

# The African Charters

Stories from the Continent



CHILD  
MARRIAGE

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# INTRODUCTION

Good governance and respect for human rights are key requirements for peaceful and sustainable growth. As such, these are also one of the main areas of focus for the African Union (AU) and German development cooperation in Africa.

Since 2004, GIZ has on behalf of the German government assisted and supported the African Union with a portfolio of around 20 supra-regional technical cooperation projects designed to help achieve the declared goals of the AU as laid out in its Agenda 2063.

One such project was the establishment by the heads of state and government of the AU of an African Governance Architecture (AGA) in 2010. Its aim is to connect the various African human rights bodies to enable them, together, to better enforce the human rights instruments, charters and conventions of the African Union.

The AGA programme, commissioned by the German Federal Ministry for Economic Cooperation and Development (BMZ) and implemented by the GIZ, supports this coordinating function since 2014 with technical and financial support.

The AGA structure connects the African human rights bodies with each other, but also enables the institutions to engage with the citizens of the African continent to explain how they can turn to the respective institutions to exercise their rights.

This booklet illustrates an exemplary individual case where a citizen has successfully turned to one of the human rights organs. It is just one of many stories that the AU's human rights bodies are dealing with.



**Hon. Goitseone Nanikie Nkwe**

Chairperson of the African Committee of Experts on the Rights and Welfare of the Child

# THE AFRICAN CHARTERS STORIES FROM THE CONTINENT >> CHILD MARRIAGE <<

The African Charter on the Rights and Welfare of the Child

## Article 2

### Definition of a child

"For the purposes of this Charter, a child means every human being below the age of 18 years."



