

# Still an infant or now a toddler? The work of the African Committee of Experts on the Rights and Welfare of the Child and its 8th ordinary session

*Benyam D Mezmur\**

Doctoral Intern and PhD Candidate, Community Law Centre, University of the Western Cape, South Africa

## 1 Introduction

Africa is the only continent which has its own comprehensive regional instrument for the promotion and protection of children's rights. This instrument, the African Charter on the Rights and Welfare of the Child (African Children's Charter),<sup>1</sup> provides that its implementation and monitoring are supervised by the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee or Committee).<sup>2</sup> The 11-member African Children's Committee was inaugurated in May 2002 and by the end of 2006, it had held eight ordinary

---

\* LLB (Addis Ababa), LLM (Human Rights and Democratisation in Africa) (Pretoria); benyamdawit@yahoo.com. It is acknowledged that this work is based upon research supported by the National Research Foundation. The author would also like to thank Prof Julia Sloth-Nielsen who has given support in the writing of this article.

<sup>1</sup> African Charter on the Rights and Welfare of the Child (1990) OAU Doc CAB/LEG/24.9/49 (1990). For a detailed discussion of the Charter, see, eg, D Olowu 'Protecting children's rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child' (2002) 10 *International Journal of Children's Rights* 127; D Chirwa 'The merits and demerits of the African Charter on the Rights and Welfare of the Child (2002) 10 *International Journal on Children's Rights* 157; A Lloyd 'Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: Raising the gauntlet' 2002 (10) *International Journal on Children's Rights* 179; M Gose 'The African Charter on the Rights and Welfare of the Child' (Community Law Centre, University of the Western Cape) (2002).

<sup>2</sup> Art 32(1) African Children's Charter.

sessions.<sup>3</sup> The Committee meets in bi-annual ordinary sessions in spring and autumn.

This article focuses on the 8th ordinary meeting of the African Children's Committee held at the African Union (AU) Conference Centre in Addis Ababa, Ethiopia, from 27 November to 1 December 2006.<sup>4</sup> The meeting was held in accordance with article 37(3) of the African Children's Charter and rules 1 and 2 of the Rules of Procedure. The meeting was the first meeting of the African Children's Committee for the year 2006. This is because the first meeting, initially planned for May 2006, was cancelled as a result of unforeseen circumstances.

The 8th meeting saw some developments in a number of areas in the work of the African Children's Committee. On the agenda were various draft guidelines which were presented by Committee members and which were subsequently adopted at the end of the meeting. These were the Guidelines for the Consideration of Communications, the Guidelines for the Conducting of Investigations and the Criteria for Granting Observer Status with the African Committee.

In what follows, the article highlights the proceedings of the 8th ordinary session of the African Children's Committee. Article 46 of the African Children's Charter mandates that:

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 of 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.

Thus, in analysing the proceedings of the 8th meeting, the article endeavours to make recommendations based mostly on the experience of the African Commission on Human and Peoples' Rights (African Commission). This piece does not discuss in detail all the procedures involved and the issues deliberated upon during the 8th meeting. Because of space limitations, some degree of prioritisation is exercised. Finally, this is not the official report of the AU Commission or the African Children's Committee.<sup>5</sup> It has been compiled to support the promotion of the African Children's Charter and the dissemination of the African Children's Committee's work.

---

<sup>3</sup> For a report on the 5th, 6th and 7th meetings of the African Children's Committee, see B Mezmur 'The African Committee of Experts on the Rights and Welfare of the Child: An update' (2006) 6 *African Human Rights Law Journal* 549.

<sup>4</sup> In writing this piece, the author relies, among others, on personal knowledge regarding the work of the Committee, reports of the African Children's Committee, staff members of the AU, academic writing and information gathered from members of NGOs and inter-governmental organisations who are actively involved in the Children's Committee's work.

<sup>5</sup> For official reports and documents, see <http://www.africa-union.org> (accessed 30 June 2007).

## 2 Procedural matters

After the opening ceremony, members of the Committee held an informal closed consultative meeting to discuss some procedural and administrative issues. It was agreed that, in order to benefit from the experience of the Committee's partners, the items on draft guidelines on communications, investigations and criteria for granting observer status should be discussed in open sessions.<sup>6</sup> The Draft Programme of Work was amended accordingly. This is a commendable move by the African Children's Committee as it allowed non-governmental organisations (NGOs) to give invaluable input in the discussions that followed.

On a different note, Mrs Dawlut Hassan, the new Committee member who was elected in January 2006 at the Gambia Summit to serve a four-year term until July 2010, also took part in the meeting. Mrs Hassan was called to take the oath of office by reading and signing the oath under the guidance of the representative of the AU Legal Counsel in the presence of Committee members and other observers.

Two points of major significance mark the election of Mrs Hassan. Firstly, it had previously been argued in the context of geographic and linguistic distribution that:<sup>7</sup>

... it is apparent that there is an absence of a member from Arabic speaking/Northern Africa countries. This happens despite the fact that Algeria, Egypt and Libya have ratified the African Children's Charter.

The election of Mrs Hassan, who is from Egypt, fills this gap. Secondly, the election of Mrs Hassan helps fill the vacancy in the Committee that had existed for some time and allows it to function with a full membership.<sup>8</sup>

## 3 Guidelines for the consideration of communications

Article 44 of the African Children's Charter stipulates that

the Committee shall be empowered to receive communications on any issue dealt with by this Charter from any individual, group or non-governmental organisation recognised by the Organization of African Unity, by a member state or by the United Nations.

