

Second Edition

# Advancing Children's Rights

A Guide for Civil Society Organisations on how to engage with the  
African Committee of Experts on the Rights and Welfare of the Child

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Second Edition



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Attached to this Guide is a CD-ROM containing additional documents relating to the African Committee of Experts on the Rights and Welfare of the Child and the advancement of children's rights in Africa.

## ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Charter on Human and Peoples' Rights
ACJHR	African Court of Justice and Human Rights
African Commission	African Commission on Human and Peoples' Rights
ANPPCAN	African Network for the Prevention and Protection against Child Abuse and Neglect
APRM	African Peer Review Mechanism
AU	African Union
AU Assembly	Assembly of Heads of State and Government of the Union
Committee	African Committee of Experts on the Rights and Welfare of the Child
CONAFE	Coalition of African NGOs Working with Children
CRC	UN Convention on the Rights of the Child
CSO	Civil Society Organisation
CSO Forum	Civil Society Forum on the ACRWC
ECOSOCC	AU Economic, Social and Cultural Council
ECOWAS	Economic Community of West African States
EU	European Union
IHRDA	Institute for Human Rights and Development in Africa
MDGs	Millennium Development Goals
NEPAD	New Partnership for Africa's Development
NGOs	Non-Governmental Organisations
OAU	Organisation of African Unity
PAP	Pan-African Parliament
PSC	AU Peace and Security Council
RECs	Regional Economic Communities
SADC	Southern African Development Community
UCRNN	Uganda Child Rights NGO Network
UNGASS	United Nations General Assembly Special Session
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
WHO	World Health Organisation



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**Frances Sheahan**  
*Child Rights Consultant*

## **PREFACE**

Since its inception in 2001, the African Committee of Experts on the Rights and Welfare of the Child has collaborated with civil society organisations working with and for children in Africa. Many of these organisations are very active in the field and have acquired an in-depth knowledge of children's rights, enabling them to make considerable contributions towards improving the lives of children.

As true partners of the Committee, civil society organisations can play an important part and bring an added value to the work of the Committee carrying out its mission of promoting and protecting the rights of the child. This is the reason why the continental monitoring body on the rights and welfare of the child has given a special place to civil society when conducting its various assignments.

For an active and constructive participation of civil society, it is essential that its members improve their knowledge of the African Children's Charter, of the Committee and of its working procedures. Save the Children and Plan International have for several years been engaged in awareness-raising of civil society actors through for example training workshops and support to the Pan-African CSO Forum on the ACRWC.

We welcome Save the Children Sweden and Plan International's initiative to update the guide *Advancing Children's Rights* in its second edition in consultation with the main civil society stakeholders. This tool not only describes the Committee's work, but is also full of ideas and proposals reflecting the views of Save the Children Sweden and Plan International for a fruitful partnership with this African Union body.

We sincerely hope that this guide, through the information it contains, will be useful in increasing the knowledge of the African Committee of Experts on the Rights and Welfare of the Child and lead to a greater interest from civil society in engaging with the Committee.

**Ms. Agnès Kaboré Ouattara, Burkina Faso**

*Chairperson, African Committee of Experts on the Rights and Welfare of the Child  
(2010 - )*

**Ms. Seynabou Ndiaye Diakhaté, Senegal**

*Former Chairperson, African Committee of Experts on the Rights and Welfare of the Child  
(2008-2010)*

**Mr. Jean-Baptiste Zoungrana, Burkina Faso**

*Former Chairperson, African Committee of Experts on the Rights and Welfare of the Child  
(2005-2008)*



## FOREWORD

Africa is the only continent with a region-specific child rights instrument. The African Charter on the Rights and Welfare of the Child (ACRWC) is an important tool for advancing children's rights. While building on the same basic principles as the UN Convention on the Rights of the Child, the AU Children's Charter highlights issues of special importance in the African context. The two legal instruments complement and reinforce each other in a powerful way.

African civil society organizations play a key role in the promotion of the Children's Charter. They can raise more awareness on its importance and call on the States parties to live up to their commitments to respect, protect and fulfil the rights enshrined in the ACRWC. They can work closely together with children and communities to translate the Charter into positive practice in the daily lives of children.

Civil society also has the opportunity to move children's rights forward by increasing its interaction with the African Committee of Experts on the Rights and Welfare of the Child. The Committee is the monitoring body of the ACRWC with a mandate not only to examine State and civil society reports on the child rights situation in different countries, but also to handle complaints on child rights violations and to conduct investigation missions to relevant States.

Having collaborated with the Committee since its early years, Save the Children Sweden and Plan International jointly produced *Advancing Children's Rights* in 2009 as a response to needs stated by civil society partners. We are now proud to present this guide in a second, updated edition. It reflects important developments relating to the Committee's work and to civil society engagement with the Committee.

Save the Children Sweden and Plan International would like to express our sincere gratitude to all the committed and knowledgeable child rights actors who have contributed to the process. The publication of the guide would not have been possible without the involvement of Committee members, civil society organisations – including children – and our allies in the universities. Our profound gratitude also goes to child rights consultant Frances Sheahan who went beyond our expectations when researching, writing and updating this guide.

*Advancing Children's Rights* is about ensuring dialogue and engagement using the tools established by the Committee. It is our hope that the guide will not only help expand the knowledge and space for civil society to promote the African Children's Charter, but will indeed contribute to the fulfilment of children's rights in Africa.

**Anniken Elisson Tydén**  
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Regional Director Eastern and Southern Africa



*Part*

*1*



# INTRODUCTION TO THE GUIDE

## 1. Introduction

‘NGOs can contribute to the work of the Committee by delivering first-hand information and advice which provide invaluable insights into the situation of children and a good basis for engaging States Parties on relevant laws and practices.’

**Dr Assefa Bequele, former member of the African Committee of Experts on the Rights and Welfare of the Child.**

This Guide is intended to be a resource for civil society organisations in Africa who are interested in finding out more about the African Committee of Experts on the Rights and Welfare of the Child (hereafter the Committee). The Committee is the body which is responsible for monitoring the implementation and ensuring the protection of the rights laid out in the African Charter on the Rights and Welfare of the Child (hereafter the ACRWC, or the Children's Charter). The ACRWC draws heavily upon the UN Convention on the Rights of the Child (CRC) and the two instruments complement and reinforce each other. They share the key principles of non discrimination, the best interests of the child, children's participation and the survival and development of the child.

However, at times the Children's Charter is more explicit about certain issues relevant in Africa. In particular, it challenges traditional African views that conflict with the rights of the child such as attitudes concerning child marriage, parental rights and obligations towards their children and children born out of marriage. The Children's Charter also gives express recognition to the idea that children have responsibilities depending on their evolving capacities.

This Guide is aimed at civil society. There are of course many different ways of defining what civil society is and this Guide relies upon the following definition: 'civil society is comprised of people who act collectively and voluntarily in an organised way in order to express or promote a common interest or opinion. Civil society is the organised sphere in the public space between individuals and their private households and the state along with its various institutions'. Civil Society includes children and youth groups, registered charities, Non-Governmental Organisations (NGOs), Community-Based Organisations, faith-

based organisations, professional associations, trade unions, self-help groups, social movements, business associations, coalitions and interest groups. These associations may or may not be formally constituted.

Civil society organisations which work with children in Africa have unrivalled knowledge and experience of the situation of children at a national and regional level and this makes them indispensable partners to the Committee. Civil society can also play a vital role in popularising the principles and provisions of the Children's Charter and can help to lay the foundations for its implementation at a national and community level. Their engagement is crucial for the Charter's success since they act as a bridge between children, States Parties and the Committee by providing relevant and analytical information and working in partnership to promote and protect children's rights in Africa. Civil society can also encourage the Committee to implement its mandate efficiently and effectively. Equally, the Committee can strengthen civil society's efforts to hold their governments accountable for the implementation and monitoring of the Children's Charter.

This symbiotic relationship is acknowledged in the Charter itself which states that one of the functions of the Committee is to 'cooperate with other African, international and regional institutions and organisations concerned with the promotion and protection of the rights and welfare of the child' (Article 42 ACERWC).

The Committee has now begun to review State Party reports and the benefits and strengths of a regional reporting mechanism are starting to be felt. However, the Committee needs the support of civil society to develop into an independent and effective mechanism for monitoring and advocating for children's rights in Africa. States Parties are more likely to take the ACERWC seriously when they start to feel its impact at a domestic level in their countries.

There is growing awareness about the Charter and the Committee. In April 2009, the first CSO Forum on the ACERWC was held in Addis Ababa, Ethiopia and has been held prior to almost every Committee session since. This CSO Forum is an opportunity for civil society organisations working on children's issues from across Africa to come together to network, share experience, learn and discuss how to improve the Charter's mechanisms and engage with the Committee. However, there are still many civil society organisations which do not know how they can co-operate with the Committee and there is little practical information available. This Guide aims to fill this gap and to encourage greater participation by civil society in the work of the Committee.

## **2. How to use this Guide**

This Guide is intended to be a comprehensive resource for finding out more about the Charter and the Committee. It can be used by organisations that already use and know the Charter but want specific information about how to engage with the Committee. It can also be used by organisations new to the Charter and the Committee who are interested in reading in more detail about their history and

background and the relationship between the Committee and the African Union (AU).

The Guide is split into Seven Parts:

- Part One introduces the Guide.
- Part Two gives an overview of the history and content of the ACRWC and looks at how it relates to the CRC. It also considers the Committee's mandate, its Members and its achievements so far.
- Part Three examines the development, achievements and potential of the CSO Forum on the ACRWC.
- Part Four is the most practical section and examines how civil society can access and work with the Committee to advance children's rights in Africa. It provides practical examples from CSOs which have used the Charter's procedures.
- Part Five looks at how the Committee fits into the structures of the AU.
- Part Six provides sources of further information.
- Part Seven consists of four annexes including a ratification table for the Children's Charter, biographies of current Committee members and the full text of the Charter.

The Guide does not aim to examine the ways in which civil society dealing with children's issues should engage with the AU as a whole. It focuses instead on exploring the relationships and linkages between the various AU institutions and the Committee and how they can work together to implement the Charter. It also explores how civil society organisations can work with the Committee to strengthen its relationships within the AU and with external bodies such as the UN Committee on the Rights of the Child.

### 3. Overview of how civil society can engage with the Committee

*Really it is civil society groups which make these bodies work. It is our interventions which push them along.*

**Edmund Foley, Legal Officer,  
Institute for Human Rights and Development in Africa**

The following is a short overview of some of the many different ways in which civil society can engage with the Committee in order to advance the rights of children in Africa. They are elaborated on in more detail in the rest of the Guide.

#### *The Charter*

- Encourage the remaining AU member states which have yet to ratify the Children's Charter, to ratify as soon as possible.
- Encourage states to remove any reservations made to the Children's Charter.
- Popularise the Children's Charter.
- Produce and use child-friendly versions of the Children's Charter.

- Advocate with states to ensure that they implement the Children's Charter and in particular that it is properly embedded into domestic legislation.
- Advocate with states to ensure that they have put in place effective mechanisms to monitor implementation of the Children's Charter.
- Encourage and support children's participation in local, national and international level advocacy for the Children's Charter.

#### ***The Committee***

- Publicise the Committee's work.
- Share important research and information regarding children with the Committee.
- Apply for Observer Status to the Committee to enable closer cooperation.
- Advocate with states to ensure an effective and transparent process for the nomination of candidates for membership of the Committee.
- Identify potential candidates and advocate with states for nomination of appropriately qualified candidates to be members of the Committee.
- Inform the public of the nomination and election process.
- Support and monitor the themes and activities of the Day of the African Child to ensure they are sustainable and worthwhile.
- Encourage the Committee to produce general comments which clarify the general measures States Parties must put in place to implement the Charter.
- Support the Committee in the interpretation of specific articles in the Charter to guide State implementation.
- Liaise with Committee members directly and engage them in relevant national, regional and global processes.

#### ***The CSO Forum on the ACRWC***

- Support the CSO Forum's work by attending sessions if possible.
- If CSOs are able to attend then they should share learning from the CSO Forum with other organisations and networks upon return to their country.
- Commit to working with other civil society organisations on implementation and monitoring of the Children's Charter both nationally and regionally.

#### ***The Reporting Procedure***

- Lobby the Committee to produce clearer guidance to States Parties on the specific areas of rights outlined in the ACRWC to be included in their reports.
- Encourage states to draft and submit their State Party report on time and to have a participatory process for its drafting.
- Be involved in the preparation of States Parties reports to the Committee.
- Write and submit a civil society report to the Committee.
- Encourage meaningful child participation in the drafting of the State Party and civil society report.
- Participate in the Pre-Session Working Groups concerning States Parties' reports.
- Encourage states to send high-level delegations to Plenary Sessions.
- Attend Plenary Sessions for the consideration of States Parties' reports.

- Publicise the Committee's Concluding Observations and Recommendations.
- Continuously monitor and advocate for States Parties' implementation of the Committee's Concluding Observations and Recommendations.

### ***The Communications Procedure***

- Facilitate the submission of communications alleging violations of the Children's Charter.
- Ensure that children's involvement in the communications procedure is ethical and that their best interests are a primary consideration at all stages of the process.
- Follow up decisions made on communications.

### ***The Investigations Procedure***

- Encourage the Committee to visit countries where there are significant violations of children's rights and advocate with countries to accept investigative missions from the Committee.
- Assist the Committee during the course of its investigations.
- Publicise the Investigations Procedure so it becomes more widely known.

### ***Within the AU***

- Advocate with states to ratify the Protocol on the Statute of the African Court of Justice and Human Rights.
- Advocate with states to make the necessary declaration allowing for individual petitions to the African Court of Human and Peoples' Rights.
- Support the Committee in bringing cases before the African Court of Human and Peoples' Rights.
- Encourage the Committee to build on the growing collaboration with other AU institutions and structures and in particular with the RECs, Pan-African Parliament and Peace and Security Council.
- Encourage the Committee and the African Commission on Human and Peoples' Rights to collaborate closely together.
- Advocate with other AU organs to support the work of the Committee and ensure coherence in the promotion and protection of children's rights.

### ***Within the global child rights movement***

- Encourage the Committee and the UN Committee on the Rights of the Child to continue to work closely together to share learning and experience and to work towards close harmonisation of the reporting procedure and interpretation of articles for both the CRC and the ACRWC.
- Support the collaboration between the Committee and the UN Special Representative to the Secretary-General on Violence against Children, the UN Special Rapporteur on the sale of children, child prostitution and child pornography as well as the UN Special Representative to the Secretary-General on children in armed conflict.
- Encourage awareness about the Charter and the Committee among AU partner countries and donors and support linkages between regional bodies, such as the AU and the EU, on children's issues.





*Part*

2

# THE CHILDREN'S CHARTER AND THE COMMITTEE

## 1. An Introduction to the African Union, the ACRWC and the ACERWC

The AU was formed in 2002 to replace the Organisation of African Unity (OAU) which had been in existence since 1963. It is a multi-lateral organisation promoting cooperation on economic and political issues and other areas of common interest. All African states are members of the AU save for Morocco (which withdrew in 1984 in protest at the recognition by the OAU of the Sahrawi Arab Democratic Republic). It is not a single entity but is constructed from over fifteen structures and institutions with overlapping levels of authority: the AU Assembly is pre-eminent amongst these. Some of these institutions are established under the authority of the AU Constitutive Act (the Act which provides the over-arching framework for the AU) while others are set up under protocols to the Constitutive Act, their own freestanding treaties or other legal documentation.

*“The Union seeks primarily to improve the quality of life of the Continent's citizens through integration, cooperation and development. It strives to promote unity, solidarity, cohesion and cooperation among the peoples and States of Africa, while developing new and stronger strategic partnerships worldwide for Africa's sustainable development.”*

**Strategic Plan of the Commission of the African Union 2009 - 2012:  
Part One: The Strategic Direction - Vision of the African Union**

The AU has an ambitious strategic vision and is an important institution for civil society advocacy and engagement. Non-African governments and multilateral agencies also recognise the strategic role played by the AU and the United States of America, China, India, the UN and the European Union (EU) have all appointed special representatives to the AU. However, the AU has limited capacity to respond to growing external expectations and demands for engagement and there is often a very wide gulf between continental policy-making and national implementation and monitoring of policy. Furthermore, its structures are challenging and there is a proliferation of AU organs and initiatives which at times leads to duplication. Perhaps the biggest obstacle to effective civil society engagement is the difficulty in obtaining information about the AU's work. The website has been improved

recently but remains incomplete with many essential documents simply not posted up at all. It should be noted that there are important proposals under discussion for the restructuring of the AU which are discussed in more detail in Part Five.

The African Charter on the Rights and Welfare of the Child is the first and only regional treaty on the rights of the child in existence and is the most important instrument for children's rights within the AU human rights system. The African Committee of Experts on the Rights and Welfare of the Child is the body which is responsible for monitoring the implementation and ensuring the protection of the rights laid out in the ACRWC. It is an AU institution and as such is ultimately responsible to the Assembly of Heads of State and Government of the Union (AU Assembly) to which it reports once a year.

The Committee is one of the AU's three principal human rights mechanisms. The other two are the African Commission on Human and Peoples' Rights (hereafter the African Commission) and the African Court on Human and Peoples' Rights. As well as these bodies, there are other AU entities which are also concerned with child rights issues such as the African Peer Review Mechanism, the Peace and Security Council, the Pan-African Parliament and the AU Commission. The relationship between the Committee and these different AU bodies is explored in more detail in Part Five. The Committee is encased within the architecture of the AU and the AU has made many commitments to it. The ability of the Committee to work competently and to act effectively is largely dependent on the AU fulfilling rather than constraining these commitments.

## 2. The African Charter on the Rights and Welfare of the Child

### 2.1 Why do we have the ACRWC?

*It's a question of African identity, of being patriotic for our continent. It puts the CRC into an African cloak. The Charter brings the CRC home to Africa.*

**Prof. Peter Onyekwere Ebigbo, former member of the African Committee of Experts on the Rights and Welfare of the Child**

The ACRWC was adopted by the Heads of State of the then OAU in 1990. It did not come into force (meaning to have full legal effect) until 1999 by which time it had the requisite 15 ratifications. It lays out the responsibilities of the state, the family, the community and the individual in the protection and promotion of the rights of the child and is rooted in other human rights treaties, including the CRC and the African Charter on Human and Peoples' Rights (ACHPR). The full text of the ACRWC can be found in Annexe Four to this Guide.

One of the reasons for having a Children's Charter was the feeling that Africa had been underrepresented during the drafting process of the CRC (only Algeria, Morocco, Senegal and Egypt participated meaningfully in the drafting process). A second important reason was a sense that Africa needed to have a charter for children which reflected the specifics of the African context. The Preamble to the Charter states that it emerged out of the social and cultural values of Africa, including those relating to family, community and society and takes into consideration the virtues of cultural heritage, historical background and values of the African civilization.

*...the situation of most African children remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity he or she needs special safeguards and care.*

**Preamble to the African Charter on the Rights and Welfare of the Child**

## 2.2 The ACRWC and the CRC

*The Charter is significant for me because it is more specific for the lives of children in Africa. It helps to explain the African phenomenon, the things that happen in Africa and it is for Africa.*

**Aminata Sow Mangane, 15 years old, Board Member of CONAFE-Senegal (National Coalition of Associations and NGOs Working with Children in Senegal)**

The Children's Charter draws a great deal from the CRC and the two instruments are wholly complementary. Both are grounded in the four key principles of non discrimination, the best interests of the child, children's participation and the survival and development of the child. They should be used side by side to work towards the promotion and protection of children's rights in Africa. There may be instances where one will provide more protection to children than another and both instruments allow for provisions in other national or international laws which are 'more conducive' to the realisation of the rights of the child to take precedence (Article 41 of the CRC and Article 1(2) ACRWC). In other words, if there is a situation where the ACRWC, the CRC or indeed a national legal system provides a higher level of protection for children then the higher level should be relied upon.

The following table outlines some of the differences between the CRC and the ACRWC and highlights how the Charter is often more explicit about issues distinctive to an African context.

ACRWC	CRC
Obligations of States Parties - Article 1 ACRWC, Article 4 CRC	
Creates obligations for States Parties to implement the Charter with no explicit distinction made between economic and social rights and civil and political rights and no limitation as to the availability of resources for realisation of rights.	Draws a distinction between civil and political rights and economic, social and cultural rights and says that States Parties shall implement the economic, social and cultural rights in the Convention 'to the maximum extent of their available resources and where needed within the framework of international co-operation.'
Expressly states that any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the Charter should be discouraged.	
Definition of a Child - Article 2 ACRWC, Article 1 CRC	
Defines a child as 'every human being below the age of 18 years.' This definition is clear and concise with no limitations or exceptions.	Defines a child as every human being below the age of 18 years 'unless under the law applicable to the child, majority is attained earlier.'
Non-Discrimination - Articles 3 and 26 ACRWC, Article 2 CRC	
Includes 'fortune' as a criterion for discrimination. The right to non-discrimination is strengthened by the provisions in the ACRWC giving priority to the special needs of children living under apartheid but also 'under regimes practising racial, ethnic, religious or other forms of discrimination as well as in states subject to military destabilisation.'	Includes 'property' and 'disability' as criteria for discrimination.
Best Interests of the Child - Article 4 ACRWC, Article 3 CRC	
States that the best interests of the child must be 'the' primary consideration in all action concerning children and this implies that it is a principle which will usually take priority over others.	The principle of the best interests of the child is 'a' primary consideration implying that other principles can be taken into account alongside it.



ACRWC	CRC
Education - Article 11 ACRWC, Articles 28 and 29 CRC	
Requires states to take special measures to ensure access to education for 'female, gifted and disadvantaged children.' Furthermore, it places an obligation on states to ensure that pregnant girls are allowed to continue with their education. This is also implied in the CRC but the strength of the ACRWC is that it makes the obligation on states explicit.	The objectives of education include 'the development of respect for the child's parents.'
No mention of 'respect for parents' but an emphasis on African culture, moral and heritage.	
Health - Article 14 ACRWC, Article 24 CRC	
Includes a provision allowing for the participation of NGOs, local communities and the beneficiary population in the planning and management of basic health services for children.	No similar provision.
Parental Responsibilities - Article 20 ACRWC, Articles 5 and 18 CRC	
States Parties shall assist parents and guardians, 'in case of need', to provide material assistance and support programmes especially with regard to health, education, clothing and housing.	No explicit provision for material assistance but instead 'respects' the responsibilities, rights and duties of parents and 'shall render appropriate assistance' to parents.
Harmful social and cultural practices - Article 21 ACRWC, Article 24(3) CRC	
Deals with them from a broad perspective which includes health but also discrimination, dignity and development. It also explicitly sets 18 as the minimum age for marriage.	Approaches harmful social and cultural practices from the perspective of their impact on the right to health.

ACRWC	CRC
Protection - Articles throughout both ACRWC and CRC	
<p>Has a number of explicit obligations which provide protection for children:</p> <ul style="list-style-type: none"> <li>• it demands special measures for children with disabilities;</li> <li>• it sets 18 as the age at which a person can be involved in direct hostilities;</li> <li>• it extends protections given to refugee children to internally displaced children as well;</li> <li>• it calls for states to prevent 'the use of children in all forms of begging';</li> <li>• it establishes machinery to consider the well being of the adopted child; and</li> <li>• it details measures to be taken when mothers are facing imprisonment including that 'a mother should not be imprisoned with her child.'</li> </ul>	<p>The provisions for protection described in the ACRWC are all contained within the CRC but are not given such an explicit emphasis. In the CRC, more explicit provisions are contained in the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography.</p>
Duties and Responsibilities of the Child - Article 31 ACRWC	
<p>Gives express recognition to the idea that children too have responsibilities depending on their evolving capacities. These are responsibilities towards family and society to work for the cohesion of the family, to respect parents, superiors and elders and to preserve African cultural values. There are two qualifications to this Article: the duties of the child are subject to his or her age or ability and are subject 'to such limitations as may be contained in the present Charter.' This Article challenges the traditional view in international human rights law that it is states which are primarily responsible as duty bearers and reflects the African concept that the family is the basic unit of society.</p>	<p>Does not define children's responsibilities; however it is implicit that children have responsibilities linked to their rights (for example, they have the right to go to school as well as the responsibility to attend school; they also have the responsibility to respect their parents).</p>

### 2.3 Strengths of the ACRWC

The great strength of the Children's Charter is that it reflects the realities of the lives of children in Africa so has resonance and credibility in an African context. It can be asserted to challenge traditional African views that conflict with the rights of the child such as attitudes concerning child marriage, parental rights and obligations towards their children and the definition of a child: for example, during

the Nigerian delegation's presentation of their initial report to the Committee in 2008, Professor Adedokun Adeyemi remarked that *'We are an African country and we therefore take the age definition of a child provided in the African Charter.'*

The Children's Charter has stronger and clearer reference than the CRC to harmful traditional practices and enhanced protection for children with disabilities, children living in prison with their mothers, girls who become pregnant and internally displaced children. It also has a straightforward and clear definition of a child and places a higher burden on states regarding taking into account the best interests of the child.

*'When lobbying the Tanzanian government on what to include in the Child Law Act we impressed on them the importance of using the ACRWC's definition of the best interests of the child being the primary consideration in all actions concerning the child rather than the more restrictive definition in the CRC of the best interests of the child being a primary consideration. In the end the Child Law Act included the ACRWC's formulation.'*

**Mr. Kaleb Gamaya, Programme Director, National Organisation for Legal Assistance (nola), Tanzania**

### 2.4 Article 31 and children's responsibilities

A significant difference between the Children's Charter and the CRC is the way in which the Charter balances duties and responsibilities on the one hand and rights on the other. Article 31 creates responsibilities for the child towards family and society, to work for the cohesion of the family, to respect parents, superiors and elders and to preserve African cultural values. These responsibilities can play an important role in children's participation in society and can help to contribute to their overall development.

However, Article 31 is an ambiguous provision. One of the duties spelt out in the Charter is for children to respect their parents, superiors and elders at all times. Some people have argued that this can conflict with children's right to participation, freedom of expression, association and thought. However, the child's duty towards his family and parents is closely linked to the duties of parents, and others who are responsible for the child, to raise that child to adulthood to the best of their abilities and capacities. The reciprocal nature of the duties and responsibilities between parent and child in the family context is further evident from Article 20 which provides for the duty of care-givers to carry out the tasks associated with a child's upbringing and development ensuring that the best interests of the child are their basic concern at all times. It is therefore imperative that all aspects of Article 31 be interpreted so that the principle of the best interests of the child is respected at all times. Furthermore, there is an internal limitation in the article itself which says that it can only be exercised 'subject to his age and ability, and such limitations as may be contained in the present Charter.'

## **Children in Tanzania talk about their Responsibilities**

As part of preparation for its Initial Report, the Tanzanian government consulted with 34 children in the age range of 10-17 years from various parts of the country. When asked what their duties were towards their communities and society in general they agreed this meant:

- Helping with house chores
- To study hard at school
- To respect parents and members in their communities
- To be law-abiding citizens
- To participate in community development activities
- To have self respect and to make wise decisions
- To cooperate with and not to oppress others

### **2.5 Limitations of the ACRWC**

Awareness is growing, but on the whole the Children's Charter is not yet very well known within the continent amongst children, civil society, the media or governments. Furthermore, it lacks emphasis, unlike the CRC, on certain important provisions which are outlined below.

