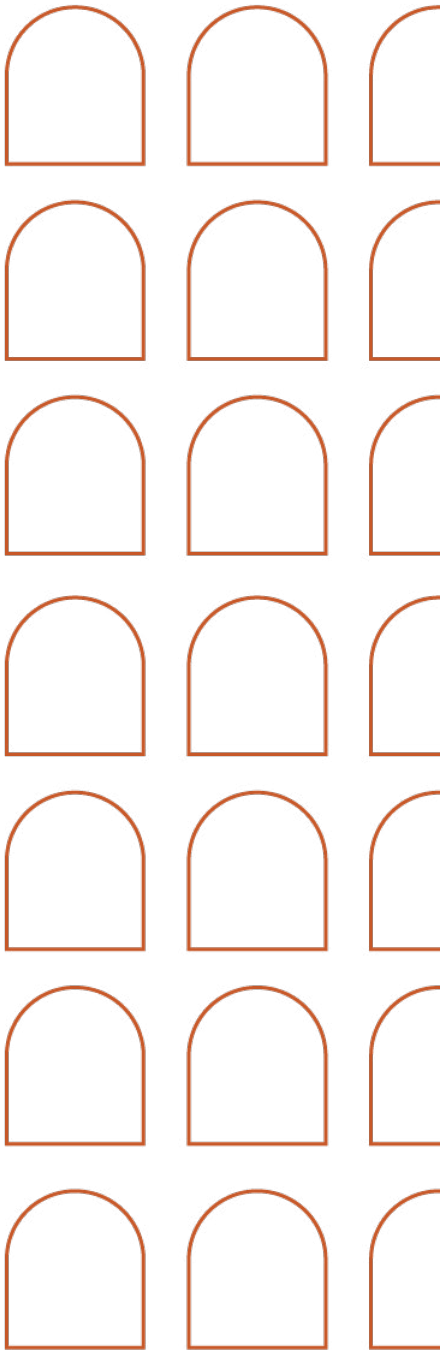
EUI SCHOOL OF TRANSNATIONAL GOVERNANCE



STG Policy Papers

# POLICY ANALYSIS

## CHILDREN'S RIGHT TO HEALTH IN AFRICA: IS RELIGION A FRIEND OR A FOE? ZAMBIA AND NIGERIA CASE STUDIES

**Author:**

Bwalya Chisanga

School of Transnational Governance

ISSUE 2023/21
JULY 2023

EUI SCHOOL OF TRANSNATIONAL GOVERNANCE

## EXECUTIVE SUMMARY

This policy analysis addresses guardian's refusal of consent to a child having a blood transfusion. Blood transfusion remains a critical issue in paediatric healthcare in Sub-Saharan Africa due to anaemia caused by malaria, malnutrition and hereditary anomalies of red blood cells. Denying the requisite consent has potential or actual harmful effects on children's right to health and can be fatal. The paper focuses on the religious subjugation of children's rights, particularly among Jehovah's Witnesses, a Christian religious group comprising a significant population in Africa. Despite having ratified the African Children's Charter and the Convention on the Rights of the Child, Zambia and Nigeria, the case studies in this research, have not implemented sufficient measures and strategies to effectively protect children's right to health. This research argues that the legislation in both states does not efficiently conform with international law on the protection of children's right to health. It recommends among others, increasing health sector funding, enhancing legislation and policies, and building nationwide awareness. The article further highlights the roles of member states, the African Union, Jehovah's Witness leaders, healthcare providers and children in advocating for medical alternatives, navigating complex situations and educating themselves about rights. The paper calls for a multidisciplinary approach to address the transnational challenge posed by the clash between children's right to health and guardians' freedom of religion in Sub-Saharan Africa.

**Author:**

**Bwalya Chisanga |** Young African Policy Leader Fellows (2022-2023), School of Transnational Governance, EUI

## 1. INTRODUCTION

Blood Transfusion remains a critical part of paediatric healthcare in Sub-Saharan Africa because of anaemia due to malaria, malnutrition and hereditary anomalies of red blood cells (Sickle Cell Disease).[1] A guardian denying the necessary consent to a child having a transfusion has potential or actual harmful effects on the child's right to health, and can lead to death. Given the pre-existing challenges underlying children's healthcare in Sub-Saharan Africa, including the lack of access to bloodless surgery options, religion-based subjugation of children's rights entrenches the vulnerability of their right to health. At least 60% of Africa's population is Christian.[2] Meanwhile, nearly half of the global population of Jehovah's Witnesses of over 8.6 million[3] live in Africa. Nigeria and Zambia, the case studies in this research, rank4th and 9th globally respectively among the highest national populations of Jehovah's Witnesses.[4]

Among the fundamental beliefs of Jehovah's Witnesses, is an explicit proscription of blood, in particular a prohibition of accepting whole blood or its primary components in any form. Having ratified the African Children's Charter and the Convention on the Rights of the Child (CRC), by virtue of their respective Articles 14 and 24 both Zambia and Nigeria are bound to ensure that children enjoy the best and highest attainable standard of health by inter alia implementing measures and strategies to enable full realisation of their right to health. Zambia and Nigeria have introduced legislative measures domesticating child-right-specific legislation, the Children's Code Act No.12 of 2022 (Children's Code Act) and Nigerian Child's Right Act No. 26 2003 (Child's Right Act) respectively, to ratify the above treaties.

