

ADVANCING CHILDRENS' RIGHTS

A **civil society guide** on how to engage with the African
Committee of Experts on the Rights and Welfare of the Child



3rd EDITION

Julia Sloth-Nielsen



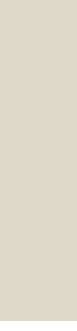
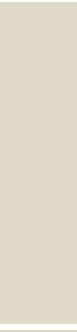
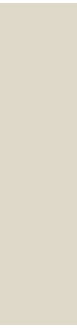
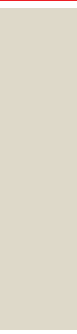
Save the Children

ADVANCING CHILDRENS' RIGHTS

A civil society guide on how to engage with the African
Committee of Experts on the Rights and Welfare of the Child

THIRD EDITION

Julia Sloth-Nielsen



Save the Children International is a global defender for child rights. We deliver immediate and lasting improvements to children's lives worldwide. Save the Children International works for a world in which every child attains the right to survival, protection, development and participation. This is achieved by inspiring breakthroughs in the way the world treats children and by striving to achieve immediate and lasting change in children's lives.

Plan International's vision is of a world in which all children realize their full potential in societies, which respect people's rights and dignity. Using a rights-based approach to programming, we work to achieve lasting improvements for children living in poverty in developing countries. We work with children, their families, communities, organisations and local governments to bring about positive change.

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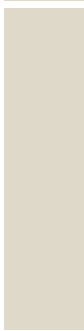
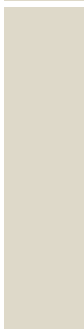
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THE THIRD EDITION OF THE CSO GUIDE

The African Human Rights system has undergone a number of significant changes since the publication of the second edition of the Guide in 2010. The membership of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), has experienced several changes in membership, with the ending of the tenure of members who served their term of office. The committee has developed general Comments, issued findings in response to communications received, and strengthened its partnership with civil society through the African Children's Charter Project (ACCP). At the broader AU level, the Human Rights Strategy for Africa, the African Governance architecture, the AU Agenda 2063 and the declaration of 2016 as the Year of Human Rights in Africa are amongst the significant developments which have had an impact on the work of the ACERWC. These have necessitated a revision of this Guide into the 3rd edition. Save The Children International thus engaged the author to update the 2nd edition with these and other new developments in the Committee's work as well as in relation to the advancement of children's rights in Africa.



PREFACE

The increasing visibility and reach of the work of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) has been immensely aided by the involvement of civil society in the Committee's activities. Civil society has prompted the Committee to undertake investigations, played a meaningful role in the Committee in the development of its General Comments and supported the Committee in deepening its knowledge of the situation of children's rights in Africa through research, conferences and workshops. The number of civil society organisations that have applied for Observer Status to the ACERWC have also steadily increased, indicating that civil society continue to be key players in advancing and promoting children's rights.

Civil society has participated formally in many of the aspects of the Committee's work. In nearly every case of a State Party report being received, civil society coalitions have prepared and presented a corresponding complementary report to the Committee on their views on the status of implementation of the ACRWC. The ACERWC sessions are attended by increasing numbers of civil society organisations, eager to assist the Committee in advancing the child rights agenda in Africa.

Of particular note has been the meaningful inputs by civil society to the Committee to enable it develop its rules of procedure, finalisation of TORs for Special Rapporteurs, development of action plans and strategic plans. The guiding documents have resulted in the Committee solidifying its presence within the AU architecture, and providing a firm platform for engagement with all stakeholders. Through this dedicated support from the CSOs, the African Union organs have incrementally invested financially in the work of the ACERWC, a true testament that civil society play a critical role in influencing government decision making on children's rights and welfare.

The Committee welcomes the revision of this Guide on how civil society organisation can interact with the work of the Committee to strengthen the implementation of the African Charter on the Rights and Welfare of the Child across the continent. Twenty-five years into the adoption of the Charter, this guide is a timely and valuable resource, which also admirably reflects the scope and reach of the modest achievements of the Committee in recent times, through the close engagement with civil society.

I hope that this guide provides CSOs with the necessary tools on how to effectively support the Committee in meeting its mandate on protecting and promoting children's rights in Africa.



Prof. Benyam Dawit Mezmur

Former Chairperson: African Committee of Experts on the Rights and Welfare of the Child,
September 2016.

ABBREVIATIONS

ACCP	African Children's Charter Project
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
ACmHPR	African Commission on Human and Peoples' Rights
AfCHPR	African Court on Human and Peoples' Rights
AGA	African Governance Architecture
ANPPCAN	African Network for the Prevention and Protection against Child Abuse and Neglect
ACPF	African Child Policy Forum
ARPM	African Peer Review Mechanism
AU	African Union
AU Assembly Committee	Assembly of Heads of State and Government of the African Union African Committee of Experts on the Rights and Welfare of the Child
CRC	Convention on the Rights of the Child
CRC Committee	UN Committee on the Rights of the Child
CSO	Civil Society Organisation
CSO Forum	Civil Society Forum on the ACRWC
DAC	Day of the African Child
DCI	Defence for Children International
ECOSOCC	AU Economic, Social and Cultural Council
EU	European Union
GC	General Comment
IHRDA	Institute for Human Rights and Development in Africa
INGOs	International non-governmental organisations
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
SDGs	Sustainable Development Goals
TOOLKIT	Training toolkit on the ACRWC
UNHCR	United National High Commissioner for Refugees
UNICEF	United national Children's Fund
WHO	World Health Organisation

CHAPTER 1: INTRODUCTION TO THE GUIDE



1. INTRODUCTION

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

Dr Assefa Beqele, 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 with an interest in engaging with the African Committee of Experts on the Rights and Welfare of the Child (ACERWC). It explores the multi-dimensional and variety of ways in which the committee engages with advancing children’s rights in Africa. It is intended to support civil society organisations with knowledge, capacity to engage in advocacy, ability to undertake research, and to participate in reporting and other processes of the committee, and the AU more broadly. The committee is the body which is responsible for monitoring the implementation of 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 Charter). The ACRWC draws profoundly on the UN Convention on the Rights of the Child (hereafter the CRC), and the two instruments complement and reinforce each other. These instruments share the key principles of non-discrimination, the paramountcy of the best interests of the child, children’s participation and the right of the child to survival and development.

At times, the 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 ACRWC also gives express recognition to the notion that children have responsibilities, depending on their evolving capacities.

This guide is aimed at supporting 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 reviewed state party reports from more than 33 member states, and the benefits and strengths of a regional reporting mechanism have been evident. Engagement with the state party reporting process has demonstrated that the support of civil society is crucial in developing an independent and effective mechanism for monitoring and advocating for children's rights in Africa. Civil society has also been instrumental in taking forward the concluding observations of the ACERWC at the domestic level in their respective countries.

The committee has also made significant strides in relation to other areas of its work, including issuing findings on communications, releasing general comments, undertaking investigations and commissioning studies. As a result, the force of the regional child rights system is increasingly felt. In all of these endeavours, the co-operation and support of civil society has been crucial in aiding the committee to become a more effective mechanism for monitoring, demanding and advocating for children's rights in Africa.

There is, at the same time, growing awareness about the charter and the Committee. In November 2015, the ACERWC hosted a conference to celebrate 25 years of the Charter's existence. It was attended by more than 400 people, drawn from academia, civil society and international organisations and partners. The CSO Forum, which was inaugurated in April 2009, and held in the shadow of the ACERWC meetings for the following few years, is currently being revived. This CSO Forum can provide an opportunity for civil society organisations working on children's issues from across Africa to come together to network, share experiences, learn and discuss how to improve the Charter's mechanisms and engage with the committee. There are still many civil society organisations which are not aware of the multiplicity of ways in which they can co-operate with the committee and where to find practical information. Only recently have guidelines for the preparation of CSO reports become available. CSOs wishing to contribute to the complimentary reporting process which runs alongside the State party reporting process may be unsure as to what is expected of them. This guide aims to fill this gap and to encourage greater participation by civil society in the work of the committee overall.

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, the African Union (AU) and regional economic communities (RECs).

The guide is split into Six 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 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. It covers the many ways in which CSOs can interact with the Committee.
- Part Four looks at how the Committee fits into the structures of the AU.
- Part Five provides sources of further information.
- Part Six consists of three annexes: a ratification table for the Children's Charter which indicates at least formally when State party reports may be due; and a list of past and present Committee members. The full text of the Charter and the Committee's working documents are not included as they are easily accessible online on the website of the Committee at www.acerwc.org.

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, as well as with RECs.

3. OVERVIEW OF HOW CIVIL SOCIETY CAN ENGAGE WITH THE COMMITTEE

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. More detail is provided throughout this guide.

The Charter

- Encourage and advocate for the remaining AU member states which have not yet ratified the charter to do so as soon as possible; currently there are 50 signatory states.
- Encourage states to remove any reservations made to the children's charter;¹

1 States that have entered reservations include Botswana (on the definition of a child); Egypt (does not consider itself bound by article 21 (2) on child marriage, article 24 concerning adoption, article 30 concerning the special treatment to be accorded children of imprisoned mothers, article 44 which allows that the Committee can receive communications; and article 45 regarding the mandate of the Committee to conduct investigations in member states; Mauritania (which does not consider itself bound by article 9 concerning freedom of thought, conscience and religion; and Sudan which entered a reservation to article 10 (the right to privacy); article 11(6) regarding the education of children who become pregnant before completing their education; and article 21 (2) relating to the prohibition on child marriage.

- Popularise the charter.
- Produce and use child-friendly versions of the charter, in local languages where necessary.
- 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.

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.
- Propose topics for the committee to consider for the Day of the African Child.
- Support and monitor the themes and activities of the Day of the African Child to ensure they are sustainable and worthwhile.
- Get involved in the annual celebration of the Day of the African Child (16 June) and host events to profile this special day.
- Encourage the committee to produce general comments which clarify the general measures states parties must put in place to implement the charter.
- Advocate for and use the committee's existing general comment and decisions on communications to advance the policy and legal frameworks at national and regional levels.
- Provide the committee with briefs on specific themes (e.g. child labour, children deprived of their liberty, children's civil and political rights or access to reproductive services for adolescents) on countries whose state party reports the Committee is considering at the time that they are being considered.
- Support the committee in the interpretation of specific articles in the charter to guide state implementation.
- Support child led reporting to the committee, and support children's participation on local, regional and national processes aimed at advocacy around the charter.
- Participate in conferences and events organised by the committee
- Prepare and present communications to the committee to enable it to extend its interpretative mandate
- Liaise with committee members directly and engage them in relevant national, regional and global processes.
- Propose topics for events and conferences that the committee can consider.

Civil society

- Commit to working with other civil society organisations on implementation and monitoring of the children's charter both nationally and regionally.
- Support the CSO Forum's work by attending sessions if they resume, and contribute to the organisation and management of the Forum

The Reporting Procedure

- Study the guidance developed by the ACERWC to states parties on the specific areas of rights outlined in the ACRWC to be included in their reports (the reporting guidelines).
- Encourage states to draft and submit their state party report on time and to have a participatory process for its drafting, including the involvement of children themselves.
- Be involved in the preparation of states parties reports to the committee.
- Write and submit a civil society report to the committee or participate in a CSO coalition to write a report.
- Encourage meaningful child participation in the drafting of the state party and civil society report, including through child led processes.
- 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.
- Support academic institutions with short-courses on children's rights so that complimentary reports are prepared by local civil society organisations, with the expertise of African intellectuals and children's rights advocates.

The Communications Procedure

- Facilitate the submission of communications alleging violations of the children's charter
- Ensure that children's involvement in the communications in line with ethical standards on child participation, and that their best interests are a primary consideration at all stages of the process.
- Assist the committee in any field visits relevant to a communication received
- Follow up upon 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.
- Follow up on recommendation that the committee has issued to governments following an investigation.

Within the AU

- Advocate with states to ratify the Protocol on the Statute of the African Court of Justice and Human Rights.²

2 States which have ratified the protocol are Algeria, Angola, Benin, Burkina Faso, Chad, Cote D'Ivoire, Congo, Democratic Republic of Congo, Gabon, Gambia, Guinea Bissau, Guinea, Libya, Lesotho, Liberia, Madagascar, Mali, Mozambique, Nigeria, Niger, Sahrawi Arab Democratic Republic, Senegal, Sierra Leone, South Sudan, Sao Tome et Principe, Tanzania, Togo, Tunisia, Zambia (30 in all). Of these, only Burkina Faso, Cote' D'Ivoire, Ghana, Mali Malawi and Rwanda??? And Tanzania have accepted the competence of the Court to receive complaints from NGOs (http://www.au.int/en/sites/default/files/treaties/7792-sl-protocol_on_statute_of_the_african_court_of_justice_and_hr_0.pdf which is updated to 1 April 2016.)

- Urge states by 2018 to acknowledge the court's competence to receive complaints from CSOs and NGOs (individual petitions)
- Strengthen CSO including child led organisation's knowledge on the operation of the court.
- Strengthen national human rights institutions engagement with the courts, including directing complaints to the courts.
- 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, the Pan-African Parliament and the 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, the UN Special Representative to the Secretary-General on Children in Armed Conflict, and any future special mandate holders that may be appointed.
- 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.

CHAPTER 02

THE AFRICAN CHILDREN'S CHARTER AND THE COMMITTEE

The AU was formed in 2002 to replace the Organisation of African Unity (OAU) which had been in existence since 1963. It is a multilateral organisation promoting cooperation on economic and political issues and other areas of common interest.

CHAPTER 2: THE AFRICAN CHILDREN'S CHARTER AND THE COMMITTEE

1. AN INTRODUCTION TO THE AFRICAN UNION (AU)

The AU was formed in 2002 to replace the Organisation of African Unity (OAU) which had been in existence since 1963. It is a multilateral organisation promoting cooperation on economic and political issues and other areas of common interest. All African States are members of the AU. Morocco withdrew in 1984 in protest at the recognition by the OAU of the Sahrawi Arab Democratic Republic. However, in July 2016 Morocco signalled its intention to re-join the AU. On 9 July 2011, South Sudan became the 54th African Union (AU) member. The AU is not a single entity but is constructed from over fifteen structures and overlapping levels of authority: the AU Assembly of the Heads of State is preeminent among these. Some of these are established under the AU Constitutive Act (the Act which provides the overarching framework for the AU) while others are set up under protocols to the Constitutive Act, their own freestanding treaties or other legal documentation.

“In spite of the many challenges, there are notable improvements in the economic and political governance systems on the continent, and there are opportunities for Africa to make the robust growth African economies realized in recent years, more inclusive and jobs-oriented, especially for Women and Youth, and to have greater impact on poverty elimination. The continental integration process is being fast-tracked with the aim of putting in place a Continental Free Trade Area by 2017, but we realize the need to boost intra-African trade and turn it into opportunities for growth, employment and development”

Source: AU Strategic Plan 2014-2017

In 2015 the AU adopted Agenda 2063. It is grounded in the African Aspirations for 2063. The seven African Aspirations were derived through a consultative process with the African Citizenry.

These are:

- a prosperous Africa, based on inclusive growth and sustainable development;
- an integrated continent, politically united, based on the ideals of Pan Africanism and the vision of Africa's renaissance;
- an Africa of good governance, democracy, respect for human rights, justice and the rule of law;
- a peaceful and secure Africa;
- Africa with a strong cultural identity, common heritage, values and ethics;

- an Africa whose development is people driven, relying on the potential offered by people, especially its women and youth and caring for children, and
- an Africa as strong, united and influential global player and partner

There was extensive consultation in the drafting of the Agenda 2063, which enhances ownership of both the processes and outcomes of the initiative. It is not the work of bureaucrats, but rather an agenda driven by the voices of the African people indicating the Africa they want. It differs from previous plans in that it is result orientated, with specific goals, targets and strategies having been set in each aspirational area for the national, regional and continental stakeholders. These targets will form the basis for holding stakeholders accountable for performance. Also, it includes a monitoring and evaluation component to ensure that planned activities, outputs, outcomes are on track for attainment- with the mid-term reviews providing the basis for programme re-alignment.

Accountability roles will be assigned and the outcomes of the monitoring and evaluation process will be used to manage the accountability relationship.

For the first time all continental and regional initiatives have been brought under one umbrella. This integration is expected to enhance consistency, remove policy overlaps and redundancies and create space for the management of diversity and uniqueness in the AU.

A key success factor for the successful implementation of Agenda 2063 is the capacity of individuals and institutions to play their roles- in the domestication of the Agenda. A capacity assessment study is being undertaken to address the capacity needs of continental and regional institutions; this will later be extended to member states.

The Key Agenda 2063 Documents are:

- Agenda 2063 Framework Document
- The Agenda 2063 Popular Version
- The Draft First Ten-Year Implementation Plan

The purposes for developing the First Ten Year plan are to identify priority areas, set specific targets, define strategies and policy measures required to implement the first ten-year plan of Agenda 2063. It will assist bring to fruition fast track programmes and initiatives to provide the big push and breakthroughs for Africa's economic and social transformation. In addition to the above Agenda, the ACERWC has adopted its own vision for African Children 2040, discussed further below, and the AU has declared 2016 to be the African Year of Human Rights, with the emphasis on women's rights (which includes the rights of the girl-child).

So it can be seen that the AU has an ambitious strategic vision and is an important institution for civil society advocacy and engagement. Non-African governments and multilateral agencies have also recognised 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. As advocated in the recent document Africa's Agenda for Children 2040 adopted by the ACERWC, international partners should co-ordinate among themselves where appropriate and align their support and programmes with the strategic objectives, programmes and identified needs of stakeholders of the AU organs and institutions, regional economic communities and member States. These partners should provide

quality and timely technical and financial support to the activities of States, the African Children’s Committee and civil society organisations. International partners should provide technical and financial support towards continent-wide ratification and reporting processes. This is because on its own, the AU has limited capacity and resources 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, the AU structures are challenging and there is a proliferation of AU organs and initiatives which at times leads to duplication or a sense that it is not clear where the best entry point is to be found. The recent initiatives of the AU described above do, however, illustrate some aspects of the human rights mandate that the AU supports.

“The AU Vision is to build an integrated, prosperous and peaceful Africa driven and managed by its own citizens and representing a dynamic force in the International Arena.”

The African Union Commission Strategic Plan 2014-2017
Part one: Introduction, Background, Achievements and Lessons

“The visibility and implementation of the African Children’s Charter and the effective functioning of the African Children’s Committee greatly rely on a wide array of national non-State actors. These actors include national human rights institutions; traditional and religious leaders; civil society organisations and non-governmental organisations; academic institutions; research centres; think-tanks; the media; and children themselves. Their partnership is, therefore, crucial. Civil society also assists in monitoring States’ compliance with their obligations, and contributes to the implementation of the decisions of AU organs.”

From Africa’s Agenda for Children 2040 p20.

Perhaps the biggest obstacle to effective civil society engagement with the various AU organs is the difficulty in obtaining information about the AU’s work. Although the website has been greatly improved recently and efforts made to engage with Africa and the rest of the world on social media (Twitter, Facebook), the AU’s overall communication platforms (website and social media) remain incomplete with most essential documents being unavailable online at the AU destination.³ For instance, the latest ACERWC session referred to is the 19th session which took place years ago, and the most recent Concluding Observations date to 2011. However, the ACERWC’s own website (www.acerwc.org) is reasonably up to date with only a few documents not available.⁴ The Committee’s Guidelines and Rules are all currently available there.

It should be noted that there are important proposals under discussion for the restructuring of the AU. These are discussed in Part 5.

³ <http://pages.au.int/acerwc>

⁴ At the time of writing, the Concluding Observations for South Africa and Zimbabwe were absent, for instance.

2. THE CHARTER

“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 Ebigo, former member of the African Committee of Experts on the Rights and Welfare of the Child

“The Children’s Charter incorporates the universalist outlook of the CRC, but at the same time clothes its conceptions within the African cultural context. It is therefore a document with a cultural-universalist outlook and a perfect starting point for the consideration and elucidation of children’s rights in Africa.

Thoko Kaime, *The African Charter on the Rights and Welfare of the Child: A Socio-Legal Perspective*, 2009, PULP, p21.

2.1. The origins of the Charter

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 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 explains 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 on the website www.acerwc.org.

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

“Although it resonates with African realities and sometimes steers very close to its mother text, the African Charter, the philosophy underlying the Children’s Charter is not one of ‘difference or otherness’ but rather ‘the need for complementarity and contextualisation. It is an instrument both in keeping with Africa traditions and values and well-suited to its unique social, economic, political and cultural environment, whilst at the same time maintaining a universalist outlook”.

Frans Viljoen, *International Human Rights Law in Africa*, 2nd edition, (2012) Oxford University Press, Oxford, p 396

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 is read as more progressive than another; however, 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. All member states to the ACRWC have also ratified the CRC.

2.2. Table illustrating specificities of the Charter compared to the CRC

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 state parties: Article 1 ACRWC, Article 4 CRC	
Creates obligations for state 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 state 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, in recognition of the sometimes dire socio-economic status of children in Africa. Also, 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.

Name and Nationality: Article 6 ACRWC and Article 7 CRC

Article 6(4) requires state parties to ensure that their constitutional legislation recognised the principles according to which a child shall acquire the nationality of the State in which he has been born if the child would at the time of his birth otherwise be stateless.

The right is phrased more weakly with states being enjoined to implement relevant international instruments 'in particular where the child would otherwise be stateless.'

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 is made of 'respect for parents' but an emphasis is placed on respect for African culture, morals, traditional values 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 'respect' for the responsibilities, rights and duties of parents and the State 'shall render appropriate assistance' to parents. This does not necessarily mean material (financial) assistance.

Harmful social and cultural practices - Article 21 ACRWC, Article 24(3) CRC

Engages with the issue from a broad perspective which includes health but also discrimination, dignity and development. It also explicitly sets 18 as the minimum age for marriage. It is particularly focussed on the girl child.

Approaches harmful social and cultural practices from the perspective of their impact on the right to health. There is no focus anywhere in the CRC on the girl child.

