



Advancing Children's Rights

A Guide for Civil Society Organisations on how to engage with the
African Committee of Experts on the Rights and Welfare of the Child
2009

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Advancing Children's Rights

**A Guide for Civil Society Organisations on how to engage with the
African Committee of Experts on the Rights and Welfare of the Child
2009**



ABBREVIATIONS

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

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The writing of this Guide was very much a collective effort with contributions from a wide range of people knowledgeable and experienced in children's rights in Africa. In order to ensure that it was as accurate, informative and up to date as possible, a draft of the Guide was distributed to a Technical Working Group for comment and suggestion. The author is indebted to this group who included Ms. Carol Bower, child rights specialist, Ms. Susan Wambui Mbugua and Mr. David Mugawe of the African Child Policy Forum, Ms. Wambui Njuguna of ANPPCAN, Mr. Cheikh Amadou Bamba Diaw of CONAFE-Senegal, Mr. Don McPhee and Ms. Stefanie Conrad of Plan International, Professor Frans Viljoen of the University of Pretoria, Mr. Edmund Amarkwei Foley of the Institute for Human Rights and Development in Africa and Professor Julia Sloth-Nielsen and Mr. Benyam Mezmur of the University of the Western Cape.

Many existing and former members of the African Committee of Experts on the Rights and Welfare of the Child also contributed to this Guide including Ms. Seynabou Ndiaye Diakhaté, Mr. Jean-Baptiste Zoungrana, Dr. Assefa Bequele, Hon. Lady Justice Martha Koome, Mr. Moussa Sissoko, Ms. Maryam Uwais, Ms. Agnès Kaboré, Mr. Cyprien Adébayo Yanco and Professor Peter Onyekwere Ebigho. Heartfelt thanks too to Ms. Mariama Cissé from the Committee's Secretariat who has been an excellent source of information throughout.

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Frances Sheahan
Child Rights Consultant
December 2008

PREFACE

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

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

For the active and constructive participation of civil society to be effective, it is essential that its members improve their knowledge of the Children's Charter, the Committee and its working procedures. Save the Children Sweden has engaged in this mission of awareness raising of civil society actors by organizing and supporting pan-African workshops on Committee procedures since 2004.

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

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

Ms. Seynabou Ndiaye Diakhaté, Senegal

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

Mr. Jean-Baptiste Zoungrana, Burkina Faso

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

FOREWORD

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

Civil society organizations can play a crucial role in the promotion of the Children's Charter. They can encourage States who have not yet ratified the Charter to do so, they can advocate the States parties to respect, protect and fulfil the rights enshrined in the ACRWC and they can work closely together with children and communities to translate the Charter into positive practice in daily life.

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

Having collaborated with the Committee since its inception, Save the Children Sweden took the initiative to produce this Guide as a response to needs stated by civil society partners. Since Plan International was also working actively with the Committee, it was a natural step to join forces. We are now proud to present the Guide in a first edition.

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

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

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Part

1

INTRODUCTION TO THE GUIDE

1. Introduction

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

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

The African Committee of Experts on the Rights and Welfare of the Child (hereafter the Committee) is the body which is responsible for monitoring the implementation and ensuring the protection of the rights laid out in the African Charter on the Rights and Welfare of the Child (hereafter the ACRWC, or the Children's Charter). The ACRWC draws heavily upon the UN Convention on the Rights of the Child (CRC) and the two instruments complement and reinforce each other. They share the key principles of non discrimination, the best interests of the child, children's participation and the survival and development of the child.

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

This Guide is intended to be a resource for civil society in Africa. There are of course many different ways of defining what civil society is. This Guide relies upon Save the Children Sweden's definition which is that 'civil society is comprised of citizens 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 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. Their engagement is crucial for the Committee's success since they can provide relevant and analytical information and

work in partnership to promote and protect children's rights in Africa. Equally, the Committee can strengthen civil society's efforts to hold their governments accountable for the implementation and monitoring of the Children's Charter.

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. This 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 ACRWC).

The Committee needs the support of civil society to develop into an independent and effective mechanism for monitoring and advocating for children's rights in Africa. However, the Charter and the Committee remain largely unknown and under-utilized by civil society. Many organisations do not know how they can co-operate with the Committee and there is little practical information available. This Guide aims to fill this gap and to encourage greater participation by civil society in the work of the Committee.

2. How to use this Guide

This Guide is intended to be a comprehensive resource for finding out more about the Charter and the Committee. It provides practical information for organisations wishing to engage with the Committee but also relevant background information to ensure that this engagement is put into context. As such it is designed to be used by organisations who already use and know the Charter but want specific information about how to engage with the Committee by, for example, finding out about the procedure for submitting a communication; it can also be used by organisations new to the Charter and the Committee who are interested in reading about its history and background. The Guide is split into six Parts:

- Part One is an introduction to 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 use the Committee to advance children's rights in Africa.
- Part Four looks at how the Committee fits into the structures of the African Union (AU).
- Part Five provides sources of further information.
- Part Six consists of nine annexes including a ratification table for the Children's Charter, biographies of current Committee members, the full text of the Charter and six of the Committee's working documents.

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 on exploring how civil society organisations can work with the Committee to strengthen its relationships with the other bodies within the AU.

In many respects the Committee's work has not properly begun and the landscape is constantly changing: it is likely that as the Committee's work progresses its working procedures will be modified and clarified by practice. It is intended that this Guide be updated on a regular basis to accommodate these changes which is why this version is entitled 'the 2009 Guide'.

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

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

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

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

The Charter

- Encourage the remaining AU member states which have yet to ratify the Children's Charter, to ratify as soon as possible.
- Encourage states to remove reservations made to the Children's Charter.
- Popularise the Children's Charter.
- Advocate with states to ensure that the Children's Charter is properly embedded into legislation and that effective monitoring mechanisms are in place.

The Committee

- Publicise the Committee's work.
- Share important research or documents with the Committee.
- Apply for Observer Status to the Committee to enable closer cooperation.
- Advocate with states for an effective and transparent process for the nomination of candidates for membership of the Committee.
- Advocate with states for nomination of appropriately qualified candidates to be members of the Committee.
- Support and monitor the themes and activities of the Day of the African Child to ensure they are sustainable and worthwhile.
- Establish a civil society advisory body attached to the Committee.

The Reporting Procedure

- Encourage states to draft and submit their State Party report on time and to have a participatory process for its drafting.
- Be involved in the preparation of States Parties reports to the Committee.
- Be involved in the submission of a civil society report to the Committee.
- Encourage meaningful child participation in the drafting of a civil society report.
- Participate in the Pre-Session Working Groups concerning States Parties' reports.
- Encourage states to send high-level delegations to Plenary Sessions.
- Attend Plenary Sessions for the consideration of States Parties' reports.
- Publicise the Committee's Concluding Observations and Recommendations.
- Continuously monitor and advocate for States Parties' implementation of the Committee's Concluding Observations and Recommendations.

The Communications Procedure

- Submit individual communications alleging violations of the Children's Charter.
- Follow up decisions made on individual 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.

Within the AU

- Advocate with states to ratify the Protocol on the Statute of the African Court of Justice and Human Rights and urge them to make the necessary declaration allowing for individual petitions to the Court.
- Encourage the Committee to work more closely with other AU institutions and structures.
- Advocate with other AU organs to support the work of the Committee and ensure coherence in the promotion and protection of children's rights.



Part

2

THE ACRWC AND THE COMMITTEE

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

The AU is based on the common vision of a united and strong Africa and on the need to build a partnership between Governments and all segments of civil society, in particular women, youth and the private sector, in order to strengthen solidarity and cohesion amongst the peoples of Africa. As a continental organization it focuses on the promotion of peace, security and stability on the continent as a prerequisite for the implementation of the development and integration agenda of the Union.

**Strategic Plan of the Commission of the African Union 2004-2007:
Volume I, Vision and Mission of the AU**

The AU has an ambitious strategic vision and is an important institution for civil society advocacy and engagement. However, the AU has limited capacity to respond to growing external expectations and demands for engagement and there is often a very wide gulf between continental policy-making and national implementation and monitoring of policy. Furthermore, its structures are problematic and there is a proliferation of AU organs and initiatives which at times leads to duplication. Perhaps the biggest obstacle to effective civil society engagement is the difficulty in obtaining information about the AU's work. The website has been improved recently but remains incomplete with many essential documents simply not posted up at all.

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 within the AU human rights system for children's rights. 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 AU Assembly to which it reports once a year.

It is one of the AU's three principal human rights mechanisms: the Committee, the African Commission on Human and Peoples' Rights (hereafter the African Commission) and the African Court of Justice and Human Rights (ACJHR). As well as these bodies, there are other AU entities which are also concerned with child rights issues such as the New Partnership for Africa's Development (NEPAD) and the AU Commission. The relationship between the Committee and these different AU bodies is explored in more detail in Part Four below. The Committee is encased within the architecture of the AU and the AU has made many commitments to it. The ability of the Committee to work competently and to act effectively is largely dependent on the AU fulfilling rather than constraining these commitments.

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

2.1 Why do we have the ACRWC?

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

**Prof. Peter Onyekwere Ebigbo,
former member of the Committee**

The ACRWC was adopted by the Heads of State of the then OAU in 1990 and came into force in 1999 by which time it had the requisite 15 ratifications. It lays out the responsibilities of the state, the family, the community and the individual in the protection and promotion of the rights of the child and is rooted in other human rights treaties, including the African Charter on Human and Peoples' Rights (ACHPR) and the CRC. The full text of the ACRWC can be found in Annexe Nine to this Guide.

One of the reasons for having a Children's Charter was the feeling that Africa had been under-represented 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.

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

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

2.2 The ACRWC and the CRC

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

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

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

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

ACRWC	CRC
Obligations of States Parties - Article 1 ACRWC, Article 4 CRC	
Creates obligations for States Parties to implement the Charter with no explicit distinction made between economic and social rights and civil and political rights and no limitation as to the availability of resources for realisation of rights.	Draws a distinction between civil and political rights and economic and social rights and says that States Parties shall implement the economic, social and cultural rights in the Convention 'to the maximum extent of their available resources and where needed within the framework of international co-operation.'
Expressly states that any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the Charter should be discouraged.	

ACRWC	CRC
Definition of a Child - Article 2 ACRWC, Article 1 CRC	
Defines a child as ‘every human being below the age of 18 years.’ This definition is clear and concise with no limitations or exceptions.	Defines a child as every human being below the age of 18 years ‘unless under the law applicable to the child, majority is attained earlier.’
Non-Discrimination - Articles 3 and 26 ACRWC, Article 2 CRC	
Includes ‘fortune’ as a criterion for discrimination. The right to non-discrimination is strengthened by the provisions in the ACRWC giving priority to the special needs of children living under apartheid but also ‘under regimes practising racial, ethnic, religious or other forms of discrimination as well as in states subject to military destabilisation.’	Includes ‘property’ and ‘disability’ as criteria for discrimination.
Best Interests of the Child - Article 4 ACRWC, Article 3 CRC	
States that the best interests of the child must be ‘the’ primary consideration in all action concerning children and this implies that it is a principle which will usually take priority over others.	The principle of the best interests of the child is ‘a’ primary consideration implying that other principles can be taken into account alongside it.
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. No mention of ‘respect for parents’ but an emphasis on African culture, moral and heritage.	The objectives of education include ‘the development of respect for the child’s parents.’
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.

ACRWC	CRC
Parental Responsibilities - Article 20 ACRWC, Articles 5 and 18 CRC	
States Parties shall assist parents and guardians, 'in case of need', to provide material assistance and support programmes especially with regard to health, education, clothing and housing.	No explicit provision for material assistance but instead 'respects' the responsibilities, rights and duties of parents and 'shall render appropriate assistance' to parents.
Harmful social and cultural practices - Article 21 ACRWC, Article 24(3) CRC	
Deals with them from a broad perspective which includes health but also discrimination, dignity and development. It also explicitly sets 18 as the minimum age for marriage.	Approaches harmful social and cultural practices from the perspective of their impact on the right to health.
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 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; however it is implicit that children have responsibilities linked to their rights (for example, they have the right to go to school and the responsibility to attend school).

2.3 Strengths and Limitations of the ACRWC

The great strength of the Children's Charter is that it reflects the realities of the lives of children in Africa so has resonance and credibility in an African context. It can be asserted to challenge traditional African views that conflict with the rights of the child such as attitudes concerning child marriage, parental rights and obligations towards their children and the definition of a child: for example, during the Nigerian delegation's presentation of their initial report to the Committee, Professor Adedokun Adeyemi remarked that 'We are an African country and we therefore take the age definition of a child provided in the African Charter.'

The Children's Charter has stronger and clearer reference than the CRC to harmful traditional practices and enhanced protection for children with disabilities, children living in prison with their mothers, girls who become pregnant and internally displaced children. It also has a straightforward and clear definition of a child. Its balance between duties and responsibilities on the one hand and rights on the other makes the instrument more pertinent for an African context.

There are also important working procedures within the ACRWC which are not found in the CRC. The Committee can receive individual communications whilst the UN Committee on the Rights of the Child as yet has no procedure to do this (although there is a strong move for it to adopt such a procedure soon). The individual petition mechanism has enormous potential to generate specific case-law which can interpret and reinforce the provisions of the Charter. This is discussed in more detail in Part 3.

However, the Charter is not yet very well known within the continent amongst children, civil society, the media or governments. It has not yet been ratified by all 53 member states of the AU which undermines its credibility (ratification stands at 44 countries as of February 2009). Even amongst those states which have ratified, the Charter's provisions have not always been harmonised within national legal frameworks and are not always properly implemented. Furthermore, it also lacks certain important provisions which are outlined below.

Limitations to the ACRWC

Protection for children in conflict with the law

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

Physical and humiliating punishment

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

Duties of the Child

Article 31 creates responsibilities for the child which are an important element of their participation in society. One of the duties spelt out in the Charter is for children to respect their parents, superiors and elders at all times. This Article needs to be reconciled with the child's right to freedom of expression, association and thought which may at times be in conflict with Article 31.

Social Security Provision

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

THE CHILDREN'S CHARTER USED FOR ADVOCACY IN SENEGAL

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

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

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

2.4 Ratification of the ACRWC

2.4.1 What is ratification?

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

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

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

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

2.4.2 Who has ratified the ACRWC?

As of February 2009, 44 member states have ratified the Children's Charter. They are Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Chad, Comoros, Congo, Côte d'Ivoire, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Sudan, Tanzania, Togo, Uganda, and Zimbabwe.

Seven AU member states have signed but not ratified the Charter: Central African Republic, Djibouti, Sahrawi Arab Democratic Republic, Somalia, Swaziland, Tunisia and Zambia. Two AU member states have neither signed nor acceded to the Charter: Sao Tome and Principe and the Democratic Republic of Congo. A full list of ratifications is attached in Annexe One to this Guide.

2.4.3 The process of ratification

To ratify a treaty, the state first signs it. Following this but prior to ratification, a state normally reviews the treaty to determine whether national laws are consistent with its provisions and to consider the most appropriate means of promoting compliance of policy, legislation and programmes with the treaty. This is an important process for civil society to be involved in since it can determine how effective implementing legislation for the Children's Charter will be in practice. For more on this see 2.6 below.

The state then fulfils its own national legislative requirements for full ratification. This means that the appropriate national organ of the country – Parliament, Senate, the Crown, Head of State or

Government, or a combination of these – follows domestic constitutional procedures and makes a formal decision to be a party to the treaty.

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

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

TIP

Encourage states to ratify the Children's Charter

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

**SAMPLE LETTER TO ENCOURAGE THE SWAZILAND GOVERNMENT TO RATIFY
THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD**

H.E. Mr. Absalom Themba Dlamini

Prime Minister

Office of the Prime Minister

Mbabane

Fax: +268 404 3943

H.E. Mr. Moses Mathedele Dlamini

Minister of Foreign Affairs and Trade

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Fax: +268 404 4085

H.E. Prince David Dlamini

Minister of Justice and Constitutional Affairs

P.O. Box 924

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Fax: +268 404 4796 / +268 404 3533

Your Excellency,

I am writing to urge you to ensure Swaziland's ratification of the African Charter on the Rights and Welfare of the Child (ACRWC). The Charter came into force in 1999 and currently 44 member states of the African Union have now ratified it. Swaziland was amongst the first states to sign the African Charter on the Rights and Welfare of the Child and did so on 29th June 1992 thereby demonstrating your support and commitment to the ideals contained within it. However, Swaziland has yet to ratify the Charter.

The Charter defines a 'child' as a human being below the age of 18 years. It recognises the child's unique and privileged place in African society and that African children need protection and special care. It also acknowledges that children are entitled to the enjoyment of freedom of expression, association, peaceful assembly, thought, religion, and conscience. It aims to protect the private life of the child and safeguard the child against all forms of economic exploitation and against work that is hazardous, interferes with the child's education, or compromises his or her health or physical, social, mental, spiritual and moral development. It calls for protection against abuse and bad treatment, negative social and cultural practices, all forms of exploitation or sexual abuse, including commercial sexual exploitation, and illegal drug use. It aims to prevent the sale and trafficking of children, kidnapping and begging of children.

The African Committee of Experts on the Rights and Welfare of the Child which is charged with promoting and monitoring the implementation of the Children's Charter has now begun reviewing States Parties' reports and its work is building momentum. It is moving forward in its crucial work ensuring the rights and welfare of children across the continent. It is time for Swaziland to demonstrate its support for the rights of children and to ratify the African Charter on the Rights and Welfare of the Child as soon as possible.

Yours sincerely...

2.5 Reservations to the ACRWC

A reservation to a treaty means that a state objects to a specific provision within a treaty and declares at the time of signing, ratification or accession that they will not put it into action domestically. Reservations cannot be made after ratification or accession has taken place. There is no explicit provision in the Children's Charter for member states to make reservations. However, under international law it is allowed providing that a reservation is not incompatible with the object and purpose of the treaty. Furthermore, at the first Committee meeting held in 2002, the Acting OAU Legal Counsel stated that 'non-fundamental' reservations could be made to the Charter in a way that is in line with a state's own culture, customs and values.

A state may withdraw a reservation at any time. It is also open to States Parties to object to reservations made by other States Parties on the basis that they are incompatible with the object and purpose of the treaty; to date no such objections have been made.

Current Reservations to the ACRWC

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

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

Mauritania: Does not consider itself bound by Article 14 regarding the right to freedom of thought, conscience and religion.

TIP

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

2.6 Harmonisation of the ACRWC with domestic law

Article 1 of the ACRWC sets out the basic obligations of States Parties to harmonise the ACRWC by taking 'necessary steps, in accordance with their constitutional processes' and by adopting 'legislative and other measures to give effect' to the rights within the Charter. During and after ratification of the ACRWC, the state should undertake a comprehensive and consultative review of all domestic legislation and administrative measures to make sure that they comply

with the obligations laid out in the Charter. This process is called harmonisation (or sometimes ‘domestication’). The harmonisation process is very important and if done properly will ensure that a strong legislative and administrative framework is in place to enable implementation of the Charter.

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

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

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

TIP

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

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

Catch-all provisions

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

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

3.1 What is the mandate of the Committee?

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

THE MANDATE OF THE COMMITTEE

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

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

The Committee can collect, commission and document information; for example, it has been responsible for commissioning research on the principle of the best interests of the child and on Article 31 of the Charter. This research has been presented to the Committee during sessions.

TIP

The Committee can be contacted if you have important research or documents you wish to share with them or if you wish to invite them to visit your programmes or to an event you are involved with.

• *Establishing principles for protecting children's rights*

The Committee may develop principles and rules aimed at the protection of children's rights akin to the General Comments produced by the UN Committee on the Rights of the Child. No principles have yet been developed.

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

The Committee needs to be systematically linked to other AU human rights bodies such as the African Commission on Human and Peoples' Rights and the African Court of Justice and Human Rights as well as to the overall continental political framework in order to maximise its potential for advancing children's rights. It also needs to learn from the experiences of its sister bodies: the African Commission and the UN Committee on the Rights of the Child.

• *Monitoring implementation of the Charter*

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

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

• *Interpreting the Charter*

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

CONTACTING COMMITTEE MEMBERS

Their contact address is:

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

3.2 When and where does the Committee meet?

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

3.3 Who are the Committee Members?

3.3.1 Who is eligible to be a Committee member?

The Committee has eleven members who are elected by the AU Assembly, on the advice of the Executive Council, to serve a five year term and who cannot be re-elected on completion of their term. The ACRWC states that they must be 'of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child.' They 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.

They come from many different backgrounds including civil society, academia or state institutions (see Annexe Two for biographies of the current Members). However, to maintain their independence and impartiality, members cannot be part of an inter-governmental organization, UN agency or hold any politically binding position such as Cabinet Minister, Deputy Minister, Member of Parliament or Ambassador. Neither the ACRWC nor the Rules of Procedure provide guidance as to the appropriate geographical and gender balance of the Committee which has implications given the many different traditions, cultures and legal systems operating in Africa. Nonetheless, the current composition of the Committee has a wide geographical spread and consists of eight women and three men.

COMMITTEE MEMBERS' OATH OF OFFICE

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

3.3.2 How are members of the Committee nominated and elected?

Nomination by states

Each State Party 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 Party nominates two people, then they must be of different nationalities.

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 at least two months before the election is to be held. The process of candidate selection will vary from state to state and the best way to find out who your country is planning to nominate (if anyone) is to contact your foreign ministry or permanent mission to the AU in Addis Ababa, Ethiopia.

Who elects the members?

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

What information do candidates have to provide to the Executive Council?

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

TIP

How can you lobby for a favoured candidate?

