

GHANA'S INVISIBLE GIRLS: THE CHILD-KAYAYEI BUSINESS AND ITS VIOLATION OF DOMESTIC AND INTERNATIONAL CHILD LABOUR LAWS

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ABSTRACT

Throughout the world, children engage in labour that denies them of their childhood. Child labour is a growing global concern, as an estimated 218 million children are engaged in the practice.¹ Though child labour reduced in some parts of the world, it is still one of the major developmental challenges facing many African countries such as Ghana. This thesis advocates for a group of young girls in southern Ghana who engage in child labour through the child-kayayei business. Kayayei is a term describing people who transport goods on their heads for a small fee. Despite Ghana's regulations against child exploitation and head portering, child-kayayei usage is widely accepted. The thesis first introduces the topic through a case study based on a personal interview and a brief overview of the child-kayayei crisis in Ghana. Thereafter, the thesis addresses (1) how the child-kayayei business violates the Constitution of Ghana and Ghanaian laws; (2) how the child-kayayei business violates international law; and (3) how Ghana should be held accountable to the international community, under the jurisdiction of the African Court for Human and Peoples' Rights, for its non-compliance to child labour regulations. The thesis concludes with plausible legal solutions to Ghana's on-going child-kayayei crisis.

To the unknown child-kayayoo, who inspired me to take action and the many others in Ghana.

¹ Peace Tetteh, *Child Domestic Labour in (Accra) Ghana: A Child and Gender Rights Issue?*, 19 THE INTERNATIONAL JOURNAL OF CHILDREN'S RIGHTS 217–232, 217 (2011).

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My passion to advocate for child-kayayei began during the summer of 2012, when I spent four months in Ghana completing two legal internships. At the completion of both internships, I went to Makola market to buy my host parents a microwave to show gratitude for their hospitality. Before I could hail a taxi to transport the microwave, my friend already placed it on the head of a child-kayayoo. I begged and pleaded with my friend to take down the microwave, but he nonchalantly replied, "That's her job." The young girl too was adamant in carrying the microwave; so I quickly realized that the little money she would receive outweighed the degradation of her childhood. She carried my microwave for about one mile with a baby on her back. I cried the entire journey. Since that day, I returned to Ghana on three other occasions to research and study the child-kayayei business, hoping to make a difference in the lives of these young girls. Though my desire and drive pushed me to write this thesis, I owe thanks to those who helped me along the way.

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*“There Can Be No Keener Revelation Of A Society’s Soul Than The
Way In Which It Treats Its Children”*

-Nelson Rolihlahla Mandela

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ABBREVIATIONS

ACHPR: African Commission on Human and Peoples' Rights
ACJ: African Court of Justice
ACRWC: African Charter on the Rights and Welfare of the Child
AMU/UMA: Arab Maghreb Union
AU: African Union
BIC: Best Interest of the Child
CEMAC: Community of Central Africa
CHRAJ: Commission on Human Rights and Administrative Justice
COMESA: Common Market of Eastern and Southern African
CPP: Convention People's Party
CRC: United Nations Convention on the Rights of a Child
EAC: East African Community
ECOWAS: Treaty of the Economic Community of West African States
ECtHR: European Court of Human Rights
FGM: Female Genital Mutilation
GBV: Gender Based Violence
ICC: International Criminal Court
ICD: International Crimes Division
ICJ: International Court of Justice
ICCPR: International Covenant on Civil and Political Rights
ICTR: International Criminal Tribunal for Rwanda
IACtHPR: Inter-American Court of Human Rights
ILO: International Labour Organization
LDA: Lunatics Detention Act
LHRC: Legal and Human Rights Centre
LRA: Lord's Resistance Party
NGO: Non-Governmental Organizations
OAU: Organization of African Unity
OHADA/OHABLA: Organization for the Harmonization of African Business Law
SADC: Southern African Development Community
TLS: Tanganyika Law Society
UN: United Nations
UDHR: United Nations Universal Declaration of Human Rights

DEFINITIONS AND KEY CONCEPTS

Child: The United Nations Convention on the Rights of a Child defines a child as a person under the age of 18, unless the laws of a particular country set the legal age for adulthood younger.² The Constitution of Ghana and Ghana's Children's Act, 1998 (Act 560) also define a child as a person below the age of 18 years.

Child-Kayayei: For the purposes of this thesis, child-kayayei refers solely to young girls, between the ages of 8-17, who engage in transporting goods on their heads for a small fee. These girls work more than four hours a day and are deprived of their dignity and development.

Child Labour: Adhering to the standards of the International Labour Organization ("ILO") child labour as used in this thesis refers to all economic activities carried out by persons between the ages of 5-17.³ This type of labour deprives children of their childhood. It divests them of the opportunity to attend school, requires them to engage in heavy and strenuous work for excessively long hours (more than 4 hours a day), and injures their health, dignity, and physical and mental development.⁴ It refers to work that:

- is mentally, physically, socially or morally dangerous and harmful to children; and
- interferes with their schooling by:
 - depriving them of the opportunity to attend school;
 - obliging them to leave school prematurely; or
 - requiring them to attempt to combine school attendance with excessively long and heavy work.

In its most extreme forms, child labour involves enslavement, separation from families, exposure to serious hazards and illnesses or abandonment at an extremely early age. Whether work is child labour depends on the child's age, the amount of hours of work performed, and the conditions under which it is performed. While child labour takes many different forms, a priority is to eliminate without delay the worst forms of child labour as defined by Article 3 of ILO Convention No. 182.⁵

Not all work done by children is child labour, and thus child labour should be differentiated from child work. Child work constitutes normal chores that children engage in as part of their socialization. Normal chores include helping parents around the home, assisting in a family business,

² United Nations Convention on the Rights of a Child, art. 1, Nov. 20, 1989.

³ WHAT IS CHILD LABOUR (IPEC), <http://www.ilo.org/ipec/facts/lang-en/index.htm> (last visited Nov 4, 2015).

⁴ *Id.*

⁵ *Id.*

or earning pocket money outside school hours and during school holidays.⁶ These kinds of activities contribute to children's development and welfare; they provide children with the skills and experience needed to become productive members of society.

Kaya: In the Hausa language, kaya means luggage or load.

Kayayei: Kayayei (singular kayayoo) are persons who transport goods on their heads for a small fee. Though the term kayayei refers to women engaged in transporting goods, the term includes both male and female.

Head Porterage/Child-kayayei-Business: These terms refer to the practice of carrying goods on one's head for a small fee.

Member-State: A Member-State is a country that is a part of an international organization or treaty, such as the United Nations.

Protocol: Protocol refers to an instrument A Protocol of Signature is an instrument subsidiary to a treaty, applicable to the same parties that generally refers to a topic relevant to the original treaty. It further addresses certain provisions in the original treaty, a new or emerging concern, or adds a procedure for the operation and enforcement of the treaty.

Recruiters: Refers to those who transport persons through improper means (such as force, abduction, fraud, or coercion) for an improper purpose including forced labour or exploitation.⁷

State: According to international law, a State (country) has a permanent population, a defined territory, a government, and the capacity to enter into relations with other States.⁸

Worst Form of Child Labour: The worst form of child labour is a term of art that derived from the ILO Worst Form of Child Labour Convention, No. 182. The ILO Convention 182 classifies the worst forms of Child Labour as follows:

- a. all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- b. the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- c. the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and

⁶ *Id.*

⁷ *Human Trafficking*, Office of Justice Programs, (Nov. 11, 2015), <http://www.nij.gov/topics/crime/human-trafficking/pages/welcome.aspx>.

⁸ Montevideo Convention on the Rights and Duties of States, art. 1, Dec. 26, 1934.

d. work, which by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

When used in this thesis, the “worst form of child labour” refers to work that harms the health, safety or morals of children.

INTRODUCTION

A. *Sylvia's Story*⁹

For over a decade, southern Ghana experienced an influx of young girls from northern Ghana (ages 8-17) who solely engage in head portering.¹⁰ Sylvia is one of those girls. As the eighth child in her family, she left Walewale, Ghana at the age of nine because a close family friend assured her of a better life in southern Ghana. She left school at the tender age of seven, because her family does not recognize the long-term benefits of formal education for girls. "None of my parents attended school. My father is a farmer and my mom works inside the home. We needed money now and school does not bring in money now, but my father would rather pay for my brothers to attend school."¹¹ Despite the requirement for free public education in Ghana, enrolling in public schools can be quite difficult. Families must purchase uniforms and school materials.¹² Classroom shortages and schools with insufficient teachers and materials also hinder education.¹³ Long distance, too, deters some children from attending school, when they live in remote villages with no access to public transportation.¹⁴ A lost copy of a birth certificate, though not a legal requirement, also obstructs admission to public school.¹⁵ With such hindrances, children in the north receive little support from their parents to attend school. Those parents being generally uneducated, do not recognize the importance of formal education; instead, they focus on their short-term needs rather than the long-term benefits of formal education.¹⁶

⁹ The name of the child was changed to protect the identity of the child. All information were derived from an interview. Interview with Sylvia, child-kayayoo, in Accra, Ghana (August 20, 2015).

¹⁰ The average age of the kayayeei is 8-45. However, this thesis will only focus on young girls ages 8-16 to adhere to the standard of the International Labour Organization (ILO); Interview with Joseph Charles Osei, Director of BIBIR-GHANA, in Accra, Ghana (August 19, 2015)

¹¹ Transcript from Interview with Sylvia, (Aug. 20, 2015) (on file with author). Chapter 5, art. 25 of the Ghanaian Constitution, which guarantees free compulsory basic education to every child in Ghana; yet her parents are still obligated to pay various educational fees, such exam fees, PTA fees, book fees, and uniforms.

¹² THE CONST. of the Republic of Ghana, Chapter 5, art. 25, (1992); UNITED STATES DEPT. OF LABOR, *2013 Findings on the Worst Form of Child Labor*, 2 (2013).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ E. BEAUCHEMIN, *THE GROWING MIGRATION OF CHILDREN FROM GHANA'S RURAL AREAS TO THE URBAN CENTRES*, 13 (1999).

Sylvia's parents grew excited when a family friend informed them of a financial opportunity for the family. The friend mentioned that Sylvia could make a large sum of money by migrating south and working in Ghana's capital, Accra; that she would be well taken care of while in Accra and that she would finish school. When Sylvia's parents learned of the opportunity, they eagerly let their only daughter migrate south.¹⁷ "My mom told me that I was the lucky one in the family. I was chosen to live in the big city. She told me that when I am there, I would live with a really nice family who would help me continue my schooling and start my own business."¹⁸ With high hopes of a better future, Sylvia quickly travelled to Accra, but when she arrived, she had no opportunity to make large sums of money or attend school. In fact, she had no shelter or food. At only nine years old she became a child-kayayoo, became homeless, and begged each day for food.¹⁹ "When I got to Accra, I met a man. I thought his family would care for me, but instead he took me to a shop in Makola market. I met the madam [store owner], and she told me that I would be carrying customers' goods and that they will pay me."²⁰ After being assigned to that particular shop, Sylvia never again saw the man that met her when she first arrived in Accra.²¹

Sylvia moved to Accra in pursuit of economic prosperity only to become entangled in child labour practices. For approximately 12 hours a day, she carries loads on her head for shoppers and traders within the market who pay her very little.²² "Now that I have children, I put the youngest on my back while I carry the goods. The others usually wait for me to come back."²³ Although Sylvia's other children should be in school, they wait on the sidewalk, unattended, as Sylvia carries groceries and heavy household items such as microwaves, toasters, air conditioners, and vacuum cleaners for consumers.²⁴ "I even carried a generator once or twice. It was heavy, but after a while, I got used to carrying it. When I carry goods, the customers pay me as they wish; sometimes I do not get paid at all. My madam gives me a few coins when she is very pleased with my work. At the end of the day, I earn about five to seven cedis [about two dollars] on a busy day."²⁵ The average Ghanaian in Accra earns about 12

¹⁷ Interview with Sylvia, *supra* note 9.

¹⁸ Tr., *supra* note 11.

¹⁹ Interview with Sylvia, *supra* note 9.

²⁰ Tr., *supra* note 11.

²¹ Interview with Sylvia, *supra* note 9.

²² *Id.*

²³ Tr., *supra* note 11.

²⁴ Interview with Sylvia, *supra* note 9.

²⁵ Tr., *supra* note 11.

USD daily. One meal costs about five USD, and thus two dollars a day is not enough to feed a family of five.²⁶

Though Sylvia moved to Accra to obtain a better life, it has not improved since the migration. Nine years later, she lives in impoverished conditions with four children, all products of rape.²⁷ She was pregnant six times, underwent two abortions, and did not finish her education or start the reputable business she once imagined.²⁸ “I have been raped 12 times since I moved from Walewale in the north. I am ashamed to return to my village. I do not know what I am going to do with my life now. I have done everything possible to come out from this challenge I am going through but nothing seems to work out well for me.”²⁹ In northern Ghana, women and girls remain far less valuable than their male counterparts. That devaluation proves true through dehumanizing cultural practices, such as female genital mutilation, child marriages, and land grabbing.³⁰ As in Sylvia’s case, when girls from northern Ghana birth illegitimate children, most do not return home out of disgrace for having children out of wedlock.³¹ While Sylvia’s children are the results of rape, Ghanaians generally believe that older children (teenagers) and adults cannot be raped, only young children.³² Though Sylvia was only 15 years old when she gave birth to her first child, she will still bear the blame as a guilty or irresponsible girl.³³ Further, within the Ghanaian judicial system, an unfair presumption exists against rape victims when the accused raises the defence of consent. Courts unfairly presume that a rape victim consents if she does not actively cry for help. Accordingly, Ghanaian courts require a rape victim to prove non-consensual sexual intercourse through

²⁶ *Prices in Accra*, Cost of Living in Accra, Ghana, (Nov. 11, 2015), http://www.numbeo.com/cost-of-living/city_result.jsp?country=Ghana&city=Accra.

²⁷ At the date of the interview, Sylvia’s first child was 3 years old. Her second two children are twins and were 2 years old and her last child was 5 months old.

²⁸ Interview with Sylvia, *supra* note 9; A reputable businesses include owning a hair salon, a boutique, or being a seamstress. Those businesses are distinguished, as it is common for locals to look at the kayayei practice as a business.

²⁹ Tr., *supra* note 11.

³⁰ Female genital mutilation and child marriage will be further explained later in the thesis. Land-grabbing occurs when a widow loses her property when her deceased husband’s family members’ (usually brothers) adversely possess (grab) the land.

³¹ E. BEAUCHEMIN, *supra* note 16, at 30.

³² Aspects of Sexual Violence Among the Ga of Accra: Ethnographic Study of Concupiscence in Transition Albert Awedoba and Deborah Atobrah, Inst. of African, PRESENTATION, <http://slideplayer.com/slide/7295955/> (last visited Nov 4, 2015).

³³ *Id.*

screaming, fighting, or scratching.³⁴ A woman simply saying no, without more, amounts to consensual intercourse.³⁵ With four illegitimate children, Sylvia's village considers her impure and unfit to marry and will be rejected by the village community if she returns home. Like Sylvia, over 50,000 other girls have migrated from northern Ghana, within the last two decades, with an expectation of a better life, but that better life is only a dream.³⁶ Within the Ghanaian society child-kayayei remain invisible.

1. Ghana

Located on the West Coast of Africa, Ghana (formerly known as "the Gold Coast") exists as one of the most thriving democratic nations on the continent.³⁷ While the word *Ghana* means "Warrior King" in the Mande language, the country is often referred to an "island of peace."³⁸ Ghana borders Togo to the east, la Cote d'Ivoire (The Ivory Coast) to the west, Burkina Faso to the north and the Gulf of Guinea, to the south.³⁹ The country covers an area of 92,000 square miles, and its population estimates at 20.8 million.⁴⁰ It covers a slight larger geographic span than the United Kingdom and a bit smaller geographic area than the state of Oregon in the United States.⁴¹ Ghana contains more than one hundred ethnic groups—each with its own unique language. English, however, continues to be the official language.⁴²

Numerous kingdoms and empires in Ghana emerged over the centuries, of which the most powerful was the Kingdom of Ashanti.⁴³ The

³⁴ ELIZABETH ARCHAMPONG & JOHN BURKE BAIDOO, *The Treatment of Consent in Sexual Assault Law in Ghana*, 9-10 (2011).

³⁵ See *Agbemanya v. the State* (holding that to prove the absence of consent that the victim should prove she tried to escape when she saw the accused tripped off his clothes and lock the door) (citing ELIZABETH ARCHAMPONG & JOHN BURKE BAIDOO, *The Treatment of Consent in Sexual Assault Law in Ghana*, 9 (2011)).

³⁶ Interview with Jones Owusu Yeboah, President of SEWA Foundation, in Accra, Ghana (August 20, 2015).

³⁷ THE WORLD FACT BOOK CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/gh.html> (last visited Nov 5, 2015).

³⁸ *The Country Ghana*, Ghana Web, (Nov. 19, 2015), http://www.ghanaweb.com/GhanaHomePage/country_information/.

³⁹ THE WORLD FACT BOOK CENTRAL INTELLIGENCE AGENCY, *supra* note 37.

⁴⁰ ROGER GOCKING, *THE HISTORY OF GHANA 1* (Greenwood 2005).

⁴¹ *Id.*

⁴² *On the Language and Development in Africa: The Case of Ghana*, GHANAIAN LANGUAGES, (Nov 5, 2015), <http://www.ghanaweb.com/ghanahomepage/tribes/languages.php>

⁴³ KWAMINA B. DICKSON, *A HISTORICAL GEOGRAPHY OF GHANA* (Cambridge U.P.) 23 (1969).

first permanent kingdom in Ghana dates back to the 11th century. By the 15th century, numerous European powers contested with each other for trading rights to Ghana. The Portuguese people, being the first Europeans to arrive in 1470, built a permanent trading base call Elmina Castle in 1482.⁴⁴ Soon after, the British, Dutch, Danish, and Germans arrived. The British eventually made the Gold Coast a colony and ultimately established control of its coast by the late 19th century.⁴⁵

In 1957, Ghana became the first country in sub-Saharan Africa to gain independence.⁴⁶ Today, Ghana's economy boasts as the ninth largest on the African continent.⁴⁷ Agricultural labour, which employs about 40 per cent of the working population, dominates the country's economy.⁴⁸ Ghana remains a major producer of petroleum and natural gas, with the continent's fifth largest oil reserves and sixth largest natural gas reserves.⁴⁹ Ghana produces one of the world's largest quantity of gold and diamond and anticipates being the largest producer of cocoa in the world as of 2015.⁵⁰ Ghana's growing economic prosperity and democratic political system makes it a regional power in West Africa. Despite those advances, it still engages in the worst form of child labour.

B. *The Kayayei Crisis*

1. Introduction to the Crisis

Customarily the people of Ghana carry loads on their heads. Though this type of transport system aids in moving goods, the practice has created a child labour crisis in the country. This particular form of child labour exploitation dominates urban areas such as Accra and Kumasi, where a group of young girls engages in *professional* head portering. Ghanaians call them kayayei. The word kayayei is the plural form of the word, kayayoo.⁵¹ In the Hausa language, kaya means luggage or load, and

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Sub-Saharan Africa is, geographically, the area of the continent of Africa that lies south of the Sahara Desert. To see a complete list visit <http://www.loc.gov/rr/amed/guide/afr-countrylist.html>; Angela Howard, *When the People Decide: A Study of the Independence Movement in Ghana*, in *WHEN THE PEOPLE DECIDE: A STUDY OF THE INDEPENDENCE MOVEMENT IN GHANA* 1, 5 (1999).

⁴⁷ *Five Countries to Watch*, *THE AFRICAN ECONOMIST*, (Nov. 5, 2015), <http://theafricaneconomist.com/five-countries-to-watch/#.vjuayg9owm8>

⁴⁸ *THE WORLD FACT BOOK CENTRAL INTELLIGENCE AGENCY*, *supra* note 37.

⁴⁹ *Ghana, AWARENESS THROUGH DANCE*, (Nov. 5, 2015), <http://www.awarenessthroughdance.org/enriching-experiences/ghana-2015/>.

⁵⁰ *Id.*

⁵¹ James Adu Opare, *Kayayei: The Women Head Porters of Southern Ghana*, 18 *JOURNAL OF SOCIAL DEVELOPMENT IN AFRICA* 33, 35 (2004).

in the Ga language, yoo means woman; yet, kayayei include young girls, usually ages 8-16.⁵² The girls originate from poor socio-economic backgrounds, coming primarily from the rural areas of northern Ghana and neighbouring Burkina Faso; only 20 per cent of the girls come from the southern areas.⁵³



Figure 1: Image courtesy of un.org.

2. Northern Ghana

Northern Ghana covers the largest geographic area in the country, about 43,734 square miles.⁵⁴ It encompasses three regions, Upper West, Upper East, and the Northern Region.⁵⁵ The highest poverty rates exist in those areas due to less commercial resources than southern cities; so, the poverty rate continues to grow as inequalities widen between the richer southern Ghana and the poorer northern Ghana.⁵⁶ While the number of poor individuals declined sharply in the south between 1992 and 2006 (2.5 million fewer), it increased in the north (0.9 million more).⁵⁷ In addition, the poverty rate in the south fell from 48 to 20 per cent, while it only declined from 69 to 63 per cent in the north.⁵⁸

Poverty in northern Ghana dates back to the historical treatment of its three regions.⁵⁹

Colonialism, recent political developments, and post-independence staggered its growth.⁶⁰ During colonialism, northern Ghana faced several invasions by the Ashantis, and thus colonial powers ruled that area to a

⁵² Owusu-Yeboah, *supra* note 36.