This policy analysis argues that, like most African countries, Zambia and Nigeria have neither implemented sufficient measures and strategies nor enacted appropriate legislation to effectively protect children's right to health. Taking into account Africa's religious and socio-economic contexts, this is particularly important. This paper also argues that although Zambia and Nigeria have enacted the Children's Code Act and the Child's Right Act respectively, neither legislation efficiently conforms with international law on the protection of children's right to health. The analysis further argues that these states have not implemented effective measures to address the specific religious and socio-economic context in Sub-Saharan Africa, as well as the vulnerability of children. As a result, violations of children's right to health have been perpetuated in favour of guardians' freedom of religion.

Based on these arguments, this analysis recommends *inter alia* that these states increase the funding of their health sectors to provide capacity for the employment of medical alternatives to blood transfusion. Furthermore, it recommends that the African Union (AU) must enhance state reporting requirements on progress made by member states to ensure the protection of children's right to health from religion-based violations. Furthermore, the analysis recommends that the Regional Economic Communities (RECs) should leverage their strategic position to increase awareness and promote policies and guidelines focused on safeguarding children's right to health. This is particularly important because the health sector plays a crucial role in the public policy functions of the RECs. The study also provides recommendations for strategic United Nations agencies (UNICEF and the World Health Organisation) and the primary stakeholders (Jehovah's Witness leaders, children and healthcare providers).

## 2. AN OVERVIEW: THE STATE OF HEALTHCARE AND TRANSFUSIONS FOR CHILDREN IN AFRICA

Many factors, including poverty, lack of access to healthcare services and low expenditure on

1 Sawadogo, S., Nébié, K., Millogo, T. & Kafando, E. "Blood transfusion requirements among children with severe malarial anemia: a cross-sectional study in a second level reference hospital in Burkina Faso." Pan African Medical Journal, vol. 37, 2020, article no. 108, doi: 10.11604/pamj.2020.37.108.22384.

2 Statista. "Share of Christian Population in Africa by Country in 2020." Statista, Statista Inc., 2021, www.statista.com/statistics/1239389/share-of-christian-population-in-africa-by-country/.

3 Watch Tower Bible and Tract Society of Pennsylvania. "How Many Jehovah's Witnesses Are There Worldwide?" JW.ORG, 2022, www.jw.org/en/jehovahs-witnesses/faq/how-many-jw/.

4 WorldAtlas. "Countries with the Largest Jehovah's Witness Populations." WorldAtlas, 16 March 2021, www.worldatlas.com/articles/countries-with-the-largest-jehovah-s-witness-populations.html.

**Figure 1**

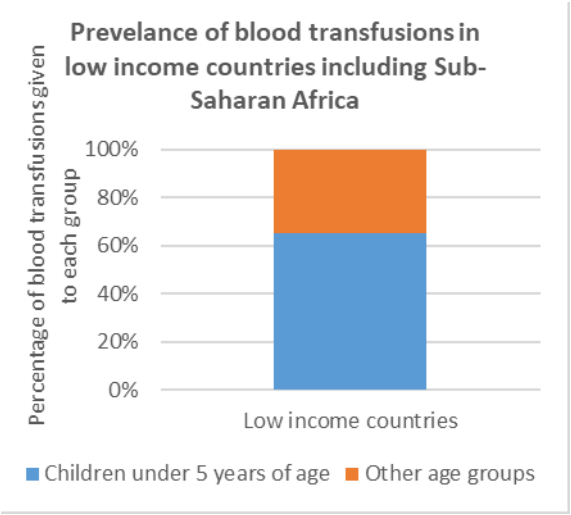
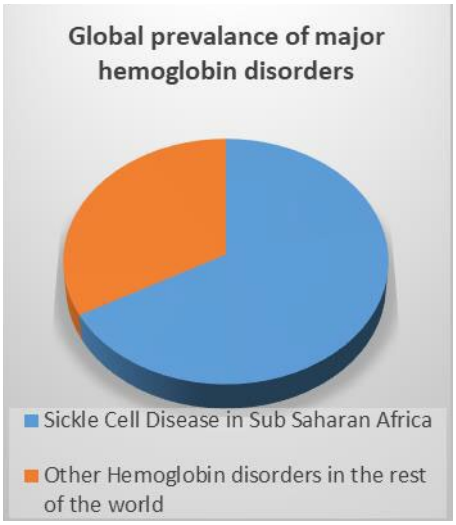



**Figure 2**




**Source:** Author

health, entrench the vulnerability of children's rights in Africa. For instance, Africa carries 25% of the world's disease burden[5] but manufactures less than 2% of the medicines consumed on the continent. Meanwhile, it has the lowest doctor to patient ratio,[6] with an average of 1.55 health workers for 1000 patients. This is evidence of the poor state of the existing healthcare systems. In these circumstances, children remain the most vulnerable because the protection of their right to health is largely dependent on their caregivers and guardians. This includes the need for guardians to ensure that children receive medical care when the need arises and to legally provide consent for various medical procedures.

The need for blood transfusions frequently arises in children's healthcare provision. Particularly in low-income countries, up to 65% of transfusions are for children under the age of 5, most of which are to treat severe childhood anaemia (illustration in Figure 1, above).[7] Denying consent for blood transfusions presents a particular challenge in Africa, particularly because the need for these procedures arises frequently to treat Sickle Cell Disease (SCD), a prevalent disease affecting children in Africa.