#### ***Protection for children in conflict with the law***

- It doesn't protect children from life imprisonment without the possibility of release.
- There is no provision for alternative measures to criminal proceedings such as diversion or community rehabilitation.
- It does not mention explicitly the right to remain silent, the right to be protected from retroactive legislation, the right to challenge detention or the right to be compensated for miscarriages of justice.

#### ***Physical and humiliating punishment***

Under Article 20 dealing with issues of parental responsibility, provision is made for 'domestic discipline' to be 'administered with humanity and in a manner consistent with the inherent dignity of the child.' This appears to leave the door open for the physical and humiliating punishment of children by their parents or caretakers which would violate the principle of the best interests of the child.

#### ***Social Security Provision***

There is no provision for parents or guardians to be able to access social security or social insurance to maintain a child's standard of living.

## THE CHILDREN'S CHARTER USED FOR ADVOCACY IN SENEGAL

The National Coalition of Associations and NGOs Working for Children in Senegal (CONAFE-Senegal) is a network comprised of over 200 child focussed organisations in the country. In 2006, CONAFE-Senegal prepared a complementary report to the UN Committee on the Rights of the Child. One of the issues they raised in the report was that there was an administrative Circular from the Senegalese Ministry of Education dating from 1986 which prevented girls from returning to school if they were pregnant. Furthermore, this Circular was being used in practice and pregnant girls were being excluded from school as a consequence.

In their Concluding Observations, the UN Committee on the Rights of the Child recommended that the Circular be cancelled 'in accordance with article 11(6) of the 1990 African Charter on the Rights and Welfare of the Child' which states that 'States Parties to the present Charter shall take all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.'

Together with other civil society actors, CONAFE-Senegal subsequently followed up the issue with the Senegalese government asking that the Circular be withdrawn on the grounds of discrimination against girls concerning their access to education. CONAFE-Senegal relied both upon the CRC and the ACRWC in advocating for its withdrawal and it was a great strength for them to be able to point out the provision in the ACRWC specifically relating to this. The Administrative Secretary from CONAFE-Senegal, Justine Laïson, explained that *'The Charter was more specific on this point than the CRC and this was very helpful for us.'* Eventually their advocacy was successful and the government agreed to withdraw the Circular and to replace it with one which ensured that pregnant girls were encouraged to continue with their education.



## 2.6 Ratification of the ACRWC

### 2.6.1 What is ratification?

A state can become a party to the ACRWC by signature and ratification, or by accession.

**Signing** the ACRWC is a signal of interest by a state in ratifying it at some point in the future. Signatory countries commit themselves to avoiding actions that would directly violate the intent of the Charter.

**Ratification** means the act by which a state formally and publicly accepts that they are legally bound by the ACRWC. It is a commitment to respect, protect and fulfil the rights and welfare of the child as outlined in the articles of the Charter. States can ratify treaties both before and after the treaty has entered into force.

**Accession** means that a state ratifies the ACRWC without having signed it previously and it has the same legal and political ramifications as ratification. States can accede to a treaty both before and after the treaty has entered into force.

### 2.6.2 Who has ratified the ACRWC?

As of November 2010, all member states of the AU have signed the Children's Charter and all save for 8 have ratified it. The 8 member states which have signed but not yet ratified the Charter are: Central African Republic, Djibouti, Democratic Republic of Congo, Sahrawi Arab Democratic Republic, Somalia, Sao Tome and Principe, Swaziland and Tunisia. A full list of current ratifications is attached in Annexe One to this Guide. Up to date information on the status of ratifications can be found at [www.africa-union.org](http://www.africa-union.org) in the section on Documents.

### 2.6.3 The process of ratification

To ratify a treaty, the state first signs it. After signing, a state normally reviews the treaty to determine whether national laws are consistent with its provisions and to consider the most appropriate means of promoting compliance of policy, legislation and programmes with the treaty. This is an important process for civil society to be involved in since it can determine how effective implementing legislation for the Children's Charter will be in practice. For more on this see 2.9.

The state then fulfils its own national legislative requirements for full ratification. This means that the appropriate national organ of the country – Parliament, Senate, the Crown, Head of State or Government, or a combination of these – follows domestic constitutional procedures and makes a formal decision to be a party to the treaty. The instrument of ratification has to be formally transmitted

to the Chairperson of the AU Commission at the AU Headquarters in Addis Ababa, Ethiopia. The instrument of ratification is usually a formal sealed letter referring to the decision made by the AU member state to ratify the Charter and signed by the state's responsible authority.

It should be noted that the status of a country's ratification of the Charter is not always clear cut. There have been occasions when a state has claimed that it has ratified the Charter when in fact the process had not been formally concluded by the AU. It is important to share this information and advise the different government ministries and departments involved to ensure that the ratification process is properly completed.

### TIP

#### Encourage States to ratify the Children's Charter

Every country has its own distinct procedure for ratifying or acceding to the Children's Charter which is laid down under national law. To encourage the remaining 8 states to ratify, civil society organisations must first establish which institutions and individuals bear responsibility for ratification as they are the political actors that must be galvanised. In many cases parliaments are involved, but in some cases the responsibility and authority resides with the executive. The most useful starting point is to contact your Ministry of Foreign Affairs.

## 2.7 Reservations to the ACRWC

A reservation to a treaty means that a state objects to a specific provision within a treaty and declares at the time of signing, ratification or accession that they will not put it into action domestically. Reservations cannot be made after ratification or accession has taken place. A state may withdraw a reservation at any time. It is also open to States Parties to object to reservations made by other States Parties on the basis that they are incompatible with the object and purpose of the treaty; to date no such objections have been made by States Parties to the ACRWC.

There is no explicit provision in the Children's Charter which allows States Parties to make reservations. However, under international law it is in theory allowed providing that a reservation is not incompatible with the object and purpose of the treaty. Furthermore, at the first Committee meeting held in 2002, the Acting OAU Legal Counsel stated that 'non-fundamental' reservations could be made to the Charter in a way that is in line with a state's own culture, customs and values.

The problem however is that reservations made to treaties are often contrary to its purpose. So far a limited number of States Parties have made reservations and these are outlined below.

### **Current Reservations to the ACRWC**

**Botswana:** Does not consider itself bound by Article 2 which defines the child.

**Egypt:** Does not consider itself bound by Article 21 (2) regarding child marriage, Article 24 regarding adoption (although this is under review and a similar reservation to the CRC has already been removed); Article 30 (a-e) regarding the special treatment of children of imprisoned mothers; Article 44 which establishes that the Committee can receive Communications; and Article 45 (1) regarding the Committee conducting investigations in member states.

**Mauritania:** Does not consider itself bound by Article 9 regarding the right to freedom of thought, conscience and religion.

**Sudan:** Does not consider itself bound by Article 10 regarding the protection of privacy, Article 11 (6) regarding the education of children who become pregnant before completing their education or Article 21 (2) regarding child marriage.

#### **TIP**

Advocate with governments who have made reservations to the Children's Charter, to withdraw them as soon as possible.

## **2.8 Implementation of the ACRWC**

Following ratification, a State Party is obliged to implement the Children's Charter to ensure the rights within it are respected, protected and fulfilled for all of the children in its jurisdiction. Under Article 1 of the ACRWC, States Parties are obliged: 'to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter'. 'Measures' include the adoption of legislation, the review and introduction of policies and other administrative measures, as well as budgetary allocation to realize the rights and welfare of the child. It should also involve measures which promote positive cultural values and traditions as well as measures which discourage those traditions and values which are inconsistent with the rights, duties and obligations contained in the ACRWC. Furthermore, 'necessary steps' would also include the introduction and implementation of mechanisms at the national or local level for co-ordinating policies relating to children.

In 2003, the UN Committee on the Rights of the Child produced its General Comment No.5 on General Measures of Implementation of the CRC which details the steps States must take to implement the CRC. These measures include legislative reform, the establishment of coordinating and monitoring bodies - governmental and independent - comprehensive data collection, awareness-raising and training and the development and implementation of appropriate policies, services and programmes. The ACERWC has not produced specific guidance for States with regard to how to go about implementing the Children's Charter and it would be extremely helpful for them to do so.

### TIP

Advocate with the Committee to produce some general principles which clarify the measures States Parties must put in place to implement the Charter. Given that all States Parties (save Somalia) have also ratified the CRC, these general principles should explain how the process of implementing the Children's Charter complements and reinforces the measures for implementing the CRC.

## 2.9 Harmonisation of the ACRWC with domestic law

An important aspect of States Parties' obligations to implement the ACRWC is to ensure that all domestic legislation and administrative measures comply with the obligations laid out in the Charter. This process is called harmonisation (or sometimes 'domestication'). The harmonisation process is very important and if done properly will ensure that a strong legislative and administrative framework is in place to enable implementation of the Charter.

The constitutional traditions of a country play an important role in determining the process for harmonisation: countries usually have a dualist or monist system, or a mixture of the two:

- The *dualist system* means that international treaties do not have direct effect for national authorities. In other words, ratifying an international treaty alone does not mean it can be used as a basis for action in courts. In dualist systems, in order for the Charter to be given the force of law domestically, it must be incorporated explicitly into domestic legislation. Countries with a dualist system include Ghana, Nigeria, Sierra Leone and Malawi.
- The *monist system* means that an international treaty is regarded as part of domestic law and may be invoked in national courts at the point of ratification provided it is self-executing (this means that it does not require further legislation to make it operative). Countries with a monist system include Benin, Burkina Faso, Ethiopia, Chad and Senegal.

In practice, these categories are not usually so clear cut. There may be instances for example where national courts invoke international law within a dualist system as a tool for interpretation. There may also be occasions in a monist system where an international treaty is not directly effective until it has been clarified by further legislation.

#### TIP

The harmonisation process is an opportunity for civil society to work with the government to ensure that the ACRWC is properly embedded into legislation. Whether a country's legal system is monist, dualist or a mixture of the two, it is important for civil society organisations to ensure that the Children's Charter is clearly articulated in national law.

Even the best-drafted legislation will have gaps and this may be particularly the case at the first attempt to harmonise domestic laws with the ACRWC. Therefore all relevant laws should expressly state that where gaps emerge, cases are to be interpreted in light of the provisions in the CRC and ACRWC. Such an express provision enables the courts to look directly at the CRC and the ACRWC in guiding their decisions.

### Catch-all provisions

The Children's Act of Uganda of 1996 comprehensively incorporates international standards on children's rights into domestic law and includes the following catch-all provision: '[T]o exercise, in addition to the rights stated in this ... [Act], all rights set out in the UN Convention on the Rights of the Child and the [AU] Charter on the Rights and Welfare of the African Child with appropriate modifications to suit the circumstances in Uganda, that are not specifically mentioned in this [Act].'

### 3. The African Committee of Experts on the Rights and Welfare of the Child

#### 3.1 What is the mandate of the Committee?

The Committee is the body responsible for monitoring the implementation and ensuring the protection of the rights laid out in the ACRWC. It was established in 2001 and held its first session in 2002. It has a far-reaching and ambitious mandate derived from Article 32 of the ACRWC. The following is an overview of the different components of this mandate which are defined in Article 42 of the ACRWC.

#### THE MANDATE OF THE COMMITTEE

- Collect, commission and document information regarding the situation of children and where necessary make recommendations to governments;
- Establish principles for protecting the rights of African children;
- Cooperate with other international, regional and national bodies concerned with the rights of the child;
- Monitor the implementation of the rights in the Charter (this includes reporting, communications and investigations procedures); and
- Interpret the Charter.

#### • *Collecting, commissioning and documenting information regarding the situation of children in Africa*

The Committee can collect, commission and document information; for example, it has been responsible for commissioning research on the principle of the best interests of the child and on Article 31 of the Charter. This research has been presented to the Committee during sessions although it has not been widely disseminated beyond this forum.

#### TIP

The Committee can be contacted if you have important research or documents you wish to share with them or if you wish to invite them to visit your programmes or to an event you are involved with. The ACERWC Secretariat should be kept informed of any such contact.



• ***Establishing principles for protecting children's rights***

The Committee may develop principles and rules aimed at the protection of children's rights akin to the General Comments produced by the UN Committee on the Rights of the Child. No principles have yet been developed. CSOs have recommended that the Committee issue principles in relation to the prohibition of corporal punishment in all settings at the second and third CSO Forums (see below).

• ***Cooperating with other international, regional and national bodies concerned with the rights of the child***

The Committee needs to be systematically linked to other AU human rights bodies such as the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights as well as to the overall continental political framework in order to maximise its potential for advancing children's rights. It also needs to continue to learn from the experiences of its sister bodies: the African Commission and the UN Committee on the Rights of the Child. It should continue to work with CSOs at a national level and also consider working more with National Human Rights Institutions.

• ***Monitoring implementation of the Charter***

Its monitoring role over the work of States Parties to implement the Charter is perhaps its most important protective function. This involves three different procedures which are provided for in the Charter (these are discussed in greater detail in Part Four):

- i. Examining reports that each member state is obligated to deliver on the child rights situation in its country (Article 43 ACRWC);
- ii. Responding to communications (Article 44 ACRWC); and
- iii. Conducting investigations (Article 45 ACRWC).

• ***Interpreting the Charter***

The Committee may interpret the ACRWC at the request of a State Party, an AU institution or an African organisation recognized by the AU.

**CONTACTING COMMITTEE MEMBERS**

Their contact address is:

The African Committee of Experts on the Rights and Welfare of the Child  
Commission of the African Union  
African Union Headquarters  
Social Affairs Department  
P.O.Box 3243,  
W21 K19 Addis Ababa, Ethiopia  
Tel: + (251) 1 551 35 22  
Fax: + (251) 1 553 57 16  
Email: [cissem@africa-union.org](mailto:cissem@africa-union.org)  
Website: <http://www.africa-union.org/child/home.htm>

### **3.2 When and where does the Committee meet?**

The Committee's General Rules of Procedure state that it should meet twice a year in ordinary sessions lasting no more than two weeks (the meetings usually last four or five days). The Chairperson of the Committee can also convene extraordinary sessions at the request of the Committee or of a State Party to the Charter. Sessions generally take place at the Headquarters of the AU in Addis Ababa, Ethiopia, but can be held elsewhere at the Committee's request. While the Committee's sessions are the culmination of many of its activities, it does some work as well between sessions such as promotional or fact-finding missions to African countries, organizing or participating in studies and seminars, and participating in international, regional or national meetings and activities relevant to human rights.

### **3.3 Who are the Committee Members?**

#### **3.3.1 Who is eligible to be a Committee member?**

The Committee has eleven members who are elected by the AU Assembly, on the advice of the Executive Council, to serve a five year term. They cannot be re-elected on completion of their term although this provision is under review as some people feel it is a loss to a newly evolving Committee and to its institutional memory for experienced members to move on after only five years. Members of the UN Committee on the Rights of the Child, for example, may be reappointed if they are nominated again after their four year term of office expires.

Members of the Committee serve on a voluntary, part-time basis and in an independent capacity, not as representatives of their government. They are supported in their work by a small Secretariat based in Addis Ababa, Ethiopia. In 2010, the Committee began to provide induction programmes for new members outlining their mandate and responsibilities. Although they receive no remuneration, they are provided with their air fares for each Committee session as well as a daily subsistence allowance to cover related expenses.

They come from many different backgrounds including civil society, academia or state institutions (see Annexe Two for biographies of the current Members). However, to maintain their independence and impartiality, members cannot be part of an inter-governmental organization, UN agency or hold any politically binding position such as Cabinet Minister, Deputy Minister, Member of Parliament or Ambassador. Neither the ACRWC nor the Rules of Procedure provide guidance as to the appropriate balance within the Committee with regards to legal system, language spoken, gender or geography. This has implications given the many different traditions, cultures and legal systems operating in Africa. The ACERWC elects its own Bureau headed by a Chairperson, three vice Chairpersons and one Rapporteur. These Officers hold office for two years.

Article 33 of the Charter provides that any African of ‘high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child’ is eligible for nomination. No further criteria are offered by the Children’s Charter. The following criteria are suggested to provide guidance on suitable candidates for nomination:

- Nominees should have recognized competence in children’s rights and welfare issues in Africa and internationally. A minimum educational qualification at postgraduate level and/or 10 years of progressive professional experience in children’s rights is desirable.
- Track record of excellent analytical, drafting, reporting and advocacy skills in the areas of children’s rights and welfare are invaluable and desirable assets that should be considered.
- Nominees should be from a variety of professional backgrounds, such as lawyers, psychologists, social workers and so on.
- Willingness and ability to commit sufficient time without remuneration to the work of the Committee.
- Willingness and ability to be independent and impartial in relation to country of nationality as well as in relationship to the nominating government.

### COMMITTEE MEMBERS’ OATH OF OFFICE

‘I solemnly undertake to exercise in all loyalty, discretion and conscience, the functions and responsibilities entrusted to me as a Member of the African Committee of Experts on the Rights and Welfare of the Child of the African Union and to discharge my functions faithfully and impartially with only the interests of the Child in view.’

#### 3.3.2 How are members of the Committee nominated and elected?

##### *Nomination by states*

Only AU member states can nominate candidates to be members of the Committee. Each state can nominate a maximum of two candidates. No two members of the Committee can be from the same state which means that if a state nominates two people, then they must be of different nationalities.

States are invited by the AU Commission to take the following into account during the nomination process, but these requirements are not mandatory:

- The procedure for nomination of candidates should be, at the minimum, the same as used for appointments to the highest judicial office in the State Party (this means that the procedure should be very rigorous and include interviews and assessments);

- States Parties should encourage the participation of civil society, judicial and other state bodies, bar associations, academic and human rights organizations and women's groups, in the process of selection of nominees;
- A transparent and impartial national selection procedure should be used in order to create public trust in the integrity of the nomination process.

### ***Who submits the nominations to the AU?***

Foreign ministers and the representatives of permanent missions to the AU are asked to submit the names and CVs of their nominated candidates to the AU Commission's Office of the Legal Counsel. This is usually two months before the election is to be held. The process of candidate selection will vary from state to state and the best way to find out who your country is planning to nominate (if anyone) is to contact your foreign ministry or permanent mission to the AU in Addis Ababa, Ethiopia.

### ***Who elects the members?***

Members are elected by the Executive Council (comprised of the foreign ministers of AU member states) by secret ballot in a meeting held just prior to the AU Summit. Their decision is then passed to the AU Assembly for final approval and adoption.

### ***What information do candidates have to provide?***

States have to ask nominees to complete biographical information indicating their judicial, practical, academic, activist, professional and other relevant experience in the field of children's rights. This biographical information should also include information on political and other associations relevant to determining questions of both eligibility and incompatibility. In addition, nominees have to submit statements indicating how they fulfill the criteria for eligibility contained in the Charter.

### ***How often are elections held?***

The most recent election for new Committee members was at the AU Summit in July 2010 when six new members were elected (the Committee's year runs from July to July). A list of the current members of the Committee, dates of completion of their term of office and their short biographies can be found in Annex Two.

#### **TIP**

Civil society can campaign to ensure that states nominate and vote only for candidates who meet the highest standards of independence, impartiality and competence. They should encourage their states to advertise the nomination process widely and encourage applications from men and women. They could also propose suitable candidates for nomination to their government and use the media to raise awareness and public interest in the issue.

### ***How can civil society support the nomination process?***

Although CSOs cannot nominate candidates, they can identify suitable candidates and suggest them to their Ministry of Foreign Affairs. These candidates can come from civil society, state institutions, academia, the private sector or elsewhere. They can do this by:

- i. Identifying qualified candidates and lobbying them to consider serving on the Committee.
- ii. Seeking support for the proposed candidate from government officials working on children's issues or within the Ministry responsible for monitoring the implementation of the Charter.
- iii. Sending a letter to the Ministry of Foreign Affairs with clear, convincing arguments as to why this person would be a good candidate.
- iv. Lobbying their governments to make the nomination process truly transparent so that candidates are selected on the basis of merit alone.
- v. Lobbying their governments to nominate competent and credible candidates of their choice.

### **National-level CSOs in Kenya working together to promote good candidates**

One of the objectives of the National Civil Society Forum on the African Charter on the Rights and Welfare of the Child in Kenya was to recommend candidates for nomination to the ACERWC. During early 2010, a task force was formed comprising of 5 organizations to hold consultative meeting with proposed candidates. Consequently consultative meetings were held with several candidates recommended by members to assess their suitability for the position. Ultimately the task force agreed on a candidate with recognized competence in child rights and welfare issues, gained through many years of progressive professional experience in children rights. Her name was then forwarded to the Ministry of Foreign Affairs, Ministry of Gender and the National Council of Children Services who submitted her name to the Commission of the AU as a candidate for the ACERWC.

## **3.4 The achievements of the Committee so far**

### **3.4.1 Promotion of the Rights of the Child**

#### ***Increasing ratifications***

A primary focus of the Committee, since it began work in 2002, has been to raise the number of ratifications of the ACRWC amongst AU member states and it has made a number of promotional visits to encourage this in countries such as Burundi, Madagascar, Namibia and Sudan.

### ***Building the Committee as an institution***

It has been involved in institution building for much of its existence and has produced the following documents to establish its working procedures:

- Rules of Procedure (2003) (See accompanying CDROM and can also be accessed at <http://www.africaunion.org/child/home.htm>)
- Guidelines for Initial Reports of States Parties (2003) (See accompanying CDROM and can also be accessed at <http://www.africa-union.org/child/home.htm>)
- Procedures for the Consideration of State Party Reports (2005) (See accompanying CDROM)
- Guidelines for the Consideration of Communications (2006) (See accompanying CDROM)
- Guidelines for the Conducting of Investigations (2006) (See accompanying CDROM)
- Guidelines for the Criteria for Granting Observer Status with the Committee (2006) (See accompanying CDROM).

All of these documents will be discussed in more detail in Part Four below.

The Committee developed a Plan of Action for 2005-2009. However, many areas in this Plan were not achieved and have been carried forward to a new Plan of Action (2010-2014). An evaluation of the work of the Committee was conducted during 2009 and 2010 which highlighted strengths, weaknesses and gave suggestions on how to improve its work.

### ***Building Partnerships***

The Committee has initiated discussions about strategic cooperation with the UN Committee on the Rights of the Child and members of the UN Committee participated in a working session at the Committee's 15th session. The Committee has also begun to work in close partnership with the African Commission on Human and Peoples' Rights.

The Chairperson of the Committee along with the AU Social Commissioner has met with the UN Special Representative of the Secretary-General (SRSG) on Violence against Children with a view to exploring opportunities for collaboration in the protection of children from all forms of violence. At the 15th ACERWC Session a speech by the SRSG on Violence against Children made some important suggestions for collaboration with the Committee alongside civil society. They proposed that they:

- Develop a strategic agenda of collaboration with the Committee
- Include the protection of children from all forms of violence as a core section of the Committee's reporting procedure (including in Concluding Recommendations and Observations)
- Work together on an advocacy campaign for an explicit legal ban on all violence against children, including corporal punishment
- Put violence against children on the AU agenda.



In 2008, the EU and AU (Department for Political Affairs) established a regular Human Rights Dialogue which holds twice yearly sessions in Europe and Africa alternately. In 2009, the Chairperson of the ACERWC spoke at this dialogue regarding the Committee's work and the rights of the child, and particularly children affected by armed conflict, were identified as a topic of mutual concern to both the EU and AU.

### ***Thematic discussion***

The Committee has held thematic discussions on key issues and problems adversely affecting the rights and welfare of children including children and armed conflict, the duties of the African child under Article 31, child participation, the principle of the best interests of the child and the impact of HIV/AIDS, poliomyelitis and malaria on children. Information concerning some of these discussions can be found in the reports of the Committee's sessions at [www.africa-union.org/child/home.htm](http://www.africa-union.org/child/home.htm).

### ***Thematic responsibilities***

At its 12th meeting, the Committee members agreed on eleven different themes which members would be assigned to take responsibility for. These themes are: Children in Conflict and Natural Disaster Situations; Violence against Children; Child Labour, Trafficking and Exploitation; Education of Children; Administration of Justice to Minors; Participation of Children; The Right to an Identity; Integral Early Childhood Development; Vulnerable Children; Survival and Development of Children; and Responsibility of the Family. It is not clear what particular mandate or duties individual members are expected to fulfil in relation to the themes selected, nor how this may (or may not) advance the overall work of the Committee.

#### **TIP**

If CSOs are organising events or have produced research or reports relating to one of these themes then they should contact the Committee member who has explicit responsibility for this theme. They can find out who this is by contacting the ACERWC Secretariat.

### ***Day of the African Child***

The Day of the African Child marks a 1976 march in Soweto South Africa, when thousands of black school children took to the streets to protest the inferior quality of their education and to demand their right to be taught in their own language. Hundreds of young boys and girls were shot at; and in the two weeks of protest that followed, more than a hundred people were killed and more than a thousand were injured. Fifteen years later, in 1991, the OAU immortalized

the Soweto Uprising by declaring 16 June the Day of the African Child. This declaration marked an official recognition of the children's contributions to the struggle against apartheid.

The Committee has been using this date to draw attention to States Parties' obligations to children's rights by selecting themes to celebrate. Topics covered so far have included 'Right to Protection: Stop Violence against children' (2006), 'Combat Child Trafficking' (2007), 'Right to Participate: Let Children be Seen and Heard' (2008), 'Africa Fit for Children: Call for Accelerated Action towards their Survival' (2009), 'Planning and Budgeting for the Wellbeing of the Child: A Collective Responsibility' (2010) and 'All together for urgent action for street children' (2011). So far the Committee has decided the theme for the Day of the African Child amongst themselves or with limited discussion with civil society. The CSO Forum has recommended that the Committee in future develops a means for including children in selection of the theme.

### **THE DAY OF THE AFRICAN CHILD – MORE THAN LIP SERVICE**

- The Day of the African Child is an important opportunity for civil society organisations to highlight state obligations to children. It should not be seen as a 'one off' event but should be used as an opportunity to promote the particular theme throughout the year and to advocate for long-lasting change. CSOs may wish to invite Committee members to attend their activities.
- CSOs can follow up and monitor the themes and activities of the Day of the African Child in their respective countries to ensure they are sustainable and worthwhile.
- Use national platforms to bring organisations together to coordinate activities which have proved successful.
- CSOs should advocate with the Committee to develop ways for children to be involved in selection of the theme of the Day of the African Child for example through the use of civil society networks.

### **3.4.2 Protection of the rights of the child**

The Committee has developed a reporting schedule indicating the dates by which States Parties should have submitted their initial reports (an updated version is annexed to this Guide) and began consideration of State Party reports during 2008. So far, around a quarter of States Parties have submitted their initial reports and the reporting process has been slow to start although momentum is now building.

In August 2005 the Committee undertook an investigative fact-finding mission to Northern Uganda. A report was subsequently submitted to the Executive Council, the Permanent Representatives Committee and the AU Assembly. The Committee has received two Communications but has yet to consider one.