⁵³ Opare, *supra* note 51, at 34, 38, 41, 45.

⁵⁴ Northern, GOVERNMENT OF GHANA, (Nov. 5, 2015), <http://www.ghana.gov.gh/index.php/about-ghana/regions/northern>.

⁵⁵ Vincent Amanor-Boadu, Yacob Zereyesus, & Jenifer Asiedu-Dartey, *A District Level Analysis of the Prevalence of Poverty in Northern Ghana*, in UNITED STATES AGENCY INTERNATIONAL DEVELOPMENT (USAID) METSS-GHANA RESEARCH AND ISSUE PAPER SERIES 1, 1 (2013).

⁵⁶ WORLD BANK, REPUBLIC OF GHANA TACKLING POVERTY IN NORTHERN GHANA 5 (2011).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ S.O. KWANKYE ET AL., INDEPENDENT NORTH-SOUTH CHILD MIGRATION IN GHANA: THE DECISION MAKING PROCESS 8 (2009).

much later date (1902) than southern Ghana. By that time southern Ghana had well-established ports for minerals and cash crops, such as cocoa.⁶¹ Southern Ghana's well-established ports created numerous trade opportunities, so the British poorly invested in northern Ghana's infrastructure and services.⁶² After colonial rule, the Ghanaian governments failed to break this pattern and kept focus on the development of the south.⁶³

At the country's independence, northern Ghana only had one high school, in contrast to the long history of secondary education in the south.⁶⁴ Accordingly, a widespread perception arose of political discrimination in favour of wealthier social groups of the south based on culture and language type.⁶⁵ Following independence, Kwame Nkrumah's Convention People's Party (CPP) Government instituted some targeted policies to support the development of northern Ghana to redress the imbalance in education received; however, that redress was slow.⁶⁶

Today, the north consists of mostly farmlands resulting in the main occupation of farming, primarily subsistence farming.⁶⁷ Farmers generally produce yam, maize, millet, guinea corn, rice, groundnuts, and beans.⁶⁸ The few who engage in commercial farming net only about \$50 USD a month,⁶⁹ in contrast to their southern counterparts who earn about \$300 to \$500 USD per month.⁷⁰ The geographic location of northern Ghana tends to hinder the income of northern farmers. The three northern areas remain the farthest from the ports, roads, railways, markets, industrial centres, and fertile farming areas that help stimulate greater economic development in southern Ghana.⁷¹ Also, the difficulty and high cost of transporting crops from northern Ghana to southern Ghana hamper

⁶¹ *Id.*

⁶² *Id.*

⁶³ Ernest Harsch, *Closing Ghana's National Poverty Gap*, AFRICA RENEWAL ONLINE UN NEWS CENTER, (Nov. 5, 2015), <http://www.un.org/africarenewal/magazine/october-2008/closing-ghana%e2%80%99s-national-poverty-gap>.

⁶⁴ World Bank, *supra* note 56, at 6.

⁶⁵ *Id.*

⁶⁶ *Id.* Current redresses are slow as well. The north still remains one of the poorest sectors of Ghana.

⁶⁷ *Id.* at 39, 50.

⁶⁸ GHANA STATISTICAL SERVICES, 2010 POPULATION AND HOUSING CENSUS NATIONAL ANALYTICAL REPORT 298 (2013).

⁶⁹ World Bank, *supra* note 56, at 6.

⁷⁰ GHANA STATISTICAL SERVICES, 2010 POPULATION AND HOUSING CENSUS NATIONAL ANALYTICAL REPORT 298 (2013).

⁷¹ Harsch, *supra* note 63.

economic activity. For example, if a farmer wanted to export his produce, that produce must be carried by truck to the port of Accra on the coast before it can be loaded onto ships.⁷² Such costs cut into the farmer's profits.

Sporadic weather patterns also hinder a farmer's profit and increase the risk of spoilage.⁷³ The climate in northern Ghana remains generally arid.⁷⁴ With little to no farming technology, farmers and livestock herders depend on scarce and erratic rainfall to harvest their crops.⁷⁵ Unpredictable climate change subjects northern Ghana to floods, drought, extreme weather, deforestation, and desertification at any moment's notice.⁷⁶ Extreme weather conditions make it difficult for farmers to consistently produce commercial crops. ⁷⁷As a result, merchants often perceive northern Ghana as having agro ecological conditions that are too difficult for improving the productivity of agriculture.

With only \$50 USD a month, a farmer must support an average household size of six people, but that income can hardly support a family of that size.⁷⁸ With little to no education or money, northern girls frequently migrate to the urban south in search for work in the markets. When given the opportunity to engage in the kayayei business, many of girls view it as a short-term job in order to build capital they cannot earn in the north.⁷⁹ Nevertheless, the short-term job typically evolves into a long-lasting way of life.⁸⁰

3. The Kaya Business

Male migrants from Sahelian countries first introduced the male-dominated head portage business in Ghana.⁸¹ In 1969, the Aliens Compliance Order removed any undocumented immigrant who failed to comply with Ghanaian immigration regulations.⁸² The Act removed Sahelian migrants since they engaged in business, contrary to their

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁸ Vincent Amanor-Boadu, *supra* note 55, at 2.

⁷⁹ Christa van den Berg, *The Kayayei: survival in the city of Accra*, 45 (2007) (published M.A. Thesis, Univ. of Amsterdam) (on file with International School for Humanities and Social Sciences Univ. of Amsterdam).

⁸⁰ Owusu-Yeboah, *supra* note 36.

⁸¹ JEAN-MARIE HENCKAERTS, *MASS EXPULSION IN MODERN INTERNATIONAL LAW AND PRACTICE* 64 (1995).

⁸² STEPHEN O KWANKYE ET AL., *COPING STRATEGIES OF INDEPENDENT CHILD MIGRANTS FROM NORTHERN GHANA TO SOUTHERN CITIES* 8 (2007).

visiting permit.⁸³ Ghanaians then began transporting goods by hand-pushed carts in the central business districts of the towns and cities, but the carts could not easily manoeuvre through heavy traffic, so the portage business reintegrated itself into the Ghanaian society once again.⁸⁴ The business, however, became female dominated, because Ghanaian men started to view head portage as feminine.⁸⁵ Two types of child-kayayei currently exist: (1) girls who help a storeowner by carrying the items customers purchased, and (2) girls who carry various items for various people shopping at the market.⁸⁶ Occasionally, child-kayayei live in private homes to perform domestic work.⁸⁷

Girls participate in the child-kayayei business for various reasons. For some girls, the business allows them to escape outmoded socio-cultural practices, such as forced marriages.⁸⁸ Forced marriages occur mostly when parents have too many children and no means to care for them.⁸⁹ Forcing a child to marry releases the parents' responsibility to the child.⁹⁰ Fostering, another traditional practice,⁹¹ involves a man giving his first-born daughter to his sister.⁹² That sister must to care for that child as her own. However, the child tends to be mistreated, since the sister can barely afford to care for her own children.⁹³ Additionally, girls migrate to escape female genital mutilation (FGM), a practice that removes some or all of the external female genitalia in an attempt to control a woman's sexuality and to effectuate ideas about purity, modesty, and aesthetics.⁹⁴

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ van den berg, *supra* note 79 at 56.

⁸⁷ CLARA OSEI-BOATENG, A REPORT ON KAYAYEI IN GHANA 3 (Trade Union Congress, Research Paper, 2012).

⁸⁸ *Id.* at 3.

⁸⁹ *Forced and Child Marriage*, STOP VIOLENCE AGAINST WOMEN: A PROJECT OF THE ADVOCATES FOR HUMAN RIGHTS, (Nov. 5, 2015) at http://www.stopvaw.org/forced_and_child_marriage.

⁹⁰ *Id.*

⁹¹ OSEI-BOATENG, *supra* note 87, at 3.

⁹² Osei, *supra* note 10.

⁹³ *Id.*

⁹⁴ OSEI-BOATENG, *supra* note 87, at 3; Fadwa El Guindi, *Had This Been Your Face, Would You Leave It as Is?* in FEMALE CIRCUMCISION: MULTICULTURAL PERSPECTIVES, 27, 30 (Rogaia Mustafa Abusharaf ed. 2006); *Female genital mutilation*, WORLD HEALTH ORGANIZATION, (Nov. 5, 2015), <http://www.who.int/mediacentre/factsheets/fs241/en/>.

While some girls leave the north to escape traditions and customs, recruiters lure others into the business.⁹⁵ In Ghana, domestic trafficking occurs more frequently than transnational trafficking, with children being the most reported victims. Trafficking occurs regularly in northern Ghana by recruiters attracting girls to work as head porters in metropolitan areas.⁹⁶ Once these girls arrive at their destinations, they are not compensated as promised and are often forced to exchange sexual services for shelter.⁹⁷ The promise of a good job and an opportunity to benefit from a growing economy entice hundreds of northern girls to migrate to southern metropolitan cities.⁹⁸

According to Ghana's Human Trafficking Act, 2005, "human trafficking is the recruitment . . . of persons within and across national borders by the use of . . . fraud, . . . deception, the abuse of power, or exploitation of vulnerability. Moreover, the Act explains that "where children are trafficked, the consent of the child, parents or guardian of the child cannot be used as a defence, regardless of evidence of abuse of power, fraud or deception on the part of the trafficker or whether the vulnerability of the child was taken advantage of."⁹⁹ Recruiters violate Ghana's Human Trafficking Act by falsely promising the girls a better life in the south through providing schooling, shelter, food, and clothing. While parents may consent to the migration, the Act provides that consent remains irrelevant when the practice involves children. Therefore, parental consent or the girls' willingness to work does not negate the illegality of the migration.

The *kaya* work requires few skills. The head pan becomes the most important tool—a round metal pan with a diameter of around 40 cm, and a height of around 15 cm.¹⁰⁰ A wet cloth sits between the pan and a *kayayoo's* head to ease the pain of the load.¹⁰¹ As one can reasonably infer, head portage is not a lucrative profession. Minimum wage requirements or fair labour practices do not exist. The income of the *child-kayei* survives

⁹⁵ *Country Narratives: Countries G through M*, U.S. DEPARTMENT OF STATE, (Nov. 5, 2015), <http://www.state.gov/j/tip/rls/tiprpt/2010/142760.htm>.

⁹⁶ Manda Sertich & Marijn Heemskerk, *Ghana's Human Trafficking Act: Successes and Shortcomings in Six Years of Implementation*, 19 HUMAN RIGHTS BRIEFS 1, 1 (2011).

⁹⁷ *Id.*

⁹⁸ Ben Ephson, *Ghana's girl porters carry a heavy burden*, THE M&G ONLINE, (Nov. 5, 2015), <http://mg.co.za/article/2005-07-31-ghanas-girl-porters-carry-a-heavy-burden>.

⁹⁹ Human Trafficking Act, § 1(1) (2005).

¹⁰⁰ van den Berg, *supra* note 79, at 48.

¹⁰¹ *Id.*

solely on market shoppers' generosity,¹⁰² considering the weight and distance of each load.¹⁰³ Child-kayayei undergo great physical demands that cause serious body aches and pains.



Figure 2: Image courtesy of Pieter Hugo's *Permanent Error*.

Typically the girls work 12 hours a day carrying large loads such as groceries, lumber, or large household appliances.¹⁰⁴ Most do so with a child on their back.¹⁰⁵ The girls pile the items high in the head pan, which amounts to huge heights and weights.¹⁰⁶ Often customers or other people in the vicinity assist while they place the pan on their head.¹⁰⁷ Rest periods prove limited and depend on the busyness of the day.¹⁰⁸ More disturbing, these young girls face sexual abuse and rape that often results in unwanted pregnancies and the contraction of various sexual diseases including HIV/AIDS.¹⁰⁹ Since child-

kayayei cannot care for their children, those children choose to work in the business, creating a nearly unbreakable cycle.¹¹⁰

¹⁰² OSEI-BOATENG, *supra* note 87, at 5.

¹⁰³ van den Berg, *supra* note 79, at 58.

¹⁰⁴ *Id.*; van den Berg, *supra* note 79, at 70.

¹⁰⁵ OSEI-BOATENG, *supra* note 87, at 6.

¹⁰⁶ van den Berg, *supra* note 79 at 70.

¹⁰⁷ *Id.*

¹⁰⁸ OSEI-BOATENG, *supra* note 87, at 5.

¹⁰⁹ van den Berg, *supra* note 79, at 40.

¹¹⁰ KATHERINE AHLVIN, THE BURDEN OF THE KAYAYEI: CULTURAL AND SOCIOECONOMIC DIFFICULTIES FACING FEMALE PORTERS IN AGBOGBLOSHIE 15 (2012).

4. Agbogbloshie

Child-kayayei live from wages to wages, unable to afford suitable housing.¹¹¹ Subsequently, approximately 30 girls will share a small cubicle-like room (a kiosk), or a child-kayao may live in uncompleted structures or on the sidewalks.¹¹² The girls usually share kiosks in Agbogbloshie, Ghana. The area holds legal and illegal electronic waste dumped by countries around the world.¹¹³ As one of the largest urban slums in Ghana, Agbogbloshie accommodates a high-density population.¹¹⁴



Figure 3: Image Courtesy of Pieter Hugo's Permanent Error.

The informal settlement area houses nearly 40,000 residents,¹¹⁵ living in self-built wooden kiosks and shacks that lack adequate water and sanitation facilities.¹¹⁶ The girls pay a weekly (sometimes daily) fee to live in the kiosks and to use water, toilets, and showers.¹¹⁷ Poor environmental conditions and dense living spaces expose the girls to malaria and cholera.¹¹⁸ Unsanitary environment and unhygienic conditions under which their food is prepared further exposes them to gastrointestinal

¹¹¹ Interview with Syliva, Kayayoo, in Accra, Ghana (August 15, 2015).

¹¹² *Id.*

¹¹³ MY DAY AT THE KAYAYEI DAYCARE CENTER THE DUBINSKYS' TRAVELS, (Nov 6, 2015), <http://www.thedubinskystravels.com/2015/07/my-day-at-kayayei-daycare-center.html>.

¹¹⁴ AHLVIN, *supra* note 110, at 12.

¹¹⁵ *Id.* at 12.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Interview with Sylvia, *supra* note 9.

diseases.¹¹⁹ Also, high crime rates exist within the Agbogbloshie community. Theft occurs regularly during the night while the girls sleep; occasionally, arsonists set houses on fire to pillage the goods¹²⁰. Additionally, sexual harassment and abuse plague the community, as men regularly exploit and sexually abuse the young girls during sleeping hours.¹²¹



Figure 4: Image courtesy of oprofessorweb.wordpress.com.

5. The Return Home

Migration involves both opportunity and risk. Unfortunately for the child-kayayei, the risks of migrating outweigh the opportunities, and thus their return home negatively affects themselves and those they once left behind. When child-kayayei do not succeed in the cities, they reluctantly return to their villages. Their parents and the rest of the villagers usually perceive their return as a failure and a shame, so no matter what the hardships, most child-kayayei choose to remain on the city street.¹²²

If child-kayayei return to their native villages, they often experience difficulties. Child-kayayei encounter a lost sense of belonging, since living

¹¹⁹ AHLVIN, *supra* note 110 at 12.

¹²⁰ *Id.* at 13.

¹²¹ *Id.* at 13.

¹²² BEAUCHEMIN, *supra* note 16, at 30.

between two cultures creates a conflicting sense of identity.¹²³ When child-kayayei leave their native villages at young ages, they find it difficult to identify with the traditions and norms they once valued, because the southern way of life has reshaped their ideals.¹²⁴ For example, many returnees no longer show respect to their elders by bowing in their presence.¹²⁵ The girls also trade in conservative traditional garb for makeup, nail polish, high heels, and shorter skirts.¹²⁶ These differences make it difficult for their families and communities to accept them, as they are perceived as deviants. Economic hardship continues to be another difficulty. The living conditions, which the girls left in pursuit of economic prosperity, have not changed. As a result, the girls usually work on the family farm and move back in with their parents since they cannot afford to live independently.¹²⁷ Despite working tirelessly in the south, the money saved does not allow the girls to live independently or attend school.¹²⁸ Consequently, children that fall into the kayayei trap become invisible—hidden from society and beyond the reach of the law.

I. LACK OF IMPLEMENTATION

A. National Legislation

The United Nations Universal Declaration of Human Rights (“UNDHR”) and the International Covenant on Civil and Political Rights (“ICCPR”) recognize the inherent dignity and the inalienable rights of all people without discrimination.¹²⁹ Ghana, a signatory to the ICCPR and a United Nations (“UN”) member, recognizes those political aspirations and established relevant laws and regulations pertaining to children that embody those ideas such as, the Children’s Act, No. 560 of 1998, Labour Act No. 651 of 2003, and the Human Trafficking Act, 2005. Recognizing the global importance of child protections, Ghana ratified key international conventions concerning child labour: the United Nations Convention on the Rights of A Child, the International Labour Organization’s C182-Worst Forms of Child Labour Convention, 1999 (No. 182), and the African Charter on the Rights and Welfare of the Child.¹³⁰ Ghana’s national legislation and its ratification of international treaties,

¹²³ Interview with Sylvia, *supra* note 9.

¹²⁴ *Id.* at 29.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* at 30; Osei, *supra* note 10.

¹²⁸ Osei, *supra* note 10.

¹²⁹ U.N., International Covenant on Civil and Political Rights, Dec. 16, 1966, Gen. Assembly Resolution 2200A (XXI), pmb1.

¹³⁰ UNITED STATES DEPT. OF LABOR, *supra* note 12.

which protect the rights and welfare of children, demonstrate that the child-kayayei problem is a result of a lack of implementation.

Created in 1992, the Constitution of the Republic of Ghana took effect on January 7, 1993.¹³¹ In conjunction with the spirit of the above-mentioned UN declarations, Chapter 005 of the Constitution grants fundamental human rights and freedoms to the people of Ghana.¹³² Section 12(2) of that chapter allows human rights and freedoms to “every person in Ghana, whatever their [*sic*] race, place of origin, political opinion, colour, religion, creed or gender.”¹³³ Section 14 protects the right to personal liberty;¹³⁴ Section 16 guards against slavery and forced labour;¹³⁵ Section 17(2) ensures equality and freedom from discrimination on grounds of gender, race, colour, ethnic, origin, religion, creed or social or economic status,¹³⁶ and Section 28(2) specifically covers children’s rights and safeguards against work that threatens health, education, or development.¹³⁷

Ghana’s ratification of the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child prompted the development of the Children’s Act, No. 560 of 1998 (“the Children’s Act”). The Children’s Act comprehensively sets out the rights of the child, parental duties, and protection of children. Relevant to the thesis, sections 87(1) (2) and 91(1) (2) (3c) particularly deals with child labour involving head portorage:

No person shall engage a child in exploitative labour. (1)
Labour is exploitative of a child if it deprives the child of its health, education or development.

The minimum age for the engagement of a person in hazardous work is eighteen years. (2) Work is hazardous when it poses a danger to the health, safety or morals of a person. (3)
Hazardous work includes – (c) head portorage of heavy loads.

A violation of the above section results in fine not exceeding ₵10 million Ghana cedis (\$2,636,479.30 USD) and/or imprisonment for a term not exceeding two years.¹³⁸

¹³¹ KOFI QUASHIGAH, THE 1992 CONSTITUTION OF GHANA, 3 (2013).

¹³² CONST. of the Republic of Ghana, *supra* note 12, at Chapter 005.

¹³³ *Id.* at Chapter 005, §12(2).

¹³⁴ *Id.* at Chapter 005, § 14.

¹³⁵ *Id.* at Chapter 005, § 16.

¹³⁶ *Id.* at Chapter 005, §17.

¹³⁷ *Id.* at Chapter 005, § 28(2).

¹³⁸ The Children’s Act, Act 560, § 93 (1998).

The Labour Act No. 651 of 2003 (“the Labour Act”) also protects the rights of children. The Labour Act reflects ratified ILO Conventions¹³⁹ and covers all employers and employees except those in strategic positions such as the Armed Forces, Police Service, Prisons Service, and the Security Intelligence Agencies.¹⁴⁰ A major provision of the Act includes the employment of young persons. Sections 58-61 prohibit the employment of young persons in hazardous work,¹⁴¹ which exposes children to physical or moral dangers.¹⁴² Young persons mean children under the age of 18.¹⁴³

Additionally, Ghana’s Human Trafficking Act, 2005 safeguards the welfare of children. As mentioned previously, human trafficking is the recruitment . . . of persons within and across national borders by the use of . . . fraud . . . deception, the abuse of power, or exploitation of vulnerability. The Act further explains that, “where children are trafficked, the consent of the child, parents or guardian of the child cannot be used as a defence, regardless of evidence of abuse of power, fraud or deception on the part of the trafficker or whether the vulnerability of the child was taken advantage of.”¹⁴⁴

The child-kayayei business violates Ghanaian law because the practice strips children of their fundamental human rights, freedoms and personal liberties, protected by the Ghanaian Constitution. The business violates personal liberty of freedom of movement and deprivation of just compensation for labour. The process strips the girls of their childhood innocence when they engage in strenuous labour, or when trafficked through deception to engage in exploitive labour. The business further encroaches on national legislation as it threatens the physical and moral welfare of children. Sexually transmitted diseases, malaria, gastrointestinal diseases, rape and gender-based violence also threaten their physical welfare.¹⁴⁵ These health and safety threats also deprive children of integrity of a person.

The children’s moral development is compromised once they leave the care and protection of their parents and attempt to survive in unknown territory. While in unfamiliar territory, the girls lose their virtue and dignity when they make their homes in open areas, bathe in public, urinate and defecate in open gutters, engage in forced sexual activities,

¹³⁹ Ghana ratified ILO C. 138, Minimum Age and ILO C. 182, Worst Forms of Child Labour. See UNITED STATES DEPT. OF LABOR, *supra* note 12.