## 3. THE PREVALENCE OF BLOOD TRANSFUSIONS AND SICKLE CELL DISEASE IN SUB-SAHARAN AFRICA

The World Health Organisation (WHO) reports that two-thirds of global births with major haemoglobin disorders are cases of SCD in Africa (illustration in Figure 2 above).[8] Moreover, the need for blood transfusions arises in children's healthcare to treat injuries from accidents, thalassemia, aplastic anaemia and other illnesses due to disease-modifying treatments, such as chemotherapy for cancer.[9]

## 4. JEHOVAH'S WITNESS RELIGIOUS DOCTRINES

Both Zambia and Nigeria have ratified the African Charter on Human and Peoples' Rights, the Article 8 of which guarantees free practice of religion. Accordingly, these states have implemented this ratification by guaranteeing the protection of religious practice in their supreme laws: Zambia's Constitution, Article

5 UN News. "Health-care Commitments in Action." Africa Renewal, vol. 30, no. 4, Dec. 2016 - Mar. 2017, www.un.org/africarenewal/magazine/december-2016-march-2017/health-care-commitments-action.

6 World Health Organization Regional Office for Africa. "Chronic Staff Shortfalls Stifle Africa's Health Systems: WHO Study." Afro WHO, World Health Organization Regional Office for Africa, 16 Jan. 2017, www.afro.who.int/news/chronic-staff-shortfalls-stifle-africas-health-systems-who-study.

7 World Health Organization Regional Office for Africa. "Blood Safety." Afro WHO, World Health Organization Regional Office for Africa, www.afro.who.int/health-topics/blood-safety.

8 World Health Organization. "Availability, Safety and Quality of Blood Products." Sixty-Ninth World Health Assembly, 23 May 2016, apps.who.int/gb/ebwha/pdf_files/WHA59/A59_9-en.pdf.

9 Yale Medicine. "Blood Transfusions for Children." Yale Medicine, Yale School of Medicine, 2022, www.yalemedicine.org/conditions/child-blood-transfusions.

19; and Nigeria's Constitution, Article 38(1). Therefore, like other religious groups, Jehovah's Witnesses have the right to practise their religion in accordance with their doctrines. Their refusal of blood transfusions is based on several theories advanced by both themselves and non-Jehovah's Witnesses, including medical personnel and institutions. Jehovah's Witnesses believe that although there are valid medical reasons for avoiding transfusions, the most important is God's command to abstain because blood represents what is sacred to Him.[10] In this regard, reference is made to various Bible scriptures including Acts chapter 15, verse 20 and 28-29, Colossians chapter 1 verse 20, Genesis chapter 9 verse 4 and Leviticus chapter 17 verses 1o-14.

The above scriptures form the fundamental basis for the Jehovah's Witnesses' proscription of blood. They hold that all issues concerning blood are religious rather than medical.[11] Furthermore, avoiding blood is not only in obedience to God but also in respect for Him as the giver of life.[12] Nevertheless, it has been argued that blood proscription only came into practice about eight decades ago, since it was not until 1945 that the Watch Tower Bible and Tract Society concluded that blood transfusions are contrary to divine law.[13] It has also been argued that the above scriptures speak of the ingestion of blood as food and that the sole basis for treating food and transfusions as equal is an article dated 1 July 1951 published in the 'The Watch Tower' magazine.[14] However, Jehovah's Witnesses primarily rely on their interpretation of Bible scriptures as the basis for their refusal to consent to transfusions. Accordingly, they are inclined to deny consent for transfusions for their children, even in life-threatening circumstances.

## 5. THE OBLIGATIONS OF ZAMBIA AND NIGERIA: THE POSITION IN INTERNATIONAL LAW

Zambia ratified the CRC and the African Children's Charter on 6 December 1991 and 2 December 2008 respectively. Similarly, Nigeria ratified the CRC and the African Children's Charter on 19 April 1991 and 23 July 2001. Hence, both states are bound by these treaties and have an obligation to implement measures for the full realisation of the rights provided therein. According to Article 24 of the CRC and Article 14 of the African Children's Charter, children have the right to enjoy the highest and best attainable standard of health. The Articles 2 of both treaties espouse the state's primary duty to ensure the full implementation of children's right to health and outline the specific measures that need to be taken in this regard. Pivotal to the effective implementation and application of the treaties, are the General Comments adopted by the treaty committees, which are discussed below.