The nomination and election of members to the Committee is often shrouded in secrecy and it can be very difficult to obtain information formally about who has been put forward. If you are able to find out that a candidate in your country has been put forward, then you could try to influence the process by contacting him or her and asking:

- What are your plans for your term at the Committee?
- How do you hope to strengthen the work of the Committee?
- What do you see as the role and potential for civil society engagement in the work of the Committee?
- What are your views about the rights of children in Africa and what are your views about the active participation of children?

This information could then be used to inform others (including members of the Executive Council) about the candidate, and where appropriate, to build momentum around their nomination.

When are the next elections?

The most recent election for new Committee members was at the AU Summit in July 2008 when four new members were elected from Benin, Burkina Faso, Madagascar and Nigeria. The next elections will be held in July 2010 when six of the current members will complete their term (the Committee's year runs from July to July). There will be another election in January 2011 when Ms. Dawlat Hassan will end her term of office. A list of the current members of the Committee, dates of completion of their term of office and their short biographies can be found in Annexe Two.

How can the nomination process be improved?

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

- The procedure for nomination of candidates should be, at the minimum, the same as used for appointments to the highest judicial office in the State Party (this means that the procedure should be very rigorous and include interviews and assessments);
- States Parties should encourage the participation of civil society, judicial and other state bodies, bar associations, academic and human rights organizations and women's groups, in the process of selection of nominees;
- A transparent and impartial national selection procedure should be used in order to create public trust in the integrity of the nomination process.

TIP

Civil society can campaign to ensure that states nominate and vote only for candidates who meet the highest standards of independence, impartiality and competence. They should encourage their states to advertise the nomination process widely, encourage applications from men and women and ensure that civil society is involved at all stages of the process. They could also propose suitable candidates for nomination to their government.

3.4 The activities of the Committee so far

- The primary focus of the Committee since it began work in 2002 has been to raise the number of ratifications of the ACRWC amongst AU member states and it has made a number of promotional visits to encourage this in countries such as Burundi, Madagascar, Namibia and Sudan. The Committee's current work plan includes provision for missions to lobby for ratification in Democratic Republic of Congo, Tunisia, Zambia, Sao Tome and Principe and Central African Republic.
- It has been involved in institution building for much of its existence and has produced the following documents to establish its working procedures:
 - Rules of Procedure (2003) (See Annexe Three and can also be accessed at <http://www.africa-union.org/child/home.htm>)
 - Guidelines for Initial Reports of States Parties (2003) (See Annexe Four and can also be accessed at <http://www.africa-union.org/child/home.htm>)
 - Procedures for the Consideration of State Party Reports (2005) (See Annexe Five)
 - Guidelines for the Consideration of Communications (2006) (See Annexe Six)
 - Guidelines for the Conducting of Investigations (2006) (See Annexe Seven)
 - Guidelines for the Criteria for Granting Observer Status with the Committee (2006) (See Annexe Eight).All of these documents will be discussed in more detail in Part Three.
- The Committee has developed a reporting schedule indicating the dates by which States Parties should have submitted their initial reports (an updated version is annexed to this Guide) and began consideration of State Party reports in 2008. However, although 44 countries have ratified the ACRWC in Africa, only ten States Parties have submitted their initial reports to the Committee as obligated by the Charter (as of February 2009). They are Nigeria, Mauritius, Egypt, Rwanda, Kenya, Burkina Faso, Uganda, Niger, Mali and Tanzania.
- It has held thematic discussions on key issues and problems adversely affecting the rights and welfare of children including children and armed conflict, the duties of the African child under Article 31, child participation, the principle of the best interests of the child and the impact of HIV/AIDS, poliomyelitis and malaria on children. Information concerning some of these discussions can be found in the reports of the Committee's sessions at <http://www.africa-union.org/child/home.htm>.
- June 16th is the Day of the African Child and the Committee has been using this date to draw attention to States Parties' obligations to children's rights by selecting themes to celebrate. Topics covered so far have included 'Right to Protection: Stop Violence against Children'

(2006), 'Combat Child Trafficking' (2007), 'Right to Participate: Let Children be Seen and Heard' (2008). The theme for 2009 is 'Africa Fit for Children: Call for Accelerated Action towards their Survival.'

TIP

Civil society organisations can follow through and monitor the themes and activities of the Day of the African Child in their respective countries to ensure they are sustainable and worthwhile.

- In August 2005 it undertook an investigative fact-finding mission to Northern Uganda. A report was subsequently submitted to the Executive Council, the Permanent Representatives Committee and the AU Assembly.
- It has developed a Plan of Action which it continues to mobilise resources for.
- It has launched an annual Award for Child Rights Champions with the aim of popularising child rights work and activism.
- It has initiated discussions about cooperation with the UN Committee on the Rights of the Child and the African Commission on Human and Peoples' Rights.

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

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

Prof. Peter Onyekwere Ebigbo, former Committee member

The Committee faces many challenges in fulfilling its mandate. One important constraint is the lack of personnel employed to support it in terms of providing administration and legal advice. According to its General Rules, the Chairperson of the AU Commission should 'provide the Committee with the necessary staff and facilities for the effective performance of its functions.' The Committee has only had a full-time Secretary since August 2007, after a long time struggling to function without one, and it has an administrator but as yet no legal officers. The AU Legal Advisor is currently assuming this role.

A general and overriding problem for the Committee is lack of funds and resources and this has been a theme throughout its life-time. The Committee has asked to have a budget autonomous from that of the Department of Social Affairs and in 2008 the Executive Council requested that the AU Commission undertake to do this. Another constraint facing the Committee is that its members are often extremely busy and committed elsewhere in their own countries.

These constraints have had a serious impact on the work of the Committee and prevented progress in implementing its action plan. Investigation missions on cases of violation of the rights of the child and missions for the ratification of the Children's Charter have been halted as have collaboration meetings with the UN Committee on the Rights of the Child. After six years of being in operation, the Committee has only just begun the process of examining State Party reports and it has not yet considered any communications (although this is planned for 2009). Its website is out of date and dissemination of its documents is poor.

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. It needs to be more systematically linked to other AU human rights bodies such as the African Commission on Human and Peoples' Rights and the African Court of Justice and Human Rights as well as to the overall continental political framework. In general, not many people in Africa or within the AU are aware of the existence of the Children's Charter or of the work being done by the Committee and there is great scope for its visibility to be raised.



Part

3

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

1. Observer Status

1.1 What is Observer Status?

The Committee formalised the participation of civil society organisations in its work in 2006 by adopting a 'Criteria for granting Observer Status in the African Committee of Experts on the Rights and Welfare of the Child to Non-Governmental Organisations (NGOs) and Associations.' (See Annexe Eight). There has been slow take up in obtaining Observer Status although civil society organisations have been invited to be actively involved with the Committee since it began work in 2002. It should be remembered that an organisation does not need to have Observer Status in order to file a communication, prepare a civil society report or help the Committee with investigative missions but it does give organisations formal access to participate in the Committee's work in the following ways:

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

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

TIP

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

1.2 Who can get Observer Status?

To be eligible for Observer Status, an organisation:

- Should support the work and spirit of the AU and the Committee;
- Is encouraged to apply as part of a coalition formed of organisations with similar interests;
- Should have been registered in a State Party to the ACRWC for at least three years before requesting Observer Status and have permission to work from the State Party in the protection and promotion of children's rights;
- Should have a recognised Head Office;
- Should have democratically adopted statutes;
- Should have a representative structure and democratic and transparent decision-making processes;
- Should have an administration which has a majority of African citizens or Africans from the diaspora and an elected children's representative. This applies to international NGOs as well; and
- Should be able to provide information regarding their sources of funding.

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

Some aspects of these criteria appear to be quite stringent: for example organisations should have a majority of African citizens and an elected children's representative in its administration. It remains to be seen how the Committee will interpret these criteria in practice.

1.3 What is the application procedure for obtaining Observer Status?

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

- The organisation's Statute or Charter;
- An updated list of its members;
- Information about sources of financing including copies of recent statements; and
- A memorandum of activities outlining past and present activities and links in and outside of Africa.

Diaspora organisations must also submit the names of two AU member states or civil society organisations recognised by the AU who can attest to its authenticity. Once an application has been received by the Secretariat of the Committee then it will be reviewed at the next Committee meeting.

1.4 Informal participation in Committee meetings

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

2. The Reporting Procedure

2.1 What is the reporting procedure?

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

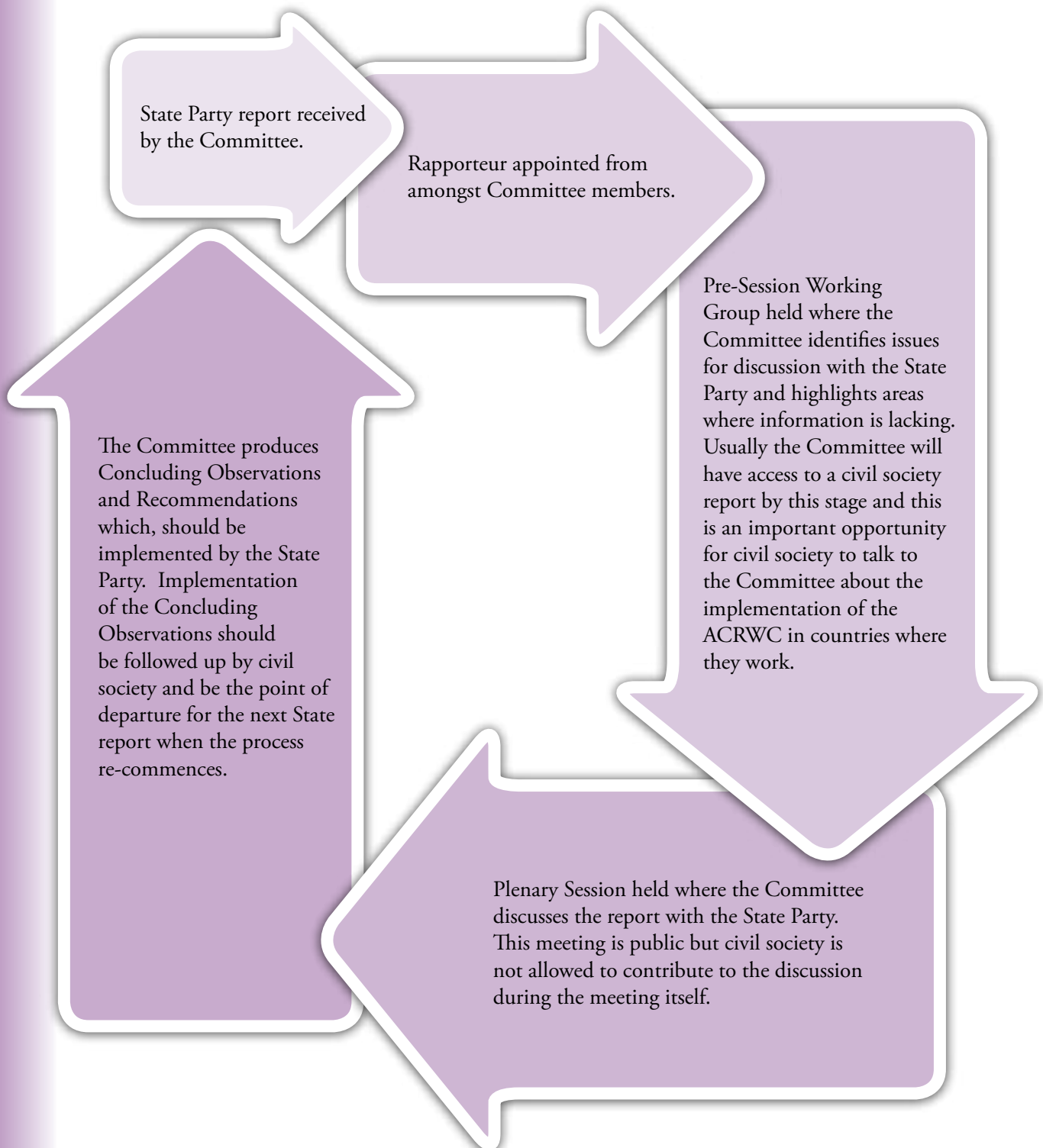
It is vital that the Committee also considers reports from civil society as part of this process and has access to children's own views and opinions since the Committee needs several sources of information to enable it to have a clear and comprehensive overview of the implementation of the Charter. The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

This section of the Guide examines what should be in the State Party report, how it relates to the CRC reporting process, what should be in the civil society report, how children and civil society can contribute effectively to the reporting process and how the Committee's Concluding Observations and Recommendations can be popularised.

The importance of the reporting procedure

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

THE REPORTING PROCESS



2.2 The State Party Report

2.2.1 Differences between the initial and the periodic reports

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

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

TIP

Encourage your government to draft and submit their initial State Party Report on time and ensure that an efficient mechanism is in place to ensure effective monitoring of the ACRWC.

2.2.2 What should be in the initial State Party Report?

The Committee has produced guidelines outlining what should be in an initial State Party report to ensure that information is presented in a methodical and informative manner (see Annexe Four). These guidelines recommend that States Parties use a format with articles clustered by themes rather than considered individually. This approach reflects the holistic perspective on children's rights taken by the Children's Charter and emphasises that children's rights are indivisible and interrelated, and that equal importance should be attached to each and every one. No guidance is given as to the length of the report (the UN Committee on the Rights of the Child recommends that the CRC State Party Report should be a maximum of 120 pages).

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

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

Thematic Clusters

i. General Measures of Implementation (Article 1)

This will 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 will 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 will 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 will 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 is taken into consideration in planning and development policies including housing, transport and environmental policies;
- whether the best interests of the child is 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 will 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 the 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 could 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 will 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 will 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 should be provided 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 will 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 will 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.

States are responsible for providing an enabling environment for children to undertake their responsibilities and duties for example by supporting the formation of Child Rights Clubs, Children's Parliaments, National Children's Days, having social and moral responsibilities incorporated into school curricula and by celebrating the Day of the African Child

2.2.3 The relationship between the CRC and ACRWC reports

All states in Africa, save for Somalia, have ratified the CRC and have submitted their initial reports to the UN Committee on the Rights of the Child. Many African states have also submitted their first and second 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 integrated into the CRC reporting procedure. The CRC periodic reports are due every five years and the ACRWC periodic reports are due every three years so the burden is heavier for the Children's Charter but the two reporting processes should run in tandem and be seen as part of a continuous cycle of monitoring, reporting and implementing Concluding Observations and Recommendations.

TIP

Civil society organisations could advocate with their governments, the African Committee on the Rights and Welfare of the Child and the UN Committee on the Rights of the Child to ensure that the reporting process for both bodies is harmonised and that there is not a great deal of delay between the two.

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

It remains to be seen how states will choose to interpret this aspect of the guidelines; whether they will deal solely with the aspects of the Children’s Charter they deem to be unique and specific or whether they will integrate these unique aspects into their most recent and updated CRC report. To date very few State Party reports are publicly available so it is too early to draw conclusions about how states will interpret their reporting obligations.

Nigeria’s Initial and First Periodic Report to the Committee 2006

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

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

2.3 The Civil Society Report

2.3.1 Civil society and the State Party report

Under its Rules, the Committee may invite civil society organisations to submit reports on the implementation of the Charter and to provide it with 'expert advice in areas falling within the scope of their activities' (Rule 69). It would be helpful to have clearer guidance about how the Committee will use civil society reports in practice and it is anticipated that this will develop over time. This section of the Guide looks at why a civil society report is needed, what should be in a civil society report, what steps need to be taken for effective preparation and how children can actively participate in this process.

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

Although responsibility for reporting lies with the State Party, the Committee Procedures for the Consideration of State Party Reports explain that 'States Parties are strongly encouraged to adopt a participatory approach to the preparation of the reports and to publicize their reports to all relevant actors at national level' (see Annex Five). The spirit of the process is therefore one of constructive dialogue. In some countries, civil society organisations may be consulted in the preparation of the State Party report and their contributions incorporated into the official version. This can be a very good opportunity to bring issues to the government's attention and to enter into dialogue. This collaboration can take many forms: holding a meeting to solicit views or discuss drafts or creating a civil society-government drafting committee.

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

2.3.2 Why prepare a civil society report?

- The Committee needs several sources of information to enable it to have a clear and comprehensive overview of the implementation of the Children's Charter.
- State Party reports to the UN Committee on the Rights of the Child, and indeed the few that have so far been submitted to the Committee, are heavily weighted in favour of presenting legislative frameworks but lack analysis of the implementation process. Civil society reports are an essential way of ensuring that the Committee has a clearer picture of how policies and legislation are being implemented on the ground.

- They can fill gaps where the State Party report has not provided enough information and expose where information provided by the state is incorrect.
- They are an important opportunity to make children's experiences and opinions heard since State Party reports rarely include children's voices.
- Reporting to the Committee is a unique opportunity to bring concerns about children's issues to an important regional body.
- At a national level, the process of preparing the report inspires scrutiny of government policy which can be very fruitful in opening a debate about the status of children's rights in a country.
- It can serve as an important advocacy tool for civil society organisations.
- It can play a crucial role in informing the media about the reporting procedure and about the main concerns of civil society organisations regarding children's rights.

2.3.3 Who is responsible for preparing a civil society report?

The Committee must invite reports from international, national and regional civil society organisations and the secretariat should be contacted to obtain this invitation. UN agencies may also be invited to submit a report.

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

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

TIP

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

2.3.4 The preparation process

Access to the State Party report

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

Harmonizing with the CRC monitoring process

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

Sources to be relied on

These need to be drawn from a broad range:

- 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 prepared for the Africa Fit for Children meeting held in 2007 or for monitoring fulfilment of the Millennium Development Goals);
- Parliamentary records and/or legislative proceedings;
- Reports produced by UNICEF, UNHCR, WHO and any other relevant UN agencies. Special attention should be paid to reports produced in the context of the 2006 UN Study on Violence Against Children; and
- Budget analyses related to public expenditure on children conducted by either government or civil society.

Consultative process

“To ensure that all voices are heard, one must try as much as possible to be inclusive.”

**Wambui Njuguna,
President of the Africa Wide Movement for Children
and Director of Programmes for ANPPCAN Head Office**

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.

Case Study:

Kenya's draft civil society report for the Children's Charter

Kenya's initial State Party report to the Committee was submitted in 2006 at the same time as Kenya's second periodic report to the UN Committee on the Rights of the Child. Much of the preparation for these two reports was duplicated 'to save on time and resources.' There was a degree of participation by civil society and children in the drafting of the CRC civil society report.

Kenya's initial State Party report to the ACRWC does not follow the Committee's guidelines for State Party reporting but examines just five areas which Kenya considers to be unique to the Children's Charter: protection of the family, children of imprisoned mothers, protection against harmful social and cultural practices, protection against apartheid and discrimination and the responsibilities of the child.

In 2007, ANPPCAN took responsibility for co-ordinating the preparation of a civil society report in response to the State Party report. Its main objective was to identify gaps in the government report. It gathered together 23 civil society organisations working on a broad range of children's issues. *'When organizing Coalitions for reporting it is important to make sure that members are drawn from different sectors working with children e.g. education, health, protection, direct service provision, children's parliament. It is important to also ensure that key professions are included e.g. legal, educationists and child advocates.'* Wambui Njuguna, Director of Programmes, ANPPCAN Head Office.

Initially ANPPCAN held a meeting to comment on the State Party report and identified many gaps but confined their discussion to the five areas established by the State Party report. This was viewed as an easier way to deal with the burden of having to prepare two very similar reports.

2.3.5 What should be in the civil society report?

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

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

Suggested template for a civil society report for the Children's Charter

Summary:

Highlight the key issues and recommendations made in the body of the report.

Introduction:

Outline who was involved in the drafting of the report, for example the members of the coalition involved. Give a short introduction to the procedures used to collect information, the extent to which children contributed to the civil society report and a short description of the processes used to capture their views.

Outline which State Party report the civil society report corresponds to and the extent to which civil society were involved in contributing to the State Party report.

Responding to the State Party report:

Provide a section-by-section analysis of the State Party report following the same thematic structure outlined above but emphasising the most important thematic clusters. Provided that the State Party report has also followed this structure, this means that the Committee will be able to compare both reports easily. As part of this analysis, information should be submitted that supplements the State Party report where it lacks information. It is also helpful to use language that the Committee can easily adopt for asking questions of the State Party.

To recap, the themes are:

- General measures of implementation
- Definition of the child
- General principles
- Civil rights and freedoms
- Family environment and alternative care
- Health and welfare
- Education, leisure and cultural activities
- Special protection measures
- Responsibilities of the child

Key recommendations:

Make clear, concrete and targeted recommendations on how to improve the situation of children in the country; for example, this might mean recommending bringing current legislation in line with the Children's Charter. The recommendations should be short and prioritised. This section should also include an overview of how civil society can contribute to the implementation of the Charter and any Concluding Observations and Recommendations where relevant.

References:

All sources, including research, statistics and data relied on during the report must be clearly referenced.

2.3.6 How is the civil society report submitted?

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

Any questions concerning the civil society report should be addressed to the Secretariat in Addis Ababa, Ethiopia since as yet there is no civil society advisory body to the Committee similar to the NGO Group for the Convention on the Rights of the Child in Switzerland or the NGO Forum of the African Commission in The Gambia. Both of these bodies function as a resource for civil society wishing to engage with the UN Committee on the Rights of the Child and the African Commission respectively.