¹⁴⁰ Labour Act No. 651 Part I (2003).

¹⁴¹ *Id.* at Part VII, §58-61.

¹⁴² *Id.*

¹⁴³ Children’s Act, *supra* note 138 at Part 1 § 1.

¹⁴⁴ Human Trafficking Act, § 1(1) (2005).

¹⁴⁵ van den Berg, *supra* note 79, at 68.

and deliver unwanted babies.¹⁴⁶ Shelter, being indisputably one of the basic needs of mankind, embodies comfort, belonging, identity and security. Those embodiments vanish after young girls become child-kayayei and perform transport functions that should be performed by technology.¹⁴⁷ They are no longer humans but make up a necessary part of Ghana's transport structure.¹⁴⁸

B. International Law

1. ILO Worst Forms of Child Labour Convention 1999 (No. 182)

Ghana joined the ILO in 1957 and ratified the ILO's Worst Forms of Child Labour Convention 1999 (No. 182) without any reservations.¹⁴⁹ The ILO adopted the Worst Forms of Labour Convention ("the ILO Convention") in 1999 and seeks to eliminate the worst forms of child labour.¹⁵⁰ The Convention describes the worst form of child labour in four categories:

- a. Slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- b. The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- c. The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- d. Work, which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.¹⁵¹

¹⁴⁶ *Id.* at 6; SUCCESS STORY ON KAYAYEI PROJECT BEING CARRIED OUT BY BIBIR-GHANA IN NORTHERN REGION AND HISTORY BEHIND "KAYAYEI" IN GHANA, 25, (2013).

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¹⁴⁸ van den Berg, *supra* note 79, at 40.

¹⁴⁹ When States make a reservation, they create a conditional acceptance of a treaty. Nations may choose to make reservations in different instances: the treaty interferes with the rights of their citizens; the treaty conflicts with existing domestic law or policy; or a nation simply does not agree with some parts of the treaty.

¹⁵⁰ Int'l Labour Organization, C-182-Worst Forms of Child Labour Convention, Nov. 19, 2000, pmbl (hereinafter "Int'l Labour Organization Convention").

¹⁵¹ *Id.* at art. 3.

The ILO Convention coins hazardous work as labour that jeopardizes the health, safety, and morals of children. By ratifying the ILO Convention, Ghana committed itself to taking immediate action to prohibit and eliminate the worst forms of child labour.

2. The United Nations Convention on the Rights of a Child

Ghana being a Member-State to the United Nations Convention on the Rights of a Child (“CRC”) prides itself as one of the first States to ratify the treaty. Ghana signed the treaty with no reservations.¹⁵² Adopted on November 20, 1989, the CRC sets out the civil, political, economic, social, health, and cultural rights of children.¹⁵³ The treaty addresses the child-specific needs and rights and requires that States act in the best interests of the child. According to Article 3 of the CRC, the best interests of children must be the primary concern when making decisions that affect them. Section two of Ghana’s Children’s Act also recognizes the best interest of the child standard (“BIC standard”) by requiring all adults to act in the child’s best interest, by contemplating the effects of their decisions.¹⁵⁴

3. African Charter on the Rights and Welfare of the Child

The Organization of African Unity (“OAU”) adopted the African Charter on the Rights and Welfare of the Child (“ACRWC”) in 1990 and effectuated it in 1999.¹⁵⁵ As of May 2013, 41 of the 54 States of the African Commission on Human and Peoples’ Rights ratified the charter; Ghana signed on August 18, 1997 and ratified on June 10, 2005, with no reservations.¹⁵⁶ Like the CRC, the ACRWC defines a child as a person under the age of 18 and comprehensively sets out rights and definitive universal principles and norms for children.¹⁵⁷ It promotes and protects

¹⁵² *Status of Ratification Interactive Dashboard*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, (Nov. 6, 2015), <http://indicators.ohchr.org/>.

¹⁵³ *The Convention*, CHILD RIGHTS INFORMATION NETWORK, (Nov. 6, 2015), <https://www.crin.org/en/home/rights/convention>.

¹⁵⁴ CONST. of the Republic of Ghana, *supra* note 12, at art. 2.

¹⁵⁵ Michael Gose, *The African Charter on the Rights and Welfare of the Child - An assessment of the legal value of its substantive provisions by means of a direct comparison to the Convention on the Rights of the Child*, (2002) (published LL.M. thesis, University of the Western Cape) (on file with University of the Western Cape).

¹⁵⁶ *Ratification Table: African Charter on the Rights and Welfare of the Child*, AFRICAN COMMISSION ON HUMAN AND PEOPLE’S RIGHTS, (Nov. 6, 2015), <http://www.achpr.org/instruments/child/ratification/>.

¹⁵⁷ Organization of African Unity, *African Charter on the Rights and Welfare of a Child*, art. 2 (1990).

the rights established, applies these rights, and interprets its disposition as required of Member-States, the African Union (“AU”), or any institution recognized by the AU or by a Member-State.¹⁵⁸

The ACRWC originated because the Member-States of the AU believe the CRC missed important socio-cultural and economic realities specific to Africa. Accordingly, the ACRWC emphasizes the need to include African cultural values and experiences addressing the rights of the child in prohibiting marriages or betrothals involving children,¹⁵⁹ prohibiting the recruitment of children in armed conflict,¹⁶⁰ protecting handicapped children,¹⁶¹ and fostering by extended families.¹⁶² The ACRWC recognizes the child’s unique and privileged place in African society and that African children need extended protections and special care.

Article 15 of the ACRWC specifically guards against child labour. As the ILO Convention and the CRC, Article 15 protects African children from all forms of economic exploitation and hazardous work, interference with education, and risks to their physical or moral development.¹⁶³ Further, Member-States, like Ghana, should take all appropriate legislative and administrative measures to ensure the full implementation of Article 15. Particularly, Member-States should, through legislative efforts, provide appropriate penalties or other sanctions to ensure the dissemination of information on the dangers of child labour to all sectors of the community. In spite of Ghana’s strong legislative and policy framework, child-kayayei issues continue to grow rampant.

Just as the child-kayayei business violates Ghanaian law, it also violates international law. The business violates the tenets of the ILO Convention through impeding the child’s education and full development.¹⁶⁴ Education and child labour are interconnected. When children are full-time students, studying consumes their time, not labour. Since the child-kayayei business demands a 12-hour workday, it leaves no time for school. The lack of school attendance conflicts with the ILO Convention, CRC, and the Ghanaian Constitution.¹⁶⁵ In addition, a lack of education inhibits intellectual development, constrains social needs, and

¹⁵⁸ Gose, *supra* note 155, at 10.

¹⁵⁹ African Charter on the Rights and Welfare of a Child *supra* note 156, at art. 21(2).

¹⁶⁰ *Id.* at art. 22.

¹⁶¹ *Id.* at art. 13.

¹⁶² *Id.* at art. 25.

¹⁶³ *Id.* at rt. 15.

¹⁶⁴ Int’l Labour Organization Convention *supra* note 150, at art. 3 (4)(d).

¹⁶⁵ *Id.* at pmb., Convention on the Rights of a Child *supra* note 2, at art. 25, CONST. of the Republic of Ghana, *supra* note 12, at Chapter 5 § 25.

fails to sufficiently prepare children to enter into an effective work force to contribute to civilization.¹⁶⁶ A lack of education also denies the girls the fullest possible opportunity to live morally, creatively, and productively in a democratic society.¹⁶⁷ Uneducated girls do not have the option to achieve legitimate goals for their lives.¹⁶⁸ Though some may argue that head portage embodies learning a skill, learning a manual is not enough. Learning plus development of moral character must be the goal of true education.¹⁶⁹

The child-kayayei business constitutes hazardous work. As mentioned earlier, the business impacts on mental or moral conditions of children once they leave the care and protection of their parents to live in unfamiliar territory. Unsafe living conditions make the girls more susceptible to illnesses and diseases. Additionally, the girls endure great physical demands when carrying heavy loads: back, neck, and chest pains and injury to their heads occurs frequently.¹⁷⁰ On average, people can carry loads of up to 20 per cent of their weight, without expending extra energy beyond what would necessarily be used to walk around unencumbered; however, young girls with lower spinal bone density, use more energy when carrying loads on their heads.¹⁷¹ Carrying heavy loads at young ages also hinders the development of pelvic bones, which leads to high-risk pregnancies or miscarriages.¹⁷² In addition, head portage imposes a considerable amount of strain to the axial skeleton, which

¹⁶⁶ Arthur W. Foshay, *The Curriculum Matrix: Transcendence and Mathematics*, 6 JOURNAL OF CURRICULUM & SUPERVISION, 277, 277 (1991).

¹⁶⁷ *What is the Purpose of Education?*, THE ASSOCIATION FOR SUPERVISION AND CURRICULUM DEVELOPMENT, EDUCATIONAL LEADERSHIP, (Nov.10, 2015), http://www.ascd.org/ASCD/pdf/journals/ed_update/eu201207_infographic.pdf.

¹⁶⁸ *The Purpose of Education*, MARTIN LUTHER KING, JR. & THE GLOBAL JUSTICE FREEDOM STRUGGLE, (Nov. 10, 2015), http://kingencyclopedia.stanford.edu/encyclopedia/documentsentry/doc_470200_000/.

¹⁶⁹ *Id.*

¹⁷⁰ van den Berg, *supra* note 79, at 40.

¹⁷¹ Jessica Dweck, *The Head Case: The Art & Science of Carrying Things on Your Head*, SLATE, (Sep.16, 2015), http://www.slate.com/articles/news_and_politics/explainer/2010/08/head_case.html.

¹⁷² *Lifting and Carrying Heavy Loads*, HESPERIAN HEALTH GUIDE, (Nov. 10, 2015), http://en.hesperian.org/hhg/Where_Women_Have_No_Doctor:Lifting_and_Carrying_Heavy_Loads.



Figure 5: Image courtesy of clker.com

causes degenerative disc disease—one of the most common causes of lower back pain and neck pain.¹⁷³

The business further violates the CRC’s Best Interest of the Child (“BIC”) standard. The BIC standard considers the welfare of a child paramount to the parents’ desires.¹⁷⁴ The standard determines what best protects the physical, psychological, and emotional security and well-being of the child. In the case of child-kayayei, the best interest of the child means ensuring that young girls have a stable, secure, and safe home environment; granting them the right to express their views and be heard on all matters; protecting them from violence and all forms of abuse; allowing them access to good health and nutrition, education, rest,

relaxation, and recreational activities; and safeguarding them from work that is dangerous, exploitive and harmful to their health or their education. Parents of child-kayayei often believe migration to the south reflects their child’s best interest, but the opportunity to relocate does not outweigh the dangers of the migration. Although parents are the greatest protectors of their children’s best interests, danger arises when the best interest of the child is used to justify any decision.¹⁷⁵

C. Legislative Effects

Despite Ghana’s numerous legislative efforts, the child-kayayei business is an on-going crisis, because of ineffective implementation of legislation that primarily results from familial and governmental complicity in the practice, which in turn inhibits its elimination. Children in Ghana are engaged in the worst forms of child labour not only in head portage but also in domestic services, mining, agriculture (cocoa and farming) and fishing.¹⁷⁶ In the cocoa sector alone, 997,357 children, ages 5 to 17, were estimated to be working, and 54 per cent of those children were

¹⁷³ *Id.*

¹⁷⁴ Lynne Marie Kohm, *Tracing the Foundations of the Best Interest of the Child Standards in American Jurisprudence*, 10 J. L. FAM. STUD. 1, 29 (2008).

¹⁷⁵ *Id.* at 36.

¹⁷⁶ Tulane University. *Final Report: Oversight of Public and Private Initiatives to Eliminate the Worst Forms of Child Labor in the Cocoa Sector in Cote d'Ivoire and in Ghana*, PAYSON CENTER FOR INTERNATIONAL DEVELOPMENT AND TECHNOLOGY TRANSFER (Nov. 10, 2015), available at <http://childlabor-payson.org/index.html>.

engaged in hazardous activities.¹⁷⁷ Overall, 43.4 per cent of children in Ghana (ages 5 to 14) are involved in the worst forms of child labour, and 39.8 per cent of children in (ages 7 to 14) attend school while working.¹⁷⁸

As a fairly new independent State, the challenge of reconciling varying and frequently competing traditional systems and the national system proves common to Ghana.¹⁷⁹ As mentioned earlier, head portorage is customary to Ghana, but children engaging in head portorage for a fee is a new crisis that began plaguing the country about two decades ago. It then follows that the tradition or custom that interferes with Ghanaian national legislation is not the child-kayayei practice, but parents being the highest authority figure in a child's life. In African culture, parents hold the moral compass that guides the lives of African children. Consequently, as long as parents permit their children to engage in the kayayei business, national legislation that encroaches on parents' authority will be disfavoured, allowing even governmental authority to disregard the rules.¹⁸⁰ Accordingly, a court that considers African values, customs, and traditions in its rulings is best suited to eliminate the child-kayayei problem, while working with the Ghanaian national government to educate parents of the dangers and risks of the child-kayayei business.

II. THE AFRICAN COURT ON HUMAN RIGHTS AND PEOPLE'S RIGHTS

A. *Background on the Court*

Three major regional human rights bodies monitor, promote, and protect human rights in several geographic regions around the world.¹⁸¹ In Africa, the Americas, and Europe, the regional human rights systems play a significant role in protecting human rights among their respective Member-States.¹⁸² Each regional body has established courts to hold States accountable for human rights violations. Africa's regional court, the African Court on Human and Peoples' Rights ("the Court" or "the African Court") defends the rights of individuals and peoples or tribal groups in

¹⁷⁷ *Id.*

¹⁷⁸ DEPT. OF LABOR, *supra* note 12.

¹⁷⁹ Lester Ohemeng, *Folk Law and the performance of adjudication: the case of Asantehene's Court in Ghana*, (2008) (published MA thesis, University of Warwick) (on file with University of Warwick).

¹⁸⁰ Interview with Mr. Addy, Supreme Court of Ghana, Law Librarian (August 27, 2015).

¹⁸¹ JACK DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE* 138 (2003).

¹⁸² *Chapter 3 The Major Regional Human Rights Instruments And The Mechanism For Their Implementation*, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, (Nov. 10, 2015), <http://www.ohchr.org/Documents/Publications/training9chapter3en.pdf>.

Africa. Article 1 of the Protocol to the African Charter on Human and Peoples' Rights ("the African Charter" or "the Charter") established the Court in 2004.¹⁸³ The Protocol became effective on January 25, 2004.¹⁸⁴ The AU, which replaced the OAU on May 26, 2001, establishes the rights guaranteed under the African Charter.¹⁸⁵

The OAU adopted the African Charter on June 27, 1981 in Nairobi, Kenya, and the Charter went into effect on October 21, 1986.¹⁸⁶ The African Charter, like the Court, promotes and protects human rights and basic freedoms throughout Africa. Unlike the European and American Conventions on Human Rights, the African Charter includes articles to protect not only civil and political rights but also economic, social, and cultural rights.¹⁸⁷ The African Charter uniquely combines traditional African values and universally recognizes the rights of individuals and peoples or tribal groups; it includes original elements linked to the history of African civilization, while broadly keeping with the continuity of legal instruments for regional and international protection of human rights. The Charter acknowledges universally accepted human rights such as freedom from discrimination,¹⁸⁸ freedom from cruel, inhuman, or degrading treatment or punishment,¹⁸⁹ rights to due process and a fair trial,¹⁹⁰ freedom of religion,¹⁹¹ freedom of information and expression,¹⁹² and freedom of association.¹⁹³ The Charter also grants Africans the right to work,¹⁹⁴ the right to health,¹⁹⁵ and the right to education.¹⁹⁶ As of 2013, 53 States ratified the Charter, including Ghana who signed on January 24, 1989 and ratified on July 3, 2004 without reservations.¹⁹⁷ Accordingly,

¹⁸³ KATE STONE, *AFRICAN COURT OF HUMAN AND PEOPLE'S RIGHTS*, 1 (2012).

¹⁸⁴ *The African Court on Human and People's Rights*, AFRICAN UNION, A UNITED AND STRONG AFRICA, (Nov. 10, 2015), <http://www.au.int/en/organs/cj>.

¹⁸⁵ *Id.*

¹⁸⁶ Stone, *supra* note 183, at 2.

¹⁸⁷ *Id.*

¹⁸⁸ Organization of African Unity, *African Charter on Human and Peoples' Rights*, art. 2, 18(3) (1986).

¹⁸⁹ *Id.* at art. 5.

¹⁹⁰ *Id.* at art. 5, 6, 7, 25.

¹⁹¹ *Id.* at art. 8.

¹⁹² *Id.* at art. 9.

¹⁹³ *Id.* at art. 10.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at art. 16.

¹⁹⁶ *Id.* at art. 17.

¹⁹⁷ State parties to the African Charter: South Africa (ratification date: 1996), Algeria (1987), Angola (1990), Benin (1986), Botswana (1986), Burkina Faso (1984), Burundi (1989), Cameroon (1989), Cap-Vert (1987), Comoros (1986), Congo (1982),

as a State-Member, Ghana falls within the Court's jurisdiction on matters dealing with general human rights violations.

While the Charter grants jurisdiction over Ghana for general human rights abuses, African Charter on the Rights and Welfare of the Child ("ACRWC") specifically grants jurisdiction to the Court over Ghana for child labour cases, such as the child-kayayei. The ACRWC specifically guards against child labour and the exploitation of African children,¹⁹⁸ while considering "the virtues of their cultural heritage, historical background and the values of the African civilization."¹⁹⁹ In its rulings, the Court considers African cultural heritage and norms "to inspire and characterize their reflection on the concept of the rights and welfare of the child."²⁰⁰ Ghana's ratification of this international legal instrument compels the Court to ensure all appropriate legislative and administrative measures safeguard the full implementation of the elimination of the child-kayayei business.

B. Structure of the Court

The Court consists of 11 judges elected for a term of six years, renewable once.²⁰¹ The judges remain in office until replaced.²⁰² If scheduled for replacement before the judgment of a pending case, the judge concerned continues to serve until the completion of that case.²⁰³ The

Côte d'Ivoire (1992), Djibouti (1991), Egypt (1984), Eritrea (1999), Ethiopia (1998), Gabon (1986), Gambia (1983), Ghana (1989), Guinea (1982), Guinea-Bissau (1985), Equatorial Guinea (1986), Libyan Arab Jamahiriya (1986), Kenya (1992), Lesotho (1992), Liberia (1982), Madagascar (1992), Malawi (1989), Mali (1981), Mauritius (1992), Mauritania (1986), Mozambique (1989), Namibia (1992), Niger (1986), Nigeria (1983), Uganda (1986), Republic of Rwanda (1983), Sahrawi Arab Democratic Republic (1986), Central African Republic (1986), Democratic Republic of Congo (1987), Sao Tome and Principe (1986), Senegal (1982), Seychelles (1992), Sierra Leone (1983), Somalia (1985), Sudan (1986), Swaziland (1995), Tanzania (1984), Chad (1986), Togo (1982), Tunisia (1983), Zambia (1984), Zimbabwe (1986). *Ratification Table: African Charter on Human and Peoples' Rights*, AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, (Nov. 10, 2015), <http://www.achpr.org/instruments/achpr/ratification/>.

¹⁹⁸ African Charter on the Rights and Welfare of a Child, *supra* note 156, at art. 15.

¹⁹⁹ *Id.* at pmb1.

²⁰⁰ *Id.*

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²⁰² The African Union, Protocol to the African Charter on Human and Peoples' Rights, art. 11, 15 (2004).

²⁰³ The African Union, Interim Rules of Procedure of the African Court on Human and Peoples' Rights, art. 2, (2008).

Court cannot seat more than one judge from the same State; members to the Protocol may propose three people for judicial candidacy, including two who must be nationals of that State.²⁰⁴ Candidates must be chosen among “jurists of high moral character and of recognized practical, judicial or academic competence and experience in the field of human and peoples’ rights.”²⁰⁵ Member-States should guarantee adequate gender representation among the judges.²⁰⁶ Member-States must also ensure that the composition of judicial candidates balance the geographical distribution and representation of the major legal systems (civil law, common law, Islamic rights and customs, and African customary law).²⁰⁷ While only States who ratified the Protocol can submit candidates for judges, all Member-States of the African Union can vote.²⁰⁸

The judges elect, among themselves, a President and Vice-President for a period of two years renewable once.²⁰⁹ Unlike the other judges, the President exercises his duties full time.²¹⁰ The protocol vaguely lists the duties of the President and Vice-President; however, Article 11 provides that the functions of the President include representing the Court, supervising the administration of the Court, promoting the activities of the Court, and preparing and submitting the annual report.²¹¹ The Court examines cases under a quorum of at least seven judges.²¹² A majority of the Court decides judgments, not subject to appeal.²¹³ The Court delivers its judgment within 90 days of the conclusion of hearings.²¹⁴ All Court judgments must be reasoned.²¹⁵ Judgments must be communicated to the parties involved and transmitted to Member-States, the AU Commission, and Executive Council.²¹⁶ Parties should comply with the Court’s decisions by ensuring the execution of judgments set within the Court’s time frame.²¹⁷ When the Court finds violations of human or peoples’ rights, it orders all appropriate measures to remedy the situation, including the

²⁰⁴ Protocol to the African Charter on Human and Peoples’ Rights, *supra* note 203, at art. 13.

²⁰⁵ *Id.* at art. 11.1.

²⁰⁶ *Id.* at art. 12.2.