### 5.1 The Convention on the Rights of the Child

The UN Committee on the Rights of the Child (the UN Committee) in its General Comment 15 interprets Article 24 of the CRC as an inclusive right concerning timely and appropriate prevention and health promotion. The Committee establishes the importance of approaching children's health from a child rights perspective and identifies several premises and principles necessary to realise children's right to health.[15] In particular, the Best Interest of the Child Principle in Article 3 of the CRC must be observed in all health-related decisions concerning individual children, after having heard their views in accordance with Article 12 of the CRC.[16] Furthermore, this right to be heard includes children's entitlement to have their views heard on all aspects of health provision, including what treatments they need.[17] The Committee advises that the right to health includes children's evolving capacity which affects their independent decision-making on health issues. The Committee also emphasises

10 Watch Tower Bible and Tract Society of Pennsylvania, "What Does the Bible Say About Blood Transfusions?" JW.ORG, 2022, www.jw.org/en/bible-teachings/questions/bible-about-blood-transfusion/.
11 As above, n. 11.
12 As above.
13 Stewart, Benjamin T. and John D. Banja. "The Ethics of Refusal of Blood Transfusion by Jehovah's Witnesses: Part 1." Journal of Clinical Ethics, vol. 24, no. 4, 2013, pp. 316-324. PubMed Central, doi: 10.1007/s10877-013-9437-3.
14 As above.
15 UN Committee on the Rights of the Child (CRC), "General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)" 17 April 2013, CRC/C/GC/15, available at: https://www.refworld.org/docid/51ef9e134.html [accessed 8 March 2023]
16 As above.
17 As above.

that the right to health encompasses children's right to life, survival and development as per Article 6 of the CRC, which cites many underlying risks and protective factors that need to be systematically identified.

### 5.2 The African Children's Charter

Under Article 9 of the African Children's Charter, children have the right to freedom of religion while guardians have a duty to provide guidance and direction in the exercise of this right considering their best interests. Meanwhile, the state is obliged to respect this duty of guardians. This forms the basis of the provisions on religion in the treaty, which is subject to national law and policies. The treaty enables the supremacy and application of laws protecting children's right to health when the guidance and religious practices of guardians are detrimental to the health of the child. Furthermore, Article 21 obliges states to take all appropriate measures to eliminate harmful social and cultural practices affecting the development of children, including customs and practices prejudicial to their health or lives.

The African Committee of Experts on the Rights of the Child (Committee of Experts) in their General Comment no 5 on Article 1 explain state party obligations and systems strengthening child protection under the African Children's Charter. The Committee of Experts lay out the meaning and scope of Article 1, which contains the "essence of the implementation obligation for member states, considering regional specificities, good practice and matters of particular concern as regards the fulfilment of children's rights in Africa."[18] Accordingly, the overarching state obligation is to ensure fulfilment of all rights envisaged in the Charter for all children in the state parties. The Committee of Experts advise that legislative measures relating to aspects of children's health needs and to policy imperatives are necessary in the health sector and integral to the implementation obligation.[19] Importantly, the obligation to provide access to primary health care and all related matters should be legally encapsulated and be enforceable against states. The Committee of Experts further reiterate the need to review and update health-related laws and policies so that they remain relevant and provide maximum protection to children's right to health. Furthermore, according to Aspiration 4 of Africa's Agenda for Children 2040 which elaborates on Africa's Agenda 2063 with respect to children, it is a state duty to ensure that every child survives and has a healthy childhood.

Additionally, the UN Committee in its General Comment no. 15 establishes the importance of approaching children's health from a child's rights perspective.[20] In doing so, it identifies several premises and principles necessary to realise children's right to health. Four of these are relevant to this policy analysis. First is the Principle of the Best Interests of the Child, which must be observed in all health-related decisions concerning individual children after having heard their views according to Article 12 of the CRC. Second, is the right to be heard, which includes children's entitlement to have their views heard on all aspects of health provisions, including what treatments they need and the attitudes of health professionals. Third, is the evolving capacity and the life course of the child, which recognises that children's evolving capacities affect their independent decision-making on health issues. The UN Committee also notes that there are often inconsistencies about children's autonomous decision-making. Last, is the right to life, survival and development, which includes many underlying risks and protective factors that need to be systematically identified to devise pragmatic interventions based on evidence during the life course.

## 6. THE STATUS OF IMPLEMENTATION OF INTERNATIONAL LAW ON THE PROTECTION OF CHILDREN'S RIGHT TO HEALTH

### 6.1 Zambia

There are currently, 215,382 Jehovah's

18 African Committee of Experts on the Rights and Welfare of the Child. "General Comment on State Party Obligations Under ACRWC (Article 1) & Systems Strengthening Child Protection." African Union, September 2022, https://www.acerwc.africa/sites/default/files/202209/GENERAL_COMMENT_ON_STATE_PARTY_OBLIGATIONS_UNDER_ACRWC_%28ARTICLE%201%29_%26_SYSTEMS_STRENGTHENING_CHILD_PROTECTION_0.pdf.

19 As above

20 UN Committee on the Rights of the Child (CRC), "General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)" 17 April 2013, CRC/C/GC/15, available at: https://www.refworld.org/docid/51ef9e134.html [accessed 8 March 2023]

Witnesses in Zambia.[21] Children's right to health is indirectly provided for in the Bill of Rights of the Constitution of Zambia under the right to life. Notably, Zambia recently adopted its first-ever codified children's rights law on 24 August 2022 called the Children's Code Act, which *inter alia* clarifies various rights and protections for children. Section 3 provides that the child's best interests is the primary consideration in all matters affecting the child. Meanwhile, section 11 of the Act provides for children's right to health and medical care, and provides that this responsibility rests on parents, those with parental responsibility and the State.

