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CONVERGENCE AND DIVERGENCE BETWEEN THE UN CONVENTION ON THE RIGHTS OF THE CHILDREN, AND THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

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ABSTRACT

There have been many praises as well as criticisms against both the UN convention on the rights of the child and the African charter on the rights and welfare of the child. However, many writers are of the view that the African charter was an unnecessary duplication of the convention. This paper outlines some of the differences and similarities between the UN convention on the rights of the child, and the African children's charter. The paper traces the development of children's right treaties internationally and on the African continent, and argues that the adoption of the African children's charter is in tandem with the United Nation's call for regional arrangements for the protection and promotion of human rights, therefore not an unnecessary duplication of the UN convention.

*Keywords:* African Children's Charter; Children's Rights; Africa; UN Convention on Children's Rights

1. BACKGROUND: INTERNATIONAL CHILDREN'S RIGHTS

In 1924 the League of Nations (now United Nations) endorsed the first *Declaration of the Rights of the Child*, (also known as the Geneva Declaration) with claims to save and protect the 'delinquent and the waif' (Jones, 2005). The document is regarded as the first human rights instrument that deals specifically with children's rights; however, it regarded children as being in need of protection, rather than individuals with personal rights (Gal, 2006). For example, the fourth principle of the Geneva Declaration provided that: *The child must be protected against every form of exploitation.*

Over the years concern for children extended beyond their protection to offering them the benefit of improved education, health and nutrition due to the recognition that investing in children would be good for everybody through increased productivity (Jones, 2005). Consequently, the *Declaration of the Rights of the Child (1959)* was promulgated. This Declaration was more detailed and regarded children as subjects to their own legal rights (Gal, 2006). However, Freeman (1983) has described the document as vague, since it is unclear who is obligated under the declaration to provide the rights enumerated in it. Gal (2006) has also criticised both the 1924 and 1959 Declarations as predominantly of a declarative nature, with no enforcement or follow-up mechanism.

The first binding international provisions regarding children are: *The Covenant on Civil and Political Rights (1966)* and the *International Covenant on Economic, Social and Cultural Rights (1966)*. Article 24(1) of *The Covenant on Civil and Political Rights (1966)* stated that:

Every child shall have, without any discrimination as to race, colour, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

Article 10 of the *International Covenant on Economic, Social and Cultural Rights (1966)* also provided that:

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.

The Polish government in 1979 proposed that the 1959 *Declaration of the Rights of the Child* be made a binding agreement. Jones (2005) has remarked that this was an attempt to embarrass the West. But Pupavac (2001) reckons it was a move in search of a moral compass at the end of the cold war. The proposal of the Polish government resulted in the *Convention on the Rights of the Child (CRC)* which was adopted by the UN General Assembly on 20th November 1989 after nearly 10 years of negotiations.

The CRC has been described as by far the most comprehensive international binding document with regard to children's rights (Freeman, 2000). It addresses children's specific entitlements, organized according to four guiding principles: non discrimination (article 2), a child's best interests must be a primary consideration (article 3), a child's survival and development must be ensured (article 6) and a child's views must be considered in all matters affecting the child (article 12). Reynolds et al (2006) accord the child's best interest as the leading principle of the convention, while Besson (2005) considers non discrimination as the most important. Freeman (2000) on the other hand espouses the right of the child to express their views in all matters affecting them as perhaps the most important provision.

The CRC has been hailed as flexible and sensitive to cultural differences more than any other human rights instrument (Alston, 1994) and for providing a broad framework of citizenship for children through the introduction of the *participation principle* (Roche, 1999). In this regard, Bell (2008) argues that the CRC seeks to promote children as both *being* and *becoming* future citizens within the universality of human rights. The CRC is also seen as unique in that for the first time in the history of human rights treaties, it created a mechanism for evaluation and follow-up for member states, which according to Gal (2006) has created a system of 'naming and shaming' of states that do not comply with the letter and spirit of the convention. This 'naming and shaming' may be significant since the CRC is mainly moral in character, with the UN having no powers to penalise countries found of breaching the rights of children (Gadda, 2008).