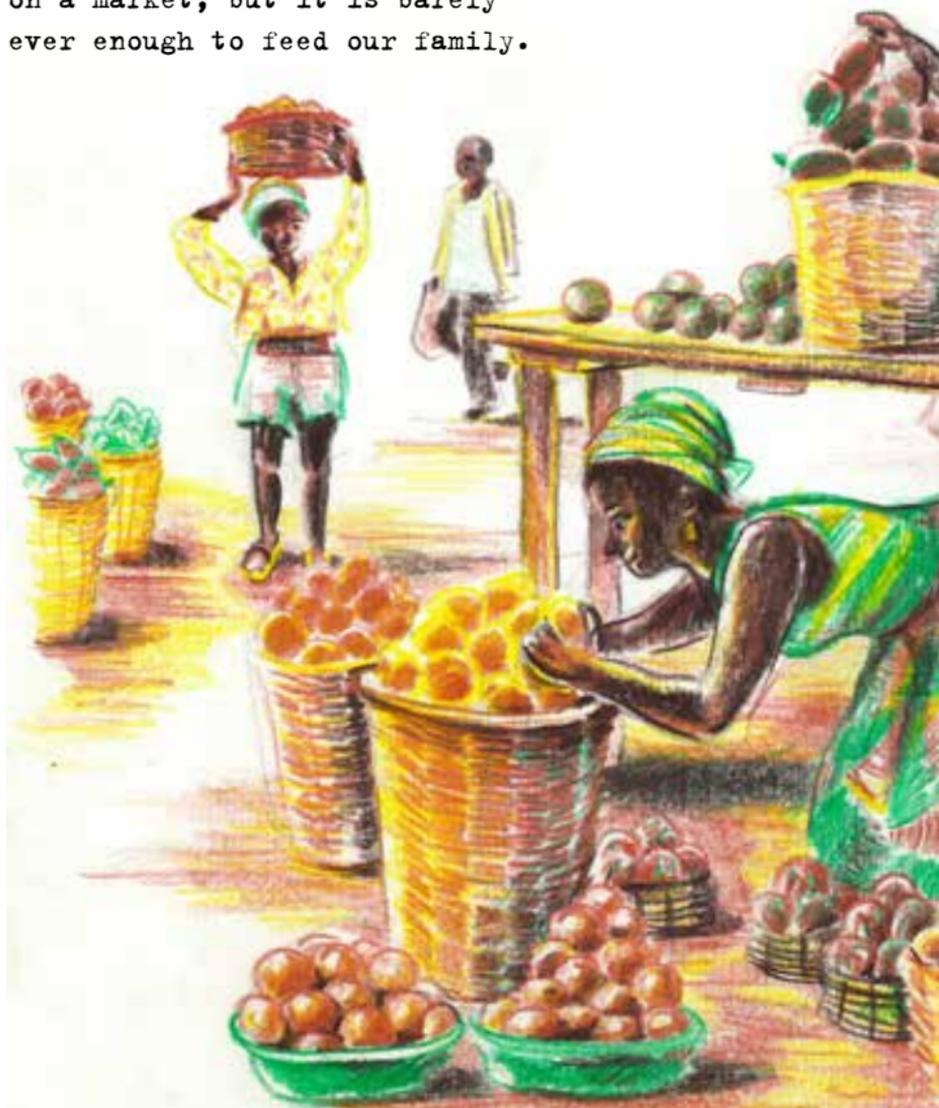
Name: Melina

Age: 16

Location: Dowa, Malawi

Education: Secondary school

I come from a small town in rural Malawi, Africa. My parents try to make a living selling fruits on a market, but it is barely ever enough to feed our family.



I am the oldest daughter and have four siblings. After school, we all help our parents with the daily business.





»ONE DAY MY DAD GOT SICK  
AND WE COULD BARELY  
MAKE A LIVING ANYMORE«

One day, a wealthy farmer from another town whom my parents got to know during market hours laid his eyes on me. I was maybe 13 at the time and didn't know what to do. He was very demanding and persistent, but luckily my mother stepped in every so often to make him stop his behavior.

I got used to his weekly flirting and after a while minded my own business, which was a lot of work anyway. But then one day my dad got sick and even though the whole family stepped in, even my youngest brother (who was only seven at the time) helped out and even quit school, we could barely make a living anymore.

Since I am the oldest girl in the family, my parents finally had no other choice than to agree to the farmers offer to marry me. I was only 15 years old at that time.

As you can imagine I was devastated. Not only was I not able get an education anymore, but I was to marry someone much older whom I had no relation to than disgust. The farmer made it very clear that I would not be seeing my family very often anymore and that I would be forced into giving birth to his children and taking care of his farm on a daily basis. He also would not allow me to go to school anymore.

Although I felt that this was not right and me being far too young to get married, the laws in Malawi at that time made this marriage legally possible.

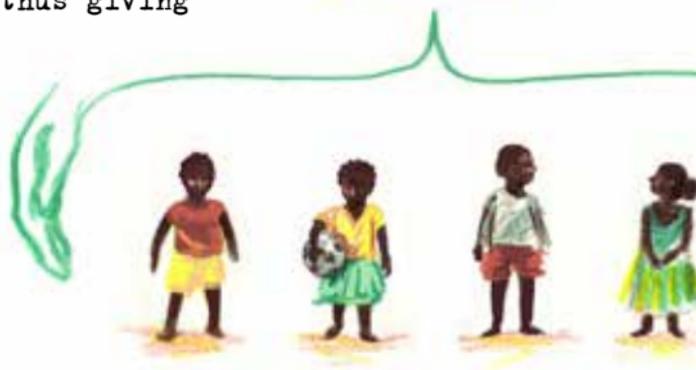


Luckily, someone from an NGO that was working in our area heard of my story and contacted the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), an organ of the African Union tasked with ensuring a sound protection of Children's rights on the entire African continent.

They reached out to the Malawi government with the aim to challenge the Constitution of the Republic of Malawi.

The African Charter on the Rights and Welfare of the Child defines a child as a person "below the age of 18 years", thus giving everyone below 18 years of age the protection as outlined in the Charter.