Section 167 of the Act provides some protection of children's right to health against religion-based violation. In particular, the state is obliged to offer protection if: a child is prevented from receiving basic services; is likely to be subjected to customs and practices prejudicial to their health; and is exposed to any circumstances likely to interfere with the child's physical, mental or social development. Further, section 168 provides for children in need of care and protection to be conveyed to a place to stay, which includes the child's birth family, foster care and "places of safety." Section 169 provides proceedings for children in need of care and protection in which applications are to be made to the court within 48 hours of a child being taken to a place of safety. Under section 172 of the Act, authorised officers are mandated to take children to places of safety to receive appropriate care. Furthermore, any person with responsibility for a child who exposes the child to physical health injury is liable to be convicted of an offence bearing a custodial sentence, the payment of a fine or both. The Act reiterates the importance of religion in deciding the affairs of a child in need. This is evidenced under section 187, which provides that children are to be put in foster care with people of the same religion.

Medical professionals are obligated to respect the refusal of consent for blood transfusions made by adult Jehovah's Witnesses, even in life-threatening situations. However, when it comes to children in similar circumstances, the position remains unclear. In order to challenge the denial of consent, healthcare facilities or disagreeing guardians have resorted to seeking court orders to authorize the use of blood products. For instance, in November 2015, the High Court for Zambia, in the case of Monze Muyeka v Miniva Nakamba 2015/HP/0974, overturned the decision of a guardian who refused consent for a necessary blood transfusion for her child with SCD based on religious beliefs. This decision, based on a children's rights-based approach, is binding on lower courts and highlights the crucial role of the court in protecting children's right to health. However, relying solely on the court as the main arbitrator in disputes arising from the denial of consent for children's blood transfusions is both impractical and ineffective. This is because blood transfusions are often needed in emergency situations, while obtaining court orders in Zambia is rarely an immediate process. The complex legal procedures and associated costs further impede the timely provision of life-saving healthcare for children in Zambia, thereby violating their right to health and the principles discussed earlier.

### 6.2 Nigeria

There are currently 389,961 Jehovah's Witnesses in Nigeria.[22] Section 38 of the Nigerian Constitution 1999 provides for the right to freedom of religion for all persons. The Child Rights Act provides and protects the rights of Nigerian children. Notably, 31 Nigerian states have enacted the Child Rights Act while five states have not.[23] Section 1 of the Act provides that the best interest of the child is to be the paramount consideration in all actions, Meanwhile, section 13 of the Act provides for children's right to health and health services, and replicates Article 14 of the African Children's Charter. In its Part IV, the Act provides for the protection of children. In particular, section 41(1) provides that

"Any appropriate authority may apply to the Court for a child assessment order with respect to a child and the Court may make the

21 Watch Tower Bible and Tract Society of Pennsylvania "Zambia." JW.ORG, 2023 www.jw.org/en/jehovahs-witnesses/worldwide/ZM/.
22 Watch Tower Bible and Tract Society of Pennsylvania. "Nigeria." JW.ORG, 2023, www.jw.org/en/jehovahs-witnesses/worldwide/NG/.
23 Tribune Online "Five states yet to domesticate Child Rights Act in Nigeria UNICEF" African Newspapers of Nigeria, 8 August 2022, https://tribuneonlineng.com/five-states-yet-to-domesticate-child-rights-act-in-nigeria-%E2%80%95-unicef/#:~:text=The%20United%20Nations%20International%20Children,%2C%20Gombe%2C%20Kano%20and%20Zamfara.

order if it is satisfied that (a) the applicant has reasonable cause to suspect that the child is suffering, or likely to suffer, significant harm; (b) an assessment of the state of the health or development of the child or of the way in which the child has been treated, is required to enable the applicant to determine whether or not the child is suffering, or is likely to suffer, significant harm; and (c) it is unlikely that such assessment will be made, or be satisfactory, in the absence of an order under this section."

Furthermore, part XV, section 171 provides for the duty of the state to promote the welfare of children if the health of a child is likely to be "significantly" impaired without the provision. By not defining the word 'significantly' this provision not only creates an ambiguity, but also implies that there is an acceptable standard to which children's healthcare can be impaired before the state can assume its role of promoting and protecting the welfare of the child. This is contrary to the international norms on children by which Nigeria is bound.

As in the case of Zambia, the Supreme Court of Nigeria recently upheld the overturning of a decision of the lower courts in the case of *Tega Esabunor & Anor. v Dr Tunde Faweya & 4 Ors. (2022) AAER - 74 (SC)*. In this case, a parent had denied consent for her child's blood transfusion on the basis of her being a Jehovah's Witness.[24] The court held inter alia that when a competent parent refuses a blood transfusion or medical treatment for her child on religious grounds, the Court should step in, consider the child's welfare, in particular the life and best interest of the child, before a decision is taken. It was further held that these considerations outweigh religious beliefs, including those of Jehovah Witnesses, and that it would amount to a great injustice to the child if the Court stood by and watched the child being denied basic treatment to save his life based on a religious conviction of their parent. The consideration to save the child's life by means of a blood transfusion greatly outweighed whatever religious beliefs one may hold, especially when the patient is a child.

## 7. ANALYSIS

Children's right to health in Africa remains in a precarious situation. The prevalence of poor healthcare systems and inadequate personnel means that alternatives to transfusions are inaccessible, if at all there are healthcare facilities. Furthermore, denial of consent for transfusions has often been challenged before relevant authorities by medical personnel or opposing guardians, as discussed abo. However, the critical shortage of medical personnel means that there is seldom time, or resources, to invoke these processes. Moreover, the high number of SCD cases – a largely African problem – creates a frequent need for transfusions. These factors, coupled with widespread religion and its accompanying practices all converge to the disadvantage of children's right to health. Therefore, enactment of children's rights legislation is but only a small fraction of the measures needed to protect children's right to health.