The Convention is further praised for proposing a 'relatively pragmatic agenda' (Gal, 2006) compared to the arguments of the child liberation movement. Thus unlike the child liberationists who advocated for equal rights and complete self determination for children, the CRC does not treat children as adults, nor does it contain provisions that suggest children are entitled to complete autonomy and freedom in decision-making. The CRC rather stresses the right of children to *participate* in the decision-making process with due regard for their views depending on their evolving capacity. It does not prescribe the right of children to make their own decisions.

Furthermore, the CRC has been advanced as a powerful tool for challenging existing power relations (Freeman, 1997), because it enables children to express their views. This assertion is however highly over-exaggerated. As argued by Reynolds et al (2006) the invitation to express views underscore the presence of a listener, a higher power, who will decide. Similarly, Federle (1994) makes an interesting comment, noting that although the child is transformed into a rights-holder in discourse, the issue of powerful elites deciding which, if any, of the claims made by children they will recognise is still pertinent. Therefore the convention in effect reinforces existing power relations (Gadda, 2008).

Notwithstanding the many exaltations of the CRC, it has its limitations. It has been highly critiqued for advancing a 'western notion' of childhood (Boyden, 1992; Freeman, 1983; Pupavac, 1997). As a result, there has been an excessive use of the reservation mechanism by many non-western countries, which may inevitably subvert the CRC (Freeman 2002). Moreover, it has been argued that the CRC is not inclusive, and at the same time is too broad or vague (Freeman, 1983). Nonetheless, by its broadness and vagueness, Bell (2008) argues that the CRC pays attention to the significance of family, culture and tradition. More so, King (1994) has suggested that the rights included in the CRC do not have equal value, that some are more worthy of protection than others, and that some are merely 'manifesto rights'. The UN Committee on the Rights of the Child rejects such criticism emphasising that States must have regard for the entire CRC and that there is no hierarchy of rights (cited in Hodgkin and Newell, 2000).

## 2. CHILDREN'S RIGHTS: THE AFRICAN REGIONAL AGENDA

Children's rights (and human rights in general) have often been quoted as alien to traditional Africa (see Howard, 1984 and Donnelly, 1989). Aidoo (1993) attributes the absence of 'Africanness' in human rights discourse to the scanty research in the area of African human rights. This may be so, as many scholars and commentators refuse to accept the validity of jurisprudence of traditional African systems (Lloyd, 2002). However, Mezmur (2008) cautions against the argument that children's rights are new to Africans. He notes that traditional Africa has always respected and continues to respect a number of children's rights. Similarly, Mutua (2002) asserts that an examination of the norms governing legal, political and social structures in pre-colonial African states, demonstrate that the concept of rights informed notions of justice and supported a measure of individualism.

In post-colonial Africa, some writers erroneously assume that the 1989 CRC was the instrument that brought children's rights to Africa. Njungwe (2009) for example, writes "before the adoption of the African Charter on the Rights and Welfare of the Child (also known as African Children's Charter, ACC), the only instrument meticulously protecting children's rights and legally binding on African states was the CRC" (Njungwe, 2009:5-6). This could not be farther from the truth as two other instruments existed in Africa before the adoption of the CRC. The CRC might have been the legally binding one but it certainly was not the only instrument on the African continent. The instruments on the African continent before the CRC were the Declaration on the Rights and Welfare of the African Child in 1979, and the African Charter on Human and People's Rights in 1981. Principle 2 of the 1979 declaration called on governments to *review provisions relating to children in their legal codes particularly paying attention to the unequal status of female children in some parts of Africa*. Also principle 3 urged governments to *thoroughly examine cultural legacies and practices that are harmful to normal growth and development of the child such as child marriage and female circumcision, and should take legal and educational measures to abolish them*. The declaration however had no binding force so was regarded as "policy statements for African States" (Njungwe, 2009:10).