²⁰⁷ *Id.* at art.11.2.

²⁰⁸ *Id.* at art. 14.1.

²⁰⁹ *Id.* at art. 21.1.

²¹⁰ *Id.* at art. 15.4.

²¹¹ *Id.* at art. 21.3.

²¹² *Id.* at art. 23.

²¹³ *Id.* at art. 28.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.* at art. 29.

²¹⁷ *Id.* at art. 30.

payment of fair compensation or reparation.²¹⁸ The African Commission has authority from the AU to act if the Court's orders are not implemented.²¹⁹

C. *Jurisdiction*

The Court's jurisdiction extends to all cases and disputes submitted to it concerning the interpretation and application of the African Charter, the Protocol, the ACRWC, and any other relevant human rights instrument ratified by Member-States.²²⁰ Its jurisdiction covers both adjudicative and advisory matters.²²¹ The Court complements and reinforces the functions of the African Commission on Human and Peoples' Rights (ACHPR),²²² a quasi-judicial body that promotes and protects human and tribal rights throughout Africa. ACHPR's authority rests on the African Charter, but reports to the African Union.²²³ ACHPR interprets the African Charter and considers individual complaints of violations of the African Charter.²²⁴ The Court can hear complaints brought by the ACHPR, Member-States to the Protocol, Intergovernmental Organizations, individuals, and Non-Governmental Organizations ("NGO's") with observer status before the Court.²²⁵

The Court allows NGO's with observer status to institute cases

²¹⁸ *Id.* at art. 27; The African Union, Protocol on the Statute of the African Court of Justice and Human Rights, 1 July 2008 merges the African Court on Human Peoples' Rights and the Court of Justice of the African Union into one single Court called the African Court for Justice and Human Rights. Though this merger was intended to replace the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights and the Protocol of the Justice of the African Union, the African Court on Human and Peoples' Rights still functions as a separate entity. That function is demonstrated by its sessions conducted in 2015 and previous years after the Protocol. Further, as of February 2014, only five States (Libya, Mali, Burkina Faso, Benin and Congo) ratified the protocol. *Sessions*, AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, (Nov. 10, 2015), <http://www.achpr.org/sessions/>.

²¹⁹ Protocol to the African Charter on Human and Peoples' Rights, *supra* note 203, at art. 29.

²²⁰ *Id.* at art. 3.

²²¹ *Id.* at art. 4.

²²² EVELYN A. ANKUMAH, AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, 11 (1996).

²²³ *Mandate of the African Commission on Human and Peoples' Rights*, AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, (Nov. 10, 2015), <http://www.achpr.org/about/mandate/>.

²²⁴ *Id.*

²²⁵ Protocol to the African Charter on Human and Peoples' Rights, *supra* note 203, at art. 5.

directly before it.²²⁶ Observer status gives organizations the ability to participate in the ACHPR's activities.²²⁷ NGO's apply for observer status through the Secretariat of the Commission by showing their willingness to comply with the objectives of the African Charter and other relative human rights instruments.²²⁸ Those NGO's only have theoretical direct access to the Court, as direct access depends on the prior acceptance of the State accused of the human rights violation(s). In other words, NGO's with Observer Status before the African Commission may institute cases directly to the Court, only if the Member-State concerned made a declaration under article 34.6 of the Protocol authorizing such direct access.²²⁹ The Court cannot hear petitions from NGO's involving a Member-State who made no such declaration.²³⁰ As of October 2013, only seven countries declared direct access to the Court for NGO's on behalf of individuals: Burkina Faso, Ghana, Malawi, Mali, Tanzania, Rwanda, and Côte d'Ivoire.²³¹ Even if the State concerned made no declaration under article 34.6 of the Protocol, NGO's without observer status could possibly bring a human rights case before the Court. Those NGO's may petition the African Commission, who will then decide whether the case should be tried before the Court.²³²

D. *Exhaustion of Domestic Remedies*

Before the Court hears a claim, all complainants must exhaust all legal domestic remedies.²³³ Article 56.5 of the Charter requires the exhaustion of all domestic remedies before the Court considers the communication, unless it considers the procedure unduly prolonged. The African Court does not provide a definition of unduly prolonged; instead, it determines that time factor on a case-by-case basis. For example, in *Kenya Human Rights Commission v. Kenya*, the African Court did not

²²⁶ *Id.* at art. 5.3.

²²⁷ OBTAINING AND THE BENEFITS OF OBSERVER STATUS WITH THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS. CENTRE FOR HUMAN RIGHTS. FACULTY OF LAW UNIVERSITY OF PRETORIA. 2 (2008).

²²⁸ *Id.*

²²⁹ Protocol to the African Charter on Human and Peoples' Rights, *supra* note 203, at art. 34.6.

²³⁰ *Id.*

²³¹ BOKA Melkisedeck Lyamuya, *The Fruitfulness of Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an ACHPR and its Bitter Pill to State Parties*, 1 ABC RESEARCH ALERT, 1, 2 (2013).

²³² Protocol to the African Charter on Human and Peoples' Rights, *supra* note 203, at art. 6.

²³³ African Charter on Human and Peoples' Rights, *supra* note 188, at art. 56.5.

consider a case pending at a national level for lasting one year and ten months unduly prolonged.²³⁴ On the other hand, in *Odjouoriby Cossi Paul v. Benin*, the Court considered a case pending on a national level for three years unduly prolonged. In the *Liesbeth Zegveld et Mussie Ephrem v. Eritrea*, the Court considered an individual detained for 18 months without judicial proceedings unduly prolonged.

Domestic remedies entail judicial resolution with the possibility of appeal.²³⁵ Only judicial remedies require the exhaustion of domestic remedies; non-judicial remedies need not meet such requirement.²³⁶ Exhausting domestic remedies gives the national government an opportunity to address the human rights violations before involving an international court.²³⁷ Pending cases at the national level will not be heard by the African Court.²³⁸ Thus, the exhaustion of domestic remedies means that a case must go through all the levels of national jurisdiction before review by the Court.

E. Exceptions to the Exhaustion of Domestic Remedies Requirement

The African Court carved out exceptions to the requirement of exhausting domestic remedies. The exhaustion requirement becomes unnecessary when the Court considers domestic remedies impractical, ineffective, and unavailable.²³⁹ The complaint must prove the veracity of the alleged facts in order to invoke an exception.²⁴⁰ Proof should be provided either by an attempt to gain access to national tribunals or by showing the Court how exhausting domestic remedies will be

²³⁴ Kenya Human Rights Commission v. Kenya, Commc'n No. 135/94, 2 (1995), available at <http://www.achpr.org/communications/decision/135.94/>.

²³⁵ Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jéhovah v. Zaïre, Commc'ns. No. 25/89, 47/90, 56/91, 100/93, 6 (1995), available at <http://www.achpr.org/fr/communications/decision/25.89-47.90-56.91-100.93/>.

²³⁶ See Constitutional Rights Project v. Nigeria, Commc'n No. 60/91, ¶10 (1995) (holding that a death sentence that could be confirmed or cancelled by the military governor is of non-judicial nature), available at <http://www1.umn.edu/humanrts/africa/comcases/60-91.html>.

²³⁷ Free Legal Assistance Group, *supra* note 236, at 6.

²³⁸ El Hadj Boubacar Diawara v. Benin, Commc'n No. 18/88; ¶ 2 (1994), available at <http://www.achpr.org/communications/decision/18.88/>. Kenya Human Rights Commission *supra* note 223 at 2.

²³⁹ See, *Rencontre Africaine pour la Défense des Droits de l'Homme v. Zambia*, Commc'n No. 71/92, ¶ 11 (1996), available at <http://www1.umn.edu/humanrts/africa/comcases/71-92.html>.

²⁴⁰ Free Legal Assistance Group, *supra* note 236, at 6.

inefficient.²⁴¹ The Court's former precedent demonstrate that exhausting domestic remedies is unnecessary when violations are massive and serious, the existence of derogation clauses prevents all recourse, the exhaustion of domestic remedies is illogical, access to justice is obstructed, or when domestic remedies are inefficient or inaccessible.

1. Massive and Serious Violations

The first exception concerns serious and massive human rights violations. In the case of Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jéhovah v. Zaïre (now the Democratic Republic of Congo), four NGO's claimed violations of articles 4, 5, 6, 7, 8, 16 and 17 of the African Charter, by reporting to the Court a high number of cases involving torture, executions, arrests, detention, unfair trials, and restrictions on freedom of association and freedom of the press.²⁴² Complainants also alleged mismanagement of public finances, shortage of medicines, violation of freedom of movement, and ethnic violence or cleansing incited by the media.²⁴³

The NGO's involved failed to exhaust all domestic remedies; however, the Court ruled that in view of the extent and diversity of the human rights violations, the requirement to exhaust domestic remedies should not be applied strictly when it is neither practical nor advisable that the applicants submit their cases to national courts.²⁴⁴ In that case, the extent and diversity of the human rights violations were enough to notify the Zairian national government as to the seriousness and gravity of the violations."²⁴⁵ Hence, when human rights violations are multiple, large scale, and on-going so that they constructively notify the national government, the exhaustion of domestic remedies will always be regarded as inapplicable.

The Zaire case differs from Anuak Justice Council v. Ethiopia, in which the complainant alleged that the Ethiopian government committed mass murder to a minority tribal population. The complainant contended that Ethiopia failed to uphold the protections of Articles 4, 5, 6, 12, 14 and 18 under the African Charter.²⁴⁶ The complainant argued that the Ethiopian Defence Forces massacred over 424 civilians, wounded over 200

²⁴¹ *Id.*

²⁴² *Id.* at 1.

²⁴³ *Id.*

²⁴⁴ *Id.* at 3.

²⁴⁵ *Id.*

²⁴⁶ Anuak Justice Council v. Ethiopia, Commc'n No. 299/05, 1 (2006), available at <http://www.achpr.org/communications/decision/299.05/>.

civilians, and captured 85 civilians in the Gambella region.²⁴⁷ The complainant contended that the Anuak, an indigenous minority group dominating the south-western Gambella region of Ethiopia, consistently faces marginalization, exclusion, and discrimination by the Ethiopian government.²⁴⁸

The complainant did not exhaust all domestic remedies but used the serious and massive exception to access the Court. The African Court held that though serious, the violations only involved one single incident that took place for a short period of time.²⁴⁹ The single occurrence of the violation debunks the presumption of notice to the accused State as in massive violations. A State's awareness of massive human rights violations shifts the burden to the accused State to act accordingly to further prevent those human rights abuses.²⁵⁰ Therefore, the pervasiveness of the violations dispenses with the requirement of exhaustion of domestic remedies.²⁵¹

2. The Existence of Derogation Clauses Prevents All Recourse

Another exception involves derogation clauses or ouster clauses, which prevent ordinary courts from hearing cases on appeal.²⁵² There were a few cases in Nigeria in the 1990s, in which the military government adopted a series of derogation clauses. For example, in *Civil Liberties Organisation v. Nigeria*, the complainant alleged that the military government of Nigeria enacted various decrees in violation of Articles 7.1(a) and 26 of the African Charter.²⁵³ The complainants also argued the illegality of Decree No. 107 of 1993, which suspended and modified the Nigerian Constitution by including Decree No. 114 of 1993 that ousts the jurisdiction of the courts and specifically nullifies any domestic effect of the African Charter under acts passed after December 1983.²⁵⁴

The African Court heard such cases, in which complainants pled for access to the Court without exhausting local remedies. The Court granted admission since the decrees ousted the jurisdiction of the Court.²⁵⁵ The Court found that the act of the Nigerian Government to nullify the domestic effect of the Charter constitutes a serious irregularity, and that

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.* at 8.

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Civil Liberties Organisation v. Nigeria*, Commc'n No. 129/94, ¶ 2 (1995), available at <http://www1.umn.edu/humanrts/africa/comcases/129-94.html>.

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

when ouster clauses prevent ordinary courts from examining decrees and decisions of the executive branch, complainants should not be compelled to exhaust domestic remedies.²⁵⁶ Ouster clauses create an illegal situation in which the judiciary can provide no check on the executive branch of government.²⁵⁷ Thus, bringing such matters to the national courts will unduly prolong cases and yield no results.²⁵⁸

3. The Exhaustion of Domestic Remedies is Illogical

Another exception arises when the exhaustion of domestic remedies proves illogical. For example, in *Alhassan Abubakar v. Ghana*, Abubakar alleged violation of Articles 6, 7(1)(d), 12(2) of the African Charter, and Section two of the Preventive Custody Law of 1992.²⁵⁹ Arrested and detained without charge or trial for seven years for collaboration with dissidents to overthrow the Ghanaian administration, Abubakar escaped from a prison hospital in Ghana to the Cote d'Ivoire. After his escape, his sister and his wife, who visited him in prison were arrested and held for two weeks in an attempt to gather information on Abubakar's whereabouts.²⁶⁰ The complainant's brother then informed him of the false information given to police about his return.²⁶¹ Relying upon false information, the police, on several occasions, surrounded the complainant's home, searched it and subsequently searched his mother's home in another city.²⁶² In 1993, Cote d'Ivoire informed the complainant that it received a report from Ghana, which assured free return without risk of being prosecuted for fleeing from prison and guaranteed the freedom of all those imprisoned for political reasons.²⁶³ The complainant, on the other hand, pointed to a Ghanaian law that penalizes escapees up to two years in prison, regardless of the legality of their escape.²⁶⁴ The complainant also provided evidence of other escapees arrested on their return to Ghana.²⁶⁵

Abubakar petitioned the Court alleging the illegality of his arrest and an indication of mistreatment if he returned to Ghana.²⁶⁶ He did not

²⁵⁶ *Id.*

²⁵⁷ *Id.* at 2.

²⁵⁸ *Id.* at 1.

²⁵⁹ *Alhassan Abubakar v. Ghana*, Commc'n No. 103/93, 2, (1996), available at <http://www.achpr.org/communications/decision/103.93/>.

²⁶⁰ *Id.* at 1-2.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.* at 2.

²⁶⁶ *Id.*

exhaust all domestic remedies, and the Ghanaian government argued that he must stand trial in the national courts before resorting to the African Court.²⁶⁷ The Court held that a person who fled from a prison in Ghana to Cote d'Ivoire, claiming illegal detention does not need to return to Ghana to submit his case to Ghanaian courts.²⁶⁸ In such a case, the exhaustion of domestic remedies proves illogical.²⁶⁹

4. Access to Justice is Obstructed

In *Purohit and Moore v. Gambia*, the Court allowed access to mentally ill patients in The Gambia without requiring them to exhaust all domestic remedies.²⁷⁰ The complainants alleged a violation of Articles 2, 3, 5, 7(1) (a) (c), 13(1), 16, and 18(4) of the African Charter and the UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Illnesses and the Improvement of Mental Health Care.²⁷¹ In that case, mentally ill patients and future mental health patients detained under the Mental Health Acts of the Republic of The Gambia, alleged that the Lunatics Detention Act ("LDA"), stripped patients of their inherent dignity and humane treatment.²⁷² Under the LDA, there is no definition of what constitutes a mental illness. There are no provisions and requirements establishing safeguards during the diagnosis, certification, and detention of the patient. Mentally ill patients lived in overcrowded psychiatric units, and no requirement exists for consent to treatment or subsequent review of continued treatment. There was also no independent examination of administration, management and living conditions within the unit itself, and patients detained in the psychiatric unit were not permitted to vote. The Act also made no provision for legal aid or for patients to seek compensation if his/her rights have been violated.²⁷³

The complainants presented the case before the Court and submitted no proof of exhaustion of local remedies, because the provisions in the national laws of The Gambia provided no further recourse to the complainants' alleged violations.²⁷⁴ The Gambia conceded that the LDA contains no provisions for review or appeal against an order of detention or any remedy for detention made in error or wrong diagnosis or

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Purohit and Moore v. Gambia*, Commc'n No. 241/01, 8 (2003), available at <http://www.achpr.org/communications/decision/241.01/>.

²⁷¹ *Id.* at 1, 8.

²⁷²

²⁷³ *Id.*

²⁷⁴ *Id.* at 2.

treatment.²⁷⁵ The Court held that when complainants claim domestic laws do not provide remedial measures through all the levels of a national judiciary, the Court could examine the extent to which such domestic law complies with the provision of the African Charter.²⁷⁶ Since the existing remedies under the domestic laws of The Gambia, or lack thereof, obstructed justice, complainants need not exhaust all domestic remedies.²⁷⁷

5. Domestic Remedies are Inefficient or Inaccessible

In a case in which a victim forced fled his country, the Court required no exhaustion of domestic remedies. In *Rights International v. Nigeria, African Commission on Human and Peoples' Rights, Complainant, Charles Baridorn Wiwa, a Nigerian student, living in Chicago, was arrested and tortured at a Nigerian Military Detention Camp in Gokana, Nigeria while visiting family. While detained, Wiwa's captors horsewhipped him and placed him in a cell with 45 other detainees. After a few days, a Nigerian officer transferred Wiwa to another prison location.*²⁷⁸ While in that location, he had no access to legal counsel or his relatives, or an explanation of the charges against him or the reason for his detention.²⁷⁹ Several days later, the Nigerian government granted bail. While out on bail, unknown men, believed to be government agents, abducted him and threatened his life. On the advice of human rights lawyers, Wiwa fled from Nigeria to Cotonou, Republic of Benin where the UN High Commissioner for Refugees declared him a refugee. Subsequently, the United States government granted him refugee status.²⁸⁰

The complainant presented the case to the Court contending violation of Articles 5, 6, 7 (1)(c) and 12(1) and (2).²⁸¹ He failed to exhaust all domestic remedies; nevertheless, the Court declared the case admissible, as available and effective domestic remedies for human rights violations in Nigeria remained unavailable.²⁸² Accordingly, the Court held ineffective the exhaustion of domestic remedies when no adequate or effective remedies subsist. In this particular case, the Court found the complainant

²⁷⁵ *Id.* at 2.

²⁷⁶ *Id.* at 5.

²⁷⁷ *Id.*

²⁷⁸ *Rights International v. Nigeria, African Commission on Human and Peoples' Rights, Commc'n No. 215/98, ¶ 8 (1999).*

²⁷⁹ *Id.* at ¶ 9.

²⁸⁰ *Id.* at ¶ 16.

²⁸¹ *Id.*

²⁸² *Id.* at ¶ 16.

unable to pursue any domestic remedy following his flight to the Republic of Benin.²⁸³

F. Successes and Authority of the African Court

1. Past Successes

While an international court, the African Court demonstrates success through its enforcement of judgments with little usage of sanctions. This enforcement began with the AU, which increasingly intervened in States' matters to protect Africans from human rights abuses.²⁸⁴ For example, the AU intruded in places such like Darfur, Somalia, and Burundi by sending peacekeeping forces to prevent and stop human rights violations.²⁸⁵ The AU helped the central government of Comoros to regain control of the semi-autonomous island of Anjouan.²⁸⁶ Also, former Chair of the AU, President John Kufuor of Ghana, intervened in the Kenyan post-election crisis despite initial reluctance by the State.²⁸⁷ While not entirely successful, the diplomatic talks opened the gates for the mediation efforts led by former UN Secretary- General Kofi Annan.²⁸⁸ In addition, the AU convinced Senegal's president, Abdoulaye Wade, to begin the prosecution of former Chadian president, Hissène Habré (exiled in Senegal) accused of committing crimes against humanity, war crimes, and torture during his rule of Chad.²⁸⁹

Moreover, the AU increasingly punished a number of recalcitrant States by placing travel and economic sanctions on several of its members, as well as barring some from actively participating in decision-making during its summits. For example, the AU barred Madagascar from the AU's inauguration summit because of doubts over the legitimacy of the Malagasy president.²⁹⁰ The AU also barred Sudan from assuming the chair in January 2007 because of Sudan's involvement in mass human rights violations.²⁹¹ The AU suspended Togo's membership and urged AU

²⁸³ *Id.* at ¶ 24.

²⁸⁴ Organization of the African Union, Constitutive Act of the African Union, art. 4(h) (2000).

²⁸⁵ See for example the official website of the UN–African Union Mission in Darfur, <http://unamid.unmissions.org/>, retrieved September 18, 2015.

²⁸⁶ See *AU troops arrive in the Comoros*, BBC WORLD NEWS, (Nov. 10, 2015), <http://news.bbc.co.uk/2/hi/africa/7289318.stm>.

²⁸⁷ GEORGE MUKUNDI WACHIRA, AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS: TEN YEARS ON AND STILL NO JUSTICE 6 (2008).

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ Richard Cornwell, *Madagascar: first test for the African Union*, 12 African Security Review 1, 41 (2003).

²⁹¹ WACHIRA, *supra* note 288, at 7.

members to impose economic and travel sanctions on the Togolese government during an unconstitutional change of leadership in February 2005.²⁹² After the States imposed those sanctions, the Togolese government acquiesced and held democratic elections in April 2005.²⁹³

2. Recent Successes

a. Lohé Issa Konaté v. Burkina Faso

Continuing in the same vein of the AU, the African Court's rulings have proved to be effective. For example, *Lohé Issa Konaté v. Burkina Faso*, concerned the criminalization of defamation in Burkina Faso and the consequent restrictions on freedom of expression in the media. That case involved Lohé Issa Konaté, a contributing editor for a weekly newspaper, *L'Ouragan*, who published two articles alleging corrupt practices by a state prosecutor, Mr. Placide Nikiéma.²⁹⁴ The Ouagadougou High Court found Konaté guilty of defamation, public insult, and contempt of court (insult of a magistrate). Ouagadougou Court of Appeals affirmed the ruling. A conviction followed, which sentenced Konaté to 12 months' imprisonment, six months suspension, and payment fines totalling over 10,000 USD.²⁹⁵

Konaté brought the case before the African Court alleging that his prison sentence, fine, civil damages and order to pay costs violated his right to freedom of expression protected by Article 9 of the African Charter, Article 19 of the ICCPR, and Article 66(c) of the Revised ECOWAS Treaty.²⁹⁶ Konaté also sought a declaration that Burkina Faso's laws on criminal defamation and insult or, alternatively, imposing custodial sentences for defamation, violate the right to freedom of expression.²⁹⁷ Hence, Konaté sought an order for Burkina Faso to amend its laws accordingly and pay him reparations.