2.4 Children's participation in civil society reports

2.4.1 Why is children's participation important?

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

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

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

2.4.2 Key principles of child participation

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

There is no specified method for involving children in the drafting of a civil society report. It might involve consultation with children through meetings organised and facilitated by a civil society organisation. This approach was taken by Conafe-Senegal in preparing for their CRC report in 2006 and the strategies and techniques they used are outlined below. It might involve consultation through youth groups or clubs or on an ad hoc basis. It might involve questionnaires and surveys being completed or children's organisations themselves preparing and submitting their own reports. It could also involve recording children's voices on different media like film or audio tape or using the internet through email, interactive websites or through web-chats (although this will be limited of course by availability of access).

Children's views can either be incorporated into the main body of the report or placed in a separate section to highlight the key issues from their perspectives. In any event it is important to highlight clearly the contribution children have made to the report, the main issues that they have raised and recommendations that they have made.

2.4.3 Follow up after the report

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

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

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

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

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

Justine Laïson, Administrative Secretary of CONAFE-Senegal

In 2006, the network organisation 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 in the report. To achieve this they worked hard to develop a mechanism for children's participation which would be comprehensive and ensure that the views of children from across the country were captured.

To begin the process of gathering children's views on the status of children's rights in Senegal, they tapped into their existing structures. In each of Senegal's eleven regions, CONAFE organised preliminary meetings to consult with children about the issues facing them. They had a wide range of children from different backgrounds involved: children with disabilities, children in school and children out of school. The issues which emerged as priorities for the children were: birth registration, situation of Talibés (beggars), 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. During this workshop, 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.

One important issue which emerged from this consultation is that the State Party report made sweeping generalisations about the country as a whole without explaining regional differences. Having such a broadly constituted group of children commenting on the report highlighted the many regional differences in the implementation of the CRC; for example, the State Party report claimed that female genital mutilation had been addressed whereas in fact the practise is still widespread in the south east and other parts of the country.

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 includes 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.

Challenges faced

- The State Party report is very technical. Many of the children being consulted were illiterate and many more did not speak French. Therefore they needed adults to translate key documents such as the State Party report, the CRC and the Concluding Observations and Recommendations 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.

Popularising the Concluding Observations

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. Two days were spent considering the legal frameworks and two looking at the Concluding Observations. Children were involved in presenting this information as well. These regional workshops contributed to push the Ministry of Family Affairs to hold a national level workshop on the Concluding Observations.

2.5 What is the procedure for considering State Party reports?

2.5.1 Pre Session Working Groups

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

Who can attend a Pre-Session Working Group?

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

specified country. There is nothing to prevent a Committee member participating in all sessions relating to a State Party report from their own country since they are elected to be independent and impartial.

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

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

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

If possible, civil society organisations should send two or three representatives to meet with the Committee during the Pre-Session Working Group including people with a comprehensive understanding of the situation of children's rights in their country and with a legal and development perspective. The delegation may also include children although it may be a while before the Committee's procedures are sufficiently organised for this to be worthwhile and at present it may raise unrealistic expectations amongst the children concerned which will not be fulfilled. Efforts could be made however to arrange a separate and informal meeting between children and Committee members outside of the formal setting of the Pre-Session Working Group. Many civil society organisations will not have the resources to send an extensive delegation to the Committee in which case it is essential to collaborate with other organisations from a country and send just one individual to present the necessary information to reduce the costs of travel.

Participation by civil society

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

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

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

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

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

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

Once a list of priority issues has been compiled and agreed upon by the Committee, then it is forwarded to the State Party who is asked to submit written responses in advance of the Plenary Session. The priority issues are confidential documents. The State Party is also 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 in the Plenary Session 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 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.

TIP

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

Plenary Sessions

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

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

The session begins with a 15 minute overview from the head of the State Party delegation followed by a presentation by the relevant Rapporteur. Questions from the Committee will follow regarding the thematic clusters of rights outlined in the reporting guidelines. At the end of the discussions, the Rapporteur will summarize observations and recommendations. Finally, the state delegation is invited to make a concluding statement.

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

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

2.5.4 The Concluding Observations and follow up to the reporting procedure

One of the most important elements of the reporting procedure is the feedback given by the Committee to the State Party both by way of oral discussion and in the form of Concluding Observations and Recommendations. This feedback becomes part of an ongoing dialogue between the Committee and the State Party. It ensures that the reporting is not a one off event which happens every three years but is part of a continual process by which a State Party constantly reviews and improves its implementation and monitoring of the Children's Charter. Concluding Observations and Recommendations also ensure that the Committee itself can monitor children's rights in a state over an extended period of time.

After the Plenary Session, the Committee will meet in closed session to prepare Concluding Observations highlighting progress achieved, goals and difficulties, major issues of concern and

suggestions and recommendations. These will be sent to the State Party through the Chairperson of the AU Commission and the State Party will be invited to comment on them. When it is reporting to the AU Heads of State Assembly, the Committee will include all of its reports, observations, suggestions and recommendations to the States Parties together with comments received from the States Parties.

Civil society has a very important role to play in popularising these Concluding Observations and Recommendations and in ensuring that they are implemented. They are a very useful advocacy tool to stimulate debate at a national level and for exerting pressure on governments to follow up their implementation. It is essential that they are made public and disseminated widely.

Suggestions for popularising Concluding Observations and Recommendations:

- Compile a list of organisations, people and groups who must receive copies of the Concluding Observations 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.
- 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 Observations 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.

3. The Communications Procedure

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

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

3.1 What is a communication?

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

3.2 Why bring a communication to the Committee?

To date the Committee has not yet considered any communications so the benefits of bringing a communication remain untested and theoretical. However, experience from the African Commission on Human and Peoples’ Rights suggests that its decisions on communications, although not legally binding, do carry significant moral authority. Having a decision on a communication from the Committee could help civil society organisations by enhancing the seriousness with which an issue is taken in a country. It could also open new possibilities for civil society organisations to build coalitions, fundraise and expand.

A communication is also a strategic means to get the Committee to interpret the provisions of the Children’s Charter and to innovatively and progressively apply it to contemporary child rights issues not already explicitly covered. The African Charter on Human and Peoples’ Rights (ACHPR) has been developed by the African Commission largely through the consideration of communications: a recent example of a progressive interpretation of the ACHPR was the SERAC case in which the African Commission read the right to food, shelter and housing into the Charter (Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001). Communications could therefore be a platform for the Committee to both interpret the Children’s Charter regarding specific violations and also to develop principles for broader application.

Since the Committee is the only international child rights protection mechanism with a communications procedure, this opportunity should be seized upon as a way of strengthening its protection mandate, developing valuable jurisprudence on the rights of the child and giving it greater visibility through popularizing the decisions it would make on communications.

3.3 Who can bring a communication?

Anybody 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), parents and civil society organisations so long as they are recognised by an AU Member State or an AU or UN body.

If the author of the communication is not the victim of the violation and does not have the consent of the child or children concerned then they have to demonstrate that they are acting in the best interests of the child or children concerned.

3.4 Who is a communication brought against?

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

3.5 What are the criteria for admissibility?

On receipt of the communication, the first stage of the process is for a decision to be made on whether or not it fulfils the Committee's criteria on admissibility. This means whether or not it is a case which falls within the Committee's mandate. This decision is made by a majority vote of the Committee.

The admissibility criteria are:

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

3.6 What does exhaustion of domestic remedies mean?

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

The Committee has not yet considered any communications so has not yet defined what the exact parameters of exhausting domestic remedies are. The following are instances, drawn from international human rights law in general and the African Commission in particular, where exhaustion of domestic remedies may be claimed:

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

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

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

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

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

3.7 What if the issue is urgent?

Once admissibility has been decided, then the Committee can make a request to the State Party concerned to take steps to prevent further harm to the children who are victims of the violations. These are called provisional measures. Since this has not yet been tried and tested by the Committee it is useful to consider the sorts of provisional measures which the African Commission has issued. These have included requesting a government not to execute individuals or calling on a government to avoid inflicting irreparable harm to a victim. In a case before the African Commission concerning the banning of a radio station, it ordered provisional measures that 'no irreparable damage is done to the equipment of Radio Freedom FM.' (Communication 290/2004: Open Society Justice Initiative (on behalf of Pius Njawe Noumeni) / Cameroon 20th Annual Activity Report). The adoption of provisional measures does not necessarily give an indication of the final outcome on the substance of the complaint.

3.8 How should a communication be prepared?

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

Template for a Communication for the Committee

Name and address of victim

(stating where necessary if this information is to be kept confidential).

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

Names and signatures of any legal representatives.

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

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

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

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

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

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

Specify what remedies are required.

Where possible attach documentary proofs which support your communication.

3.9 How are the communications considered?

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

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

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

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

Format of African Commission recommendations

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

3.10 How are decisions followed up?

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 and cannot be enforced. The expectation is that states will comply with its decisions in order to demonstrate their good faith and obligations to the Children's Charter.

It is interesting to note that only around one third of the decisions of the African Commission have been fully or partially complied with by the member state in question. However, decisions of the African Commission become part of African human rights law and can therefore be used for advocacy and as precedents all over Africa (and beyond), even if they are not adhered to by the state concerned. The Commission is considering establishing mechanisms to improve follow-up. Under the merger Protocol, the African Court of Justice and Human Rights has explicit jurisdiction over cases from the African Commission. This means that if a state does not comply with a decision by the African Commission then the Commission can send the case on to the African Court to be considered.

The Committee should be encouraged to learn from the African Commission's experiences of enforcing decisions. 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. Under the merger Protocol, the African Court of Justice 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 permitted to send cases to the African Court to ensure compliance by states to its decisions. If the Committee does actually send cases to the African Court in the future, this would be a very effective way of strengthening its own mandate.

TIP

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

4. The Investigations Procedure

4.1 What are investigations?

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

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

| Advancing Children's Rights

Investigations may be initiated because the Committee has received a communication indicating serious and systematic violations and subsequently makes a request for an invitation to visit a State Party. The Committee can only visit a State Party if they are invited to do so. If a State Party refuses to invite them then the Committee can report this lack of cooperation to the AU Assembly who may choose to take further action. In some circumstances, it may be that a State Party itself directly invites the Committee to investigate a specific issue.

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

TIP

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

4.2 What can civil society contribute to investigations?

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

4.3 The mission report

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



Part

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 and 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 the Committee, 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 of Justice and Human Rights. It then considers the other key AU institutions of relevance for children's rights to show how and where the Committee fits in to the institutional landscape of the AU.

It is important to note that this 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. It also examines how civil society organisations can work with the Committee to strengthen its relationship with the other bodies within the AU.

Key AU institutions and structures of relevance for children

- The African Commission on Human and Peoples' Rights
- The African Committee of Experts on the Rights and Welfare of the Child
- The African Court of Justice and Human 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 and the African Peer Review Mechanism

An Overview of the Committee within the AU

Assembly of Heads of State and Government

- Highest decision making power and meets twice a year.
- The Committee submits annual report of activities to it.
- Decides whether to adopt Executive Council's decisions regarding: the election of Committee members, the Committee's investigation reports and decisions on Communications.
- Can enforce judgments of the ACJHR.

Executive Council

- Advises the Assembly.
- Comprised of Ministers of Foreign Affairs.
- Elects Members of the Committee.
- Takes decisions on the Committee's activity reports.
- Takes decisions on the Committee's judgements on communications.
- Takes decisions on the Committee's investigation reports.
- Charged, on behalf of the Assembly, with monitoring the execution by States Parties of judgements of the ACJHR.

The Permanent Representatives' Committee

- Comprised of African Ambassadors accredited to the AU.
- Very influential and lead in preparing for AU summits including preparation of the agenda.
- Important body for linking the AU agenda with national governments.

Peace & Security Council

- Responsible for promoting peace and security.
- Scope to work with the Committee on issues concerning children and armed conflict.

The AU Commission

- Serves as the secretariat of the AU and guides the Heads of State and Government and the Executive Council of Ministers.
- Has a powerful and influential Cabinet comprised of the Chair, Deputy and eight Commissioners.

AU Commission Departments

- The departments are Peace and Security; Political Affairs; Infrastructure and Energy; Social Affairs; Human Resources, Science and Technology; Trade and Industry; Rural Economy and Agriculture; Economic Affairs.
- There is also a Directorate of Women, Gender and Development.
- They are very well placed to put children's issues on the AU's agenda.

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

- Sits in the AU Commission in the Department for Social Affairs and is accountable to it.
- Reports to the Assembly through the Executive Council.

The Committee and principal AU Human Rights Mechanisms

African Court of Justice and Human Rights

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

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

- Mandate to monitor and report on the ACRWC.
- Meets twice a year.
- Has 11 Members on its Committee.
- Sits within the Department for Social Affairs in Ethiopia and is accountable to it.
- Does not have an independent budget.
- Reports to the Assembly through the Executive Council.
- As yet has no formal body of civil society organisations working with it.
- Members of the Committee have attended meetings at the African Commissions but scope for more systematic collaboration.
- Can send cases to the ACJHR.

African Commission on Human and Peoples' Rights

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

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

2.1 The African Commission on Human and Peoples' Rights

Introduction

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

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

- Examining reports that each member state has an obligation to deliver every other year 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 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 report and the decisions on individual communications that it contains only become public after it has been adopted by the Assembly.

State Party Reports

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

Communications

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

Special Rapporteurs

Currently there are Special Rapporteurs for women, human rights defenders, refugees and internally displaced persons, prisons and other places of detention, and freedom of expression. There is no Special Rapporteur for child rights, but complaints involving breaches of child rights may be addressed to the other rapporteurs as relevant. Of particular importance for children's rights is the rapporteur on women's rights who is in charge of implementing the Protocol to the ACHPR known as the 'Maputo Protocol'.

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

The 'Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (known as the Maputo Protocol) is a regional legal instrument which entered into force in November 2005. It is important for children particularly because it expressly mentions girls and provides enhanced protection on female genital mutilation, gender-based violence and early marriage. The monitoring of states' implementation of the Protocol is currently being done by the African Commission but will be the responsibility of the African Court once it is established.

Role of civil society organisations within the African Commission

Civil society organisations play a vital role in the workings of the African Commission. As of February 2009, the number of NGOs with Observer Status with the African Commission stood at 392. At its 44th Ordinary Session, a total of 497 participants attended including 275 African and international NGOs. Civil society organisations can submit civil society reports to give additional information about human rights in a country when the state reports to the Commission are presented. These civil society reports are presented to the Secretariat of the Commission which uses them in formulating questions for Commissioners to put to state delegates. Though access by civil society organisations to State Party reports has not been easy, the Commission is now putting state reports on its website prior to the Session to resolve this.

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

The NGO Forum at the African Commission on Human and Peoples' Rights

Ahead of each session of the African Commission, some of the participating NGOs meet in what is known as the NGO Forum. The NGO Forum has been organized since 2000 by the African Centre for Democracy and Human Rights Studies, a human rights organization based in Banjul, The Gambia. It normally takes place during the three days pre-ceding each ordinary session of the African Commission, in the place where the session is scheduled to take place, and often in the same venue. 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.

During the Forum, NGOs have the opportunity to discuss issues of concern to them, to propose resolutions and to co-operate with other NGOs in their preparation. These resolutions may then be adopted by the NGO Forum in plenary meetings. Commissioners often participate in some of the debates at the Forum. 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. The NGO Forum provides a key opportunity to exchange information among NGOs and develop or strengthen partnerships or networks. For further information on the NGO Forum, please contact the African Centre for Democracy and Human Rights Studies (see their website at www.acdhrs.org).

TIP

Civil society has not yet organised itself around the Committee in such a dynamic way as it has with the NGO Forum of the African Commission. Civil society engagement with the Committee would be strengthened and consolidated by establishing a similar advisory body.

Children's Rights and the African Commission on Human and Peoples' Rights

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

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

Cooperation between the African Commission and the Committee

If the Committee and the African Commission are to meet their potential as mechanisms for fulfilling children's rights then they must cooperate together. This process has begun but the momentum must be maintained.

TIP

Civil society organisations should advocate for more systematic collaboration between the Committee and the African Commission on issues concerning children's 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, for example, attending each others' sessions.
- The African Commission could carry out joint missions with Committee members in the implementation of the mandates of Special Rapporteurs and during promotional and investigative missions.
- Both bodies should share information on children's rights stemming from the consideration of State Party reports.

2.2 The African Court of Justice and Human Rights

In 2004 the AU Assembly agreed to merge two new courts: the African Court on Human and Peoples' Rights and the 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 Court will be based in Arusha, Tanzania and has 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 permitted to send cases to the African Court.

Who can bring a case to the Court?: States Parties, the African Commission, the Committee, African inter-governmental organisations and African National Human Rights Institutions may all bring cases to the Court. However, individuals and civil society organisations can only submit cases against states if the state concerned has made a declaration accepting the competence of the Court to do so. Furthermore if it is a civil society organisation bringing the case then they must have Observer Status before the African Commission or the Committee.

By bringing cases before the merged Court in the future, 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.

TIP

Civil society organisations must advocate with states to ratify the Protocol on the Statute of the African Court of Justice and Human Rights and urge them to make the necessary declaration allowing for individual petitions to the Court. Where possible they should support the Committee in bringing cases before the African Court.

Enforcement of judgements: Unlike the Committee and the African Commission, the African Court's decisions will be binding and enforceable and as such they can 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. There is potential for the African Court to reinforce the powers of the Committee by making their decisions legally binding and enforceable and by setting precedents on key issues concerning children's rights. 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: Since the main channel of cases to the African Court will in all likelihood be the African Commission and the Committee, establishing efficient models for collaboration between these bodies is essential if the African Court is to be effective. It is also necessary to find a way to overcome the inconvenience of the Commission, the Committee, and the African Court being established at different ends of the African continent.

3. The Committee and Key AU Institutions

3.1 Assembly of Heads of State and Government

The Assembly is the highest decision-making body of the AU and is comprised of Heads of State and Government of all AU member states. It usually meets twice a year in January and June/July for a Summit. 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.

Every year the Committee 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 any decisions made on communications. The election of members of the Committee is conducted by the Executive Council and their decision is then passed to the Assembly for adoption.

3.2 Executive Council

The Executive Council is comprised of foreign ministers and is responsible to the Assembly. It considers the activity report of the Committee prior to its adoption by the Assembly: this will include consideration of any investigative mission reports and/or judgement on communications. It also elects the members of the Committee at its meeting held just before the AU summit (again their decision ultimately has to be adopted by the Assembly).

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

TIP

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

3.3 Permanent Representatives' Committee

The Permanent Representatives' Committee (PRC) is composed of Ambassadors of Member States based in Addis Ababa. 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 its members play a critical role in bringing the AU agenda to their government's attention at home. The PRC is therefore an important and influential body for civil society working to influence their national governments through the AU and vice versa.

3.4 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. From 2003 to 2008, this was the former Malian President HE Alpha Oumar Konaré. Currently it is HE Jean Ping, the former Deputy Prime Minister and Foreign Minister of Gabon. The Office of the Chairperson is structured around a powerful and influential Cabinet comprised of

the Chair, Deputy and eight Commissioners. The Commissioners are in charge of individual portfolios dealing with different areas of policy and they manage the day-to-day tasks of the AU. Official appointments to the Commission are made in accordance with gender parity and regional balance.

Structure of the Office of the Chairperson of the Commission

Office of the Chairperson

- Women, Gender and Development Directorate
- Office of the Legal Counsel
- African Citizens Directorate (ECOSOCC)

Office of the Deputy Chairperson

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

Eight departments, each headed by a Commissioner:

- Peace and Security
- Political Affairs
- Infrastructure and Energy
- Social Affairs
- Human Resources, Science and Technology
- Trade and Industry
- Rural Economy and Agriculture
- Economic Affairs

The AU Commission and child rights

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

Responsibility for a diverse range of children's issues is spread amongst various other departments within the AU Commission although they often do not fully co-ordinate their work on children's issues.

Departments with responsibility for children's issues in the AU Commission

- Social Affairs – all child-related issues and the Committee sits within this department
- Human Resources, Science and Technology - education and youth
- Peace and Security - children associated with armed forces
- Political Affairs - human rights, democracy, good governance as well as refugees and internally displaced persons. The African Commission on Human and Peoples' Rights also sits within this department.
- Directorate of Women, Gender and Development - girl children.

TIP

In cooperation with the Committee, civil society organisations should lobby for better collaboration between the Committee and the various AU Commission Departments which have responsibility for children to ensure improved coherence in the AU's work with children.

Cooperation with the Committee

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

3.5 The Peace and Security Council

The Peace and Security Council (PSC) was established in 2004 and can intervene in conflicts to protect the security of the continent. It has fifteen member states, elected for two or three year terms, with equal voting rights. The PSC is also overseeing the establishment of a permanent African security force, the AU Standby Force.

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. It provides the Committee and civil society organisations with another avenue of advocacy to strengthen the protection of African children, especially those affected by war.

TIP

The Committee should be encouraged to work with the PSC on issues around the prevention of conflict, monitoring of the rights of children caught up in armed conflict, supervision of child reintegration processes and promotion of child rights within regional peace-building and post-conflict reconstruction processes. The PSC holds informal consultations with stakeholders and other groups which provide good opportunities for advocacy.

3.6 Economic, Social and Cultural Council

The Economic, Social and Cultural Council (ECOSOCC) is the main body linking civil society to the AU. It has a purely advisory role. This means it can make proposals and submit recommendations to the various AU bodies, with no certainty that the views of civil society will be taken into account in the final analysis. While ECOSOCC can play an important role, its advisory status limits it to research and public information about AU developments and its potential for advocacy on children's rights issues must be understood in these terms. It was launched in 2005 and the process of organising democratic elections of civil society representatives into the ECOSOCC Assembly is ongoing.