Protection - Articles throughout both ACRWC and CRC

Has a number of explicit obligations which provide protection for children:

- it demands special measures for children with disabilities;
- it sets 18 as the age at which a person can be involved in direct hostilities;
- it extends protections given to refugee children to internally displaced children as well;
- it calls for states to prevent 'the use of children in all forms of begging';
- it establishes machinery to consider the well-being of the adopted child; and
- it details measures to be taken when mothers are facing imprisonment including that 'a mother should not be imprisoned with her child.

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.

Duties and Responsibilities of the Child - Article 31 ACRWC

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.

Does not define children's responsibilities expressly; 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).

The ACRWC has stronger and clearer reference than the CRC to harmful traditional practices and enhanced protection for children with disabilities, child living in prison with their mothers, adolescent teenage pregnancies, and internally displaced children. It also has a straightforward and clear definition of a child and places a higher burden on states regarding the application of the best interests of the child standard. It is sensitive to the specific discrimination faced by the girl child.

“As the schematic comparison and the subsequent analysis shows, there are very few areas where the CRC offers a better standard than the ACRWC. Apart from the juvenile justice provisions and a few others, the ACRWC has the normative upper hand over the CRC. Therefore, the central conclusion of this article is that, despite the way the two instruments complement each other, the ACRWC offers a greater number of progressive provisions tailored to address African realities, and this makes the preceding comparative analysis between the two instruments a non-zero-sum game in favour of the ACRWC.”

From Benyam Mezmur

‘The African Children’s Charter versus the UN Convention on the Rights of the Child: A Zero Sum Game?’ 2008 (23) South African Public Law p28.

The South African Children’s Act 38 of 2005, in article 16, entrenches the principle that ‘[e]very child has responsibilities appropriate to the child’s age and ability towards his or her family, community and the state’.

2.3. Article 31 and children’s responsibilities

” ...in the African cultural context childhood is not perceived and conceptualised in terms of age but in terms of inter-generational obligations of support and reciprocity. In this sense an African “child” is often always a “child” in relation to his or her parents who expect and are traditionally entitled to all forms of support in times of need and in old age.”

W Ncube ‘The African cultural fingerprint: The changing concept of childhood’ in W Ncube (eds) Law, culture, tradition and children’s rights (1998) p18.

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 has in the past been seen as 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.'

Fortunately, the ACERWC has clarified the meaning and import of Article 31 in a proposed general comment on Article 31.

“To this end, the Committee notes that the main aim of the Charter is to promote and protect children's legitimate rights and their welfare interests. It is the view of the Committee that a child cannot be denied any rights contained in the Charter on allegation that he or she failed to fulfil his or her responsibilities prescribed by the provisions in the Charter or in any other applicable norm.

The position above is supported by the manner in which the Charter is written, first spelling out a very detailed and comprehensive list of rights for children, without limiting them in anyway, and only placing responsibilities at the end of the section that deals with the rights.

Thus, Article 31 of the Children's Charter is rather coined as a subsidiary provision which does not limit or interfere with the enjoyment of the rights previously provided, thereby reinforcing the enjoyment of children's rights as the aim of the Charter.”

Draft General Comment on The Responsibilities of the Child
(General Comment on Article 31 of the Charter), draft as at August 2016.

2.4 Limitations of the ACRWC

Certain aspects of the ACRWC are weaker than those of the CRC.

Protection for children in conflict with the law

- It does not 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 relating to 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 formulation may appear 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. However, the committee has not adopted this line of interpretation. In its concluding observations to the government of the Republic of South Africa in 2015, the Committee expressed this as follows: ‘The committee recommends that the state party expedite the process of amending the Children’s Act to explicitly ban corporal punishment in all settings including in the home. The Committee also calls upon the state party to promote positive disciplining, to support families through awareness raising, and to train those who are working for and with children such as teachers and care givers. Moreover, the committee advises the government of South Africa to harmonize its national laws such as the common law which entitle parents to reasonably punish their children,’ (concluding observations to the initial report of the Government of the Republic of South Africa, par 35). From this it is apparent that the committee interprets the ACRWC to mean that physical punishment in the home (or any other setting such as school or in institutions) is a violation of the inherent dignity of the child, and hence a contravention of Article 20.

Social security provisions

There is no obvious provision in the ACRWC for parents or guardians to be able to access social security or social insurance to be able to maintain a child’s standard of living.

However, recent academic work has held that Article 20(2) provides that ‘in accordance with their means and national conditions, state parties must take all appropriate measures to assist parents and other persons responsible for the child and in case of need, including by providing ‘material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing’ (*italics inserted*). This formulation of the provision of material assistance in relation to crucial socio-economic rights conceives of an immediate obligation upon the part of the state, and is one which makes sense in situations of extreme family poverty where the state is the provider of last resort.’ (Julia Sloth-Nielsen ‘The Protection of Children’s Economic, social and cultural rights under the African Children’s Charter’ in L Chenwi and D Chirwa, *Socio-economic Rights in Africa*, forthcoming, Cambridge University Press 2016).

Hence, the absence of an express right to social security in the ACRWC is to a large extent cured by the formulation of article 20(2).

In any event, all States parties to the ACRWC are also state parties to the CRC so where a higher standard prevails in the CRC, they are bound to that higher standard. The child’s right to social security is protected by Article 26 CRC.



2.5 Ratification of the ACRWC

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 formal interest by a state in ratifying it at some point in time in the future. Signatory countries commit themselves to avoiding actions that would directly violate 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. In the case of the ACRWC, future ratifications by states will be after entry into force, as the entry into force occurred in 1999.

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.

Who has ratified the ACRWC?

As at 1 August 2016, 47 AU member States have ratified the ACRWC, and 7 remain to ratify it. These are: Central African Republic, Sao Tome et Principe, Somalia, Sahrawi Arab Democratic Republic, South Sudan, Tunisia and the Democratic Republic of Congo. Updated information can be obtained from the website www.acerwc.org (last accessed 1 August 2016). A full list of current ratifications and the reporting status of State parties can be found in Annexure 1 to this guide.

The process of ratification

After signing a state usually reviews the treaty to determine whether its national laws are consistent with its provisions and to consider the most appropriate means of promoting compliance of policy, legislation and programmes with ACRWC provisions. This is an important process for civil society to be involved in since it can assist determine how effectively the children's charter will be implemented in practice.

The state then fulfils its own national requirements for full ratification. This means that the appropriate national organ of the country – parliament, senate, the Crown, head of state or government of 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 that state's responsible authority. It is ordinarily transmitted via that state's mission to the AU in Addis Ababa to the AU which is also located in Addis Ababa.

It should be noted that that status of a country's ratification of the ACRWC is not always clear. 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 at the level of the AU. It is important to share this information and

advise the different government departments and ministries involved to ensure that the ratification process is properly completed.

2.6 Reservations to the ACRWC

A reservation to a treaty means that a state objects to a specific provision within that 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 state 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 state parties to the ACRWC.

There is no explicit provision in the ACRWC which allows state 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 the state's own culture, customs and values.

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

Campaign for universal ratification and reporting on the Charter

The ACERWC launched in 2014 a campaign for universal ratification and reporting on the Charter. The aim was to achieve this by the time of the 25th anniversary conference in November 2015 held to celebrate this milestone. Although universal ratification was not achieved, a measurable increase in the number of State Party reports was received over that period, such that the Committee convened its 1st extraordinary session in October 2014 to deal with the emerging backlog of State Party reports due to the unprecedented number of reports received in 2014. With only 7 AU member States remaining, universal ratification remains an important goal for the ACERWC.

Current reservations to the ACRWC

Botswana: Does not consider itself bound by Article 2 which defines a 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 child of imprisoned mothers; article 44 which established that the Committee can receive communications; and article 45 regarding the mandate of the committee to conduct investigations in member states.

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



“Of these four States, all of whom State parties to both the African Children’s Charter and the CRC, three (Botswana, Egypt and Mauritania) made reservations under both treaties, reiterating their reservations under the CRC when becoming party to the African Children’s Charter. Egypt has subsequently withdrawn its reservation under the CRC. While a greater number of African States initially entered reservations under the CRC, by 2015, Djibouti, Egypt, Mauritius and Tunisia (to a large extent) had withdrawn these, leaving only the following States with reservations under the CRC: Botswana, Mali, Mauritania, Somalia and Tunisia (albeit only in limited form).

From: Africa’s Agenda for Children 2040, p3. From: Africa’s Agenda for Children 2040, p3.

“Following consideration of this report, the Committee has the honour to submit to the Government of Egypt the following recommendations:
1-RATIFICATION OF THE CHARTER: to waive the reservations entered into on the Charter...”

Source: Concluding Recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the Arab Republic of Egypt report on the status of implementation of the African Charter on the Rights and Welfare of the Child (2008)

Sudan: Does not consider itself bound by article 10 concerning the protection of the child’s privacy; article 11(6) concerning the education of children who become pregnant before completing their education or article 21(2) concerning child marriage.

Civil society can advocate with governments who have made reservations to the Children’s Charter to withdraw these as soon as possible.

2.7 Implementation of the ACRWC

Following ratification, state parties are obliged to implement the ACRWC to ensure that the rights within it are respected, protected and fulfilled for all 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’ should include the introduction and implementation at the national or local level for co-ordinating policies relating to children.

“The main aim of the African Children’s Charter – and the corresponding obligation of States - is to ensure that child-friendly laws and policies are adopted in each member State; and that practices develop to give effect to these laws and policies. Article 1 of the African Children’s Charter captures this obligation. Child-friendly laws and policies are rights-based and aim to serve the best interests of children. It is desirable, in addition to general or generic laws, policies and institutions dealing with children, and child-specific legislation, that policies and institutions also be put in place. Obviously, it is equally, if not more, important that these laws and policies are effectively implemented.”

From Africa’s Agenda for Children 2040, p9.

The ACERWC is planning to produce in 2017 or 2018, a General Comment on General Measures of Implementation of the ACRWC, including child protection systems strengthening. This General Comment will draw some inspiration for the General Comment no 5 on General Measures of Implementation of the CRC committee, issued in 2003. It is likely to detail the legislative, administrative, coordinating and other measures required to fully implement the Charter. It will probably cover such issues as the need for monitoring of the implementation of the ACRWC, comprehensive data collection, awareness raising and training and the development and implementation of appropriate policies, services and programmes. Civil society should endeavour to engage with the forthcoming process of developing a General Comment on General Measures of Implementation of the charter, and assist the committee to draft a coherent and detailed set of guidelines. Civil society can make proposals concerning the content, and give feedback during consultative processes that the Committee convenes.

“The Committee takes note of the fact that the Children’s Act of 2001 has been under review since 2010; however, it has not yet been amended, inter alia, to bring it in line with the Constitution. Hence, the Committee urges the State Party to expedite the amendment process as the Act is important for protecting and promoting children’s rights. The Committee also urges the State Party to urgently finalize the adoption of other laws undergoing a revision or a process of adoption.”

Concluding Observations to the 1st periodic Report of Kenya, 2014.

“The Committee encourages the State Party to put in place a permanent system for gathering disaggregated data in terms of sex, geographical location, family status, access to basic services, disability and so forth that can be utilized as inputs in decision making, budget allocation and designing policies and laws.”

Concluding Observations to the initial Report of Sudan, November 2012.

2.8 Harmonisation of the ACRWC with domestic law

An important aspect of states party's 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 a 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 that 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. This means that parliament must enact domestic legislation to give effect to the provisions of the charter in the local legal system. Countries with a dualist system include Ghana, Nigeria, Sierra Leone and South Africa.
- The monist system means that an international treaty is regarded as part of the domestic law immediately upon ratification (or sometimes upon publication in an official gazette) and may be invoked directly in national countries at the point of ratification provided it is self-executing (this means 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 further elaborated or clarified in national legislation.

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

Box: Responsibility of the Child

“The committee appreciates the State Party for dedicating a specific provision on child responsibility under its law on the Promotion and Protection of Children’s Rights as well as for encouraging children to carry out solidarity activities through the children’s parliament, school councils, girls’ clubs and community- based child protection committees. With this, the committee calls upon the state party to continue its efforts in promoting the responsibility of the child as it contributes towards the provision of a forum of participation for children and allows them to be involved in matters which might affect their interests.”

Concluding observations Mozambique 2015 par 34: examples of national courts relying on the provisions of the charter to interpret the law:

In *Bhe and Others v Magistrate, Khayalitsha and Others (Commission for Gender Equality as Amicus Curiae)* one of the issues that the South African Constitutional Court had to decide was whether the customary law rules that gave rise to differential entitlements of children born within a marriage and those born extra-marital constituted unfair discrimination on the grounds of birth. The court examined the relevant provisions of the African Children's Charter, noting that Article 3 of the African charter on the Rights and Welfare of the Child provides that children are entitled to enjoy the rights and freedoms recognised and guaranteed in the charter 'irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, birth or other status'. The court found that unfair discrimination on the ground of 'birth' should be interpreted to include a prohibition of differentiation between children on the grounds of whether the children's parents were married at the time of conception or birth. The differentiation was thus found to be unfair discrimination. The wording of article 3 appears to have played a significant role in the court's decision.

In the case of *In Re: Adoption of Children Act (Cap.26:01); In re: David Banda* the High Court of Malawi examined the wider context within which the law fell to be interpreted. Noting section 211 of the Malawian Constitution, Justice Nyirenda observed that Malawi had ratified CRC, and was also a party to the African children's charter, and that therefore these Conventions are binding on Malawi by choice. Even if the conventions were not part of the law, opined the honourable judge, at very least the court would have a duty to 'interpret and apply our statutory law, so far as the spirit of the statute could allow, so it is in conformity and not in conflict with our established obligations under these conventions'.

Source: Ann Skelton 'The Development of a fledgling child rights jurisprudence in Southern and Eastern Africa based on international and regional instruments' 2009 African Human Rights Law Journal 482

In the recent case of *Mudzuru and another v Minister of Justice, Legal and Parliamentary Affairs (CCZ 12/15)*, the Constitutional Court of Zimbabwe declared unconstitutional some of the provisions of the Marriage Act and the Customary Marriages Act, insofar as latter did not provide for a minimum age limit for marriages, and insofar as the former permitted child marriage below the age of 18 years, in violation of the 2013 Constitution of Zimbabwe. The court held that by ratifying the African charter on the Rights and Welfare of the Child 'Zimbabwe expressed its commitment to take all appropriate measures, including legislative, to protect and enforce the rights of the child as enshrined in the relevant conventions to ensure that they are enjoyed in practice'. The court conducted an extensive review of the applicable international law provisions. However, it was most swayed by the text of the ACRWC:

'In clear and unambiguous language, Article 21 of the ACRWC imposed on States Parties, including Zimbabwe, an obligation which they voluntarily undertook, to take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child. The charter goes on to specifically target child marriage as such a harmful social and cultural practice affecting the welfare, dignity, normal growth and development of the child particularly the girl-child. The States Parties are placed under a positive obligation to take effective measures, including legislation, to specify the age of eighteen years as the minimum age for marriage. They are obliged to abolish child marriage.'

Source: Julia Sloth-Nielsen 'Child marriage in Zimbabwe? The Constitutional Court Rules 'NO!'' in 2016 International Survey of Family Law

It is important to note that harmonisation is not a once off process, but that new developments must constantly be taken into account. As the jurisprudence of the ACERWC develops, further legislative amendments might be necessary to bring law and policy in line with the recommendations of the Committee.

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].’

2.9 Africa’s Agenda for Children 2040

This document was developed to coincide with the 25th anniversary of the ACRWC and shared at a conference in November 2015. It was adopted in final form in July 2016 by the ACERWC. The Agenda sets out ten aspirations, to be achieved by 2040, against a brief background contextualising the particular issue. It proceeds to identify action steps, mostly, but not exclusively, to be taken by States, for the first period of the five-phased 25-year journey ahead.

The ten aspirations are the following:

- **Aspiration 1:** The African Children’s Charter, as supervised by the African Children’s Committee, provides an effective continental framework for advancing children’s rights.
- **Aspiration 2:** An effective child-friendly national legislative, policy and institutional framework is in place in all member States.
- **Aspiration 3:** Every child’s birth and other vital statistics are registered.
- **Aspiration 4:** Every child is born alive and survives infancy.
- **Aspiration 5:** Every child grows up well-nourished and with access to the basic necessities of life.
- **Aspiration 6:** Every child benefits fully from quality education.
- **Aspiration 7:** Every child is protected against violence, exploitation, neglect and abuse.
- **Aspiration 8:** Children benefit from a child-sensitive criminal justice system.
- **Aspiration 9:** Every child is free from the impact of armed conflicts and other disasters or emergency situations.
- **Aspiration 10:** African children’s views matter.

The agenda includes a monitoring and implementation plan, and various stakeholders are identified as duty bearers with regard to implementation, including civil society. In particular, by 2020, CSOs/NGOs working on the rights of children should have obtained observer status with the African children’s committee and should be fully participating in the sessions and work of the committee; they should have made use of the procedures before the African children’s committee, by submitting communications and shadow reports; and they should have assisted with the translation into local languages, the popularisation and dissemination of the African children’s charter, the committee’s activities and the rights of the child, more generally (African Agenda for Children p 27). The full text of the agenda is available on the committee’s website.

3. THE COMMITTEE

3.1 What is the mandate of the committee?

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. Inclusive of 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. Another structure which can be considered as an organ of the AU is the Commission on international law, tasked with developing harmonised continental laws.

The relationship between the committee and these different AU bodies is explored in more detail in part five. The committee is embedded within the architecture of the AU and the AU has made commitments to it.

“The ACERWC generally meets twice a year in ordinary sessions of about one week to ten days (no more than two weeks). Each session is usually preceded by a one to three-day pre-session working group, usually with civil society organisations (CSOs), National Human Rights Institutions (NHRIs), and other partners and stakeholders. Extra-ordinary sessions may also be convened by the Committee, either at the initiative of the Committee, or a request by a State Party to the Charter. Sessions are generally held at the African Union (AU) Headquarters in Addis Ababa Ethiopia, but may be held elsewhere at the request of the Committee or upon the invitation of a State Party, provided that the necessary conditions for the hosting of the session in the State Party are fulfilled.”

Extract from the 2015 Working Methods document commissioned and approved by the ACERWC

“Session” refers to the statutory meetings of the committee. This may also include ordinary and extraordinary (specially convened) sessions (revised rules of procedure, definitions section).

Article 42 of the charter mandates the ACERWC to work in cooperation with: “institutions and organisations concerned with the promotion and protection of the rights and welfare of the child”. This lays the basis for the Committee to co-operate with civil society, broadly speaking.

TIP:

CSOs can advocate within their domestic jurisdictions for litigators and courts to use the provisions of the ACRWC in support of their findings and judgments.



The committee was established in 2001 and held its first meeting in 2002. It is widely agreed that the work of the committee got off to a slow start. Initially severely under-resourced and largely unknown, the committee made a slow start. The initial years of the committee were without a fully functional secretariat, until its first substantive secretary was appointed in 2007. Since then, the African children’s committee has worked hard within the OAU/AU structures to assert its legal authority as the continent’s leading children’s rights authority” (Africa’s Agenda for Children 2040, p 4).

Summary of Committee’s mandate

- 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;
- Co-operate 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 considering state party reports, receiving communications and undertaking investigations)

The committee, in line with the African Commission on Human and Peoples’ Rights, has an extended and ambitious mandate. This mandate proceeds well beyond the more limited mandate accorded the UN CRC committee, which only recently was accorded the power to receive individual communications in addition to examining state party reports. The mandate of the ACERWC is defined in article 42 of the charter as follows:

Collecting commissioning and documenting information on the situation of children in Africa

The Committee can collect, commission and document information on the situation of children in Africa. Several examples of this can be adduced.

For some years, the committee has convened mini conferences or discussion sessions on specific themes at which papers or presentations relevant to that theme are solicited or commissioned. In 2013 the Committee convened such a mini- conference on birth registration in Africa, at which two governments shared their best practices. Another example of this working practice relates to the theme of harmful cultural practices, which was the topic of a conference in 2012. Child marriage specifically has also been the subject of detailed consideration by the committee at this type of event. In the instance of the themes birth registration and child marriage, the conferences formed the basis for a subsequent General Comment of the committee (see below).

Second, in 2015, the committee commissioned a continental study on the impact of armed conflict upon children. This study involved fieldwork in 6 conflict – ridden countries, supplemented by a desk top study of the effects of war upon children’s lives. The study was prompted by the committee’s own prior investigative missions (see below) and by a suggestion from another AU organ, the Peace and Security Council, that it would like to receive updated information from the ground on the situation of children affected by armed conflict. The report on this continental study was adopted by the ACERWC in 2017.

“The objectives of the investigative mission are:

- To investigate the situation of children with albinism in Tanzania and assess the alleged rights violations and challenges they encounter;
- To identify the causes leading to the reported curtailing of or violation of the rights of children with albinism; and
- To engage with various stakeholders, in particular the Government of Tanzania, United Nations, African Union, UN Agencies International and Local Non-Governmental, for a better understanding of challenges and protection of children with albinism in Tanzania”

Source: The ACERWC Report on Investigative Mission on the Situation of Children with Albinism in Temporary Holding Shelters – Tanzania, March 2016, p3

Third, at the request of a non-governmental organisation, the committee undertook a study tour to Tanzania to document the situation of children with albinism in temporary holding shelters. The Committee’s report and recommendations to the government of Tanzania was warmly applauded by the executive council of the AU when they were presented in July 2016 at the summit meeting in Kigali, Rwanda.

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TIP:

The Committee can be contacted if you have research or documents you wish to share with them or if you wish to invite members to an event or to visit your programme. The ACERWC secretariat should be kept informed of any such contact

Establishing principles for protecting children’s rights

The committee may establish principles and rules aimed at the protection of children’s rights in the same way that the UN CRC Committee has produced General Comments.

The first General Comment (GC1) was adopted in November 2013. It concerns the interpretation of the nature of the obligations incurred under article 30 of the ACRWC, i.e. the rights and obligations in respect of children of incarcerated and imprisoned parents and primary caregivers. The General Comment was developed in a consultative process

under the leadership of a designated committee member and with the assistance of NGOs and the international NGO Penal Reform International (PRI), who have specific expertise in relation to imprisonment. The main objectives of the GC 1 are to strengthen the understanding of Article 30 of the African Charter on the Rights and Welfare of the Child (the Charter) and to define the legislation, policy and practices necessary to achieve its full implementation.