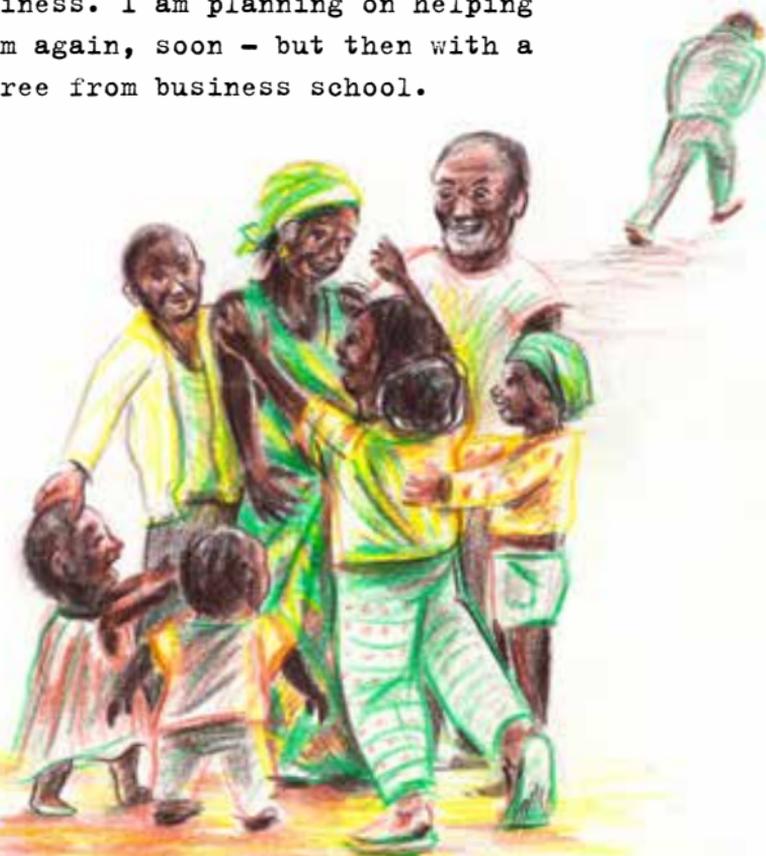
ACERWC



These provisions include fundamental rights, such as the right to education, and important protection provisions, for example from child abuse and from child marriage. Malawi had ratified the African Charter on the Rights and Welfare of the Child many years ago and was therefore bound to it, but the provision in the Malawian Constitution was not complying with the standards set therein.

An amicable settlement was reached. Herein, Malawi committed to amend its Constitution and all other relevant laws to be in compliance with Article 2 of the African Charter. The Malawi Constitution now states that all persons under 18 years are considered "children" and therefore enjoy from all rights and protection laid down in the Charter - including to be spared from early marriage.

My case brought real change to the Malawi Constitution and to my life, too - I was finally able to live my life as a teenager again. I did not have to marry the wealthy farmer. Instead, through the attention this case raised, I was allowed back to school and my parents got into a program that helped them build their own business. I am planning on helping them again, soon - but then with a degree from business school.



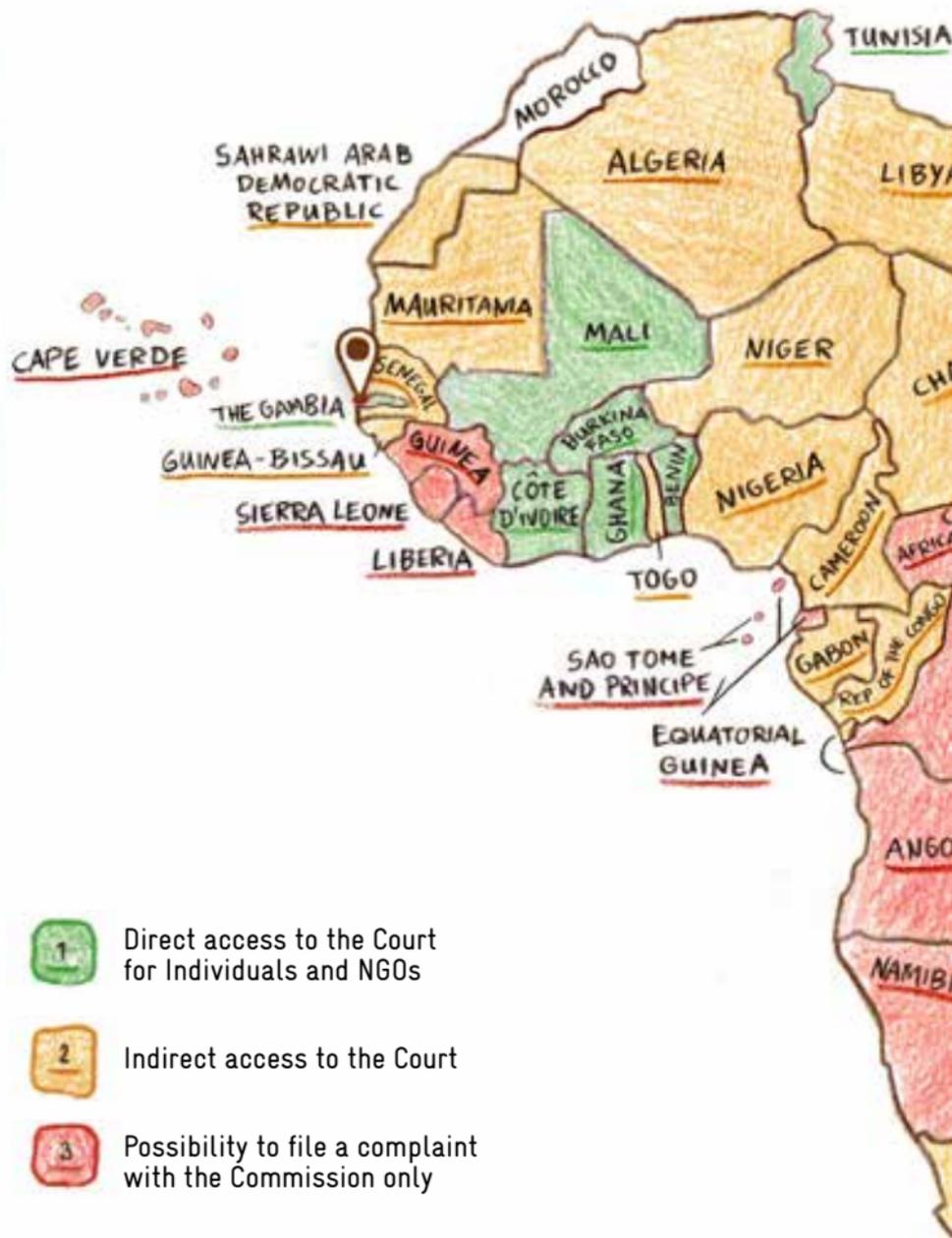
My case shows that the mere possibility of submitting a case at the Human Rights institutions of the African Union can shed light on serious shortcomings Human Rights standards and can bring swift change to the legal framework of the Member states and to the lives of people. The Malawi laws now state a minimum age of 18 years for marriage, removing a provision that had previously allowed marriage from the age of 16 or even 15 with parental consent.