The widespread adoption of the CRC did not stop African governments from promulgating a specific children's rights instrument for the continent. Indeed many African States felt that the CRC did not adequately address African concerns. Among these concerns were "the situation of children living under apartheid; disadvantages facing the African girl child; the African conception of the community's responsibilities and duties; and the role of the extended family in the upbringing of children" (Kaime, 2009:131). The reason why African concerns were not adequately addressed by the CRC has been attributed to the under representation of African States during the drafting process (Viljoen, 1998). He notes that only 4 Northern African States participated in the nearly 10 years that the CRC was drafted, compared with 61% of West European countries. Not a single Sub-Sahara African country participated in the drafting process. Consequently, it was difficult to forcefully articulate issues that reflected the African cultural context (Kaime, 2009). In other words, African States had limited opportunity to air their views on the contents of the CRC (Njungwe, 2009).

Against the above dissatisfaction, the Organisation of African Unity (now African Union) adopted the African Charter on the Rights and Welfare of the Child on 11 July 1990, which came into force on 29 November 1999. It took 9 years for the charter to receive the requisite 15 State ratifications to become operational. This has led Njungwe (2009:4) to question, "if the specific protection of African children was so urgent that it necessitated a separate treaty, why did it take so long for African leaders to ratify their own treaty?" It is important to highlight that whereas African states rushed to ratify the CRC, they were very slow or even reluctant to ratify their own charter. A typical example is Ghana, the first country to ratify the CRC (within a month of its adoption) but took 15 years to ratify the ACC. As at November 2011, the African children's charter had been ratified by 46 of the 54 countries on the continent. Interestingly the countries that have not ratified the charter have all ratified the UN convention on children's rights except Somalia and Sahrawi Arab Democratic Republic (which is not a member of the UN).

A number of speculations have been enunciated for the behaviour of African states towards the CRC and ACC. Nieuwenhuys (2008) speculates that ratification of CRC was regarded as part of the neoliberal package that developing countries had to accept in order to remain part of the international community. Pupavac (1997) makes similar assertion, that States ratified the CRC with the hope that it would enhance their international standing. Cynically, Ngokwey (2004) notes that many African countries rushed to ratify the CRC assuming that ratification could become a condition for development assistance. Nonetheless Ngokwey's cynicism seems to be confirmed by Hammarberg's (1994:69) assertion that the approach of the CRC is "constructive and aid-orientated" and also by Reynolds et al's (2006:298) exposition that "children's rights have become a legitimate road to access aid".

It is very important to mention that the charter is not opposed to the convention; it clearly states its support for the convention in its preamble:

Reaffirming adherence to the principles of the rights and welfare of the child contained in the declaration, conventions and other instruments of the United Nations and in particular the United Nations Convention on the Rights of the Child.

The charter has been described as a powerful tool for the enhancement of the lives of millions of African children (Olowu, 2002) and also as the most progressive of the treaties on children's rights (Van Bueren, 1995). In spite of the accolades attributed to the charter it has some criticisms. Its silence on the situation of the unborn child has been described as anomalous (Olowu, 2002). Article 22 (2) of the charter has been criticised by Jesseman (2001) as restrictive to a child's freedom of association, which, she regards as important, especially to

older children to enable them to participate in group activity. The said article requires *States Parties to take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child*. One can argue that Jesseman's criticism is misguided, as she seems to suggest that children's engagement in hostilities is a group activity that must be encouraged.

### 3. CONVERGENCE AND DIVERGENCE BETWEEN THE CHARTER AND THE CONVENTION

This section presents some of the similarities and differences between the charter and the convention. The analysis is based on the four cardinal principles of both the charter and the convention, and other issues that the authors consider important.