The committee asserts that the provisions of Article 30 do not just apply to mothers but also to fathers and primary caregivers who may be a foster parent or another family member such as a grand-parent. This is because large numbers of children in Africa are orphaned or living separated from their parents but may still require the protections guaranteed in Article 30. Article 30 applies when primary caregivers are accused or found guilty of infringing the criminal law. This encompasses all stages of criminal proceedings starting from arrest and continuing through to release and integration. The provisions of Article 30 apply whether the primary caregiver is in custody or subject to non-custodial measures.

The best interests of the child in the context of incarcerated care-givers

“The authorities should take into account the best interest of a child who may be affected when making decisions at all stages of the criminal justice process including arrest, pre-trial measures, trial and sentencing, imprisonment, release and reintegration into the family and community. In order to meet this obligation, the Committee recommends the following:

- The authorities should actively consider applying alternatives to pre-trial detention and to sentences of imprisonment when offenders are parents or primary caregivers of children.
- Taking children’s best interests into account does not mean that parents and caregivers cannot be detained or imprisoned.
- A decision for a child to live in prison with his or her mother or primary caregiver must be subject to judicial review. Criteria for taking such a decision should be developed and include consideration of the individual characteristics of the child such as age, sex, level of maturity, quality of relationship with mother/caregiver and the existence of quality alternatives available to the family.
- Contact between imprisoned parents/caregivers and children must be facilitated where it is in a child’s best interest

Source: Short Guide to General Comment no 1, p 6.
Both the General Comment and the Short Guide are available on the website www.acerwc.org

The committee has also developed a short guide to GC1 to ease its understanding and use by children rights practitioners. PRI is helping the ACERWC to promote and disseminate this General Comment as part of its work to improve the treatment of children in conflict and in contact with the law in Africa and beyond.

The ACERWC’s second General Comment (GC2) deals with the interpretation of article 6 of the ACRWC, i.e. the right to name, to a nationality, to registration of birth and the obligation of states parties to combat child statelessness. This General Comment was spurred by the AU Campaign on civil registration and vital statistics (CRVS), which includes birth registration as a foundational human right (the 3rd meeting of African Ministers on CRVS in February 2015 Yamoussoukro, Republic of Côte d’Ivoire ended with a call for a Decade on Civil Registration 2015-2024).

This General Comment is addressed to all stakeholders who play a role in the implementation of the African Children’s charter and especially the rights embedded in Article 6. This includes agencies of states parties – parliaments and judiciaries, civil society organizations, academics, legal practitioners, and civil registry authorities. Its main objectives are to explicate principles contained in the rights provided for under article 6 and to give the above stakeholders guidance on its implementation in a practical sense.

“The primary responsibility to ensure that a child is registered at birth lies with his/her parents or caregiver. Nevertheless, States parties are under an obligation to play an active role in ensuring that education and sensitization campaigns on birth registration are undertaken all over the country and that the message reaches as many people as possible. The obligation to play a pro- active role is justified under Article 20 of the African Children’s Charter. The Article provides for parents’ responsibilities with regard to the upbringing and development of the child but also imposes on States parties a number of obligations intended to complement the role of parents. In any case, the obligation of to take pro-active steps is required under the broader obligation to take special measures for the child’s protection and to ensure that his/her best interests are at all times given due consideration. Pro-active State obligations are also engendered by the primary obligation to establish and maintain decentralized, efficient and effective civil registry systems, so that parents are in fact enabled to register the births of their children. That these must find their basis in well thought through and modern legislation which gives effect to the principles in this General Comment is also indicative of the pro-active obligation upon State parties.”

Source: General Comment no 2 on Article 6 of the African Charter on the Rights and Welfare of the Child: “Right to birth registration, name and nationality” par 103

The committee is currently finalising two further General Comments. One is on article 31 of the charter (the Responsibilities of the Child) and the other is being formulated jointly with the African Commission on Human and Peoples’ Rights on the obligation to end child marriage. Both will be considered for possible adoption in the latter half of 2016, and have followed the same consultative process of development in which civil society and subject experts have been involved in workshops, commenting on drafts, and proposing amendments. The committee thereafter plans to develop a General Comment on General Measures of Implementation of the Charter and Child Protection systems strengthening (Article 1 of the Charter). The addition of a focus on systems strengthening derives from an expert briefing session held by the ACERWC on this topic and addressed by a consortium of NGOs and INGOs. Civil society has made additional proposals for topics for the ACERWC to consider developing General Comments upon. It is not likely that the ACERWC will develop a general comment on a topic on which a General Comment of the CRC Committee exists or is planned, as that would lead to duplication and potential confusion for states.



Co-operating with other international, regional and national bodies concerned with the rights of the child

The ACERWC has in recent times vastly expanded its contact and co-operation with other international, regional and national bodies concerned with the rights of the child.

The Peace and Security Council has taken the step of holding a theme day on children and armed conflict which the ACERWC is always invited to address. The ACERWC has linked with many donors and partners, such as UNHCR, ECPAT, Save the Children International, Plan International, ANNPCAN, World Vision, Oak Foundation, the African Child Policy Forum, the Dullah Omar Institute, IHRDA, the Centre for Human Rights at the University of Pretoria, and Tear fund (to name only a few partners and organisations).

A key impetus to the work of the ACERWC from 2009 has been the African Children's Charter Project (ACCP), comprising a consortium of CSOs which have assisted the ACERWC to produce many of its outputs, including revised Rules of Procedure, General Comments, and other key documents which direct the work of the ACERWC. The ACCP project has also assisted the ACERWC and child rights CSOs collaborate with multiple AU bodies to promote and implement the African Children's Charter, with a particular focus on collaboration with the African Commission on Human and Peoples' Rights (ACmHPR), the African Court on Human and Peoples' Rights (ACtHPR), Regional Economic Communities (especially SADC and ECOWAS), the Permanent Representatives Committee (PRC), and the Peace and Security Council (PSC). A compendium indicating the results of the ACCP project is available at <http://www.acerwc.org/projects/accp/>.

Collaborative Plan of Action between the ACERWC and the RECs

The collaborative plan of action was developed by SCI. Its primary aim is to pull together efforts, to extend the reach and to scale up the impact of the work of the ACERWC, to avoid duplication and leverage scarce resources in the service of the African child through the effective implementation of the ACRWC. The collaboration with RECs is necessitated by the important roles the RECs play in the goal of Africa's economic and political union. The Plan of Action highlights the strengths and weaknesses of collaboration with RECs; and concludes that the strengths could drive collaboration with RECs through liaison offices while the weaknesses could hinder effective collaboration if an action plan fails to adequately mitigate them. The action plan provides a table that sets out immediate objectives to realise the goals of the collaboration; short, medium and long-term actions required to achieve each objective and expected outcomes.

(Source: Compendium on the ACCP project p 13)

Monitoring implementation of the Charter

Its monitoring role over the work of state 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):

- examining reports that each member state is obligated to deliver on the child rights situation in its country (article 43 ACRWC);

- responding to communications (article 44 ACRWC); and
- 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. This the ACRWC has done through its concluding observations to states parties, as well as through the GCs it has released (as discussed above).

3.2. Who are the committee members?

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. Initially, the charter provided that they could not be re-elected on completion of their term; this provision was amended by the legal counsel in 2015, with the result that two current members are serving a second term of 5 years. The provision now reads that members are eligible for re-election – it does not guarantee their re-election, nor is there a mere extension of their term without an election being held (at which any number of candidates can be nominated). 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. This initiative has continued with each new election of Committee members. Although they receive no remuneration, Committee members are provided with their air fares for each committee session as well as a daily subsistence allowance to cover related expenses.

Committee members come from many different backgrounds including civil society, academia or state institutions (see Annexe Two for biographies of the current Members). To maintain their independence and impartiality, members cannot be part of an inter-governmental organisation, UN agency or hold any politically binding position such as cabinet minister, deputy minister, member of parliament or ambassador.

In January 2016, the AU executive council adopted EX.CL/953 (XXV111) on the “modalities on the implementation of the criteria of equitable geographical and gender representation in AU ORGANS AND institutions”. This decision was intended to enforce gender and regional representation in all AU organs. According to para 20, the regional proportional representative will in future be as follows:

- i. Central 2
- ii. East 2
- iii. North 2
- iv. South 2
- v. West 3



Apart from the AU Commission and the Peace and Security Council, the remaining organs generally have a total membership of eleven (11). Exceptions will be allowed to the above scheme in cases where a region which has been duly informed about vacancies but has not presented candidates. In this case, the other regions will be given the opportunity to fill the vacancy during that election. Where a region did present the required number of candidates but the candidate (s) could not obtain the required number of majority to be elected, then that region will be allowed to present candidates during the next session of the Executive Council.

Gender representation must also be considered. At the January 2016 election of one member of the ACERWC, only male candidates were considered in view of the over-representation of females on the Committee.

According to EX.CL/953 (XXV111), the voting rules of the Executive Council must henceforth be scrupulously adhered to, i.e. a candidate must obtain a two thirds majority. The previous decision of the Executive Council, whereby it decided to reduce the required majority after the third round to a simple majority, will no longer apply.

Since, August 2016, there are currently four members of the committee from the western region, it does not seem as though a candidate from the western region will be eligible at the next elections in 2018. A candidature from the Southern region be possible, as there are two current committee members from the southern region in place until 2020. The eastern region also currently has three members, two of whom will hold office until 2020. Therefore, logic dictates that in 2018 only candidates from central and northern regions will be eligible for election.

The ACERWC elects its own bureau headed by a chairperson, three vice chairpersons and a rapporteur and deputy rapporteur. These officers hold office for two years. The committee is supported by a secretariat headed by a secretary and at time of writing this includes four additional staff. The committee does not have a permanent seat, thus, its secretariat is located within the Department of Social Affairs of the African Union Commission. The chairperson of the African Union Commission appoints the secretary of the committee and is expected to provide the necessary staff and resources needed for the effective discharge of the mandate of the committee. There has been an ongoing discussion about the re-localisation of the seat of the committee, and four countries have tendered to host the ACERWC. Feasibility studies are ongoing and such a move of the seat of the committee out of Addis Ababa is in all likelihood a long way off.

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.
- A 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.

- Nominees should show the willingness and ability to commit sufficient time without remuneration to the work of the Committee.
- Nominees should display the willingness and ability to be independent and impartial in relation to their country of nationality as well as in relationship to the nominating government.

Rule 4 Incompatibility

1. Membership of the committee is incompatible with the exercise of activities which could compromise the independence and impartiality, the dignity or the prestige of the office or of the committee.
2. In particular, members of the committee may not hold political, diplomatic or administrative positions or function as government national advisers at the national level that the Committee decides is incompatible.
3. Each member of the committee shall be responsible to declare to the chairperson any other activities that might compromise the committee.
4. Incompatibility shall be decided by two third majority vote of the committee after examination of all relevant information and after the member concerned is given an opportunity of making any statement or furnishing any explanation he/she wishes.
5. The chairperson of the committee shall notify the chairperson of the African Union Commission, the decision in respect to incompatibility together with all relevant materials for the purpose of article 39 of the African Charter.

Source: ACERWC Revised Rules of Procedure

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.”

A committee member can resign, and a vacancy is then created. A committee member can also be “dismissed” if, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his/her functions for any cause other than absence of a temporary nature; the chairperson of the committee shall notify then the chairperson of the commission, who shall then declare vacant the seat of that member. If either of these situations arise, then, according to the provisions of Article 39 of the children’s charter and paragraphs 1 and 2 of the rules of procedure, the chairperson of the commission shall request the State party which had nominated that member to appoint another expert from among its nationals within two months to serve for the remainder of the term of his/her predecessor.



3.3 How are members of the Committee nominated and elected?

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 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 on 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 fulfil the criteria for eligibility contained in the Charter.

How often are elections held?

A complete list of current committee members and the dates of completion of their respective terms appears in annexe two. The next elections will be in 2018.

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:

- identifying qualified candidates and lobbying them to consider serving on the committee;
- 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;
- sending a letter to the Ministry of Foreign Affairs with clear, convincing arguments as to why this person would be a good candidate;
- Lobbying their governments to make the nomination process truly transparent so that candidates are selected on the basis of merit alone;
- lobbying their governments to nominate competent and credible candidates of their choice.

3.4 The achievements of the Committee thus far...

Increasing ratifications and visibility of the charter

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 Central African Republic, Tunisia, and South Sudan. Whilst in 2002 there were 26 State parties to the charter, the result of the advocacy efforts has been having been that only seven countries remain to ratify at the time of writing.

After the first state party reports were received in 2007, an escalating number were submitted and the ACRWC has become much more prominent in national landscapes, including being referred to in legislation and the jurisprudence of national courts (as previously noted).

Building the Committee as an institution

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

- revised rules of procedure;
- guidelines for initial reports of states parties;
- guideline on initial state party reporting and a guideline on periodic reporting give; instructions to state parties on the form and content of their reports when; reporting on the measures they have taken to give effect to the provisions of the charter;
- revised G=guidelines for the consideration of communications
- guidelines for the C=conducting of investigations
- revised guidelines for the C=criteria for G=granting observer status with the committee
- guidelines for CSOs to draft complementary report (September 2015)
- working methods document
- The ACERWC communication plan

These documents are to an extent discussed in the next chapter.

“... this plan incorporates the following strategic shifts intended to strengthen the functioning of the Committee and its achievement of results:

1. consolidation of institutional structures – the committee will move proactively to fill gaps in the financial, human and systems capacity to ensure that it is adequately equipped to fulfil its mandate and be consistent with the structures and functioning of the two other human rights treaty bodies in Africa;
2. Increased capacity through use of special mechanisms and interns – the committee will identify thematic areas of emphasis and special mechanisms or rapporteurs to carry forward these elements of the committee’s work. In addition, it will come to agreement with an academic institution offering studies in human rights with the objective of obtaining a steady supply of interns to directly assist committee members with research in the areas they have been assigned;

3. greater emphasis on generation of evidence to support advocacy, public information and decision-making –more evidence is needed to facilitate the work of the Committee and increase its visibility and credibility;
4. greater emphasis on performance monitoring the committee will continuously monitor, document and report on the achievement of results identified in its results framework and take corrective action where necessary. To enable this, a project officer with adequate skills in M&E will be hired;
5. shift from a plan, focused on the activities of the Committee, to one that focuses on the achievement of results for the children of Africa.”

Source: ACERWC Strategic Plan 2015-2019 p 8

The committee’s plan of action 2010 – 2014 was subjected to an external evaluation prior to a fresh strategic plan being adopted to guide the work of the ACERWC from 2015 - 2019. The committee also has articulated its vision for children in the African Agenda for Children 2040.

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. There are now two members of the ACERWC and CRC Committee in common. The committee has also begun to work in close partnership with the African Commission on Human and Peoples’ Rights and they will have a joint session in October 2016.

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.

The committee has established a relationship with the Peace and Security Council of the AU with a focus on children and armed conflict.

The ACCP project has enabled the committee to have developed an action plan for ongoing engagement with the regional economic communities (especially ECOWAS and SADC).

Thematic discussions

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, child marriage, harmful cultural practices, and birth registration. Three of these have thus far lead to the ACERWC issuing or developing a general comment, namely birth registration, the responsibilities of the child and child marriage. Further information on these thematic sessions is not readily available in the public domain.

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. These themes were revised and reassigned in 2014/2015.

Although there is no fixed set of duties that the individual member assigned that theme must bear, in the past the committee member responsible for birth registration led the development of the general comment on this theme, and the committee member then responsible for children in conflict with the law took the lead at the conference on children in conflict with the law hosted by the African Child Policy Forum and Defence for Child International at Kampala in 2011.

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 (DAC). This declaration marked an official recognition of the children's contributions to the struggle against apartheid.

The committee has taken responsibility for the coordination of the DAC, drawing 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); 'All together for urgent action for street children (2011)'; 'The rights of children with disabilities: the duty to protect, respect, promote and fulfil', (2012); 'Eliminating harmful social and cultural practices affecting children: our collective responsibility' (2013); 'A child friendly, quality, free and compulsory education for all children in Africa' (2014); 'Ending child marriage' (2015), and 'Conflict and crisis in Africa: protecting all children's rights.' (2016) Source: Info hub of the ACPF @ <https://app.box.com/s/vfr64bpfvcl3lmajk70zxos4tm9wasro>.

TIP:

If CSOs have produced research or reports or are organising events in relation to one of the themes, they could contact the committee member responsible for that issue. They can find out who this is by contacting the ACERWC secretariat.



“38. A presentation on the survey undertaken to consult children to identify the themes of DAC 2016 and 2017 was made by Mr. Paul Fagnon from Plan International. Elaborating on the modality and scope of the survey, Mr. Fagnon indicated that up to 14 countries were considered and that 431 children above the age of 15 were consulted. He also mentioned that the survey had three key areas namely the level of knowledge of children about child rights instruments, evaluation of the knowledge of DAC and evaluation of the participation of children. In this regard, the presenter stated that the outcome of the survey revealed that some children have knowledge of the Charter and the commemoration of the DAC. However, he mentioned that many children are not aware of the themes of the DAC and that they are invited to the DAC on a short notice. Mr. Fagnon also highlighted that the children emphasized the importance of the DAC as an opportunity to speak to authorities on their particular needs.”

Extract from the 25th Ordinary Meeting report of the ACERWC, April 2015

The above box shows that the Committee has taken active steps to involve children in the selection of the themes for the DAC. The celebrations themselves inevitably involve children in respective countries, and the UNICEF AU office annually produces a report detailing the various ways in which the DAC has been commemorated. The Committee adopts a concept note related to the chosen theme at the last session of the preceding year, and this concept note explains the rationale for the choice of that theme as well as the scope and ambit of the affected right. This concept note is transmitted via their AU missions to state parties to guide their planning for the DAC events. An unofficial template for recording the various activities has also been drafted, and this too is sent to state parties for reporting purposes once the events have taken place.

THE DAY OF THE AFRICAN CHILD – MORE THAN LIP SERVICE

- The event should highlight state obligations to children. It should not be seen as a ‘once 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 assist the committee to marshal children’s involvement in selection of the theme of the Day of the African Child through their networks.

Receiving state party reports, complementary reports from CSOs and issuing concluding observations following upon constructive engagement with state delegations:

The committee has received more than 30 initial and periodic state party reports, and save in one instance, CSO reports have been compiled and presented to the committee at a pre-session hearing. Concluding observations that have been issued are available on the committee website at www.acerwc.org.

The committee's expectations of how it engages with CSOs is captured in the guidelines for CSO reporting developed by the committee with the assistance of the ACCP. These are discussed more fully in the next chapter.

In November 2015, the committee adopted the following proposed working method for its constructive dialogue with states parties:

“The committee agreed that the time to be allocated for statements of heads of delegation will be a maximum of fifteen to twenty minutes. It was also agreed that rapporteurs will be given a total of eight minutes to raise questions while other members of the committee will individually be given a maximum of two minutes each. These timeframes will be implemented with some level of flexibility as attendant circumstances necessitate”.

Source: 26th Ordinary meeting of the ACERWC report

Concluding observations take a specific format, although the content differs with respect to each state party. The committee guidelines recommend that states parties use a format with articles clustered by themes rather than considering each article 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. The desired format includes:

An introduction

A review of progress in the implementation of the ACRWC which includes references to other treaties that the State party has ratified, or should ratify, and references to important legislative or policy developments

Areas of concern and recommendations related to:

- general measures of implementation
- definition of a child
- general principles (non-discrimination, best interests of the child, right to life survival and development, and child participation)
- civil rights and freedoms
- family environment and alternative care
- health and welfare
- education, leisure and cultural activities
- special protection measures
- responsibility of the child
- conclusion

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.



More information on the above thematic clusters is provided at p 57 below.

Communications

The committee has issued findings in three *communications* thus far, and several others have been received and are in various states of consideration. Due to the confidential nature of communications processes prior to the committee's decision, these cannot be discussed at this point.

The committee has adopted revised guidelines for the consideration of communications, which are discussed more fully in the next Chapter.

Investigative missions and studies

The committee is empowered by article 45 of the charter to undertake investigations. The article reads that the committee may resort to any appropriate method of investigating any matter falling within the ambit of the 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. The fruits of such investigations as well as the findings in relation to any communication brought to the committee must be reported on to the assembly of heads of state and governments. Investigations may be initiated by the committee itself, or undertaken as a result of a referral of a matter to the committee. An investigative mission may also be undertaken at the request of a state party (by invitation). The mission can only proceed with the permission of the country under study, so that if a state party refuses to allow an investigative mission in its territory, it must give reasons for this and the committee must report the refusal to the assembly of the African Union, who must then decide what steps are possible or necessary.

The committee has developed guidelines for the conduct of investigations. These clarify that the aim of an investigative mission shall be to seek and collect accurate and reliable information on any issue arising from the charter in order to assess the general situation of the rights of the child in a country; to clarify facts and establish responsibility of individuals and the state towards children who are victims of violence and their families; and/or to promote and support the implementation of the rights and welfare of the child by various administrative, legal, and legislative institutions of the country in conformity with the charter (Article 2).

The investigative mission will be constituted by a working group or subcommittee of the ACERWC. They may be assisted by independent experts where necessary and feasible. A committee member who is a national of a country to which a mission is planned, or who resides there, or who nominated that person for election to the committee may not take part in an investigative mission to that country. A mission must be preceded by the compilation of a preliminary report outlining the major legislative and policy parameters for children in that country, and if CSOs are aware that a preliminary report is being planned, they can contribute directly to it (see article 10 of the guidelines for investigative missions.) The dates for the mission must be fixed 6 weeks before it is scheduled to take place. The guidelines highlight the need for the committee's independence to be assured, so that committee gathers its own information, makes its own travel itinerary and arranges the meetings it deems necessary. Article 13(3) details that the mission programme should include meetings with national and local authorities, including members of government, the judicial authorities and Parliament, representatives of national human rights institutions, civil society organisations, representatives of UN agencies and if needs be children

who are victims of violations or their rights and their families. The mission programme should be flexible enough to include complementary (add on) meetings that may present themselves during the mission.