### 3.5 What are the constraints affecting the work of the Committee?

*‘We need to be seen, to be mentioned as an agency. When the wheel of activity begins then the issues will become more urgent before the Heads of State. Things have to be pushed.’*

**Prof. Peter Onyekwere Ebigbo, former member of the African Committee of Experts on the Rights and Welfare of the Child**

The Committee faces many challenges in fulfilling its mandate. One important constraint is the lack of personnel employed to support it in terms of providing administration and legal advice. According to its General Rules, the Chairperson of the AU Commission should ‘provide the Committee with the necessary staff and facilities for the effective performance of its functions.’ The Committee has only had a full-time Secretary since August 2007, after a long time struggling to function without one, and it has an administrator but as yet no legal officers. The AU Legal Advisor is currently assuming this role. To give an indication of how under-staffed the Committee is, the draft Strategic Plan for the ACERWC for 2010-2014 recommends that the following staff need to be recruited: a Senior Children’s Rights Officer, two Legal Officers, one Financial Officer, one Administrator, one Information Officer, one Liaison Officer, one IT and Documentalist, and other supporting staff and interns.

A general and overriding problem for the Committee is lack of funds and resources and this has been a theme throughout its life-time. In part this may be a consequence of its status as part of the AU Commission’s Department for Social Affairs (for more explanation of this relationship see Part Five). This means that the Committee has to compete for its budget amongst the Department for Social Affairs’ many other obligations and may not necessarily benefit from funding invested in the AU. The Committee has asked to have a budget which is separate and autonomous from that of the Department of Social Affairs and in 2008, the Executive Council requested that the AU Commission ‘clarify and review the status of the Committee and provide it with an autonomous budget to enable it to fulfill its mission of coordinating and implementation of the Charter on the Continent.’ Another constraint facing the Committee is that its members are often extremely busy and committed elsewhere in their own countries.

These constraints have had a serious impact on the work of the Committee and prevented progress in implementing its action plans. Its website is out of date (it has not been updated since 2007) and dissemination of its documents is poor. Its documents are not routinely translated into all of the AU's working languages and are principally available only in English and French. This limits the reach of its documents within the AU.

For the Committee to grow as an independent and effective mechanism for monitoring and advocating for children's rights in Africa, it needs to have more support from the AU and be provided with all the resources needed to discharge its mandate. In the same vein it also needs to prove itself to be indispensable to the AU so that its inclusion is assured. It needs to be more systematically linked to other AU human rights bodies such as the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights as well as to the overall continental political framework. This process has begun and needs to be maintained.

The Committee also needs to develop strategic relationships with institutions external to the AU. There has been increased cooperation with the UN Committee on the Rights of the Child and the UN Special Representative of the Secretary-General on Violence against Children which must be built upon. However, these are first steps and in general, not many people in Africa, within the AU or externally are aware of the existence of the Children's Charter or of the work being done by the Committee.



*Part*

3

# THE CSO FORUM ON THE ACRWC

‘Uniting in a professional manner is the best way to bring about change and to pressure governments and treaty bodies.’

**Ms Hannah Forster, Executive Director, the African Centre for Democracy and Human Rights Studies speaking at the first CSO Forum on the ACRWC held in April 2009**

## 1. What is the CSO Forum?

Civil society has been involved in the Committee's work since its inception in 2002 on an informal and ad hoc basis. Several organisations closely engaged with the Committee's activities were inspired by the NGO Forum to the African Commission on Human and Peoples' Rights to establish a CSO Forum on the ACRWC. The first meeting was held in April 2009. This Forum, which is now held prior to every meeting of the Committee, supports the Committee's work and provides a strong platform for child rights information and advocacy in Africa. The number of organisations involved is growing rapidly. The CSO Forum has a database of over 700 individuals and organisations and over 140 people from over 30 African countries attended the second CSO Forum.

The idea behind the Forum is to bring together civil society organisations working on children's issues from across Africa. It provides an opportunity for CSOs to engage with the mechanisms of the ACERWC as well as to discuss issues directly with Committee Members who attend the meetings. It is also a platform for partnership and networking and a catalyst for advocacy around children's rights in Africa. The CSO Forum has also been given a standing slot at every ACERWC meeting to share its recommendations and concerns with the Committee. The CSO Forum is open to all child rights organisations and activists. There is no membership fee or formal structure yet.



### **How can I find out more about the CSO Forum on the ACRWC?**

The current members of the organizing committee of the CSO Forum on the ACRWC are: African Child Policy Forum, AfricaWide Movement for Children, CONAFE, Institute for Human Rights and Development in Africa (IHRDA), Plan International and Save the Children. For more information about the work of the CSO Forum or to be invited to attend future Forums please contact the organisers at: [csoforumacrwc@gmail.com](mailto:csoforumacrwc@gmail.com). Information about the CSO Forums which have already taken place can be found at:

<http://www.crin.org/resources/infoDetail.asp?ID=22369&flag=report>

## **2. What does the CSO Forum aim to do?**

- Contribute to the implementation and monitoring of the ACRWC and the Call for Accelerated Action for an Africa Fit for Children (2008-2012).
- Raise the profile and understanding of the Committee among CSOs.
- Foster closer collaboration and co-operation among CSOs, the AU, the Committee and other stakeholders for the promotion and protection of children's rights in Africa.
- Contribute to the Committee's Strategic Plans of Action.
- Encourage sharing and learning from one another on important child rights issues, mechanisms and processes.
- Make recommendations to the Committee on various issues regarding child rights.
- Make recommendations on how civil society can support the Committee and implementation of the Children's Charter.

### 3. What has the CSO Forum achieved so far?

‘The Committee really learns from the CSO Forum and their recommendations improve our work.’

**Ms. Agnès Kaboré Ouattara, Chairperson of the African Committee of Experts on the Rights and Welfare of the Child**

#### 3.1 Educating, sharing and learning

The Forum is in its infancy but has achieved a great deal not least as a mechanism for bringing child-focussed civil society together to share information and experience. Bakary Badjie from Child Protection Alliance in The Gambia explains that: *‘Some people and institutions are doing a great work in promoting and protecting child rights in Africa. I know their work but this Forum gave me a chance to meet them. It helped me to learn more how they are going about their work. I understand better for instance how they gather the information they need to produce their reports. What I also found interesting is the group discussion about how civil society organisations can use the African Children’s Charter to advocate for child rights.’* Although not every CSO working on children’s issues in Africa will be able to attend these Forums, several organisations have subsequently held workshops in their own countries; for example, participants from Niger, Kenya and Burkina Faso held workshops with their networks to share the information and learning from the second CSO Forum.

In addition, those agencies and individuals on the CSO Forum database receive regular updates on what is going on at the Secretariat and in the ACERWC. They receive the reports of meetings, announcements of upcoming events and information on how they can engage with the ACERWC. Please contact the organizers to be included on this database.

#### 3.2 Avenues of communication with the Committee

The Forum has created avenues for communication between CSOs in Africa and Members of the Committee who have attended and participated in every Forum. This has created an opportunity for CSOs to ask direct questions and raise issues with them. The CSO Forums have also made recommendations to the ACERWC and these have been included in the Committee’s official session reports and are discussed by Committee members. On presentation of the CSO Forum’s recommendations to the Committee at the 15th session, the Chairperson Ms. Seynabou Ndiaye Diakhaté announced that *‘I am very happy about these recommendations. They will be used in our meeting to help us make progress.’*

Several of the recommendations have already been acted upon by the ACERWC. It was CSOs, through the Forum, which asked for an evaluation of the last Plan of Action. It was also CSOs which asked for a revision of the Observer Status guidelines. The Forum has also fed in comments to the Committee's draft new Plan of Action 2010-2014. Furthermore, CSOs, with the help and support of the Forum have been very active in seeking nominations for strong candidates to the ACERWC.

### **3.3 Catalyst for broader advocacy in the region**

The CSO Forum has not restricted its advocacy to the Committee. It also seeks to be a voice for children within the region more broadly. For example, following the first CSO Forum a statement was prepared regarding children rights in relation to Agriculture and Food Security which was the theme for a forthcoming AU Summit. This statement was shared with national government delegations going to the AU Summit, Ambassadors to the AU and donors. The third Forum also explored child rights advocacy opportunities in the region during 2010 including preparation of a Communiqué on maternal, infant and child health and development to be distributed by CSO Forum participants to government delegations attending the AU Summit.

## **4. The future for the CSO Forum**

The CSO Forum needs to become established on a firm footing so that its work is sustainable. The establishment of a liaison unit is essential for the expansion of this movement of informed and committed CSOs which can work together to fight for children's rights and wellbeing in Africa. The idea behind such a unit would be to create an independent and permanent body to liaise between the Committee, CSOs and other bodies and undertake the following tasks amongst others:

- Serve as a liaison between CSOs and the Committee as well as other AU bodies (for example regarding civil society reporting)
- Support the development of civil society reports
- Facilitate attendance for civil society at the ACERWC pre-session to present their reports
- Organise the CSO Forums
- Follow up the implementation of the resolutions and recommendations of the CSO Forum
- Facilitate the effective sharing of information relating to the implementation and monitoring of the ACRWC; this may involve setting up a website
- Promote the visibility and credibility of the CSOs within the AU
- Share information about when meetings are taking place, civil society reporting, state reporting and activities linked to them
- Link with the NGO Group for the CRC.



*Part*

4

# HOW CIVIL SOCIETY CAN ENGAGE WITH THE WORKING PROCEDURES OF THE COMMITTEE

## 1. Observer Status

### 1.1 What is Observer Status?

The Committee formalised the participation of civil society organisations in its work in 2006 by adopting 'Criteria for granting Observer Status in the African Committee of Experts on the Rights and Welfare of the Child to Non-Governmental Organisations (NGOs) and Associations.' (See accompanying CDROM). These were updated by the Committee in 2010. Civil society organisations have been invited to be actively involved with the Committee since it began work in 2002 however to date only a handful have obtained Observer Status in part because of delays in the Committee deciding on applications and in part because of confusion about the criteria.

It should be remembered that an organisation does not need to have Observer Status in order to file a communication, prepare a civil society report or help the Committee with investigative missions. However, the advantage of Observer Status is that it gives organisations formal access to participate in the Committee's work in the following ways:

- To be present at all the opening and closing ceremonies of Committee meetings;
- To participate in some of the discussions at meetings when invited and with the Chairperson's authorization;
- To have access to Committee documents provided they are not confidential and they deal with issues concerning the observers;
- To be invited to attend closed sessions to consider issues which concern observers;
- To make a statement on issues concerning an organisation with the Chairperson's authorization and provided that the text of the statement is supplied in advance;
- To answer questions put to observers by the Committee members; and
- To request that issues of particular interest be included in the agenda.



The Criteria for Granting Observer Status also generates reciprocal obligations by civil society organisations to the Committee: they undertake to establish a relationship of close cooperation with the Committee and to hold regular consultations with them. They are also obliged to submit analytic reports on their activities every two years.

#### TIP

Organisations wishing to attend a Committee meeting should first contact the Secretariat to obtain accreditation (written permission to attend) whether or not they have Observer Status.

### 1.2 Who can get Observer Status?

To be eligible for Observer Status, an organisation:

- Should support the work and spirit of the AU and the Committee;
- Is encouraged to apply as part of a coalition formed of organisations with similar interests;
- Should have been registered in a State Party to the ACRWC for at least three years before requesting Observer Status and have permission to work from the State Party in the protection and promotion of children's rights;
- Should have a recognised Head Office;
- Should have democratically adopted statutes;
- Should have a representative structure and democratic and transparent decision-making processes;
- Should have an administration which has a majority of African citizens or Africans from the diaspora as defined by the Executive Council and should have an elected children's representative whenever possible. Please note that these two conditions do not apply to international NGOs; and
- Should be able to provide information regarding their sources of funding.

Any organisation which is discriminatory or employs child labour is not eligible.

### 1.3 What is the application procedure for obtaining Observer Status?

An organisation must submit an application to the Committee at least three months before the Committee's next session is scheduled to take place. The application must be in both English and French and enough copies for all of the Committee members must be submitted (this means at least 12 copies). The application should contain the following:

- The organisation's Statute or Charter;
- An updated list of its members;
- Information about sources of financing including voluntary contributions from external sources (accurately indicating the amounts and names of donors)

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- Copies of recent financial statements which include financial support or contributions granted directly or indirectly by a state; and
- A memorandum of activities outlining past and present activities and links in and outside of Africa.

Diaspora organisations must also submit the names of two AU member states or civil society organisations recognised by the AU who can attest to its authenticity. Once an application has been received by the Secretariat of the Committee then it should be reviewed at the next Committee meeting. The practice so far is that applications have taken a long time to process.

### **1.4 Informal participation in Committee meetings**

It should be noted that some of the time the Committee meets in closed session. The practical implication of this is that organisations may have travelled far and at great expense to attend a meeting only to find that they are excluded from the meeting room for long periods of time. This time should not of course be wasted. A very important aspect of attending Committee meetings is that civil society organisations can approach Committee members during the breaks in sessions to raise matters of particular concern with them. Although they are often very busy, members are normally able to find the time to meet briefly with most organisations wishing to do so. It is also an opportunity for civil society organisations from different parts of the continent to meet and discuss common issues of interest.

## **2. The Reporting Procedure**

### **2.1 What is the reporting procedure?**

A vital part of the Committee's mandate is to examine reports submitted by States on the child rights situation in their country. States are supposed to submit an initial report within two years of ratification of the Children's Charter and every three years after that. The main objective of these reports is to inform the Committee of the administrative, judicial and other measures that the state has taken to implement the Charter and factors and difficulties affecting implementation. They are public documents and widespread consultation in the preparation of reports is highly encouraged.

It is vital that the Committee also considers reports from civil society as part of this process. It must have access to children's own views and opinions since the Committee needs several sources of information to enable it to have a clear and comprehensive overview of the implementation of the Charter. The final part of the reporting jigsaw is for the Committee's Concluding Observations and Recommendations to be publicised and implemented and for this to be monitored and then discussed during the next State Party report.

The Committee reviewed the first State Party reports in 2008. State Party reports submitted so far include those from Burkina Faso, Cameroon, Egypt, Kenya, Libya, Mali, Niger, Nigeria, Rwanda, Tanzania, Togo and Uganda. Copies of these reports can be found at: <http://www.crin.org/resources/treaties/index.asp>.

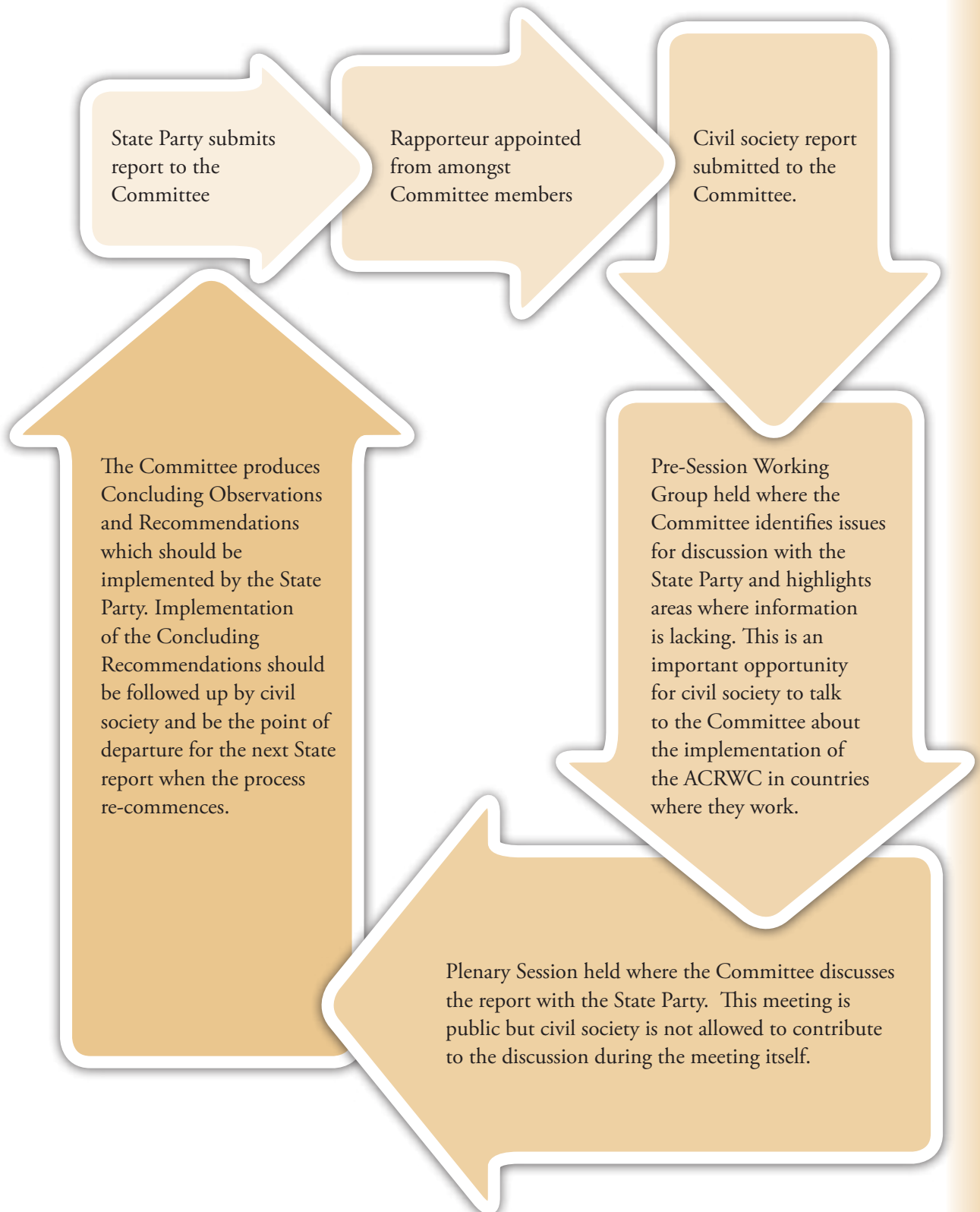
This section of the Guide examines:

- what should be in the State Party report
- how the Children's Charter reporting process relates to the CRC reporting process
- what should be in the civil society report
- how children and civil society can contribute effectively to the reporting process
- how the Committee's Concluding Observations and Recommendations can be popularised.

### **The importance of the reporting procedure**

- It establishes a framework for dialogue between the Committee, its partners, civil society and States Parties which can be used to achieve other goals which further the rights of the child;
- It allows the Committee to monitor implementation of the ACRWC;
- It enables difficulties to be identified and solutions to be agreed co-operatively;
- It provides tools for civil society to monitor the implementation of the ACRWC at national levels;
- It enables information to be shared amongst states themselves and amongst civil society.

## THE REPORTING PROCESS



## 2.2 The State Party Report

### 2.2.1 Differences between the initial and the periodic reports

The initial State Party report has to be made within two years of ratification and the subsequent periodic reports have to be made every three years after this. The Committee has produced guidelines for initial reports but not yet for periodic reports. Both the initial and periodic reports should contain sufficient information to give a comprehensive understanding of the implementation of the Children's Charter in a specific state. However, there will be some differences between them:

- The initial report will have to provide a certain amount of basic information about the status of children's rights such as general data about the population and life expectancy at birth, ratified human and child rights treaties and national legislation concerning children. This baseline information will not need to be repeated in periodic reports unless there has been a significant change.
- The periodic reports will focus on measures adopted as a follow-up to the recommendations made by the Committee on previous occasions and on major developments that have occurred during the reporting period with regards to children's rights.

#### TIP

Encourage your government to draft and submit their initial State Party Report as soon as possible after ratification and ensure that an efficient mechanism is in place to ensure effective monitoring of the ACRWC which is in harmony with monitoring of the CRC.

### 2.2.2 What should be in the initial State Party Report?

The Committee has produced guidelines outlining what should be in an initial State Party report to ensure that information is presented in a methodical and informative manner (see accompanying CDROM). These guidelines recommend that States Parties use a format with articles clustered by themes rather than considered individually. This approach reflects the holistic perspective on children's rights taken by the Children's Charter and emphasises that children's rights are indivisible and interrelated, and that equal importance should be attached to each and every one.

No guidance is given as to the length of the report (the UN Committee on the Rights of the Child recommends that the CRC State Party Report should be a maximum of 120 pages). The First CSO Forum on the ACRWC recommended that the Committee 'Set the maximum number of pages for State reports (excluding the attached annexes) so as to favour a standardized format to expedite consideration of reports.'

The Committee has organised the themes into nine clusters; the first eight are the same as for the CRC periodic reports and the ninth focuses on Responsibilities of the Child (Article 31 ACRWC). The guidelines recommend that each of the nine themes listed below should be considered in terms of:

- Legislative, judicial or administrative measures taken to implement the right;
- Institutional infrastructure in place particularly for monitoring;
- Difficulties encountered; and
- Plans and goals for the future to ensure implementation.

### Thematic Clusters

#### *i. General Measures of Implementation (Article 1)*

This should include consideration of:

- The process of harmonisation which has taken place to ensure that national laws are compatible with the Children's Charter;
- Whether any reservations have been made to the Children's Charter and, if so, why;
- Whether the state has any independent human rights institutions for children such as an Ombudsperson;
- What comprehensive national strategies there are for children;
- Whether there are permanent governmental coordination mechanisms such as a Child Rights Commissioner or Ministry for Children;
- Measures taken to ensure that any custom, tradition, cultural or religious practice that is inconsistent with the Charter is discouraged; and
- How the Charter is popularised and how the State Party reports are disseminated.

#### *ii. Definition of the Child (Article 2)*

This should include consideration of the minimum ages defined by national legislation for:

- voting, marriage for girls and boys, employment (including hazardous, part-time and full-time work), end of compulsory education, sexual consent for girls and boys, criminal responsibility, detention, capital punishment and life imprisonment, bringing a case before the court without parental or guardian consent, participating in judicial proceedings, giving consent to adoption or guardianship, capacity to inherit or conduct property transactions, access to information concerning the biological family, giving consent to medical procedures, voluntary enlistment in armed forces, conscription into armed forces and participation in hostilities.

### *iii. General Principles (Articles 3 and 26, 4, 5, 7 and 12)*

#### ***Non-discrimination***

This should include consideration of:

- whether the principle is included in the Constitution or national legislation;
- which groups of children are excluded (for example, girls, children with disabilities), how the rights of children who are non-nationals, refugees or internally displaced are assured;
- what specific measures have been taken to reduce economic, social and geographical disparities; and
- whether disaggregated data have been collected regarding specific groups of children, for example children belonging to minorities, refugees, asylum-seekers and girls and boys with disabilities.

#### ***The best interests of the child***

This should include consideration of:

- whether the principle is integrated in relevant legislation;
- what consideration is given to this principle by courts of law, administrative authorities and legislative bodies and by public and private social welfare agencies;
- how the principle is taken into consideration in budgetary allocations including at the central, regional and local levels;
- how the best interests of the child are taken into consideration in planning and development policies including housing, transport and environmental policies;
- whether the best interests of the child are given primary consideration in matters relating to adoption, immigration, administration of juvenile justice, the placement and care of children in institutions, social security; and
- whether the best interests of the child are made part of the training of professionals.

#### ***The right to life, survival and development***

This should include consideration of:

- whether the principle is incorporated into legislation;
- the relationship between minimum age of employment and the age of completion of compulsory schooling and how this impacts on the right of the child to education;
- the situation regarding the enjoyment of the highest attainable standard of health and facilities for treatment and rehabilitation;
- measures adopted to recognize and ensure the right of every child to a standard of living adequate for their physical, mental, spiritual, moral and social development;
- whether deaths of children are registered and when appropriate, investigated and reported; and
- whether specific measures have been taken to ensure the survival and development of adolescents and the prevention of risks that adolescents are particularly exposed to, for example, sexually transmitted diseases and street violence.



## **| Advancing Children's Rights**

### ***Respect for the views of the child including the provision of information to children and promotion of their participation.***

This should include consideration of:

- whether the principle is incorporated in legislation;
- whether the views of boys and girls are incorporated in decision-making processes at local, regional and national levels;
- whether relevant and accessible information is provided to children in the context of their evolving capacities;
- what legislative or other measures are in place to ensure the right of the child to express his or her views in family life, school life, administration of juvenile justice, or asylum-seeking processes and so on;
- whether boys and girls can be heard in judicial and administrative proceedings and whether they can intervene directly or through a representative;
- whether professionals, for example judges, teachers, health workers, social workers are trained to encourage children to express their views and give them due weight;
- whether the subject of human rights in general, and the rights of the child in particular, have been incorporated in the school curricula for all children and promoted in school life; and
- what action children are taking on their own, for example, through children's coalitions or youth mobilisation, regarding issues that concern them.

### ***iv. Civil Rights and Freedoms (Articles 6, 7, 8, 9, 10 and 16)***

This should include consideration of:

- Name, nationality and identity;
- Birth registration;
- Freedom of expression;
- Freedom of thought, conscience and religion;
- Freedom of association and of peaceful assembly;
- Protection of privacy; and
- Protection against child abuse and torture.

### ***v. Family environment and family care (articles 16, 18, 19, 20, 23, 24, 25 and 27)***

This should include consideration of:

- Parental responsibilities;
- Separation from parents;
- Family reunification and children deprived of a family environment;
- Maintenance of the child;
- Adoption; and
- Abuse, neglect and exploitation.

Information provided should be disaggregated by gender, age, ethnicity and rural or urban environment, regarding homeless children, abused or neglected children, children placed in foster care, children placed in institutional care, children placed through domestic adoption and children entering or leaving the country through inter-country adoption procedures.

*vi. Health and welfare (Articles 5, 13, 14, 20 and 25)*

This should include consideration of:

- Survival and development;
- Children with disabilities;
- Health and health services;
- Child care services and facilities including provision for parents to be assisted; and
- Care for orphans.

*vii. Education, leisure and cultural activities (Articles 11 and 12)*

This should take into account whether:

- All children have the right to free and compulsory basic education, whether special measures are taken to ensure access to education for 'female, gifted and disadvantaged children' and whether African morals, traditional values and cultures are preserved and strengthened through a child's education;
- Pregnant girls can continue with their education; and
- Leisure and cultural activities are available, meaning that children have the right to rest and play and to participate in cultural life.

*viii. Special protection measures (Articles 15, 16, 17, 21, 22, 23, 26, 27, 28, 29 and 30)*

This should include consideration of:

- Children in situations of emergency such as armed conflict or refugee or internally displaced children;
- Children in conflict with the law including how juvenile justice is administered particularly for children who are deprived of their liberty and how convicted children are rehabilitated;
- Children of imprisoned mothers;
- Children in situations of exploitation and abuse including child labour, protection from drug abuse, protection from abuse, sexual abuse and exploitation and torture, prevention of the use of children in begging; and prevention of the sale, trafficking and abduction of children;
- Children who are victims of harmful social and cultural practices such as early and forced marriage and female genital mutilation; and
- Children belonging to minority groups.

*ix. Responsibilities of the Child (Article 31)*

Article 31 deals with the responsibilities and duties of children rather than the obligations of States Parties. Children are given various responsibilities under this Article including:

- To work towards the cohesion of their families and communities;
- To respect their parents, superiors and elders at all times; and
- To preserve and strengthen African cultural values.