The African Court unanimously held that Burkina Faso violated Article 9 of the African Charter, Article 19 of the ICCPR, and Article 66(c) of the Revised ECOWAS Treaty, and that the sentences were disproportionate to the purpose of the Information Code and the Burkina Faso Penal Code.²⁹⁸ In assessing the proportionality of the Burkina Faso's

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Lohé Issa Konaté v. Burkina Faso*, Commc'n 004/2013 3-4 (2014), available at <http://www.ijrcenter.org/wp-content/uploads/2015/02/Konate-Decision-English.pdf>.

²⁹⁵ *Id.* at 3-5.

²⁹⁶ *Id.* at 48.

²⁹⁷ *Id.*

²⁹⁸ *Id.* at 2.

sanctions for defamation, the African Court held that in the context of public figures, freedom of expression must be interfered with to a lesser degree than those of private figures, as a higher degree of tolerance is expected of public figures.²⁹⁹ Thus, laws dealing with the reputation of public figures should not provide more severe sanctions than those relating to the reputation of private figures.³⁰⁰ Further, assessing jurisprudence of the European Court of Human Rights, the African Court held that only in the exceptional circumstances of hate speech or incitement to violence would a sentence of imprisonment be justified in a defamation proceeding.³⁰¹ Accordingly, defamations cases should be tried civilly and not criminally. The Court ordered Burkina Faso to amend its legislation by repealing imprisonment for defamation and ensuring that all other non-custodial sanctions align with its international obligations. The Court then ordered Burkina Faso to report on its implementation of these amendments within two years.³⁰² Burkina Faso is currently in the process of amending its legislation.³⁰³

b. Tanganyika Law Society and LHRC v. Tanzania

In June 2011, the Tanganyika Law Society (TLS), the Legal and Human Rights Centre (LHRC) and Reverend Christopher Mtikila, filed an application before the African Court contesting the eighth and eleventh amendments of the Tanzanian Constitution, which require all persons running for presidential, parliamentary, and local elections to be a member of and/or to be sponsored by a political party, thus barring independent candidates.³⁰⁴ The applicants alleged that the Tanzanian Constitution violated the provisions of the African Charter and the ICCPR, which guarantee freedom of association, non-discrimination, equality before the law, and the right for citizens to participate freely in the government of their country.³⁰⁵ On June 14, 2013, the African Court held that Tanzania violated Articles 2, 3, 10 and 13.1 of the African Charter and directed the authorities to take constitutional, legislative,

²⁹⁹ *Id.* at 37.

³⁰⁰ *Id.*

³⁰¹ *Id.* at 43.

³⁰² *Id.* at 49.

³⁰³ *Konate to the Rescue? How the Konate case can help others facing criminal defamation charges*, THE ACTHPR MONITOR, (Dec. 11, 2015), <http://www.acthprmonitor.org/konate-to-the-rescue-how-the-konate-case-can-help-others-facing-criminal-defamation-charges/>.

³⁰⁴ Tanganyika Law Society and LHRC v. Tanzania, Commc'n No.009/2011 6 (2013), available at <http://www.african-court.org/en/images/documents/case/Judgment%20%20Rev%20Christopher%20Mtikila%20v.%20Tanzania.pdf>.

³⁰⁵ *Id.* at 20.

and all other necessary measures within a reasonable time to remedy these violations.³⁰⁶ The FIDH and LHRC called on the Tanzanian authorities to implement the decision of the African Court without further delay.³⁰⁷ Today, the final draft of the proposed Tanzanian constitution includes the establishment of an independent electoral commission and will allow dissatisfied candidates to challenge the results in the High Court within seven days of the pronouncement and allows independent candidates to run for office.³⁰⁸

c. Beneficiaries of Late Norbert Zongo et al. v. Burkina Faso³⁰⁹

The case of Beneficiaries of the late Norbert Zongo et al. v. Burkina Faso, involves the assassination of investigative journalist Zongo, as well as the deaths of Abdoulaye Nikiema, Blaise Illboudo, and brother, Ernest Zongo. Zongo's assassination connected to his investigation of David Ouédraogo, a driver assigned to François Compaoré, brother of the president of Burkina Faso and the president's top aide.³¹⁰ The complainants argued that the deceased received no justice, and that Burkina Faso failed to fulfil its duty to prosecute the suspects.³¹¹

The application to the African Court claimed violations of the African Charter, the ICCPR, and the UDHR with regard to the victims' rights to: freedom of expression, non-discrimination, equal protection, judicial protection, and life. On April 1, 2014, the African Court found violations of all legal instruments concerned, and that Burkina Faso failed to exude due diligence in seeking the assassins of Zongo and the other victims.³¹² The Court ordered Burkina Faso to pay reparations to the Complainant and to immediately prosecute the case.³¹³ On June 5, 2015, 5 June, the government of Burkina Faso reopened the investigation of the killing

³⁰⁶ *Id.* at 33.

³⁰⁷ *Id.* at 53.

³⁰⁸ Parliament of Tanzania, *Katiba Inayopendekezwa* (in Swahili, trans. by Eddie Mutumba) available at http://parliament.go.tz/docs/KATIBA/INAYOPENDEKEZWA_02.10.2014.pdf.

³⁰⁹ *Beneficiaries of Late Norbert Zongo et al. v. Burkina Faso*, Commc'n No. 13/2011, (2014), available at <http://www.african-court.org/en/index.php/component/content/article/22-recient-judgements/596-application-no-013-2011-the-beneficiaries-of-the-late-norbert-zongo-et-al-v-burkina-faso>.

³¹⁰ *Id.* at 2.

³¹¹ *Id.* at 2.

³¹² *Id.* at 2.

³¹³ *Id.*

Zongo and three others and paid damages totaling over one million US dollars to the victims' families.³¹⁴

3. Implications of the African Court's Decisions

The past and recent decisions of the AU and the African Court reiterate to African countries their obligations to uphold democratic principles as set forth in the African Charter. The decisions set precedents beyond the borders of the specific accused State and send a continental message on the adherence to human rights law and international law. Specifically, the decisions of the African Court demonstrate that it plays a significant role in interpreting not only African human rights instruments but also other international human rights instruments, freely adopted and ratified by African States. Moreover, by granting access to NGO's around the globe, the effectiveness of the African Court heightens, as the accountability to execute its decision increases.

III. AFRICAN SOLUTIONS FOR AFRICAN PROBLEMS

The successes of the African Court demonstrate its commitment to international human rights and its ability to protect child-kayayei from child labour. Its rulings also demonstrate that African States adhere to its regulations and recommendations for governing African States. While there may be national and other international solutions, the best viable solution to end the child-kayayei problem is to bring the case before the African Court because it provides African solutions to African problems.

A. *Insufficiency at a National Level*

While the African Court requires States to originally resolve child-labour issues at the national level, heavy corruption and bribery practices in Ghana hinder such resolution. The 2013 Global Corruption Barometer released by Transparency International revealed that the perception of corruption in Ghana worsened in the last two years.³¹⁵ The Ghana Police Service, for a third time, ranked highest for corruption. Ghana's major political parties were ranked second and the judiciary was third.³¹⁶ While Ghana progressed in terms of government effectiveness and transparency, corruption remains a significant problem in the country, as it ranks 61 out

³¹⁴ Chidi Odinkalu, *African Court Orders Remedies and Damages in Case of Murdered Journalist*, VOICE, (Dec. 10, 2015), <https://www.opensocietyfoundations.org/voices/african-court-orders-remedies-and-damages-case-murdered-journalist>.

³¹⁵ *Police Service Most Corrupt Institution in Ghana-Report*. GHANA ANTI-CORRUPTION, (Nov. 10, 2015), <http://www.gaccgh.org/news/others/police-service-most-corrupt-institution-in-ghana-report.php>.

³¹⁶ *Id.*

of 175 on the corruption list.³¹⁷ Despite Ghana's ranking, it passed legislation to combat anti-corruption, but the country still faces practical implementation challenges.

The Ghanaian criminal code fights anti-corruption by criminalizing anyone who immorally holds a public office or misuses the public office for private profit or benefit, or collaborates with a person holding public office to corruptly or dishonestly abuse the office for private profit or benefit.³¹⁸ The Act condemns corruption of and by a public officer, or juror, or by those seeking to corrupt a public officer or juror.³¹⁹ The Act further penalizes acceptance of bribes by public officers and giving of bribes to public officers.³²⁰ Another relevant act, the Anti-Money Laundering Act 2008, also criminalizes money laundering or aiding and abetting money laundering in offences relating to public officials.³²¹ Violating these acts hinders resolution of child-labour issues at the national level.

1. Police Corruption

In most modernized societies, the police department is usually the first governmental branch called on to punish law-breakers; however, Ghana's police department will not effectively punish business businesses who hire child-kayayei or eliminate the child-kayayei problem altogether. The police department ranks as one of the most corrupt institutions in Ghana, with 63 per cent of households who contacted the police reporting having to pay a bribe.³²² In particular, police officers demand bribes when dealing with court matters, vehicle registrations, and routine traffic stops.³²³ The demand for bribes creates distrust between the citizens and the government. Also, political motivation drives the promotion and appointments of police officers rather than professional merit.³²⁴ That drive undermines the independence and legitimacy of the institution. Heavy corruption and bribery make reporting businesses that engage in the child-kayayei business futile, for payoffs make criminal penalties difficult.

³¹⁷ *Ghana Suspends 22 Judges Over Corruption Scandal*, MADE FOR MINDS, (NOV. 10, 2015), <http://www.dw.com/en/ghana-suspends-22-judges-over-corruption-scandal/a-18704652>.

³¹⁸ Criminal Code (Act 29), §179 C (a) (b) (2003).

³¹⁹ *Id.* at § 239.

³²⁰ *Id.* at §§ 244-45.

³²¹ Anti-Money Laundering Act, §§ 1-2 (2008).

³²² MARIE CHENE, OVERVIEW OF CORRUPTION IN GHANA, 4 (ed., Robin Hodess 2010).

³²³ *Id.*

³²⁴ *Id.*

2. Judicial Corruption

The judiciary also penalizes law-breakers; however, as with Ghana's police department, the judicial system in Ghana engages in corrupt practices and cannot adequately deal with the child-kayaye problem. Corruption inhibits Ghanaian courts from delivering quick and effective justice and enforcing decisions. Low salaries and scarce resources incentivize judges to engage in dishonest behaviour.³²⁵ While relatively independent with no apparent evidence of government interference in judicial procedures, the president influences the appointment of all superior court judges, including the chief justice.³²⁶ In addition, the attorney general acting as both the head of prosecutorial services and the chief legal advisor to the president raises questions about the independence of prosecutions.³²⁷ This dual role increases concerns about the government and selective justice, as the attorney general enjoys immunization from prosecution, along with the president.³²⁸

Recently, a Ghanaian investigative journalist and former lawyer released video and audio files connecting more than 180 judicial officials in Ghana to corrupt practices.³²⁹ Mr. Anas, who previously exposed human trafficking and police corruption, spent two years making a film consisting of 500 hours of raw footage.³³⁰ As a result, Ghana's judicial council suspended seven high court judges, 22 circuit judges and magistrates, and 12 other high court judges are under further investigation.³³¹ The investigation depicts 34 judges and magistrates, more than 100 court clerks, seven policemen, five state attorneys, and bail contractors engaging in bribery and extortion.³³² The film shows judges and other court staff extorting bribes from litigants through intermediaries, and in some cases asking for sexual favours to manipulate

³²⁵ *Id.* at 7.

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ *Ghana Suspends 22 Judges Over Corruption Scandal*, *supra* note 318.

³³⁰ *Ghana Suspends Seven High Court Judges Over Taking Bribe-Film*, THE TELEGRAPH, (Nov. 10, 2015), <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/ghana/11915763/Ghana-suspends-seven-high-court-judges-over-bribe-taking-film.html>.

³³¹ *Ghana Suspends Top Judges Over Corruption*, MADE FOR MINDS, (Nov. 10, 2015), <http://www.dw.com/en/ghana-suspends-top-judges-over-corruption/a-18765119>.

³³² *Police Goes After Anas Corrupt Judges*, NEWS GHANA, (Nov. 10, 2015), <http://newsghana.com.gh/police-goes-after-anas-corrupt-judges/>.

the justice system.³³³ While in the process of reforming its national courts, the Ghanaian courts are not the best court to immediately address the child-kayayei problem.

3. Cultural Thought

An ancient proverb states, “It takes an entire village to raise a child.” Though this adage connects closely with communal countries like Ghana, Ghanaian citizens alone are unable to end the child-kayayei problem. While, the child-kayayei business is a recent practice, child workers are customary in Ghana. The general population believes working children are important for socialization, marriage, and adulthood.³³⁴ As mentioned previously, if working children received permission from their parents to work, Ghanaians believe the government should not over-step its boundaries by taking away that consent.³³⁵ With such views, reporting businesses for engaging in child labour and deterring children from exploitation is illogical to the average Ghanaian citizen.³³⁶ Thus, the challenge of implementing national and international laws against child labour begins at the grassroots.

Child-kayayei faces another cultural challenge in the way in which they are perceived. Child-kayayei are grouped into a larger context within the Ghanaian society known as street children. Culturally, children should remain at home or in the classroom and not in the streets without adult supervision; so, street children remain socially unacceptable and frowned upon.³³⁷ Their vulnerability to exploitation is demonstrated every day when abused by patrons and sometimes harassed by the police.³³⁸ To the public, the street represents deviant and criminal lifestyles; thus, street children hold little power when dealing with adults and face much hostility.³³⁹ Today, street children are a commonplace norm in Ghana and make up a permanent part of its population. These children are easily forgotten and usually ignored.

³³³ *Ghana Suspends Seven High Court Judges Over Corruption Accusations*, REUTERS, (Nov. 10, 2015), <http://www.reuters.com/article/2015/10/06/us-ghana-judiciary-idUSKCN0S002U20151006>.

³³⁴ Alice Boateng & Rose. Korang-Okrah, *The Predicament Of Rural Urban Migration In Ghana: The Case Of The Visible, But Voiceless Kayayei Girls*, 3 *African Journal of Soc. Scis* 4, 49-50 (2013).

³³⁵ *Id.*

³³⁶ Interview with Mr. Addy, *supra* note 180.

³³⁷ EMMANUEL NII-BOYE QUARSHIE, PUBLIC’S PERCEPTION OF THE PHENOMENON OF STREET CHILDREN: A QUALITATIVE STUDY OF STUDENTS AND SHOPKEEPERS IN ACCRA, GHANA 65 (2011).

³³⁸ *Id.* at 62.

³³⁹ *Id.* at 63.

4. Religious Institutions and NGO's

Biblical mandates obligate churches and other religious organizations to help the poor. Proverbs 19:17 states, "Whoever is generous to the poor lends to the Lord, and he will repay him for his deed."³⁴⁰ In the New Testament, Jesus reiterates that duty when He states, "Give to the one who begs from you, and do not refuse the one who would borrow from you."³⁴¹ Accordingly, churches, religious institutions, and NGO's continually offer aid to help remedy the child-kayayei problem, but the issue is too large for these institutions to completely eliminate it.

BIBIR-Ghana, an NGO in northern Ghana helps provide quality education and good health to children for a better future.³⁴² BIBIR-Ghana provides vocational training in sewing and alterations for kayayei. The organization began with 80 girls; 62 of whom enrolled in vocational training, while the other 18 enrolled in traditional education. The 62 girls completed their training within three years. Before their graduation, the organization provided each girl with necessary tools to begin her business.

³⁴³

Religious leaders such as Bishop Daniel Obinim of God's Way International Ministry sponsor five child-kayayei to attend school in their villages in northern Ghana.³⁴⁴ Three of them, Nahima Musah, age six, Lydia Aliu, age five, and Regina Aliu, age four, enrolled at the Kpatarigu Primary School in the Mamprusi Moagduri District; while Fati Mohammed, age fifteen, enrolled at a high school in Tamale, and Adia Abdul Rahman (age unknown) enrolled at the Gambaga Primary School in the East Mamprusi District.³⁴⁵ Also, Olivier Omar, the director of the Children's Project of the Catholic Arch-diocese of Kumasi, opened a day-care centre to help care for children of kayayei in Abinkyi Market.³⁴⁶ Though laudable efforts, the determinations by these institutions and individuals cannot completely extinguish the problem.

³⁴⁰ *Proverbs* 19:17 (ESV).

³⁴¹ *Matthew* 5:42 (ESV).

³⁴² *Mission and Vision Statement*, BIBIR, (Nov. 10, 2015), <http://bibir.yolasite.com/mission.php>.

³⁴³ BIBIR ANNUAL REPORT, 6 (December 31, 2013).

³⁴⁴ *Bishop Obinim Sponsors Education of Kayayei*, LOCAL NEWS, (Nov. 10, 2015), <http://news.peacefonline.com/pages/social/201410/219770.php>.

³⁴⁵ *Id.*

³⁴⁶ *Catholic Church Puts Children of Kayayei in School*, NEWS FROM PRINCE APPIAH, (Nov. 10, 2015), <https://princeappiah.wordpress.com/2014/02/17/catholic-church-puts-children-of-kayayei-in-school-in-kumasi/>.

B. *Inadequacy of Other International Courts*

While other international courts deal with human rights issues, State matters, and other international violations, the African Court proves to be the best court to compel Ghana to uphold its national and international obligations concerning child labour.

1. European Court of Human Rights

The European Court of Human Rights (ECtHR) is an international court founded in 1959; it rules on individual or State complaints that allege violations of the civil and political rights protected by the European Convention on Human Rights.³⁴⁷ The jurisdiction of the ECtHR's pertains to all matters dealing with the interpretation and application of the European Convention on Human Rights and its Protocols.³⁴⁸ Although the ECtHR takes into account other elements of international law and their interpretations when interpreting the meaning of the European Convention and the Protocols, the ECtHR takes into account other elements of international law and their interpretation, the ECtHR's jurisdiction only allows it to examine complaints against a Member-States to the European Convention or its Protocols.³⁴⁹ Ghana is not a State party to the European Convention or its Protocol, and thus the ECtHR has no jurisdiction over Ghana.

2. Inter-American Court of Human Rights

Established in 1969 by the American Convention of Human Rights, the Inter-American Court of Human Rights (IACtHR) exists to protect, along with the Inter-American Commission of Human Rights, human rights and freedoms.³⁵⁰ Article 44 of the American Convention on Human Rights gives any person, group, or NGO legally recognized by the Organization of American States (OAS) to petition with the Inter American Commission on Human Rights (IACHR) against another Member-State for violating human rights under the American Convention.³⁵¹ Alleged violations before the IACtHR must occur in a territory of a Member-State or under the effective control of an accused

³⁴⁷ *Migration and Human Rights*, COUNCIL OF EUROPE, (Nov. 11, 2015). http://www.coe.int/t/democracy/migration/bodies/echr_en.asp.

³⁴⁸ CHIARA GIORGETTI, *THE RULES, PRACTICE, AND JURISPRUDENCE OF INTERNATIONAL COURTS AND TRIBUNALS*, 329 (2012).

³⁴⁹ *Id.* at 330.

³⁵⁰ Alvaro Paul, *Decision-Making Process of the Inter-American Court: An Analysis Prompted By The "Invitro Fertilization" Case*, 21 ISLA J. INT'L & COMP. L. 1 fn. 2, 88 (2014).

³⁵¹ GIORGETTI, *supra* note 344, at 370.

Member-State.³⁵² Ghana is not a Member-State of the OAS nor did the child-kayayei violations occur in a Member State of the OAS; accordingly, the IACtHR does not possess jurisdiction over Ghana in this matter.

3. International Court of Justice

As the primary judicial branch of the United Nations, all UN Member-States answer to the International Court of Justice (ICJ) in either contentious cases or advisory proceedings.³⁵³ A contentious case arises between States who hold differing views as to the relevant facts or law.³⁵⁴ Although a UN Member-State, Ghana's membership does not automatically allow it through the ICJ's jurisdictional door. That membership merely opens the door to be heard before the ICJ, but the child-kayayei problem would not fall under the ICJ's jurisdiction. Firstly, the ICJ only allows States to participate in contentious cases; thus, precluding contentious cases brought by or against international organizations, non-governmental organizations, transnational corporations, or individuals.³⁵⁵ Further, the child-kayayei problem does not create a contentious case between two differing States; rather, the problem embodies a conflict between a State and its citizens. Although States can bring a claim on its own citizens' behalf, Ghana would be unlikely to bring such a claim.

Secondly, even if the ICJ were to hear such a claim, States cannot be sued before the ICJ without their consent.³⁵⁶ Consent to the ICJ's jurisdiction occurs in three ways. First, States could accept the ICJ's jurisdiction on an *ad hoc* basis for the adjudication of an existing dispute.³⁵⁷ For example, in July 2010, Burkina Faso and Niger jointly submitted a dispute to the ICJ for the purpose of determining their mutual boundary in a particular sector.³⁵⁸ While a contentious case, both States agreed, beforehand, to bring the dispute to the ICJ for resolution.³⁵⁹ Second, States can accept the ICJ's jurisdiction by signing a bilateral or multilateral treaty submitting to future jurisdiction over certain issues in the event of a dispute.³⁶⁰ Since this form of jurisdiction requires a treaty obligation accepting ICJ's jurisdiction, it is critical to assess whether a State, in joining a multi-lateral treaty, filed a reservation limiting or

³⁵² *Id.* at 370-71.