#### *Cardinal principle 1: Non-discrimination*

The convention under Article 2 provides that:

1. *States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's status.*

Article 3 of the charter provides that:

*Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' status.*

The non-discrimination principle requires that all children are treated equally. However equality does not mean that all children are provided with exactly the same resources. As argued by Van Bueren (1999a, cited in Gal, 2006) inequalities among children must first be acknowledged, and adequate resources provided to disadvantaged children in order to ensure equal opportunities. It is worth mentioning that the charter does not make reference to the 'State' unlike the convention, implying that the obligation to promote equality is binding on all actors. It also extends the list of grounds on which discrimination is prohibited to include 'fortune'. According to Chirwa (2002) this fits perfectly with the African perception of 'wealth' which goes beyond traditional property such as land and assets.

#### *Cardinal principle 2: the Best Interests of the Child*

Under Article 4 of the charter: *1. in all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.*

The convention provides under Article 3 that:

1. *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

A careful examination of the above quoted articles reveals a slight difference. The charter makes the best interest of the child 'the primary consideration' whereas the convention makes it 'a primary consideration'. It has been argued that the charter's insistence on making the best interest of the child as 'the primary consideration' offers better protection for children (Chirwa, 2002; Sloth-Nielsen, 1995; Van Bueren, 1995). Thus the charter does not permit other considerations to override a child's best interest, which the convention's 'a primary consideration' permits. However, Gal (2006) argues that the best interest principle seems simple to grasp as it relates to the wellbeing of children but also notes that it is very challenging

to identify the best interests of the child. Who decides what is in a child's best interest in situations where the child's wishes conflict with other people's opinions? In situations where a parent's view contradicts the child's views, and the views of professionals working with the family, should the parent's view override the child's view, and should parent's views be overruled by State officials? Neither the Convention nor Charter offers any guidelines in such situations. Therefore the best interest principle is plagued with vagueness and implementation difficulties (Lloyd, 2002; Gal, 2006).

Another subtle difference is that under the charter's provision the best interest principle applies to individuals as well as institutions in making decisions concerning children. However the convention's provision seems to apply exclusively to institutions.

*Cardinal principle 3: Participation*

Article 12 of the convention provides the general principle of respect for the child's views. Article 12 obliges:

*1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*

The charter under article 7 provides that:

*Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws.*

Article 4 (2) of the charter also guarantees that, *in all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, an opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.*

There is a subtle difference between the charter provision and that of the convention with regards to children expressing views. Whereas the convention requires that the views expressed by children are given serious consideration in line with the age and maturity of the child, the charter does not contain such a phrase. Therefore it is unclear how the views expressed by children should be treated. Nonetheless Kassan (2004) has argued that the charter's provision that views of the child 'be heard' places a duty on the person or authority to whom the child expressed a view to indeed listen to such a child, irrespective of age and maturity. The charter however accords the right to be heard to a child who is 'capable of communicating his or her views'. This provision is discriminatory against some disabled children who may be able to form an opinion but may be unable to communicate them. This provision does not recognise that children who are unable to communicate verbally or in writing can nevertheless be able to express an opinion in non-verbal means such as sign and body language, exhibiting different behaviour, finger and eye pointing, picture exchange etc. The provision in the convention is more inclusive as it requires that children who are capable of forming an opinion to be given the right to express that opinion.

It is worth mentioning that both treaties place a restriction on children's views in accordance with appropriate and national laws. There seems to be apparent tension and contradiction in these treaties. Whereas they call on State parties to amend laws that are at variance with their tenets, they somehow seem to endorse such laws by some of their provisions. The question that arises is, if a national law prohibits children from making their views known, would that law be against the convention or the charter?

Another difference between the charter and the convention in respect of children expressing their views is the arena or area. Whereas the convention limits the areas that children can express their views to *matters that affect them*, the charter places no limitation on the areas that children can express their views. The charter requires that children are assured the right to express their views *freely in all matters*. It is very ironic that the charter which is supposedly reflecting African culture adopts such stance bearing in mind that children in Africa are rarely given the opportunity to express views even in matters that affect them, how much more to express views in other matters not affecting them.