Each member of ECOSOCC has to work with a 'Sectoral Cluster Committee' which fits with its expertise. One of the explicit functions of the ECOSOCC is to 'contribute to the promotion of ...child rights.' Children's rights could feature in the Political Affairs Sectoral Cluster Committee which is in charge of human rights under the ECOSOCC Statute as well as under the Peace and Security and the Women and Gender Sectoral Cluster Committees. For more information on ECOSOCC see their website: <http://www.ecosocc.org/>

3.7 The Pan-African Parliament (PAP)

The Pan-African Parliament (PAP) was established in 2004 and is based in Midrand, South Africa. At present PAP is an advisory and consultative body but it will eventually have full legislative status and be comprised of members elected by the populations of their respective countries. 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 Gender, Family, Youth and People with Disability is particularly relevant for children's rights.

3.8 The Regional Economic Communities (RECs)

The 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. There is also scope for the Committee to be engaged with their social agendas which involve children.

Many of the RECs have courts or tribunals which have powers to hear and give binding decisions on cases brought by individuals and bodies such as companies and civil society organisations, against governments in Africa on a wide variety of issues including discrimination, citizenship, regulation of the movement of persons across international and regional boundaries in Africa, regional trade and transactions, and compliance with national and regional rule of law. 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 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 Commission for 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

3.9 New Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM)

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 socio-economic development. It also aims to promote economic partnerships among African countries and between African countries and the rest of the world. It reports to the AU Assembly through the NEPAD Heads of State Implementing Committee and has a Secretariat based in Midrand, South Africa.

The African Peer Review Mechanism (APRM) is a learning process to evaluate the effectiveness of economic, corporate and political governance in African countries on a voluntary, non-adversarial basis. NEPAD has taken a clear lead in this process. As of September 2008, 29 countries had formally joined the APRM. Ghana, Rwanda, Kenya, South Africa, Benin, Nigeria, Burkina Faso, Algeria, and Uganda have now been reviewed. The following countries are at an advanced stage and should be tabled for review in early 2009: Mozambique, Lesotho, Egypt, Gabon and Mauritius. The next five years are expected to see an even greater momentum in the review process.

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.

NEPAD and the APRM provide a significant entry point for advocacy on children's rights issues. 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 new African Youth Charter, provide standards to monitor these objectives. There is tremendous scope for civil society organisations and the Committee to engage with NEPAD and 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. For more information on these mechanisms please see the section on Sources of Further Information below.



Part

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SOURCES OF FURTHER INFORMATION

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Information about 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 are Annexed to this Guide and include:

Rules of Procedure (2003)

Guidelines for Initial Reports of States Parties (2003)

Procedures for the Consideration of State Party Reports (2005)

Guidelines for the Consideration of Communications (2006)

Guidelines for the Conducting of Investigations (2006)

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

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Information about the CRC and the 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 and Reporting Guidelines can be found at the Committee's website: <http://www2.ohchr.org/english/bodies/crc/index.htm>

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

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

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

Information about the African Union institutions

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

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

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

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Overview

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African Commission on Human and Peoples' Rights

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

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

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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

Case Law from the African Commission on Human and Peoples' Rights

Curtis Francis Doebbler v. Sudan - Communication 236/2000, 16th Annual Activity Report of the African Commission (2002 – 2003)

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African Court of Justice and Human Rights

Decision on the merger of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union

<http://www.interights.org/doc/AU%20Final%20Decision%20on%20the%20merger.doc>

Legal and Institutional Issues Arising from the Decision by the Assembly of Heads of State & Government of the African Union to Integrate the African Court on Human and Peoples' Rights and the Court of Justice of the African Union.

www.justiceinitiative.org/db/resource2/fs/?file_id=14964

About the African Court - Coalition for an Effective African Court on Human and Peoples Rights: http://www.africancourtcoalition.org/editorial.asp?page_id=16

NEPAD and the APRM

See the NEPAD website for background information on the organisation and for updates on APRM country reviews: <http://www.nepad.org/aprm/>

For more information see the website for AfriMAP, the African Governance Monitoring and Advocacy Project which has a wealth of information about the APRM process: <http://www.afrimap.org>

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

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

Further reading on conducting 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).'

Regional instruments and documents relevant for children

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

African Charter on Human and Peoples' Rights (1981)

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

African Youth Charter (2006)

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

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

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

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

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

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

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

Resolution on the International Year of the Child (1979)

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

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

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Resolution on the World Summit on Children (1990)

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Part

6

ANNEXE ONE – DATES OF SIGNATURE AND RATIFICATION AND DATES FOR THE SUBMISSION OF INITIAL REPORTS ON THE IMPLEMENTATION OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

S/N	Country	Date of Signature	Date of ratification/ accession	Due Date of Initial Reports	Due Date for 1st Periodic Reports
1	Algeria	21/05/1999	08/07/2003	08/07/2005	08/07/2008
2	Angola	-	11/04/1992	29/11/2001	29/11/2004
3	Benin	27/02/1992	17/04/1997	29/11/2001	29/11/2004
4	Botswana	10/07/2001	10/07/2001	10/07/2003	10/07/2006
5	Burkina Faso	27/02/1992	08/06/1992	29/11/2001	29/11/2004
6	Burundi	-	28/06/2004	28/06/2006	28/06/2009
7	Cameroon	16/09/1992	05/09/1997	29/11/2001	29/11/2004
8	Central African Republic	04/02/2003	-	-	-
9	Cape Verde	27/02/1992	20/07/1993	29/11/2001	29/11/2004
10	Chad	06/12/2004	30/03/2000	30/03/2002	30/03/2005
11	Côte d'Ivoire	27/02/2004	01/03/2002	18/06/2007	18/06/2010
12	Comoros	26/02/2004	18/03/2004	18/03/2006	18/03/2009
13	Congo Brazzaville	28/02/1992	08/09/2006	10/10/2006	10/10/2009
14	Djibouti	28/02/1992	-	-	-
15	Democratic Rep. of Congo	-	-	-	-
16	Egypt	30/06/1999	09/05/2001	09/05/2001	09/05/2004
17	Equatorial Guinea	-	20/12/2002	20/12/2004	20/12/2007

S/N	Country	Date of Signature	Date of ratification/ accession	Due Date of Initial Reports	Due Date for 1st Periodic Reports
18	Eritrea	-	22/12/1999	12/12/2001	12/12/2004
19	Ethiopia	-	02/10/2002	02/10/2004	02/10/2007
20	Gabon	27/02/1992	18/05/2007	18/05/2009	18/05/2012
21	Gambia	-	14/12/2000	14/12/2002	14/12/2005
22	Ghana	18/08/1997	10/06/2005	10/06/2007	10/06/2010
23	Guinea Bissau	08/03/2005	19/06/2008	19/06/2010	19/06/2013
24	Guinea	22/05/1998	27/05/1999	29/11/2001	29/11/2004
25	Kenya	-	25/07/2000	25/07/2002	25/07/2005
26	Libya	09/06/1998	23/09/2000	23/09/2002	23/09/2005
27	Lesotho	-	27/09/1999	29/11/2001	29/11/2004
28	Liberia	14/05/1992	15/07/2008	15/07/2010	15/07/2013
29	Madagascar	27/02/1992	30/03/2005	30/03/2007	30/03/2010
30	Mali	28/02/1996	03/06/1998	29/11/2001	29/11/2004
31	Malawi	13/07/1999	16/09/1999	29/11/2001	29/11/2004
32	Mozambique	-	15/07/1998	29/11/2001	29/11/2004
33	Mauritania	-	21/09/2005	21/09/2007	21/09/2010
34	Mauritius	07/11/1991	14/02/1992	29/11/2001	29/11/2004
35	Namibia	13/07/1999	23/07/2004	23/07/2006	23/07/2009

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

ANNEXE TWO – BIOGRAPHIES OF CURRENT COMMITTEE MEMBERS

1. Ms. Seynabou Ndiaye Diakhaté

(Senegal – Chairperson, Term of Office complete July 2010)

Ms. Seynabou Ndiaye Diakhaté is a member of the Court of Justice of the West African Economic and Monetary Union. Prior to this she was the Senior Investigation Magistrate at the Court of First Instance in Dakar, Senegal and the Public Prosecutor at the Court of First Instance in Thiès. She has also been the Deputy Public Prosecutor in charge of juvenile cases at the Court of First Instance in Dakar.

2. Ms. Koffi Appoh Marie Chantal

(Côte d'Ivoire – Deputy Chairperson, Term of Office complete July 2010)

Ms. Koffi Appoh Marie Chantal is currently the Deputy Director for Youth in the Ministry of Justice and Human Rights. She is a member of Côte d'Ivoire's Association of Women Lawyers as well as the International Association of Magistrates for Children and the Family.

3. Ms. Boipelo Lucia Seithamo

(Botswana – Rapporteur, Term of Office complete July 2010)

Ms. Boipelo L. Seithamo is a qualified social worker and has over 15 years of experience in the development and implementation of government and international policies and programmes for children in Botswana, as both a government and UN employee. She has lead national training programmes and offered technical support services to government and District-level personnel focusing on family, children, court work, child protection, HIV and orphans and vulnerable children programming.

4. Hon. Lady Justice Martha Koome

(Kenya, Term of Office complete July 2010)

Hon Lady Justice Martha Koome obtained her Bachelors Degree in Law from the University of Nairobi in 1986 and was admitted to the Bar in 1987. Prior to joining the judiciary arm she was in private practice and was also a renowned advocate for gender equality and the protection of women's rights. She served as the Chairperson of the Federation of Kenyan Women Lawyers (FIDA) and was in charge of policy formulation and maintaining liaison with other NGOs and donors. She was previously based in the family division of the High Court where she deals with probate and administration matters, divorce, maintenance and custody of children. She is currently a Judge of High Court of Kenya based in Nakuru, Kenya.

5. Ms. Mamosebi T. Pholo

(Lesotho, Term of Office complete July 2010)

Advocate Pholo holds a Bachelor of Laws (LLB), Bachelor of Arts in Law (BA Law), and Diploma in Law certificates. She is also qualified in Legislation and Policy Drafting, Gender and Development, Application of International Covenants in local legal system, Peace - building and Good Governance, Trainer of Trainers, Leadership and Management, Conflict Management, Projects Management, to mention but a few.

While serving at the Lesotho Water and Sewerage Authority as Director of Corporate Services and Legal Affairs, she drafted a number of policies relating to the organization's human resources and their welfare including a Workplace Policy on HIV and AIDS. She was also responsible for rolling out the said policy and development of the plan for its implementation. She has undertaken many challenging assignments such as the development of The Lesotho HIV and AIDS Bill (2007), the development of The Lesotho Human Rights Bill (2007).

6. Mr. Moussa Sissoko

(Mali, Term of Office complete July 2010)

Mr. Sissoko is a socio-economist who originally trained as a teacher in Senegal and holds a post-graduate degree in diplomatic studies from the Paris International Graduate School. He has worked for UNICEF, Terre des Hommes, USAID, Enda Tiers Monde and Mali-Enjeu. He is currently Chairman of Mali Enjeu, Chairman of the Coalition of African NGOs Working with Children, Regional Representative of the NGO Committee of Unicef for West and Central Africa, Expert for the UN Independent Commission for the 'Millennium Project for Africa' and an Expert Consultant for the Environment, Youth and Children.

7. Ms. Dawlat Ibrahim Hassan

(Egypt, Term of Office complete January 2011)

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

8. Mr. Cyprien Adébayo Yanclo

(Benin, Term of Office complete July 2013)

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

9. Ms. Agnès Kaboré

(Burkina Faso, Term of Office complete July 2013)

Ms. Kaboré is a socio-economist who has held a number of senior positions relating to children's issues within the Burkina Faso civil service. She is presently the Director for Child and Youth Protection in the Ministry for Social Action and National Solidarity. Furthermore, she has extensive civil society experience, having been e.g. Deputy Secretary General of the Burkina Faso Association for Family Well-Being and a member of the Board of the Red Cross in Burkina Faso since 2005. She has also worked with GTZ.

10. Mr. Andrianirainy Rasamoely

(Madagascar, Term of Office complete July 2013)

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

11. Ms. Maryam Uwais

(Nigeria, Term of Office complete July 2013)

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

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PART ONE: GENERAL RULES

I. SESSIONS

Rule 1: Meetings of the African Committee

The African Committee on the Rights and Welfare of the Child (hereinafter referred to as "the Committee") shall hold meetings as may be required for the effective performance of its functions in accordance with the African Charter on the Rights and Welfare of the Child (hereinafter referred to as "the Children's Charter").

Rule 2: Ordinary sessions

1. The Committee shall normally hold two ordinary sessions annually not exceeding two weeks.
2. Ordinary sessions of the Committee shall be convened on dates decided by the Chairperson of the Committee in consultation with the Chairperson of the Commission of the African Union (hereinafter referred to as the "Chairperson of the Commission"), taking into account the calendar of conferences approved by the policy organs of the AU.

Rule 3: Extraordinary sessions

1. Extraordinary sessions of the Committee shall be convened by the Chairperson, if the Committee so decides. When the Committee is not in session, the Chairperson may convene extraordinary sessions of the Committee in consultation with the Bureau. The Chairperson of the Committee shall also convene extraordinary sessions:
 - (a) At the written request of a simple majority of the members of the Committee;
 - (b) At the written request of a State party to the Children's Charter.
2. Extraordinary sessions shall be convened as soon as possible on a date fixed by the Chairperson, in consultation with the Chairperson of the Commission and with the Bureau of the Committee.

Rule 4: Place of sessions

Sessions of the Committee shall normally be held at the Headquarters of the African Union. The Committee may, in consultation with the Chairperson of the Commission, decide to hold a session in another place.

Rule 5: Notification of dates of sessions

1. The Secretary of the Committee, hereinafter called "the Secretary", shall, in consultation with the Chairperson of the Committee, notify the members of the Committee of the date and venue of each session. Such notification shall be sent, in the case of ordinary sessions, at least six weeks in advance and in the case of an extraordinary session, at least three weeks in advance of the session.

2. The Chairperson of the Commission shall have the right to be represented at meetings of the Committee and its subsidiary bodies and to participate without voting rights.

II. AGENDA

Rule 6: Provisional agenda for ordinary sessions

The provisional agenda for each ordinary session shall be prepared by the Secretary in consultation with the Chairperson of the Committee, in conformity with the relevant provisions of the Children's Charter, and shall include:

- (a) Any item decided upon by the Committee at a previous session;
- (b) Any item proposed by the Chairperson of the Committee;
- (c) Any item proposed by a member of the Committee;
- (d) Any item proposed by a State party to the Children's Charter;
- (e) Any item proposed by the Chairperson of the Commission relating to his/her functions under the Children's Charter or these rules;
- (f) Any item proposed by the Policy Organs of the AU.

Rule 7: Provisional agenda for extraordinary sessions

The provisional agenda for an extraordinary session of the Committee shall consist only of those items which were proposed for its consideration at the extraordinary session.

Rule 8: Adoption of the Agenda

The first item on the provisional agenda for any session shall be, after the election of the officers, the adoption of the Agenda of the session on the basis of the provisional Agenda referred to in Rule 6.

Rule 9: Revision of the Agenda

During an ordinary session, the Committee may revise the Agenda and may as appropriate, add, defer or delete items. Only urgent or important items may be added to the agenda.

Rule 10: Transmission of the provisional agenda and basic documents

The Secretary shall transmit basic documents relating to items appearing on its Provisional Agenda to the members of the Committee at least one month before the meeting takes place.

III. MEMBERS OF THE COMMITTEE

Rule 11: Composition of Committee

1. The Committee is composed of 11 independent members elected by the Assembly of the Union in conformity with Article 33 of the Children's Charter.
2. The position of a member of the Committee is incompatible with any activity that might interfere with the independence or impartiality of such a member or the demands of the office such as working in any intergovernmental organisation, UN Agencies, or a Cabinet Minister or Deputy Minister, member of parliament, Ambassador, or any other politically binding function.
3. In the event of a dispute as to whether an activity is incompatible with the functions of a Member, the Committee shall decide.

Rule 12: Term of office

The members of the Committee shall be elected and shall serve in conformity with Article 37 of the Children's Charter.

Rule 13: Beginning of term of office

The members of the Committee elected at the first election shall begin their term of office from the date of their election namely 10 July 2001. In the case of members elected at subsequent elections, their term of office shall begin on the day following the date of expiry of the term of office of the members whom they replace.

Rule 14: Filling of casual vacancies

1. The members of the Committee shall be present in person and participate effectively during the whole period of the meeting. In the case of legitimate absence they shall inform the Chairperson of the Committee two weeks before the session. In any case, they shall not be absent for two consecutive sessions. In both cases of absence or failure to fully participate in the work of the Committee, the Committee may decide to bring this matter, through its Chairperson, to the Chairperson of the Commission who shall then declare the post vacant and take immediate action for replacement.

2. If a member of the Committee dies or resigns or declares, for any other cause, that he/she can no longer perform his/her duties as member, the Chairperson of the Committee shall notify the Chairperson of the Commission who shall then declare vacant the seat of that member.

3. 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 the Chairperson of the Commission, who shall then declare vacant the seat of that member.

4. Pursuant to the provisions of Article 39 of the Children's Charter and paragraphs 1 and 2 of this rule, 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 his/her predecessor's term.

5. The name and the curriculum vitae of the expert so appointed shall be transmitted by the Chairperson of the Commission to the Assembly for approval. Upon approval by the Assembly, the Chairperson of the Commission, who shall notify the States parties to the Children's Charter of the name of the new member of the Committee filling a casual vacancy.

6. In the case of a vacancy arising from a member's death or proven disability or incompatibility, the Chairperson of the Commission and the Committee shall act in accordance with the provisions of Article 39 of the Children's Charter.

Rule 15: Oath of Office

Upon assuming his/her duties, each member of the Committee shall make the following oath of office in an open session of the Committee:

"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."

IV. OFFICERS

Rule 16: Elections

The Committee shall elect from among its members a Chairperson, three Vice-Chairpersons, a Rapporteur and a Deputy Rapporteur.

Rule 17: Term of office

The officers of the Committee shall be elected for a term of two years. They shall be eligible for re-election. None of them, however, may hold office if he/she ceases to be a member of the Committee.

Rule 18: Position of the Chairperson in relation to the Committee

The Chairperson shall perform the functions conferred upon him/her by the Children's Charter and by these Rules of Procedure. In exercising his/her functions, the Chairperson shall remain under the authority of the Committee.

Rule 19: Acting Chairperson

If the Chairperson is unable to be present at a meeting or any part thereof, the first Vice-Chairperson will act as Chairperson in his/her place.

Rule 20: Powers and duties of the Acting Chairperson

A Vice-Chairperson acting as Chairperson shall have the same powers and duties as the Chairperson.

Rule 21: Replacement of officers

If any of the officers of the Committee ceases, or declares his/her inability to continue serving as an officer of the Committee, a new officer shall be elected for the unexpired term of his/her predecessor.

V. SECRETARIAT

Rule 22: Duties of the Chairperson of the Commission

1. The secretariat of the Committee and of such subsidiary bodies, as may be established by it under Rule 62, shall be provided by the Chairperson of the Commission.
2. The Chairperson of the Commission shall appoint a Secretary for the Committee in conformity with Article 40 of the Children's Charter.
3. The Chairperson of the Commission shall provide the Committee with the necessary staff and facilities for the effective performance of its functions as assigned to it under the Children's Charter.

Rule 23: Duties of the Secretary

The Secretary of the Committee, appointed in terms of Article 40 of the Children's Charter, shall be responsible for the activities of the Secretariat under the general supervision of the Chairperson, and, particularly:

- (a) He/she shall assist the Committee and its members in the exercise of their functions;
- (b) He/she shall serve as an intermediary for all the communications concerning the Committee;
- (c) He/she shall be the custodian of the archives of the Committee.

Rule 24: Servicing of meetings

The Chairperson of the Commission shall be responsible for all the necessary arrangements for meetings of the Committee and its subsidiary bodies.

Rule 25: Keeping the members informed

The Chairperson of the Commission shall be responsible for keeping the members of the Committee informed of any questions which may be brought before it for consideration and/or any other developments that may be of relevance to the Committee.

Rule 26: Budget

The Budget of the Committee shall be provided by the AU. The Committee may accept donations to support its work.

Rule 27: Financial implications of proposals

Before any proposal which involves expenditures is approved by the Committee or by its subsidiary bodies, the Chairperson of the Commission shall prepare and circulate to Members States, as early as possible, an estimate of the cost involved in the proposal. It shall be the duty of the Chairperson to draw the attention of the members to this estimate and to invite discussion on it when the proposal is considered by the Committee or by a subsidiary body.

VI. LANGUAGES

Rule 28: Official and working languages

The official languages of the Committee shall be those of the African Union. The working languages of the Committee shall be English and French.

Rule 29: Interpretation from a working language

Statements made in any of the working languages shall be interpreted into the other working language.

Rule 30: Interpretation from a non-working language

Any person addressing the Committee in a language other than one of the working languages shall provide and bear the expenses of interpretation into one of the working languages. The interpreters of the Secretariat may take the interpretation of the original language as source language for their interpretation in the other working language.

Rule 31: Languages of decisions and official documents

All official decisions and documents of the Committee shall be made available in the working languages.

VII. PUBLIC AND PRIVATE MEETINGS

Rule 32: Public sessions

The sessions of the Committee and its subsidiary bodies shall be public, except for administrative and budgetary matters or where the Committee so

decides. At the end of each public session, the Chairperson of the Committee shall issue a Communiqué and organise a press conference with the media.