³⁵³ *Id.* at 11-12.

³⁵⁴ *Id.* at 15.

³⁵⁵ *Id.* at 12.

³⁵⁶ *Id.* at 15.

³⁵⁷ *Id.*

³⁵⁸ Frontier Dispute (Burk. Faso v. Niger), 2010 I.C.J. 1 (July 21).

³⁵⁹ GIORGETTI, *supra* note 344, at 15.

³⁶⁰ *Id.*

rejecting the ICJ's jurisdiction.³⁶¹ For example, when the United States ratified the Convention Against Genocide in 1988, it included a reservation stating that before any dispute could be submitted to ICJ, 'the specific consent of the United States is required in each case.'³⁶² Consequently, when, in 1999, the Federal Republic of Yugoslavia (Serbia & Montenegro) sued the United States under the Convention Against Genocide for acts associated with NATO's bombing campaign against Serbia, the ICJ found a lack of jurisdiction and dismissed the case.³⁶³ Ghana created no such treaty to adhere to the ICJ's jurisdiction. Finally, States can submit to the compulsory jurisdiction of the ICJ, by making a unilateral declaration that 'they recognize as compulsory *ipso facto* and without special agreement, in relation to any other [S]tate accepting the same obligation, the jurisdiction of the ICJ in all legal disputes' involving issues of law or fact governed by the rules of international law.³⁶⁴ Ghana did not submit to this jurisdiction.³⁶⁵ Accordingly, the ICJ would not be the best international court to combat the child-kayayei problem.

4. International Criminal Court

As the world's first standing international criminal court, the International Criminal Court (ICC) prosecutes human rights offenders.³⁶⁶ The Rome Statute defines the jurisdiction of the ICC. Ghana, a signatory of the Statute lent itself to the ICC's jurisdiction;³⁶⁷ however, its jurisdiction is limited and specific. The ICC only prosecutes individuals for four specified core crimes: genocide, crimes against humanity, war crimes, and crimes of aggression, committed on the territory of a State party to the Rome Statute or by a citizen of a State Party.³⁶⁸ According to the statute, "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, radical or religious group, as such: (a) Killing members of the group; (b) Causing

³⁶¹ *Id.* at 16.

³⁶² *Id.* at 15.

³⁶³ SEAN D. MURPHY, *THE INTERNATIONAL COURT OF JUSTICE IN THE RULES, PRACTICE, AND JURISPRUDENCE OF INTERNATIONAL COURTS AND TRIBUNALS* 17 (2011).

³⁶⁴ *Basis of the Court's jurisdiction*, INTERNATIONAL COURT OF JUSTICE, (Nov. 11, 2015), <http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=2>.

³⁶⁵ *Declarations Recognizing the Jurisdiction of the Court of Compulsory*, INTERNATIONAL COURT OF JUSTICE, (Nov. 10, 2015), <http://www.icj-cij.org/jurisdiction/?p1=5&p2=1&p3=3>.

³⁶⁶ GIORGETTI, *supra* note 344, at 192.

³⁶⁷ *Ghana*, INTERNATIONAL CRIMINAL COURT, (Nov. 10, 2015), http://www.icc-cpi.int/en_menus/asp/states%20parties/african%20states/Pages/ghana.aspx.

³⁶⁸ GIORGETTI, *supra* note 344, at 192.

serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.”³⁶⁹ The Statute defines Crimes Against Humanity “as any of the following acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”³⁷⁰

- a. Murder;
- b. Extermination;
- c. Enslavement;
- d. Deportation or forcible transfer of population;
- e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- f. Torture;
- g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- i. Enforced disappearance of persons; The crime of apartheid;
- j. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.³⁷¹

Article 8 of the Rome Statute defines war crimes as crimes “committed as a part of plan or policy or as part of a large scale commission.”³⁷² Article 8(2) then gives a thorough list of enumerated war crimes covering sixty separate provisions. Article 9 expounds further on those crimes, dividing war crimes into two broad categories:

1. In international armed conflicts, grave breaches of the Geneva Conventions and other ‘serious violations of the laws and customs of war,’ and

³⁶⁹ International Criminal Court, Rome Statute art. 6 (1998).

³⁷⁰ *Id.* at art. 7.

³⁷¹ *Id.*

³⁷² *Id.* at art. 8(1).

2. In armed conflict not of an international character, serious violations of Common Article 3 of the Geneva Conventions and ‘other serious violations of the laws and customs of war.’³⁷³

Finally, the crime of aggression means planning, preparing, initiating or executing, by a person in a position to “effectively exercise control over or to direct the political or military action of a State, of an act aggression which, by its character, gravity, and scale constitutes a manifest violation of the Charter of the United Nations.”³⁷⁴

The child-kayaei problem does not fit within the enumerated crimes the ICC handles. Further, the provisions of the Rome Statute demonstrate that the ICC grants legal remedies rather than equitable relief.³⁷⁵ Being a prosecutorial court, the ICC would not be the best court to procure jurisdiction for child-kayayei cases.

5. United Nations Special Tribunals

In the past, the UN has established special tribunals to bring justice to victims of international crimes,³⁷⁶ but these tribunals offer legal remedies instead of equitable remedies. For example, the United Nations established special international criminal tribunals in Rwanda and Yugoslavia to prosecute those responsible for war crimes, crimes against humanity, and genocide. Successful convictions of these political and military leaders offered legal relief by imprisoning suspects to bringing justice to victims and deterring others from committing such crimes in the future.³⁷⁷ The child-kayayei problem demands an equitable solution, such as an injunction, one that a UN special tribunal will not be able to grant.

6. Community Court of Justice-Economic Community of West African States (ECOWAS)

Articles 6 and 15 of the Revised Treaty of the Economic Community of West African States (“the Community Law”) created the Community

³⁷³ GIORGETTI, *supra* note 344, at 207.

³⁷⁴ Rome Statute, *supra* note 365, at art. 8 bis.

³⁷⁵ Equitable Remedy: A nonmonetary one such as an injunction or specific performance, obtained when available legal remedies, usu. monetary damages, cannot adequately redress the injury; Legal Remedy: A remedy historically available in a court of law, as distinguished from a remedy historically available only in equity. Remedy, Black’s Law Dictionary (10th ed. 2014).

³⁷⁶ *United Nations: International Law, Courts & Tribunals* UN DOCUMENTATION INTERNATIONAL LAW-RESEARCH GUIDES AT UNITED NATIONS DAGS HAMMARSKJOLD LIBRARY RESEARCH GUIDES, (Nov. 11, 2015), <http://research.un.org/en/docs/law/courts>.

³⁷⁷ *Id.*

Court of Justice (“the Community Court”).³⁷⁸ As a State-Member to the Economic Community of West African States community (ECOWAS) Ghana must adhere to the Community Court’s jurisdiction on matters provided in the Community Law. That law aims to “promote co-operation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standard of its peoples, and to maintain and enhance economic stability, foster relations-among Member-States and contribute to the progress and development of the African Continent.”³⁷⁹

The Community Court’s jurisdiction extends to Member-States failing to honour their obligations under the Community Law, contending any dispute relating to the interpretation and application of acts of the Community, and commencing cases dealing with liability for or against the Community.³⁸⁰ While the court now covers cases alleging human rights violations arising from ECOWAS Member-States, it has no specific human rights treaty comparable to the African Charter, ACWRC, CRC, or the ILO’s Convention on Child Labour.³⁸¹ In fact, no provisions exist in the revised Community Law or its protocols that specifically address the rights of African children or their place within the workforce.³⁸² Accordingly, unlike the OAU that intentionally created a child charter protecting the inherent dignities of African children, the Community created no such document; that court merely applies human rights law created by other international organizations. Since the African Court only handles human rights cases and produced an international legal instrument explicitly addressing the rights and welfare of African children within the work sector, it proves to be the best court to handle Ghana’s child-kayayei problem.³⁸³

C. *A Self-Sufficient Continent*

Even if the UN had a court comparable to the African Court or other

³⁷⁸ *About Us*, COMMUNITY COURT OF JUSTICE-ECOWAS, (Nov. 18, 2015), http://www.courtecowas.org/site2012/index.php?option=com_content&view=article&id=2&Itemid=5.

³⁷⁹ Economic Community of West African States, Revised Treaty of the Economic Community of West African States, art. 1 (1993).

³⁸⁰ *About Us*, *supra* note 374.

³⁸¹ *Id.*

³⁸² *ECOWAS Community Court of Justice*, IHRDA, (Nov. 18, 2015), <http://www.ihrda.org/2012/10/ecowas-community-court-of-justice/>.

³⁸³ A later section will mention other sub-regional international courts in Africa. However, Ghana does not fall within the jurisdiction of those courts. Ghana also does not fall within the jurisdiction of the International Crimes Division (will be mentioned later) as that court is specific to Uganda and has State-Members.

non-African international courts had jurisdiction over Ghana, Africans are more likely to accept rulings from its own courts, for African courts provide African solutions to African problems. African leaders sometimes believe that other international courts unfairly target their countries. For instance, though a large number of African States adopted the ICC's Rome Statute, they are very critical of ICC's rulings, because AU members believe that the ICC abuses its universal jurisdiction to arrest and selectively prosecute African leaders.³⁸⁴ As a result, African States prefer setting up their own courts and abiding by their rulings.

1. Gacaca

During the 1994 Rwandan genocide, 800,000 Hutus brutally murdered ethnic Tutsis and moderate Hutus.³⁸⁵ After the genocide, Rwanda struggled to bring justice to the victims' families, so on July 1, 1994, the UN Security Council set up an International Criminal Tribunal for Rwanda (ICTR) to prosecute those responsible for genocide and other serious violations of international humanitarian law committed in Rwanda.³⁸⁶ By the year 2000, the Rwandan government arrested over 120,000 genocide suspects, who were awaiting trial.³⁸⁷ Overcrowded prisons and understaffed administrative agencies prevented the national courts in Rwanda from efficiently handling the mass number of cases, as arrests increased daily.³⁸⁸ Despite the UN's creation of the ICTR, the Rwandan government created multiple Gacaca courts to prosecute those accused of the 1994 genocide.³⁸⁹

The Gacaca courts are traditional village courts used in the past to try cases in the community. While judges have no legal education, the community reveres them as elders.³⁹⁰ The courts focus on reconciliatory justice and forgiveness instead of punitive justice. When a village member commits an offence against another, if the offender shows true remorse, he would beg for forgiveness, upon which the village elders would then

³⁸⁴ MAX DU PLESSIS ET. AL, AFRICA AND THE INTERNATIONAL CRIMINAL COURT 3 (2013).

³⁸⁵ GIORGETTI, *supra* note 344, at 261-262.

³⁸⁶ *Id.*

³⁸⁷ David Gusongoirye, Gacaca Courts? *Giving Rwandans More Than Justice*, (Nov. 11, 2015), <https://www.globalpolicy.org/component/content/article/163/28332.html>.

³⁸⁸ *Id.*

³⁸⁹ General Articles on Special and Criminal Courts, GLOBAL POLICY FORUM, <https://www.globalpolicy.org/international-justice/international-criminal-tribunals-and-special-courts/general-articles-on-special-international-criminal-tribunals.html>.

³⁹⁰ Gusongoirye, *supra* note 383.

oversee the reconciliation process.³⁹¹ In cases of recalcitrant offenders, if the village found the offender guilty, then the offender would be punished.³⁹² This forgiveness and reconciliation standard prosecuted those accused of genocide. Gacaca courts gave genocide suspects the opportunity to honestly seek the community and the victims' families' forgiveness, by giving an account of their personal roles in the genocide attacks.³⁹³ This method improved relations and reconciled the divide between the Hutus and the Tutsis, as the Gacaca courts became the foundation of the new Rwanda.³⁹⁴ While the ICTR only tried 33 cases in 14 years, Gacaca courts tried approximately 200,000 cases within that same time period.³⁹⁵ Reconciliation through the Gacaca courts built a stronger Rwanda than ever before.

2. African Court of Justice

The African Court of Justice (ACJ) will soon be the sole judicial organ to the Constitutive Act of the African Union, adopted by the OAU in 1999.³⁹⁶ The Protocol to the Constitutive Act provides broad power to the ACJ. The Protocol gives the ACJ jurisdiction over matters under the Constitutive Act and other AU treaties and instruments promulgated thereunder.³⁹⁷ As other international courts, the ACJ's jurisdiction covers only Member-States. The African Commission and the Parliament and the Assembly can also seize its jurisdiction.³⁹⁸ The ACJ will also have the power to provide advisory opinions on legal questions presented to it by the Assembly, the Parliament, the Executive Council, and any other organ of the AU that may be authorized to do so by the Assembly.³⁹⁹

3. International Crimes Division

As a State-Member to the Rome Statute, Uganda answers to the ICC for international crimes. Nevertheless, Uganda created the International Crimes Division ("ICD") that enables Ugandan courts to try, convict, and

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ *Id.*

³⁹⁵ *Id.*

³⁹⁶ *ACJ: African Court of Justice*, AFRICAN INTERNATIONAL COURT AND TRIBUNALS, (Nov. 11, 2015), http://www.aict-ctia.org/courts_conti/acj/acj_home.html.

³⁹⁷ *Id.*

³⁹⁸ *Id.*

³⁹⁹ *Id.* Even if this court were in session, it would not be the best option to try the child-kayayei cases, because comparable to the ICJ, the ACJ's jurisdiction extends to States in contentious proceedings.

sentence persons who committed war crimes, crimes against humanity, genocide, and terrorism, including commanders of the Lord's Resistance Army (LRA) and other rebel groups. Established in 2008, the ICD fulfils Uganda's commitment to the implementation of the Juba Agreement on Accountability and Reconciliation.⁴⁰⁰ Accordingly, when LRA commander Dominic Ongwen, second in command to infamous LRA leader Joseph Kony, willingly turned himself over to the authorities, the Ugandan government quickly announced that instead of facing trial at the ICC, Ongwen should face trial in Uganda's ICD, a position consistent with the country's on-going battle against intervention by the ICC.⁴⁰¹ Though Uganda eventually allowed the LRA commander to be transferred to the ICC, it continually professes its ability to conduct fair trials for serious crimes, and claims that when it comes to accountability for the actions of groups like the LRA, the ICD proves capable to handle the tasks before it.⁴⁰²

4. Sub-Regional Courts

The continent possesses many sub-regional courts that perform the same functions as many other international courts. Some of Africa's sub-regional courts are the Arab Maghreb Union (AMU/UMA) Judicial Authority in Nouakchott, Mauritania,⁴⁰³ the Common Market of Eastern and Southern African (COMESA) Court of Justice in Khartoum, Sudan,⁴⁰⁴ the East African Community (EAC) Court of Justice in Arusha, Tanzania,⁴⁰⁵ the Economic and Monetary Community of Central Africa (CEMAC) Court of Justice in Djamena, Chad,⁴⁰⁶ the Economic Community

⁴⁰⁰ *International Crimes Division*, THE JUDICIARY OF THE REPUBLIC OF UGANDA, (Nov. 11, 2011), http://www.judicature.go.ug/data/smenu/18/International_Crimes_Division.html.

⁴⁰¹ *Is Uganda's Judicial System Ready to Prosecute Serious Crimes?*, ICTJ: JUSTICE TRUTH DIGNITY <https://www.ictj.org/news/uganda-kwoyelo-case>.

⁴⁰² *Id.*

⁴⁰³ *AMUIJ: African Court of Justice*, Instance Judiciaire of the Arab Maghreb Union, AFRICAN INTERNATIONAL COURT AND TRIBUNALS, (Nov. 11, 2015), http://www.aict-ctia.org/courts_subreg/amu/amu_home.html.

⁴⁰⁴ *COMESA: Court of Justice of the Common Market for Eastern and Southern Africa*, AFRICAN INTERNATIONAL COURT AND TRIBUNALS, (Nov. 11, 2015), http://www.aict-ctia.org/courts_subreg/comesa/comesa_home.html.

⁴⁰⁵ *EACJ: Court of Justice of the East African Community*, (Nov. 11, 2015), http://www.aict-ctia.org/courts_subreg/eac/eac_home.html.

⁴⁰⁶ *CEMAC: Court of Justice for the Central African Economic and Monetary Community*, AFRICAN INTERNATIONAL COURT AND TRIBUNALS, (Nov. 11, 2015), http://www.aict-ctia.org/courts_subreg/cemac/cemac_home.html.

of West African States (ECOWAS) Court of Justice in Lagos, Nigeria,⁴⁰⁷ the Organization for the Harmonization of African Business Law (OHADA/OHABLA) Common Court of Justice and Arbitration in Abidjan, Cote d'Ivoire,⁴⁰⁸ the Southern African Development Community (SADC) Tribunal in Windhoek, Namibia,⁴⁰⁹ and the Court of Justice of the West African Economic and Monetary Union in Ouagadougou, Burkina Faso.⁴¹⁰ The continent's usage of its own courts demonstrates African leaders' preference of using African Solutions to African Problems.⁴¹¹ Hence, continuing with the spirit and culture of the continent, the African Court on Human and Peoples' Rights will be the best court to try the child-kayaye violations.

D. Application of an African Solution

To reiterate, Ghana is a Member-State to the African Charter. Ghana also adopted and ratified the ACRWC, the CRC, and the ILO Convention. In addition, Ghana made a declaration under article 34.6 of the Protocol to the African Charter granting individuals and NGOs direct access to bring a claim against it before the African Court, but to access the African Court, complainants must exhaust all domestic remedies. Exhausting all domestic remedies means taking "any domestic legal action that may lead to the resolution of the complaint at the local or national level."⁴¹² Generally, the Court requires complainants to demonstrate in their applications the steps taken to exhaust domestic remedies or why domestic remedies would be ineffective.⁴¹³

As demonstrated earlier, the African Court created instances when complainants do not need to exhaust domestic remedies before accessing the Court. In each instance, the Court took into consideration the circumstances of each case and brought certain cases immediately under

⁴⁰⁷ *ECOWAS CCJ: Court of Justice of the Economic Community of West African States*, AFRICAN INTERNATIONAL COURT AND TRIBUNALS, (Nov. 11, 2015), http://www.aict-ctia.org/courts_subreg/ecowas/ecowas_home.html.

⁴⁰⁸ *OHADA CCJA: Court of Justice of the Organization for the Harmonization of African Business Law*, AFRICAN INTERNATIONAL COURT AND TRIBUNALS, (Nov. 11, 2015), http://www.aict-ctia.org/courts_subreg/ohada/ohada_home.html.

⁴⁰⁹ *SADC: Tribunal of Southern African Development Community*, AFRICAN INTERNATIONAL COURT AND TRIBUNALS, (Nov. 11, 2015), http://www.aict-ctia.org/courts_subreg/sadc/sadc_home.html.

⁴¹⁰ *WAEMU/UEMOA: Court of Justice of the West African Economic and Monetary Union*, AFRICAN INTERNATIONAL COURT AND TRIBUNALS, (Nov. 11, 2015), http://www.aict-ctia.org/courts_subreg/waemu/waemu_home.html.

⁴¹¹ The person who coined the phrase is unknown.

⁴¹² Anuak Justice Council, *supra* note 244, at 6.

⁴¹³ *Id.*

its jurisdiction. Since child-kayayei cases stop at the administrative level due to bribery, corruption, or just a general backlash against child labour laws, complainants to these cases cannot meet the exhaustion requirement.⁴¹⁴ As a result, the cases should be brought before the Court under two exceptions: (1) massive and serious violations and (2) access to justice is obstructed.

1. Massive and Serious Violations

In the case of Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jéhovah v. Zaïre, the African Court held that when human rights issue contain massive and serious violations, then no condition to exhaust all domestic remedies exist. The Court held that massive and serious abuses occur on a large-scale and are on-going abuses. Those human rights abuses must also involve multiple-violations, so that they bring awareness to the national government as to the seriousness and gravity of the problem.

a. Large Scale and On-going

Comparable to the case in Zaire, which involved large scale and on-going human rights violations, the child-kayayei business also contains large-scale and on-going human rights abuses. Child-kayayei numbers continue to increase.⁴¹⁵ Given the widespread nature of the problem, the actual number of child-kayayei to date is unknown.⁴¹⁶ Ghana Statistical Services estimated that out of 6.36 million children, 2.47 million children engage in paid economic activity;⁴¹⁷ out of the 2.47 million children who work, about 1.27 million engage in child labour;⁴¹⁸ out of 2.47 million children, 242,074 children engage in hazardous child labour, including child trafficking, child-kayayei, child domestic servitude, and fishing and commercial agriculture.⁴¹⁹ Estimates from aid organizations place the number of children working in the kayayei business in the tens of

⁴¹⁴ Interview with Mr. Addy, *supra* note 180.

⁴¹⁵ *Kayayei Numbers Higher than Anticipated*, GHANA STATISTICAL SERVICES, (Nov. 11, 2015), <http://www.statsghana.gov.gh/docfiles/news/Kayayei.pdf>.

⁴¹⁶ Lepowura M. N. D. Jawula, *Kayayei in Ghana – A Case Of Policy Failure*, GHANA WEB, (Nov. 11, 2015). <http://mobile.ghanaweb.com/GhanaHomePage/NewsArchive/Kayayei-In-Ghana-A-Case-Of-Policy-Failure-189496>.

