, het creëren van veilige en zelfredzame omgevingen en het zorgen voor kindgerichte klachtenmechanismen en processen voor de behandeling van zorgen over de veiligheid van kinderen. Organisaties moeten goede praktijken en geleerde lessen uitwisselen. Instanties en netwerken die zich richten op specifieke groepen uit de samenleving kunnen samenwerking vergemakkelijken, een consistente toepassing van normen door organisaties heen stimuleren en leren van verschillende sectoren en omgevingen.

- *Onderzoekers* hebben een belangrijke rol te spelen in het opvullen van hiaten in onze kennis over *child safeguarding*-praktijken, vooral in landen met een laag of gemiddeld inkomen. Er is behoefte aan kwalitatief empirisch onderzoek op lokaal niveau met organisaties en de kinderen en families die zij bedienen om te begrijpen hoe gewoonterecht en bestaande of traditionele praktijken *child safeguarding*-maatregelen en relevante kinderbeschermingswetgeving kunnen aanvullen of tegenwerken. Er is ook behoefte aan het ontwikkelen en testen van interventies die een zinvolle betrokkenheid en *empowerment* van kinderen in de context van *child safeguarding* mogelijk maken. Andere hiaten in het onderzoek die in deze studie naar voren kwamen, zijn onder andere het verbeteren van administratieve datasystemen om verwijzingspatronen en resultaten te volgen om de impact en effectiviteit van wetten voor verplichte melding te evalueren. Literatuur over *grooming* komt voornamelijk uit landen met hoge inkomens en er is meer onderzoek nodig om verschillen in de werkwijzen van daders in diverse contexten te onderzoeken. De juridische wetenschap moet zich richten op het identificeren van de meest effectieve regelgevings- en toezichtmodellen voor organisaties die met kinderen werken, met name in omgevingen met beperkte middelen, terwijl internationale verantwoordingsplicht en ombudsmechanismen eveneens verder moeten worden onderzocht.
- *Maatschappelijke organisaties en pleitbezorgers* moeten zich blijven inspannen om de diepewortelde machtsonevenwichtigheden aan te pakken die in sommige organisaties nog steeds bestaan en pleiten voor strategieën voor *empowerment* en participatie van kinderen. Dergelijke strategieën moeten kinderen erkennen als direct belanghebbenden en hen actief betrekken bij het creëren van oplossingen die de inherente machtsongelijkheid met volwassenen aanpakken, zowel binnen organisaties als in de bredere gemeenschap. Pleitbezorgers moeten blijven streven naar het afleggen van verantwoording voor de bescherming van kinderen, onder andere via kinderrechten- en mensenrechtenmechanismen. Ze kunnen bijvoorbeeld de aandacht vestigen op specifieke sectoren of organisaties die nader onderzocht moeten worden door toezichthoudende verdragsorganen door middel van schaduwrapporten in het kader van het rapportageproces onder mensenrechtenverdragen of via internationale klachtprocedures. Door deze aanpak kunnen kwesties op het gebied van *child safeguarding* worden opgenomen in formele mechanismen, waardoor verdere discussie, debat en uitvoerbare aanbevelingen worden gestimuleerd.

Dit onderzoek heeft zijn doelen bereikt en de onderzoeksvragen beantwoord die aan het begin werden gesteld. Er valt echter nog veel meer te onderzoeken en te leren over wat in de praktijk werkt om te voorkomen dat kindermisbruik zich überhaupt voordoet binnen organisaties. Het overbruggen van deze hiaten

is cruciaal voor het bevorderen van de paradigmaverschuiving die werd geïntroduceerd door het Verdrag inzake de Rechten van het Kind, waarmee kinderen niet langer alleen maar worden gezien als slachtoffers maar als individuen met rechten. Vijfendertig jaar na dato is deze verschuiving nog steeds niet volledig gerealiseerd, maar wel van cruciaal belang voor het doorbreken van de cyclus van organisatorische tekortkomingen bij de bescherming van kinderen. Het voortbestaan van een dynamiek waarin volwassenen centraal staan, blijft pogingen om organisatieculturen te veranderen en het eigenbelang van de organisatie te overstijgen, belemmeren.³ Deze studie roept wetgevers, beleidsmakers en professionals op om verder te gaan dan beleidsaanpassingen en om de rechten, de stem en het welzijn van kinderen fundamenteel voorop te stellen. Om echte vooruitgang te boeken op het gebied van *child safeguarding*, moeten we ons collectief inzetten om de rechten en het welzijn van kinderen boven alles te stellen.

3 Marci A Hamilton, 'The Barriers to a National Inquiry into Child Sexual Abuse in the United States' (2017) 74 Child Abuse & Neglect 107, 108.

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Curriculum vitae

Afroz Kaviani Johnson completed her primary and secondary education in New Zealand. She pursued post-secondary education in political science and international relations and graduated with a Bachelor of Arts from Victoria University of Wellington in 2001. Afroz gained admission to the postgraduate law programme at Monash University in Melbourne, Australia, earning a Juris Doctor in 2005.

Afroz undertook her articles of clerkship with an Australian law firm and was admitted to legal practice in the Supreme Court of Victoria and the High Court of Australia in 2006. She continued to work full-time as a lawyer and undertook a Master of Social Science specialising in international development, graduating in 2007. Alongside commercial legal practice, Afroz engaged in substantial pro bono efforts, including as team leader of a homeless persons' legal clinic in Melbourne and on secondment to a community legal centre serving remote Indigenous communities in Western Australia. In 2008, Afroz left commercial legal practice to work with an Australian non-governmental organisation tackling child sexual abuse and exploitation in travel and tourism in Southeast Asia. Afroz was later employed by the Australian Human Rights Commission to investigate and conciliate breaches of human rights and anti-discrimination law nationwide.

In 2011, Afroz relocated to Bangkok, Thailand, to work as the regional technical director and deputy team leader of a multi-country three-year project combatting child sexual abuse and exploitation in travel and tourism. During this period, she was awarded a Finkel Foundation grant by the Castan Centre for Human Rights Law at Monash University to research human rights law in practice. From mid-2014 until early 2017, Afroz was engaged as an international consultant on children's rights and child protection for different agencies including The Asia Foundation, Save the Children, and UNICEF. In 2017, Afroz moved to Lilongwe, Malawi, to take up the position of Chief of Child Protection at UNICEF. Near the end of 2019, Afroz began her doctorate (as an external candidate) at Leiden Law School of Leiden University under the supervision of Professor Ton Liefaard and Professor Julia Sloth-Neilsen. She continued full-time employment and was reassigned to UNICEF Headquarters in late 2020 to serve as the global technical lead on preventing and responding to technology-facilitated violence against children. She is living in New York with her husband and two children.

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