Meetings conducted during the mission must be kept confidential, and conducted in the absence of government representatives and in a venue that is not supervised by government where the matter involves an alleged violation of children's rights (to protect children's identities and that of witnesses) according to article 15 of the guidelines.

Wherever possible missions should include visits to rural areas so that discussions can be held with local authorities, with community organisations and local populations including children. At the conclusion of the mission, a mission report must be compiled, which should highlight the preliminary findings of the committee. This mission report should be communicated to the government and to the media. The preliminary report must thereafter be finalised to reflect the committee's findings, and the recommendations of the committee must thereafter be addressed to the State party concerned but also to other duty bearers or persons, institutions or authorities with responsibility for children. The mission report must ultimately be presented to the Assembly of Heads of State of the African Union by the Committee.

In 2014, the committee also undertook two study tours (to South Sudan and to the Central African Republic) to investigate the situation of children being affected by the severe civil conflict in those countries. The visits were prominently profiled in local and international media, and the mission reports were presented by a committee member to the Peace and Security Council of the AU at its annual themed day on children and armed conflict in May 2015.

3.5 What are the constraints affecting 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. As the 2015-2019 strategic plan notes, the efforts of the committee to effectively discharge its mandate have been hampered by serious lack of human, financial and material resources. One important constraint is the limited number of personnel employed to support it in terms of providing administration and legal advice. The committee has only had a full-time secretary since August 2007, after a long time struggling to function without one, and now has an administrator, a child rights officer who also serves as the financial officer, a senior social worker, a child rights legal officer and communication officer (the latter both supported by donor funding). In the past the Secretariat benefitted from the donor funded appointment of two legal interns, but funding for these positions ended.

Only since 2013 has the committee been granted a budget which is separate and autonomous from that of the Department of Social Affairs (within which its secretariat is located) and for much of its programme work (such as investigations and mini conferences), the committee has to seek donor funding. Another constraint facing the committee is that its members are often extremely busy and committed elsewhere in their own countries.

To give an indication of how the committee should optimally be staffed, the strategic plan for the ACERWC for 2014-2019 recommends that the following staff need to be recruited:

Professional staff:

1. Secretary at P6
2. Planning, Monitoring and Evaluation Officer at P4
3. Senior Child Rights Officer at P3
4. Senior Child Protection Officer at P3
5. Senior Social Worker at P3
6. Senior Research Officer at P3
7. Finance and Administrative Officer at P3
8. Communication Officer at P3
9. 2 Translators at P4
10. Resource Mobilization Specialist at P2
11. Child Rights Officer at P2
12. Researcher at P2
13. Knowledge Management Officer at P2

Support staff:

1. 2 Program Assistants at GSA5
2. Protocol Assistant at GSA4
3. Messenger at GSB6
4. Driver at GSB8
5. 2 Security Guards at GSB8 **
6. Cleaner at GSB8 **

** In the event of delocalization. In that case a human resources officer (not listed) would also be required

Furthermore, it is proposed that interns and volunteers be sought from universities, institutes and foundations such as the Open Society Initiative for Southern Africa to directly support the work of the Committee.

Historically, funding constraints have had a serious impact on the work of the committee and prevented progress in implementing its action plans. Its new website (www.acerwc.org) is a vast improvement, though not all relevant documentation is available. 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 work hard to be even more visible and to link more systematically to other AU structures and offices.

CHAPTER 03

HOW CIVIL SOCIETY CAN ENGAGE WITH THE WORKING PROCEDURES OF THE COMMITTEE (THE DEVELOPMENT, ACHIEVEMENTS AND POTENTIAL OF CIVIL SOCIETY'S ENGAGEMENT WITH THE ACERWC.)

The **ACERWC** has been considering state party reports since receiving the first (from Nigeria and Egypt) in 2008. To date more than 30 state party report have been received and considered by the Committee.

CHAPTER 3: HOW CIVIL SOCIETY CAN ENGAGE WITH THE WORKING PROCEDURES OF THE COMMITTEE (THE DEVELOPMENT, ACHIEVEMENTS AND POTENTIAL OF CIVIL SOCIETY'S ENGAGEMENT WITH THE ACERWC.)

The next sections provide more details as to the ways in which civil society can interact with the ACERWC.

1. ENGAGING WITH THE MANDATES OF THE COMMITTEE

1.1. State Party Reporting

The ACERWC has been considering state party reports since receiving the first (from Nigeria and Egypt) in 2008. To date more than 30 state party reports have been received and considered by the Committee. Most of these have been initial reports (the first report that a state party must submit within two years of ratification), but the committee has considered some periodic reports (subsequent reports that are due every three years). The committee has revised its guidelines for the submission of state party reports in order to ensure that reports are presented in a uniform manner and that they comprehensively deal with the charter rights. 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. 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 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 ACERWC;
- 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 ACERWC at national levels;
- It enables information to be shared amongst states themselves and amongst civil society.

- 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.

The two working languages of the African committee are English and French. However, this is done without prejudice to the right of each state party to interact, both orally and in writing, with any of the five official AU languages (Arabic, English, French, Swahili and Portuguese).

At its 20th ordinary session, held from 12-16 November 2012 in Addis Ababa, the committee reviewed the situation of overdue reports, and decided that the committee will accept from states parties that have never submitted a report under the Charter, a one-time submission of up to three reports consolidated in a single document, in order to bring them up to date with their reporting obligations; this consolidated report should contain a general overview of important developments over the whole period and bring the committee up to date to the present time. According to its rules of procedure, exceptionally, the committee may examine in a public meeting the situation of children's rights in a state party in the absence of a state party report, although to date the committee has not yet utilised this provision.

The committee's guidelines set a page limit for state party reports at 80 pages or 35,000 words. This does not include documents, such as legal texts or statistical data, which may be attached to the report. The preparation of a state party report is expected to have undergone a consultative process with stakeholders within the state including ministries, agencies, law enforcement authorities etc. This is to ensure that the report is as comprehensive as possible while taking into account the views and experiences of those working directly with and for children.

The participation of children in the reporting process is also important, and the committee encourages states parties should ensure that children are encouraged and enabled to participate in the preparation and presentation of reports to the committee (discussed further below at p 68). It is also not unheard of for governments to consult CSOs in the preparation of the state party report, without prejudice to their involvement in later preparing a complementary report (see further below).

Before the consideration of a state party report, the African committee prepares a 'list of issues' which basically refers to a set of queries sent by the committee to a state party ahead of the presentation of the report. The issues are identified by the committee in the course of its engagement with CSOs working in the state party concerned during a pre-session. Through the list of issues, the committee seeks to gain clarity about specific aspects of children's rights in the state party concerned or to understand the State's Party's position and measures being taken in response to those issues. The list of issues is therefore a very important aspect of the constructive dialogue process, as it assists the Committee to identify priority issues for discussion with the state party (see working methods document 2015 p 6).

TIP:

CSO input through the complementary reporting process assists the ACERWC to formulate and define the List of Issues it submits to State parties.

Committee members who are nationals of the state party under review do not participate in the entire process substantively, including during

the constructive dialogue and the adoption of concluding observations. If a committee member is of the view that his/her participation at any stage of the process might create a real or perceived conflict of interest, he or she shall not take part in the process. Such a committee member might be allowed to sit in and attend the constructive dialogue (without participation) if permitted to do so by the committee.

According to the working methods document, the ACERWC is assisted in the state reporting process by reports prepared and presented by CSOs which provide alternative, complementary or additional information. 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.

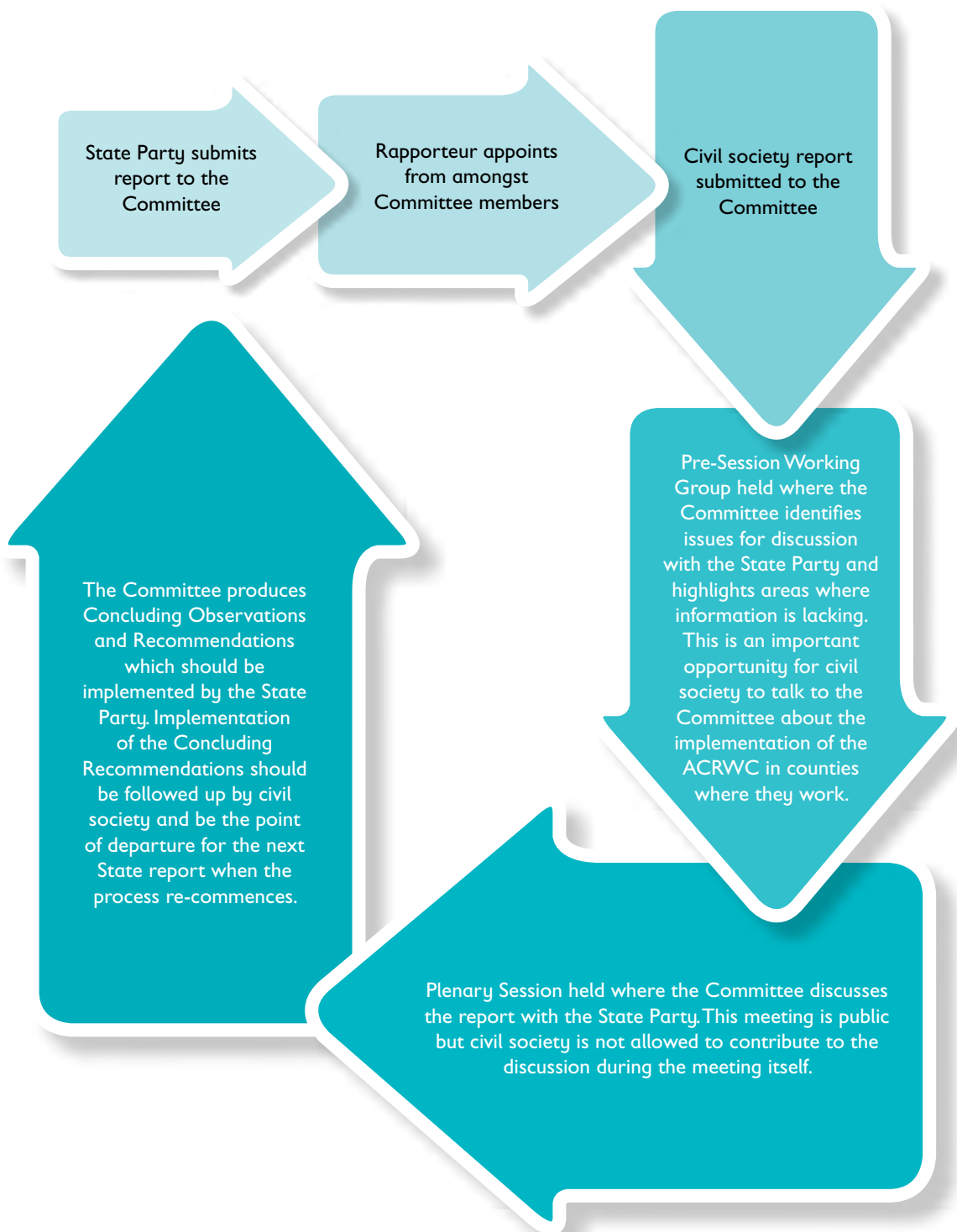
The committee's Rules of Procedure (Rule 69) allows the ACERWC to receive civil society reports from CSOs. Reports by civil society not only contain factual information but also usually contain expert advice based on the areas of specialisation of the organisations involved. The preparation and submission of a civil society report does not in any way preclude CSOs from actively participating in the national process spearheaded by the government for the preparation of state reports, if such a process is in place. Where CSOs are not able to contribute to the state reporting process, it becomes even more important to prepare civil society reports which bring to the fore key issues that may have been missed from the state report.

In preparing a civil society report, the CSOs involved study the state party report and thereafter conduct independent investigations to verify the information contained therein. It is best practice for a national coalition of organisations to come together for this process: preparation of the civil society report should preferably be broad, collective and participatory. This in turn allows for more effective monitoring of the ultimate recommendations of the ACERWC, and for the acquisition of information from a diverse range of sources based on the specialist knowledge of each member of the coalition. It also lends credibility to the process and validity to the report produced as it will be endorsed by a broad range of organisations working on children's rights issues in different parts of the country. It is also more effective and practical for the committee to receive one comprehensive and credible report from a national coalition of CSOs than a multiplicity of reports which may be repetitive or contradictory. Thus, the process should also be participatory, with children involved in various stages of the process as well (working methods document p7). Children are part of civil society too!

The ACERWC has adopted guidelines for CSOs to assist them in drafting their reports. These are available on the ACERWC website. In particular, the information included in a civil society report must be factual, reliable, objective and supported by verifiable body of evidence. It should strive to enhance the quality of constructive dialogue between the committee and the state party that will later take place. The content should be biased towards implementation processes and challenges.

It should follow the exactly same format as the state party report (see above at p (fill in)), but without duplicating information already provided in the state party report. It should detail any progressive or retrogressive measure(s) undertaken by a State Party which has implications for the realisation of the rights and welfare of the child. If it is a periodic report, it should detail the extent of implementation of previous recommendations of the ACERWC.

THE REPORTING PROCESS



A civil society report should not be more than 7500 words or 30 pages in length according to the Guidelines for CSO reporting. It should have a 3-page executive summary and each heading or subheading should identify a need, point out the main issue(s) responsible for the need and provide concrete recommendation to meet the need. 15 hard copies should be submitted in English and French to the secretariat. In addition, the full address of the contact organisation should be indicated on the cover page. A civil society report is due at least 3 months before the pre-session, and 6 months before the date when the State Party report is going to be considered, according to the Guidelines for CSO reporting. A civil society report is confidential and may only be made public if the author(s) decide this is acceptable.

Thematic clusters for the state party and civil society reports

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.

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.

With the introduction of the CPW Act in 2011, a separate children's court was established in the capital city Maseru, to deal with children's matters covered in the Act. Applications for fostering and adoption remain the jurisdiction of the High Court of Lesotho. Although specific children's courts have so far been piloted in Maseru district, the CPW Act does envisage that subordinate courts in all Districts practice in the same physical premises with the same staff, but with the child-friendly procedures outlined in the Act. Significantly more training of the prosecution and judiciary is required before this can be an actuality. The government of Lesotho has established the Child and Gender Protection Unit (CGPU) within the Lesotho Mounted Police (LSMP) in each of the ten Districts for the enforcement of the aforementioned pieces of legislation. Child Helpline is a new reporting mechanism for members of the community to lodge complaints related to children's matters in an anonymous manner. The telephone number is advertised on billboards in some Districts. The enactment of the CPW Act catalysed a review of all related legislation, regulations and policy to ensure alignment with the Charter.

Extract: State Party report of the Government of Lesotho, 2015, p 6.

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. PREPARATION OF THE CSO 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. These can be used as the basis for the process of developing a CSO report.

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

Kaleb Gamaya, Programme Director, National Organisation for Legal Assistance (NOLA), Tanzania

Sources that can be relied on include:

- 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, any other relevant UN agencies, and reports produced by the special representative of the UN Secretary General
- Budget analyses related to public expenditure on children conducted by either government or civil society.

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 below). Final drafts should be validated by further wide consultation.

After finalising a civil society report, hard and electronic copies should be submitted in English and French to the committee's secretariat. The submission should be done three months (or at least one month) ahead of the next committee session in order for it to be scheduled for consideration at the pre-session working group meeting, where it will be presented and discussed with the African committee. 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.

“The reporting process offers a great opportunity for CSOs to make input into the situation of children in their respective countries. But most CSOs are challenged by the lack of knowledge about the Charter. This is a reality we had to deal with that we were not on the same wave length and could not contribute equally to the process of putting together the complementary report. While we had to report frankly, it is shocking to find out that some of us felt they would fall out of the government’s favour if certain issues were disclosed. There was so much fear for example that organizations would lose the opportunity to get subventions from government if they participate in the process. A lot of issues can compromise the quality of what is reported.”

One consultant who formed part of the coalition that drafted the Lesotho CSO report

A delegation comprising members of the national CSO coalition is usually expected to be present at the pre-session for the presentation of the report. As is the case with the state party report, several individuals with expertise in various aspects of children’s rights (health, education, justice, birth registration, labour) should make up the delegation in order to be able to engage meaningfully with the committee. The objective is for the committee to obtain information from a broad range of authoritative sources. Children are also welcome as forming part of CSO delegations (working methods document p 9).

Why prepare a civil society report?

- 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 can be heavily weighted in favour of presenting legislative frameworks but lack deep 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.”

The presentation of civil society reports is generally scheduled to take place during a (pre)session ahead of the committee’s next ordinary/extra-ordinary session when the state party report of the state in question will be considered. This is to give sufficient time for the Committee to develop the list of issues that will be sent to the state party for responses ahead of the presentation of its state party report. Civil society reports are submitted after the committee has received the state party report (working methods document p 10), and respond to the state party report.



It should be noted that the African Committee does not offer financial assistance to CSO delegations, whether in the report preparation process or at the presentation stage.

A significant value of the civil society reporting process is the formulation of the list of issues based on which the Committee would engage with the state party during the state reporting process (see 3(b) (viii) above). In addition, CSOs are expected to highlight at the end of their presentation, a number of key recommendations (at least three) for the committee to take forward in engaging with the state party during state reporting process. The committee may also seek for additional information which the delegation may provide at a later date, but before the state reporting session (working methods document p7).

While the State Party reporting process is public or open, the Committee meets privately with CSOs during pre-sessions to encourage free and full disclosure of all useful information. 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. Participation in a pre-session is strictly through invitation at the discretion of the CERWC (Guidelines on CSO participation in a pre-session).

What is constructive dialogue?

The Working Methods document describes this as follows:

“The African committee considers states parties’ reports (and complementary reports) by examining them through a process that includes a constructive dialogue with representatives of the state party concerned or representatives of CSOs as the case may be. The constructive dialogue is mainly intended to assist the ACERWC to understand and review the children’s rights situation in the State Party concerned. In principle, it is also on the basis of the constructive dialogue that the Committee would draw its concluding observations to the state party concerned. It is to be noted that the constructive dialogue emphasises discussion, cooperation and collaboration in good faith and it is not intended to be an adversarial process. States parties are also encouraged to view the constructive dialogue as an opportunity to receive expert advice on compliance with their child rights commitments which assists them in their implementation of the African charter at the national level.”

Source: Working Methods document p 8

In the course of the formal reporting by delegations from states parties, CSOs, although welcome to attend the sessions as observers, are not permitted to address the committee at this point in time. Constructive dialogue during this period is then between the committee and the state party delegation (working methods document p7).

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.

The constructive dialogue with states parties and CSO delegations will normally be conducted in two sessions of up to 2.5 hours each (a total of 5 hours) and will usually take place over one working day. With reference to civil society reports, constructive dialogue focuses on thematic areas where there are clear gaps and insufficient information provided in the state party report. The discussion also centres on concrete examples of areas where there have been violations of children's rights and where necessary and sufficient measures have not been taken by the State Party to address them. It is useful for CSOs to provide factual statistical information to support or contradict information contained in the state party report. Such information will add value to the committee's subsequent dialogue with the government.

States parties and CSO delegations will be provided with information on the structure of the dialogue and an indication of the time-limits for their opening statement (10 minutes) and for their closing remarks (up to 10 minutes) with a view to saving time for the direct exchange between the state party's or CSO delegation and committee members. Questions posed by the committee members may be clustered by articles on the basis of the nine clusters provided in the reporting guidelines (see above at p 57). Usually, during the first round, the Committee will raise questions pertaining to the first five clusters of the reporting guidelines. Following the responses of the CSO delegation, in the second round of questioning and dialogue, the committee will deal with the remaining four clusters of the reporting guidelines bearing in mind the need to give the CSO delegation reasonable time to answer the questions posed by the committee members. Committee members may pose follow-up questions to the responses of the CSO delegation until sufficient clarity is obtained (working methods document p11). The committee appreciates careful time management on the part of the CSO delegation, including by providing precise, short and direct responses to the questions asked. It will mainly be the responsibility of the head of delegation to ensure that time is managed well and that the responses by the members of the delegation are direct, and precise. The committee appreciates it if the state party or CSO delegation could clearly indicate when a response to a question cannot be provided (at that point in time).

The committee may allow the CSO delegation to provide supplementary information [within 72 hours] from the conclusion of the dialogue, which answers will be taken into account during the constructive dialogue with the state party.

“South African civil society's alternative report was put together by a broad coalition of children's rights organisations. This gave the report credibility and the Committee gave our team a reasonable time to present, as well as time to answer their questions”.

Prof Ann Skelton. Director, Centre for Child Law, University of Pretoria

After the pre-session, a list of priority issues is 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.

Next, 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. Oftentimes, children form part of the delegation too.

Concluding observations are prepared by the Committee in closed session, with the Country Rapporteur (designated from amongst the Committee members) taking the lead. The aim is to put together a general overview of the situation of children's rights in the country concerned based on the contents of all reports (State Party and civil society reports) and the constructive dialogue with the Committee, while highlighting the major areas of concern. Concluding Observations form concrete and formal feedback at the end of the State reporting process and as such, the most significant part of them is the suggestions and recommendations to the State Party for specific and overall improvement on the implementation of the Charter. The reporting procedure is a central part of the Committee's work and the Concluding Recommendations are arguably the most important documents produced by the Committee. The recommendations need to be precise, clear, well-defined and concrete so that they are as meaningful as possible for State parties.

Article 6: NAME AND NATIONALITY

The committee notes with satisfaction that the nationality act has been amended to make it compliant with the existing constitutional text, and this is a most welcome step. The procedures for acquiring Sudanese nationality in respect of a child born by a Sudanese mother and a foreign father need to be facilitated. Measures are being taken to ensure and facilitate registration of births.

The committee, however, remains concerned at the fact that many births in remote areas are not registered. The Committee recommends to the Government of the Republic of the Sudan to take appropriate measures to provide the means necessary to cover the entire national territory in terms of structures for enlisting birth declarations and enhance the capacities of such structures, thereby considerably increasing the rate of birth registration.