The participation principle is seen as the most controversial and most challenging among the cardinal principles (Pinkerton, 2004), as it is an expansion of rights beyond protection and welfare. Flekkøy and Kaufman (1997) contend that the wellbeing of children is invariably dependent on their opportunities to be active participants in decision-making, since such opportunities develop their trust in others and their self esteem.

*Cardinal principle 4: Life, Survival and Development*

The right of children not only to life, but survival and development is guaranteed under the following articles:

1. *States Parties recognize that every child has the inherent right to life.*
2. *States Parties shall ensure to the maximum extent possible the survival and development of the child* (Article 6 of the convention).

Article 5 of the charter reads:

1. *Every child has an inherent right to life. This right shall be protected by law.*
2. *States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.*
3. *Death sentence shall not be pronounced for crimes committed by children.*

These articles require State parties to take all measures possible to ensure that not only do children survive but are also developed to achieve their full potentials. A major advantage in the charter for children is its explicit prohibition of death sentence against children, which the convention does not prohibit, at least explicitly. However both the charter and the convention can be criticised for not prohibiting life imprisonment sentence on children.

*(a) Public Awareness*

Governments that have ratified the charter and convention are obliged to inform the public of their principles and provisions. Under Article 42 of the convention, *States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.*

This means that government officials and staff at all levels, including local officials must not only be aware of the treaties' existence, but also knowledgeable of their principles and provisions to effectively promote them. The charter on the other hand provides no enshrined obligations for State parties to publicise its principles and provisions. This may probably explain why the convention is better known on the African continent than the charter (Lloyd, 2002; Kaime, 2009). However as noted by Olowu (2002) the effectiveness of the charter depends on whether it is widely known, understood and applied.

*(b) Parental Guidance*

Both the convention and charter acknowledge the right of parents to provide guidance and direction for their children. The convention under Article 3 (2) reads; *States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*

Article 5 (3) of the convention also require *States Parties to respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.*

Parental guidance is assured under article 9 (3) of the charter; *States Parties shall respect the duty of parents and where applicable, legal guardians to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies.* The evolving capacity concept contained in Article 5 (3) of the convention has significant implications for children wishing to exercise their rights (Bell, 2008). Lansdown reiterates that, the concept is in recognition that:

children in different environments and cultures who are faced with diverse life experiences will acquire competencies at different ages, and their acquisition of competencies will vary according to the circumstances. It also allows for the fact that children's capacities can differ according to the nature of the rights to be exercised. Children, therefore, require varying degrees of protection, participation and opportunity for autonomous decision-making in different contexts and across different areas of decision making (Lansdown, 2005:ix).

She concedes that evolving capacity is a challenging concept, as it relies upon individual competencies and decision-making abilities that children often forfeit until they are judged as having capacity to assume their rights. Bell (2008) clarifies that the evolving capacity concept reflects the notion that children do not instantly become adults once they turn eighteen and that parents are expected to guide their children in developing their capacities.

*(c) Definition of a Child*

Although both the charter and convention define a child as any human being below the age of eighteen years, there is a proviso in the convention "...unless, under the law applicable to the child, majority is attained earlier". This allows for local interpretation of childhood. However, the charter unequivocally leaves no space for local interpretations. This has led Twum-Danso (2008) to criticise the charter for adopting a more rigid definition of childhood that does not reflect childhood construction on the African continent. Franklin (1995:8) further points out that the definition of everyone under 18 years as a child "obscures the inherent diversity of childhood and attempts to establish a false uniformity of needs and rights for an evidently heterogeneous group".



*(d) Customs and Traditions*

Many customs and traditions of Africa are often faulted as violations of children's rights. In reaction to these harmful customs and traditions in African societies, the Charter unequivocally calls for their prohibition under article 21, which reads:

*1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child.*

Article 1 (3) also illuminate that *any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.* In spite of this elaborate provision, Njungwe (2009) has criticised the charter for merely calling for a sieving of these practices since the practices in conflict with the charter do not necessarily have to be rejected in their entirety, but rather to the extent of their inconsistency. The convention is however silent on harmful cultural practices.