Generally, both Zambia and Nigeria have progressive legislation that aims to provide state protection for children who may be subjected to harmful practices affecting their health. These laws also outline procedures for court proceedings in cases involving such children. However, rather than focusing on restoring children's health, it is crucial to prioritize their protection by preventing any violations from occurring in the first place. Unfortunately, given the urgent nature of medical situations that require blood transfusions, the existing legislation in both countries is insufficient in effectively safeguarding children's right to health against violations based on religious beliefs. Additionally, although judicial decisions are generally binding on lower courts, the need to obtain court orders persists on a case-by-case basis. Challenges arise due to the complexity of legal processes, the unavailability of court officials, and the cost implications of obtaining legal representation, whereas blood transfusions are mostly required in emergency situations. While the Zambian Act is progressive by providing punishment for neglecting a child's healthcare, this alone does not adequately protect children's right to health as it comes into effect only after a

24 Hbriefs, "Esabunor, Tega & Anor v Dr. Tunde Faweya & Ors (2019) [HC.16B/2019], High Court of Justice, Delta State." Hbriefs, 10 July 2019, hbriefs.com/sc/tega-esabunor-anor-v-dr-tunde-faweya-ors-2019/

violation has already occurred, leading to a worsening of the child's medical condition and, in some cases, even fatalities. Judicial measures cannot and should not solely rely on post facto protection for children's right to health against potential or harmful religious practices. Furthermore, although the Best Interest of the Child Principle is included in both Acts, it fails to fully address the challenges in protecting children's right to health from violations based on religious beliefs. For instance, it does not provide medical personnel with adequate guidance when they encounter potential violations arising from the denial of consent solely on religious grounds.

## 8. WHAT NEXT, THEN?

The clash between children's right to health and the guardian's freedom of religion stretches beyond Zambia and Nigeria, as it is a transnational challenge. In Sub-Saharan countries, the socio-economic contexts entrench the vulnerability of children's right to health, given their dependency on intermediaries for the protection of their rights. Refusal of consent for blood transfusions by Jehovah's Witness guardians based on religious grounds is a complex issue that requires careful consideration and a multidisciplinary approach. The following institutions and organs can upscale the protection of children's right to health in their respective contexts and mandates:

**i) AU member states:** The primary duty to protect children's right to health rests on the respective governments in the AU member states. As ratifiers of not only the UN's CRC but also the African Children's Charter, member states are obliged to ensure the implementation of all measures necessary for the protection of children's right to health, even from religion-based violations by guardians refusing consent for medical treatment. This includes:

*Investing in children's healthcare:* Almost all Sub-Saharan African states have failed to meet their commitments under the Abuja Declaration, in which they pledged to allocate no less than 15% of their annual budgets to improving the health sector. This has negatively impacted the protection of children's right to health. For instance, only 10.4% was allocated to health Zambia's 2023 national budget,[25] while only 5.75% of Nigeria's 2023 total budget is allocated to health.[26] Increased funding of the healthcare sector will enable provision of medical treatments alternative to blood transfusions that do not violate guardians' religious beliefs. There are various alternatives to blood transfusions used in developed countries which have generally been acceptable to Jehovah's Witnesses, including tranexamic acid, prothrombin complex concentrate and fibrin glue.[27]

Meanwhile, it is imperative that all the other possible measures needed to protect children's right to health listed below are employed.

*Enhance legislation and policy on children's right to health.* Both Zambia's and Nigeria's children's rights Acts offer protection of children's right to health in retrospect, in religion-based violations due to denial of consent for transfusions. Accordingly, there is a need to make amendments to the laws to clearly provide steps and measures for healthcare providers, guardians and children in situations where conflicts arise between children's right to health and guardians' religious freedom. When the child's health and well-being are likely to be negatively impacted and there are no available alternatives to blood transfusions while guardians still withhold the necessary consent, healthcare providers must be accorded temporary guardianship to protect the child's health without having to obtain court orders, where these are unavailable. Therefore, the Acts must not only criminalise acts or omissions by guardians which hinder the fulfilment of the healthcare providers' duty to protect children's right to health, but

25 UNDP. (2022). An Analytical Brief of the 2023 Social Sector Budget. Retrieved from https://www.undp.org/sites/g/files/zskgke326/files/2022-11/An%20Analytical%20Brief%20of%20the%202023%20Social%20Sector%20Budget.pdf

26 Premium Times. (2022, November 28). 2023 Budget: Health Gets Highest Allocation Ever but Fails to Meet AU Commitment. Premium Times Nigeria. Retrieved from https://www.premiumtimesng.com/news/headlines/559213-2023-budget-health-gets-highest-allocation-ever-but-fails-to-meet-au-commitment.html?tztc=1

27 Gore, M. A. & Tewari, S. C. (2021). Blood transfusion and alternatives in Jehovah's Witnesses. Current Opinion in Anesthesiology, 34(2), 222-228. doi: 10.1097/ACO.0000000000000946

also omissions by healthcare providers to act in their capacity as temporary guardians for the purpose of protecting children's right to health. It will also be helpful to deploy social workers and law enforcement officers trained in children's rights into healthcare institutions with the purpose of ensuring efficacy in the implementation of these measures necessary to protect children's right to health.