This may include consideration of the extent to which States are responsible for providing an enabling environment for children to undertake their responsibilities

and duties. For example, do they support the formation of Child Rights clubs or organisations and Children's Parliaments? Do they celebrate National Children's Days as well as the Day of the African Child and do they incorporate social and moral responsibilities into school curricula?

### **2.2.3 The relationship between the CRC and ACRWC reports**

All states in Africa, save for Somalia, have ratified the CRC and have submitted their initial reports to the UN Committee on the Rights of the Child. Many African states have also submitted their second periodic reports to the UN Committee. Some have also submitted consolidated third and fourth periodic reports (these countries include Burkina Faso, Egypt, Ethiopia, Nigeria and Sudan). There are of course differences between the reporting requirements for the CRC and the ACRWC but there are also very many similarities and in practice the ACRWC reporting procedure will be closely integrated into the CRC reporting procedure. The CRC periodic reports are due every five years and the ACRWC periodic reports are due every three years so the burden is heavier for the Children's Charter, but the two reporting processes should run in tandem and be seen as part of a continuous cycle of child rights monitoring, reporting and implementing Concluding Observations and Recommendations made by both Committees.

#### **TIP**

Civil society organisations should support the African Committee of Experts on the Rights and Welfare of the Child and the UN Committee on the Rights of the Child in their ongoing dialogue to ensure that the reporting process for both bodies is harmonised regarding timing.

In order to avoid over-burdening states with duplicating reporting obligations, the guidelines for State Party reports to the Committee explicitly say that they may rely on the reports submitted to the UN Committee on the Rights of the Child but must also 'highlight the areas of rights that are specific to the Children's Charter.' They must also specify actions taken in response to Concluding Observations and Recommendations produced by the ACERWC and the UN Committee on the Rights of the Child.

However, there are no legislative or practical guidelines provided by the Committee to States Parties on how to implement and report on these 'specific' areas of rights. This raises the possibility that the Committee and the UN Committee on the Rights of the Child may reach different and possibly contradictory conclusions regarding States' reports. This will do nothing to provide States with clarity regarding their obligations towards children's rights.

### **Nigeria's Initial and First Periodic Report to the Committee 2006**

Nigeria's initial and first periodic report to the Committee is very comprehensive and follows the outline given in the Committee's guidelines closely. It draws extensively from its second CRC periodic report. However, it is not simply a duplication of the CRC report since the drafting process for the Children's Charter report involved a consultative meeting with members of civil society, international organisations and development partners. It was also validated at a stake-holders workshop at which members of the Children's Parliament were present. The information has been updated since the CRC report was submitted and also incorporates the government's response to the UN Committee's Concluding Observations and Recommendations.

Most of the unique aspects of the Children's Charter are specifically referred to including prohibiting child marriage, fixing 18 as the age at which a person can be involved in hostilities, enhanced protection for children of imprisoned mothers, for pregnant girls and for children being used for begging. There are some gaps; for example, in the section dealing with refugee children, there is no discussion of the protections given to internally displaced children.

States have interpreted for themselves how to approach the content of their reports. Kenya's Initial Report to the ACERWC, for example, focuses solely on five areas it deems to be 'not addressed in the UNCRC, in recognition of unique African experience, circumstances and conditions.' These five areas are: the protection of the family, children of imprisoned mothers, protection against harmful, social practices, protection against apartheid and discrimination and responsibilities of the child. By contrast Egypt's Initial Report is more comprehensive and organised by chronological examination of each Article of the Children's Charter in turn. Uganda's Initial Report omits to mention Article 31 regarding children's responsibilities which is remarkable given its unique status within the Charter. This uncertainty on what States should be reporting on has also lead to one State Party Report being rejected by the Committee on the basis that it was a straight copy of the CRC report and did not deal with the specificities of the Children's Charter in sufficient detail.

The reporting procedure is a central part of the Committee's work and the Concluding Recommendations should arguably be the most important documents produced by the Committee. The recommendations they contain need to be precise, clear, well-defined and concrete so that they are as meaningful as possible for State parties. It is therefore imperative that the Committee issues

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States with clear guidelines outlining the specific areas they must focus on to differentiate the ACRWC report from the CRC report. Clarification of these specific areas will also assist civil society in harmonising their own reports with the CRC reporting processes.

### TIP

Lobby the Committee to produce clearer guidance to States Parties on the specific areas of rights outlined in the ACRWC to be included in their reports to ensure consistency and coherence so that the reporting procedure is as effective as possible in protecting children's rights.

## 2.3 The Civil Society Report

*Civil society can say what they see, they criticise and that is what we need. This collaboration is very important.*

**Ms. Agnès Kaboré Ouattara, Chairperson of the African Committee of Experts on the Rights and Welfare of the Child**

### 2.3.1 Civil society and the State Party report

Under its Rules of Procedure, the Committee may invite civil society organisations to submit reports on the implementation of the Charter and to provide it with 'expert advice in areas falling within the scope of their activities' (Rule 69). This section of the Guide looks at why a civil society report is needed, what should be in it, what steps need to be taken for effective preparation and how children can actively participate in this process.

The civil society reports prepared for the CRC are often referred to variously as 'complementary', 'supplementary', 'shadow', 'alternative' or 'the NGO report'. There are inferences which can be attached to these terms; for example, an alternative report implies that a wholly different report is needed to that of the State Party report. In this Guide the term 'civil society report' is used because it is clear, unambiguous and straightforward.

Although responsibility for reporting lies with the State Party, the Committee Procedures for the Consideration of State Party Reports explain that 'States Parties are strongly encouraged to adopt a participatory approach to the preparation of the reports and to publicize their reports to all relevant actors at national level'. The spirit of the process is therefore one of constructive dialogue. In some countries, children and civil society organisations may be consulted in the preparation of the State Party report and their contributions incorporated into the official

version. This can be a very good opportunity to bring issues to the government's attention and to enter into dialogue. This collaboration can take many forms such as holding a meeting to solicit views or discuss drafts.

In many cases however, civil society organisations do not have the opportunity to contribute to the reporting process or their views are not taken fully into account. Furthermore, civil society organisations should be careful to maintain their independence and be cautious of putting their name to a State Party report which might subsequently be altered without their knowledge. It is of course possible for civil society organisations to be involved in preparing both the State Party report and the civil society report; this does not represent a conflict but should in fact help to strengthen the reporting process.

### 2.3.2 Why prepare a civil society report?

*CSO engagement in the Reporting Process brings to the fore key issues that need to be considered that would otherwise be missed out from state party reports because most of the statements provided by state parties in their reports are statements of intent. There is need to move from intentions to actions.*

**Ms Stella Ayo Odongo, Executive Director UCRNN**

- The Committee needs several sources of information to enable it to have a clear and comprehensive overview of the implementation of the Children's Charter.
- State Party reports to the UN Committee on the Rights of the Child, and indeed the few that have so far been submitted to the Committee, are heavily weighted in favour of presenting legislative frameworks but lack analysis of the implementation process. Civil society reports are an essential way of ensuring that the Committee has a clearer picture of how policies and legislation are being implemented on the ground.
- They can fill gaps where the State Party report has not provided enough information and expose where information provided by the state is incorrect.
- They are an important opportunity to make children's experiences and opinions heard since State Party reports rarely include children's voices.
- Reporting to the Committee is a unique opportunity to bring concerns about children's issues to an important regional body.
- At a national level, the process of preparing the report inspires scrutiny of government policy which can be very fruitful in opening a debate about the status of children's rights in a country.
- It can serve as an important advocacy tool for civil society organisations.
- It can play a crucial role in informing the media about the reporting procedure and about the main concerns of civil society organisations regarding children's rights.

### 2.3.3 Who is responsible for preparing a civil society report?

It is advisable for a national coalition of organisations to prepare a civil society report for several reasons:

- It allows for more effective monitoring of implementation of the Children's Charter at a national level owing to the specialist knowledge of coalition members.
- It gives the report credibility and validity for it to be endorsed by a wide range of organisations working on children's issues who have broad geographical range.
- It is more effective for the Committee to receive one comprehensive and credible civil society report than a multiplicity of possibly contradictory reports.

#### TIP

Involving the media throughout the reporting process, starting with the preparation of the civil society report, can be a very useful way of keeping the reporting process in the public eye and can help push for the state to comply with the resulting Concluding Recommendations and Observations.

### 2.3.4 The preparation process

‘When preparing our report to the African Committee of Experts on the Rights and Welfare of the Child we took the government report and compared it with reality.’

**Mr. Moussa Sidikou, Chairperson, CONAFE-Niger**

#### *Access to the State Party report*

Once submitted to the Committee, the State Party reports are public documents which should be publicly available from either the State Party itself or from the Committee's secretariat.

#### *Harmonizing with the CRC monitoring process*

In many countries a structure for monitoring the implementation of the CRC and for preparing civil society reports to the UN Committee on the Rights of the Child is already in place and this should be adapted to incorporate the unique elements of the ACRWC. The ACRWC civil society report should be considered as an integral part of the ongoing CRC monitoring and reporting cycle rather than something that is separate and new.



### **Sources to be relied on**

‘Reports need to be very well researched and based on well-founded evidence of what is happening on the ground.’

**Mr. Kaleb Gamaya, Programme Director, National Organisation for Legal Assistance (nola), Tanzania**

- Any previous documentation from the Committee such as Concluding Observations and Recommendations;
- CRC documentation including State Party reports, civil society reports, Concluding Observations and Recommendations and General Comments;
- Reports produced by local, national, international or regional human and child rights organizations, other civil society organisations and academic/ research institutions;
- Current legislation and National Plans of Action for children;
- Government reports on implementation of legislation (for example, government reports for monitoring fulfilment of the Millennium Development Goals);
- Parliamentary records and/or legislative proceedings;
- Reports produced by UNICEF, UNHCR, WHO and any other relevant UN agencies. Special attention should be paid to reports produced in the follow up to the 2006 UN Study on Violence Against Children; and
- Budget analyses related to public expenditure on children conducted by either government or civil society.

### **Consultative process**

The main issues to be included in the civil society report should be identified in consultation with key organisations and individuals. Children should also be closely involved (for more on this see 2.4). Final drafts should be validated by further wide consultation. Wambui Njuguna, Director of Programmes for ANPPCAN Regional Office and involved in preparing the Kenya Civil Society report says that: *‘To ensure that all voices are heard, one must try as much as possible to be inclusive. When organizing Coalitions for reporting it is important to make sure that members are drawn from different sectors working with children e.g. education, health, protection, direct service provision, children’s parliament. It is important to also ensure that key professions are included e.g. legal, educationists and child advocates.’*

### **2.3.5 What should be in the civil society report?**

The aim of the civil society report is to undertake a systematic analysis of the extent to which law, policy, programmes and practice in the State Party comply with the Children’s Charter. It should place an emphasis on analysing the implementation of legislation in practice. It should point out relevant legislation, policy, programmes, institutions and mechanisms and statistics to support or contradict the information provided by the government and all assertions must be backed up with reference to facts. If there is no statistical information available then this should also be pointed out as an obstacle to effective monitoring. CSO reports should as far as possible contain child-centered statistics and case studies on the most significant changes in children’s lives.

It is not necessary to provide information regarding all nine of the thematic clusters of the ACRWC. In order to make maximum impact, a civil society report should focus on the most important and relevant themes and where possible provide concrete examples of violations of children's rights. The aim is to initiate constructive dialogue with the government rather than to be accusatory. This is not to say that the report mustn't point out problems and issues in no uncertain terms but the tone should aim to be non-confrontational and lead towards practical and achievable solutions to problems.

### **2.3.6 How is the civil society report submitted?**

Once it has been finalised, civil society reports should be submitted in English or French (the working languages of the Committee) to the Committee's Secretariat in Addis Ababa, Ethiopia. Hard copies should be sent along with electronic copies. There is no time limit for submission but it should be done in advance of the Pre-Session Working Group where the State Party report will be considered. Where possible, 12 copies of the report should be submitted to the Secretariat for distribution to all Committee members and to the Secretariat itself. The report can be submitted on a confidential basis if the organisation or individuals concerned do not wish the findings to be made public or for members of the Committee to refer to it as a source during their discussions with government. If confidentiality is required then this should be made clear to the Secretariat at the time of submission. Any questions concerning the civil society report should be addressed to the Secretariat in Addis Ababa, Ethiopia or the organisers of the CSO Forum at [csoforumacrwc@gmail.com](mailto:csoforumacrwc@gmail.com).

### **Uganda Child Rights NGO Network (UCRNN) – Preparing a civil society report**

UCRNN is a coalition of CSOs working in the field of child rights in Uganda and spearheaded the development of the CSO report on the Children's Charter working with its members but with other CSOs as well. The reporting process involved the following steps:

- A desk review of the Government's initial report to the ACERWC, the most recent civil society report to the CRC and child-related documents including policies.
- An inception workshop for stakeholders from CSOs and government bodies aimed at building consensus on how to develop the civil society report. It also aimed at involving participants in identifying key issues and clarifying the roles of different stakeholders in the process to ensure ownership.
- An orientation workshop was then held aimed at presenting to participants an understanding of the task, approach, methodology and use of various data collection tools. CSOs that work with children directly were invited to this orientation meeting to agree

on the most appropriate means of involving children. Among other things discussed was the consent by both children and caretakers or guardians prior to their engagement.

- Research was conducted and data was collected from a wide range of stakeholders including government representatives, children, and men and women; geographical representation was key.
- Consultation with children was a major aspect of the reporting and was aimed at ensuring their voices are brought to the fore. UCRNN in its undertakings values the involvement of children because we believe that children know their problems best and once guided, together we can come up with lasting solutions to the problems.
- Children, boys and girls in and outside school, were involved in the generation of the report from 11 districts in the country. Children's views were presented as a section on their own in the alternative report.
- Preparation of the report followed the guidelines given by the ACERWC. Specific attention was given to the aspects of the ACRWC which at the time of reporting were a big concern. They include: respect for children's views; (on realizing that although participation of children was gaining momentum in the country, many stakeholders were approaching it from a 'simplified point of view where children's views are generated at events but not respected'); Article 31, (having realized that a number of child rights advocates are not giving enough attention to the responsibilities of the child); and Article 30; (since children with imprisoned mothers at the time of research were one of the silent majority in the country). The report also included issues that were not included or adequately addressed in the government report.

The main challenge was lack of a systematic mechanism for information management that made the generation of the report costly and time consuming. In areas where the network had a presence, members played a critical role, but major set backs were experienced in areas where there were no members. As a priority the network is putting in place a comprehensive child rights information data bank that will ensure availability of regular and up-to-date data on the situation of children. This will include supporting organizations to participate in regular information gathering on aspects of the ACRWC as part of their routine work. Resources allocated to the exercise limited the area of coverage in addition to time limitation and communication gaps. From the exercise, UCRNN learnt the importance of having adequate resources well in advance for the process. The importance of coalitions as a mechanism for regular information gathering on the implementation of the Children's Charter so that information is readily available for the report also came out strongly.

### **2.4 Children's participation in civil society reports**

#### **2.4.1 Why is children's participation important?**

Child participation is a right under the ACRWC: Article 7 states that 'every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws.' Children can participate in the civil society reporting process either through adult-led civil society organisations that report to the Committee, or through their own child-led organisations. Children might also be involved in the formal State Party reporting process through participating in consultations organized by their government or civil society organisations.

Their participation in report writing is important for many reasons and has benefits for children, their families and communities, the Committee, States Parties and for civil society organisations drafting the civil society report. Children who are involved in making decisions about their lives and who are informed about their rights often take on the responsibility of informing others in their community about their knowledge. The Committee benefits from the participation of children in the reporting process because a civil society report that involves children will give a more personal, critical and practical approach than the State Report. Having access to children's experiences, ideas and suggestions means that the Committee will be better able to assess the implementation of children's rights within the specified country and make appropriate recommendations.

States Parties will benefit from child participation within the reporting process by receiving accurate information from children regarding how the programmes and facilities they have initiated to implement the ACRWC are being used and how well they are meeting the goals for which they were designed. These opinions will assist the States Parties in developing new, or adapting old, programmes so they are more precise and effective.

#### **2.4.2 Key principles of child participation**

The key principles surrounding child participation within the reporting process are derived from the CRC and the ACRWC: non-discrimination; the best interests of the child; the right to life, survival and development; and respect for the views of the child. Additional principles such as recognition and respect for children's evolving capacities, transparency and accountability, and being dedicated to involving children in all areas of the reporting process should also be applied to ensure that when children are participating, it is meaningful, ethical and effective in its purpose and application.

There is no specified method for involving children in the drafting of a civil society report. It might involve consultation with children through meetings organised and facilitated by a civil society organisation. This approach was taken by CONAFE-Senegal in preparing for their CRC report in 2006 and the strategies and techniques they used are outlined below. It might involve consultation through youth groups or clubs or on an ad hoc basis. It might involve questionnaires and

surveys being completed or children's organisations themselves preparing and submitting their own reports. It could also involve recording children's voices on different media like film or audio tape or using the internet through email, interactive websites or through web-chats (although this will be limited of course by availability of access).

Children's views can either be incorporated into the main body of the report or placed in a separate section to highlight the key issues from their perspectives. In any event it is important to highlight clearly the contribution children have made to the report, the main issues that they have raised and recommendations that they have made. Children might also submit their own report to the Committee. The NGO Group for the CRC conducted research with children who had participated in the CRC reporting process. One of their findings was that children thought their reports should present information in a manner accessible to other children, and should look visibly different from the State Party and civil society reports. They also found that children are often very keen to present their findings in person to the UN Committee. When children were asked why they had wanted to meet with the UN Committee, 82% of children said that it was *'to tell the Committee about the experiences of children in my country'*.

#### **2.4.3 Follow up with children after the report**

Following up with the children who participated in the civil society report should not be given any less attention than the creation of the report itself. In fact, it should be planned near the beginning of the reporting process since this follow up can be a source of motivation and learning for all who were involved. Children will have a deeper sense of satisfaction with respect to their participation if they are able to see the fruits of their labour. Not conducting a follow-up or debriefing can leave the children involved feeling disappointed and used.

The final report should not be seen as an end in itself but as part of a continuum. Children who have been involved in drafting the civil society report can attend the Pre-Session Working Group as part of the civil society delegation and play a key role in advocacy activities around the Committee's Concluding Observations and Recommendations. After presenting the report to the Committee, the children will be interested in hearing how the process went, what was recommended and what can be done now. The research conducted while preparing the report, and the feedback and recommendations given by the Committee, can lead to new projects and initiatives that children can be involved in. Practical considerations, such as how children can take their new-found skills and the results from their monitoring back to their communities and put them to use, should also be presented at the follow-up.

Suggested activities for sharing information about the Pre-session and State party examination with children:

- Sending information to children through updated reports, news bulletins and letters.
- Sending the Concluding Recommendations and/or a report to all children and organisations that had participated.

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- Creating blogs, podcasts and films documenting the process.
- Providing information through a website.
- Organising national conferences (funded by the State Party or by CSOs) and meetings for children.
- Using the media, with examples including articles in adult and children's newspapers.
- Disseminating information to children through member organisations.

See the section on 'Sources of Further Information' for details of more guidance materials for undertaking child participation work.

### Case Study from CONAFE-Senegal on child participation in the CRC reporting process

*'Working with children takes a lot of time. The children were saying slow down, slow down. You have to adapt the terminology of the CRC to make it real for them.'*

**Ms. Justine Laïson, Administrative Secretary of CONAFE-Senegal**

In 2006, the child rights coalition CONAFE-Senegal prepared a civil society report for the UN Committee on the Rights of the Child. An important part of this process was ensuring that children's voices were heard and to achieve this they developed a mechanism for children's participation which would ensure that the views of children from across the country were captured.

In each of Senegal's eleven regions, CONAFE organised preliminary meetings to consult with a wide range of children from different backgrounds including children with disabilities, children in school and children out of school. The issues which emerged as priorities for the children were: birth registration, begging children, child domestic workers, early marriage, discrimination against children born out of wedlock, child participation, access to education for girls in rural areas, children in conflict with the law and harmful traditional practices.

Child representatives from each region were then elected by their peers to attend a five day national workshop at which the children went through the State Party report point by point discussing it and making recommendations. For much of the time the children met separately from the adults as this enabled them to speak more freely. One of the children involved in this consultation explained that: *'What is really important is to allow the children to feel comfortable to speak their minds so that we can really access their opinions. Sometimes with just the adults they don't talk they don't say much but they talk more freely when it is just children talking together.'*

**Aminata Sow Mangane, 15 years old, Board Member of CONAFE-Senegal.**

A committee of adult writers then drafted the civil society report incorporating children's views and recommendations. This draft was then passed to the Board, which included children members, for validation. One child was also selected to help present the report to the UN Committee on the Rights of the Child in Geneva.

After the sessions in Geneva, the delegation from CONAFE-Senegal informed the Board, including the child Board members who had been involved in drafting the civil society report, about what had happened in Geneva and presented all of the materials including the Concluding Observations. Children also participated in a series of regional four day workshops on the reporting process with members of the CONAFE-Senegal network, district level government bodies and community leaders. These regional workshops contributed to push the Ministry of Family Affairs to hold a national level workshop on the Concluding Observations.

### **Challenges faced**

- The State Party report is very technical. Many of the children being consulted were illiterate and many did not speak French. Therefore they needed adults to translate key documents such as the State Party report, the CRC and the Concluding Observations into Wolof and Pulaar.
- At first they did not separate the children from the adults during the meetings but it became apparent that this was necessary to encourage free flowing discussion. It is also very important to integrate the children's views with those of adults. This was done by electing rapporteur children who were confident about speaking publicly to present their groups findings to the adult group.
- CONAFE-Senegal also tried to ensure that school-going children who were involved did so with minimum disruption to their education and with the active support of their school principals.



### **2.5 What is the procedure for considering State Party reports?**

#### **2.5.1 Pre Session Working Groups**

On receipt of a State Party report, the Committee will appoint one of its members to be a Rapporteur. The Rapporteur has responsibility to analyse the State Party report and any civil society reports, establish a list of issues to be considered and draft the final Concluding Observations and Recommendations. The Committee will establish a time for a Pre-Session Working Group to consider the State Party report. The aim of this working group is to identify issues for discussions with the State Party concerned and to see if any additional information is required by the Committee. For those able to attend, these meetings are a very important opportunity for civil society to draw the Committee's attention to key aspects of implementation of the Children's Charter.

#### ***Who can attend a Pre-Session Working Group?***

The Pre-Session Working Group meets in private: participation is by invitation from the Committee only. The criteria they use are whether or not an organisation or individual has submitted a civil society report to the Committee, or is actively working in the concerned country and is able to contribute something 'relevant' to the discussion. When submitting a civil society report to the Committee it is important to enclose a covering letter explaining that you wish to attend the Pre-Session Working Group for your specified country.

Involvement in the Pre-Session Working Groups gives civil society organisations the opportunity to:

- Provide the Committee with a constructive and critical analysis of the State Party report;
- Share information about the situation of children in their country in a confidential setting;
- Set priorities and identify key issues for discussion with the government; and
- Draw the media's attention to the State Party report and to the reporting procedure.

In addition to the Committee members and civil society representatives, other organisations may be invited from the Regional Economic Communities (RECs), AU specialised agencies, UN organs and human rights institutions.

If possible, civil society organisations should send two or three representatives to meet with the Committee during the Pre-Session Working Group including people with a comprehensive understanding of the situation of children's rights in their country and with a legal and development perspective. The delegation may also include children although it may be a while before the Committee's procedures are sufficiently organised for this to be worthwhile. At present it may raise unrealistic expectations amongst the children concerned which will not be fulfilled. Efforts could be made however to arrange a separate and informal meeting between children and Committee members outside of the formal setting of the Pre-Session Working Group.

Many civil society organisations will not have the resources to send an extensive delegation to the Committee in which case it is essential to collaborate with other organisations from a country and send just one individual to present the necessary information to reduce the costs of travel.

### ***Participation by civil society***

‘CSOs need to be thoroughly prepared before they present their report to the Committee. They need to clearly demarcate duties and roles amongst themselves so that answers to the Committee can be well informed and prompt.’

***Ms. Jane Mbugua, Chair, Kenya NGO Child Rights Committee***

The provision of information by civil society organisations during the Pre-Session Working Group is a crucial aspect of the consideration of State Party reports by the Committee since in order for them to have a fruitful exchange with the government, they need to base their questioning on information from a broad range of sources. Civil society organisations who are invited to the meeting are able to make oral presentations to the Committee on key areas. Written submissions of these presentations should be given to the Committee in advance where possible.

The meeting begins with an overview statement from the Rapporteur outlining the main issues in the State Party report. This is followed by oral presentations from civil society (power point may not be available so confirm this with the Secretariat if required). The sessions are short so it is very important to maximise your impact by being clear, precise and succinct. Remember that your presentation will be translated simultaneously so speak slowly and clearly. If you refer to specific research or data then make sure you have copies available with you to submit to the Committee if requested.

### **Suggested framework for presentations to the Pre-Session Working Group:**

1. Comprehensiveness of the State Party report.
2. If there is a significant time lag between the date of the State Party report and the date of the pre-session then it will be very useful to provide the Committee with updated information about significant changes or events.
3. Transparency and participation in the reporting process.
4. Constraints and challenges and measures to overcome them.
5. Key questions for the Committee to ask the State Party.
6. Action-oriented recommendations for solutions.

After the presentations have been made, the Committee then asks questions of the civil society organisations present. The atmosphere of these meetings is confidential and informal. No press releases or summary records of the meetings are made and civil society organisations are asked to respect the confidentiality of other organisations present to enable people to speak freely. This means that information shared and opinions expressed by Committee members, other civil society organisations, national human rights institutions, representatives from other AU bodies and UN agencies and so on should not be made public.

### **2.5.2 Between the Pre-Session Working Group and the Plenary Session**

Once a list of priority issues has been compiled and agreed upon by the Committee, then it is forwarded to the State Party who is asked to submit written responses in advance of the Plenary Session. The list of priority issues is a confidential document. The Committee may also ask for additional information from the State Party before the Plenary Session if it deems that the State Party report does not contain sufficient information.

The State Party is formally invited to participate in the Plenary Session by the Chairperson of the AU Commission. They are asked to designate senior officials with decision-making powers regarding children's rights to participate as this will make a crucial difference to the success of the dialogue with the Committee. Ideally the delegation will not be constituted of diplomats based in Addis Ababa, Ethiopia but will have been sent from their home countries. The practice so far has been for states to send very high-level delegations which have included Ministers of state as well as senior representatives from National Councils with responsibility for children's issues. It has also proved fruitful for states to include government employees who work 'on the ground' as part of their delegation. The Kenyan delegation for example included District Children Officers who were able to explain their work to the Committee.

#### **TIP**

Civil society organisations can try to find out from their governments who will be attending the Plenary Session and encourage their governments to send a high-level and knowledgeable delegation.

### **2.5.3 Plenary Sessions**

The Plenary Sessions are when the Committee and State Party meet to discuss the State Party report. They are public and open meetings although only the State concerned and the Committee members may speak. It is worthwhile for civil society organisations to attend these meetings to obtain a comprehensive overview of the dialogue that takes place. It may also be possible to meet informally with Committee members and the governmental delegations before and during breaks in the meeting to present additional information or provide updates.