Rule 33: Closed sessions

At the beginning of each ordinary session the Committee shall convene a closed pre-session to be attended by only the members of the Committee and selected partners to prepare the next session. At the close of each private meeting, the Committee or its subsidiary bodies may issue a communiqué, through the Chairperson of the Commission, for the use of the media and the general public.

Rule 34: Participation in meetings

Representatives of the Regional Economic Communities (RECs), AU, Specialised Agencies, United Nations Organs, NGOs and CSOs shall be entitled to participate in the sessions of the Committee during the consideration of the implementation of such provisions of the Children's Charter which fall within the scope of their mandate, under modalities to be established for the purpose.

VIII. RECORDS

Rule 35: Summary records

1. Summary records of the meetings of the Committee shall be written in the working languages of the Committee. The Secretariat shall record and conserve the tapes of the sessions of the Committee. It may also record and conserve the tapes of the sessions of the working groups and sub-committees if the Committee so decides. The Secretariat of the Committee shall also ensure verbatim recording of the sessions of the Committee.

2. Summary records of the public and private meetings of the Committee shall be prepared by the Secretariat. All such participants may submit corrections to the Secretariat in the languages in which the records have been issued within a specified time of the receipt of such records. Corrections to the records of the meetings shall be consolidated in a single corrigendum to be issued at the end of the session concerned. Any disagreement concerning such corrections shall be decided upon by the Chairperson of the Committee or, in the case of continued disagreement, by decision of the Committee.

Rule 36: Distribution of summary records

1. The summary records of public meetings shall be documents for general distribution.
2. The summary records of private meetings shall be distributed to the members of the Committee and to other participants in the meetings. They may be made available to other interested parties upon decision of the Committee at such time and under such conditions as the Committee may decide.

IX. DISTRIBUTION OF REPORTS AND OTHER OFFICIAL DOCUMENTS OF THE COMMITTEE

Rule 37: Distribution of official documents

1. Without prejudice to the provisions of Rule 36 and subject to paragraphs 2 and 3 of this Rule, reports, decisions and all other official documents of the Committee and its subsidiary bodies shall be documents for general distribution, unless the Committee decides otherwise.
2. Reports and information provided to the Committee by the RECs, AU, Specialised Agencies, United Nations organs, NGOs and CSOs shall be distributed by the secretariat to all members of the Committee and, if so decided by the Committee, to members of its subsidiary bodies, States Parties concerned and other participants at the meetings. Such reports and information shall normally be made available to the Committee in the language in which they have been submitted, unless otherwise decided by the Committee.
3. Reports and additional information submitted by States Parties, pursuant to Article 43 of the Children's Charter and to Rules 65 and 68, shall be documents for general distribution.

X. CONDUCT OF BUSINESS

Rule 38: Quorum

In conformity with Article 38(3) of the Children's Charter, seven members of the Committee shall constitute a quorum.

Rule 39: Powers of the Chairperson

1. In addition to exercising the powers conferred upon the Chairperson by the Children's Charter and elsewhere by these Rules, the Chairperson shall declare the opening and closing of each meeting of the Committee, direct the discussions, ensure observance of these rules, accord the right to speak, put questions to the vote and announce decisions.

2. The Chairperson, subject to these Rules, shall have control of the proceedings of the Committee and over the maintenance of order at its meetings.

3. In the course of the discussion of an item, the Chairperson may propose to the Committee a limitation on the time to be allowed to speakers and on the number of times each person may speak on any question, and the closure of the list of speakers.

4. The Chairperson shall rule on points of order.

5. The Chairperson may also propose adjournment or closure of the debate or adjournment or suspension of a meeting. Debate shall be confined to the question before the Committee, and the Chairperson may call a speaker to order if his/her remarks are not relevant to the subject matter under discussion.

Rule 40: Points of order

During the discussion of any matter, a member may, at any time, raise a point of order, and such point of order shall immediately be decided upon by the Chairperson in accordance with these Rules of Procedure. Any appeal against the ruling of the Chairperson shall immediately be put to the vote, and the ruling of the Chairperson shall stand unless overruled by a simple majority of the members present. A member raising a point of order may not speak on the substance of the subject matter under discussion.

Rule 41: Time limitation

The Chairperson may limit the time allowed to each speaker on any question. When debate is limited and a speaker exceeds his/her allotted time, the Chairperson shall call him/her to order without delay.

Rule 42: List of speakers

During the course of a debate, the Chairperson may announce the list of speakers and, with the consent of the Committee, declare the list closed. The Chairperson may, however, accord the right of reply to any speaker if a speech delivered after he/she has declared the list closed makes this desirable. When the debate on an item is concluded because there are no other speakers, the Chairperson shall declare the debate closed.

Rule 43: Suspension or adjournment of meetings

During the discussion of any matter, a member may move for the suspension or adjournment of the meeting. No discussion on such motions shall be permitted, and they shall immediately be put to the vote.

Rule 44: Adjournment of debate

During the discussion of any matter, a member may move for the adjournment of the debate on the item under discussion. In addition to the person who proposed the motion, one member may speak in favour and one against the motion, after which the motion shall immediately be put to the vote.

Rule 45: Closure of debate

A member may, at any time, move for the closure of the debate on the item under discussion, whether or not any other member or representative had signified his or her wish to speak. Permission to speak on the closure of the debate shall be accorded only to two members opposing the closure, after which the motion shall immediately be put to the vote.

Rule 46: Order of motions

Subject to Rule 40, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

- (a) To suspend the meeting;
- (b) To adjourn the meeting;
- (c) To adjourn the debate on the item under discussion;
- (d) To close the debate on the item under discussion.

Rule 47: Submission of proposals

Unless otherwise decided by the Committee, substantive proposals, amendments and motions submitted by the members shall be introduced in writing and handed to the secretariat and their consideration shall, if so requested by any member, be deferred until the next session on the following day.

Rule 48: Decisions on competence

Subject to Rule 46, any motion by a member calling for a decision on the competence of the Committee to adopt a proposal submitted to it shall

immediately be put to the vote before a vote is taken on the proposal in question.

Rule 49: Withdrawal of motions

A motion may be withdrawn by the member who proposed it at any time before it is put to the vote, on condition that it has not been amended. A motion thus withdrawn may be reintroduced by any member.

Rule 50: Reconsideration of proposals

When a proposal has been adopted or rejected, it may not be reconsidered at the same session unless the Committee, by a two-thirds majority of its members present, so decides. Permission to speak on a motion to reconsider shall be accorded only to one member in favour of and one member in opposition to the motion, after which it shall immediately be put to the vote.

X. VOTING

Rule 51: Voting rights

Each member of the Committee shall have one vote.

Rule 52: Adoption of decisions

1. Decisions of the Committee shall be made by a two-thirds majority of the members present.
2. Decisions on procedural matters shall be made by simple majority.
3. In case of equality of votes, the Chairperson shall have a casting vote.

Rule 53: Method of voting

Unless otherwise decided by the Committee, and subject to Rules 14, 60 and 61, the Committee shall vote by a show of hands. Any member may request a roll-call, which shall be taken in the alphabetical order of the names of the members of the Committee, beginning with the member whose name is drawn by lot by the Chairperson.

Rule 54: Roll-call votes

The vote of each member participating in any roll-call shall be inserted in the record.

Rule 55: Conduct during voting and explanation of votes

After the voting has commenced, there shall be no interruption of the voting except on a point of order by a member in connection with the actual conduct of the voting.

Rule 56: Division of proposals

Parts of a proposal shall be voted upon separately if a member requests that the proposal be divided. Those parts of the proposal which have been approved shall then be put to the vote as a whole. If all of the operative parts of the proposal have been rejected, the proposal shall be considered to have been rejected as a whole.

Rule 57: Order of voting on amendments

1. When an amendment to a proposal is moved, the amendment shall be voted upon first. When two or more amendments to a proposal are moved, the Committee shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on, until all amendments have been put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon.

2. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

Rule 58: Order of voting on proposals

1. If two or more proposals relate to the same question, the Committee shall, unless it decides otherwise, vote upon the proposals in the order in which they have been submitted.

2. The Committee may, after each vote on a proposal, decide whether to vote upon the next proposal.

3. Any motions which do require any decision on the substance of such proposals shall, however, be considered as previous questions and shall be put to the vote before those proposals.

XII. ELECTIONS

Rule 59: Method of elections

In conformity with Article 38 of the Children's Charter, elections shall be held by secret ballot, unless the Committee decides otherwise, in the case of elections to fill a place for which there is only one candidate.

Rule 60: Conduct of elections when only one elective place is to be filled

1. When only one person or member is to be elected and no candidate in the first ballot obtains the two-thirds majority of all members, a second ballot shall be taken, which shall be restricted to the two candidates who obtained the greatest number of votes.

2. If the second ballot is inconclusive, a third ballot shall be taken on the basis of a simple majority in which votes may be cast for any eligible candidate. If the third ballot is inconclusive, the next ballot shall be restricted to the two candidates who obtained the greatest number of votes in the third ballot and so on, with unrestricted and restricted ballots alternating until a person or member is elected.

3. If the second ballot is inconclusive, the balloting shall be continued until one candidate secures the necessary simple majority.

Rule 61: Conduct of elections when two or more elective places are to be filled

When two or more elective positions are to be filled at one time, those candidates obtaining the two-thirds majority in the first ballot shall be elected. If the number of candidates obtaining such majority is less than the number of elective positions, there shall be additional ballots to fill the remaining positions on the basis of a simple majority.

XIII. SUBSIDIARY BODIES

Rule 62: Establishment of subsidiary bodies

1. The Committee may, in accordance with the provisions of the Children's Charter and subject to the provisions of Rule 27 of the present Rules whenever applicable, set up such subcommittees and other ad hoc working groups as it deems necessary and define their composition and mandates.

2. Each working group shall elect its own officers and the present Rules of Procedure shall apply *mutatis mutandis*.

XIV. REPORTS OF THE COMMITTEE

Rule 63: Reports to the Assembly of the Union

The Committee shall submit to the Assembly of the Union through the Executive Council, every year, its reports on the activities undertaken in the implementation of the Children's Charter and any other such reports as appropriate.

Rule 64: Other reports

The Committee, or its subsidiary bodies, may issue for general distribution other reports on its activities. The Committee may also issue reports for general distribution in order to highlight specific problems in the field of the rights and welfare of the child.

PART TWO. MANDATE AND PROCEDURE OF THE COMMITTEE

XV. REPORTS AND INFORMATION UNDER ARTICLES 42, 43, 44 AND 45 OF THE CHILDREN'S CHARTER

Rule 65: Submission of reports by States parties

1. Each State Party shall submit, through the Chairperson of the Commission, its initial and periodic reports, in conformity with Article 43 of the Children's Charter.
2. States Parties concerned shall submit their initial reports within two years of the entry into force of the Children's Charter for the State Party concerned and thereafter periodic reports every 3 years as well as complementary reports and information requested by the Committee during the period between the two reports.
3. The Committee shall indicate to States Parties, through the Chairperson of the Commission, the format of the reports and other related information to be communicated as contained in paragraphs 1 and 2 of this Rule.

Rule 66: Non-submission of reports

1. At each session, the Chairperson of the Commission shall inform the Committee of all cases of non-submission of reports or complementary information in conformity with Article 43 of the Children's Charter. In such cases, the Committee shall address to the State Party concerned, through the Chairperson of the Commission, a reminder regarding the submission of these

reports or complementary information and shall undertake any other measures in a spirit of dialogue between the State concerned and the Committee.

2. If, despite the reminder and other measures referred to in paragraph 1 above, the State Party does not submit the required report or complementary information, the Committee shall consider the situation as it deems necessary and shall include a reference to this effect in its report to the Assembly of Heads of State and Government.

Rule 67: Attendance by States parties at the examination of reports

The Committee, shall notify the States Parties, as early as possible, through the Chairperson of the Commission, of the opening date, duration and venue of the session at which their respective reports shall be examined. Representatives of the States Parties shall be invited to attend the Committee's session during which their reports shall be examined. The Representatives should be able to answer all questions that may be raised by the Committee and make declarations on reports already presented by their countries. They may also provide complementary information regarding their State.

Rule 68: Request for additional reports or information

If, in the opinion of the Committee, a report submitted by a State Party pursuant to Article 43 of the Children's Charter, does not contain sufficient information, the Committee may request that State to submit an additional report or information, indicating the time limit within which such additional report or information should be supplied.

Rule 69: Request for other reports or advice

1. The Committee may invite the RECs, the AU, Specialised Agencies, the United Nations organs, NGOs and CSOs, in conformity with Article 42 of the Children's Charter, to submit to it reports on the implementation of the Children's Charter and to provide it with expert advice in areas falling within the scope of their activities.

2. The Committee may indicate, as appropriate, the time limit within which such reports or advice should be submitted.

Rule 70: Specific provisions for reporting process

The Committee shall lay down appropriate guidelines in order to avoid repetition between the reports to it and the UN Committee on the Rights of the Child and in order to encourage governments to fulfil their obligations

towards both Committees while recognizing the specific nature of the specific provisions of the Children's Charter. The following shall be considered:

- a) If a State Party has already submitted an initial report to the UN Committee on the Rights of the Child, whether that report has been reviewed by the UN Committee or not, the State Party may be invited to update the information already submitted and add information on the provisions specific to the Children's Charter.
- b) If a State Party's initial report has been reviewed by the UN Committee on the Rights of the Child, the concluding observations and the recommendations may be considered by the Committee when preparing the list of issues for the governments and adopting its own concluding observations and recommendations.
- c) If a State Party has not yet submitted an initial report to the UN Committee on the Rights of the Child, the State Party shall be invited to prepare a complete report on all the provisions of the Children's Charter.
- d) For the review of a State Party's report, the Committee shall designate one of its experts as focal point.
- e) The establishment of modalities for cooperation between the Committee and the UN Committee on the Rights of the Child.

Rule 71: **Suggestions and general recommendations on a State Party's report**

1. After its exhaustive consideration of each report of a State Party, together with such reports, information or advice by partners, if any, received in conformity with Article 42 (iii) of the Children's Charter, the Committee shall make such suggestions and general recommendations on the implementation of the Children's Charter by the reporting State, as it may consider appropriate.

2. The Committee shall transmit, through the Chairperson of the Commission, suggestions and general recommendations it has decided upon to the State Party concerned for its comments. The Committee may, where necessary, indicate the time limit within which such comments from States Parties are to be received.

3. The Committee shall include in its reports to the Assembly of the Union suggestions and general recommendations together with comments, if any, received from States Parties.

Rule 72: Other general recommendations

1. The Committee shall make other general recommendations based on information received in conformity with Article 42 of the Children's Charter.

2. The Committee shall include such other general recommendations in its reports to the Assembly of the Union together with comments, if any, received from States Parties.

Rule 73: General comments on the Children's Charter

1. The Committee may prepare general comments on the basis of the Articles and provisions of the Children's Charter with a view to promoting its further implementation and assisting States Parties in fulfilling their reporting obligations.

2. The Committee shall include such general comments in its reports to the Assembly of the Union.

Rule 74: Communications and Investigations

1. The Committee shall develop guidelines relating to the admissibility and consideration of communications pursuant to the provisions of Article 44 of the Children's Charter.

2. The Committee shall develop guidelines relating to the conduct of investigations pursuant to the provisions of Article 45 of the Children's Charter.

Rule 75: Transmission of States Parties' reports that contain a request or indicate a need for technical advice or assistance

1. The Committee shall transmit, as it may consider appropriate, to the RECs, Specialized Agencies, United Nations organs, NGOs, CSOs and other competent bodies, reports and information received from States Parties that contain a request or indicate a need for technical advice or assistance.

2. In accordance with paragraph 1 above, the Committee shall transmit reports and information received from States Parties along with observations and suggestions from the Committee, if any, on these requests or indications

3. The Committee may request, when it considers it appropriate to do so, information on the technical advice or assistance provided and the progress achieved.

XVI. GENERAL DISCUSSION

Rule 76: General discussion

In order to enhance a deeper understanding of the content and implications of the Children's Charter, the Committee may devote one or more meetings of its regular sessions to a general discussion on one specific Article of the Children's Charter or related subject.

XVII. REQUESTS FOR STUDIES

Rule 77: Studies

1. In conformity with Article 42, of the Children's Charter, the Committee may recommend to the Assembly of the Union to request the Chairperson of the Commission to undertake, on its behalf, studies on specific issues relating to the rights and welfare of the child.

2. The Committee may also invite partners and other bodies to undertake studies or to submit available studies on topics of relevance to the Committee.

PART THREE. NON-MEMBERS OF THE COMMITTEE AND CIVIL SOCIETY

XVIII. PARTICIPATION OF NON-MEMBERS OF THE COMMITTEE

Rule 78: Participation and Consultations with AU Specialized Institutions

1. Pursuant to the agreements concluded between the African Union and the Specialized Institutions, the latter shall have the right to:

- (a) Be represented in the public sessions of the Committee and of its subsidiary bodies;
- (b) Participate, without voting rights, through their representatives in deliberations on issues which shall be of interest to them and to submit, on these issues, proposals which may be put to vote at the request of any member of the Committee or the interested subsidiary body.

2. Before placing in the provisional agenda an issue submitted by a Specialized Institution, the Chairperson of the Commission shall initiate such preliminary consultations as may be necessary, with the Committee.
3. When an issue proposed for inclusion in the provisional agenda of a session, contains a proposal requesting the AU to undertake additional activities relating to issues concerning directly one or several specialized institutions, the Chairperson of the Commission may consult with the institutions concerned and inform the Committee of the ways and means of ensuring coordinated utilization of available resources in order to avoid duplication.
4. When at a meeting of the Committee, a proposal calling upon the AU to undertake additional activities relating to issues directly concerning one or several specialized institutions, the Chairperson of the Commission, after consulting as far as possible, the representatives of the interested institutions, shall draw the attention of the Committee to the effects of that proposal.
5. Before taking a decision on the proposals mentioned above, the Committee shall make sure that the institutions concerned have been duly consulted.

Rule 79: Participation of other African Inter-governmental Organizations

Representatives of Inter-governmental Organizations may participate, without voting rights, in the deliberations of the Committee on issues falling within the framework of the activities of these organizations.

Rule 80: Participation of UN Agencies and other International Organizations

Representatives of the United Nations Agencies and other international organizations may participate, without voting rights, in the public sessions of the Committee on issues falling within the framework of their activities.

XIX. CONSULTATIONS WITH CIVIL SOCIETY ORGANIZATIONS AND REPRESENTATION OF THESE ORGANIZATIONS

Rule 81: Representation

Civil society organizations may apply to the Committee to participate as observers in the public sessions of the Committee and of its subsidiary bodies. The NGOs and CSOS on the list as established by the Committee may send observers to these sessions where issues falling within their area of activity are being considered.

Rule 82: Consultation

1. The Committee may consult non-governmental organizations either directly or through one or several committees set up for this purpose. Such consultations may be held at the invitation of the Committee or at the request of the NGOs.

2. Upon recommendation of the Chairperson of the Commission and at the request of the Committee, organizations on the list referred to in Rule 80 may also be heard by the Committee.

XX. INTERPRETATION AND AMENDMENTS

Rule 83: Headings

For the purpose of the interpretation of these rules, the headings are for reference purposes only and do not form part of the Rules.

Rule 84: Amendments

These Rules of Procedure may be amended by a decision of the Committee in conformity with the relevant provisions of the Children's Charter.

**ANNEXE FOUR – GUIDELINES FOR INITIAL REPORTS OF STATES PARTIES
(2003)**

**GUIDELINES FOR INITIAL REPORTS OF STATES PARTIES
(PREPARED BY THE AFRICAN COMMITTEE OF EXPERTS ON
THE RIGHTS AND WELFARE OF THE CHILD PURSUANT TO
THE PROVISION OF ARTICLE 43 OF THE AFRICAN CHARTER
ON THE RIGHTS AND WELFARE OF THE CHILD)**

I. INTRODUCTION

1. Article 43, paragraph 1, of the African Charter on the Rights and Welfare of the Child (Children's Charter) states that:

“Every State Party to the present Charter shall undertake to submit to the Committee through the Secretary-General of the Organization of African Unity, reports on the measures they have adopted which give effect to the provisions of this Charter and on the progress made in the enjoyment of these rights.

 - (a) within two years of the entry into force of the Charter for the State Party concerned; and
 - (b) thereafter, every three years.
2. Article 43, paragraph 2, further states that:

“Every report made under this Article shall:

 - (a) contain sufficient information on the implementation of the present Charter to provide the Committee with comprehensive understanding of the implementation of the Charter in the relevant country; and
 - (b) shall indicate factors and difficulties, if any, affecting the fulfilment of the obligations contained in the Charter.
3. The African Committee of Experts on the Rights and Welfare of the Child (the Committee) believes that the process of preparing a report for submission to the Committee offers an important occasion for conducting a comprehensive review of the various measures undertaken

to harmonize national law and policy with the Children's Charter and to monitor progress made in the enjoyment of the rights set forth in the Children's Charter. Additionally, the process should be one that encourages and facilitates popular participation, national introspection and public scrutiny of government policies and programmes, private sector practices and generally the practices of all sectors of society towards children.

4. The Committee further considers that the reporting process entails an ongoing reaffirmation by States Parties of their commitment to respect and ensure observance of the rights set forth in the Children's Charter and serves as the essential vehicle for the establishment of a meaningful dialogue between the States Parties and the Committee.
5. The Committee intends to formulate guidelines for the preparation of periodic reports that are to be submitted pursuant to Article 43 of the Children's Charter in due course.
6. Reports should be accompanied by copies of the principal legislative and other texts as well as detailed statistical information and indicators referred to therein, which will be made available to members of the Committee. It should be noted, however, that for reasons of economy they will not be translated or reproduced for general distribution. It is desirable, therefore, that when a text is not actually quoted in or annexed to the report itself, the report should contain sufficient information to be understood without reference to those texts.
7. The provisions of the Children's Charter have been grouped under different sections, equal importance being attached to all the rights and welfare recognized by the Children's Charter.