*Build nationwide awareness.* Member states should complement education with counselling for guardians about the potential consequences of them refusing to consent on children's right to health and the legal implications of them. This will improve guardians' decision-making in the context of the best interests of the child. Additionally, member states should conduct continual monitoring and investigation of cases to assess factors, trends and issues underlying guardians' refusal of consent which risks the health and ultimately the lives of children. This will help ensure that pragmatic and appropriate action is taken to safeguard their health and well-being. Furthermore, member states should ensure that they take measures to establish robust, effective and functioning child protection agencies, including law enforcement institutions.

### ii) The African Union

The Committee of Experts, an organ of the African Union, has so far provided substantive guidance on the protection of children's right to health in its General Comments numbers 5 and 15. However, due to conflicts between the protection of children's right to health and guardians' freedom of religion, violations of children's right to health persist. Therefore, the Committee of Experts needs to strengthen its role, in line with its mandate by:

*Facilitating Legal and Policy Analyses.* By enhancing state reporting requirements, the Committee of Experts must monitor and record the progress made by member states on children's right to health protection from religion-based violations. This information will be useful to conduct legal and policy analyses to determine the extent to which the right to health is protected in member states, and to identify any gaps in existing laws and policies. In turn, this will help to inform advocacy efforts and guide the development of new laws and policies to protect the right to health of children.

*Raising Awareness:* The Committee of Experts, with its strategic role and mandate as an organ of the African Union, must utilise its links and proximity to member states to improve awareness of the need to ensure the non-subjugation of children's right to health. Considering the dependence of the right to life, as the enabling right, on this right, it is necessary to engage member states, through their Ministries of Health, Religion, Education and Child Protection to create awareness through advocacy campaigns with extensive stakeholder engagement of the importance of protecting children's right to health, even with blood transfusions, when there are no other medical options available.

### iii) Regional Economic Communities (RECs)

In their capacities as groupings of African states, RECs aim to facilitate regional economic integration between member states.[28] The health sector is a key component of the public policy functions of most of the RECs.[29] Therefore, by complementing the efforts of the Committee of Experts and member states, RECs can use their influence to raise awareness of the importance of protecting children's right to health, including their right to access life-saving medical interventions. They can also advocate for policies and guidelines prioritising children's health and well-being. Furthermore, RECs can provide training and capacity-building programmes for healthcare providers to ensure they are equipped to navigate the ethical and legal considerations of providing medical treatment to children whose guardians refuse consent based solely on religious beliefs. RECs can also monitor, report and collaborate with other stakeholders, including government ministries, religious leaders and healthcare providers, to devise pragmatic solutions respecting the rights of the child while also accommodating the beliefs and practices of

28 Integrate Africa. (n.d.). Regional Economic Communities. Retrieved from https://www.integrate-africa.org/rankings/regional-economic-communities/

29 Agne, R. & Dieye, A. M. (2020). The impact of financial development on economic growth in Africa: Evidence from panel data analysis. Journal of Economic and Financial Sciences, 13(1), 1-10. doi: 10.4102/jef.v13i1.478

their guardians, considering that the former must be given precedence when conflicts arise.

### iv) United Nations Agencies

*The United Nations International Children's Emergency Fund (UNICEF).* In accordance with its mandate to promote and protect the rights of children worldwide, including the right to health, UNICEF must utilise its strategic position, resources and global platform to raise awareness of the importance of the right to health of children. It can raise awareness of the detrimental effects of denying medical treatment, such as blood transfusions, on the basis of religious beliefs. Furthermore, UNICEF can work with local health authorities to ensure that health professionals are trained to recognise situations where a child's right to health may be at risk and to take appropriate actions to protect the child's well-being. Additionally, it can provide local support, engagement and stakeholder-mapping with Jehovah's Witness leaders and families to discuss the prioritisation of children's health, while upholding the guardian's freedom of religion. Meanwhile, UNICEF can partner with national and international legal bodies to promote laws and policies which protect children's right to health, while providing guidance to policymakers and lawmakers on how to balance religious freedoms with the need to safeguard children's health.

*The World Health Organization (WHO).* In line with its global mandate, the WHO can develop Africa-specific guidelines and recommendations for use by health professionals where a child's right to health is at risk due to a refusal of consent for blood transfusions based on religious beliefs. These guidelines, which can be coupled with technical support and training, must consider the socio-economic context in Sub-Saharan Africa and also help healthcare providers to better understand the legal, ethical and medical aspects and complexities of such cases. Furthermore, by utilising its unique strategic position and resources, the WHO can advocate for member states to employ alternatives to blood transfusion while promoting education and awareness of the importance of children's right to health, and the risks involved in refusing necessary medical treatment based on religious beliefs. Meanwhile, the WHO can work with national and international legal bodies, including the RECs and the Committee of Experts to promote laws and policies that protect children's right to health, while providing guidance to policymakers and lawmakers on ways to balance religious freedoms with the need to safeguard children's health.