The focus of the dialogue is on:

- Progress achieved in implementation;
- Difficulties encountered;
- Current priorities;
- Future goals; and
- Need (if any) for technical assistance.

The session should begin with a 15 minute overview from the head of the State Party delegation followed by a presentation by the relevant Rapporteur. Questions from the Committee should follow regarding the thematic clusters of rights outlined in the reporting guidelines. In practice this structure is not always faithfully followed and the questioning can jump from issue to issue. At the end of the discussions, the Rapporteur will summarize observations and recommendations. Finally, the state delegation is invited to make a concluding statement. It should be noted that these sessions tend to be formal and non-accusatory. They are more about the Committee gathering information than directly challenging the state. The former Chairperson to the ACERWC Ms. Seynabou Ndiaye Diakhaté has said that: *'consideration of reports submitted by States parties should not be made to seem as if the States were being put on trial, but as a framework for frank and fruitful exchanges for better implementation of the Charter.'*

Involvement in the Plenary Session gives civil society organisations the opportunity to:

- Meet with members of the governmental delegation in the intervals before and after meetings to discuss ways in which they could cooperate to address critical problems affecting the implementation of children's rights.
- Encourage the media to give coverage to the work of the Committee and to open up a public debate on children's issues.
- Interact with the Committee members as well as other partners.

#### **2.5.4 The Concluding Recommendations and follow up to the reporting procedure**

One of the most important elements of the reporting procedure is the feedback given by the Committee to the State Party both by way of oral discussion and in the form of Concluding Observations and Recommendations. This feedback becomes part of an ongoing dialogue between the Committee and the State Party. It ensures that the reporting is not a one off event which happens every three years but is part of a continual process by which a State Party constantly reviews and improves its implementation and monitoring of the Children's Charter. Concluding Observations and Recommendations also ensure that the Committee itself can monitor children's rights in a state over an extended period of time. Issues raised in the ACERWC Concluding Recommendations can be incorporated into existing action plans for implementing the Concluding Observations produced by the UN Committee on the Rights of the Child. They should also be used by civil society to lobby for states to follow them up at a national level.

After the Plenary Session, the Committee will meet in closed session to prepare Concluding Recommendations highlighting progress achieved, goals and

difficulties, major issues of concern and suggestions and recommendations. The Committee has adopted a format for Concluding Recommendations to ensure uniformity and consistency. These Concluding Recommendations will be sent to the State Party through the Chairperson of the AU Commission and the State Party will be invited to comment on them. There is no specified deadline for the Concluding Recommendations to be completed and there have been significant delays in the Committee finalising and making its Concluding Recommendations publicly available. When it is reporting to the AU Heads of State Assembly, the Committee will include all of its reports, observations, suggestions and recommendations to the States Parties together with comments received from the States Parties.

Concluding Recommendations prepared by the Committee are available at <http://www.crin.org/resources/treaties/index.asp>

### **Suggestions for popularising Concluding Observations and Recommendations**

- Compile a list of organisations, people and groups who must receive copies of the Concluding Recommendations and circulate them widely.
- If needed, prepare an 'unofficial' translation into local languages as well as a child-friendly version to share with children's groups; also encourage states to prepare child-friendly versions and translations into local languages.
- Review how the Concluding Recommendations relate to the UN Committee on the Rights of the Child's most recent Concluding Observations and dovetail monitoring and implementation efforts where possible.
- Identify key government institutions and officials responsible for implementing the Concluding Recommendations and advocate for a Plan of Action on their implementation.
- Involve the media in reporting on the Concluding Recommendations to encourage scrutiny and raise the issue of child rights up the government's agenda.
- Conduct briefings with governments, other civil society organisations and children and youth on the reporting process, the outcome and the Concluding Recommendations.
- Develop systems and indicators for monitoring implementation of the Concluding Recommendations.
- Advocate and campaign around Concluding Recommendations issues.
- Strengthen or create a network to draft the next civil society report and plan for children's participation in it.

### 3. The Communications Procedure

*‘We are partners to the Committee and we really need to utilise the opportunity this gives us.’*

**Mr. Edmund Foley, Legal officer, Institute for Human Rights and Development in Africa**

#### 3.1 What is a communication?

A communication is the name given to a complaint made to the Committee of a violation of one or more rights under the Children’s Charter. Communications are treated as confidential and are usually a measure of last resort when a domestic justice system has failed to provide a remedy for a violation of a right under the Charter. The Committee has produced Guidelines for the Consideration of Communications which are reproduced in the accompanying CDROM.

#### 3.2 Why bring a communication to the Committee?

Until the UN Committee on the Rights of the Child begins to hear communications, the ACERWC is the only child rights protection mechanism with a communications procedure. The Committee has begun work considering communications but the benefits of bringing a communication remain largely untested and theoretical. However, experience from the African Commission on Human and Peoples’ Rights suggests that its decisions on communications, although not legally binding, do carry significant moral authority.

Bringing a communication to the Committee has the following potential benefits:

- A means to seek remedies for violations of rights protected by the ACERWC;
- A means for the Committee to interpret the provisions of the ACRWC and develop principles and standards for their implementation;
- Communications and the decisions made on them offer a powerful advocacy tool for civil society to ensure state compliance with the provisions of the ACRWC; and
- A means to complement the reporting procedure in monitoring implementation of the ACRWC by a State Party.

A communication is a strategic means to get the Committee to innovatively and progressively apply the Children’s Charter to contemporary child rights issues. The African Charter on Human and Peoples’ Rights (ACHPR) has been developed by the African Commission largely through the consideration of communications: an example of a progressive interpretation of the ACHPR was the SERAC case in which the African Commission read the right to food, shelter and housing into the ACHPR (Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001)). Communications to the ACERWC could provide a platform for the Committee to interpret the Children’s Charter regarding specific violations and to develop principles for broader application.

### 3.3 Who can bring a communication?

Anybody, including children themselves, can bring a communication. Representation by legal counsel is not required and a civil society organisation may complain on behalf of itself or others. The Committee allows for communications to be made by an individual (including a child), group (including a group of children), and civil society organisations so long as they are recognised by an AU Member State, or an AU or UN body.

If the author of the communication is not the victim of the violation and does not have the consent of the child or children concerned then they have to demonstrate that they are acting in the best interests of the child or children concerned. There is no indication of how the Committee will go about deciding whether or not a case has been brought 'in the best interests of the child.'

### 3.4 Who is a communication brought against?

A communication will normally concern a State Party to the Children's Charter but the Committee will consider a communication against a state which has not ratified the Charter providing it is in 'the overall best interest of the child.' This is an unusually generous interpretation.

### 3.5 What are the criteria for admissibility?

On receipt of the communication, the first stage of the process is for a decision to be made on whether it fulfils the Committee's criteria on admissibility. This decision is made by a majority vote of the Committee. If a communication meets the following requirements then it is open to consideration by the ACERWC:

- The communication must be written not verbal;
- It can't be anonymous: if the author is an individual, the complainant should indicate their name and address. The author must be identified even if they do not want their name or organisation known to the government of the state being complained about. Please note that anonymity will be protected by the Committee **only if requested** to do so by the author;
- It must be based on more than just media reports: part of it must be based on other sources such as personal knowledge, statements of witnesses or government documents;
- It must be compatible with the Children's Charter and allege a violation of a right guaranteed under the Charter;
- Communications can not concern cases that have been or are being considered by another international human rights body such as the African Commission;
- All available channels of redress at a national level must have been exhausted or alternatively 'the author of the communication is not satisfied with the solution provided.'
- The wording must not be offensive or disparaging: it should simply state the facts and indicate how they constitute a violation of a right under the Charter; and
- It must be presented to the Committee within a reasonable period after exhaustion of domestic remedies has occurred.



### 3.6 What does exhaustion of domestic remedies mean?

Exhaustion of domestic remedies means that the person or group bringing the communication has used all of the legal processes available in the relevant country to address the problem they are complaining of and that these legal processes have been unsuccessful. These criteria exist in order to give a State Party an opportunity to remedy the violation of a right or rights under the Children's Charter before it is brought to the attention of the Committee. To claim exhaustion of remedies, the complainant should indicate in the communication which national remedies have been tried and the results of this.

The Committee has only recently begun considering communications and has yet to define what the exact parameters of exhausting domestic remedies are. The following are instances, drawn from international human rights law in general, and the African Commission in particular, where exhaustion of domestic remedies may be claimed:

- When a case has been brought before the highest court in a state and has been unsuccessful;
- If a case is stalled by inaction or there is no sign that the domestic authorities will move a case on any further then it may be possible to claim that domestic remedies have in fact been exhausted;
- If a domestic remedy is highly unlikely to be successful in remedying a violation, then it is possible that the Committee will not demand that it be used. There is case law on this point that may be influential when the Committee does begin to consider communications. The African Commission has made it clear that the main reason for having the criteria of exhaustion of domestic remedies is to allow the State Party to have the opportunity to redress any violations of the ACHPR. However, it also admits that there might be circumstances when the likelihood of a complainant obtaining a remedy to redress a situation is so minimal that it is in effect unavailable and ineffective. This was found to be the case in a communication brought by Lawyers for Human Rights against Swaziland when they argued that a proclamation by the King by which he retained the power to overturn all court decisions in effect removed any meaningful legal avenue for redress for their complaint (Lawyers for Human Rights v. Swaziland, Communication 251/2002, 18th Annual Activity Report (2005)).

There is a right of appeal to a decision that a communication is not admissible and the author may ask that the Committee reconsider its decision by providing additional documents or facts or, it is assumed, by demonstrating that the grounds for deciding that the complaint was inadmissible no longer exist.

**Exhaustion of domestic remedies  
– Extracts from the African Commission on  
Human and Peoples' Rights Judgement on  
Admissibility in the SERAC case**

'One purpose of the exhaustion of local remedies requirement is to give the domestic courts an opportunity to decide upon cases before they are brought to an international forum, thus avoiding contradictory judgements of law at the national and international levels.....Another rationale for the exhaustion requirement is that a government should be notified of a human rights violation in order to have the opportunity to remedy such violation before being called to account by an international tribunal.....Requiring the exhaustion of local remedies also ensures that the African Commission does not become a tribunal of first instance for cases for which an effective domestic remedy exists.'

*Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001)*

**3.7 What if the issue is urgent?**

Once admissibility has been decided, then the Committee can make a request to the State Party concerned to take steps to prevent further harm to the children who are victims of the violations. These are called 'provisional measures'. Whereas other regional mechanisms issue provisional measures to States to avoid immediate or irreparable harm to the child, the Committee can issue such measures if it damages the child in any way – the harm does not have to be irreparable. A situation in which a child is removed from school for six months for whatever reason, for example, would qualify and the State must ensure the child receives education.

This mechanism has not yet been tried and tested by the Committee. The African Commission has issued provisional measures which include requesting a government not to execute individuals, calling on a government to avoid inflicting irreparable harm to a victim and not damaging radio transmission equipment. The adoption of provisional measures does not necessarily give an indication of the final outcome on the substance of the complaint.

**3.8 How should a communication be prepared?**

Although it is not a requirement to have a lawyer presenting the communication, it is a good idea for a civil society organisation to work with one closely where possible. The Committee does not offer legal or financial assistance to any complainant. There is no strict format for a communication but it must be in writing and addressed to the Chairperson of the Committee.

## **Template for a Communication for the Committee**

Name and address of victim  
(stating where necessary if this information is to be kept confidential).

Name and address of civil society organisation (if acting on behalf of a victim).

Names and signatures of any legal representatives.

Name of the State Party accused of the violation, the year the State ratified the Children's Charter and its official language. If the State has not ratified the Charter then give an explanation why it is in the child or children's best interests for the communication to be heard.

State the provision(s) of the Charter alleged to have been violated.

Describe the violation of the right(s) which took place detailing times, places and dates and include the names of any authorities or witnesses involved. Indicate the persons who have committed the violations.

Provide arguments in support of the evidence. Draw on African regional and international human rights jurisprudence.

Explain the extent to which domestic remedies have been exhausted. If any domestic legal remedies have not been pursued then explain why this has not been done and why the communication should still be deemed admissible.

Indicate whether the communication has been before any other international human rights body such as the African Commission on Human and Peoples' Rights or the UN Human Rights Committee.

Give an indication of the urgency of the case. Is it a case which requires provisional measures to be taken by the Committee to prevent further harm to the alleged victims? If so explain why you think it deserves immediate action from the Committee.

Specify what remedies are required.

Where possible attach documentary proofs which support your communication such as sworn statements from victims (a very good source of first hand information), documentary evidence, audio-visual evidence, media reports and reports of international organisations (UN, AU agencies, international NGOs).

### 3.9 How to ensure children's involvement in the communication procedure is in their best interests?

Bringing a communication is likely to be a long and drawn out process which involves sensitive issues where children have experienced serious violations of their rights. While bringing a communication may promise much, CSOs involved in this must think twice where there are concerns that doing so would have a negative impact on the lives of the children concerned. The over-riding principle is that communications should only be brought to the Committee if it is in a child or children's best interests to do so. Practice in other international and regional human rights fora is that children have not been the direct applicants in cases; most have been initiated by national or regional CSOs, and some by parents on behalf of children. Whether a child is the direct applicant, is the named victim or whether they are involved in the case as a witness, ethical procedures must be put in place to ensure that you act in their best interests at all times. The following are some particular areas to consider:

***Contacting child victims:*** Searching for children who have been victims of child rights violations can raise many sensitive issues. It can be very intimidating for children to be approached by people they do not know particularly when they are not in familiar environments or with adults they know and trust. Where possible, you might first consider contacting children through their families, schools, recreation or youth centres, or other safe spaces.

***Obtaining informed consent:*** If children are going to apply directly, be named in a communication as a victim or if they are going to be involved in the communication procedure by providing a witness statement then they must be given the opportunity to give their free and informed consent to this (ideally in writing). This means the following:

- **They must be given adequate information to make an informed decision.** Children must be given a very clear picture of what involvement in bringing a communication means. You must explain to them the system and processes involved taking into consideration the particular role the child will have and the different procedural steps; the time and place of relevant events (such as hearings); the general progress and outcome of the communication and the availability of provisional measures. Expectations should be carefully managed to ensure a realistic picture is given of possible outcomes of the case. Provision of the information to the parents or guardian should not be an alternative to communicating the information directly to a child. Normally, both the child and parents or guardian should directly receive the information.
- **Participation in the communication must be freely volunteered, with the understanding that the child can withdraw at any time.** It must be made clear that they can agree or disagree to participate with no risk of adverse consequences.
- There may be occasions, for example when very young children are involved, when the child's maturity and understanding is such that **consent will have to be obtained from their parent or guardian by proxy.**

***Providing information:*** Children should be kept informed of progress at all stages of the communication process giving due weight to the child's maturity and any speech, language or communication difficulties they might have. Given that the Committee has only just started consideration of communications, it is especially important to be clear about both how long it can take before children will get a final answer from the Committee and how unpredictable things may be along the way. It is also important to emphasise that the Committee will only make recommendations to the state concerned at the end of the process.

***Confidentiality:*** As a CSO, when you are interviewing potential victims in connection with bringing a communication, you should assure them that you intend to keep any information you learn in confidence unless they give you permission to share, broadcast, or otherwise use that information. This should be the case regardless of whether they ultimately participate in your communication or not. If a child consents to participate in a communication they must be informed of who will have access to the case materials.

***Ensuring safety:*** Children are particularly vulnerable to the potential negative effects of bringing a case in their name, especially where cases involve schools they attend, places they reside, or close family members. You should be extremely vigilant in ensuring that child victims receive the security and support they need. Specific protection and assistance may need to be granted to more vulnerable children, such as migrant children, refugees and asylum seeking children, unaccompanied children, children with disabilities, homeless and street children and children in residential institutions. All efforts should be made to identify possible risks, and extra precautions need to be taken accordingly.

***Children as witnesses:*** As yet the Committee has no experience of hearing direct testimony from children. However, it is worth highlighting that serving as a witness can be a very stressful experience. It can be very hard for children to talk about upsetting events, especially where family members or authority figures are involved. Moreover, the Committee's proceedings may be difficult to understand for most children. If you are working with a child witness, you should therefore be sure to explain the process in clear and straightforward terms that they can understand and where possible get psychological assistance.

***Media:*** Bringing a communication to the Committee may be an excellent way to get the media interested and involved and they can provide a platform for furthering the issue in hand. If you manage the publicity for your case well, this awareness may in turn become support. Even if your case is unpopular locally or nationally, international media may foster widespread support beyond your jurisdiction's borders. However, dealing with the media can be very intimidating for children and you should be sure to prepare any children involved in your case for dealing with journalists or reporters provided they have agreed to do this. Furthermore, there may be occasions when it is counterproductive to involve them for example if there is a risk they may not respect a child's anonymity.

### 3.10 How are the communications considered?

A Working Group and Rapporteur are appointed from amongst the Committee members to take the lead in dealing with a communication. Once admissibility has been decided by the Committee then the author is contacted. If the communication is admissible then the author has another opportunity to provide the Committee with further facts. The communication is then forwarded to the State Party on a confidential basis and they are given three months to respond in writing. They may also be asked to provide the Committee with additional information. If they do not respond within the time limit then the Committee or Working Group can decide to proceed to consider the communication without the State Party's input.

There is opportunity for the victim, the author (and/or their representatives) and the State Party to meet with the Committee to answer questions and give additional information. There is no provision though for funding to attend such a meeting which may be a practical obstacle if it is held in Addis Ababa, Ethiopia. This may be a cost which a civil society organisation supporting a case is willing to shoulder.

All deliberations are held in private sessions and are confidential. The guidelines for bringing a communication make it clear that the Committee should try and hear children involved in the case. After careful consideration of all information provided by both sides, the Committee will decide whether or not there has been a violation of the Children's Charter and if so, what actions are needed to be taken by the State Party concerned.

If there is any indication that any of the Committee members may not be impartial when considering a communication, the author may ask that they not take part in considering it; for example, if a Committee member has a personal interest in the case or has participated in any decision-making at a domestic level concerning the case.

The Committee has taken a long time to acknowledge and respond to the few communications it has received so far. The CSO Forum has recommended to the Committee that it *'Amend its guidelines for the consideration of communications to include a timeframe of six weeks for the Committee to acknowledge receipt of a communication, and to make decisions on admissibility and merits of the communication within a reasonable time to ensure that victims are not left without redress.'* It has also asked that a progress report on communications be a standing item on the Committee's agenda for each session.

### Format of African Commission Recommendations

- Reflection on admissibility.
- An interpretation of the relevant provisions of the ACHPR.
- A decision on whether the facts as presented amount to a violation of the ACHPR.
- The actions required to be taken by the State Party, when a violation is found.

### 3.11 How are decisions followed up?

*‘You have to be in this for the long-haul and have a long-term strategy. Bringing communications doesn’t just stop with a judgement – you have to monitor subsequent compliance as well.’*

**Ms Angela Naggaga, Deputy Director, Institute for Human Rights and Development in Africa**

Decisions made by the Committee regarding communications will be submitted to the AU Assembly and published after consideration by the AU Assembly and the States Parties involved in the communication. Since it is not a Court, the Committee’s decisions are not legally binding as such however the expectation is that states will comply with its decisions in order to demonstrate their good faith and obligations to the Children’s Charter.

It is interesting to note that only around one third of the decisions of the African Commission have been fully or partially complied with by the member state in question. However, decisions of the African Commission become part of African human rights law and can therefore be used for advocacy and as precedents all over Africa (and beyond), even if they are not adhered to by the state concerned. Although the Committee’s decisions are not legally binding, it is hoped that they too will carry immense moral authority and open the door to new avenues of advocacy at a national level.

The Protocol which establishes the African Court on Human and Peoples’ Rights does not specifically mention that the ACERWC is able to bring cases to the Court. However, there is a strong case for arguing that the ACERWC is capable of submitting a case. Furthermore, the ACERWC’s Rules of Procedure provide no clarity about how and at what stage of deciding a case the Committee would refer cases to the African Court. Clarity on this issue is demanded to ensure that the mechanism works as effectively as possible to protect children’s rights.



## | Advancing Children's Rights

One option that may be available is for the ACERWC to refer the case to the African Commission on Human and Peoples' Rights to submit to the Court on its behalf. During the 45<sup>th</sup> Session in 2009, the African Commission on Human and Peoples' Rights adopted a Resolution on cooperation between the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child in Africa. This Resolution establishes a formal relationship between the two organs. The exact parameters for collaboration in this formal relationship are yet to be established. Referring cases to each other – and in the case of the ACERWC to the African Commission for onward submission to the African Court – would be a useful aspect of collaboration for the two organs to consider.

In 2004 the AU Assembly agreed to merge the African Court on Human and Peoples' Rights with the new Court of Justice in order to establish a single effective continental court. The Protocol on the Statute of the African Court of Justice and Human Rights was adopted by the AU Assembly in 2008. The new protocol will come into effect once 15 states have ratified it; in the meantime the African Court on Human and Peoples' Rights remains in place. Under the merger Protocol, the African Court of Justice and Human Rights has jurisdiction over cases concerning the 'interpretation and application of the African Charter on the Rights and Welfare of the Child' and this means that the Committee is explicitly permitted to send cases to the African Court to ensure compliance by states to its decisions. If the Committee does actually send cases to the African Court in the future, this would be a very effective way of strengthening its own mandate.

### TIP

Civil society organisations have a vital role to play in publicizing the Committee's decisions on communications and in advocating for and monitoring the implementation of the Committee's decisions.

## 4. The Investigations Procedure

*“An investigation mission shall be a mission of a team of the Committee of Experts on the Rights and Welfare of the Child to a State party of the Children's Charter to gather information on the situation of the rights of the child in the State Party.”*

**Article 1 Guidelines on the Conduct of Investigations by the ACERWC**

#### 4.1 What are investigations?

Article 45(1) of the Children's Charter provides that 'The Committee may resort to any appropriate method of investigating any matter falling within the ambit of the present Charter, request from the States Parties any information relevant to the implementation of the Charter and may also resort to any appropriate methods of investigating the measures a State Party has adopted to implement the Charter.'

This is interpreted in the Committee's Guidelines on the Conduct of Investigations (reproduced in the accompanying CDROM) as meaning that they can undertake investigative missions to gather information on the situation of the rights of the child in a State Party. These visits allow the Committee to document violations and make recommendations to the state concerned and are critical to gaining first-hand knowledge. The Committee conducted a fact-finding mission to Northern Uganda in 2005 which was presented by the AU Commission to the Executive Council, the Permanent Representatives Committee (PRC) and the AU Assembly. However the report was not published by the AU Assembly and therefore it was not widely disseminated or acted upon. Funding has been a significant obstacle to further missions.

Investigations can be conducted on matters referred to the ACERWC, matters initiated by the ACERWC which may arise from a communication or through a direct invitation by the State Party. The Committee can only visit a State Party if they are permitted to do so. If a State Party refuses to invite them then the Committee can report this lack of cooperation to the AU Assembly which may choose to take further action.

An investigation team comprising an ad hoc working group is set up to prepare for investigations. The ACERWC would determine the number of team members depending on the circumstances and urgency of the case. An ACERWC member may not take part in the investigation if he/she is a national of the State Party concerned; resides in the territory of the State Party concerned or the mission is to a State Party on whose behalf the member has been elected. Prior to the investigation, a pre-mission report must be prepared including mission dates and the mission's programme.

The itinerary of such visits can vary considerably. The Committee might try to meet government representatives and relevant ministries, police authorities, national human rights institutions, civil society organisations working on children's issues, UN agencies and children who are victims of violations and their families or representatives. They might also visit health centres, detention or rehabilitation centres for children, schools, hospitals and refugee or internally displaced persons camps.

### **TIP**

Civil society organisations can encourage the Committee to undertake an investigation in a specific country or to address particular issues within a country. It can also help to facilitate the trip and ensure that the Committee meets relevant people and has access to important information.

#### **4.2 What can civil society contribute to investigations?**

Once the decision to undertake a fact-finding mission has been made public, civil society organisations, especially national ones, can play an important role in providing information to the Committee whilst it prepares for its mission. The type of information provided may include suggestions of places to visit or issues to investigate, details of local civil society organisations working on child rights issues, details of specific cases of alleged violations of children's rights or a broad overview of patterns of violations. Information from civil society organisations working in the country or with particular expertise can be invaluable.

#### **4.3 The mission report**

Following a visit the Committee compiles a mission report which details the investigation and makes recommendations to the State Party concerned. This report is sent by the AU Commission to the Executive Council, the Permanent Representatives' Committee and the AU Assembly and is published only after the AU Assembly has adopted it. A follow-up procedure is also in place and the State Party visited by the mission can be asked to present a written reply on any measures taken in light of the recommendations made in the mission report.



*Part*

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# THE COMMITTEE AND THE AFRICAN UNION

## 1. How does the Committee fit into the AU?

The AU is not a single entity but is constructed from over fifteen structures and institutions with overlapping levels of authority. There is great potential for these myriad bodies to engage with children's rights at national and regional levels. To have a full understanding of how the Committee works, it is important to understand the character of the relationships it has with the other AU bodies both in practice and in theory.

The following section first gives an overview of the mandate and workings of the other principal human rights mechanisms: the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights. It then considers the other key AU institutions of relevance for children's rights. This is to show how and where the Committee fits in to the institutional landscape of the AU as well as to highlight contexts where AU institutions could be engaged in implementation of the Children's Charter. Further information on the AU and its bodies can be found in Source of Information below. It should also be noted that the AU is currently developing a new human rights strategy.

### **Key AU institutions and structures of relevance for children**

- The African Committee of Experts on the Rights and Welfare of the Child
- The African Commission on Human and Peoples' Rights
- The African Court on Human and Peoples' Rights
- Assembly of Heads of State and Government
- Executive Council
- Permanent Representatives Committee
- The Commission of the African Union
- Peace and Security Council
- Economic, Social and Cultural Council
- The Pan African Parliament
- The Regional Economic Communities
- New Partnership for Africa's Development
- African Peer Review Mechanism

The Guide does not aim to examine the ways in which civil society dealing with children's issues should engage with the AU as a whole. It focuses instead on exploring the relationships and linkages between the various AU institutions and the Committee and how they can work together to implement the Charter. It also explores how civil society organisations can work with the Committee to strengthen its relationships within the AU.

CSOs who are interested in engaging with the AU more broadly should be aware that an NGO called The Centre for Citizens' Participation in the African Union (CCP-AU) was established in 2007 in order to broaden and strengthen opportunities for substantive AU-CSO engagement. It has been involved in training African civil society organisations on the structure of the AU and how to engage it. It has also organised continental conferences that gathered over 350 CSO representatives from all over the continent to engage the AU bi-annual summits. For further information their website is: [www.ccpau.org](http://www.ccpau.org).