II. GENERAL MEASURES OF IMPLEMENTATION

8. Under this section, States Parties are requested to provide relevant information pursuant to Article 1 of the Children's Charter, including information on:
 - a) necessary steps undertaken, in accordance with their Constitutional processes and with the provisions of the Children's Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of the Children's Charter.
 - b) measures taken to realize the rights and welfare of the child in the law of the State Party or in any other international convention or agreement in force in that State.

- c) measures taken to promote positive cultural values and traditions and to discourage those that are inconsistent with the rights, duties and obligations contained in the Children's Charter.
 - d) existing or planned mechanisms at the national or local level for coordinating policies relating to children and for monitoring the implementation of the Children's Charter.
9. In addition, States are requested to describe the measures that have been taken or are foreseen to:
- a) make the principles and provisions of the Children's Charter widely known to adults and children alike;
 - b) widely disseminate their reports to the public at large in their own countries.

III. DEFINITION OF THE CHILD

10. States Parties are requested to provide information, in conformity with Article 2 of the Children's Charter, regarding the definition of a child under their laws and regulations.

IV. GENERAL PRINCIPLES

11. Relevant information, including the principal legislative, judicial, administrative or other measures in force or foreseen; factors and difficulties encountered and progress achieved in implementing the provisions of the Children's Charter, and implementation priorities and specific goals for the future should be provided in respect of:
- a) Non-discrimination (Articles 3 and 26)
 - b) Best interests of the child (Article 4)
 - c) The right to life, survival and development (Article 5)
 - d) Respect for the views of the child (Article 7)
 - e) Provision of information to children and promotion of their participation (Articles 4, 7 and 12)
12. In addition, States Parties are encouraged to provide relevant information on the application of these principles in the implementation of articles listed elsewhere in these guidelines.

V. CIVIL RIGHTS AND FREEDOMS

13. Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Children's Charter and implementation priorities and specific goals for the future in respect of:

- a) Name, nationality, identity and Registration at birth (Article 6)
- b) Freedom of expression (Article 7)
- c) Freedom of thought, conscience and religion (Article 9)
- d) Freedom of association and of peaceful Assembly (Article 8)
- e) Protection of privacy (Article 10)
- f) Protection against child abuse and torture (Article 16)

VI. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

14. Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force, particularly how the principles of the "best interests of the child" and "respect for the views of the child" are reflected therein: factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Children's Charter and implementation priorities and specific goals for the future in respect of:

- a) Parental guidance (Article 20)
- b) Parental responsibilities (Article 20.1)
- c) Separation from parents, separation caused by State Party, separation caused by internal displacement arising from armed conflicts, civil strifes, or natural disasters (Articles 19.2&3 and 25)
- d) Family reunification and children deprived of a family environment (Article 25.2(b))
- e) Maintenance of the child (Article 18.3)
- f) Adoption and periodic review of placement (Article 24)
- g) Abuse, neglect, exploitation including physical and psychological recovery and social integration (Articles 16 and 27)

15. In addition, States Parties are requested to provide information on the numbers of children per year within the reporting period in each of the following groups, desegregated by age group, sex, ethnic or national background and rural or urban environment: homeless children, abused or neglected children taken into protective custody, children placed in foster care, children placed in institutional care, children placed through domestic adoption, children entering the country through inter-country adoption procedures and children leaving the country through inter-country adoption procedures.
16. States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section.

VII. HEALTH AND WELFARE

17. Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures particularly programmes and projects, etc.; the institutional infrastructure for implementing policy in this area, particularly monitoring strategies and mechanisms; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Children's Charter, in respect of:
 - a) Survival and development (Article 5)
 - b) Children with handicap (Article 13)
 - c) Health and health services (Article 14)
 - d) Social security and child-care services and facilities (Article 20.2(a-c))
 - e) Care for orphans (Article 26)
18. In addition to information provided under paragraph 8(d) of these guidelines, States Parties are requested to specify the nature and extent of cooperation with local, national, regional and international organisations, concerning the implementation of this area of the Children's Charter. States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section

VIII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

19. Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures such as projects, programmes etc.; the institutional infrastructure for implementing policy in this area, particularly

monitoring strategies and mechanisms; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Children's Charter, in respect of:

- a) Education, including vocational training and guidance (Article 11)
 - b) Leisure, recreation and cultural activities (Article 12)
20. In addition to information provided under paragraph 8(d) of these guidelines, States Parties are requested to specify the nature and extent of cooperation with local, national, regional and international organisations, concerning the implementation of this area of the Children's Charter. States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section.

IX. SPECIAL PROTECTION MEASURES

21. Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures such as projects, programmes etc.; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Children's Charter and implementation priorities and specific goals for the future in respect of:
- a) Children in situations of emergency:
 - (i) Refugee, returnee and displaced children (Articles 23 & 25)
 - (ii) Children in armed conflicts, including specific measures for child protection and care (Article 22)
 - b) Children in conflict with the law:
 - (i) The administration of juvenile justice (Article 17)
 - (ii) Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial setting and compliance with the provisions of Article 5(3) of the Children's Charter prohibiting death sentences on children (Article 17.2(a))
 - (iii) Reformation, family reintegration and social rehabilitation (Article 17.3)

- c) Children of imprisoned mothers:
 - (i) Special treatment to expectant mothers and to mothers of infants and young children who have been found guilty by law (Article 30)
 - (ii) A mother shall not be imprisoned with her child (Article 30(d))
 - (iii) Reformation, integration of the mother into the family and social rehabilitation (Article 30(f))
 - d) Children in situations of exploitation and abuse:
 - (i) Economic exploitation including Child Labour (Article 15)
 - (ii) Drug abuse (Article 28)
 - (iii) Abuse and torture (Article 16)
 - (iv) Sexual exploitation and sexual abuse (Article 27)
 - (v) Other forms of abuse and exploitation such as begging, early pregnancy, etc. (Article 29(b))
 - (vi) Sale, trafficking and abduction (Article 29)
 - e) Children victims of harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child:
 - (i) Betrothal of girls and boys (Article 21.2)
 - (ii) Early and forced marriage (Article 21.2)
 - (iii) Any form of female genital mutilation (Article 21.1(a))
 - (iv) Any other form of harmful social and cultural practices (Article 21.I(b))
 - f) Children belonging to a minority groups (Article 26)
 - g) Children who need special protection on account of being in risky or vulnerable conditions and situations such as street children or HIV/AIDS orphans (Article 26)
 - h) Any other emerging or unforeseen problem (Article 26)
22. Additionally, States Parties are encouraged to provide specific statistical information and indicators relevant to the children covered by paragraph 21.

X. RESPONSIBILITIES OF THE CHILD

23. Under this section, States Parties are requested to provide relevant information, including the principal practices, legislative, judicial, administrative and other specific measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of Article 31 of the Children's Charter. The Child's duty:
- a) towards the parents, the family and the community; (Article 31)
 - b) towards the superiors; (Article 31)
 - c) towards the State and the Continent. (Article 31)

XI. SPECIFIC PROVISIONS FOR THE REPORTING PROCESS

24. A State Party that has already submitted to the UN Committee on the Rights of the Child a report based on the provisions of the CRC may use elements of that report for the report that it submits to the Committee as required by the Children's Charter. The report shall, in particular, highlight the areas of rights that are specific to the Children's Charter.
25. The report must specify the action taken by the State Party in response to any recommendations made to it by the Committee and/or the UN Committee on the Rights of the Child.

XII. AMENDMENTS

26. These guidelines may be amended by the Committee from time to time.

ANNEXE FIVE – PROCEDURES FOR THE CONSIDERATION OF STATE PARTY REPORTS (2005)

AFRICAN UNION

الاتحاد الأفريقي



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**7th MEETING OF THE AFRICAN COMMITTEE
OF EXPERTS ON THE RIGHTS AND WELFARE
OF THE CHILD
19-21 DECEMBER, 2005
ADDIS ABABA, ETHIOPIA**

**PROCEDURES FOR THE CONSIDERATION
OF STATE PARTY REPORTS**

PROCEDURES FOR THE CONSIDERATION OF STATE PARTY REPORTS

I. INTRODUCTION

1. The African Committee of Experts on the Rights and Welfare of the Child (the Committee) was established in July 2001 pursuant to articles 32-45 of the African Charter on the Rights and Welfare of the Child (the Charter). One of the major roles of the Committee is to monitor the implementation and ensure the protection of the rights enshrined in the Charter. To this end, Article 43 of the Charter provides that State Parties to the Charter shall submit reports to the Committee on measures that they have adopted to give effect to the provisions of the Charter.
2. In accordance with article 38 of the Charter, the Committee shall establish its Rules of Procedure which under articles 42,43,44 and 45 of the Charter shall, among other things, define the mandate and procedure of the Committee in considering reports and information. The Committee has adopted detailed guidelines to assist State Parties in the preparation of their initial reports. Thus, the provisions of the Charter and the Rules of Procedure of the Committee, particularly Rules 65 to 81, constitute the basis of these procedures.
3. The purpose of these procedures is to outline in a systematic way the process for the submission of reports by State Parties and the consideration of these reports by the Committee.

II. PROCEDURE FOR SUBMISSION OF REPORTS

- a) **Obligations of State Parties in the Preparation of the Reports and Procedure to Follow**
4. Under Article 43 of the Charter, State Parties undertake to submit to the Committee, through the Chairperson of the Commission of the African Union, reports on measures that they have adopted to implement the Charter, as well as progress made in the exercise of these rights:
 - i) Within two (2) years of entry into force of the Charter for the State party concerned; and
 - ii) Thereafter every three (3) years.
5. Reports submitted by State Parties are the bases for the Committee's evaluation of the degree to which the Charter is being implemented. The preparation of the report shall comply to the following objectives:

- Inform the Committee of the administrative, judicial and other measures that the Government has taken to implement the Charter. In this regard the Report shall:

- i) Contain sufficient information on the implementation of the Charter
- ii) Indicate factors and difficulties, if any, affecting the fulfilment of the obligations contained in the charter.

b) Reporting Schedules and Reminders

- 6. The Commission of the African Union (the Commission) shall prepare and maintain an up-to-date schedule indicating to all State Parties to the Charter, the status of their reporting to the Committee and the scheduled dates when their initial or periodic reports are due.
- 7. This schedule shall be presented at each session of the Committee. Based on this schedule, the Committee shall, through the Chairperson of the Commission, periodically (every 6 months) send reminders to each of the State Party concerned whose report is due.

c) Receipt, Nomination of a Rapporteur for the State Party, Notification and Forwarding of State Party Reports

- 8. Upon receipt of a report from a State Party, the Commission shall write to the State Party concerned acknowledging receipt of its report. The Committee shall nominate one of its Members as Rapporteur for the State Party. The main tasks of the Rapporteur shall be to: analyse the report and supplementary information received from the State Party or other partners; establish a list of issues to be considered; draft the final observations or conclusions. The Commission shall forward the report to the Chairperson of the Committee as well as to the Rapporteur of the State Party concerned, within a month following the receipt of the report. All Committee Members shall receive notification regarding all reports submitted by State Parties to the Commission.

III. SCHEDULING OF CONSIDERATION OF STATE PARTY REPORTS

a) Order of Consideration of Reports

- 9. A schedule for consideration of State Party reports shall be prepared based on the chronological order of submission of the reports by the State Parties. However in circumstances where both initial and periodic reports are submitted by different Member States and are pending consideration, priority shall be given to initial reports.

b) Notification to State Parties

10. The Committee shall, during its ordinary sessions, and based on the reports submitted, determine the dates for the consideration of the reports. The Committee shall, through the Chairperson of the AU Commission, notify the State Parties (at least two (2) months in advance) of the date, duration and venue of the session during which their respective reports shall be examined.
11. The State Party whose report is to be examined shall be invited, through its diplomatic representation, to present its report to the Committee.
12. For the purposes of having a constructive dialogue, the Committee shall exhort State Parties to designate Senior Officials, with decision-making powers on the issues of children's rights, to participate in the work of the Committee.

IV. PUBLICITY OF STATE PARTY REPORTS (Access to State Party reports)

13. Reports submitted by State Parties shall be treated as public documents. State Parties are strongly encouraged to adopt a participatory approach to the preparation of the reports and to publicize their reports to all relevant actors at national level. The Committee shall, as and when requested avail the State Party reports to the RECS, Relevant AU and UN Specialized Agencies as well as relevant NGOs and Civil Society Organizations.

V. CONSIDERATION OF STATE PARTY REPORTS

a) Pre-Sessional Working Group

14. Prior to the session during which a State Party's report is to be considered, a pre-sessional working group will be convened to review the State Party report and identify issues for discussion with the State Party concerned as well as any additional information that may be necessary for a comprehensive consideration of the report.
15. The composition of the pre-sessional working group shall be determined by the Committee and participation in the pre-sessional working group shall be on invitation by the Committee. The Committee may also invite to the pre-sessional working group representatives of RECs, AU specialized Agencies, the United Nations Organs, NGOs and, Human Rights Institutions, CSOs as well as individuals, experts and professionals that have either submitted supplementary reports to the Committee or that the Committee finds relevant. The meetings of the pre-sessional working group shall be informal, confidential and closed.

16. In conformity with Rules 68 and 69 of the Rules of Procedure, at the end of the pre-session working group meeting, a "list of issues" that the Committee considers as priorities for discussion with the State Party will be produced and forwarded to the State Party concerned before the session in which its report is to be considered. In order to facilitate efficiency during the meeting with the State Party, the Committee will request State Parties to submit written responses to the list of issues in advance.
17. In addition, pursuant to Rule 68 of its Rules of Procedure, the Committee may request for additional report and/or updated information prior to the session in which the State Party's report is to be considered, if in its opinion, a report submitted by that State Party does not contain sufficient information.
18. The Committee shall determine the date by which the written responses or the additional information by State Parties should be submitted so as to enable enough time for their translation into the working languages of the Committee/AU. The pre-session Working Group shall meet soon after a meeting of the Committee to prepare its next session.

b) Information from other Sources

19. In accordance with Rule 69 of its Rules of Procedure, the Committee may also invite RECS, relevant AU and UN Specialized Agencies as well as relevant NGOs and Civil Society Organizations to submit reports on the implementation of the Charter and to provide it with technical advice in areas falling within the scope of their activities, in so far as such reports will provide the Committee with a comprehensive understanding of the implementation of the Charter in the State Party concerned. The Committee shall provide specific guidelines for the preparation and submission of such reports.

c) Follow up of recommendations of the U.N Committee on the Rights of the Child.

20. If a State Party has already submitted its initial or periodic report to the U.N Committee on the Rights of the Child (UN Committee), and if the UN Committee has considered the report, the African Committee of Experts on the Rights and Welfare of the Child may consider the concluding observations and recommendations of the UN Committee when preparing the list of issues for discussion with the State Party.

VI. CONSIDERATION OF REPORTS AND REPRESENTATION OF STATE PARTIES

a) Number of Reports per Session

21. Initial and periodic reports of State Parties shall be examined by the Committee during ordinary or extraordinary sessions in accordance with the Rules of Procedure.

b) Representation of State Parties

22. Invitations to take part in the work of the Committee shall be sent by the AU Commission to the State Parties by diplomatic channels.

c) Non-Representation of State Parties

23. In the event that a State Party report is to be considered and an invitation has been sent to the State Party concerned to attend the session and there is no representative of that State to present the report at the meeting, in spite of two (2) notifications to that State to that effect, the Committee shall proceed to consider the report and forward its comments to the State concerned through the Chairperson of the AU Commission. The Committee shall include a reference on the non-representation of the State Party concerned, in its report to the Assembly of Heads of State and Government.

d) Public examination of State Party reports

24. The State Party reports will be discussed in open and public meetings of the Committee. During these meetings only the State Party representatives and Committee Members shall take the floor. Other relevant AU and UN Agencies and Institutions will be represented. The media, representatives of Non-Governmental Organizations and Human Rights Institutions, professionals as well as other interested individuals may attend.

e) Nature of Engagement with State Party Delegations

25. With a factual and clear report presented in writing well in advance by the State Party concerned, the interaction with the State Party delegation will take the form of a dialogue on the implementation of the Charter, with particular focus on:
 - i) The progress achieved in the implementation of the Charter;
 - ii) The difficulties encountered;
 - iii) The current priorities;
 - iv) The future goals;

- v) The need for technical assistance (if any);
 - vi) The procedure for elaborating the report of the State Party.
26. The head of the State Party delegation will be given 15 minutes to make an introductory statement. This will be followed by the presentation of an overview of the state of Child Rights in the State Party by the Rapporteur for that State. Thereafter, the Chairperson of the Committee will invite the Committee members to ask questions or make comments on the various clusters of rights as outlined in the reporting guidelines. The discussion will proceed in an interactive manner. At the end of the discussions the Rapporteur for that State will summarize his/her observations on the report and make suggestions and recommendations. Lastly, the State Party delegation will be invited to make a concluding statement.

VII. OBSERVATIONS, SUGGESTIONS, AND RECOMMENDATIONS

27. After the discussion with the State Party, the Committee will, in a closed session, prepare written observations, suggestions and recommendations, which will, inter alia, highlight the following:
- i) Progress achieved;
 - ii) Goals and difficulties;;
 - iii) Major issues of concern;
 - iv) Suggestions and recommendations;
28. The observations, suggestions and recommendations of the Committee shall be transmitted, through the Chairperson of the Commission, to the state party concerned for its comments. The Committee will indicate the time limit within which such comments from State Parties should be submitted.
29. The Committee shall include in its reports to the AU Assembly of Heads of State and Government its observations, suggestions and recommendations to the State Parties together with the comments received from the State Parties.

VIII. FOLLOW- UP OF REPORTS

a) Request for Technical Assistance

30. If a State Party, as part of its report, requests for technical advice or assistance, the Committee shall, after due consideration, transmit such request to the RECS, Specialized AU and UN Agencies and organs, NGOs, CSOs or any other competent body as it may deem fit.

31. The final suggestions and recommendations of the Committee will underpin the subsequent periodic report of the State Party concerned.

b) Field Visit

32. In the exercise of its functions, the Committee shall endeavour to encourage the promotion of the Charter and the respect of its provisions. Field visits and informal meetings shall be organized each year in one region of the continent. The purpose of these field visits shall be:
- To have first hand understanding of the situation of children in the State Party concerned;
 - Make contacts with the authorities and technical services to exchange information on proposals made on the implementation of the Charter;
 - Encourage national and international cooperation;
 - Follow-up on the recommendations of the Committee;
 - Give advice and useful suggestions where needed. These visits can be scheduled either before the examination of the report by the Committee or after.

IX. PROCEDURE IN RELATION TO OVERDUE REPORTS

33. If after two reminders a State party fails to submit its report as provided for under article 43 of the Charter, the Committee shall through the Office of Chairperson of the Commission send a final reminder to the State Party concerned indicating its intention to consider the situation of Children's Rights in the State Party in the absence of the State Party report. If no response is received within a timeframe determined by the Committee, the Committee shall consider the situation, as it deems necessary and shall include a reference to this effect in its report to the Assembly of Heads of State.

**ANNEXE SIX – GUIDELINES FOR THE CONSIDERATION OF COMMUNICATIONS
(2006)**

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**GUIDELINES FOR THE CONSIDERATION OF COMMUNICATIONS PROVIDED
FOR IN ARTICLE 44 OF THE AFRICAN CHARTER ON THE RIGHTS AND
WELFARE OF THE CHILD**

**GUIDELINES FOR THE CONSIDERATION OF COMMUNICATIONS PROVIDED
FOR IN ARTICLE 44 OF THE AFRICAN CHARTER ON THE RIGHTS AND
WELFARE OF THE CHILD**

I. INTRODUCTION

1. Article 44 of the African Charter on the Rights and Welfare of the Child stipulates “the Committee shall be empowered to receive communications on any issue dealt with by this Charter from any individual, group or non-governmental organization recognized by the Organization of African Unity, by a Member State or by the United Nations.
2. Any communication to the Committee shall indicate the names and address of the author and shall be treated as “confidential”.
3. The Committee considers that the directives should be elaborated for effective application of these provisions in accordance with Article 74 of the Rules of Procedure of the Committee.

CHAPTER I: GENERAL PROVISIONS

Article 1: Definition of Communications

1. Under Article 44 of the African Charter on the Rights and Welfare of the Child, any correspondence or any complaint from a State, individual or NGO denouncing acts that are prejudicial to a right or rights of the child shall be considered as communication.

Article 2: Recording of Communications

1. Communications shall be recorded by the Committee's Secretariat.
2. For that purpose, the Committee shall keep a register.

Article 3: Summary and Circulation of Communications

1. The Committee Secretary shall make a summary of all the Communications, depending on their subject. At each session, he/she shall circulate these summaries to Committee members.
2. An original file shall be kept for each Communication Summary. The complete text of any Communication brought to the attention of the Committee shall be made available to all members.

CHAPTER 2: CONSIDERATION OF COMMUNICATIONS

Article 1: Conditions of Admissibility of Communications

I. Authors of Communications.

1. Communications may be presented by individuals, including, the victimized child and/or his parents or legal representatives, witnesses, a group of individuals or non-governmental organizations recognized by the African Union, by a Member State or by any other institution of the United Nations system.
2. The Author of the Communication shall specify either to have been a victim of violations of the rights spelt out in the Charter, or to act on behalf of a victim or of other eligible parties.
3. A Communication may be presented on behalf of a victim without his/her agreement on condition that the author is able to prove that his/her action is taken in the supreme interest of the child. The victimized child who is able to express his/her opinions shall be informed of the communications presented on his/her behalf.
4. The Committee shall decide by simple majority of members present and in conformity with the following regulations, on the admissibility or not of a Communication in conformity with the provisions of Article 44 of the Charter.