The Committee suggests that secondary or mobile civil status centres be established to more easily reach out to the populations and thus facilitate registration of births and deaths.

Extract: Concluding Observations of the ACERWC to Sudan, 2012

The recommendations and suggestions made will be re-visited when the next periodic report becomes due, enabling the Committee to monitor the situation of children's rights in a particular country over an extended period of time. CSOs may find the Concluding Observations useful for the promotion of their advocacy programmes and campaigns for the protection of children's rights.

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 observations 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 observations 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 observations;
 - develop systems and indicators for monitoring implementation of the concluding observations;
 - advocate and campaign around concluding observations issues;
 - strengthen or create a network to draft the next civil society report and plan for children's participation in it

The Committee also makes follow up visits in between the receipt of reports, during which visits CSOs can meet with the Committee and discuss the implementation of the previous recommendations and Concluding Observations with the delegation.

Good practice in using the reporting process by CSOs:

In April 2015, a coalition of CSOs from South Africa came together in an informal workshop to brainstorm the experiences they had undergone in developing a CSO report and presenting it to the ACERWC in 2015, and in presenting a CSO report to the CRC committee in 2016. This was used to draw lessons to enhance practices for the next reporting round to the committees.

Concluding Recommendations prepared by the Committee are available at www.acerwc.org

Relationship between the CRC reports and the ACRWC reports

Many African states have also submitted periodic reports to the UN committee. 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 aligned to 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. The two reporting processes should run in tandem as far as possible, and be seen as part of a continuous cycle of child rights monitoring, reporting and implementing concluding observations and recommendations made by both committees.

One early state party report was 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 guidelines adopted by the ACERWC now make it clear what states have to include in their reports under the charter.

2.1. Child participation in CSO reports to the ACERWC

“For the formulation for the present report, the following methodology was observed: i) Literature review; ii) Meetings with more than 100 CSOs representatives and groups of children of Maputo, Inhambane, Manica, Tete, Zambézia and Nampula provinces and Maputo city;”

Extract from the Civil Society Alternative Report on the implementation of the African Charter on the Rights and Welfare of the child in Mozambique (2000 - 2012), Maputo 2014

TIP:

Civil Society organisations should support the ACERWC and the CRC committee to ensure that the reporting process for both bodies is harmonised regarding the timing for the submission of reports.

“STEPS FOR PREPARING THE ALTERNATIVE REPORT

This report was prepared in several stages, summarized as follows:

- Studying the governmental report, and comparing its contents with reality
- Collecting observations of the organizations about the weaknesses and strengths in the enforcement of the ACWRC.
- Collecting observations of children from different segments on the extent of deprivation and provision of the rights given to them by the ACRWC.
- Using relevant studies and research. Furthermore, by reviewing the concluding observations of the Committee on the Rights of the Child in Geneva, for Sudan III and IV reports.
- Drafting the report.”

Extract from the Alternative Report on the implementation of the African Charter on the Rights and Welfare of the Child in Sudan 2011

Involving children in the preparation of the CSO report is regarded as a good practice, and is reflected in the working methods adopted in the above two case studies.

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. Child participation will also enable the committee to determine how well they are meeting the goals for which they were designed. These opinions will also assist the states parties in developing new, or adapting old, programmes so they are more precise and effective.



2.2. Key principles of child participation

The key principles of child participation within the reporting process are derived from the CRC and the ACERWC. These include: non-discrimination; the best interests of the child; the right to life, survival and development; and respect for the views of the child. The procedures for involving children should meet the nine basic principles of child participation: processes should be transparent and informative; voluntary; respectful; relevant; child friendly; inclusive; be supported by training for adults; be safe and sensitive to risk; and be accountable. The encouragement of child-led reporting (in developing and presenting a report) is to be fostered.

“Government should ensure that children’s voices are reflected in reporting to treaty bodies, including to this Committee.”

ACERWC Concluding Observations Ethiopia par 17.

There is no definitive 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. It might involve consultation through youth groups or clubs or on an ad hoc basis. It might involve questionnaires and surveys which will be completed by children’s organisations themselves, who are preparing and submitting their own reports. It could also involve recording children’s voices on different media including film or audio tape or using the internet through email, interactive websites or through web-chats. Although, the latter will be limited of course by availability of access.

The committee notes that the report was prepared through collaboration with other stakeholders and wide consultation and participation of many actors in the area of children were involved in the preparation of the report. In particular, the committee commends the participatory process of public consultations notable among them the involvement of the Civil Society Organization and the participation of children especially the children’s parliament. The committee commends the state party for its large delegation headed by Prof. Adewemi the chairperson of the child’s rights implementation forum and the inclusion in the delegation the speaker of children’s parliament.

Extract: ACERWC concluding observations Nigeria 2008 par 2 and 3.

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. Children can even prepare their own report, as the children of Zimbabwe did when the Zimbabwe CSO report was presented to the ACERWC in 2014. 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 have frequently formed part of delegations (CSO and state party delegations) to the ACERWC and have taken the floor to voice their opinions. These are given careful consideration by the ACERWC members.

2.3. 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.

Research conducted while preparing the CSO 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;
- 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 and
- disseminating information to children through member organisations

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.'

Justine Laison, 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.

2.4. 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. Communications

Article 44 of the charter mandates the committee to receive and address any complaint alleging the violation of the rights of the child or any act or omission that is or may be prejudicial to the rights of the child. Such complaints may be communicated to the committee by a state party, and individual or NGO. Ideally, communications are a measure of last resort when it has become difficult or impossible to secure a remedy for the violation at the domestic level.

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.

Where a communication is in issue, the committee's role generally encompasses three aspects: consideration of the admissibility of the matter; consideration of the merits and reaching a decision; and monitoring of the implementation of decisions reached. The committee's guidelines for the consideration of communications contain detailed information on specific issues such as who may file a communication, parties to a communication, and the form and content of a communication, among others.

2.5.1. 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.

A complainant submitting a communication may designate an attorney or other person to represent her/ him before the Committee in the communication itself or in a separate document.

A communication may be presented on behalf of a child victim without her/his agreement on condition that the complainant is able to show that her/his action is taken in the supreme interest of the child. When possible, the child victim who is able to express her/his opinions shall be informed of the communication presented on her/his behalf.

2.5.2. Criteria for admissibility

The ACRWC guidelines for the submission of communications contain requirements relating to both form and content. These are often termed the criteria for admissibility. Regarding form, no communication shall be considered by the committee if:

- it is anonymous;
- it is not written in one of the official languages of the committee;
- it concerns a state non-signatory to the charter
- it is not duly signed by the complainant or her/his representatives

Notwithstanding (c) above, the committee may admit a communication from state non-signatory to the charter in the overall best interests of the child. This is an unusually generous interpretation. The communication should not be based exclusively on media reports: it must be based at least in part on other sources such as personal knowledge, witness statements or government documents.

Regarding anonymity, 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. Anonymity will be protected by the committee only if requested to do so by the author.

Regarding the requirements as to content, a communication addressed to the committee shall contain the following information:

- clear particulars of the complainant or complainants and party or parties against whom such complaint has been made;
- where possible, the name of the victim or victims, in case they are not the complainant or complainants, and of any public official or authority who has taken cognisance of the fact or situation alleged;
- whether or not the complainant wishes that his or her identity or the identity of any victim or victims be withheld from the state party against which the communication is brought;
- the state the complainant considers responsible, by act or omission, for the violation of any of the rights and welfare of the child recognised by the African Children's Charter;
- an account of the act or situation that is the subject matter of the complaint, specifying the place and date of the alleged violations;
- where possible, the provision of the African Children's Charter allegedly violated;
- the remedies sought by the complainant to redress the alleged violations
- any steps taken to exhaust domestic remedies, or the impossibility or ineffectiveness of doing so as provided under section IX 1(d) of the guidelines;
- an indication of whether the communication has been submitted to another international settlement procedure as provided in section IX (c) of these guidelines;
- the address for receiving correspondence from the committee and, if available, a telephone number, facsimile number, and email address.

The communication should be presented to the committee within a reasonable period after exhaustion of domestic remedies (see below) has occurred.

Extract from section VII of the Guidelines for the consideration of communications:

“(i) Where the committee considers that one (or more) communications submitted to it or pending before it reveal a situation of urgency, serious or massive violations of the African Children's charter and the likelihood of irreparable harm to a child or children in violation of the African Children's charter may, either on its own initiative or at the request of a party to the proceedings, request the state party concerned to adopt provisional measures to prevent grave or irreparable harm to the victim or victims of the violations as urgent as possible.

(ii) after the request for provisional measures has been transmitted to the state party, the committee shall transmit a copy of the letter requesting provisional measures to the victim, the assembly, peace and security council and the African Union Commission.”

A complainant should receive acknowledgement of receipt of the communication from the secretariat within 21 days of submission. Thereafter, provided the formalities have been complied with the communication is tabled before the committee. Where a communication reveals serious or massive violations or in cases of emergency, the secretariat shall immediately notify the committee for

consideration of any provisional measure in accordance with section VII of the guidelines for the consideration of communications (see below).

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. However, the ACERWC has not yet had an opportunity to consider using provisional measures.

Before dealing with the merits (contents) of a communication, the ACERWC must first take a decision on its admissibility. The criteria for ruling on admissibility are that:

- the communication is compatible with the provisions of the Constitutive Act of the African Union and the African Children’s Charter;
- The communication is not exclusively based on information circulated by the media or is manifestly groundless;
- The communication does not raise matters pending settlement or previously settled by another international body or procedure in accordance with any legal instruments of the Africa Union and principles of the United Nations Charter;
- The communication is submitted after having exhausted available and accessible local remedies, unless it is obvious that this procedure is unduly prolonged or ineffective;
- The communication is presented within a reasonable period after exhaustion of local remedies at the national level; and
- The communication does not contain any disparaging or insulting language.

2.5.3. What is exhaustion of local remedies?

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. An example is when a case has been brought before the highest court in a state and has been unsuccessful.



Extract: Exhaustion of local remedies

“17. In this regard, the complainants submitted that they have undertaken a number of efforts to exhaust local remedies for a period of seven years in order to resolve the issue of lack of citizenship of the Nubian community.

18. The Complainants submit that in 2002 the Nubian community, through the Kenyan Nubian Council of Elders, instructed the Centre for Minority Rights Development (CEMIRIDE) to institute legal proceedings against the Kenyan Government. On 17th March 2003 an action was commenced in the High Court of Kenya by way of an urgent application that led to a leave to file a class action suit on behalf of the Nubian community.

19. The Complainants indicate that, even though CEMIRIDE filed the substantial constitutional application the same day in the High Court in Nairobi, numerous procedural obstacles have since been raised which have stalled the case...

21. the Complainants submitted that, more than six years after the CEMIRIDE instituted proceedings on behalf of the Nubian community, no bench has been constituted and no date has been fixed for a substantive hearing on the case...

22. The complainants are of the view that the pursuit of local remedies by the Nubian community has been fraught with such impediments that it offers no prospect of success and children of Nubian descent living in Kenya cannot be reasonably expected to benefit from these local remedies. As a result of the above, the Complainants argue that the

Communication should be declared admissible as it complies with all the requirements of the Guidelines for the Consideration of Communications.”

From: Decision on the Communication submitted by the Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on behalf of children of Nubian descent in Kenya) against the Government of Kenya (Communication 002/2009)

There is no strict format for a communication, but it must be in writing and addressed to the chairperson of the ACERWC. In practice, communications are voluminous documents accompanied by considerable supporting documentation to back up the complaint.

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 CRC 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 proof which supports 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).

The procedure that follows is that the affected state will be notified of the receipt of the communication, although the details as to who brought it may be anonymous. This enables the state to raise any possible challenges to the admission of the communication. Prior to deciding upon the admissibility of a communication, the committee may, where it deems necessary, invite the parties to submit additional information either in writing or orally. Any additional written observations submitted by a party shall be transmitted to the other party.

Having considered all the facts, evidence and observations made by the parties, and report of rapporteurs or working groups as the case may be, the committee shall make a decision on the admissibility or otherwise of the communication within 90 days of conclusion of deliberation on of admissibility. The committee shall provide parties with written decisions detailing the reasons for its decisions. The

admissibility decision can be appealed, 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.

Once admissibility has been assured, the ACERWC will consider the merits of the communication (the alleged violation). Again, the committee will request the respondent state party to submit its arguments and evidence on the merits of the communication within 60 days. The committee may invite the parties to reach a friendly (amicable) settlement (but this has not yet occurred in the practice of the ACERWC). In all cases of an amicable settlement, the terms of settlement reached must be based on respect for the rights and welfare of the child recognised by the African Children's Charter and other applicable instruments.

After ruling a communication admissible, and in the absence of an amicable settlement, the committee may convene a hearing on the communication and invite the parties to make oral submissions (unless there is a preliminary objection). If there is a preliminary objection, it must be ruled on first before consideration of the merits). The committee may convene an oral hearing of its own accord, or at the request of one of the parties (the complainant or the State against whom the communication has been filed. The committee practice has been to convene oral hearings for all of the communications received thus far. This entails that the complainant will have to travel to the hearing (and fund the costs of such travel).

The hearing will usually be conducted in closed session, although the guidelines do provide for the possibility of open sessions. Closed sessions are better able to protect the anonymity of complainants. Not only parties can testify at hearings since the guidelines provide for the possibility of independent experts sought by the ACERWC to testify, the possibility of witnesses being called (either by the parties or by the committee), and for the possibility of third party interventions and of amicus curiae interventions (separate interventions, not by parties, but as a friend of the Committee). The committee shall also take measures to ensure the effective and meaningful participation of the child or children concerned by the consideration of the Communications. When the child is capable of expressing his opinions, he should be heard by the committee through a child friendly process.

In all cases it should be made known to the secretariat who will be appearing the make an oral presentation before the committee.

If it deems it necessary or advisable for the determination of a communication at any stage before determination on the merits, the Committee may carry out an on-site investigation in accordance with article 45 of the African Children's Charter. This the committee did in relation to the first communication brought against the government of Uganda in relation to events that had occurred in 2003-2005 in northern Uganda when the territory was under siege due to the activities of the Lord's Resistance Army. Unable to make suitable factual findings on the oral evidence alone, a working group undertook a field mission to verify information and obtain first-hand accounts.

Upon the receipt of all arguments and evidence on the merits from the parties, the conduct of any hearings or any on-site investigations, the committee deliberates on the merits of the communication and prepares a report on its deliberations. This Report covers its examination of the arguments and evidence presented by the parties, information obtained during hearings and on-site investigations. The

committee may also, on its own initiative, take into account any other information that is a matter of public knowledge relevant to the communication. Amongst others, the final report of the committee must contain the relevant facts and law examined, a reasoned decision on the admissibility of the communication with a full analysis of facts and law; the reasoned decision on the merits with full analysis of facts and law; the conclusions of the committee; and recommendations of the committee on actions to be taken by the parties to remedy the violations found by the committee.

“For the reasons given above, the African committee finds a violation of Article 22 (and, as a fundamental duty, Article 1(1)) of the African Charter on the Rights and Welfare of the Child by the government of Uganda. The African Committee does not find a violation of the other Articles (Articles 11, 14, 16, 27 and 29) as alleged in the Communication. The African committee therefore:

(...)

Recommends that the government of Uganda establishes administrative procedures and practices in relation to all armed forces and units of defence, including private security operations, which ensure that, in instances where there is no credible proof of age, or in the case of conflicting or inconclusive evidence of age, the person alleged to be or alleging to be a child shall not be recruited or used in any situations of hostilities, tension or strife until conclusive proof of age is provided to confirm that the person is aged over 18 years...”

From: Decision on the communication submitted by Michelo Hunsungule and others (on behalf of children in Northern Uganda) against the Government of Uganda (Communication 1/2005)

A decision on a communication adopted by the committee may only be made public by the Committee and the parties after the assembly of Heads of State of the African Union has considered and adopted the committee’s report in accordance with article 45 (3) of the African Children’s charter.

2.5.4. How to ensure that 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. Facilitators and convenors 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 finalised 3 communications, it is 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. One 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. 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 working with a child witness, one 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. 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.

2.5.5. Enforcement of decisions on communications

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.

Although the committee's decisions are not legally binding, it is hoped that they 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 did not specifically mention that the ACERWC is able to bring cases to the court. There is a likelihood of amendments to make provision for the ACERWC to submit cases to the court.

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.

3. GENERAL COMMENTS

Article 42 of the charter mandates the committee to, among others, "interpret the provisions of the Charter" and "to formulate and lay down principles aimed at protecting the rights and welfare of children in Africa".

One of the means by which the committee fulfils this mandate is through the preparation of General Comments. The committee prepares General Comments based on the various articles and provisions of the charter, in particular with a view to assisting the states parties in fulfilling their obligations under the charter. General Comments present authoritative interpretations of particular provisions



of the ACERWC. Their main objective is to promote understanding of the articles and strengthen implementation by guiding states parties in shaping their legislation, policy and practice to achieve full and proper implementation of the provisions of the charter.

The committee has adopted a full formal process for the preparation of General Comments. It entails a highly participatory approach involving several partners of the committee, and other stakeholders. After deciding on an article of the children's charter requiring a General Comment, opportunities for wider consultation are launched to receive input from experts and CSOs. Workshops are one means by which the committee solicits input, and CSOs can participate in these. As a rule of thumb, the process of drafting, convening workshops and finalising a General Comment takes about two years.

After adoption, states parties are encouraged to widely disseminate the General Comments across their governments and territories. The contents should also be made known to different groups of professionals working for and with children, including judges, lawyers and legal aid providers, teachers, guardians, social workers, officials of public or private welfare institutions, as well as to children and civil society. CSOs can play a substantial role in assisting to make a General Comment widely known.

As mentioned, the ACERWC has to date produced two General Comments (on article 30 and on article 6 of the Charter), and two more are at an advanced stage of finalisation.

3.1. Day of the African Child

In furtherance of the promotion of the rights of the child, the ACERWC has taken the lead role in the celebration of the Day of the African Child (DAC). The DAC was established by the then Organization of African Unity in commemoration of the 16 June 1976 uprising by school children in apartheid South Africa, resulting in the shooting of innocent children. The DAC is therefore a standing promotional item of the committee and it is an AU-wide event.

In commemoration of the DAC, the ACERWC selects a theme each year, in order to focus attention on an issue affecting children, and which AU member states have committed themselves to address. As much as possible, children are consulted beforehand to get their views on issues that should be highlighted to states parties through the DAC celebrations.

The selected theme is thereafter elaborated in a concept note incorporating the views of children as well as the ideas and issues that arise in the course of the Committee's Days of General Discussion. After the concept note is finalized, it is shared with all AU member states, CSOs and other child-focused organisations, six months ahead of the celebrations, to guide the planning for commemorating the day. It also suggests follow-up steps to ensure that the selected thematic focus is sustained through and by future action.

Previous themes for the DAC are reflected in Chapter 2 above at p45.

Every state party is expected to submit to the committee a report on the commemoration of the DAC. The report is to enable the committee evaluate impact and monitor the implementation of the recommendations made in the DAC concept note. CSOs may also assist the committee by filing their reports independently of the reports expected from state governments. [A reporting template is usually

annexed to the concept note]. In the past the UNICEFAU liaison office has collated reports from states and UNICEF country office relating to how they celebrated the DAC and compiled a composite report for the attention of the ACERWC.

3.2. Statements and Communiqués

The committee from time to time adopts statements to clarify and confirm its position with respect to major regional and national developments or to comment upon issues bearing upon the implementation of the Charter. Such statements are made with a view to assisting States Parties and other stakeholders such as NGOs and children to understand the views of the committee on the matters in question, and undertake the necessary measures to improve and ensure the implementation of the Charter. A list of several statements made by the committee is available on the ACERWC's webpage under the title "statements".

Open letter from the chairperson of the African Committee of Experts on the Rights and Welfare of the child

H.E. Macky Sall,

President of the Republic of Senegal

Your Excellency,

The African Committee of Experts on the Rights and Welfare of the Child, an African Union Organ which was established by the Heads of State and government of the Organization of African Unity (OAU), to monitor the implementation of the African children's charter, learned with great satisfaction and appreciation Your Excellency's Decision on the measures to stop child begging on the streets of Dakar. The Decision comes at a right time as we are celebrating the African year of Human Rights, with special focus on the rights of women, ahead of the 27th Ordinary Session of the Assembly of Heads of State and Government of the African Union.

Extract from the Open Letter to the President of Senegal from the ACERWC, posted 26 July 2016

3.2.1. Thematic Discussions and Days of General Discussion

The ACERWC organizes general discussion days, usually in the course of ordinary sessions, during which open discussions on specific provisions of the charter or other issues related to the committee's mandate are held. The discussions are open to representatives of states parties, CSOs, NHRIs, and all partners and interested stakeholders. At the end of the discussions, the ACERWC will formally adopt recommendations on the topic of focus during the discussions; inputs received all participants present during the discussions will be incorporated.

Days of General Discussion may also result in other outcomes other than the formal recommendations made to provide guidance and direction to States Parties on how to address the issues raised during the discussion. These include decisions that pressing issues be further developed in terms of a General Comment, or that a particular subject becomes the focus of a future DAC commemoration.

CSOs can play a central role in advocating for a topic to be considered as for a general discussion or thematic discussion day. They may also request to present their own research or field experiences at such events. Finally, they can shape the recommendations or other outcomes that may flow from such an event.

3.2.2. Investigative missions

In terms of Art 45(1) of the charter, the committee may use any appropriate method to investigate any matter covered by the charter; and to investigate measures taken by State parties to implement the Charter. Investigative missions enable the committee to directly gather information relevant for monitoring the implementation or violation of the charter by states parties.

Investigative missions are generally prompted by matters referred to the ACERWC, matters initiated by the ACERWC which may arise from a communication, or through a direct invitation by a state party. Detailed information on investigations is provided in the committee's guidelines on the conduct of investigations, which is available on the website. Investigations are conducted by an ad hoc team of committee members. 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. A committee member may not take part in an investigation if he or she is a national of the state party concerned.