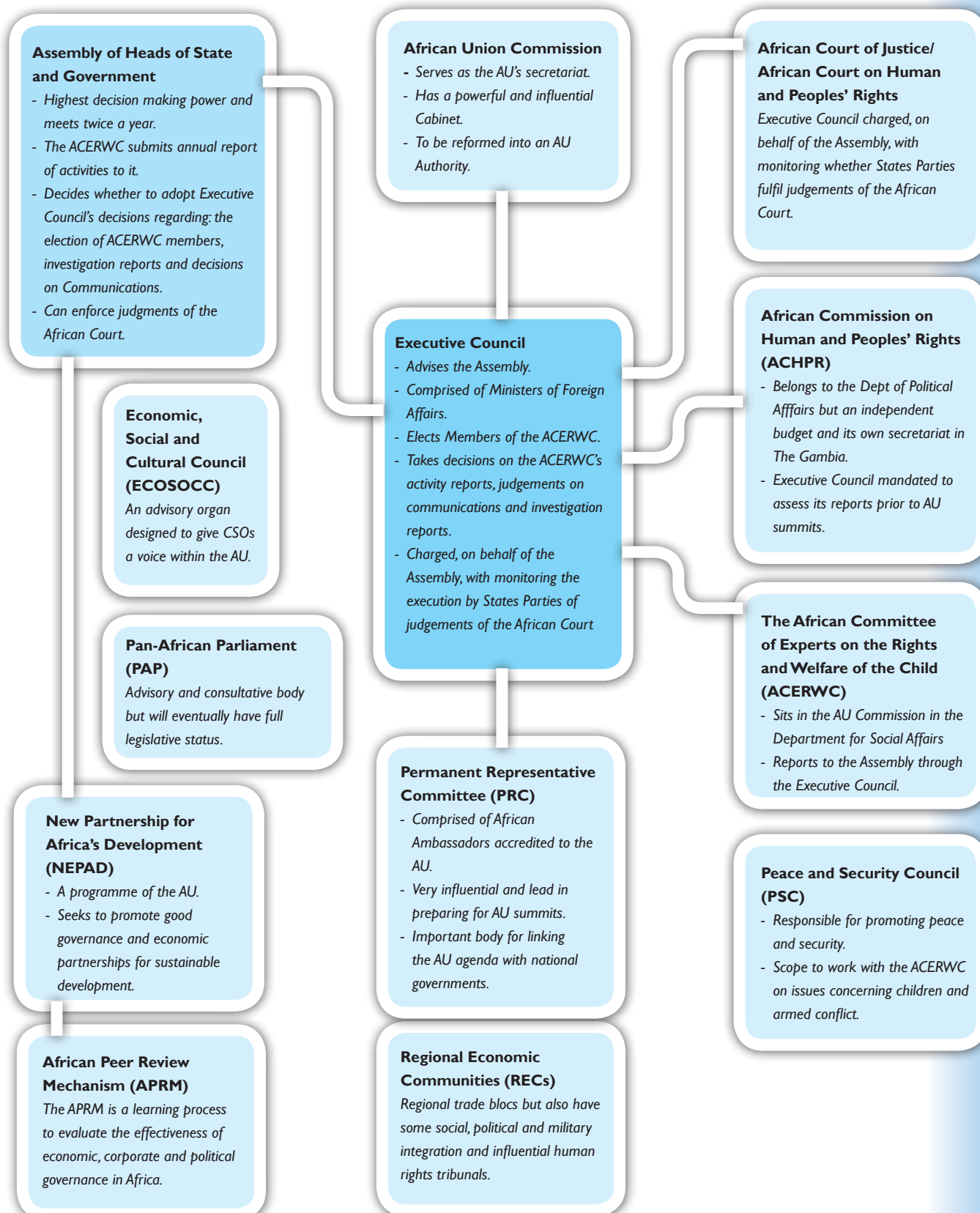
#### TIP

CSOs should advocate with the Committee to extend its collaboration with the African Commission on Human and Peoples' Rights to other AU organs such as the African Court on Human and Peoples' Rights, the Peace and Security Council, the Regional Economic Communities and the Pan-African Parliament. Focal persons from among Committee Members should be appointed to liaise with these bodies.



## How the ACERWC fits within the African Union

*(adapted from the Compendium of Key Human Rights Documents of the AU)*





## **The Committee and principal AU Human Rights Mechanisms**

### **African Court on Human and Peoples' Rights (to become African Court of Justice and Human Rights)**

- Cases can be brought to the Court by States Parties, the African Commission, African inter-governmental organisations and African National Human Rights Institutions.
- Individuals and civil society organisations can only submit cases against states if the state concerned has made a declaration accepting the competence of the Court to do so.
- Decisions will be binding and enforceable on states and as such they can have a large impact in cases concerning children.
- Executive Council is charged, on behalf of the Assembly, with monitoring whether States Parties fulfil judgements of the African Court.
- Protocol for merged Court of Justice and Court on Human and Peoples' Rights adopted 2008.

### **African Committee of Experts on the Rights and Welfare of the Child**

- Mandate to monitor and report on the ACRWC.
- Meets twice a year.
- Has 11 Members on its Committee.
- Sits within the Department for Social Affairs in the AU Commission.
- Does not have an independent budget.
- Reports to the Assembly through the Executive Council.
- Can send cases to the ACJHR (once established); not clear if can send cases to the African Court on Human and Peoples' Rights.
- Has dynamic CSO Forum working with it.

### **African Commission on Human and Peoples' Rights**

- Mandate to monitor and report on the ACHPR.
- Meets twice a year.
- Has 11 Commissioners including 5 Special Rapporteurs for: women, human rights defenders, refugees and internally displaced persons, prisons and other places of detention, and freedom of expression.
- Belongs to the Dept of Political Affairs but has an independent budget and its own secretariat in The Gambia.
- Executive Council mandated to assess its reports prior to AU summits.
- Can send cases to the African Court on Human and Peoples' Rights and to the ACJHR once established.
- Has dynamic NGO Forum working with it.

## 2. The Committee and the principal Human Rights Mechanisms within the AU

### 2.1 The African Commission on Human and Peoples' Rights

#### 2.1.1 Introduction

The African Commission on Human and Peoples' Rights was established by the African Charter on Human and Peoples' Rights to supervise and monitor all rights enshrined in the Charter. All 53 Member States of the African Union are parties to this Charter. It was established in 1986 and so has extensive experience which the Committee can draw upon.

The African Commission consists of eleven Commissioners and has its own Secretariat in Banjul, The Gambia. The Commission meets twice a year in ordinary sessions. In addition to the right and duty to interpret the Charter, the mandate of the Commission is to promote and protect human rights in Africa. This includes:

- Examining reports that each member state has an obligation to deliver on the human rights situation on its territory;
- Deciding on communications, both from member states and from individuals and civil society organisations;
- Adopting resolutions and declarations and organising seminars; and
- Visiting member states and taking other steps aimed at the promotion of human rights in Africa.

#### *Reporting to the Assembly*

The Commission belongs to the Department of Political Affairs and submits an activity report to the Assembly at each AU Summit. In 2003, the Assembly decided that the Executive Council should assess the work of the Commission. The Commission's report and the decisions on individual communications that it contains only become public after it has been adopted by the Assembly.

#### *State Party Reports*

States must submit reports on their progress in implementing the ACHPR to the Commission every two years. The reports are considered by the Commission in public sessions, following which it issues recommendations to the reporting State which are called 'Concluding Observations'. However, over half of the States Parties to the Charter have not yet submitted any report.

#### *Communications*

The Commission receives and decides on communications from member states and from individuals and civil society organisations. Only once has a communication been brought by a state (a communication brought by DRC with respect to the military operations of Burundi, Rwanda, and Uganda in DRC).

#### *Special Rapporteurs*

Currently there are Special Rapporteurs for women, human rights defenders,

refugees and internally displaced persons, prisons and other places of detention, and freedom of expression. There is no Special Rapporteur for child rights, but complaints involving breaches of child rights may be addressed to the other rapporteurs as relevant. Of particular importance for children's rights is the Special Rapporteur on the Rights of Women in Africa who is in charge of implementing the Protocol to the ACHPR on the Rights of Women in Africa (known as the 'Maputo Protocol'). Since 2009, this Special Rapporteur has also been the focal point for collaboration to further children's rights in Africa. The Special Rapporteur is obliged to report to the African Commission on progress made on this collaboration.

### ***Working Groups and Committee***

The Commission has also introduced a new mechanism to assist it in its work on specific themes under its mandate. These are the Working Groups and currently a Committee. Membership of the Working Groups and Committee include both Commissioners and other individuals and organisations with expertise in the areas on which these mechanisms focus. The Working Groups include: on the Situation of Indigenous Peoples/Communities in Africa; on Economic, Social and Cultural Rights in Africa; on the Death Penalty; on Specific Issues Relevant to the Work of the African Commission; on the Rights of Older Persons and People with Disabilities, and on Extractive Industries and Human Rights Violations in Africa. The Working Group on the Implementation of the Robben Island Guidelines on the Prevention of Torture has been transformed into the Committee for the Prevention of Torture in Africa.

### ***Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa***

The Protocol on the Rights of Women in Africa is a regional treaty which entered into force in November 2005. It is important for CSOs working on children's issues particularly because it expressly protects girls and provides enhanced protection on female genital mutilation, gender-based violence and early marriage. The monitoring of states' implementation of the Protocol is done by the African Commission, and particularly the Special Rapporteur on the Rights of Women in Africa. The African Court of Human and Peoples' Rights has jurisdiction over matters of interpretation of the Protocol.

## **2.1.2 Role of civil society organisations within the African Commission**

Civil society organisations play a vital role in the workings of the African Commission. The number of NGOs with Observer Status with the African Commission is over 400. Civil society organisations can submit civil society reports to give additional information about human rights in a country when the state reports to the Commission are presented. These civil society reports are presented to the Secretariat of the Commission which uses them in formulating questions for Commissioners to put to state delegates. Though access by civil society organisations to State Party reports has not been easy, the Commission is now putting state reports on its website prior to the Session to resolve this.

Civil society organisations also play an important role in bringing communications to the Commission, proposing agenda items for Commission sessions, providing logistical and other support to the Special Rapporteurs, working groups and missions, and supporting the development of resolutions and new protocols to the ACHPR.

Ahead of each session of the African Commission, most of the participating NGOs meet in what is known as the NGO Forum which has been organized since 2000 by the African Centre for Democracy and Human Rights Studies, a human rights organization based in Banjul, The Gambia. The Forum gives NGOs a platform to share information, debate and formulate resolutions and co-ordinate strategies for addressing human rights issues and problems in Africa which the African Commission should tackle. The outcome of the Forum is publicly presented to the African Commission at its opening session, and the Forum submits proposed resolutions for the Commission to consider or adopt. For further information, please contact the African Centre for Democracy and Human Rights Studies (see their website at [www.acdhhs.org](http://www.acdhhs.org)). Since 2007, child rights organisations have been attending the NGO Forum to raise awareness about the situation of children in Africa, the ACRWC and the work of the Committee.

### **2.1.3 Children's Rights and the African Commission on Human and Peoples' Rights**

The ACHPR provides for the protection of children implicitly when it talks of the rights of 'every individual' and of 'peoples'. It also provides special or specific protection to children in three respects:

- i. Some rights, such as the right to education (Art. 17), are of greater relevance to children than any other sector of the population.
- ii. The ACHPR proclaims the family as 'the natural unit and basis of society.' States have a duty to assist the family and protect its 'physical health and morals.' The care of children within the context of the family is seen as a 'virtue' in the 'African tradition' (Art.18).
- iii. States Parties to the ACHPR are further under obligation to 'ensure the protection of the rights of the child as stipulated in international declarations and conventions' (Art.18).

### **2.1.4 Cooperation between the African Commission and the Committee**

If the Committee and the African Commission are to meet their full potential as mechanisms for fulfilling children's rights then they must cooperate together. Child rights-focussed civil society has recently begun to influence the African Commission's work in order to raise awareness about the Committee, the Children's Charter and to try to mainstream child rights into the broader human rights' discussions. This has taken place through having specific sessions on child rights linked to the African Commission meetings; for example, in November 2008, during the NGO Forum before the Commission's 44th session, a panel discussion on children's rights was held for the first time and a resolution on children's rights was adopted by the NGO Forum.

It is also achieved through having joint sessions at the NGO Forum with women's rights organisations and by preparing joint statements on child rights issues with other CSOs. CSOs have also supported the participation of members of the ACERWC in the African Commission's work and during its 45<sup>th</sup> session in 2009, the African Commission adopted a Resolution on Cooperation with the Committee.

### **Pathways for collaboration between the African Commission and the Committee**

- The African Commission needs to mainstream children's rights within its agenda and should refer expressly to the Committee when dealing with child rights' issues.
- The African Commission and the Committee should have strong collaboration by, for example, systematically attending each others' sessions.
- The African Commission could carry out joint missions with Committee members in the implementation of the mandates of Special Rapporteurs and during promotional and investigative missions.
- Both bodies should share information on children's rights stemming from the consideration of State Party reports.

#### **TIP**

Child-focused CSO should engage more with non child-focused CSOs to raise awareness about the Children's Charter and the Committee. They should also encourage concrete collaboration between the Committee and the African Commission.

## **2.2 The African Court on Human and Peoples' Rights (to become the African Court of Justice and Human Rights)**

### **2.2.1 Introduction**

A 1998 protocol to the African Charter on Human and Peoples' Rights to establish an African Court on Human and Peoples' Rights came into force in 2004. The first judges were sworn in during the July 2006 AU summit and the Court is based in Arusha, Tanzania. It has just begun its work hearing cases.

#### ***Who can bring a case to the African Court on Human and Peoples' Rights?***

States Parties, the African Commission, the Committee, African inter-governmental organisations and African National Human Rights Institutions may all bring cases to the Court. The ACERWC is not explicitly mentioned in the Protocol which establishes the African Court on Human and Peoples' Rights as a

body which is able to bring cases to the Court. However, there is a strong case for arguing that the ACERWC is an African Intergovernmental Organisation and as such capable of submitting a case. The situation does need to be clarified through judicial or advisory opinion from the court itself. Furthermore, the ACERWC's Rules of Procedure provide no clarity about how and at what stage of deciding a case the Committee would refer cases to the African Court. Again clarity on this issue is demanded to ensure that the mechanism works as effectively as possible to protect children's rights.

Individuals and civil society organisations can only submit cases against states if the state concerned has made a declaration accepting the competence of the Court to do so. Furthermore if it is a civil society organisation bringing the case then they must have Observer Status before the African Commission or the Committee. By bringing cases before the Court, the Committee would not only strengthen its mandate but would also offer child rights defenders a means to access the Court when their states have not made the requisite declaration to allow individual access to the Court.

### ***Enforcement of judgements***

Unlike the Committee and the African Commission, the African Court's decisions are binding and enforceable and as such they could potentially have a large impact in cases concerning children. Once the Court has established that violations have occurred they can order appropriate measures to be taken such as the state paying compensation to victims. The Court's decisions may also be invoked within other national jurisdictions. The Executive Council is charged, on behalf of the Assembly, with monitoring the execution by States Parties of judgements of the African Court. Time will tell if the AU Assembly is willing to use its power against member states who fail to comply with the Court's decisions by, for example, instigating sanctions.

### ***Cooperation with the Committee***

Since the main channel of cases to the African Court will in all likelihood be the African Commission and the Committee, establishing efficient models for collaboration between these bodies is essential if the African Court is to be effective. It is also necessary to find a way to overcome the inconvenience of the Commission, the Committee, and the African Court being established at different ends of the African continent.

#### **TIP**

Civil society should advocate with States to make the necessary declaration allowing for individual petitions to the African Court on Human and Peoples' Rights. Where possible they should support the Committee in bringing cases before the African Court.

### 2.2.2 The African Court of Justice and Human Rights

In 2004 the AU Assembly agreed to merge the African Court on Human and Peoples' Rights with the new Court of Justice in order to establish a single effective continental court. The Protocol on the Statute of the African Court of Justice and Human Rights was adopted by the AU Assembly in 2008. The merged court, which will also be based in Arusha, will have two chambers, for human rights and general matters. The new protocol will come into effect once 15 states have ratified it; in the meantime the African Court on Human and Peoples' Rights remains in place. The new Court will have explicit jurisdiction over cases concerning the 'interpretation and application of the African Charter on the Rights and Welfare of the Child.' Furthermore, the Committee is explicitly permitted to send cases to the new African Court.

#### TIP

Civil society organisations must advocate with States to ratify the Protocol on the Statute of the African Court of Justice and Human Rights.

## 3. The Committee and key AU Institutions

### 3.1 Assembly of Heads of State and Government

The Assembly is the highest decision-making body of the AU and is comprised of Heads of State and Government of all AU member states. It usually meets twice a year in January/February and June/July for a Summit. At most summits, the Assembly will adopt two types of proposal: decisions, which are binding on Member States; and declarations, which are intended to guide and harmonise the viewpoints of Member States but are not binding. The Assembly members elect an AU Chairperson, who holds office for one year and is a Head of State; this position rotates across the five regions of Africa. As the supreme organ of the AU it has the power to monitor the implementation of the AU's policies and decisions concerning children and can exert a considerable amount of influence on Member States through peer pressure. Ultimately, if any Member State fails to comply with the decisions and policies of the AU, the Assembly can impose sanctions under Article 23 of the Constitutive Act, including not only denial of the right to speak and vote at meetings, but also 'measures of a political and economic nature' such as the denial of transport and communication links with other Member States.

Every year the ACERWC submits a report outlining the activities it has performed to the Assembly through the Executive Council. This report includes the Committee's investigation mission reports as well as decisions made on communications (if any). The election of members of the Committee is conducted by the Executive Council and their decision is then passed to the Assembly for adoption.



## **PUTTING CHILDREN'S RIGHTS ON THE AU SUMMIT AGENDA**

Each AU Summit has a theme, nearly all of which will impact on children in some way. The theme for 2010 for example was maternal, infant and child health and development. There is great scope to push the issue of children's rights in relation to the theme of the AU Summit. The theme can be highlighted in advocacy work during the year and relevant children's rights issues can be raised with national government delegations going to the AU Summit, Ambassadors to the AU and donors.

CSOs who wish to become involved in putting children's rights onto the AU Summits' agenda should consider convening open meetings among interested civil society groups at least two months before the summit to generate an exchange of views and perspectives on upcoming decisions and to prepare joint statements to be shared with states. Request meetings in your country with the Ministry of Foreign Affairs to obtain a briefing on the government's position and advocate for the concerns of civil society groups. Make contact with the media so that they are aware of the critical issues and the AU's role in influencing and affecting outcomes for children. See 'Strengthening Popular Participation in the African Union: A Guide to AU Structures and Processes, AfriMAP and Oxfam (2010)' for more guidance on how to engage effectively with the AU Summit.

### **3.2 Executive Council**

The Executive Council is comprised of foreign ministers and is responsible to the Assembly. It considers the activity report of the Committee prior to its adoption by the Assembly: this will include consideration of any investigative mission reports and/or judgement on communications. This is just a paper exercise and the Committee does not present to the Executive Council in person. It also elects the members of the Committee at a meeting held just before the AU summit. Their decision ultimately has to be adopted by the Assembly.

It is also responsible for monitoring States Parties' compliance with judgements from the African Court. In future this may be relevant if a case is referred to the Court by the Committee for non-compliance and a State Party subsequently refuses to comply with the Court's judgement.

#### TIP

Civil society organisations can draw the attention of good candidates for membership of the Committee to their foreign ministers sitting on the Executive Council. They can also advocate with states during Assembly meetings to ensure that the nomination and election process for Committee members is transparent and well-informed (see Section 3.3 for more information on the nomination process).

### 3.3 Permanent Representatives' Committee

The Permanent Representatives' Committee (PRC) is composed of Ambassadors of Member States who are accredited to the AU and are usually based in Addis Ababa, Ethiopia. It works closely with the AU Commission on implementation of programmes and also acts as an advisory body to the Executive Council. It plays a lead role in preparing for the AU summit and in bringing the AU agenda to their government's attention at home. Its members meet at least once a month usually at the AU headquarters in Addis Ababa. The PRC is an important and influential body for civil society working to influence their national governments through the AU and vice versa.

### 3.4 Commission of the African Union

#### 3.4.1 Introduction

It should be noted that this body is different from the African Commission on Human and Peoples' Rights. The Commission is the bureaucratic engine of the AU. It reports to the Executive Council and acts as the Secretariat for the AU; it also has a clear policy-making and advisory structure of its own. Headquartered in Addis Ababa, Ethiopia, the Commission is led by a Chairperson. Since 2008 this has been HE Jean Ping, the former Deputy Prime Minister and Foreign Minister of Gabon. The Office of the Chairperson is structured around a powerful and influential Cabinet comprised of the Chair, Deputy and eight Commissioners who each hold office for five years. The Commissioners are in charge of individual portfolios dealing with different areas of policy and they manage the day-to-day tasks of the AU. Official appointments to the Commission are made in accordance with gender parity and regional balance.

In February 2009, the AU Assembly resolved to transform the AU Commission into an AU Authority, with stronger powers. As a consequence the roles and responsibilities of the Commissioners will be slightly altered. Nonetheless, the basic structure of Chairperson, Deputy Chairperson and eight Commissioners (to be renamed Secretaries) remains. Since this transformation is ongoing, the diagram below illustrates both the AU Commission structure and the new names under the proposed AU Authority structure.

The main focus of the new AU Authority will be on reforming the existing AU governance structure. The AU Commission produced its Strategic Plan for 2009-12. As part of this plan, it established four main strategic pillars: Peace and Security; Development, Integration and Cooperation; Shared Values; and Institution and Capacity Building. Donors working with the AU align themselves around these Pillars. The Pillar on Shared Values is of most relevance for the Committee since it focusses on good governance, democracy, human rights and rights-based approaches to development including social, economic, cultural and environmental rights. The timetable for the reforms is lengthy.

### **Structure and Responsibilities within the Office of the Chairperson**

#### ***Office of the Chairperson (New name: President)***

- **Women, Gender and Development Directorate**  
Gender issues, country reports for implementation of declaration on women's rights
- **Office of the Legal Counsel**  
Status of ratifications, drafting and interpretation of treaties
- **African Citizens and Diaspora Directorate (CIDO)**  
Civil society and diaspora issues, accreditation to meetings, observer status, support to ECOSOCC

#### ***Office of the Deputy Chairperson (New name: Vice President)***

- Conferences and events
- Human resources
- Finance and budget
- Protocol

#### ***Eight departments, each headed by a Commissioner (New name: Secretaries)***

- Peace and Security (New name: Peace Security and Common Defence)
- Political Affairs (New name: Political Affairs and Coordination of Common Positions on External Relations)
- Infrastructure and Energy
- Social Affairs (New Name: Health and Social Affairs)
- Human Resources, Science and Technology (New Name: Education, Human Resources and Science and Technology)
- Trade and Industry (New name: Trade, Industry and International Cooperation)
- Rural Economy and Agriculture (New name: Rural Economy, Agriculture and Environment)
- Economic Affairs

### 3.4.2 The AU Commission and child rights

The AU Commission has a crucial role in promoting children's rights in Africa and is extremely well placed to put children's issues on the agenda of the AU's political institutions. The Department for Social Affairs is primarily responsible within the Commission for child-related issues and has one child protection officer. An important output from this Department has been the African Common Position on Children – 'An Africa Fit for Children', as Africa's contribution to the 2002 UNGASS session. It includes a Declaration and Plan of Action, and consists of guidelines as well as a framework identifying priorities and roles for Governments and other stakeholders. A mid-term review of the Common Position was conducted in Cairo in 2007 to assess the level of implementation and chart the way forward. This review resulted in the Call for Accelerated Action on the Implementation of the Plan of Action towards Africa Fit for Children (2008-2012).

Responsibility for a diverse range of children's issues is spread amongst various departments and directorates within the AU Commission. The Women, Gender and Development Directorate plays an important role regarding the girl child. Departments with responsibility for children's issues in the AU Commission are:

#### ***Social Affairs (New Name: Health and Social Affairs)***

Responsibility for all child-related issues as well as crime prevention, human trafficking, population, migration, labour and employment, sports and culture, epidemics including HIV and AIDS. The Committee is located within this Department.

#### ***Human Resources, Science and Technology (New Name: Education, Human Resources and Science and Technology)***

Responsibility for information and communication technology, youth, research, universities and intellectual property.

#### ***Peace and Security (New name: Peace, Security and Common Defence)***

Responsibility for conflict prevention and management, including children associated with armed forces, peacekeeping, terrorism, transnational crime.

#### ***Political Affairs (New name: Political Affairs and Coordination of Common Positions on External Relations)***

Responsibility for political cooperation, governance, elections, human rights, humanitarian affairs, free movement of persons and financial crimes. The African Commission on Human and Peoples' Rights is located within this department.

#### ***Economic Affairs***

Responsibility for economic integration, international economic cooperation, monetary affairs, private sector development, investment and resource mobilisation, poverty reduction, and statistics.

### TIP

Civil society organisations should lobby for better collaboration between the Committee, the Women, Gender and Development Directorate and the various AU Commission Departments which have responsibility for children to ensure improved coherence and understanding in the AU's work with children and in implementation of the Children's Charter.

### 3.4.3 Cooperation with the Committee

The Committee sits within the AU Commission in the Department for Social Affairs. The implication of this is that it receives its funding from the Department's budget which has many other competing demands upon it. The Committee's Secretariat sits in the Department itself. Until August 2007, there was no Secretariat for the Committee and the Department for Social Affairs fulfilled this function on behalf of the Committee. There have been calls for the Committee to become more autonomous (much like the African Commission) on the basis that such reliance on the Department for Social Affairs calls the Committee's independence into question.

### 3.4.4 EU-AU Human Rights Dialogue

In 2008, the EU and AU (Department for Political Affairs) established a regular Human Rights Dialogue which holds twice yearly sessions in Europe and Africa alternately. In 2009, the Chairperson of the ACERWC was invited to speak at this dialogue regarding the Committee's work and the rights of the child, and particularly children affected by armed conflict, were identified as a topic of mutual concern to both the EU and AU. CSOs have criticised these dialogues because of the limitations on civil society participation and the lack of independent assessment of their impact on concrete situations. However, there is great scope for the Committee to be part of this dialogue. European and African CSOs can collaborate together to pressure both the EU and the AU to put children's rights on their agendas.

## 3.5 Peace and Security Council

The Peace and Security Council (PSC) was established in 2004 and can intervene in conflicts to protect the security of the continent. It is comprised of fifteen Member States, elected for two or three year terms, with equal voting rights. The PSC is also overseeing the establishment of a permanent African security force, the AU Standby Force, a project which is due to be completed by 2012.

The objectives of the PSC include the anticipation and pre-empting of armed conflicts, as well as the prevention of massive violations of human rights. The council also aims to promote and encourage democratic practices, good governance, the rule of law, human rights, respect for the sanctity of human life, and international humanitarian law. The PSC is a decision-making body in its own right, and its decisions are binding on Member States. In December 2008,

the PSC adopted a document setting out the modalities for interaction with civil society organisations, known as the ‘Livingstone Formula’. The formula provides for the PSC to consult with ECOSOCC and invite individual civil society organisations to address its meetings. It provides civil society organisations with another avenue of advocacy to strengthen the protection of African children, especially those affected by war.