II. Conditions of Form

1. No Communication shall be considered by the Committee if:
 - it is anonymous;
 - it is not written;
 - it concerns a State non-signatory to the Charter
2. Notwithstanding the Committee may admit a Communication from a State non-signatory to the Charter in the overall best interest of the child. In so doing the Committee shall collaborate with other related Agencies implementing Conventions and Charters to which the non-signatory country is State Party.

III. Conditions of Content

1. In order to take a decision on the admissibility of a Communication, the Committee shall ensure that:
 - a) The Communication is compatible with the provisions of the Constitutive Act of the African Union or with the Charter on the Rights and Welfare of the Child;
 - b) The Communication is not exclusively based on information circulated by the media;

- c) The same issue has not been considered according to another investigation, procedure or international regulation;
- d) The author has exhausted all the available appeal channels at the national level or when the author of the Communication is not satisfied with the solution provided;
- e) The Communication is presented within a reasonable period after appeal channels at the national level have been exhausted.
- f) The wording of the Communication shall not be offensive,

Article 2: Procedure for consideration of Communications

I. Transmission of Communications

1. Communications shall be forwarded to Committee members three (03) months before each ordinary session.

II. Setting up of a Working Group

1. The Committee may set up one or more working groups made up of three of its members who shall meet before its sessions or at any time decided by the Committee in order to consider the admissibility or not of a communication. The working group shall designate a Rapporteur.
2. When the Committee decides that a communication is admissible according to the terms of the Charter and these directives, it shall communicate, as soon as possible, through the Secretariat, its decision to the Author of the Communication.
3. The Author of the Communication may request the Committee to reconsider its decision by providing additional documents or facts.
4. After having decided on the admissibility of a Communication according to the terms of the Article 1, Chapter 2 of these directives, the Committee, Working Group or Rapporteur shall confidentially bring the Communication to the attention of the State concerned and shall request it to present an explanation in a written statement containing his observations within three (03) months.
5. When the Committee or Working Group has decided that a Communication is admissible according to the terms of the Charter and directives, this decision and all the other relevant documents shall, as soon as possible, be presented to the State party concerned through the Committee Secretary. The Author or Authors of the Communication shall also be informed of the decision.
6. The Committee shall decide by simple majority of members.

III. Order in which Communications are considered

1. Except in cases that require promptness on a decision taken by the Committee or a Working Group, Communications shall be dealt with in the order in which they are received by the Secretariat.
2. Two or several Communications may be dealt with together if the Committee or Working Group so decides.
3. The Author of the Communication shall also be informed.
4. If at the end of the deadline the State Party concerned does not give an explanation, the Committee or Working Group may decide to proceed to consider the Communication.

IV. Provisional measures

1. When the Committee decides to consider a Communication, it may forward to the State party concerned, a request to take provisional measures that the Committee shall consider necessary in order to prevent any other harm to the child or children who would be victims of violations.

V. Additional information, clarifications and observations

1. The Committee or Working Group may request the State concerned, the Author or Authors of the Communication for additional information.
2. Within the period fixed by the Committee, the State party concerned shall present to the Committee, explanations by way of written statements indicating, if need be, the measures that it has been able to take in conformity with the Committee's directives. If necessary, the Committee may indicate the information requested from the State party concerned.
3. The Committee may request the presence of the Author or Authors of the Communications or their Representatives as well as the presence of the Representatives of the State concerned in order to give additional clarifications or answer questions on the validity of the Communication. Each time that one of the parties is thus invited, the other party shall be informed and invited to be present and make its observations if it so wishes. The absence of a party shall not hinder consideration of the case.
4. The Committee may send one of its members to conduct on the spot investigations.

VI. Incompatibilities

1. A Committee member may not take part in the consideration of a Communication:
 - if the State Party on whose behalf he has been elected to the Committee is Party to the case;
 - if the member has any personal interest in the case or
 - if he has participated in any decision-making process concerning the case relating to the Communication.

VII. Removal or withdrawal of a member

1. Any person who has reasons to doubt the impartiality of a member could request his removal.
2. The Committee shall request the person to explain the reasons for doubting a member's impartiality before taking a decision
3. If, for whatever reason, a member considers that he should not take part or continue to take part in the consideration of a Communication, he shall inform the Committee Chairperson.
4. After consultation with members, the Chairperson shall formally acknowledge the withdrawal and inform the member accordingly.

CHAPTER 3: COMMITTEE DELIBERATIONS

Article 1: In Camera Session

1. Committee Meetings at which Communications shall be considered according to the terms of Article 44 of the Charter shall be held in camera.
2. The Committee, Working Group or Rapporteur shall not make public any Communication, document or information relating to a Communication.
3. The Committee or Working Group responsible for considering a Communication may gather and validate information.

Article 2: Open Session

1. Meetings at which the Committee shall have to consider general issues such as procedures for the implementation of Article 44 may be held in open session if the Committee so decides.

2. After considering the validity of a Communication, the Committee may reconsider a decision according to which a Communication is admissible in the light of the explanations or decisions presented by the State Party. However, before the Committee shall decide to reconsider this decision, the explanations or statements concerned should be forwarded through the Secretary, to the author or authors of the communication, who may present additional written information or observations within a period to be fixed by the Committee.

3. The Committee may request the presence of the author or authors or their representatives as well as the presence of representatives of the State Party concerned in order to give additional clarifications or answer questions on the communication's validity.

Article 3: Children's participation

1. The Committee should take measures to ensure the effective and meaningful participation of the child or children concerned by the consideration of the validity of the communications and its author.

2. When the child is capable of expressing his opinions, he should be heard by a Committee member.

Article 4: Monitoring of decisions

1. The Committee shall designate one of its members to be responsible for monitoring its decisions.

2. He/she shall regularly report to the Committee,

3. The Committee Chairperson shall inform the Chairperson of the African Union Commission,

4. The decisions of the Committee shall be submitted to the Assembly of Heads of State and Government of the African Union. The decisions shall be published after consideration by the Assembly and the State Parties concerned which shall ensure their dissemination in their countries, in conformity with Article 45, paragraphs 3 and 4 of the Charter

**ANNEXE SEVEN – GUIDELINES FOR THE CONDUCTING OF INVESTIGATIONS
(2006)**

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ACERWC/8/5

**GUIDELINES ON THE CONDUCT OF INVESTIGATIONS BY
THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS
AND WELFARE OF THE CHILD UNDER ARTICLE 45 OF
THE AFRICAN CHARTER AND ARTICLE 74 OF THE RULES
OF PROCEDURE**

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INTRODUCTION

The African Committee of Experts on the Rights and Welfare of the Child is established under Article 32 of the African Charter on the Rights and Welfare of the Child. Its mandate is to, *inter-alia*, promote and protect the rights of children as enshrined in the Charter; Collect and document information; commission interdisciplinary assessment of situations on African Problems in the area of the rights and welfare of the child; formulate and lay down principles and rules aimed at protecting the rights of the child; and above all monitor the implementation and ensure protection of the rights enshrined in the Charter and to supervise their observance.

Article 44(1) provides that “The Committee may receive communication from any person group or non-governmental organisation recognised by the Organisation of the African Unity, by a Member State or the United Nations relating to any matter covered by this Charter”.

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

It would thus appear that on the basis of the ratification of the African Charter on the Child and without the need for a complementary acceptance of competence, the Committee of Experts is empowered to investigate any issue arising from the Charter, including alleged or observed violations of the rights and welfare of the child that could or could not have been submitted to it.

The Charter on the Child does not clearly or adequately stipulate the procedures for communication and investigation. Therefore,, these guidelines have been drafted to provide regulations that will enable the Committee of Experts to conduct investigations within the framework of the Charter.

I. General presentation of investigation missions of the African Committee of Experts on the Rights and Welfare of the Child

A) Definition, aim and types of investigation missions

Article 1: Definition

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

Article 2: Aim of investigation missions

The aim of the investigation missions shall be to seek and collect accurate and reliable information on any issue arising from the Charter in order to:

- a) assess the general situation of the rights of the child in a country;
- b) clarify the facts and establish responsibility of individuals and the State towards children who are victims of violations and their families, and/or
- c) promote and support the implementation of the rights and welfare of the child by the various administrative, legal and legislative institutions of the country, in conformity with the Charter.

Article 3: Types of investigation missions

1. The African Committee of Experts on the Rights and Welfare of the Child (hereinafter known as the Committee) may undertake two types of investigative missions:
 - a) Investigations on any matter referred to the Committee.
 - b) Investigations initiated by the Committee.

B) Initiative and composition of investigation missions.

Article 4: Initiative of Investigation Missions.

1. Investigative missions shall be undertaken on the initiative of the Committee, under the relevant provisions of the African Charter and its Rules of Procedure, on the basis of a communication admitted by the Committee indicating serious and systematic violations of the rights of the child in a State party.
2. The Committee may also undertake an investigative mission at the invitation of the State party concerned. Any invitation from a State party to undertake an investigative mission shall be considered by the Committee without delay.

3. In the event of refusal by a State party of an investigative mission on its territory, the State concerned should indicate the reasons for this refusal in a reasonable time. The Committee shall take note and report to the Assembly of the Union which shall then decide on further action to be taken. States parties shall strive to adopt a policy of admitting investigative missions to their territories.

Article 5: Composition of investigation missions

1. On the basis of Article 62 of its Rules of Procedure, the Committee could, depending on the case:
 - set up sub-committees and/or ad hoc working groups in order to prepare for the investigations as per the provisions of Article 45 of the Charter and these directives;
 - designate a Head of mission to lead a mission;
 - designate a special Rapporteur from among its members to investigate in accordance with the above mentioned provisions;
 - designate independent experts to back the sub-committees, ad-hoc working groups and special rapporteurs in their missions.
2. The number and designation of the sub-committee and/or working group members thus established shall be determined by the Committee, taking into consideration the aim and scope of the mission. In the event of emergency, these decisions shall be taken by the Chairman and submitted to the Committee for approval.

Article 6: Inability of a member to take part in an investigation mission

1. A Committee Member may not take part in an investigation mission if:
 - a) he/she is a national of a State in which the mission takes place;
 - b) he/she resides on the territory of the State party in which the mission takes place; or
 - c) the mission is undertaken in the State party on behalf of which he/she has been elected to the Committee.
2. Any issue raised within the context of this Article shall be resolved by the Committee without the participation of the member concerned.

Article 7: Organization/functioning of investigation missions

Ad hoc sub-committees and working groups set up under Article 5 (1) above shall organize their proceedings. In this respect, they shall in consultation with the Chairperson of the Committee assign duties to each of their members and, , notify the secretariat staff on the composition of the team(s).

II- Preparation of investigation missions of the African Committee of Experts on the Rights and Welfare of the Child.

A. Preliminary mission report

A preliminary Mission Report is a report that will be prepared prior to proceeding on a mission

Article 8: Aim of the preliminary report

1. A preliminary mission report shall be prepared before each investigation mission.
2. The aim of the preliminary report shall be to collect all available information on the country concerned in order to give an overview of the situation of the rights of the child in the country.

Article 9: Substantial points of the preliminary report

1. The preliminary mission report should contain relevant information such as:
 - a) the general situation of the country : political, economic, social, cultural and security issues;
 - b) the country's legal system'
 - c) the status of ratification of the major international instruments on human rights, particularly the United Nations Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child concerning the Sale of children, Prostitution of Children and Pornography that displays children, the Additional Protocol to the Convention on the Rights of the Child concerning the involvement of children in armed conflicts and the African Charter on the Rights and Welfare of the Child and the status of the submission of the reports to the UN Committee on the Rights of the Child and the African Committee.
 - d) The status of ratification of the regional and sub-regional instruments of cooperation and development and also information on the accession of the country to the African Peer Review Mechanism of the NEPAD;
 - e) The major constitutional and legislative provisions on the rights and welfare of the child;
 - f) Analysis of the major policies for children and information on budgets allocated to issues on education and maternal, child and youth health.
2. The preliminary mission report shall also mention the possible difficulties of the mission and include a list of potential interlocutors.

Article 10: Sources of information

Information contained in the preliminary mission report shall be collected from the African Union, the United Nations and other international organizations with expertise on the country or the situation of the rights of the child in question, from the government of the State party concerned and from non-governmental organizations with observer status on the committee, as well as official opposition political parties,

local representatives of international or regional organizations and civil society organizations.

B. Logistics

Article 11: Mission dates

1. The Committee should, through its Chairperson and the Chairperson of the AU, send through the official channel, three (03) months before the dates scheduled for the mission, a letter to the government of the State party to inform it of the objective, timetable and venues of the investigation mission. The State party shall be obliged to send its reply within one (01) month after reception of the letter.
2. In agreement with the State party, the Committee shall finally fix the dates of its investigation missions six (06) weeks before the beginning of the mission. In the event of emergency, the Committee shall decide on its investigation missions within a shorter period.

Article 12: Need for independent arrangements

1. In order to ensure the independence and impartiality of the mission, the Committee shall undertake to organize the collection of information necessary for the preparation of the mission.
2. The Committee shall also make the necessary arrangements for the journey through its Secretariat. These arrangements shall include, *inter- alia*, air and hotel reservations, travel insurances and necessary visas, transport in the country, organization of meetings with the various interlocutors as well as arrangements necessary for communication on and during the mission.
3. All expenses incurred by the mission shall be borne by the Committee.

Article 13: Mission programme

1. The mission programme shall be prepared by the Committee Secretariat, in collaboration with the Committee Chairman and mission members.
2. In order to ensure the smooth functioning of the mission, the Secretariat of the Committee shall transmit to the State party, a draft mission programme. The Secretariat shall draw the government's attention on the mission's terms of reference, its mandate as well as its privileges and immunities. The agreement of the government on these terms of reference should be obtained in writing before the onset of the mission.
3. 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.

4. The mission programme shall be flexible and measures should be envisaged in the event of complementary meetings.

III - Functioning of investigation missions

A) Contents and procedure of investigation missions.

Article 14: Public Information

1. A general notice shall also be published on the mission, inviting the public and all individuals likely to contribute to the mission's success to cooperate with the Committee's representatives.

Article 15: Investigations on any matter referred to the Committee

1. The mission shall conduct in-depth and impartial investigations on alleged violations of the rights of the child.
2. In order to protect the identity of the victimized children and ensure their protection as well as that of the witnesses, these meetings shall be open and confidential, in the absence of government representatives and in a venue that is not supervised by government authorities.
3. The mission shall also meet authorities of public or private institutions responsible for victimized children and their families.

Article 16: Investigations initiated by the Committee itself

1. The mission shall focus on sensitisation on the African Charter and the African system of human rights in general by encouraging and indicating good practices in the effective implementation of the Charter.
2. Mission members shall meet government authorities, representatives of non-governmental organizations as well as any other person likely to provide information on the rights of the child in the country.
3. They shall also visit detention or rehabilitation centres for children, schools, hospitals, refugee camps, if need be, and any other centre that will enable a fair assessment of the situation of children in the country.

Article 17: Common procedures

1. Whenever possible, investigation missions shall visit the rural areas of the country and shall hold discussions with local government authorities, local authorities of institutions responsible for children, community organizations and local populations including children.
2. Mission members shall take notes at each meeting or visit, including the date, time, names and posts of persons met and subjects discussed. Notes of the meetings should be as complete and as detailed as possible.

3. Mission members shall meet, if possible, at the end of each day in order to report on activities carried out and the problems faced with a view to facilitating the preparation of the mission report. They shall also consider possible difficulties of the current programme that they could face and ways to resolve them.

B. Guiding principles of investigation missions

Article 18: Principles relating to mission members.

1. The investigation mission shall be conducted in total impartiality and independence.
2. Mission members shall strive to obtain any and all information necessary for their investigation.
3. The mission shall moreover have the obligation to act in conformity with its mandate. All mission members shall have the duty to participate actively in all activities envisaged by the mandate, including individual participation.
4. Mission members shall be obliged, prior to, during and after the mission, to respect the general principles for the implementation of the rights of the child, inter-alia, the principles relating to non-discrimination, participation of children and respect of the supreme interest of children.

Article 19: Principles relating to investigation methods

1. In carrying out their mandate, mission members shall have the obligation to respect the laws and regulations of the State Party visited without however being hindered by these laws and regulations in the conduct of the mission.
2. States Parties shall be obliged to take all necessary measures to protect the alleged victims of violations of the rights of the child, their parents or legal representatives as well as witnesses met in the course of the mission against threats, harassments or any other form of intimidation that could be related to the investigation.
3. The State Party shall have the opportunity, at every stage of the investigation, to comment on the information collected by the mission.

IV - Report, publication and follow-up of investigation missions

A) Preparation of mission report

Article 20: Preliminary results

1. At the end of the mission and before leaving the country visited, the delegation shall prepare a document presenting the preliminary results of its investigation that shall be communicated to the government and media.

2. The above-mentioned preliminary results shall be presented at a press conference and confidential information related to the consideration of certain violations of the rights of the child shall not be published.

Article 21: Mission notes

All notes taken during the mission shall be compiled and handed over to the Head of Mission. He shall transmit them to a member of the Committee's Secretariat who shall be responsible for drafting the mission's final report.

Article 22: Contents of the final report

1. The mission report shall be prepared within a period of one (01) or two (02) months after the mission. It shall include a description of the investigation, as well as procedures and methods used in the investigation.
2. The mission report shall also recapitulate all the substantial points included in the preliminary report , for example, information on:
 - a) the general situation in the country and the major political, economic, social and cultural issues on the protection of the rights and welfare of the child;
 - b) the legal system of the country and particularly the legal provisions and mechanisms established to guarantee the rights of the child proclaimed in the Charter;
 - c) analysis of the major national policies on children.
3. In addition, the mission report shall include:
 - a) a historical background, if need be, of actions taken by the Committee on rights and welfare of the child in the country;
 - b) a recapitulation of the correspondence exchanged by the Committee and the State party concerned;
 - c) the mission's terms of reference;
 - d) a copy of the form for the collection of information on the field;
 - e) An aide-mémoire of the mission, recapitulating its composition, mission programme, places visited and persons met, including government officials, representatives of institutions responsible for children and civil society organizations. The report shall also mention meetings with victimized children, their families or representatives, except those whose identity was not revealed for their protection;
 - f) press releases published;
 - g) a summary of communications submitted, if need be, under Article 44 of the Charter and information collected by the mission on every communication;

- h) information on the process to be followed with regard to these communications as well as on possible replies given by the government in response to the communications; and lastly
- i) an analysis of mission results in relation to all the issues for the investigation.

Article 23: Recommendations

1. On the basis of all the information collected, the mission report shall make recommendations on the implementation of the Charter in the State Party visited, or relating to allegations of violation of the rights of the child, including by presenters of petitions submitted under Article 44 of the Charter.
2. Recommendations of the Committee shall mainly be addressed to the State Party concerned, - indicating the measures that should be taken. They shall also be sent to other public and private institutions responsible for the monitoring and implementation of the rights of the child recognized in the Charter.

B. Publication of mission report

Article 24: Transmission of report

1. Once drafted, the mission report shall be sent to members of the delegation who shall have one (01) month to propose amendments. The amended report shall then be transmitted to the government of the State Party concerned which shall within thirty (30) days following transmission, be allowed to make its observations and indicate measures to be taken for a follow up.
2. In the case of investigation missions on allegations of violations of the rights of the child recognized in the Charter and communicated to the Committee on the basis of Article 44, the report shall also be transmitted to presenters of petitions. The Committee shall take into account comments made by the presenters of petitions particularly in the possibility of an amicable settlement of the dispute.

Article 25: Adoption and circulation of report.

1. After revision in conformity with the comments made by the State parties mentioned above by the Committee Secretariat, under the supervision of the Head of mission, the report shall be submitted to the Committee at its next meeting for approval.
2. The mission report shall be attached to the progress report submitted by the Committee to the Assembly of Heads of State and Government of the African Union. It shall be published after consideration by the Assembly of Heads of State and Government and the States parties concerned shall ensure its circulation in their countries.

C. Follow-up of missions

Article 26: Monitoring of investigation missions on any matter referred to the Committee.

1. Investigation missions of the Committee on petitions submitted under Article 44 shall be monitored by contacts inviting the State Party visited to present, within six (06) months after the mission or the adoption of a decision by the Committee, a written reply comprising information on any measure taken in the light of recommendations made by the Committee after the mission.
2. The Committee could also establish other contacts that will enable it to obtain additional information on measures taken by the State Party in reaction to its recommendations.
3. Lastly, the Committee could request the State Party to include in its subsequent reports presented under Article 43 of the Charter, information on any measure taken in reaction to recommendations made by the Committee after the mission.

Article 27: Monitoring of investigation missions initiated by the Committee

1. Investigation missions of the Committee shall be monitored by a periodic evaluation of the situation of the rights of the child in the country. The Committee could, for example, request the State party to include in its subsequent reports presented under Article 43 of the Charter, information on any measure in reaction to the recommendations made by the Committee after the mission.
2. The Committee could moreover invite specialized institutions and civil society organizations working for the protection of the rights and welfare of the child to provide it with information on the monitoring and implementation of the Charter in the countries concerned in the areas that shall be covered by their activities.