### v) Primary players

*Jehovah's Witness leaders.* As Jehovah's Witnesses have a religious belief against blood transfusions, the importance of the role of the church leaders at the national and international levels cannot be overstated. First, they can advocate for extensive government provision of medical alternatives to blood transfusion, as this is the most optimal solution to balance children's right to health and guardians' freedom of religion when conflicts exist. Meanwhile, when this is impractical, as is often the case in Sub-Saharan Africa, it is imperative that Jehovah's Witness leaders work with national and international legal bodies to promote laws and policies that protect children's right to health. They can also be instrumental in providing guidance to policymakers and lawmakers on how to balance religious freedoms with the need to safeguard children's health. Additionally, they can promote education and awareness of the importance of children's right to health and the risks involved in refusing necessary medical treatment solely based on religious beliefs. Additionally, these leaders play a pivotal role in encouraging and facilitating respectful dialogue with multiple stakeholders, including the AU, member states, UN agencies, RECs, healthcare providers, guardians and children to help find solutions that prioritise the child's health while respecting the family's religious beliefs.

*Healthcare providers*. Healthcare providers can educate guardians about the potential risks of refusing blood transfusions for their children and inform them about available alternative medical options. Furthermore, depending on their age and understanding, healthcare providers have a duty to inform children about their medical conditions and the importance

of receiving necessary medical treatment, including blood transfusions. Additionally, where possible, healthcare givers must involve ethics committees to help navigate the legal, ethical and medical complexities of such situations and to help find a resolution that prioritises the child's health while respecting the family's religious beliefs. It is also important for healthcare providers to report cases of suspected child abuse, including when a child's right to health is being violated or being put at risk due to a refusal of necessary medical treatment.

*Children.* Although children generally depend on intermediaries, often guardians, for the protection of their right to health, they remain important and pivotal stakeholders in enhancing the protection of their right to health. Children can educate themselves about their own rights, medical conditions including sickle cell disease which require treatment with blood transfusions and the potential consequences of refusing medical treatment. This knowledge can help them play roles as their own agents and advocates in circumstances in which conflicts arise between protection of their right to health and guardians' freedom of religion. Furthermore, by educating themselves children will be better able to seek support and guidance from other trusted adults, such as teachers, church leaders, counsellors, healthcare providers and law enforcement agencies if they are concerned about their health and their guardians' refusal of medical treatment.

## 9. CONCLUSION AND PROSPECTS FOR CHANGE

The clash between children's right to health and guardians' freedom of religion is a transnational challenge that extends beyond Zambia and Nigeria. Sub-Saharan countries' particular socio-economic contexts entrench the right to health of children, given their dependence on intermediaries to protect their rights. A multidisciplinary approach is essential to address the challenges posed by guardians' refusing consent for children's blood transfusions based on religious grounds. Member states must invest in children's healthcare, enhance legislation and policy on children's right to health, and build nationwide awareness. The African Union's Committee of Experts must facilitate legal and policy analysis and raise awareness to improve the protection of children's right to health from religion-based violations. The World Health Organization, the United Nations Children's Fund and other relevant international organisations should provide technical and financial support to member states to strengthen their health systems and enhance awareness of children's rights. This article has highlighted the crucial role played by Jehovah's Witness leaders, who can advocate for medical alternatives and work with legal bodies to promote laws and policies that protect children's health. Healthcare providers are responsible for educating guardians about potential risks and involving ethics committees to navigate complex situations. Meanwhile, it is imperative for children to be educated and further encouraged to educate themselves about their rights and seek support from trusted adults if they are concerned about their health.

The School of Transnational Governance (STG) delivers teaching and high-level training in the methods, knowledge, skills and practice of governance beyond the State. Based within the European University Institute (EUI) in Florence, the School brings the worlds of academia and policy-making together in an effort to navigate a context, both inside and outside Europe, where policy-making increasingly transcends national borders.

The School offers Executive Training Seminars for experienced professionals and a Policy Leaders Fellowship for early- and mid-career innovators. The School also hosts expert Policy Dialogues and distinguished lectures from transnational leaders (to include the STG's Leaders Beyond the State series which recorded the experiences of former European Institution presidents, and the Giorgio La Pira Lecture series which focuses on building bridges between Africa and Europe). In September 2020, the School launched its Master-of-Arts in Transnational Governance (MTnG), which will educate and train a new breed of policy leader able to navigate the unprecedented issues our world will face during the next decade and beyond.

The STG Policy Papers Collection aims to further the EUI School of Transnational Governance's goal in creating a bridge between academia and policy and provide actionable knowledge for policy-making. The collection includes Policy Points (providing information at-a-glance), Policy Briefs (concise summaries of issues and recommended policy options), and Policy Analyses (in-depth analysis of particular issues). The contributions provide topical and policy-oriented perspectives on a diverse range of issues relevant to transnational governance. They are authored by STG staff and guest authors invited to contribute on particular topics.

School of Transnational Governance
European University Institute
Via Camillo Cavour 65, Firenze, FI 50129
Email: stg.publications@eui.eu

**www.eui.eu/stg**

Co-funded by the
Erasmus+ Programme
of the European Union

Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Education and Culture Executive Agency (EACEA). Neither the European Union nor EACEA can be held responsible for them.



**doi: 10.2870/438326**
**ISBN: 978-92-9466-420-4**
**ISSN: 2600-271X**
**QM-BA-23-021-EN-N**