#### TIP

The PSC’s knowledge of how conflict affects children is limited. The Committee should be encouraged to work with the different units of the PSC on issues around the prevention of conflict, monitoring of the rights of children caught up in armed conflict, supervision of child reintegration processes and promotion of child rights within regional peace-building and post-conflict reconstruction processes. The Livingstone Formula provides good opportunities for advocacy and informal consultations are also held by the PSC with civil society. For more information see the PSC website at:  
[www.africa-union.org/root/au/organs/The\\_Peace\\_%20and\\_Security\\_Council\\_en.htm](http://www.africa-union.org/root/au/organs/The_Peace_%20and_Security_Council_en.htm)

### 3.6 Economic, Social and Cultural Council

The Economic, Social and Cultural Council (ECOSOCC) is an advisory organ designed to give CSOs a voice within the AU institutions and decision-making processes. The CIDO office in the AU Commission acts as secretariat for ECOSOCC. ECOSOCC has a purely advisory role. This means it can make proposals and submit recommendations to the various AU bodies, with no certainty that the views of civil society will be taken into account in the final analysis. While ECOSOCC can play an important role, its advisory status limits it to research and public information about AU developments and its potential for advocacy on children’s rights issues must be understood in these terms. It was launched in 2005 and the process of organising democratic elections of civil society representatives into the ECOSOCC Assembly is ongoing.

Each member of ECOSOCC has to work with a ‘Sectoral Cluster Committee’ which fits with its expertise. One of the explicit functions of the ECOSOCC is to ‘contribute to the promotion of ...child rights.’ Children’s rights could feature in the Political Affairs Sectoral Cluster Committee which is in charge of human rights as well as under the Peace and Security and the Women and Gender Sectoral Cluster Committees.

### 3.7 Pan-African Parliament

The Pan-African Parliament (PAP) was established in 2004 and is based in Midrand, South Africa. At present PAP is an advisory and consultative body but it will eventually have full legislative status and be comprised of members elected by the populations of their respective countries. It meets twice a year. One of its objectives is to promote the principles of human rights and democracy

in Africa leaving room for lobbying on issues relating to children's rights with representatives. It operates through a number of sub-committees of which the Committee on Justice and Human Rights and the Committee on Gender, Family, Youth and People with Disability are of most relevance for children's rights. Members of the Committee have been in discussion with PAP to identify areas of common interest and members of PAP have attended ACERWC sessions.

### 3.8 Regional Economic Communities

The Regional Economic Communities (RECs) consist primarily of trade blocs but also have some social, political and military integration. They are playing an increasingly influential role within the AU and have to differing degrees recognised the contribution that civil society can bring to the delivery of their mandates. To this end they have put in place mechanisms and created spaces for engagement with civil society organisations and networks. These mechanisms either take the form of pre-summit forums, civil society standing assemblies or parliaments. The Economic Community of West African States (ECOWAS) has the most formalised parallel civil society body, known as the West Africa Civil Society Forum (WACSOF). A harmonisation process of the RECs has begun since at present there is a major overlap with most countries being a member of at least two RECs.

There is also scope for the Committee to be engaged with their social agendas which involve children; for example, the Southern African Development Community (SADC) and ECOWAS have been very active in implementation of the AU's Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children (2006).

Many of the RECs have courts or tribunals which have powers to hear and give binding decisions on cases brought by individuals and bodies such as companies and civil society organisations, against governments in Africa on a wide variety of issues including discrimination, citizenship, regulation of the movement of persons across international and regional boundaries in Africa, regional trade and transactions, and compliance with national and regional rule of law. Notable amongst these courts is the ECOWAS Community Court of Justice which has the competence to directly receive cases from individuals alleging violation of human rights that occurs in any member state of ECOWAS. This court has made some significant rulings including regarding the right to education in Nigeria and a finding against Niger for allowing slavery to persist. The SADC Tribunal also has jurisdiction in respect of any dispute concerning human rights, democracy and the rule of law.



### **The 8 RECs recognised by the AU**

- Common Market for Eastern and Southern Africa (COMESA)  
[www.comesa.int/index\\_html/view](http://www.comesa.int/index_html/view)
- Southern African Development Community (SADC) [www.sadc.int/](http://www.sadc.int/)
- Economic Community of West African States (ECOWAS)  
[www.ecowas.int/](http://www.ecowas.int/)
- East African Community (EAC) [www.eac.int/](http://www.eac.int/)
- Intergovernmental Authority on Development (IGAD)  
[www.igad.org/](http://www.igad.org/)
- Community of Sahel-Saharan States (CEN-SAD) [www.cen-sad.org/](http://www.cen-sad.org/)
- Arab Maghreb Union (AMU) [www.maghrebarabe.org/](http://www.maghrebarabe.org/)
- Economic Community of Central African States (ECCAS)  
[www.ceeac-eccas.org](http://www.ceeac-eccas.org)

### **3.9 New Partnership for Africa's Development (NEPAD)**

The New Partnership for Africa's Development (NEPAD) was established in 2001 outside the structures of the OAU/AU, but is now a programme of the AU. NEPAD seeks to promote good governance as a basic requirement for peace, security and sustainable political and socioeconomic development. It also aims to promote economic partnerships among African countries and between African countries and the rest of the world. It is supervised by the AU Commission and reports to the AU Assembly through the NEPAD Heads of State and Government Orientation Committee. It has a Planning and Coordinating Agency based in Midrand, South Africa.

### **3.10 African Peer Review Mechanism (APRM)**

The African Peer Review Mechanism (APRM) is a learning process to rigorously evaluate the effectiveness of economic, corporate and political governance in African countries on a voluntary, non-adversarial basis. As of July 2010, 30 countries had signed up to undertake this process and twelve have been reviewed. The next five years are expected to see an even greater momentum in the review process.

Signatories agree to conduct their own national self-assessments of compliance with a range of African and international governance standards. These self-assessments are supposed to be prepared through a highly participatory research process that generates a 'national conversation' about governance challenges.

They are reviewed by a Panel of Eminent Persons who present their own independent report, and this report is presented to a meeting of all the Heads of State and Government who have signed the APRM memorandum (known as the APR Forum), and discussed with the Head of State whose country is being reviewed. Each review leads to a National Programme of Action to address the problems identified. States report each year on their progress in implementing the Programme of Action to the APR Forum.

Efforts have been made to ensure that civil society is part of the APRM process, although concerns remain as to the nature and extent of its involvement. Countries reviewed so far have involved civil society in different ways, including as contractors to undertake consultations and write elements of country reports.

Under the APRM initiative, the promotion and protection of the rights of the child and young people is one of the nine key objectives of the 'Democracy and Good Political Governance' thematic area. The Children's Charter, the CRC and the African Youth Charter, provide standards to monitor these objectives. There is tremendous scope for civil society organisations and the Committee to engage with the APRM process not least by providing input to the country self-assessment reports and the national consultation processes in countries where peer review is scheduled to take place or is underway. The Committee should share information with the APRM on countries under review in order to enhance the quality of their work regarding children. In particular they should share Concluding Recommendations which cover similar areas.



*Part*

6

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Sloth-Nielsen, J and Mezmur, BD 'A Dutiful Child: The Implications of Article 31 of the African Children's Charter' (2008) *Journal of African Law*, 52, 2 159–189

Viljoen, F. (2000), 'The African Charter on the Rights and Welfare of the Child', in Davel, C. (Ed.) *Introduction to child law in South Africa* (2000) 214

## 2. The African Committee of Experts on the Rights and Welfare of the Child

The Working Documents of the African Committee of Experts on the Rights and Welfare of the Child include:

Rules of Procedure (2003)

Guidelines for Initial Reports of States Parties (2003)

Procedures for the Consideration of State Party Reports (2005)

Guidelines for the Consideration of Communications (2006)

Guidelines for the Conducting of Investigations (2006)

Guidelines for the Criteria for Granting Observer Status with the Committee (2006)

ACERWC reports for Fifth to Twelfth Sessions <http://www.africa-union.org/root/au/index/index.htm>

State Party Reports and Concluding Observations issued by the Committee can be found on CRIN at: <http://www.crin.org/resources/treaties/index.asp>

Institute for Human Rights and Development in Africa (2004), *Report of the fourth ordinary session of the African Committee on the Rights and Welfare of the African Child, 24-27th May 2004, Addis Ababa, Ethiopia*

Lloyd, A (2002) 'The First Meeting of the African Committee of Experts on the Rights & Welfare of the Child' *African Human Rights Law Journal* 2(2) 320-327

Lloyd, A. (2003) 'A report of the second ordinary session of the African Committee of Experts on the Rights & Welfare of the Child' *African Human Rights Law Journal* 3(2) 329-347

Lloyd, A. (2004) 'The Third Ordinary Session of the African Committee of Experts on the Rights & Welfare of the Child' *African Human Rights Law Journal* 4(1) 139-158

Mezmur, B. (2006) 'The African Committee of Experts on the Rights and Welfare of the Child: An update' 6 *African Human Rights Law Journal* 549

Mezmur, B. (2007) 'Still an infant or now a toddler? The work of the African Committee of Experts on the Rights and Welfare of the Child and its 8th ordinary session' 7 *African Human Rights Law Journal* 258

Mezmur, B. (2007) 'The 9th ordinary session of the African Committee of Experts on the Rights and Welfare of the Child: Looking back to look ahead' (2007) 7 *African Human Rights Law Journal* 545

NGO Group for CRC Complaints Mechanism Working Group (2009) Children's use of international and regional human rights complaints procedures <http://www.crin.org/resources/infoDetail.asp?ID=19601&flag=report>

Sloth-Nielsen, J. & Mezmur, B. (2008) 'Win some, lose some: The 10<sup>th</sup> ordinary session of the African Committee of Experts on the Rights and Welfare of the Child' (2008) 8 *African Human Rights Law Journal* 207

Sloth-Nielsen, J. & Mezmur, B. (2008) 'An ice-breaker: State party reports and the 11<sup>th</sup> session of the African Committee of Experts on the Rights and Welfare of the Child' 8 *African Human Rights Law Journal* 596.

Sloth-Nielsen, J. and Mezmur, B (2009), 'Out of the starting blocks: The 12<sup>th</sup> and 13<sup>th</sup> sessions of the African Committee of Experts on the Rights and Welfare of the Child' 9 *African Human Rights Law Journal* 336

### **3. Child participation**

There is a wealth of guidance materials for undertaking child participation work. For more information about practical ways of involving children in the civil society report see 'Children as change agents: Guidelines for child participation in periodic reporting on the Convention on the Rights of the Child' World Vision (2008).

For more information on the ethics and practicalities of organising child participation work see 'So you want to consult with children? A toolkit of good practice', Save the Children (2003): [www.savethechildren.net/alliance/resources/childconsult\\_toolkit\\_final.pdf](http://www.savethechildren.net/alliance/resources/childconsult_toolkit_final.pdf)

The following link is to a broad range of Plan International documents regarding child participation: <http://plan-international.org/about-plan/resources/publications/participation>

The NGO Group for the CRC are preparing guidelines for children participating in the CRC reporting process and these will be posted on their website <http://www.childrightsnet.org>.

### **4. The CSO Forum to the ACRWC**

To date the CSO Forum does not yet have its own website. However, comprehensive information relating to its activities can be found on CRIN at: <http://www.crin.org/resources/infoDetail.asp?ID=22369&flag=report>

### **5. UN Committee on the Rights of the Child**

Key documents concerning the UN Committee on the Rights of the Child including their Rules of Procedure, Reporting Guidelines and State Party Reports can be found at the Committee's website: <http://www2.ohchr.org/english/bodies/crc/index.htm>

Information regarding the schedule for review of State Party Reports can be found at <http://www2.ohchr.org/english/bodies/crc/sessions.htm>

A Guide for Non-Governmental Organisations reporting to the Committee on the Rights of the Child (Third Edition 2006)

<http://www.crin.org/docs/Reporting%20Guide%202006%20English.pdf>  
(English)

[http://www.crin.org/docs/NGO\\_Group\\_Reporting\\_Guide\\_2006\\_Fr.pdf](http://www.crin.org/docs/NGO_Group_Reporting_Guide_2006_Fr.pdf)  
(French)

[http://www.crin.org/docs/ngo\\_group\\_reporting\\_ed3\\_sp.pdf](http://www.crin.org/docs/ngo_group_reporting_ed3_sp.pdf) (Spanish)

[http://www.crin.org/docs/reporting\\_to\\_the\\_CRC\\_Arabic.doc](http://www.crin.org/docs/reporting_to_the_CRC_Arabic.doc) (Arabic)

Civil society alternative and complementary reports to the UN Committee on the Rights of the Child are available at: <http://www.crin.org/docs/resources/treaties/crc.25/annex-vi-crin.asp>

Networking for Children's Rights: A Guide for NGOs

<http://www.crin.org/docs/resources/publications/NGOCRC-a-guide-for-NGOs.pdf> (English)

<http://www.crin.org/docs/resources/publications/UNGuideFrancaise.pdf>  
(French)

<http://www.crin.org/docs/resources/publications/UNGuideEspagnol.pdf>  
(Spanish)

Reporting on Violence Against Children: A thematic guide for non-governmental organisations reporting to the UN Committee on the Rights of the Child

<http://www2.ohchr.org/english/bodies/crc/docs/study/GuidelinesNGOsVACtoCRC31012008.pdf>

Report of the independent expert for the United Nations Study on Violence against Children

<http://www.violencestudy.org/IMG/pdf/English-2-2.pdf> (English)

<http://www.violencestudy.org/IMG/pdf/French-2-2.pdf> (French)

<http://www.violencestudy.org/IMG/pdf/Spanish-2-2.pdf> (Spanish)

Concluding Observations of the Committee on the Rights of the child by country

<http://www.crin.org/resources/find.asp>

The Use of Concluding Observations for Monitoring the Implementation of the Convention on the Rights of the Child: The Experiences of NGO Coalitions in Nine Country Case Studies (produced by the NGO group)

[http://www.crin.org/docs/resources/publications/ngocrc/CRIN-NGOCRC\\_WP2\\_en.pdf](http://www.crin.org/docs/resources/publications/ngocrc/CRIN-NGOCRC_WP2_en.pdf)



What Happened? A study on the impact of the Convention on the Rights of the Child in five countries: Estonia, Nepal, Peru, Uganda and Yemen, Save the Children Sweden (2009)

[www.savethechildren.net/alliance/what\\_we\\_do/child\\_rights/What\\_Happened.pdf](http://www.savethechildren.net/alliance/what_we_do/child_rights/What_Happened.pdf)

### 6. The African Union institutions

The AU website has information about all of its institutions although this is not always up to date: <http://www.africa-union.org/root/au/index/index.htm>

In 2007, an Audit of the AU was produced which gives some analysis and overview of the AU systems: [www.dgroups.org/groups/CoOL/docs/AU-Audit\\_280108.pdf](http://www.dgroups.org/groups/CoOL/docs/AU-Audit_280108.pdf)

Strengthening Popular Participation in the African Union: A Guide to AU Structures and Processes, AfriMAP and Oxfam (2010) [http://www.oxfam.org.uk/resources/policy/right\\_heard/downloads/african\\_union\\_strengthening\\_popular\\_participation\\_en.pdf](http://www.oxfam.org.uk/resources/policy/right_heard/downloads/african_union_strengthening_popular_participation_en.pdf)

Engaging the New Pan-Africanism -Strategies for Civil Society, Action Aid International and Open Society Initiative for Southern Africa (2007)

Towards a People-Driven African Union: Current Obstacles and New Opportunities, Oxfam, AfriMAP, AFRODAD (2007)

Civil society and the African Union towards a continental advocacy strategy for World Vision, World Vision (2007)

Regional child rights advocacy: Scoping the opportunities and challenges for promoting and protecting children's rights in Southern Africa through SADC, Save the Children Sweden (2010)

### 7. The African Human Rights System

African Union, Second Pan-African Forum on Children: Mid Term Review [http://www.africaunion.org/root/au/Conferences/2007/November/sa/Children/doc/en/Concept%20Note\\_r.doc](http://www.africaunion.org/root/au/Conferences/2007/November/sa/Children/doc/en/Concept%20Note_r.doc)

Murray, R (2004) *Human Rights in Africa: From the OAU to the African Union* Cambridge University Press, UK

Viljoen, F (2007) *International Human Rights Law in Africa* Oxford University Press, UK

Heyns, C & Killander M (2006) 'The African Regional Human Rights System' in F Isa & K Feyele, (2006) *International Protection of Human Rights, Achievements and Challenges*, University of Deusto Bilbao

## **8. African Commission on Human and Peoples' Rights**

For more information about the African Commission on Human and Peoples' Rights visit their website at: <http://www.achpr.org>

A Guide to the African Commission on Human and Peoples' Rights, Amnesty International (2007) <http://asiapacific.amnesty.org/library/Index/ENGIOR630052007?open&of=ENG-375>

A Guide to the African Charter on Human and Peoples' Rights, Amnesty International (2006)  
<http://asiapacific.amnesty.org/library/Index/ENGIOR630052006?open&of=ENG-312>

Musila, G 'What is the African Commission on Human and People's Rights?' <http://www.crin.org/RM/achpr.asp>

Compilation of Decisions on Communications of the African Commission on Human and Peoples' Rights, Institute for Human Rights and Development in Africa (2006)

Decisions of the African Commission on Human and Peoples' Rights on Communications 2002 – 2007, Institute for Human Rights and Development in Africa (2008)

For more information about the NGO Forum to the African Commission on Human and Peoples' Rights see the African Centre for Democracy and Human Rights Studies' website: [www.acdhhrs.org](http://www.acdhhrs.org)

## **9. Case Law from the African Commission on Human and Peoples' Rights**

Lawyers for Human Rights v. Swaziland, Communication 251/2002, 18th Annual Activity Report (2005).

Democratic Republic of Congo v Burundi, Rwanda and Uganda (2004) AHRLR 19 (ACHPR 2003)

Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001)

Communication 290/2004: Open Society Justice Initiative (on behalf of Pius Njawe Noumeni) / Cameroon 20th Annual Activity Report

## **10. African Court of Human and Peoples' Rights**

Decision on the merger of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union <http://www.interights.org/doc/AU%20Final%20Decision%20on%20the%20merger.doc>

About the African Court - Coalition for an Effective African Court on Human and Peoples Rights: <http://www.africancourtcoalition.org>

## **11. APRM**

For more information see the APRM website at <http://www.aprm-international.org>.

The website for AfriMAP, the African Governance Monitoring and Advocacy Project, also has a wealth of information about the APRM process: <http://www.afriMAP.org>

The Young Face of NEPAD: Children and Young People in the New Partnership for Africa's Development (2004) UNICEF, UN Economic Commission for Africa and NEPAD.

For more on child participation in NEPAD and the APRM see Benyam Mezmur 'Advocating for Child Participation in NEPAD' (2008) African Child Policy Forum.

South African Institute of International Affairs The African Peer Review Mechanism: Lessons from the Pioneers [www.saiia.org.za](http://www.saiia.org.za)

## **12. Regional instruments and documents relevant for children**

African Charter on the Rights and Welfare of the Child (1990)

African Charter on Human and Peoples' Rights (1981)

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2000)

African Youth Charter (2006)

Declaration on the Rights and Welfare of the African Child (1979)

Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally (1986)

Decision on the ILO Convention on the Banning of the Worst Forms of Child Labour and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)

Decision on the Report on the African Conference on the Use of Children as Soldiers (1999)

Decision on the Global Partnership for Children: 'Africa's Children, Africa's Future' (2000)

Decision of the Report of the Secretary General on the Twenty-Fifth Ordinary Session of the OAU Labour and Social Affairs Commission/Ministerial Conference on Employment and Poverty Reduction in Africa (2002)

Decision on the Report of the Secretary-General on the Pan-African Forum on the Future of Children (2001)

Resolution on the International Year of the Child (1979)

Resolution of the Plight of African Children in Situations of Armed conflict (1996)

Resolution on the Programme of Essential Medicines for Children and their Mothers (1988)

Resolution on the Strategies for the Decade for the African Child (1989)

Resolution on the World Summit on Children (1990)

Resolution on Cooperation between the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child in Africa (2009)

Tunis Declaration on Aids and the Child in Africa (1994)





*Part*

7

**ANNEXE ONE**  
**DATES OF SIGNATURE AND RATIFICATION AND DUE DATES**  
**FOR THE SUBMISSION OF INITIAL AND PERIODIC REPORTS**  
**ON THE IMPLEMENTATION OF THE AFRICAN CHARTER ON**  
**THE RIGHTS AND WELFARE OF THE CHILD (NOVEMBER 2010)**

S/N	Country	Date of Signature	Date of ratification/ Accession	Due Date of Initial Reports	Due Date for 1st Periodic Reports
1	Algeria	21/05/1999	08/07/2003	08/07/2005	08/07/2008
2	Angola	-	11/04/1992	29/11/2001	29/11/2004
3	Benin	27/02/1992	17/04/1997	29/11/2001	29/11/2004
4	Botswana	10/07/2001	10/07/2001	10/07/2003	10/07/2006
5	Burkina Faso	27/02/1992	08/06/1992	29/11/2001	29/11/2004
6	Burundi	21/05/2004	28/06/2004	28/06/2006	28/06/2009
7	Cameroon	16/09/1992	05/09/1997	29/11/2001	29/11/2004
8	Central African Republic	04/02/2003	-	-	-
9	Cape Verde	27/02/1992	20/07/1993	29/11/2001	29/11/2004
10	Chad	06/12/2004	30/03/2000	30/03/2002	30/03/2005
11	Côte d'Ivoire	27/02/2004	01/03/2004	01/03/2006	01/03/2009
12	Comoros	26/02/2004	18/03/2004	18/03/2006	18/03/2009
13	Congo Brazzaville	28/02/1992	08/09/2006	08/09/2008	08/09/2011
14	Djibouti	28/02/1992	-	-	-
15	Democratic Republic of Congo	02/02/2010	-	-	-
16	Egypt	30/06/1999	09/05/2001	09/05/2003	09/05/2006
17	Equatorial Guinea	-	20/12/2002	20/12/2004	20/12/2007
18	Eritrea	-	22/12/1999	22/12/2001	22/12/2004
19	Ethiopia	-	02/10/2002	02/10/2004	02/10/2007
20	Gabon	27/02/1992	18/05/2007	18/05/2009	18/05/2012
21	Gambia	-	14/12/2000	14/12/2002	14/12/2005
22	Ghana	18/08/1997	10/06/2005	10/06/2007	10/06/2010
23	Guinea Bissau	08/03/2005	19/06/2008	19/06/2010	19/06/2013
24	Guinea	22/05/1998	27/05/1999	29/11/2001	29/11/2004
25	Kenya	-	25/07/2000	25/07/2002	25/07/2005
26	Libya	09/06/1998	23/09/2000	23/09/2002	23/09/2005
27	Lesotho	-	27/09/1999	29/11/2001	29/11/2004
28	Liberia	14/05/1992	01/08/2007	01/08/2009	01/08/2011
29	Madagascar	27/02/1992	30/03/2005	30/03/2007	30/03/2010
30	Mali	28/02/1996	03/06/1998	29/11/2001	29/11/2004
31	Malawi	13/07/1999	16/09/1999	29/11/2001	29/11/2004
32	Mozambique	-	15/07/1998	29/11/2001	29/11/2004
33	Mauritania	-	21/09/2005	21/09/2007	21/09/2010
34	Mauritius	07/11/1991	14/02/1992	29/11/2001	29/11/2004



S/N	Country	Date of Signature	Date of ratification/ Accession	Due Date of Initial Reports	Due Date for 1st Periodic Reports
35	Namibia	13/07/1999	23/07/2004	23/07/2006	23/07/2009
36	Nigeria	13/07/1999	23/07/2001	23/07/2003	23/07/2006
37	Niger	13/07/1999	11/12/1999	11/12/2001	11/12/2004
38	Rwanda	02/10/1991	11/05/2001	11/05/2003	11/05/2006
39	South Africa	10/10/1997	07/01/2000	07/01/2002	07/01/2005
40	Sahrawi Arab Democratic Republic	23/10/1992	-	-	-
41	Senegal	18/05/1992	29/09/1998	29/11/2001	29/11/2004
42	Seychelles	27/02/1992	13/02/1992	29/11/2001	29/11/2004
43	Sierra Leone	14/04/1992	13/05/2002	13/05/2004	13/05/2007
44	Somalia	01/06/1991	-	-	-
45	Sao Tome and Principe	01/02/2010	-	-	-
46	Sudan	-	30/07/2005	30/07/2007	30/07/2010
47	Swaziland	29/06/1992	-	-	
48	Tanzania	23/10/1998	16/03/2003	16/03/2005	16/03/2008
49	Togo	27/02/1992	05/05/1998	29/11/2001	29/11/2004
50	Tunisia	16/06/1995	-	-	-
51	Uganda	26/02/1992	17/08/1994	29/11/2001	29/11/2004
52	Zambia	28/02/1992	02/12/2008	02/12/2010	02/12/2013
53	Zimbabwe	-	19/01/1995	29/11/2001	29/11/2004

**ANNEXE TWO  
BIOGRAPHIES OF CURRENT MEMBERS OF THE AFRICAN  
COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF  
THE CHILD (NOVEMBER 2010)**

**1. Ms. Agnès Kaboré Ouattara**

Burkina Faso - Chairperson, Term of Office: July 2008 - July 2013

Ms. Kaboré is a socio-economist who has held a number of senior positions relating to children's issues within the Burkina Faso civil service. She is presently the Director General for Child and Youth Protection in the Ministry for Social Action and National Solidarity. Furthermore, she has extensive civil society experience, having been, for example, Deputy Secretary General of the Burkina Faso Association for Family Well-Being and a member of the Board of the Red Cross in Burkina Faso since 2005. She has also worked with GTZ as an advisor on cross-cutting themes such as mainstreaming HIV/AIDS and combating child labour in the agricultural sector. She has worked as an international consultant on situation analyses and on developing strategies and policies for the protection of children.

E-mail address: [agneskabore@hotmail.com](mailto:agneskabore@hotmail.com)

**2. Mr. Cyprien Adébayo Yanclo**

Benin - 1<sup>st</sup> Vice Chairperson, Term of Office: July 2008 - July 2013

Mr. Cyprien Adebayo Yanclo is an activist and independent consultant for children's rights. He is currently Executive Director of the NGO AASSE (the Association for the social action for the survival and development of the child) and in addition is the Chairperson of Conafe-Benin.

E-mail address: [yancyp63@yahoo.fr](mailto:yancyp63@yahoo.fr)

**3. Mr. Benyam Dawit Mezmur**

Ethiopia - 2<sup>nd</sup> Vice Chairperson, Term of Office: July 2010 - July 2015

Mr. Benyam Dawit Mezmur is currently a Mellon-Research Fellow based at the Community Law Centre, University of the Western Cape (UWC) in Cape Town, South Africa. He is also the lecturer of the LLM module on Children's Rights and the Law at UWC. Previously, he has worked as a Legal Officer for the African Child Policy Forum and as a part-time lecturer in two private academic institutions in Addis Ababa. Mr. Benyam Dawit Mezmur has been invited as a guest lecturer in academic institutions in Africa and Europe, has been awarded research fellowships by the Universities of Utrecht and Groningen (Netherlands) and Abo Akademi (Finland), and presented in national and international conferences. He has also undertaken work for some intergovernmental and non-governmental organizations. He received his LLB from the Addis Ababa University, a LLM

from the University of Pretoria (the Centre for Human Rights), and a Doctorate in Law from the University of the Western Cape. He has been closely involved in the work of the African Committee since 2002.