In the course of an investigative mission, the team will usually meet with government representatives and departments or ministries relevant to the particular issue at stake. Others include NHRIs, police authorities, CSOs working on children's issues, UN agencies and children who are victims of violations, together with their families or representatives. Depending on the matter for investigation, they may also visit health centres, detention or rehabilitation centres for children, schools, hospitals and refugee or internally displaced person's camps, to give some examples. These may be government run or run by CSOs.

National CSOs play an important role in providing information about the situation to the committee before the mission and while on the mission. They may suggest particular places to visit, particular officials to meet with or specific issues to investigate or questions to ask. They can also provide information on specific cases of alleged violations of children's rights or a broad overview of patterns of violations.

During the investigative mission to South Sudan in 2014, the ACERWC Delegation met with the following UN Agencies, INGOs and NGOs:

- UNICEF
- UNMISS Child Protection Unit
- UNHCR,
- National Child Protection Sub Cluster
- National Coalition of Child Rights
- The MRM Country Task Force
- UNMISS State Coordinator, Bor
- INGOs and National NGOs

Extract: ACERWC Report on the investigative mission to South Sudan p 4

The mission programme shall include meetings with national and local authorities, including members of government, the judicial authority and Parliament, representatives of national institutions of human rights and rights of the child, civil society organizations, representatives of United Nations agencies and other inter-governmental organizations and if need be, children who are victims of violations and their families or representatives, and presenters of petitions submitted under article 44 of the charter.”

Extract from the ACERWC guidelines on investigations, p 7

Upon the completion of an investigative mission, the team compiles a report which includes recommendations to the State Party concerned. The report will subsequently be published but only after being adopted by the AU Assembly. A follow-up procedure may then be put in place to monitor how the state party puts the recommendations made into effect.

3.2.3. Observer status

The relationship between the committee and CSOs is mainly regulated through “observer status” which may be granted to the CSOs; it gives the recipient CSOs a more formal access to engage with the committee, and participate in its work in more specific ways. The granting of observer status is regulated in terms of article 42 of the charter, together with Rules 34, 37, 81 and 82 of the ACERWC rules of procedure, and the ACERWC’s criteria for granting observer status (revised). Interested organisations may consult these documents as well as the “application procedure for observer status to the ACERWC” in order to familiarize themselves with the contents and comply accordingly.

NGOs and human rights associations who apply for observer status should have a “recognised reputation” in their particular areas. They should have been registered in a state party at least for three years preceding their application for observer status. They may be engaged with regional and continental activities or working in the diaspora on defending promoting and protecting the rights of children. They should have a recognised headquarters and an executive organ, democratically adopted statutes (they must furnish a copy to the chairperson of the ACERWC), a representative structure and appropriate reporting mechanisms vis some vis their members, and an administration comprised of a majority of African citizens (except in the case of international NGOs).

Checklist of required documents to accompany an application for observer status:

- 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)
- 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 their authenticity

The criteria for granting observer status clearly list all the information that must accompany an application for observer status, including details of funding sources, donors and the extent of any state funding (this may be derived from a financial report of the organisation). Information concerning its activities (such as an annual report) must be included to assist the committee understand its identity as an organisation and its area of work. Any organisation which practices discrimination or which employs child labour is not eligible for the award of observer status.

All documentation must be submitted in English and French (the costs of translation to be borne by the applicant and not the committee), and sufficient copies must be made to allow distribution to all members of the committee. The committee considers applications for observer status during its ordinary sessions. Applications must be submitted three months prior to a scheduled session taking place. In practice the committee has granted observer status to more than 20 NGOs, and as the visibility of the ACERWC has increased, so too has the flow of applications continued. In practice, applications tend to be quite bulky as regards the amount of documentation required. It can also be quite onerous for NGOs to carry translation costs.

The organisation should provide information about its contribution to the work of the Committee including its contribution in relation to the following mandate areas of the committee:

- a) collection and documentation of information, assessment of situations of African problems in the fields of the rights and welfare of the child, and organisation of meetings;
- b) formulation of principles and rules aimed at protecting the rights and welfare of children in Africa (e.g. contribution to formulation of general comments);
- c) consideration of state party reports submitted to the committee pursuant to article 43 of the charter (e.g. submission of CSO reports and country briefings)
- d) determination of communications received by the committee pursuant to article 44 of the charter (e.g. submission of communications or filing of amicus briefs);
- e) investigations conducted by the committee pursuant to article 45 of the Charter

Extract from part V: Contribution to the work of the Committee, Guidelines for Reporting by NGOs and Associations with Observer Status

All CSOs with observer status are required to report to the Committee every two years (2) years on the work they have done towards the implementation of the ACRWC. The reports should include information on the financial situation and viability of the organisations, as well as the measures they have taken to promote the implementation of the ACRWC and the challenges experienced. The committee has drafted its guidelines for reporting by non- governmental organisations (NGOs) and associations with observer status, to guide the relevant CSOs in this reporting requirement. It does not appear that any organisations with observer status have yet formally submitted reports to the committee in fulfilment of the guidelines.

3.2.4. Special mechanisms

“Special mechanism” shall be understood to be special rapporteur, working group, study group, sub-committee or other subsidiary body established by the committee with a specific mandate (revised rules of procedure, 2016 definitions).

The committee has the possibility to use any of the above vehicles to further its mandate concerning the promotion and the protection of the rights of the child. To this end, in 2014 the committee appointed from amongst its members a Special Rapporteur on Child Marriage to support the AU Campaign to end child marriage. The person appointed was Ms Fatema Delladj-Sebba, whose term expired in 2016 after she was not re-nominated as a committee member.

The committee has established ad hoc working groups for several themes, such as planning the 25th anniversary conference and vetting the papers submitted, and to select the researchers for the conduct of the continental study on children and armed conflict.

4. CSO FORUM

“The Committee really learns from the CSO Forum and their recommendations improve our work”.

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

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 ACERWC. The first meeting was held in April 2009. This Forum was held prior to every meeting of the Committee, to support the Committee’s work and provide a strong platform for child rights information and advocacy in Africa. The idea behind the Forum was to bring together civil society organisations working on children’s issues from across Africa. It provided an opportunity for CSOs to engage with the mechanisms of the ACERWC as well as to discuss issues directly with committee members who attended the meetings. It was also a platform for partnership and networking and a catalyst for advocacy around children’s rights in Africa. The CSO forum was also given a standing slot at every ACERWC meeting to share its recommendations and concerns with the committee.

Benefits of observer status:

- NGOs enjoying observer status may be present at all the opening and closing ceremonies;
- NGOs enjoying observer status may participate in meetings of the committee (subject to conditions);
- NGOs enjoying observer status may have access to non-confidential committee documents;
- NGOs enjoying observer status may be invited to attend closed sessions of the committee
- NGOs enjoying observer status may be authorised by the chairperson to make statements on issues concerning them provided that the text of the communication is communicated in advance to the chairperson;
- NGOs enjoying observer status may take the floor to answer questions from members of the committee;
- NGOs enjoying observer status may request the inclusion of issues of particular interest to them on the agenda of the meeting.

The CSO Forum is currently in abeyance, the last forum having taken place in 2014, and it is not clear at the time of writing whether and in what form it will revive.

4.1. Benefits of a CSO Forum

The forum did create avenues for communication between CSOs in Africa and members of the committee who attended and participated in every forum. The CSO forums also made recommendations to the ACERWC and these were included in the committee's official session reports and were discussed by committee members. The CSO forum was also intended to be a broader catalyst for child rights in the region. For example, the third CSO 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.

Committee members interviewed by the research team who conducted the final evaluation of the ACCP project in April 2015 stressed at several junctures that the CSO forum was extremely useful and valuable to them as they would meet at their forums and thereafter come up with recommendations for the committee. They restated that the committee needs the CSO forum as it provides objective information/alternative thinking to input into the work of the committee. The committee members expressed concern at the fact that the relationship between the CSO forum and the consortium partners and therefore with the committee seems to have disintegrated but expressed hope that the same could be repaired.

4.2. What could a CSO forum achieve?

- It could contribute to the implementation and monitoring of the ACRWC and the African Agenda for Children 2040.
- It could raise the profile and understanding of the Committee among CSOs.
- It could 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.
- It could contribute to the committee's strategic plan of action for 2015-2019.
- It could encourage sharing and learning amongst CSOs on important child rights issues, mechanisms and processes.
- It could make recommendations to the committee on various issues regarding child rights.
- It could make recommendations on how civil society can support the committee and implementation of the children's charter.
- It could assist promote the visibility of the committee within the AU.
- It could propose themes for the annual day of the African Child celebration.
- It could contribute to the ongoing development of the committee's general comments.
- It could assist with monitoring and follow up of the committee's recommendations emanating from communications.
- It could publicise the committee's findings on investigations and studies.
- It could facilitate the preparation of CSO reports, and advise CSOs on their participation in committee sessions

In the absence of an organised CSO forum which is functioning at present, the ACERWC continues to deepen its collaboration with CSOs generally, as highlighted in the next section.

4.3. Informal participation in Committee meetings

The committee meetings always start with a session in which CSOs that are present introduce themselves and make a statement outlining their recent area of work, or make a call for some or other action to be adopted by the committee. Similarly, CSOs ordinarily attend the closing ceremony and comment on the draft meeting report.

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.

Potential recommendations:

- ensure mechanisms to monitor and support children transitioned from institutions into communities and link those with prevention of separation efforts, including with early intervention and other education, health and social protection services;
- ensure the national child protection system is resourced with sufficient specialist staff, funding allocated is sufficient to enable support for special protection and prevention efforts (based on a costing exercise) and has a case management and data collection system in line with the UN Guidelines for the Alternative Care of Children’s recommendations;
- ensure legislation like the revised civil code is adopted and standards like the guidelines for foster care, national adoption, inter-country adoption and residential care are developed in line with the UN Guidelines for the Alternative Care of Children and adopted in a timely fashion;
- ensure revision of the legislation regulating child abandonment, shifting the focus from criminalisation towards prevention of abandonment;
- ensure relevant evidence on the wellbeing of all children living in formal and informal arrangements, including those in kinship care, is being collected and used to inform policy and system approaches;
- ensure children with disabilities are included, benefit from the integrated child rights policy and are supported to transition from institutional care into families and communities;
- ensure meaningful participation of children in the review and monitoring of the reform, including through the district children’s forums and the national children’s summit”.

From the briefing by the Better Care Network and Partners on
“Fact Sheet for the ACERWC: country Rwanda, April 2015”

Some organisations with a thematic mandate (e.g. ending corporal punishment or ensuring the provision of alternative care) have begun to prepare fact sheets for the use by the ACERWC when it considers individual state party reports. These can assist the ACERWC formulate its questions to the state party during the constructive dialogue and to compose its concluding observations. There is no specified format for such fact sheets or briefings, but they should be kept short at 2-3 pages, factual and easy to read at a glance.

5. AFRICAN CHILDREN'S CHARTER PROJECT

This project is a consortium which commenced in 2009 with the express objective of supporting the work of the ACERWC and advancing children's rights within the African Union. The project which is supported by SIDA (Swedish International Development Agency) is comprised of Plan International, Save the Children International, The African Child Policy Forum, the Dullah Omar Institute (formerly the Community Law Centre), and the Institute for Human Rights and Democracy in Africa (IHRDA).

The three strategic objectives of the project were:

- To strengthen the capacity of the ACERWC to achieve its strategic objectives.
- Promote children's rights and welfare in African Union institutions bodies and mechanisms.
- Strengthen civil society to use AU mechanisms, and especially ACERWC's mechanisms, to promote children's rights and welfare in Africa.

Although the project formally was intended to close in 2014, it is currently in a bridging period pending the development of a second round funding proposal.

The project website can be found at: <http://www.africanchildinfo.net/accp/>

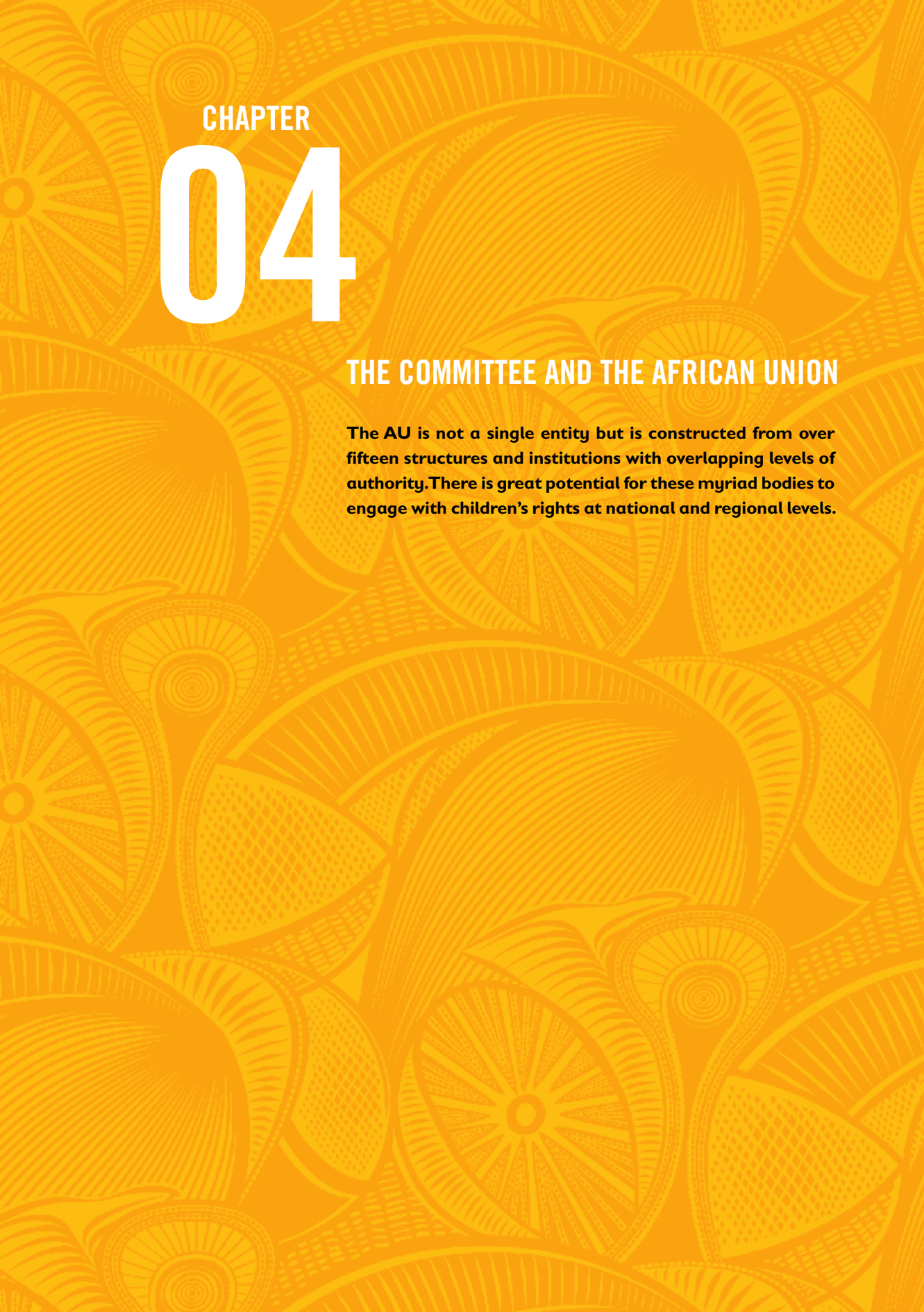
At this website, all the project deliverables that have been developed are provided, including (amongst others):

- Revised guidelines for the consideration of communications.
- Revised draft rules of procedure of the ACERWC.
- Engaging the Permanent Representative Council of the African Union- a Civil Society Strategic Plan of Action.
- Civil Society Organizations advocacy plan – a tool/document for engaging with the APSA.
- Compendium on civil society processes around the African Union.

“There is increased direct and indirect capacity for the committee through the provision of financial, human resources, training and technical assistance to actually implement a majority of its activities as per its strategic plan; most of the strategic plan activities for the committee were achieved due to the ACCP. The consortium has enabled the secretariat to do more work. With input from the consortium they are able to deliver much more work of better quality.”

From: final evaluation report of the ACCP project, April 2015, p 61

As can be seen from the above list, the ACCP project is aimed at supporting both the ACERWC and civil society. This version of the guide is produced under its auspices.



CHAPTER
04

THE COMMITTEE AND THE AFRICAN UNION

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.

CHAPTER 4: 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 sources of information below at part 6 and on the African Union website at www.au.int

The website contains details of (amongst others):

- The AU organs
- The African Agenda 2063
- The first 10-year implementation plan for Agenda 2063
- 2016 as the African Year of Human Rights

1.1. The African Governance Architecture (AGA)

What is the AGA?

The AGA is a platform for dialogue between the various stakeholders who are mandated to promote good governance and strengthen democracy in Africa, in addition to translating the objectives of the legal and policy pronouncements in the AU Shared Values.

Four interrelated and dynamic components make up the structure of AGA:

- a) Norms and standards.
- b) Institutions and other stakeholders woven around a platform of AU organs and institutions with a formal mandate on governance, democracy, human rights, elections and humanitarian assistance.
- c) Mechanisms and processes of interaction define and support engagement at the two preceding levels.
- d) The African Governance Facility serves as the resource mobilisation framework for AGA.

See: <http://aga-platform.org/>

1.2 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
- African Peace and Security Architecture (APSA)

Strategy for engagement

- Child-focussed CSOs should become members of the network in large numbers.
- Send delegations to the meetings and pre-summit events of the network.
- Engage existing members and the secretariat of the network to include children's rights in the agenda of the CCP-AU.
- Seek to mainstream children's issues in all the focus areas of the CCP-AU.
- Organise children's rights side events during the meetings of the CCP-AU.

Source: Compendium on Civil Society processes around the African Union, (October 2014), p 12

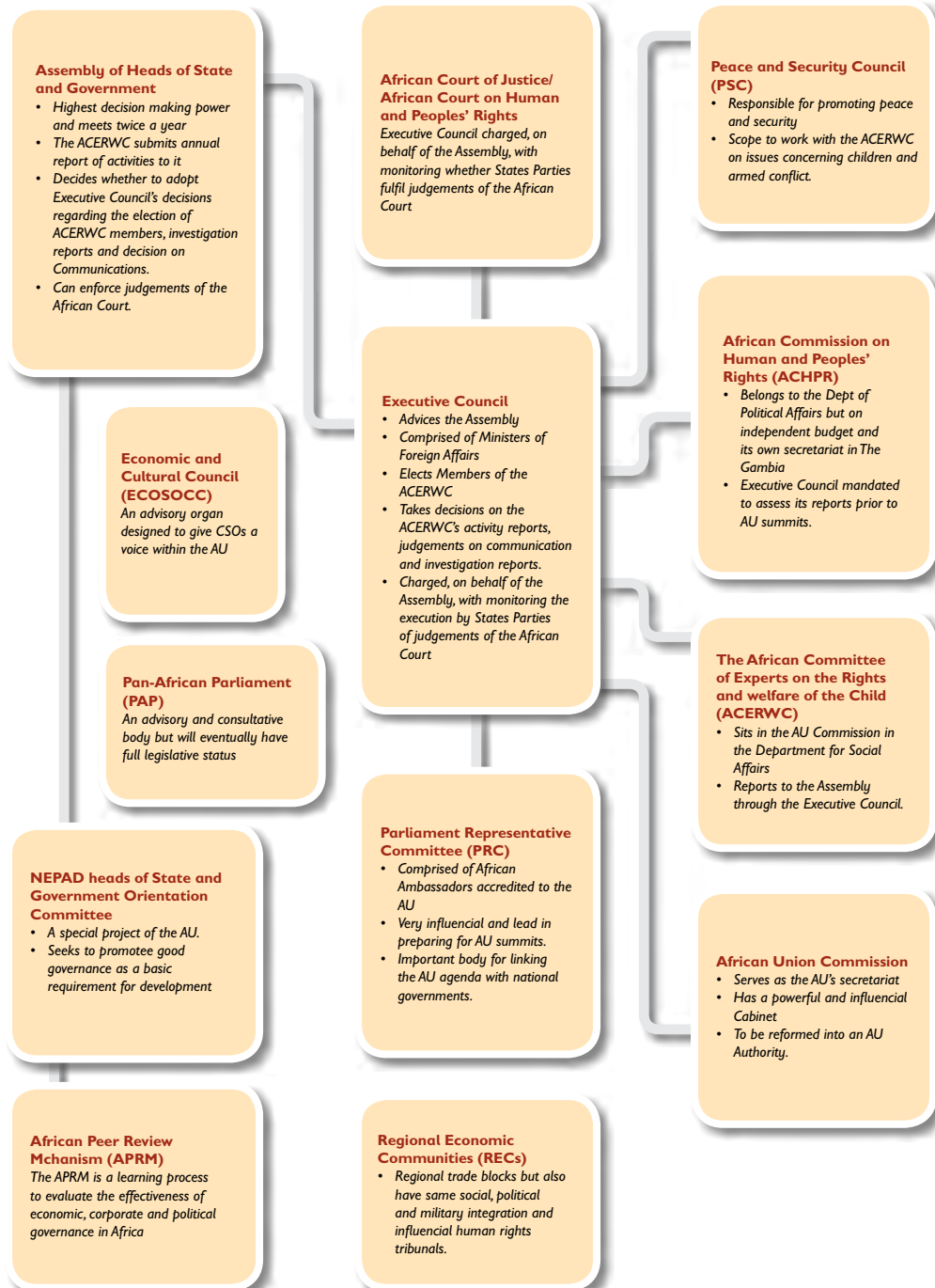
The guide does not aim to examine the ways in which civil society dealing with children's issues should engage with the AU as a whole. It focuses instead on exploring the relationships and linkages between the various AU institutions and the committee and how they can work together to implement the charter. 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 can consult the compendium on Civil Society Processes around the African Union developed by the ACCP project (see <http://www.africanchildinfo.net/accp/>). They should also 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. The current CCP-AU secretariat was established in 2011 with a presence in Nairobi, Kenya, Addis Ababa and Midrand, South Africa. It organises meeting before every summit (see below) and uses its offices to lobby Summit participants. For further information, their website is: www.ccpau.org.