In March 2018, First Lady Gertrude Mutharika urged all Malawians to be part of the resolution to end child marriage and the Malawian government has committed to end child marriage by 2030.

Section 23 of the Malawian Constitution now reads:

**>>CHILDREN SHALL BE PERSONS  
UNDER SIXTEEN  
YEARS OF AGE<<**

**EIGHTEEN**



Direct access to the Court for Individuals and NGOs



Indirect access to the Court



Possibility to file a complaint with the Commission only

The African Commission  
on Human and Peoples' Rights  
(ACHPR) Banjul, The Gambia

The African Committee of Experts  
on the Rights and Welfare of the Child  
(ACERWC) Addis Ababa, Ethiopia

The African Court on Human and  
Peoples' Rights (AfCHPR)  
Arusha, Tanzania



# HAVE YOUR RIGHTS BEEN VIOLATED? TAKE ACTION!

If you feel that your fundamental rights have been violated by state authorities, you can turn to one of the human rights organs of the African Union tasked with protecting your rights on the African continent (see map above).

Both the African Court on Human and Peoples' Rights ("the Court") and the African Commission on Human and Peoples' Rights ("the Commission") can rule on cases regarding the compliance of a state's actions with the provisions of the African Charter on Human and Peoples' Rights. In matters where children's rights have been violated, the African Committee of Experts on the Rights and Welfare of the Child is the responsible institution you can submit a complaint to.

Out of these organs, the Court is the only one that can issue a binding decision and order a state to provide remedies for violations.

The Committee has adopted an own "Agenda 2040 on Fostering an Africa fit for children" to strive towards the effective implementation of the African Children's Charter on the continent.



**Direct access to the Court:** You can submit your case to the Court directly.

**Indirect access to the Court:** You can submit your case to the Commission, from where it can be referred to the Court. This is possible as your state has accepted the jurisdiction of the Court.

**Access to the Commission or the Committee only:** Your State has not accepted the jurisdiction of the Court, but you can file a complaint at the Commission who can then formulate a recommendation regarding your case. In Children's rights related cases, you can address the Committee with a communication or a complaint.

The AU has appointed a Special Rapporteur on Child Marriage and launched an Africa-wide campaign to end child marriage, running from 2019 to 2023. The Economic Community of Western African States (ECOWAS) has also made a political declaration to protect children's rights and prevent child marriage in the region and adopted the ECOWAS Child Policy and its Strategic Action Plan to address the topic at regional level.

For more information  
how to access the different organs,  
please check these websites:

[www.achpr.org](http://www.achpr.org)  
[www.african-court.org](http://www.african-court.org)  
[www.acerwc.africa](http://www.acerwc.africa)

[www.aga-platform.org](http://www.aga-platform.org)  
(about the African Governance Architecture)