⁴¹⁷ *Id.*

⁴¹⁸ *Kayayei Numbers Higher than Anticipated*, *supra* note 416.

⁴¹⁹ Jawula, *supra* note 417.

thousands.⁴²⁰ Other numbers document that there are over 160,000 child-kayayei in the city of Accra alone and about 15,000 arrive each year from northern Ghana.⁴²¹ Hence, the child kayayei case is unlike *Anuak Justice Council v. Ethiopia*, in which the violations only pertained to a small portion of the population and involved a single incident that took place for a short period of time. In the case of the child-kayayei, the violations affect a large portion of the population and the abuses continue, so the exhaustion of domestic remedies should not be required.

b. Multiple Violations

Analogous to the Zaire case, which involved multiple human rights violations, so the child-kayayei business involves multiple human rights violations. The child-kayayei practice violates Article 3(d) of the ILO's Convention on the Worst Form of Child Labour, because the work harms the health, safety or morals of children.⁴²² The business also violates Section 28(2) of the Constitution of Ghana that safeguards against work that threatens health, education, or development;⁴²³ section 87(1) of Ghana's Children's Act, No. 560 of 1998 that provides that no person shall engage a child in exploitative labour, such as head portorage of heavy loads; section 58(1) of Ghana's Labour Act No. 651, which specifically states that a "young person shall not be engaged in any type of employment or work likely to expose the person to physical or moral hazard;"⁴²⁴ and article 15 of the African Charter on the Rights and Welfare of a Child, which protects African children from all forms of economic exploitation and from performing any work that is likely to be hazardous, interferes with the education of children, or compromises their physical or moral development.⁴²⁵ Moreover, the child kayayei business infringes on the best interests of a child as articulated in the Convention on the Rights of a Child ("CRC") and also violates the following six key rights guaranteed by the CRC:

⁴²⁰ Manda Sertich & Marijn Heemskerk, *Ghana's Human Trafficking Act: Successes and Shortcomings in Six Years of Implementation*, 19 Human Rights Briefs 1 (2011).

⁴²¹ Other cities in Ghana that have child-kayayei are Kumasi, Tamale, Takroadi; Helen Kearney, *Ghana's Female Porters Gets Family Planning Advice*, THE GUARDIAN, <http://www.theguardian.com/global-development-professionals-network/2013/nov/22/ghanas-female-porters-get-family-planning-advice>.

⁴²² Int'l Labour Organization Convention, *supra* note 150, at art. 3(d).

⁴²³ CONST. of the Republic of Ghana, *supra* note 12, at Chapter 005 § 28(2).

⁴²⁴ Labour Act No. 651, *supra* note 140, at § 58(1).

⁴²⁵ African Charter on the Rights and Welfare of a Child, *supra* note 156, at art.

i. Article 12: The right to expression of views and being heard on all matters.

When adults force children to become child-kayayei, the child's opinion remains unheard.⁴²⁶ When adults make decisions that affect the best interests of a child, children should have the right to freely express their opinions. This expression does not make children the authority figure, but adults should listen to the opinions of children and involve them in decision-making. Article 12 does not interfere with parents' right and responsibility to express their views on matters affecting their children; instead, it recognizes that the level of a child's participation in decision-making must be appropriate to the child's level of maturity.⁴²⁷ Naturally, most adults will give a teenager's view greater weight than that of a pre-schooler.

ii. Article 24: The right of the child to health and good nutrition.

Children have the right to good quality health care, safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy. Sometimes child-kayayei face unexpected medical costs, but since their income is little, they receive little to no professional medical attention.⁴²⁸ When confronted with pain, injuries, or other illnesses that need treatment, child-kayayei, instead, choose to go to the local pharmacy or use herbs or drugs made by themselves or bought at the market.⁴²⁹ Also, the poor financial state of child-kayayei does not always permit them to eat three times a day to receive proper nutrition. Unsanitary living conditions make it difficult for child-kayayei to access clean drinking water, and their diet usually consists of solely starches: banku (grounded corn), rice, omotu (rice balls).⁴³⁰

iii. Article 28: The right to education.

The Convention places a high value on education. Children should be encouraged to reach the highest level of education. Long work hours force child-kayayei to leave school and never return, even though the desire to continue in school remains.

⁴²⁶ Osei, *supra* note 10.

⁴²⁷ Convention on the Rights of a Child, *supra* note 2, at art.12(1).

⁴²⁸ van den berg, *supra* note 79, at 56.

⁴²⁹ J.Y. Avotri & V. Walters, Ghanaian Women's Accounts of their Work and Their Health, 48 SOC. SCIENCE & MED. 1133 (1999).

⁴³⁰ G. MAXWELL ET. AL., URBAN LIVELIHOODS AND FOOD AND NUTRITION SECURITY IN GREATER ACCRA, GHANA 112 ((2000).

iv. Article 31: The right to leisure, play and culture.

Children have the right to relax and play, and to join in a wide range of cultural, artistic and other recreational activities. Child-kayayei work 12-hour shifts with no time for rest, so opportunities for recreation, play, and leisure are limited or non-existent.

v. Article 32: Protection from work that is dangerous or might harm their health or their education.

Previous sections discuss the hazards of the child-kayayei business, and how it harms the girls' right to health and education. While the CRC protects children from harmful and exploitative work, it does not prohibit parents from expecting their children to help out at home in safe age appropriate ways. If children help out in a family farm or business, their tasks should be safe, suited to their level of development, and comply with national and international labour laws.

vi. Article 36: Protection From Other Forms of Exploitation.

Children should be protected from any activity that takes advantage of them or could harm their welfare and development. The child-kayayei business exploits children and harms their physical and moral welfare and development.

The child-kayayei business violates the Ghanaian Constitution, Ghana's Children Act, Ghana's Labour Act, Ghana's Human Trafficking Act, the CRC, the African Charter, and the ILO Convention; therefore, as the case in Zaire, in which the human rights abuses violated multiple legislation, so also the child-kayayei business violate multiple national and international legislation. So, the exhaustion of domestic remedies should not be essential.

c. National Awareness

Similar to the case in Zaire in which massive human rights violations create awareness to its national government, so the enormity of the child-kayayei business creates awareness to the Ghanaian government. In 2004, the Speaker of Parliament summoned the Minister of Gender, Children and Social Protection, Nana Oye Lithur, to brief the House on prospective measures to rectify the child-kayayei problem.⁴³¹ In 2005, the Minister of Women and Children's Affairs, Hajia Alima Mahama, attempted to implement a program that provides child-kayayei with

⁴³¹ Mark-Anthony Vinorkor, *Oye Lithur: Kayayei Phenomenon is a National Challenge*, GRAPHIC ONLINE, (Nov. 11, 2015), <http://graphic.com.gh/news/general-news/18475-oye-lithur-kayayei-phenomenon-is-a-national-challenge.html>.

health benefits through the new national health-insurance plan.⁴³² In 2007, the Ministry of Women and Children's Affairs attempted to create another program in which child-kayayei under 15 years of age will be sent back to their villages to begin school.⁴³³ In 2012, President John Mahama demonstrated his awareness of the issue when he admonished his opponent, Nana Akufo-Addo, for promising to provide free temporary housing for child-kayayei.⁴³⁴ In 2015, the Ministry of Gender, Children and Social Protection once again made empty promises to give child-kayayei scholarships to attend school.⁴³⁵

Despite national awareness, the child-kayayei business continues to grow. The discussions of the various ministerial departments and the conversation on the floor of parliament demonstrate the Ghanaian government's understanding of the on-going child-kayayei problem. Moreover, further governmental awareness of the problem arises when child-kayayei pay the police a council tax of GH¢0.20 per day for engaging in self-employment.⁴³⁶ The demand to pay tax punishes children under legislation that should protect them. The exhaustion of domestic remedies should not apply.

Because of the enormity of child-kayayei business and its violation of multiple provisions of national and international legislation that brings constructive awareness to the Ghanaian government, the requirement to exhaust all domestic remedies should not apply. Similar to the Zaire case, in which the gravity of the human rights abuses forced the African Court to hold that the exhaustion of domestic remedies should not be strictly applied when it is impractical for complainants to submit their cases to the national courts, so also the gravity of the child-kayayei violations make it impractical to submit complaints to Ghana's national courts. Though similar to the case in Zaire, the child-kayayei case receives a heightened status than that of the Zaire case, solely because of the involvement of children. Time and memorial demonstrate that children alone cannot advocate for their rights; thus, the livelihood of the child-

⁴³² Ben Ephson, *Ghana's Girl Porters Carry a Heavy Burden*, MAIL & GUARDIAN, AFRICA'S BEST READ, <http://mg.co.za/article/2005-07-31-ghanas-girl-porters-carry-a-heavy-burden>.

⁴³³ Cynthia Boakye, *Children's Ministry to send Kayayei Back to School*, Modern Ghana, (Nov. 11, 2015), <http://www.modernghana.com/news/143941/1/childrens-ministry-to-send-kayayei-back-to-school.html>.

⁴³⁴ *Nana Addo's Promise of Free Hostel to Kayayie Most Insulting-Mahama*, GHANA REPORTERS, (Nov. 11, 2015), <http://ghanareporters.com/2012/10/31/nana-addos-promise-of-free-hostel-to-kayayie-most-insulting-mahama/>.

⁴³⁵ *Ghana Government Plans Scholarship for Kayayei*, Ghana News, (Nov. 11, 2015), <http://newsghana.com.gh/ghana-government-plans-scholarship-for-kayayei/>.

⁴³⁶ OSEI-BOATENG, *supra* note 87, at 5.

kayayei depends on their parents, police officers, judges, members of parliament, business leaders, and community members. When adults fail to safeguard children, their welfare is left unprotected. The prerequisite to exhaust domestic remedies should not be compulsory.

1. Access to Justice Obstructed

Even if the African Court does not find the violations to be massive and serious, a second exception applies. In *Purohit and Moore v. Gambia*, the African Court held that complainants should not exhaust domestic remedies when national legislations prevent them from seeking remedies through all national judicial channels. When child-kayayei cases go through the Commission on Human Rights and Administrative Justice (CHRAJ), access to justice is obstructed, because CHRAJ prevents Complainants from seeking remedies through all national judicial channels.

Child-kayayei cases in Ghana begin at the administrative level with the CHRAJ. Chapter 18 of Act 456 under of the Constitution of Ghana established CHRAJ in 1993.⁴³⁷ It is a quasi-judicial institution created to help promote transparency and public accountability.⁴³⁸ CHRAJ investigates complaints of violations of fundamental human rights and freedoms, injustice and corruption, abuse of power and unfair treatment of persons by public officers in the exercise of their duties, with power to seek remedy in respect to such acts or omissions.⁴³⁹ Cases handled by CHRAJ range from human rights abuses and corruption to administrative injustice.⁴⁴⁰ CHRAJ consists of a Commissioner and two Deputy Commissioners and supporting staff. In the absence of the Commissioner, any of his two deputies could effectively perform his functions. The President appoints the Commissioner, but the Council of State, with the approval of Parliament appoints his two deputies.⁴⁴¹ The appointments from different branches ensure the Commissioner and the Deputies' independence from the executive.⁴⁴²

⁴³⁷ Commission for Human Rights and Administrative Justice Act 456, Chapter 18 (1993).

⁴³⁸ Dr. Sam K. Asibuo, *The Role of the Commission on Human Rights and Administrative Justice (CHRAJ) in Promoting Public Service Accountability Under Ghana's Fourth Republic 3* (2003).

⁴³⁹ *Id.*

⁴⁴⁰ *Africa: Human Rights "Commissions" Have Little Effect. State-Sponsored Bodies Often Silent On Abuses*, HUMAN RIGHTS WATCH, Nov. 11, 2015, <https://www.hrw.org/news/2001/02/21/africa-human-rights-commissions-have-little-effect>.

⁴⁴¹ Asibuo, *supra* note 439, at 9.

⁴⁴² *Id.*

Since its inception, CHRAJ has attained modest achievements, but as a quasi-judicial branch, it cannot handle the magnitude of the child-kayayei issues in Ghana. First, CHRAJ's lack of financial resources disallows it to motivate and retain staff members, especially its attorneys. CHRAJ attorneys quickly leave the agency to work for other institutions that pay far higher salaries and better benefits. For example, three CHRAJ attorneys resigned on the same day due to poor compensation.⁴⁴³ Currently only 12 attorneys work at the head office in Accra, handling an average of 200 cases monthly.⁴⁴⁴ Financial inadequacy creates overburdened attorneys. CHRAJ's website depicts the effects of overburdened workers, in which no links to investigative reports exist; its required annual reports date from 2006 to 2010; and its special reports on the State of Human Rights in Ghana only date from 2008 to 2011.⁴⁴⁵ Unpublished reports and investigative cases demonstrate a lack of accountability from the national government to CHRAJ.

Second, CHRAJ cannot prosecute cases, fine individuals for contempt (other than for failure to honour a subpoena) or enforce its decisions. As an advisory court, after arriving at a decision, CHRAJ must submit a report including its findings and recommendations to the appropriate person, minister, department, or authority concerned, with a copy to the complainant. The Commissioner may bring an action before any court to strictly enforce any decision of CHRAJ not implemented after three months.⁴⁴⁶ Commissioner, Mr. Emile Short expressed dissatisfaction with such a provision, since going before the traditional court becomes timely, and because when violations against top government officials surface, they go unenforced by the judiciary.⁴⁴⁷ For example, CHRAJ made various recommendations to the Police and Prisons Services concerning the conditions of Accra Central Police Station Cell and other prisons in Ghana, but they were not implemented.⁴⁴⁸

⁴⁴³ *Id.* at 17.

⁴⁴⁴ *Id.* at 18.

⁴⁴⁵ *Annual Reports*, Commission on Human Rights & Administrative Justice (CHRAJ) Ghana, (Nov. 11, 2015), http://www.chrajghana.com/?page_id=53.

⁴⁴⁶ Commission for Human Rights and Administrative Justice Act 456, *supra* note 438, at § 18.

⁴⁴⁷ The role of the commission on human rights and administrative justice in promoting public service accountability under Ghana's Fourth Republic.

⁴⁴⁸ Joseph R.A. Ayee, *Notes on the Commission on Human Rights and Administrative*

Justice Under the 1992 Ghanaian Constitution, 1 LAW AND POLITICS IN AFRICA, ASIA AND

LATIN AMERICA, 164 (1994). See also Fui S. Tsikata, *The Commission for Human Rights and Administrative Justice: Mission And Prospects*, 2 THE JOURNAL

CHRAJ is able to obstruct justice because Section 18(2) of the Commission on Human Rights and Administrative Justice Act, 1993 (“CHRAJ Act”) only gives the Commissioner sole discretion to enforce child-kayayei cases through the national judiciary:

If within three months after the report is made no action is taken which seems to the Commission to be adequate and appropriate, the Commissioner, may after considering the comments, if any, made by or on behalf of the department, authority or person against whom the complaint was made, bring an action before any court and seek such remedy as may be appropriate for the enforcement of the recommendations of the Commission.⁴⁴⁹

The Act provides no other remedial measures to a complainant when the Commissioner chooses not to enforce a human rights case through the judicial channels. Thus, like the LDA of The Gambia, which made no provisions for complainants to seek remedies through all jurisdictions of the national courts, so the CHRAJ Act makes no provisions for complainants to seek remedies through all jurisdictions of Ghanaian courts. The absence of other remedial measures in the CHRAJ Act extinguishes child-kayayei cases at an administrative level, and thus inhibits complainants from going through all the levels of national jurisdiction as required by the African Court. Therefore, as the existing remedies under the LDA obstructed justice for mentally ill patients in The Gambia, so the existing remedies, or lack thereof, under the CHRAJ Act obstructs justice for the child-kayayei in Ghana. In cases involving child-kayayei, exhausting all domestic remedies should be unnecessary.

CONCLUSION

On October 15, 2015, the African Committee of Experts on the Welfare of the Child, a subcommittee of the African Commission on Human and People’s Rights celebrated the 25th anniversary of the adoption of the African Charter on the Rights and Welfare of the Child.⁴⁵⁰ The majority of Member-States, including Ghana, ratified the charter, which serves as an important tool for advancing children’s rights. Ghana, a country that initiated the decolonization movement in Africa, is a forerunner in the human rights movement in West Africa because of its relatively stable government. As a result, other West African States follow Ghana’s lead in regards to human rights.

OF MANAGEMENT STUDIES (LEGON) THIRD SERIES, (1994).

⁴⁴⁹ *Id.* at 18(2).

⁴⁵⁰ *African Charter at 25: Looking Back to Look Ahead*, AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD, (Nov. 11, 2015), <http://acerwc.org/african-childrens-charter-at-25/>.

Since obtaining independence, Ghana has enacted enforceable human rights legislation and implemented mechanisms specifically designed to protect children from child labour. Nevertheless, as a leader in the human rights movement in West Africa, Ghana continues to turn a blind eye towards the child labour practice of child-kayayei. Consequently, Ghana must be held accountable for its non-compliance with child labour regulations explicitly enumerated in the Constitution of the Republic of Ghana, Ghana's Children Act, Ghana's Labour Act, Ghana's Human Trafficking Act, The United Nations' Convention on the Rights of a Child, The International Labour Organization's Convention on the Worst Form of Child Labour, and The African Charter on the Welfare and Rights of a Child. The African Court should thus rule the child-kayayei business as one of the worst forms of child labour, because such labour jeopardizes the physical, mental or moral well-being of a child; and that such practice should cease and Ghana should conform to national and international standards and norms for the protection of child-kayayei. Consequently, the African Court should,

- (a) grant an immediate injunction and fine all businesses that violate child labour practices by hiring child-kayayei;
- (b) compel the Ghanaian government to use immediate and strict police enforcement and participation to deter child-kayayei who are independent of businesses;
- (c) oblige Ghana to spread awareness about the hazards of the child-kayayei practice through national advertisements and campaigns, so that parents will be fully informed of the risks and dangers of the practice;
- (d) order the Ghanaian government to build vocational schools and provide scholarships for current child-kayayei and day-care facilities for children of child-kayayei;
- (e) require the Ghanaian government to provide financial assistance to NGO's and other institutions and organizations who have been combatting the child-kayayei problem at the grass-roots level; and
- (f) command the Ghanaian government to report back to the African Commission when it submits its next periodic report regarding measures taken to comply with the recommendations and directions of the African Court concerning the child-kayayei problem.

BIBLIOGRAPHY

1. *ACJ: African Court of Justice*, AFRICAN INTERNATIONAL COURT AND TRIBUNALS, (Nov. 11, 2015), http://www.aict-ctia.org/courts_conti/acj/acj_home.html.
2. *The African Court on Human and People's Rights*, AFRICAN UNION, A UNITED AND STRONG AFRICA, (Nov. 10, 2015), <http://www.au.int/en/organs/cj>.
3. *African Charter at 25: Looking Back to Look Ahead*, AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD, (Nov. 11, 2015), <http://acerwc.org/african-childrens-charter-at-25/>.
4. *Africa: Human Rights "Commissions" Have Little Effect. State-Sponsored Bodies Often Silent On Abuses*, HUMAN RIGHTS WATCH, Nov. 11, 2015, <https://www.hrw.org/news/2001/02/21/africa-human-rights-commissions-have-little-effect>.
5. Alhassan Abubakar v. Ghana, Commc'n No. 103/93, 1, (1996), available at <http://www.achpr.org/communications/decision/103.93/>.
6. Alice Boateng & Rose. Korang-Okrah, *The Predicament Of Rural Urban Migration In Ghana: The Case Of The Visible, But Voiceless Kayayei Girls*, 3 African Journal of Soc. Scis 4. (2013).
7. Alvaro Paul, *Decision-Making Process of the Inter-American Court: An Analysis Prompted By The "In Vitro Fertilization" Case*, 21 ISLA J. INT'L & COMP. L. 1 fn. 2, (2014).
8. *AMUIJ: African Court of Justice*, Instance Judiciaire of the Arab Maghreb Union, AFRICAN INTERNATIONAL COURT AND TRIBUNALS ,(Nov. 11, 2015), http://www.aict-ctia.org/courts_subreg/amu/amu_home.html.
9. Angela Howard, *When the People Decide: A Study of the Independence Movement in Ghana*, in WHEN THE PEOPLE DECIDE: A STUDY OF THE INDEPENDENCE MOVEMENT IN GHANA (1999).
10. Anti-Money Laundering Act, §§ 1-2 (2008).
11. Anuak Justice Council v. Ethiopia, Commc'n No. 299/05, 1 (2006), available at <http://www.achpr.org/communications/decision/299.05/>.
12. Arthur W. Foshay, *The Curriculum Matrix: Transcendence and Mathematics*, 6 JOURNAL OF CURRICULUM & SUPERVISION, (1991).
13. Aspects of Sexual Violence Among the Ga of Accra: Ethnographic Study of Concupiscence in Transition Albert Awedoba and Deborah Atobrah Inst of African, PRESENTATION, (Nov. 11, 2015), <http://slideplayer.com/slide/7295955/>.