In the past, children's issues have not featured prominently on the agenda of the CCP-AU They were discussed within the gender equality and women's rights thematic area.

HOW THE ACERWC FITS WITHIN THE AFRICAN UNION

(Adapted from the Compendium of Key Human Rights Documents of the AU)



1.3 African Commission on Human and Peoples' Rights

Summary:

- 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 Department of Political Affairs but has an independent budget and its own secretariat in The Gambia.
- Executive Council of the AU is 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 alongside it.

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 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). The findings in relation to decided communications are readily available on the commission's website (www.achpr.org).

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 are various other special mechanisms such as committees and working groups. 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. Currently the ACERWC and Special Rapporteur on the rights of women in Africa are working closely on the finalisation of a Joint General Comment on Child Marriage. This will be discussed for potential adoption at a historic first joint meeting of the ACERWC and the commission in October 2016, to be held at the seat of the commission in Banjul.

Working groups and committees

The commission has also various special mechanisms to assist it in its work on specific themes under its mandate. These are the working groups and committees on the prevention of torture in Africa and on the protection of the rights of people living with HIV (PLHIV) and those at risk, vulnerable to and affected by HIV. Membership of the working groups and committees 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.

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 (Maputo Protocol) 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. The commission has issued a General Comment (No.1) on Article 14 (1) (d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa dealing with women's (and girl's) rights and HIV; and General Comment (No.2) on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which deals with reproductive rights.

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 now at 477. 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. The commission puts state reports on its website prior to the Session to enable CSOs to engage with them.

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.acdhrs.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. 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.

Children's Rights and the African Charter on Human and Peoples' Rights (ACHPR)

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:

Criteria for grant of NGO observer status:

- The objectives of the NGO must be in consonance with the principles of the Constitutive Act of the AU and the African Charter;
- The NGO must be working in the field of human rights;
- Written application to the Secretariat which must be accompanied by:
proof of legal existence, list of members, constituent organs and source of funding
declaration of financial resources
last financial statement
statement of activities.

extract from www.achpr.org

- Some rights, such as the right to education (Art. 17), are of greater relevance to children than any other sector of the population.
- 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).
- 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).

Cooperation between the African Commission on Human and Peoples' rights and the ACERWC

The Committee and the commission have begun to co-operate together during the last 5 years, assisted by the ACCP project. A commissioner has attended almost all recent meetings of the ACERWC, and ACERWC members have been assisted to attend commission meetings in Banjul, accompanied by members of the secretariat. A product of this enhanced collaboration is the forthcoming adoption of a joint General Comment on Child Marriage, which commenced under the auspices of the Commission's Special Rapporteur on Women in Africa, in a process which the ACERWC later joined. As mentioned, the ACERWC will have a historic joint meeting with the commission in Banjul in October 2016, evidence of growing collaboration between the two organs.

1.4. African Court on Human and Peoples' Rights

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 continuing to attend each other's 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.
- The Committee and the commission can jointly popularise the forthcoming General Comment on Child Marriage
- The commission can join in planning thematic seminars or Days of General Discussion where appropriate

The African Court on Human and Peoples' Rights was established in 1998 to complement and reinforce the functions of the African Commission on Human and Peoples' rights. The 1998 protocol 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. The court consists of 11 judges elected by the AU Assembly from a list of candidates nominated by member states of the AU. The judges are elected in their personal capacity but no two serving judges shall be nationals of the same state. Due consideration is also given to gender and geographical representation. The judges are elected for a period of six years and are eligible for re-election only once. Only the president of the court holds office on full time basis. The other 10 judges work part-time. Its website is www/African-court.org and the registrar can be reached at registrar@african-court.org

It has to date finalised more than 25 cases. Some 90 cases have been submitted to the court. The number of submitted cases is definitely on a strong upward trajectory. The Court can make binding decisions, including orders or reparations, while the commission can only make recommendations. It has jurisdiction over the African Charter on Human and Peoples' Rights, over the protocol that

established the court, and any other relevant human rights instruments ratified by the state party concerned. Cases can be brought to the court by states parties, the African Commission on Human and People's Rights, African inter-governmental organisations and African National Human Rights Institutions. Following upon the summit held in Kigali Rwanda in 2016, the ACERWC will also likely be given standing to refer cases to the court.

- 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, which not many states have done.⁵
- Decisions will be binding and enforceable on states and as such they can have a large impact in cases concerning children
- The AU Executive Council is charged, on behalf of the assembly, with monitoring whether States Parties fulfil judgments of the African Court.
- A protocol for merged Court of Justice and Court on Human and Peoples' Rights was adopted 2008.

Comparative to the ACERWC and the African Commission on Human and People's Rights, the court has relatively few opportunities for civil society engagement with it. There is a civil society coalition for an effective African Court on Human and Peoples' Rights (African Court Coalition) which has amongst its objectives to serve as a network between CSOs and independent national human rights institutions. It was formed in 2003 during the first conference for the promotion of the protocol to the African Charter on Human and Peoples' Rights in Niamey, Niger.

The coalition has the following objectives:

- To promote the ratification of texts relating to the African Court by all member states of the AU.
- To promote the rights of individuals and organisations to refer matters directly to the African Court by encouraging state to make the declaration as stipulate in article 34(6) of the protocol creating the African Court.
- To advocate for a credible and independent African Court including a transparent process for the nomination and election of judges which guarantees an equitable representation of the Africa judicial systems and gender parity in the nomination and election of judges.
- To provide technical support to entities wishing to invoke the assistance of the court in promoting and protecting human and peoples' rights.
- To contribute to strengthening the human rights system.

Cases brought directly before the court by individuals and NGOs are admissible only when the state against which the complaint is brought has made a declaration under article 5(3) of the court's protocol accepting the competence of the court to receive such complaints. 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 in future once the amendment to the protocol has been effected to enable the ACERWC to refer cases to 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.

5 See page 14 above for a list of countries which have made such a declaration.

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

There has been limited interaction between the committee and the court thus far. Establishing efficient models for collaboration between these bodies is essential if the African Court is to be a player in relation to children's rights and the charter.

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.

2 THE AU IN A NUTSHELL

2.1 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. It will meet in Addis Ababa in Ethiopia unless a member state invited the assembly to hold a session in their country. In practice the assembly alternates between the headquarters in Addis Ababa and a member state. At most summits, the assembly will adopt two types of proposals: 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.

Challenges engaging the African Union summit

Any action to influence the policy or decisions of the AU must start long in advance, as once policy proposals are before the assembly, the chances of exerting any influence are slim. Most will have already been through a numbers of consultations before being tabled. CSOs, in the past have used their observer status during summits to lobby participants on their policy positions and at the lobby during breaks. Success in exerting influence at this level depends on the resources available to the CSO sector, its recognised expertise and international or continental clout, as well as a strong informal network at the AU and within the AUC (see below).

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. There is no permanent structure for lobbying for a specific theme. Pre-session consultations and advocacy is usually facilitated by international non-governmental organisations.

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.

Opportunities for engagement

- Register and obtain observer status at the summits.
- Attend summits with a purpose and go prepared with briefing packs, target countries you wish to speak to and so forth.
- Work with other actors to push children's issue into their own policy positions.
- Organise child rights events and stands during Summits and at the foyers.

Use the presence of members of the ACERWC inside the summit halls to provide you with information on what is happening

Source: *Compendium on Civil Society processes around the African Union, (October 2014), p 12*

2.2 The Executive council

The Executive council is comprised of foreign ministers and is responsible to the assembly. It is the second highest decision making body within the AU (the first being the assembly). The executive council usually meets twice a year in ordinary session immediately prior to the assembly session. 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 judgements 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.

There is no CSO process around the executive council mainly because the sessions are closed sessions.

2.3 The Permanent representative 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 conducts the day to day business of the AU on behalf of the assembly and the executive council. 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. All AU member states are represented on the PRC, and it reports to the Executive Council.

There is no formal and permanent civil society forum around the PRC. Most CSO engagements with the PRC are through sub-committee briefings or through individual embassies in Addis Ababa that are members of the PRC.

2.4 The Commission of the African Union

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 January 2017, this has been Moussa Faki from the Republic of Chad, who will lead the AU Commission for 4 years. This was as a result of the non-attainment of the two-thirds majority by all the three candidates fielded for the position. There are three candidates vying for the position of African Union chairperson: Specioza Wandira Kazibwe, former Ugandan vice president, Pelonomi Venson Moitoi, Botswana Foreign Minister, and Agapito Mba Mokuy, Equatorial Guinea foreign Minister.

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 four years. These posts are renewable once. 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.

The portfolios are:

- peace and security (with responsibility for conflict prevention and management, including children associated with armed forces, peacekeeping, terrorism, transnational crime);
- political affairs (with responsibility for political cooperation, governance, elections, human rights, humanitarian affairs, free movement of persons and financial crimes);
- trade and industry;
- infrastructure and energy;
- social affairs (with 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 ACERWC is located within this department);
- rural economy and agriculture;
- human resources, science and technology (with responsibility for information and communication technology, youth, research, universities and intellectual property);
- economic affairs (with responsibility for economic integration, international economic cooperation, monetary affairs, private sector development, investment and resource mobilisation, poverty reduction, and statistics).

Official appointments to the commission staff are made in accordance with gender parity and regional balance.

The ACERWC falls under the Social Affairs portfolio and each meeting of the ACERWC is opened by the Commissioner of Social Affairs, or by someone on his behalf.

On behalf of the commissioner of Social Affairs, his excellency Dr Mustapha Sidiki Kaloko, Dr. Kango Mabvuto read a welcoming statement. In his speech, Dr. Kango underlined that the year 2015 is remarkable for the committee as it marks the 25th anniversary of the adoption of the African Charter on the Rights and Welfare of the Child which is a normative guide for the full enjoyment of child rights in Africa. After mentioning the added values, he particularly underscored that even after 25 years of the adoption of the Charter; children are still facing challenges such as natural disasters, armed conflict and harmful traditional practices including female genital mutilation and child marriage.

Dr. Kango emphasized AUC's battle on warfronts to create an Africa fit for Children in accordance with the ACERWC slogan. Among the various activities AUC undertakes to this end, Dr. Kango mentioned the ongoing 1st Session of the Specialized Technical Committee on Social Development, Migration and Labour and the 1st Session of the Specialized Technical Committee on Health, Population and Drug Control which was held to discuss the issue of Universal Healthcare and how to strengthen health systems in Africa following the Ebola outbreak. Furthermore, he highlighted that one of the priority areas of the Common Position on the Post 2015 Agenda and Agenda 2023 is the extension of universal health care to all.

Dr. Kango also stated that the AU has launched a four years' campaign to end child marriage and that the Governments of Ethiopia, Niger, Chad and Burkina Faso have shown their commitment to eliminate child marriage by launching the campaign at national level. He also indicated that the theme of DAC 2015 combines the 25th anniversary of the Charter as well as the campaign to end child marriage.

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 the ACERWC secretariat falls currently under it, operationally speaking. An important output from this Department in the past was the African Common Position on Children – 'An Africa Fit for Children', as Africa's contribution to the 2002 UNGASS session. It included 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).

Extract: 25th SESSION OF THE ACERWC (ACERWC) 20-24 APRIL 2015

The AU Commission produced its Strategic Plan for 2014-17. The Strategic Plan has concrete and annualized targets in the following key areas that impact directly on the welfare, lives and livelihoods of Africans in all works of life:

- Human capacity development focussing on health, education, science, research, technology and innovation;
- Agriculture and agro processing;
- Inclusive economic development through industrialisation, infrastructure development, agriculture and trade and investment;
- Peace, stability and good governance;
- Mainstreaming women and youth into all our activities;
- Resource mobilisation;
- Building a people-centred Union through active communication and branding; and
- Strengthening the institutional capacity of the Union and all its organs.

Currently the Department is leading the AU Campaign to End Child marriage, and is collaborating strongly with the ACERWC in this endeavour. More details can be found at <http://www.au.int/en/sa>

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.

There is no formal civil society interaction around the AU Commission. However, there are many ways through which CSOs engage with the AU Commission. A number of CSOs have entered into Memoranda of Understanding (MOUs) with different departments of the AU Commission. These formal arrangements provide CSOs with access to their activities and processes.

TIP: FOR CIVIL SOCIETY

- **Child focussed organisations that could afford this might consider opening a liaison office to the AU in Addis Ababa, Ethiopia. This will provide for day to day access to the AU Commission activities and processes.**
- **Child Rights CSOs could enter into a MOU with relevant departments and directorates of the AU Commission such as Social Affairs, Peace and Security, Political Affairs or the Directorate of Women**
- **Child Rights CSOs could participate in expert consultative meetings organised by the AU Commission**

Source: Compendium on Civil Society Processes around the African Union (October 2014) p 15

3. 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. The 11th European Union – African Union Human Rights Dialogue took place on 24 November in Kigali, Rwanda. The dialogue contributed to the work of the Africa-EU partnership on democratic governance and human rights. The AU-EU civil society (CSO) on democratic governance and human rights also concluded its 5th round seminar prior to the AU-EU human Rights dialogue. This round of dialogue between the AU and the EU CSOs brought experts from both Africa and Europe and focused on freedom of expression as a basic human rights and explored means and ways to promote and protect this right on both continents. In future, it is possible that children's issues might again be placed on the agenda of this dialogue.

4. PEACE AND SECURITY COUNCIL AND APSA

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 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 (see below) 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. Since 2011, the PSC has held a theme day in May every year on 'children and armed conflict'. At the request of the PSC, the ACERWC has commissioned a continental study on children and armed conflict which will be presented to the PSC in 2017.

APSA is the African Union peace and security architecture, the umbrella term for the key mechanisms supporting peace, security and stability on the African continent. Apart from the PSC discussed above, there is:

- The continental early warning system, which is the standing decision-making organ of the AU on matters of peace and security;
- The Panel of the Wise, which is a consultative body established to provide advice;
- The African Standby Force, which is intended to provide rapid deployment peacekeeping forces;
- Peace Fund, which is intended to fund peacekeeping and peace support operations;

TIP: FOR CHILD FOCUSED CSOS:

Seek to contribute to and participate in the annual PSC ECOSOCC consultative meeting. Seek to be invited to brief the PSC on children's rights issues, especially the impact of armed conflict on children.

Prepare briefing reports and submit these through the AU Commission for the consideration of the PSC.

Engage with different activities of the Peace and Security Department of the AUC

Source: *Compendium on Civil Society Processes around the African Union (October 2014)* p 25

5. 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 (Citizens and Diaspora Directorate 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. The first ECOSOCC General Assembly was formally launched on 9 September 2008 in Dar es Salaam, United Republic of Tanzania. It can be reached at ECOSOCC@african-union.org

Under article 4 of the ECOSOCC Statutes, the council is composed of 150 CSOs: two CSOs from each Member State; 10 CSOs operating at regional level and eight at continental level; 20 CSOs from the African Diaspora, as defined by the executive council and covering the continents of the world; and six CSOs, in ex-officio capacity, nominated by the AU Commission and based on special considerations, in consultation with member states. Article 4 also provides for member state, regional, continental and diaspora representatives to be elected on the basis of 50 percent gender equality and 50 percent aged between 18 and 35. Members are elected for four-year terms and may be re-elected once.

Article 11 of the ECOSOCC Statutes established the 10 Sectoral Cluster Committees as key operational mechanisms to formulate opinions and provide input into AU policies and programmes. The Committees are: Peace and Security; Political Affairs; Infrastructure and Energy; Social Affairs and Health; Human

Resources, Science and Technology; Trade and Industry; Rural Economy and Agriculture; Economic Affairs; Women and Gender; and Cross-Cutting Programmes (such as HIV/AIDS, international cooperation and coordination with other AU institutions and organs). 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 Social Affairs cluster, the Political Affairs Sectoral Cluster Committee which is in charge of human rights, as well as under the Peace and Security or the Women and Gender Sectoral Cluster Committees.

6. PAN-AFRICAN PARLIAMENT

The Pan-African Parliament (PAP) was established in 2004 and is based in Midrand, South Africa. It is made up of 245 members representing the 49 AU member states that have ratified the protocol establishing it. 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. The sessions of the PAP are open to civil society and every year, the PAP organises a direct consultation with CSOs on a topic of interest. Although there is no formal CSO forum around the PAP, there are ad hoc opportunities and platforms for CSO engagement.

Members of the ACERWC have had interactions with the PAP to identify areas of common interest and members of PAP have attended ACERWC sessions.

7. 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 special project 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.

NEPAD aims to eradicate poverty, place African countries both individually and collectively on a path of sustainable growth and development, halt the marginalisation of African in the globalisation process, accelerate the empowerment of women and fully integrate Africa into the global economy.

CSO engagement with NEPAD structure is an integral part of the conceptualisation of NEPAD which has established a civil society desk at its secretariat to provide a one-stop focal point for civil society. The unit mobilizes thematic groups to participate in NEPAD programmes. Most sectors have a NEPAD CSO task force or a NEAD CSO think tank.

TIP: FOR CHILD FOCUSSED CSOS:

- **Constitute a thematic group to monitor and ensure the inclusion of children's rights issues in the implementation of NEPAD activities at all levels;**
- **seek, become and participate in NEPAD think tank processes;**
- **actively participate in the activities of the NEPAD Gender Task Force and highlight girl child issues.**

Source: Compendium on Civil Society Processes around the African Union (October 2014) p 16

8. AFRICAN PEER REVIEW MECHANISM (ARPM)

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. It was established in 2003, and more than 30 countries have signed up to undertake this process. Second generation reviews are already taking place as at 2016.

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 could also 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.

The Collaborative Plan of Action between the ACERWC and the RECs particularly SADC and ECOWAS

“The Collaborative Plan of Action between the ACERWC and the RECs was developed by SCI. Its primary aim is to pull together efforts, to extend the reach and to scale up the impact of the work of the ACERWC, to avoid duplication and leverage scarce resources in the service of the African child through the effective implementation of the ACERWC. The collaboration with RECs is necessitated by the important roles the RECs play in the goal of Africa’s economic and political union. The Plan of Action highlights the strengths and weaknesses of collaboration with RECs; and concludes that the strengths could drive collaboration with RECs through Liaison Offices while the weaknesses could hinder effective collaboration if an action plan fails to adequately mitigate them. The Action Plan provides a table that sets out immediate objectives to realise the goals of the collaboration; short, medium and long-term actions required to achieve each objective and expected outcomes.”

Source: Compendium on the ACCP project, p 13

However, to date the APRM remains largely untapped as an opportunity for promoting children’s rights issues, despite the fact that it has the potential to deepen and extend conversations on implementation of children’s rights at the national level, where reforms and improvements are most important. Therefore, popular mobilisation and participation in a process such as the APRM cannot be over-emphasised. See the website of the APRM at <http://aprm-au.org/>

9. 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.

The committee has to an extent engaged with the RECs through interaction and invitations to REC representatives to attend Committee meetings.


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. These have related to an 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 is currently in abeyance, though theoretically it 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
- Southern Africa Development Community (SADC) www.sadc.int/
- Economic Community of West African States (ECOWAS) www.ecowas.int/
- East African Community (EAC) www.eac.int/
- Intergovernmental Authority on Development (IGAD) www.igad.org/
- Economic Community of Sahelo-Saharan States (CENSAD) www.cen-sad.org/
- Arab Maghreb Union (AMU) www.maghrebarabe.org/
- Economic Community for Central African States (ECCAS) www.ceeac-eccas.org

Much more details on the individual opportunities for civil society interaction with the respective RECs is to be found in the Compendium on Civil Society processes around the African Union (see <http://www.africanchildinfo.net/accp/index.php/documents-publications>) produced under the auspices of the African Children's Charter Project.



CHAPTER
05

FURTHER SOURCES OF INFORMATION

CHAPTER 5: FURTHER SOURCES OF INFORMATION

1. The African Charter on the Rights and Welfare of the Child

African Child Policy Forum (2007) Realising rights for children: Harmonization of children's laws in eastern and southern Africa.

African Child Policy Forum (2012) Achieving child friendly justice for children

Alston, P (1994) *The Best Interests of the Child: Reconciling Culture and Human Rights* Clarendon: Oxford University Press

Chirwa, D (2002) 'The Merits and Demerits of the African Charter on the Rights and Welfare of the Child' (2002) 10 *International Journal on Children's Rights* 157

Chirwa, D 'Children's rights, domestic alternative care frameworks and judicial responses to restrictions on inter-country adoption: A case study of Malawi and Uganda' (2016) 16 *African Human Rights Law Journal* 117

Gose, M (2002) 'The African Charter on the Rights and Welfare of the Child: An Assessment of the Legal Value of its substantive provisions by means of a Direct Comparison to the Convention on the Rights of the Child' (2002) *Community Law Centre, University of the Western Cape*

Johnson, R 'Strengthening the Monitoring of and Compliance with the Rights of the African Child' 2015 (23) *International Journal on Children's Rights* 365

Kaime, T (2009) *The African Charter on the Rights and Welfare of the Child: A socio-legal perspective*. Pretoria, South Africa: Pretoria University Law Press.

Kaime, T 'The Convention on the Rights of the Child in the cultural legitimacy of children's rights in Africa: some reflections' (2005) 5 *African Human Rights Law Journal* No 1 224

Lloyd A 'A theoretical analysis of the reality of children's rights in Africa: An introduction to the African Charter on the Rights and Welfare of the Child' (2002) 2 *African Human Rights Law Journal* 13

Mezmur, B (2008) *The African Children's Charter versus the UN Convention on the Rights of the Child: A zero-sum game?* 23 *SAPR/PL*

Olowu, D 'Protecting children's rights in Africa: a critique of the African Charter on the Rights and Welfare of the Child.' (2002) 10 *International Journal of Children's Rights* 127

Skujyte, D (2011) 'Right of African children under the African Charter on the Rights and Welfare of the Child: the addition to the universal protection of a child', unpublished LLM dissertation, University of Tilburg, pp 44-48.