*(e) Privacy*

The Charter under Article 10 guarantees the child's right to privacy, but subjects it to the right of parents or legal guardians to exercise reasonable supervision over the conduct of the child. This sharply contrasts the provision in the Convention i.e. Article 16, which guarantees the child's right to privacy without the intervention of parental supervision. This provision in the Convention is more difficult for parents to accept as it seems to contradict the requirement of parental supervision and guidance.

*(f) Monitoring Mechanism*

Both treaties contain an implementation mechanism – Committee - responsible for the supervision and monitoring of the implementation of the treaty provisions. However the African Committee has broad interpretative and promotional mandates and wide ranging power that would allow the Committee to become useful and positively influence legislation and policies at the national and domestic levels (Van Bueren, 1995; Olowu, 2002). As with the Convention, states parties are obliged to submit reports to the Committee on their national implementation on a 3 yearly basis under the charter and 5 yearly period under the Convention. The African Committee under article 44 of the charter is empowered to receive communications from “any person” relating to any matter covered by the Charter. However the UN committee can only receive communication from State parties. This has led Olowu (2002) to argue that the requirements under the charter would enhance the opportunity for more effective monitoring of state obligations at both regional and international levels.

*(g) Responsibilities of the Child*

Under article 31 of the charter, *the child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty and responsibilities towards his family and society, the State and other legally recognized communities and the international community.*

The most striking distinction between the charter and other children's rights treaties is its allocation of duties to children depending on their evolving capacity. There is no such provision in the convention. Mezmur (2008) reckons it could be contentious when a children's rights instrument expressly imposes duties on them. Nevertheless it has been argued that this is

in recognition of the principle that the promotion and protection of children's rights implies the performance of duties on the part of everyone, children inclusive (Chirwa, 2002; Mezmur, 2008; Sloth-Nielsen and Mezmur, 2008). Sloth-Nielsen and Mezmur (2008) further argue that the inclusion of duties for children contemplates a form of active and true participation in societal and communal life instead of a narrow construction of only expressing views.

*(h) Corporal Punishment*

Article 19 of the Convention requires 1. *States Parties to 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.*

Article 28 (2) also requires *States Parties to take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.* Under article 37, (a) *No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.*

The Committee on the Rights of the Child, which monitors implementation of the Convention, has consistently held that the Convention requires prohibition in law of all corporal punishment in all settings, the family, schools, juvenile justice systems and all alternative care settings. In 2006 the Committee adopted a General Assembly Comment on children's right to protection from corporal punishment which aims "to highlight the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children" (UNGA, 2008:17).

The charter's position on corporal punishment is unclear. Article 20 (c) requires parents *to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.* This article can be interpreted as supporting corporal punishment as what is meant by the administration of domestic discipline is unclear. Meanwhile the African committee that monitors adherence to the charter has also not made any comment regarding the interpretation of this article.

#### 4. CONCLUSION

The paper has outlined some of the differences and similarities between the UN convention on the rights of the child, and the African children's charter. As alluded to above, the charter is not opposed to the convention. Indeed it uses the language of the convention in greater similarity but with subtle differences to reflect African contexts. It must be emphasised that the adoption of the African charter on the rights and welfare of the child is in tandem with the UN's recognition of regional arrangements for the protection of human rights (Mezmur, 2008). The 92<sup>nd</sup> plenary meeting of the UN General Assembly in 1992 noted that regional arrangements for the promotion and protection of human rights may make a major contribution to the effective enjoyment of human rights (see UN General Assembly Resolutions GA/SHC 362, and A/RES/47/125). These resolutions highlight that each region, with its unique culture, traditions and history is best placed to handle and resolve its human rights situation. According to Njungwe (2009) the charter is an "African embellishment to the global protection of children's rights" (p.11). The two pieces of legislation are complementary and both provide the framework through which children's rights and welfare are discussed and promoted in Africa.

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