E-mail address: benyam.mezmur@gmail.com

#### **4. Ms. Fatima Delladj-Sebaa**

Algeria - 3<sup>rd</sup> Vice Chairperson, Term of Office: July 2010 - July 2015

Ms. Fatima Delladj-Sebaa is a practising Clinical Psychologist specialising in the development of children and adolescents and is also a lecturer at the Department of Psychology at the University of Oran, Algeria. She was educated at the Universities of Lille, France and Oran, Algeria and holds a doctorate on the identity of adolescence. Ms Fatima Delladj-Sebaa has extensive research experience regarding child and adolescent psychology with a particular emphasis on the issues of suicide, family, drug use, violence against women, child and youth participation and education. She is a research associate at the National Centre for Research into Social and Cultural Anthropology and has worked as an Expert and Consultant for various organisations including UNIFEM, UNICEF, the Social and Economic Council and the National Organisation for the Fight against Drugs and Drug-addiction. She is Vice President of the National Council for the Family and Women and regularly broadcasts on local radio on issues of education and community cohesion. She has published widely on the issue of adolescence and identity.

E-mail address: fsebaa@yahoo.fr

#### **5. Mr. Clement Julius Mashamba**

Tanzania - Rapporteur, Term of Office: July 2010 – July 2015

Mr. Mashamba is an Advocate of the High Court of Tanzania and the founding Executive Director of the *National Organization for Legal Assistance*, nola. He undertook his undergraduate degree in law at the University of Dar es Salaam. He has attended extensive training in human rights from the Canadian Human Rights Foundation and the Danish Institute for Human Rights. He graduated his LLM from the Open University of Tanzania (*Socio-Economic Rights*), where he is also pursuing his Ph.D. in Juvenile Justice. In the past few years, Mr. Mashamba has been representing nola as a member to the Permanent Assembly of the Economic, Social and Cultural Council of the African Union (ECOSOCC). He has also served as a part-time lecturer at the Law School of Tanzania and is currently a visiting lecturer at the St. Augustine University of Tanzania (Mwanza). Mr. Mashamba has published extensively on children's rights, socio-economic rights, good governance and corruption.

E-mail address: mashamba.cj@gmail.com

**6. Ms. Dawlat Ibrahim Hassan**

Egypt, Term of Office: January 2006 - January 2011

Ms. Dawlat Ibrahim Hassan is a diplomat with an expertise in economics. She is currently the Assistant Minister of Foreign Affairs for International Economic Relations. Previously she has been Ambassador of the Arab Republic of Egypt in Lisbon, Portugal and Assistant Minister of Foreign Affairs for International Economic Relations. She has served as the Deputy Permanent Representative of Egypt at the United Nations in New York and Minister Plenipotentiary, Office of the Under Secretary of State for Economic Relations, Ministry of Foreign Affairs.

E-mail address: dawlat2@hotmail.com

**7. Mr. Andrianirainy Rasamoely**

Madagascar, Term of Office: July 2008- July 2013

Mr. Andrianirainy Rasamoely is a Headteacher specialising in history and geography and in addition teaches and trains on human rights and is responsible for coaching people in the public and private sector. He is an activist and consultant on human rights issues and in particular on children's rights and is the President of the National Confederation of the Human Rights Platforms in Madagascar.

E-mail address: andry\_setra@yahoo.fr

**8. Ms. Maryam Uwais**

Nigeria, Term of Office: July 2008 - July 2013

Ms. Maryam Uwais is a lawyer and human rights activist. She is the Principal Partner of Wali-Uwais & Co., Abuja, Nigeria and serves on several Boards including Leap Africa, Commonwealth Education Fund and the Youth Business Foundation. Between 2000 and 2006 she was the Special Rapporteur for the Rights of the Child at Nigeria's National Human Rights Commission.

E-mail address: maryamu@wali-uwais.com

**9. Ms. Amal Mohamed Elhengary**

Libya, Term of Office: July 2010 – July 2015

Ms. Amal Mohamed Elhengary is the Director of the Children's Department General People's Committee for Social Affairs in Libya. This involves coordinating the work of relevant bodies regarding the rights of the child as well as organising events around the Day of the African Child. In this role she has been responsible for

preparing reports on the rights of the child for submission to the UN Committee on the Rights of the Child, the African Committee of Experts on the Rights and Welfare of the Child and the Organisation of Islamic States. Ms Amal Mohamed Elhengary has a degree and higher diploma (equivalent to a Masters) in social work and has written and researched extensively on issues such as orphaned and vulnerable children, child welfare and rights, breastfeeding and is the author of a book regarding social work. In addition she writes stories and poetry for children in the media and has volunteered for many charities.

E-mail address: amal\_h\_7@yahoo.com

#### **10. Ms. Félicité Muhimpundu**

Rwanda, Term of Office: July 2010 – July 2015

Ms. Félicité Muhimpundu is an education specialist and expert on education planning and teacher training at University level. She has worked for the Rwandan government in the Ministry of Education and has been a visiting lecturer in teacher training in Kibungo, Rwanda. She has extensive experience of research on the issues of education in the context of conflict, children's rights, women's rights and citizenship and has conducted consultancies for UNICEF and UNESCO. She is particularly interested in the right to education for early years.

E-mail address: fmuhimpundu@yahoo.fr

#### **11. Mr. Alfas Muvavarigwa Chitakunye**

Zimbabwe, Term of Office: July 2010 – July 2015

Mr. Alfas Muvavarigwa Chitakunye holds a LLB from the University of Zambia, an LLM from the University of Zimbabwe and was admitted as a legal practitioner to the High Court of Zimbabwe in 1984. He has had a distinguished career within the Zimbabwean judiciary and was appointed judge of the High Court of Zimbabwe in 2003. He currently sits in the Family Law Division of the High Court of Zimbabwe. He has been an Executive Member of the National Committee on Victim Friendly Court System where he was closely involved in issues relating to children. Furthermore, he has been a Member of the Inter-Ministerial Committee on Human Rights and International Humanitarian Law and was engaged in preparing the state party reports to the UN Committee on the Rights of the Child.

E-mail address: achitakunye@highcourtzim.co.zw

**ANNEXE THREE  
PREVIOUS MEMBERS OF THE AFRICAN COMMITTEE OF  
EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD**

**Elected for Term of Office from 2005-2010**

Ms. Boipelo Lucia Seithamo, Botswana  
Ms. Seynabou Ndiaye Diakhaté, Senegal  
Ms. Koffi Appoh Marie Chantal, Côte d'Ivoire  
Ms. Mamosebi T Pholo, Lesotho  
Lady Justice Martha Koome, Kenya  
Mr. Moussa Sissoko, Mali

**Elected for Term of Office from 2003-2008**

Dr Assefa Bequele, Ethiopia  
Ms. Nakpa Polo, Togo  
Professor Peter Onyekwere Ebigbo, Nigeria  
Mr. Jean-Baptiste Zoungrana, Burkina Faso

**Elected for Term of Office from 2001-2006**

Ms. Dior Fall Sow, Senegal

**Elected for Term of Office from 2001-2005**

Mr. Louis Pierre Robert Ahnee, Mauritius  
Lady Justice Joyce Aluoch, Kenya  
Ms. Nanitom Motoyam, Chad  
Mr. Straton Nsanzabaganwa, Rwanda  
Mr. Rodolphe Soh, Cameroon  
Professor Lulu Tshiwula, South Africa

**Elected for Term of Office from 2001-2003**

Ms. Suzanna Aho, Togo  
Mr. Dirius Diale Doré, Guinea  
Mr. Karabo Karabo Mohau, Lesotho  
Dr. Rebecca M. Nyonyintono, Uganda

**ANNEXE FOUR  
THE AFRICAN CHARTER ON THE RIGHTS  
AND WELFARE OF THE CHILD (1990)**



**AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF  
THE CHILD**

**OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.**

**PREAMBLE**

**The African Member States of the Organization of African Unity, Parties to the present Charter entitled 'African Charter on the Rights and Welfare of the Child',**

**CONSIDERING** that the Charter of the Organization of African Unity recognizes the paramountcy of Human Rights and the African Charter on Human and People's Rights proclaimed and agreed that everyone is entitled to all the rights and freedoms recognized and guaranteed therein, without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status,

**RECALLING** the Declaration on the Rights and Welfare of the African Child (AHG/ST.4 Rev.I) adopted by the Assembly of Heads of State and Government of the Organization of African Unity, at its Sixteenth Ordinary Session in Monrovia, Liberia, from 17 to 20 July 1979, recognized the need to take appropriate measures to promote and protect the rights and welfare of the African Child,

**NOTING WITH CONCERN** that the situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity he/she needs special safeguards and care,

**RECOGNIZING** that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality, the child should grow up in a family environment in an atmosphere of happiness, love and understanding,



**RECOGNIZING** that the child, due to the needs of his physical and mental development requires particular care with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security,

**TAKING INTO CONSIDERATION** the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child,

**CONSIDERING** that the promotion and protection of the rights and welfare of the child also implies the performance of duties on the part of everyone,

**REAFFIRMING ADHERENCE** Lo the principles of the rights and welfare of the child contained in the declaration, conventions and other instruments of the Organization of African Unity and in the United Nations and in particular the United Nations Convention on the Rights of the Child; and the OAU Heads of State and Government's Declaration on the Rights and Welfare of the African Child.

**HAVE AGREED AS FOLLOWS:**

#### **PART 1: RIGHTS AND DUTIES**

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### **CHAPTER ONE: RIGHTS AND WELFARE OF THE CHILD**

#### **Article 1: Obligation of States Parties**

**1. Member States of the Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.**

**2. Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State.**

**3. Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.**

## **Article 2: Definition of a Child**

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

## **Article 3: Non-Discrimination**

**Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.**

## **Article 4: Best Interests of the Child**

- 1. In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.**
- 2. In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, and opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.**

## **Article 5: Survival and Development**

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

## **Article 6: Name and Nationality**

- 1. Every child shall have the right from his birth to a name.**
- 2. Every child shall be registered immediately after birth.**
- 3. Every child has the right to acquire a nationality.**
- 4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.**

#### **Article 7: Freedom of Expression**

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

#### **Article 8: Freedom of Association**

**Every child shall have the right to free association and freedom of peaceful assembly in conformity with the law.**

#### **Article 9: Freedom of Thought, Conscience and Religion**

- 1. Every child shall have the right to freedom of thought conscience and religion.**
- 2. Parents, and where applicable, legal guardians shall have a duty to provide guidance and direction in the exercise of these rights having regard to the evolving capacities, and best interests of the child.**
- 3. States Parties shall respect the duty of parents and where applicable, legal guardians to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies.**

#### **Article 10: Protection of Privacy**

**No child shall be subject to arbitrary or unlawful interference with his privacy, family home or correspondence, or to the attacks upon his honour or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks.**

#### **Article 11: Education**

- 1. Every child shall have the right to an education.**
- 2. The education of the child shall be directed to:**
  - (a) the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential;**
  - (b) fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on**

**human and peoples' rights and international human rights declarations and conventions;**

**(c) the preservation and strengthening of positive African morals, traditional values and cultures;**

**(d) the preparation of the child for responsible life in a free society, in the spirit of understanding tolerance, dialogue, mutual respect and friendship among all peoples ethnic, tribal and religious groups;**

**(e) the preservation of national independence and territorial integrity;**

**(f) the promotion and achievements of African Unity and Solidarity;**

**(g) the development of respect for the environment and natural resources;**

**(h) the promotion of the child's understanding of primary health care.**

**3. States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular:**

**(a) provide free and compulsory basic education;**

**(b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;**

**(c) make the higher education accessible to all on the basis of capacity and ability by every appropriate means;**

**(d) take measures to encourage regular attendance at schools and the reduction of drop-out rates;**

**(e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.**

**4. States Parties to the present Charter shall respect the rights and duties of parents, and where applicable, of legal guardians to choose for their children's schools, other than those established by public authorities, which conform to such minimum standards may be approved by the State, to ensure the religious and moral education of the child in a manner with the evolving capacities of the child.**

**5. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.**

**6. States Parties to the present Charter shall have all appropriate measures to ensure that children who become pregnant before completing their education**

shall have an opportunity to continue with their education on the basis of their individual ability.

7. No part of this Article shall be construed as to interfere with the liberty of individuals and bodies to establish and direct educational institutions subject to the observance of the principles set out in paragraph I of this Article and the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the States.

#### **Article 12: Leisure, Recreation and Cultural Activities**

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

#### **Article 13: Handicapped Children**

1. Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community.

2. States Parties to the present Charter shall ensure, subject to available resources, to a disabled child and to those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development.

3. The States Parties to the present Charter shall use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highway buildings and other places to which the disabled may legitimately want to have access to.

#### **Article 14: Health and Health Services**

1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.

2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:

- (a) to reduce infant and child mortality rate;**
- (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;**
- (c) to ensure the provision of adequate nutrition and safe drinking water;**
- (d) to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;**
- (e) to ensure appropriate health care for expectant and nursing mothers;**
- (f) to develop preventive health care and family life education and provision of service;**
- (g) to integrate basic health service programmes in national development plans;**
- (h) to ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents;**
- (i) to ensure the meaningful participation of non-governmental organizations, local communities and the beneficiary population in the planning and management of a basic service programme for children;**
- (j) to support through technical and financial means, the mobilization of local community resources in the development of primary health care for children.**

#### **Article 15: Child Labour**

- 1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.**
- 2. States Parties to the present Charter take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the International Labour Organization's instruments relating to children, States Parties shall in particular:**
  - (a) provide through legislation, minimum wages for admission to every employment;**
  - (b) provide for appropriate regulation of hours and conditions of employment;**

**(c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;**

**(d) promote the dissemination of information on the hazards of child labour to all sectors of the community.**

#### **Article 16: Protection Against Child Abuse and Torture**

**1. States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.**

**2. Protective measures under this Article shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting referral investigation, treatment, and follow-up of instances of child abuse and neglect.**

#### **Article 17: Administration of Juvenile Justice**

**1. Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.**

**2. States Parties to the present Charter shall in particular:**

**(a) ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;**

**(b) ensure that children are separated from adults in their place of detention or imprisonment;**

**(c) ensure that every child accused in infringing the penal law:**

**(i) shall be presumed innocent until duly recognized guilty;**

**(ii) shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;**

**(iii) shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;**



(iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;

(d) prohibit the press and the public from trial.

3. The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.

4. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

#### **Article 18: Protection of the Family**

1. The family shall be the natural unit and basis of society. it shall enjoy the protection and support of the State for its establishment and development.

2. States Parties to the present Charter shall take appropriate steps to ensure equality of rights and responsibilities of spouses with regard to children during marriage and in the even of its dissolution. In case of the dissolution, provision shall be made for the necessary protection of the child.

3. No child shall be deprived of maintenance by reference to the parents' marital status.

#### **Article 19: Parent Care and Protection**

1. Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child.

2. Every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis.

3. Where separation results from the action of a State Party, the State Party shall provide the child, or if appropriate, another member of the family with essential information concerning the whereabouts of the absent member or members of the family. States Parties shall also ensure that the submission of such a request shall not entail any adverse consequences for the person or persons in whose respect it is made.

4. Where a child is apprehended by a State Party, his parents or guardians shall, as soon as possible, be notified of such apprehension by that State Party.

## **Article 20: Parental Responsibilities**

**1. Parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development the child and shall have the duty:**

- (a) to ensure that the best interests of the child are their basic concern at all times-**
- (b) to secure, within their abilities and financial capacities, conditions of living necessary to the child's development; and**
- (c) to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.**

**2. States Parties to the present Charter shall in accordance with their means and national conditions the all appropriate measures;**

- (a) to assist parents and other persons responsible for the child and in case of need provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing;**
- (b) to assist parents and others responsible for the child in the performance of child-rearing and ensure the development of institutions responsible for providing care of children; and**
- (c) to ensure that the children of working parents are provided with care services and facilities.**

## **Article 21: Protection against Harmful Social and Cultural Practices**

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

- (a) those customs and practices prejudicial to the health or life of the child; and**
- (b) those customs and practices discriminatory to the child on the grounds of sex or other status.**

**2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.**

## **Article 22: Armed Conflicts**

- 1. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.**
- 2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.**
- 3. States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.**

## **Article 23: Refugee Children**

- 1. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties.**
- 2. States Parties shall undertake to cooperate with existing international organizations which protect and assist refugees in their efforts to protect and assist such a child and to trace the parents or other close relatives or an unaccompanied refugee child in order to obtain information necessary for reunification with the family.**
- 3. Where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.**
- 4. The provisions of this Article apply mutatis mutandis to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.**

## **Article 24: Adoption**

**States Parties which recognize the system of adoption shall ensure that the best interest of the child shall be the paramount consideration and they shall:**

- (a) establish competent authorities to determine matters of adoption and ensure that the adoption is carried out in conformity with applicable laws and procedures and on the basis of all relevant and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives**

and guardians and that, if necessary, the appropriate persons concerned have given their informed consent to the adoption on the basis of appropriate counselling;

(b) recognize that inter-country adoption in those States who have ratified or adhered to the International Convention on the Rights of the Child or this Charter, may, as the last resort, be considered as an alternative means of a child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) ensure that the child affected by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) take all appropriate measures to ensure that in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child;

(e) promote, where appropriate, the objectives of this Article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework to ensure that the placement of the child in another country is carried out by competent authorities or organs;

(f) establish a machinery to monitor the well-being of the adopted child.

#### **Article 25: Separation from Parents**

1. Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance;

2. States Parties to the present Charter:

(a) shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment shall be provided with alternative family care, which could include, among others, foster placement, or placement in suitable institutions for the care of children;

(b) shall take all necessary measures to trace and re-unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters.

3. When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious or linguistic background.

#### **Article 26: Protection Against Apartheid and Discrimination**

- 1. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under Apartheid and in States subject to military destabilization by the Apartheid regime.**
- 2. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under regimes practising racial, ethnic, religious or other forms of discrimination as well as in States subject to military destabilization.**
- 3. States Parties shall undertake to provide whenever possible, material assistance to such children and to direct their efforts towards the elimination of all forms of discrimination and Apartheid on the African Continent.**

#### **Article 27: Sexual Exploitation**

- 1. States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:**
  - (a) the inducement, coercion or encouragement of a child to engage in any sexual activity;**
  - (b) the use of children in prostitution or other sexual practices;**
  - (c) the use of children in pornographic activities, performances and materials.**

#### **Article 28: Drug Abuse**

**States Parties to the present Charter shall take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the production and trafficking of such substances.**

#### **Article 29: Sale, Trafficking and Abduction**

- States Parties to the present Charter shall take appropriate measures to prevent:**
- (a) the abduction, the sale of, or traffick of children for any purpose or in any form, by any person including parents or legal guardians of the child;**
  - (b) the use of children in all forms of begging.**

### **Article 30: Children of Imprisoned Mothers**

**1. States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:**

- (a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers;**
- (b) establish and promote measures alternative to institutional confinement for the treatment of such mothers;**
- (c) establish special alternative institutions for holding such mothers;**
- (d) ensure that a mother shall not be imprisoned with her child;**
- (e) ensure that a death sentence shall not be imposed on such mothers;**
- (f) the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.**

### **Article 31: Responsibility of the Child**

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

- (a) to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need;**
- (b) to serve his national community by placing his physical and intellectual abilities at its service;**
- (c) to preserve and strengthen social and national solidarity;**
- (d) to preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well-being of society;**
- (e) to preserve and strengthen the independence and the integrity of his country;**
- (f) to contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African Unity.**

## **PART 11**

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### **CHAPTER TWO: ESTABLISHMENT AND ORGANIZATION OF THE COMMITTEE ON THE RIGHTS AND WELFARE OF THE CHILD**

#### **Article 32: The Committee**

**An African Committee of Experts on the Rights and Welfare of the Child hereinafter called 'the Committee' shall be established within the Organization of African Unity to promote and protect the rights and welfare of the child.**

#### **Article 33: Composition**

- 1. The Committee shall consist of 11 members of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child.**
- 2. The members of the Committee shall serve in their personal capacity.**
- 3. The Committee shall not include more than one national of the same State.**

#### **Article 34: Election**

**As soon as this Charter shall enter into force the members of the Committee shall be elected by secret ballot by the Assembly of Heads of State and Government from a list of persons nominated by the States Parties to the present Charter.**

#### **Article 35: Candidates**

**Each State Party to the present Charter may nominate not more than two candidates. The candidates must have one of the nationalities of the States Parties to the present Charter. When two candidates are nominated by a State, one of them shall not be a national of that State.**

#### **Article 36**

- 1. The Secretary-General of the Organization of African Unity shall invite States Parties to the present Charter to nominate candidates at least six months before the elections.**
- 2. The Secretary-General of the Organization of African Unity shall draw up in alphabetical order, a list of persons nominated and communicate it to the Heads of State and Government at least two months before the elections.**



#### **Article 37: Term of Office**

- 1. The members of the Committee shall be elected for a term of five years and may not be re-elected, however, the term of four of the members elected at the first election shall expire after two years and the term of six others, after four years.**
- 2. Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity shall draw lots to determine the names of those members referred to in sub-paragraph 1 of this Article.**
- 3. The Secretary-General of the Organization of African Unity shall convene the first meeting of Committee at the Headquarters of the Organization within six months of the election of the members of the Committee, and thereafter the Committee shall be convened by its Chairman whenever necessary, at least once a year.**

#### **Article 38: Bureau**

- 1. The Committee shall establish its own Rules of Procedure.**
- 2. The Committee shall elect its officers for a period of two years.**
- 3. Seven Committee members shall form the quorum.**
- 4. In case of an equality of votes, the Chairman shall have a casting vote.**
- 5. The working languages of the Committee shall be the official languages of the OAU.**

#### **Article 39: Vacancy**

**If a member of the Committee vacates his office for any reason other than the normal expiration of a term, the State which nominated that member shall appoint another member from among its nationals to serve for the remainder of the term - subject to the approval of the Assembly.**

#### **Article 40: Secretariat**

**The Secretary-General of the Organization of African Unity shall appoint a Secretary for the Committee.**

#### **Article 41: Privileges and Immunities**

**In discharging their duties, members of the Committee shall enjoy the privileges and immunities provided for in the General Convention on the Privileges and Immunities of the Organization of African Unity.**

### **CHAPTER THREE: MANDATE AND PROCEDURE OF THE COMMITTEE**

#### **Article 42: Mandate**

**The functions of the Committee shall be:**

**(a) To promote and protect the rights enshrined in this Charter and in particular to:**

**(i) collect and document information, commission inter-disciplinary assessment of situations on African problems in the fields of the rights and welfare of the child, organize meetings, encourage national and local institutions concerned with the rights and welfare of the child, and where necessary give its views and make recommendations to Governments;**

**(ii) formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa;**

**(iii) cooperate with other African, international and regional Institutions and organizations concerned with the promotion and protection of the rights and welfare of the child.**

**(b) To monitor the implementation and ensure protection of the rights enshrined in this Charter.**

**(c) To interpret the provisions of the present Charter at the request of a State Party, an Institution of the Organization of African Unity or any other person or Institution recognized by the Organization of African Unity, or any State Party.**

**(d) Perform such other task as may be entrusted to it by the Assembly of Heads of State and Government, Secretary-General of the OAU and any other organs of the OAU or the United Nations.**

#### **Article 43: Reporting Procedure**

**1. Every State Party to the present Charter shall undertake to submit to the Committee through the Secretary-General of the Organization of African Unity, reports on the measures they have adopted which give effect to the provisions of this Charter and on the progress made in the enjoyment of these rights:**

**(a) within two years of the entry into force of the Charter for the State Party concerned: and**

**(b) and thereafter, *every three years*.**

**2. Every report made under this Article shall:**

**(a) contain sufficient information on the implementation of the present Charter to provide the Committee with comprehensive understanding of the implementation of the Charter in the relevant country; and**

**(b) shall indicate factors and difficulties, if any, affecting the fulfilment of the obligations contained in the Charter.**

**3. A State Party which has submitted a comprehensive first report to the Committee need not, in its subsequent reports submitted in accordance with paragraph I (a) of this Article, repeat the basic information previously provided.**

#### **Article 44: Communications**

**1. The Committee may receive communication, from any person, group or non-governmental organization recognized by the Organization of African Unity, by a Member State, or the United Nations relating to any matter covered by this Charter.**

**2. Every communication to the Committee shall contain the name and address of the author and shall be treated in confidence.**

#### **Article 45: Investigations by the Committee**

**1. The Committee may, resort to any appropriate method of investigating any matter falling within the ambit of the present Charter, request from the States Parties any information relevant to the implementation of the Charter and may also resort to any appropriate method of investigating the measures the State Party has adopted to implement the Charter.**

**2. The Committee shall submit to each Ordinary Session of the Assembly of Heads of State and Government every two years, a report on its activities and on any communication made under Article [44] of this Charter.**

**3. The Committee shall publish its report after it has been considered by the Assembly of Heads of State and Government.**

**4. States Parties shall make the Committee's reports widely available to the public in their own countries.**

### **CHAPTER FOUR: MISCELLANEOUS PROVISIONS**

#### **Article 46: Sources of Inspiration**

**The Committee shall draw inspiration from International Law on Human Rights, particularly from the provisions of the African Charter on Human and Peoples' Rights, the Charter of the Organization of African Unity, the Universal**

**Declaration on Human Rights, the International Convention on the Rights of the Child, and other instruments adopted by the United Nations and by African countries in the field of human rights, and from African values and traditions.**

**Article 47: Signature, Ratification or Adherence**

- 1. The present Charter shall be open to signature by all the Member States of the Organization of African Unity.**
- 2. The present Charter shall be subject to ratification or adherence by Member States of the Organization of African Unity. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary-General of the Organization of African Unity.**
- 3. The present Charter shall come into force 30 days after the reception by the Secretary-General of the Organization of African Unity of the instruments of ratification or adherence of 15 Member States of the Organization of African Unity.**

**Article 48: Amendment and Revision of the Charter**

- 1. The present Charter may be amended or revised if any State Party makes a written request to that effect to the Secretary-General of the Organization of African Unity, provided that the proposed amendment is not submitted to the Assembly of Heads of State and Government for consideration until all the States Parties have been duly notified of it and the Committee has given its opinion on the amendment.**
- 2. An amendment shall be approved by a simple majority of the States Parties.**

Africa is the only continent with a region-specific child rights instrument. The African Charter on the Rights and Welfare of the Child is an important tool for African child rights activists as it complements the UN Convention on the Rights of the Child.

This guide aims to be a resource for civil society organisations who are interested in finding out more about the African Committee of Experts on the Rights and Welfare of the Child, the AU body in charge of interpreting the Children's Charter and monitoring how it is put into practice. It contains practical advice and information on how civil society can engage with the Committee to advance children's rights in Africa.

This second edition reflects important developments relating to the Committee's work, to civil society organisations' engagement with the Committee and to the functioning of the CSO Forum on the African Charter on the Rights and Welfare of the Child.

**Save the Children's mission is to inspire breakthroughs in the way the world treats children, and to achieve immediate and lasting change in their lives.**

**Plan works to achieve lasting improvements for children living in poverty in developing countries, through a process that unites people across cultures and adds meaning and value to their lives.**

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