Sloth-Nielsen, J (2008) *Children's Rights in Africa, A Legal Perspective*, Ashgate

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

Skelton A 'The development of a fledgling child rights jurisprudence in Eastern and Southern Africa based on international and regional instruments' (2009) 9 *African Human Rights Law Journal* 482

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* (2009) 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:

Revised Rules of Procedure (2015)

Guidelines for Initial Reports of States Parties (2003)

Guidelines on the Form and Content of Periodic State Party Reports to be Submitted Pursuant to Article 43(1) (b) of the African Charter on the Rights and Welfare of the Child (2014)

Revised Guidelines for the Consideration of Communications (2014)

Guidelines for the Conducting of Investigations (2014)

Revised Guidelines for the Criteria for Granting Observer Status with the Committee (2002)

Collaboration plan between the African Peace and Security Council (PSC) and the ACERWC (2014)
ACERWC WORKING METHODS DOCUMENT (2014)

ACERWC Strategic Plan 2015-2019

Africa's Agenda for Children's Rights 2040 (2016)

State party reports and reports for the sessions can be found on the Committee's website: www.acerwc.org

See too:

Civil Society Organizations (CSOs), Complementary Report, Conduct and Participation of CSOs in ACERWC Pre-Session Guidelines (developed by the African Children's Charter project, see <http://www.africanchildinfo.net/accp/index.php/documents-publications>)

Compendium on Civil Society processes around the African Union (<http://www.africanchildinfo.net/accp/index.php/documents-publications>)

Civil Society Organizations Advocacy Plan a Tool/Document for Engaging with the APSA (2014) <http://www.africanchildinfo.net/accp/index.php/documents-publications>

Advancing Children's Rights – Child friendly version (available at <http://resourcecentre.savethechildren.se/sites/default/files/documents/advancing20children20rights20-20child20friendly20guide.pdf>)

Compendium on the ACCP project

www.acerwc.org/download/accp-compendium/?wpdmdl=8470

Durojaye, E and Foley, E (2012) 'Making a first impression: An assessment of the decision of the Committee of Experts of the African Children's Charter in the Nubian children communication', *African Human Rights Law Journal*, Vol. 12, No. 2, pp 565.

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

Sloth-Nielsen, J. & Mezmur, B. (2008) 'Win some, lose some: The 10th 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 11th 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 12th and 13th sessions of the African Committee of Experts on the Rights and Welfare of the Child' 9 *African Human Rights Law Journal* 336

Sloth-Nielsen, J. and Mezmur, B. (2010) 'Like running on a treadmill? The 14th and 15th sessions of the African Committee of Experts on the Rights and Welfare of the Child' 10 *African Human Rights Law Journal*

Wakefield, L. and Assim, M. (2011) 'Dawn of a new decade? The 16th and the 17th sessions of the African Committee of Experts on the Rights and Welfare of the Child', 11 *African Human Rights Law Journal* 721

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

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 support group for NGO's involved with the CRC Committee (called Child Rights Connect)

with a wealth of resources connected to reporting procedures, aimed at CSOs and children such as My Pocket Guide to CRC reporting and Guide for NGOs Reporting to the Committee (2014) (see www.childrightsconnect.org)

4. Crin (children's rights information network)

This organisation provides wealth of information about specific themes in children's rights, about the UN system as it pertains to children's rights and also about the ACERWC. See:

<https://www.crin.org/en/guides/un-international-system/regional-mechanisms/african-committee-experts-rights-and-welfare>

The CSO Forum to the ACRWC

Although the CSO Forum is not presently active, information about previous CSO forums can be sought at the website above (<https://www.crin.org/en/library/publications/africa-civil-society-forum-african-charter-rights-and-welfare-child>), though this is quite dated at 2010.

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>

6. The African Union institutions

The AU website has information about all of its institutions. It has been much improved in recent times and is by and large up to date:

www.au.int

In 2007, an Audit of the AU was produced which gives some analysis and overview of the AU

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

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

Ssonyonyo, M (ed) (2012) 'The African Regional Human Rights System – 30 years after the African Charter on Human and Peoples' Rights (Marthinus Nijhoff publishers, Leiden)

Viljoen, F (2012) International Human Rights Law in Africa Oxford University Press, UK

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>

On the African Women's Protocol

Megan Goldenhuys, Chisomo Kaufulu-Kumwenda, Satang Nabaneh and Karen Stefiszyn “The African Women’s Protocol and HIV: Delineating the African Commission’s General Comment on articles 14(1)(d) and (e) of the Protocol” 2014 (2) African Human Rights Law Journal 681

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

A Guide to the African Charter on Human and Peoples’ Rights, Amnesty International (2006) <http://asiapacific.amnesty.org/library/Index/ENGIOR630052006?openof=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.acdhrs.org

9. African Court on Human and Peoples’ Rights

Gino Naldi ‘observations on the Rules of the African Court on Human and Peoples’ Rights’ 2014 (2) African Human Rights Law Journal 367-392

ANNEXE 1: MATRIX OF STATE PARTY REPORT CONSIDERATION

No	Member state	Date of accession/ Ratification	Date when initial report due	Date when periodic report due	Date of submission of initial report	Date of submission of periodic report	Status of consideration initial report	Status of consideration periodic report
1	Algeria	08/07/2003	24/09/2005	24/09/2008	Initial report submitted in 2014	N/A	Report examined at the 26th session (November 2015)	N/A
2.	Angola	11/04/1992	29/11/2003	29/11/2006	Initial report submitted in 2015	N/A	Pending consideration	
3.	Benin	17/04/1997	29/11/2003	29/11/2006	Not submitted	N/A		
4.	Botswana	10/07/2001	29/11/2003	29/11/2006	Not submitted	N/A		
5.	Burkina Faso	08/06/1992	29/11/2003	29/11/2006	Initial report submitted in 2006	Periodic report submitted in 2015	Considered at the 114th ordinary session (November 2009)	Considered at the 21st ordinary session (April 2013)
6.	Burundi	28/06/2004	24/08/2006	24/08/2009	Not submitted	N/A		
7.	Cameroon	05/09/1997	29/11/2003	29/11/2006	Initial report submitted in 2009	Periodic report submitted in 2015	Considered at 18th ordinary session (November 2011)	To be considered at the 28th ordinary session (October 2016)
8.	Central African Republic	Not ratified						
9.	Cape Verde	20/07/1993	29/11/2003	29/11/2006	Not submitted	N/A		
10.	Chad	30/03/2000	04/04/2002	04/04/2005	Initial Report submitted	N/A		
11.	Cote D'Ivoire	01/03/2002	18/06/2009	18/06/2012	Initial Report submitted	N/A		
12.	Comoros	18/03/2004	16/04/2006	14/04/2009	Initial Report submitted			
13.	Congo	08/09/2006	10/10/2008	20/10/2001	Initial Report submitted in 2014	Not submitted	Report considered at the 26th ordinary session (November 2015)	

No	Member state	Date of accession/ Ratification	Date when initial report due	Date when periodic report due	Date of submission of initial report	Date of submission of periodic report	Status of consideration initial report	Status of consideration periodic report
14.	Djibouti	03/01/2011	25/01/2013	25/01/2016	Not submitted	N/A		
15.	Democratic Republic of Congo	Not ratified						
16.	Egypt	09/05/2001	29/11/2003	29/11/2006	Initial report submitted 2008	Not Submitted	Report considered at the 12th ordinary session (November 2008)	
17.	Equatorial Guinea	20/12/2002	19/02/2005	19/02/2008	Not submitted	N/A		
18.	Eritrea	22/12/1999	20/11/2003	29/11/2006	Initial report submitted in 2012	N/A	To be considered at the 28th ordinary session (October 2016)	
19.	Ethiopia	2/10/2002	27/12/2004	27/12/2007	Initial report submitted in 2014	N/A	Report considered during the 1st Extra-ordinary session (October 2014)	
20.	Gabon	18/05/2007	12/06/2009	12/06/2012	Initial report submitted in 2010	Not submitted	Report considered during the 26th ordinary session (November 2015)	
21.	Gambia	14/12/2000	29/11/2003	29/11/2006	Not submitted	N/A		
22.	Ghana	10/06/2005	17/07/2007	15/07/2010	Initial report submitted in 2007	N/A	Report to be considered at the 28th ordinary session (October 2016)	
23.	Guinea Bissau	19/06/2008	14/10/2010	14/10/2013	Not submitted	N/A		
24.	Guinea	27/05/1999	21/01/2002	21/10/2005	Initial Report submitted 2014	N/A	Report considered during the 1st Extra-ordinary session	
25.	Kenya	25/07/2000	29/11/2003	29/11/2006	Initial report submitted 2007	Periodic report submitted in 2014	Report considered at the 14th ordinary session (November 2009)	Considered at the 1st Extra-ordinary session
26.	Libya	23/09/2000	29/11/2003	29/11/2006	Initial report submitted in 2010	N/A		

No	Member state	Date of accession/ Ratification	Date when initial report due	Date when periodic report due	Date of submission of initial report	Date of submission of periodic report	Status of consideration initial report	Status of consideration periodic report
27.	Lesotho	27/09/1999	29/11/2003	29/11/2006	Initial report submitted in 2014	N/A	Report considered at the 26th ordinary session (November 2015)	
28.	Liberia	1/08/2007	15/07/2010	15/07/2013	Initial report submitted in 2014	N/A	Report considered at the 26th ordinary session (November 2015)	
29.	Madagascar	30/3/2005	24/06/2007	24/06/2010	Initial report submitted in 2014	N/A	Report considered at the 25th ordinary session (April 2015)	
30.	Mali	03/06/1996	29/11/2003	29/11/2006	Initial Report submits 2007	Not submitted	Report considered at the 14th ordinary session (November 2009)	
31.	Malawi	17/09/1999	29/11/2003	29/11/2006	Not submitted			
32.	Mozambique	15/07/1998	29/11/2003	29/11/2006	Initial report submitted in 2014	N/A	Report considered during the 1st Extra-ordinary meeting	
33.	Mauritania	21/09/2005	14/12/2007	14/12/2010	Initial report submitted in 2016			
34.	Mauritius	14/02/1992	29/11/2003	29/22/2006	Not submitted	N/A		
35.	Namibia	23/07/2004	26/08/2006	26/08/2009	Initial report submitted in 2014	N/A	Report considered at the 25th ordinary session (April 2015)	
36.	Nigeria	23/07/2001	02/05/2005	02/05/2008	Initial report submitted in 2006	Periodic report submitted in 2015	Considered at the 12th ordinary session (November 2008)	
37.	Niger	11/12/1999	29/11/2003	29/11/2006	Initial report submitted in 2008	Submitted at the 18th ordinary session (December 2011)		
38.	Rwanda	11/05/2000	29/11/2013	29/11/2006	Initial report submitted 2006	Periodic report submitted in 2014	Report Considered at the 16th ordinary session (November 2010)	Considered at the 25th ordinary session (April 2015)
39.	South Africa	07/01/2000	29/11/2003	29/11/2006	Initial report submitted in 2014	N/A	Considered during the 1st Extra-ordinary session	

No	Member state	Date of accession/ Ratification	Date when initial report due	Date when periodic report due	Date of submission of initial report	Date of submission of periodic report	Status of consideration initial report	Status of consideration periodic report
40.	Sahraoui Arab Republic	Not ratified						
41.	Senegal	29/01/1998	29/11/2003	29/11/2006	Initial report submitted in 2009	Not submitted	Considered at the 18th ordinary session (December 2011)	
42.	Seychelles	13/02/1992	29/11/2003	29/11/2006	Not submitted	Not submitted		
43.	Sierra Leone	13/05/2002	18/06/2004	18/06/2007	Submitted	N/A	Initial report to be considered at the 28th session (October 2016)	
44.	Somalia	Not ratified						
45.	Sao Tome et Principe	Not Ratified						
46.	Sudan	20/07/2005	18/07/2010	18/07/2013	Initial report submitted 2010	N/A	Initial report considered at the 20th ordinary session (November 2012)	
47.	South Sudan	Not Ratified						
48.	Swaziland	05/10/2012	06/11/2014	06/11/2017	Not submitted			
49.	Tanzania	16/03/2003	09/05/2008	Initial report submitted 2008	Submitted	Initial report considered at the 14th ordinary session (November 2009)		
50.	Togo	05/05/1998	29/11/2003	29/11/2006	Initial report submitted in 2010	Not submitted	Initial report considered at the 17th ordinary session (March 2011)	
51.	Tunisia	Not Ratified						
52.	Uganda	17/08/1992	29/11/2003	29/11/2006	Initial report submitted 2007	Not submitted	Initial report considered at the 15th ordinary session (March 2010)	
53.	Zambia	02/12/2008	10/02/2011	10/02/2014	Not submitted	N/A		

No	Member state	Date of accession/ Ratification	Date when initial report due	Date when periodic report due	Date of submission of initial report	Date of submission of periodic report	Status of consideration initial report	Status of consideration periodic report
54.	Zimbabwe	19/01/1995	29/11/2003	29/11/2006	Initial report submitted in 2014	N/A	Initial report considered at the	25th ordinary session (April 2015)

Source: www.acerwc.org (updated to 15 August 2016)

States that have ratified: 47

States that have not ratified: 7

States that have submitted their initial reports: 28

States that have submitted a periodic report: 6

States that have ratified but not submitted any report: 14

ANNEXE 2: SHORT BIOGRAPHIES OF CURRENT COMMITTEE MEMBERS

Chairperson ACERWC

Prof. Benyam Dawit Mezmur, Ethiopia, Term of Office: July 2015 – July 2020

Prof. Benyam Dawit Mezmur is currently a lecturer at the University of the Western Cape (UWC) in South Africa. 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. Prof. 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.

Prof. Benyam has been re-elected and is currently serving his second term.

First Vice-Chairperson ACERWC

Ms. Maria Mapani-Kawimbe, Zambia, Term of Office: July 2015 – July 2020

Ms. Mapani Kawimbe is from Zambia and has been elected by the Executive Council and appointed by the assembly of Head of States and Governments of the African Union at its 25th Ordinary Summit in June 2015. She is a Judge of the High Court in her country.

Second Vice-Chairperson ACERWC

Mr. Joseph Ndayisenga, Burundi, Term of Office: May 2013- May 2018

Mr. NDAYISENGA is a specialist in psychology and science education. As Director in the Ministry of National Solidarity, Human Rights and Gender since July 2006, Joseph NDAYISENGA headed various policies elaboration and strategies such as the National Policy for Orphans and other Vulnerable Children (OVC), mapping and evaluation of the Child Protection System, the National Policy for the Protection of Children, the Document on Minimum Standards for the residential centres and the National Strategy for Prevention and Fight against Street Children. In this same way, he also holds the presidency of the National Technical Coordination of all children oriented policies. Mr. Joseph NDAYISENGA is also Chairman of the Board of Directors of various institutions related to social protection.

Third Vice-Chairperson ACERWC

Dr. Azza Ashmawy, Egypt, Term of Office: May 2013 – May 2018

Dr. Azza El Ashmawy, Ph. D Paediatrics, Secretary General of the National Council for Childhood and Motherhood in Egypt (NCCM), was member of the 50-person expert committee for drafting the Egyptian constitution in 2014; she is a former member of the CRC Committee in Geneva, served as

head of the Anti-Human Trafficking Unit at NCCM, and Adolescent Reproductive health programs. She participated as an expert with League of Arab States in studies related to marriage in Arab countries and in relation to reproductive health.

Rapporteur ACERWC

Mrs. Dikere Marie Christine Bocoum, Côte d'Ivoire, Term of Office: July 2015 – July 2020

Mrs. Dikere Marie Christine is from Côte d'Ivoire and has been elected by the Executive Council and appointed by the Assembly of Head of States and Governments of the African Union at its 25th Ordinary Summit in June 2015.

Deputy-Rapporteur ACERWC

Mrs. Goitseone Nanikie Nkwe, Botswana, Term of Office: July 2015 – July 2020

Mrs. Goitseone Nanikie Nkwe is from Botswana and has been elected by the Executive Council and appointed by the Assembly of Head of States and Governments of the African Union at its 25th Ordinary Summit in June 2015, South Africa.

Members ACERWC

Mr. Mohamed Ould Ahmedoudit H'Meyada, Mauritania, Term of Office: January 2016 – January 2021

Mr. Mohamed Ould Ahmedoudit H'Meyada is a Lecturer in Sociology at the University of Nouackchott. He is an expert in Social Development and has more 25 years of extensive experience in designing and implementing social development programs in West Africa and the Arab world. He has published several papers on child begging, domestic violence and the status of women in Mauritania. Mr. Mohamed H'Meyada holds a Master of Science in Sociology from Université Mohamed V, Rabat, Morocco.

Mrs. Sidikou Alassane Moulaye, Niger, Term of Office: May 2013 - May 2018

Mrs. SIDIKOU AISSATOU ALASSANE MOULAYE is Inspector of Social Action. After graduating from the National School of Public Health Niamey in 1992, Ms. SIDIKOU AISSATOU ALASSANE MOULAYE was recruited by the Ministry of Public Health to serve at the Maternal and Child Health Center (CSMI) as a Social Worker. She was later transferred to the Ministry of Social Development, Population, Promotion of Women and Child Protection where she consecutively served as Head of Social Service, Regional Director of Social Development, Population, Promotion of Women and Child Protection, Technical Advisor to the Minister, National Director of the Child Protection and General Director of Child Protection. She holds Master Degree in Local Development Engineering from the Centre for the Study of Local Development (CIEDEL) Lyon (France). Mrs. SIDIKOU AISSATOU ALASSANE MOULAYE was further admitted to the University of Science and Technology of Lille, where she equally obtained a Master 2 in Cooperation Projects Engineering. Ms. SIDIKOU has also expertise in gender and development communication.

Mrs. Suzanne Aho-Assouma, Togo, Term of Office: May 2013 – May 2018

Mrs. Suzanne AHO ASSOUMA attended her primary and secondary studies in Benin, Congo and France where she got her High School Diploma. After her Diploma, she attended a social training that enabled her to obtain a Certificate of Social Workers in Abidjan University, in Ivory Coast. With an early professional life, Mrs. AHO worked in the Head Office of Social Affairs from 1977 to 1979 and afterwards, from 1979 to 1992, in the Court of Lomé as Responsible for Social Service which she reformed by creating various services responsible for juvenile delinquency, street children and youth, children of divorce, adoption and civil prison. She pursued her action of social reform in the Directorate of Protection and Promotion of Family in 1993 before to be nominated as Head of the Head Office of Child Protection from May 2002 to July 2002. From then she was nominated Minister of Health, Social Services, Promotion of Women and Child Welfare from July 2002 to July 2003 and then Minister of Health from July 2003 to September 2006. She published several lampoons, collections and documentaries namely, “Protection of minors in Togo legislation”, “Adoption procedure in Togo”, “Women victims of domestic violence and abuse”, “The ordeal of small maids in Togo”, “The Convention concerning Child Rights told to children by children”, a Book titled “Aguague or the Adventure” and a Documentary film on system of the servitude of young girl in fetish monasteries.

Dr. Clement Julius Mashamba, Tanzania, Term of Office: July 2015 – July 2020

Dr. 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 with his LLM from the Open University of Tanzania (Socio-Economic Rights), where he has also completed a Ph.D. in Juvenile Justice. In the past few years, Dr. 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 lecturer at the St. Augustine University of Tanzania (Mwanza). Dr. Mashamba has published extensively on children’s rights, socio-economic rights, good governance and corruption. Dr. Mashamba has been re-elected and is currently serving his second term.

Ms. Aver Gavar, Nigeria, Term of Office: July 2015 – July 2020

Ms. Gavar is from Nigeria and has been elected by the Executive Council and appointed by the Assembly of Head of States and Governments of the African Union at its 25th Ordinary Summit in June 2015.

ANNEXE 3: FORMER MEMBERS OF THE ACERWC

North Africa

Mrs. Dawlat Hassan (Egypt) 2006-2011
Mme Fatima Delladj-Sebba (Algeria) 2010-2015
Mme Amal Muhammad al-Hengari (Libya) 2010-2015

West Africa

Mr. Dirius Dialé Dore (Guinea) 2001-2003
Mrs. Dior Fall Sow (Senegal) 2001-2005
Mr. Jean-Baptiste Zoungrana (Burkina Faso) 2003-2008
Prof. Peter Ebigbo (Nigeria) 2003-2008
Mrs. Nakpa Polo (Togo) 2003-2008
Mrs. Seynabou Ndiaye Diakhaté (Senegal) 2003-2008
Mrs. Marie Chantal Koffi Appoh (Cote d'Ivoire) 2005-2010
Mr. Moussa Sissoko (Mali) 2005-2010
Mr. Cyprien Adébayo Yanclo (Benin) [First Vice Chair] 2007-2013
Mrs. Agnès Kabore Ouattara (Burkina Faso) [Chair] 2007-2013
Mrs. Maryam Uwais (Nigeria) 2007-2013

East Africa

Mrs Joyce Aluoch (Kenya) 2001-2005
Dr. Rebecca Mirembe Nyanyintono (Uganda) 2001-2003
Mr. Stratton Nsanzabaanwa (Rwanda) 2001-2005
Dr. Assefa Bequele (Ethiopia) 2003-2008
Mrs. Martha Koome (Kenya) 2005-2010
Mrs. Felicité Muhimpundu (Rwanda) 2010-2015

Central Africa

Mr. Rudolph Soh (Cameroon) 2001-2005
Mrs. Nanitom Motoyam (Chad) 2001-2005

Southern Africa

Mr. Karabo Mohau (Lesotho) 2001-2003
Mr. Louis Pierre Robert Ahnee (Mauritius) 2001-2005
Dr. Lulu Tshiwula (South Africa) 2001-2005
Mrs. Mamosebi T. Pholo (Lesotho) 2005-2010
Ms. Boipelo Lucia Seithlamo (Botswana) 2005-2010
Mr. Andrianirainy Rasamoely (Madagascar) 2007-2012
Justice Alfas M. Chitakunye (Zimbabwe) 2010-2015
Prof. Julia Sloth-Nielsen (South Africa) 2011 – 2016

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Save the Children East & Southern Africa Region



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[https://www.youtube.com/channel/
UCYafJ7mw4EutPvYskpnaruQ](https://www.youtube.com/channel/UCYafJ7mw4EutPvYskpnaruQ)