14. *AU troops arrive in the Comoros*, BBC WORLD NEWS, (Nov. 10, 2015), <http://news.bbc.co.uk/2/hi/africa/7289318.stm>.
15. Ben Ephson, *Ghana's girl Porters Carry a Heavy Burden*, THE M&G ONLINE, (Nov. 5, 2015), <http://mg.co.za/article/2005-07-31-ghanas-girl-porters-carry-a-heavy-burden>.
16. Beneficiaries of Late Norbert Zongo et al. v. Burkina Faso, Commc'n No. 13/2011, (2104), available at <http://www.african-court.org/en/index.php/component/content/article/22-recent-judgements/596-application-no-013-2011-the-beneficiaries-of-the-late-norbert-zongo-et-al-v-burkina-faso>.
17. BIBIR ANNUAL REPORT, (December 31, 2013).
18. THE BIBLE, (ESV).
19. *Bishop Obinim Sponsors Education of Kayayei*, LOCAL NEWS, (Nov. 10, 2015), <http://news.peacefmonline.com/pages/social/201410/219770.php>.
20. BOKA Melkisedeck Lyamuya, *The Fruitfulness of Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an ACHPR and its Bitter Pill to State Parties*, 1 ABC RESEARCH ALERT, (2013).
21. *Catholic Church Puts Children of Kayayei in School*, NEWS FROM PRINCE APPIAH, (Nov. 10, 2015), <https://princeappiah.wordpress.com/2014/02/17/catholic-church-puts-children-of-kayayei-in-school-in-kumasi/>.
22. *CEMAC: Court of Justice for the Central African Economic and Monetary Community*, AFRICAN INTERNATIONAL COURT AND TRIBUNALS, (Nov. 11, 2015), http://www.aict-ctia.org/courts_subreg/cemac/cemac_home.html.
23. *Chapter 3 The Major Regional Human Rights Instruments And The Mechanism For Their Implementation*, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, (Nov. 10, 2015), <http://www.ohchr.org/Documents/Publications/training9chapter3en.pdf>.
24. CHIARA GIORGETTI, THE RULES, PRACTICE, AND JURISPRUDENCE OF INTERNATIONAL COURTS AND TRIBUNALS, (2012).
25. *COMESA: Court of Justice of the Common Market for Eastern and Southern Africa*, AFRICAN INTERNATIONAL COURT AND TRIBUNALS, (Nov. 11, 2015), http://www.aict-ctia.org/courts_subreg/comesa/comesa_home.html.

26. Commission for Human Rights and Administrative Justice Act 456, Chapter 18 (1993).
27. CONST. of the Republic of Ghana (1992).
28. Constitutional Rights Project v. Nigeria, Commc'n No. 60/91, ¶10 (1995) (holding that a death sentence that could be confirmed or cancelled by the military governor is of non-judicial nature), available at <http://www1.umn.edu/humanrts/africa/comcases/60-91.html>.
29. *The Convention*, CHILD RIGHTS INFORMATION NETWORK, (NOV. 6, 2015), <https://www.crin.org/en/home/rights/convention>.
30. Christa van den Berg, *The Kayayei: survival in the city of Accra*, (2007) (published M.A. Thesis, Univ. of Amsterdam) (on file with International School for Humanities and Social Sciences Univ. of Amsterdam).
31. CLARA OSEI-BOATENG, *A REPORT ON KAYAYEI IN GHANA* (Trade Union Congress, Research Paper, 2012).
32. *Country Narratives: Countries G Through M*, U.S. DEPARTMENT OF STATE, (Nov. 5, 2015), <http://www.state.gov/j/tip/rls/tiprpt/2010/142760.html>.
33. Civil Liberties Organisation v. Nigeria, Commc'n No. 129/94, (1995), available at <http://www1.umn.edu/humanrts/africa/comcases/129-94.html>.
34. Criminal Code (Act 29), §179 C(a)(b) (2003).
35. Cynthia Boakye, *Children's Ministry to send Kayayei Back to School*, Modern Ghana, (Nov. 11, 2015), <http://www.modernghana.com/news/143941/1/childrens-ministry-to-send-kayayei-back-to-school.html>.
36. Dr. Sam K. Asibuo, *The Role of the Commission on Human Rights and Administrative Justice (CHRAJ) in Promoting Public Service Accountability Under Ghana's Fourth Republic* (2003).
37. David Gusongoirye, *Gacaca Courts? Giving Rwandans More Than Justice*, (Nov. 11, 2015), <https://www.globalpolicy.org/component/content/article/163/28332.html>.
38. *Declarations Recognizing the Jurisdiction of the Court of Compulsory*, INTERNATIONAL COURT OF JUSTICE, (Nov. 10, 2015), <http://www.icj-cij.org/jurisdiction/?p1=5&p2=1&p3=3>.
39. *EACJ: Court of Justice of the East African Community*, (Nov. 11, 2015), http://www.aict-ctia.org/courts_subreg/eac/eac_home.html.

40. E. BEAUCHEMIN, *THE GROWING MIGRATION OF CHILDREN FROM GHANA'S RURAL AREAS TO THE URBAN CENTRES*, (1999).
41. *ECOWAS CCJ: Court of Justice of the Economic Community of West African States*, AFRICAN INTERNATIONAL COURT AND TRIBUNALS, (Nov. 11, 2015), http://www.aict-ctia.org/courts_subreg/ecowas/ecowas_home.html.
42. *El Hadj Boubacar Diawara v. Benin*, Commc'n No. 18/88; (1994), available at <http://www.achpr.org/communications/decision/18.88/>.
43. ELIZABETH ARCHAMPONG & JOHN BURKE BAIDOO, *The Treatment of Consent in Sexual Assault Law in Ghana*, (2011).
44. EMMANUEL NII-BOYE QUARSHIE, *PUBLIC'S PERCEPTION OF THE PHENOMENON OF STREET CHILDREN: A QUALITATIVE STUDY OF STUDENTS AND SHOPKEEPERS IN ACCRA, GHANA* (2011).
45. Ernest Harsch, *Closing Ghana's National Poverty Gap*, AFRICA RENEWAL ONLINE UN NEWS CENTER, (Nov. 5, 2015), <http://www.un.org/africarenewal/magazine/october-2008/closing-ghana%e2%80%99s-national-poverty-gap>.
46. EVELYN A. ANKUMAH, *AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS*, (1996).
47. Fadwa El Guindi, *Had This Been Your Face, Would You Leave It as Is?* in *FEMALE CIRCUMCISION: MULTICULTURAL PERSPECTIVES*, 27, 30 (Rogaia Mustafa Abusharaf ed. 2006).
48. *Female genital mutilation*, WORLD HEALTH ORGANIZATION , (Nov. 5, 2015), <http://www.who.int/mediacentre/factsheets/fs241/en/>.
49. *Five Countries to Watch*, THE AFRICAN ECONOMIST, (Nov. 5, 2015). <http://theafricaneconomist.com/five-countries-to-watch/#.vjuayg9owm8>.
50. *Forced and Child Marriage*, STOP VIOLENCE AGAINST WOMEN: A PROJECT OF THE ADVOCATES FOR HUMAN RIGHTS, (Nov. 5, 2015) at http://www.stopvaw.org/forced_and_child_marriage.
51. Free Legal Assistance Group, *Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jéhovah v. Zaïre*, Communications 25/89, 47/90, 56/91, 100/93, 6 (1995), available at <http://www.achpr.org/fr/communications/decision/25.89-47.90-56.91-100.93/>.
52. *Frontier Dispute (Burk. Faso v. Niger)*, 2010 I.C.J. (July 21).
53. G. MAXWELL ET. AL., *URBAN LIVELIHOODS AND FOOD AND NUTRITION SECURITY IN GREATER ACCRA, GHANA* (2000).

54. General Articles on Special and Criminal Courts, GLOBAL POLICY FORUM, <https://www.globalpolicy.org/international-justice/international-criminal-tribunals-and-special-courts/general-articles-on-special-international-criminal-tribunals.html>.
55. *Ghana*, AWARENESS THROUGH DANCE, (Nov. 5, 2015), <http://www.awarenessthroughdance.org/enriching-experiences/ghana-2015/>.
56. *Ghana Government Plans Scholarship for Kayayei*, Ghana News, (Nov. 11, 2015), <http://newsghana.com.gh/ghana-government-plans-scholarship-for-kayayei/>.
57. *Ghana*, INTERNATIONAL CRIMINAL COURT, (Nov. 10, 2015), http://www.icccpi.int/en_menus/asp/states%20parties/african%20states/Pages/ghana.aspx.
58. GHANA STATISTICAL SERVICES, 2010 POPULATION AND HOUSING CENSUS NATIONAL ANALYTICAL REPORT (2013).
59. *Ghana Suspends 22 Judges Over Corruption Scandal*, MADE FOR MINDS, (NOV. 10, 2015), <http://www.dw.com/en/ghana-suspends-22-judges-over-corruption-scandal/a-18704652>.
60. *Ghana Suspends Seven High Court Judges Over Corruption Accusations*, REUTERS, (NOV. 10, 2015), <http://www.reuters.com/article/2015/10/06/us-ghana-judiciary-idUSKCN0S002U20151006>.
61. *Ghana Suspends Seven High Court Judges Over Taking Bribe-Film*, THE TELEGRAPH, (Nov. 10, 2015), <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/ghana/11915763/Ghana-suspends-seven-high-court-judges-over-bribe-taking-film.html>.
62. *Ghana Suspends Top Judges Over Corruption*, MADE FOR MINDS, (Nov. 10, 2015), <http://www.dw.com/en/ghana-suspends-top-judges-over-corruption/a-18765119>.
63. GEORGE MUKUNDI WACHIRA, AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS: TEN YEARS ON AND STILL NO JUSTICE (2008).
64. Helen Kearney, *Ghana's Female Porters Gets Family Planning Advice*, THE GUARDIAN, <http://www.theguardian.com/global-development-professionals-network/2013/nov/22/ghanas-female-porters-get-family-planning-advice>.
65. Human Trafficking Act (2005).
66. JACK DONELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE 138 (2003).

67. International Criminal Court, Rome Statute (1998).
68. Interview with Jones Owusu Yeboah, President of SEWA Foundation, in Accra, Ghana (August 20, 2015).
69. Interview with Joseph Charles Osei, Director of BIBIR-GHANA, in Accra, Ghana (August 19, 2015).
70. Interview with Mr. Addy, Supreme Court of Ghana, Law Librarian (August 27, 2015).
71. Interview with Syliva, Kayayoo, in Accra, Ghana (August 15, 2015).
72. James Adu Opere, *Kayayei: The Women Head Porters of Southern Ghana*, 18 JOURNAL OF SOCIAL DEVELOPMENT IN AFRICA 33 (2004).
73. JEAN-MARIE HENCKAERTS, MASS EXPULSION IN MODERN INTERNATIONAL LAW AND PRACTICE (1995).
74. Jessica Dweck, *The Head Case: The Art & Science of Carrying Things on Your Head*, SLATE, (Sep.16, 2015), http://www.slate.com/articles/news_and_politics/explainer/2010/08/head_case.html.
75. J.Y. Avotri & V. Walters, Ghanaian Women's Accounts of their Work and Their Health, 48 SOC. SCIENCE & MED. 1133 (1999).
76. KATE STONE, AFRICAN COURT OF HUMAN AND PEOPLE'S RIGHTS, (2012).
77. Kenya Human Rights Commission v. Kenya, Communication 135/94, 2 (1995), available at <http://www.achpr.org/communications/decision/135.94/>.
78. Lester Ohemeng, Folk Law and the performance of adjudication: the case of Asantehene's Court in Ghana, (2008) (published MA thesis, University of Warwick) (on file with University of Warwick).
79. *Lifting and Carrying Heavy Loads*, HESPERIAN HEALTH GUIDE, (Nov. 10, 2015), http://en.hesperian.org/hhg/Where_Women_Have_No_Doctor:Lifting_and_Carrying_Heavy_Loads.
80. Lynne Marie Kohm, *Tracing the Foundations of the Best Interest of the Child Standards in American Jurisprudence*, 10 J. L. FAM. STUD. 1 (2008).
81. MARIE CHENE, OVERVIEW OF CORRUPTION IN GHANA, (ed., Robin Hodess 2010).
82. *Migration and Human Rights*, COUNCIL OF EUROPE, (Nov. 11, 2015). http://www.coe.int/t/democracy/migration/bodies/echr_en.asp.

83. *Mission and Vision Statement*, BIBIR, (Nov. 10, 2015), <http://bibir.yolasite.com/mission.php>.
84. *Nana Addo's Promise of Free Hostel to Kayayie Most Insulting-Mahama*, GHANA REPORTERS, (Nov. 11, 2015), <http://ghanareporters.com/2012/10/31/nana-addos-promise-of-free-hostel-to-kayayie-most-insulting-mahama/>.
85. Int'l Labour Convention, C-182-Worst Forms of Child Labour Convention, Nov. 19, 2000.
86. *International Crimes Division*, THE JUDICIARY OF THE REPUBLIC OF UGANDA, (Nov. 11, 2011),
87. http://www.judicature.go.ug/data/smenu/18/International_Crimes_Division.html.
88. *Is Uganda's Judicial System Ready to Prosecute Serious Crimes?*, ICTJ: JUSTICE TRUTH DIGNITY <https://www.ictj.org/news/uganda-kwoyelo-case>.
89. *OHADA CCJA: Court of Justice of the Organization for the Harmonization of African Business Law*, AFRICAN INTERNATIONAL COURT AND TRIBUNALS, (Nov. 11, 2015), http://www.aict-ctia.org/courts_subreg/ohada/ohada_home.html.
90. *On the Language and Development in Africa: The Case of Ghana*, GHANAIAN LANGUAGES, (Nov 5, 2015), <http://www.ghanaweb.com/ghanahomepage/tribes/languages.php>.
91. KATHERINE AHLVIN, *THE BURDEN OF THE KAYAYEI: CULTURAL AND SOCIOECONOMIC DIFFICULTIES FACING FEMALE PORTERS IN AGBOGBLOSHIE* (2012).
92. *Kayayei Numbers Higher Than Anticipated*, GHANA STATISTICAL SERVICES, (Nov. 11, 2015), <http://www.statsghana.gov.gh/docfiles/news/Kayayei.pdf>.
93. KWAMINA B. DICKSON, *A HISTORICAL GEOGRAPHY OF GHANA* (Cambridge U.P.) (1969).
94. Labour Act No. 651 Part I (2003).
95. Lepowura M. N. D. Jawula, *Kayaye In Ghana – A Case Of Policy Failure*, GHANA WEB, (Nov. 11, 2015). <http://mobile.ghanaweb.com/GhanaHomePage/NewsArchive/Kayaye-In-Ghana-A-Case-Of-Policy-Failure-189496>.

96. *Lohé Issa Konaté v. Burkina Faso*, Commc'n 004/2013 1 (2013), available at <http://www.ijrcenter.org/wp-content/uploads/2015/02/Konate-Decision-English.pdf>.

97. Manda Sertich & Marijn Heemskerk, *Ghana's Human Trafficking Act: Successes and Shortcomings in Six Years of Implementation*, 19 HUMAN RIGHTS BRIEFS 1 (2011).

98. *Mandate of the African Commission on Human and Peoples' Rights*, AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, (Nov. 10, 2015), <http://www.achpr.org/about/mandate/>.

99. MAX DU PLESSIS ET. AL, AFRICA AND THE INTERNATIONAL CRIMINAL COURT (2013).

100. Michael Gose, *The African Charter on the Rights and Welfare of the Child - An assessment of the legal value of its substantive provisions by means of a direct comparison to the Convention on the Rights of the Child*, (2002) (published LL.M. thesis, University of the Western Cape) (on file with University of the Western Cape).

101. *Migration and Human Rights*, COUNCIL OF EUROPE, http://www.coe.int/t/democracy/migration/bodies/echr_en.asp.

102. *Montevideo Convention on the Rights and Duties of States*, Dec. 26, 1934.

103. *Northern*, GOVERNMENT OF GHANA, (Nov. 5, 2015), <http://www.ghana.gov.gh/index.php/about-ghana/regions/northern>.

104. OBTAINING AND THE BENEFITS OF OBSERVER STATUS WITH THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS. CENTRE FOR HUMAN RIGHTS. FACULTY OF LAW UNIVERSITY OF PRETORIA. 2 (2008).

105. Organization of African Unity. African Charter on Human and Peoples' Rights, (1986).
106. Organization of African Unity, African Charter on the Rights and Welfare of a Child, 1990.
107. The African Union, Constitutive Act of the African Union, (2000).
108. The African Union, Protocol to the African Charter on Human and Peoples' Rights, (2004).
109. Parliament of Tanzania, Katiba Inayopendekezwa (in Swahili, trans. by Eddie Mutumba) available at http://parliament.go.tz/docs/KATIBA_INAYOPENDEKEZWA_02.10.2014.pdf.
110. *Police Goes After Anas Corrupt Judges*, NEWS GHANA, (Nov. 10, 2015), <http://newsghana.com.gh/police-goes-after-anas-corrupt-judges/>.
111. *Police Service Most Corrupt Institution in Ghana-Report*. GHANA ANTI-CORRUPTION, (Nov. 10, 2015), <http://www.gaccgh.org/news/others/police-service-most-corrupt-institution-in-ghana-report.php>.
112. *Purohit and Moore v. Gambia*, Comme'n No. 241/01, 8 (2003), available at <http://www.achpr.org/communications/decision/241.01/>.
113. *The Purpose of Education*, MARTIN LUTHER KING, JR. & THE GLOBAL JUSTICE FREEDOM STRUGGLE, (Nov. 10, 2015), http://kingencyclopedia.stanford.edu/encyclopedia/documentsentry/doc_470200_000/.
114. *Ratification Table: African Charter on the Rights and Welfare of the Child*, AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGHTS, (Nov. 6, 2015), <http://www.achpr.org/instruments/child/ratification/>.

115. Rencontre Africaine pour la Défense des Droits de l'Homme v. Zambia, Commc'n No. 71/92, (1996), available at <http://www1.umn.edu/humanrts/africa/comcases/71-92.html>.

116. Richard Cornwell, *Madagascar: first test for the African Union*, 12 African Security Review 1, (2003).

117. Rights International v. Nigeria, African Commission on Human and Peoples' Rights, Commc'n No. 215/98, (1999).

118. ROGER GOCKING , THE HISTORY OF GHANA (Greenwood 2005).

119. *SADC: Tribunal of Southern African Development Community*, AFRICAN INTERNATIONAL COURT AND TRIBUNALS, (Nov. 11, 2015), http://www.aict-ctia.org/courts_subreg/sadc/sadc_home.html.

120. SEAN D. MURPHY, THE INTERNATIONAL COURT OF JUSTICE IN THE RULES, PRACTICE, AND JURISPRUDENCE OF INTERNATIONAL COURTS AND TRIBUNALS (2011).

121. S.O. KWANKYE ET AL., INDEPENDENT NORTH-SOUTH CHILD MIGRATION IN GHANA: THE DECISION MAKING PROCESS (2009).

122. *Status of Ratification Interactive Dashboard*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, (Nov 6, 2015), <http://indicators.ohchr.org/>.

123. STEPHEN O KWANKYE ET AL., COPING STRATEGIES OF INDEPENDENT CHILD MIGRANTS FROM NORTHERN GHANA TO SOUTHERN CITIES 8 (2007).

124. SUCCESS STORY ON KAYAYEI PROJECT BEING CARRIED OUT BY BIBIR-GHANA IN NORTHERN REGION AND HISTORY BEHIND “KAYAYEI” IN GHANA, 25, (2013).

125. Tanganyika Law Society and LHRC v. Tanzania, Comm’n No.009/2011 6 (2013), available at <http://www.african-court.org/en/images/documents/case/Judgment%20%20%20Rev%20Christopher%20Mtikila%20v.%20Tanzania.pdf>.

126. *Tulane University. Final Report: Oversight of Public and Private Initiatives to Eliminate the Worst Forms of Child Labor in the Cocoa Sector in Cote d'Ivoire and in Ghana*, PAYSON CENTER FOR INTERNATIONAL DEVELOPMENT AND TECHNOLOGY TRANSFER (Nov. 10, 2015), available at <http://childlabor-payson.org/index.html>.

127. U.N., Convention on the Rights of a Child, (1989).

128. U.N., International Covenant on Civil and Political Rights, Dec. 16, 1966, Gen. Assembly Resolution 2200A (XXI), Preamble.

129. *United Nations: International Law, Courts & Tribunals* UN DOCUMENTATION INTERNATIONAL LAW-RESEARCH GUIDES AT UNITED NATIONS DAGS HAMMARSKJOLD LIBRARY RESEARCH GUIDES, (Nov. 11, 2015), <http://research.un.org/en/docs/law/courts>.

130. UNITED STATES DEPT. OF LABOR, *2013 Findings on the Worst Form of Child Labor*, (2013).

131. Vincent Amanor-Boadu, Jacob Zereyesus, & Jenifer Asiedu-Dartey, *A District Level Analysis of the Prevalence of Poverty in Northern Ghana*, in UNITED STATES AGENCY INTERNATIONAL DEVELOPMENT (USAID) METSS-GHANA RESEARCH AND ISSUE PAPER SERIES (2013).

132. *WAEMU/UEMOA: Court of Justice of the West African Economic and Monetary Union*, AFRICAN INTERNATIONAL COURT AND TRIBUNALS, (Nov. 11, 2015), http://www.aict-ctia.org/courts_subreg/waemu/waemu_home.html.

133. WHAT IS CHILD LABOUR (IPEC), <http://www.ilo.org/ipecc/facts/lang-en/index.htm> (last visited Nov 4, 2015).

134. *What is the Purpose of Education?*, THE ASSOCIATION FOR SUPERVISION AND CURRICULUM DEVELOPMENT, EDUCATIONAL LEADERSHIP, (Nov.10, 2015), http://www.ascd.org/ASCD/pdf/journals/ed_update/eu201207_infographic.pdf.

135. WORLD BANK, REPUBLIC OF GHANA TACKLING POVERTY IN NORTHERN GHANA (2011).

136. THE WORLD FACT BOOK CENTRAL INTELLIGENCE AGENCY, (Nov. 5, 2015), <https://www.cia.gov/library/publications/the-world-factbook/geos/gh.html>.