Appendix 1

Form for the collection of field information,

This form has been prepared in order to assist mission members in the collection of information – one form should be used for each of the meetings and/or interviews. All forms shall be collected and transmitted to the Committee Secretariat after the mission.

Date:

Time:

Venue:

Person(s) met:

Issues discussed:

Problems raised:

Results and conclusions (if need be, indicate reasons that prevented results from being obtained):

Appendix 2:

Mission – terms of reference.

During investigation missions of the African Committee of Experts on the Rights and Welfare of the Child, mission members shall have the following principles and guarantees, which shall be obligatory for the state party that has invited the Committee or agreed to the mission:

1. Freedom of movement on the whole territory of the country concerned and free access to all venues indicated on the mission programme.
2. Freedom of investigation, particularly as regards:
 - (i) contacts with central and decentralized authorities of all government sectors;
 - (ii) contacts with representatives of non-governmental organizations of the rights and welfare of the child, other private institutions and the media;
 - (iii) access to all institutions that host children, including detention and rehabilitation centres;
 - (iv) confidentiality of contacts and discussions with witnesses and other private interlocutors, including victimized children and their families and children deprived of freedom;
 - (v) free access to all documents needed for carrying out the mission's mandate and preparing the report.
3. Assurance by the government that no child, public or private person who has been in contact with one of the mission members as part of its mandate, shall, for that reason, be victim of harassment, retaliation or subjected to legal procedure;
4. Assurance by the government that appropriate security measures shall be taken, without however restricting the freedom of movement of mission members mentioned above;
5. Assurance that all the guarantees and facilities shall be extended to the African Union staff responsible for assisting the mission prior to, in the course of and after the visit;
6. Assurance that mission members and African Union staff responsible for assisting the mission shall enjoy privileges and immunities accorded by the African Union without undermining the laws and regulations in force in the territory of the State party visited.

ANNEXE EIGHT – GUIDELINES FOR THE CRITERIA FOR GRANTING OBSERVER STATUS WITH THE COMMITTEE (2006)

AFRICAN UNION

الاتحاد الأفريقي



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ACERWC/8/6

**CRITERIA FOR GRANTING OBSERVER STATUS IN THE
AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE
OF THE CHILD TO NON-GOVERNMENTAL ORGANISATIONS (NGOs)
AND ASSOCIATIONS**

**CRITERIA FOR GRANTING OBSERVER STATUS IN THE
AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND
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ORGANIZATIONS (NGOs) AND ASSOCIATIONS**

INTRODUCTION

The AU African Committee of Experts on the Rights and Welfare of the Child, in conformity with Article 42 of the Charter and Articles 34, 37, 81 and 82 of the Rules of Procedure on representation and cooperation with civil society organisations grant observer status to civil society organisations according to the following criteria and principles.

SECTION I

**Principles to be Applied in Granting Observer Status in the AU
African Committee of Experts on the Rights and Welfare of the Child**

1. The aim and objectives of NGOs/Associations applying for Observer Status should be in keeping with the spirit, objectives and principles of the Constitutive Act of the African Union and of the African Committee of Experts on the Rights and Welfare of the Child and those enshrined in the Charter.
2. The NGOs/Associations shall undertake to support the work of the African Union and the Committee, and promote the dissemination of information on its principles and activities, in accordance with the aims and objectives, the nature and areas of competence and activities.
3. The NGOs and Human Rights Associations in general for the promotion and protection of the child in particular should have a recognized reputation in their particular areas. When there are several NGOs/ Associations with similar objectives, interests and view points in a given area, they should be encouraged with a view to obtaining observer status with the Committee to form a coalition.
4. The NGOs/Associations should:
 - a) Be registered in a State Party, at least three (03) years after the submission of the request, to undertake without restriction regional and continental activities as African Civil Society Organisations or of the diaspora working in the area of defending, protecting and promoting the rights of children ; and
 - b) Provide proof of their official recognition as well as their activities during that period.

5. The NGOs/Associations should have:
 - a) a recognized headquarters and an executive organ;
 - b) democratically adopted statutes, a copy of which shall be deposited with the Chairperson of the Committee of Experts;
 - c) a representative structure and appropriate mechanisms to enable them to report to their members who should exercise effective control over their policies, through an appropriate democratic and transparent decision-making process;
 - d) an administration comprising a majority of African citizens or Africans from the Diaspora as defined by the executive council and an elected children's representative. These conditions shall be applicable to international non governmental organisations.
6. The NGOs/Associations shall be required to provide all the details concerning their different sources of financing. In case of voluntary contributions from external sources, the amounts and names of donors should be accurately indicated in the application for observer status. Any support, financial or other contributions, granted directly or indirectly by a Government to the NGO/Association, should be duly declared and recorded in its financial statements.
7. Any NGO/Association that practices discrimination on the basis of specific criteria such as gender, colour, religion, ethnic group, tribe or race, or practices any other activity involving children that could be described as the worst forms of work and other abuses cannot enjoy observer status.

SECTION II

Application Procedure for Non-Governmental Organizations

1. Any NGO/Association wishing to obtain Observer Status should submit:
 - a) a written application addressed to the Committee, stating its intention, at least three (3) months before the session of the Committee to consider the application in question.
 - b) its statute or charter; an updated list of its members; its sources of financing together with copies of its most recent statements; and a memorandum of its activities.
2. The memorandum of activities should contain a presentation of the past and present activities of the NGO/Association; its links, including any links outside Africa and any other information which will help to define its identity, and above all, its area of activity.
3. The submission of documents shall be in two (English and French) of the official languages of the African Union and in sufficient number of copies to allow their distribution to Committee members.

4. If it is a Non-Governmental Organization of the Diaspora, it should also submit all the information and the names of at least two (2) AU Member States or civil society organizations recognized by the Union that are well acquainted with the organization and are willing to certify its authenticity.

SECTION III

Procedure for Consideration of Applications by the Committee

1. The Committee shall, during its ordinary sessions, in conformity with the agenda prepared, consider the applications received within the set deadline..
2. The Committee shall, on the basis of defined criteria and principles, decide on the applications considered during its session and inform, through the Chairperson of the Committee, the organizations and Associations of the decisions of the Committee, without delay.

SECTION IV

Participation of Observers in the Deliberations of the Committee

The representatives of NGOs/Associations enjoying Observer Status may:

1. Be invited to be present at all the opening and closing ceremonies;
2. Participate in meetings of the Committee in conformity with the conditions provided for in this section.
3. Have access to documents of the Committee provided these documents:
 - a) are not confidential;
 - b) deal with issues concerning the observers;
4. The documents of the Committee shall be distributed in accordance with the documents classification system adopted by the Committee
5. Be invited to attend closed sessions to consider issues which concern them.
6. Participate, without voting rights, in the deliberations of meetings to which they are invited, with the authorization of the Chairperson.
7. Observers may be authorized by the Chairperson to make a statement on issues concerning them, provided that the text of the statement is communicated in advance to the Chairperson.
8. The Chairperson of the meeting may give the floor to observers to enable them to reply to questions they may be asked by members.
9. Observers may request the inclusion of issues of particular interest to them on the agenda of the meeting.

SECTION V

Relations between the Committee and Observers

1. The NGOs/Associations enjoying Observer Status undertake to establish close cooperation relations with the Committee and hold regular consultations with the latter on all issues of common interest.
2. All NGOs/Associations enjoying Observer Status with the Committee should submit analytic reports on their activities every two years (2) years. These reports should indicate:
 - a) their financial situation and viability;
 - b) their activities during the period considered, particularly concerning the support they provided for the implementation of the African Charter on the Rights and Welfare of the Child;
 - c) their officers and their dates of election, and indicate if the elections were held in conformity with the statute of the organization.
3. The Chairperson of the Committee may authorize any NGO/Association enjoying Observer Status, which has legally changed its name or legally succeeded an organization which enjoyed Observer Status, to continue to enjoy the said status under its new name.
4. The Committee may suspend or withdraw the Observer Status, if it appears that an NGO/Association enjoying this status has ceased to meet the exigencies of these criteria, namely: be in regular situation or function appropriately, or it losses its representational character or independence.
5. Granting, suspension or withdrawal of Observer Status of an NGO/Association is the prerogative of the Committee and may not be the subject of a judgement of a court or tribunal.

SECTION VI

Final Provisions

1. Granting of Observer Status to an NGO/Association does not incur any obligation on the part of the Committee to allocate a subsidy or any material assistance whatsoever to this NGO/Association.
2. Observers shall bear the expenses for their transport and stay at the venue of the conference.

ANNEXE NINE – THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD (1990)



AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

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

PREAMBLE

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

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

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

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

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

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

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

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

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

HAVE AGREED AS FOLLOWS:

PART 1: RIGHTS AND DUTIES

CHAPTER ONE: RIGHTS AND WELFARE OF THE CHILD

Article 1: Obligation of States Parties

- 1. Member States of the Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.**
- 2. Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State.**
- 3. Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.**

Article 2: Definition of a Child

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

Article 3: Non-Discrimination

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

Article 4: Best Interests of the Child

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

Article 5: Survival and Development

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

Article 6: Name and Nationality

- 1. Every child shall have the right from his birth no a name.**
- 2. Every child shall be registered immediately after birth.**
- 3. Every child has the right to acquire a nationality.**
- 4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.**

Article 7: Freedom of Expression

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

Article 8: Freedom of Association

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

Article 9: Freedom of Thought, Conscience and Religion

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

Article 10: Protection of Privacy

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

Article 11: Education

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

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

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

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

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

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

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

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

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

(a) provide free and compulsory basic education;

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

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

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

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

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

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

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

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

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

Article 12: Leisure, Recreation and Cultural Activities

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

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

Article 13: Handicapped Children

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

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

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

Article 14: Health and Health Services

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

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

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

Article 15: Child Labour

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

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

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

Article 16: Protection Against Child Abuse and Torture

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

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

Article 17: Administration of Juvenile Justice

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

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

(a) ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;

(b) ensure that children are separated from adults in their place of detention or imprisonment;

(c) ensure that every child accused in infringing the penal law:

(i) shall be presumed innocent until duly recognized guilty;

(ii) shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;

(iii) shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;

(iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;

(d) prohibit the press and the public from trial.

3. The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.

4. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

Article 18: Protection of the Family

1. The family shall be the natural unit and basis of society. it shall enjoy the protection and support of the State for its establishment and development.

2. States Parties to the present Charter shall take appropriate steps to ensure equality of rights and responsibilities of spouses with regard to children during marriage and in the even of its dissolution. In case of the dissolution, provision shall be made for the necessary protection of the child.

3. No child shall be deprived of maintenance by reference to the parents' marital status.

Article 19: Parent Care and Protection

1. Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child.

2. Every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis.

3. Where separation results from the action of a State Party, the State Party shall provide the child, or if appropriate, another member of the family with essential information concerning the whereabouts of the absent member or members of the family. States Parties shall also ensure that the submission of such a request shall not entail any adverse consequences for the person or persons in whose respect it is made.

4. Where a child is apprehended by a State Party, his parents or guardians shall, as soon as possible, be notified of such apprehension by that State Party.

Article 20: Parental Responsibilities

1. Parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development the child and shall have the duty:

(a) to ensure that the best interests of the child are their basic concern at all times-

(b) to secure, within their abilities and financial capacities, conditions of living necessary to the child's development; and

(c) to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.

2. States Parties to the present Charter shall in accordance with their means and national conditions the all appropriate measures;

(a) to assist parents and other persons responsible for the child and in case of need provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing;

(b) to assist parents and others responsible for the child in the performance of child-rearing and ensure the development of institutions responsible for providing care of children; and

(c) to ensure that the children of working parents are provided with care services and facilities.

Article 21: Protection against Harmful Social and Cultural Practices

1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

(a) those customs and practices prejudicial to the health or life of the child; and

(b) those customs and practices discriminatory to the child on the grounds of sex or other status.

2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

Article 22: Armed Conflicts

1. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.

2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.

3. States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.

Article 23: Refugee Children

1. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties.

2. States Parties shall undertake to cooperate with existing international organizations which protect and assist refugees in their efforts to protect and assist such a child and to trace the parents or other close relatives or an unaccompanied refugee child in order to obtain information necessary for reunification with the family.

3. Where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.

4. The provisions of this Article apply mutatis mutandis to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.

Article 24: Adoption

States Parties which recognize the system of adoption shall ensure that the best interest of the child shall be the paramount consideration and they shall:

(a) establish competent authorities to determine matters of adoption and ensure that the adoption is carried out in conformity with applicable laws and procedures and on the basis of all relevant and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives

and guardians and that, if necessary, the appropriate persons concerned have given their informed consent to the adoption on the basis of appropriate counselling;

(b) recognize that inter-country adoption in those States who have ratified or adhered to the International Convention on the Rights of the Child or this Charter, may, as the last resort, be considered as an alternative means of a child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) ensure that the child affected by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) take all appropriate measures to ensure that in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child;

(e) promote, where appropriate, the objectives of this Article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework to ensure that the placement of the child in another country is carried out by competent authorities or organs;

(f) establish a machinery to monitor the well-being of the adopted child.

Article 25: Separation from Parents

1. Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance;

2. States Parties to the present Charter:

(a) shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment shall be provided with alternative family care, which could include, among others, foster placement, or placement in suitable institutions for the care of children;

(b) shall take all necessary measures to trace and re-unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters.

3. When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious or linguistic background.

Article 26: Protection Against Apartheid and Discrimination

1. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under Apartheid and in States subject to military destabilization by the Apartheid regime.

2. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under regimes practising racial, ethnic, religious or other forms of discrimination as well as in States subject to military destabilization.

3. States Parties shall undertake to provide whenever possible, material assistance to such children and to direct their efforts towards the elimination of all forms of discrimination and Apartheid on the African Continent.

Article 27: Sexual Exploitation

1. States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:

- (a) the inducement, coercion or encouragement of a child to engage in any sexual activity;**
- (b) the use of children in prostitution or other sexual practices;**
- (c) the use of children in pornographic activities, performances and materials.**

Article 28: Drug Abuse

States Parties to the present Charter shall take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the production and trafficking of such substances.

Article 29: Sale, Trafficking and Abduction

States Parties to the present Charter shall take appropriate measures to prevent:

- (a) the abduction, the sale of, or traffick of children for any purpose or in any form, by any person including parents or legal guardians of the child;**
- (b) the use of children in all forms of begging.**

Article 30: Children of Imprisoned Mothers

1. States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:

- (a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers;**
- (b) establish and promote measures alternative to institutional confinement for the treatment of such mothers;**
- (c) establish special alternative institutions for holding such mothers;**
- (d) ensure that a mother shall not be imprisoned with her child;**
- (e) ensure that a death sentence shall not be imposed on such mothers;**
- (f) the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.**

Article 31: Responsibility of the Child

Every child shall have responsibilities towards his family and society, the State and other legally recognized communities and the international community. The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty;

- (a) to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need;**
- (b) to serve his national community by placing his physical and intellectual abilities at its service;**
- (c) to preserve and strengthen social and national solidarity;**
- (d) to preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well-being of society;**
- (e) to preserve and strengthen the independence and the integrity of his country;**
- (f) to contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African Unity.**

PART 11

CHAPTER TWO: ESTABLISHMENT AND ORGANIZATION OF THE COMMITTEE ON THE RIGHTS AND WELFARE OF THE CHILD

Article 32: The Committee

An African Committee of Experts on the Rights and Welfare of the Child hereinafter called 'the Committee' shall be established within the Organization of African Unity to promote and protect the rights and welfare of the child.

Article 33: Composition

- 1. The Committee shall consist of 11 members of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child.**
- 2. The members of the Committee shall serve in their personal capacity.**
- 3. The Committee shall not include more than one national of the same State.**

Article 34: Election

As soon as this Charter shall enter into force the members of the Committee shall be elected by secret ballot by the Assembly of Heads of State and Government from a list of persons nominated by the States Parties to the present Charter.

Article 35: Candidates

Each State Party to the present Charter may nominate not more than two candidates. The candidates must have one of the nationalities of the States Parties to the present Charter. When two candidates are nominated by a State, one of them shall not be a national of that State.

Article 36

- 1. The Secretary-General of the Organization of African Unity shall invite States Parties to the present Charter to nominate candidates at least six months before the elections.**
- 2. The Secretary-General of the Organization of African Unity shall draw up in alphabetical order, a list of persons nominated and communicate it to the Heads of State and Government at least two months before the elections.**

Article 37: Term of Office

- 1. The members of the Committee shall be elected for a term of five years and may not be re-elected, however, the term of four of the members elected at the first election shall expire after two years and the term of six others, after four years.**
- 2. Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity shall draw lots to determine the names of those members referred to in sub-paragraph 1 of this Article.**
- 3. The Secretary-General of the Organization of African Unity shall convene the first meeting of Committee at the Headquarters of the Organization within six months of the election of the members of the Committee, and thereafter the Committee shall be convened by its Chairman whenever necessary, at least once a year.**

Article 38: Bureau

- 1. The Committee shall establish its own Rules of Procedure.**
- 2. The Committee shall elect its officers for a period of two years.**
- 3. Seven Committee members shall form the quorum.**
- 4. In case of an equality of votes, the Chairman shall have a casting vote.**
- 5. The working languages of the Committee shall be the official languages of the OAU.**

Article 39: Vacancy

If a member of the Committee vacates his office for any reason other than the normal expiration of a term, the State which nominated that member shall appoint another member from among its nationals to serve for the remainder of the term - subject to the approval of the Assembly.

Article 40: Secretariat

The Secretary-General of the Organization of African Unity shall appoint a Secretary for the Committee.

Article 41: Privileges and Immunities

In discharging their duties, members of the Committee shall enjoy the privileges and immunities provided for in the General Convention on the Privileges and Immunities of the Organization of African Unity.

CHAPTER THREE: MANDATE AND PROCEDURE OF THE COMMITTEE

Article 42: Mandate

The functions of the Committee shall be:

(a) To promote and protect the rights enshrined in this Charter and in particular to:

(i) collect and document information, commission inter-disciplinary assessment of situations on African problems in the fields of the rights and welfare of the child, organize meetings, encourage national and local institutions concerned with the rights and welfare of the child, and where necessary give its views and make recommendations to Governments;

(ii) formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa;

(iii) cooperate with other African, international and regional Institutions and organizations concerned with the promotion and protection of the rights and welfare of the child.

(b) To monitor the implementation and ensure protection of the rights enshrined in this Charter.

(c) To interpret the provisions of the present Charter at the request of a State Party, an Institution of the Organization of African Unity or any other person or Institution recognized by the Organization of African Unity, or any State Party.

(d) Perform such other task as may be entrusted to it by the Assembly of Heads of State and Government, Secretary-General of the OAU and any other organs of the OAU or the United Nations.

Article 43: Reporting Procedure

1. Every State Party to the present Charter shall undertake to submit to the Committee through the Secretary-General of the Organization of African Unity, reports on the measures they have adopted which give effect to the provisions of this Charter and on the progress made in the enjoyment of these rights:

(a) within two years of the entry into force of the Charter for the State Party concerned: and

(b) and thereafter, *every three years*.

2. Every report made under this Article shall:

(a) contain sufficient information on the implementation of the present Charter to provide the Committee with comprehensive understanding of the implementation of the Charter in the relevant country; and

(b) shall indicate factors and difficulties, if any, affecting the fulfilment of the obligations contained in the Charter.

3. A State Party which has submitted a comprehensive first report to the Committee need not, in its subsequent reports submitted in accordance with paragraph I (a) of this Article, repeat the basic information previously provided.

Article 44: Communications

1. The Committee may receive communication, from any person, group or non-governmental organization recognized by the Organization of African Unity, by a Member State, or the United Nations relating to any matter covered by this Charter.

2. Every communication to the Committee shall contain the name and address of the author and shall be treated in confidence.

Article 45: Investigations by the Committee

1. The Committee may, resort to any appropriate method of investigating any matter falling within the ambit of the present Charter, request from the States Parties any information relevant to the implementation of the Charter and may also resort to any appropriate method of investigating the measures the State Party has adopted to implement the Charter.

2. The Committee shall submit to each Ordinary Session of the Assembly of Heads of State and Government every two years, a report on its activities and on any communication made under Article [44] of this Charter.

3. The Committee shall publish its report after it has been considered by the Assembly of Heads of State and Government.

4. States Parties shall make the Committee's reports widely available to the public in their own countries.

CHAPTER FOUR: MISCELLANEOUS PROVISIONS

Article 46: Sources of Inspiration

The Committee shall draw inspiration from International Law on Human Rights, particularly from the provisions of the African Charter on Human and Peoples' Rights, the Charter of the Organization of African Unity, the Universal

Declaration on Human Rights, the International Convention on the Rights of the Child, and other instruments adopted by the United Nations and by African countries in the field of human rights, and from African values and traditions.

Article 47: Signature, Ratification or Adherence

- 1. The present Charter shall be open to signature by all the Member States of the Organization of African Unity.**
- 2. The present Charter shall be subject to ratification or adherence by Member States of the Organization of African Unity. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary-General of the Organization of African Unity.**
- 3. The present Charter shall come into force 30 days after the reception by the Secretary-General of the Organization of African Unity of the instruments of ratification or adherence of 15 Member States of the Organization of African Unity.**

Article 48: Amendment and Revision of the Charter

- 1. The present Charter may be amended or revised if any State Party makes a written request to that effect to the Secretary-General of the Organization of African Unity, provided that the proposed amendment is not submitted to the Assembly of Heads of State and Government for consideration until all the States Parties have been duly notified of it and the Committee has given its opinion on the amendment.**
- 2. An amendment shall be approved by a simple majority of the States Parties.**

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