The Committee had considered that directives should be elaborated for an effective application of these provisions in accordance with article 74 of the Rules of Procedure of the Committee.

<sup>6</sup> The meeting was attended by 10 members of the African Children's Committee as well as representatives from UN agencies, NGOs and other organisations dealing with children's rights issues.

<sup>7</sup> Mezmur (n 3 above) 556.

<sup>8</sup> Until July 2005, the African Children's Committee was forced to operate short of two members.

Unlike the provisions of the African Charter on Human and Peoples' Rights (African Charter), the mandate of the African Children's Committee under the African Children's Charter, which is to receive and entertain communications, is worth noting for its relative clarity and precision.<sup>9</sup> This is an innovative addition to the African Children's Charter,<sup>10</sup> as the United Nations (UN) Convention on the Rights of the Child (UN Convention) does not contain this enforcement mechanism.

In order to fulfil this mandate of the Committee, a member of the Committee was tasked with drafting the draft guidelines during the 7th meeting and presented it to the 8th meeting. The Report on the Draft Guidelines for Considering Communications Received was presented by Mrs Diakhate, the Committee member who drafted the Report, and all Committee members commended Mrs Diakhate for a job well done.

The Report deals with a number of issues. The document is divided into three chapters and under each chapter a number of articles have been developed. Chapter one deals with general provisions, chapter two with consideration of communications, and chapter three with the Committee's deliberations.

In chapter one, the document defines 'communications' as 'any correspondence or any complaint from a state, individual or NGO denouncing acts that are prejudicial to a right or rights of the child'. It also provides the way in which communications should be received and recorded by the Committee's Secretary.<sup>11</sup> Further elaboration is added on the way in which summaries of communications, categorised according to their subject matter, are to be made and how these summaries are to be circulated at each session.<sup>12</sup>

'No communication shall be considered by the Committee if it is anonymous.'<sup>13</sup> As is to be expected, communications must indicate who the author is, and should also include full particulars to enable the Committee's Secretary to remain in contact with the author, to keep him or her informed about the status of the communication, and to request further information if required.<sup>14</sup> This seems to be the

---

<sup>9</sup> However, here it should be mentioned that the procedure contained in the African Charter spans seven different articles elaborating different conditions for submission and receipt of communications. The African Committee's mandate is basic, but this does not mean it is a weaker mechanism. It simply allows room for interpretation and for guidelines and procedures to be established which set out submission and receipt conditions. This is what the Committee has done with the Guidelines for Communications — it elaborated and clarified the conditions and the procedure for consideration of communications.

<sup>10</sup> Art 44 of the African Children's Charter provides for 'communications'.

<sup>11</sup> Ch 1, art 2(1) Guidelines for Communications.

<sup>12</sup> Ch 1, art 3 Guidelines for Communications.

<sup>13</sup> Ch 2, art 1(2) Guidelines for Communications.

<sup>14</sup> F Viljoen 'Admissibility under the African Charter' in M Evans & R Murray (eds) *The African Charter on Human and Peoples' Rights: The system in practice, 1986-2000* (2002) 67.

understanding of the African Commission too.<sup>15</sup> The experience of the African Commission indicates that the authors of the communication should give their names 'even if they desire to be anonymous with respect to the state involved'.<sup>16</sup>

Communications may be presented by individuals, including the child victim and/or his parents or legal representatives, a group of individuals or NGOs recognised by the AU, by a member state or by any other institution of the UN system. It is also an interpretation that the African Commission justifies as being<sup>17</sup>

a clear response to the practical difficulties that face individuals in Africa and, in particular, where there are serious or massive violations that may preclude individual victims from pursuing national or international legal remedies on their behalf.

It is also interesting to note that '[a] communication may be presented on behalf of a victim without his agreement on condition that the author is able to prove that his action is taken in the supreme interest of the child'.<sup>18</sup> This section is intended to address situations in which the 'best interest of the child' principle under the African Children's Charter<sup>19</sup> should override other circumstances.

Although no communication will be considered by the Committee if it concerns a state that is not a 'signatory' (or, rather, state party) to the Children's Charter,<sup>20</sup> an exception to this exists.<sup>21</sup>

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.

Here, with some degree of innovation by the Committee, the principle of the 'best interest of the child' seems to be given an upper hand over the question whether a country is a state party to the African Children's Charter.

Unlike the African Charter, the African Children's Charter does not deal with the issue of admissibility. As a result, it has become necessary for the African Children's Committee to address this issue under the Guidelines for Communications. Accordingly, the Guidelines provide that<sup>22</sup>

<sup>15</sup> As above.

<sup>16</sup> See, eg, *Dioumessi & Others v Guinea* (2000) AHRLR 130 (ACHPR 1995) (admissibility) (interpreting article 56(1) of the African Charter).

<sup>17</sup> As above.

<sup>18</sup> Ch 2, art 1(I)(4) Guidelines for Communications.

<sup>19</sup> Art 4 African Children's Charter.

<sup>20</sup> Ch 2, art 1(II)(1) Guidelines for Communications.

<sup>21</sup> Ch 2, art 1(II)(2) Guidelines for Communications.

<sup>22</sup> Ch 2, art 1(III)(a) Guidelines for Communications.

in order to take a decision on the admissibility of a communication, the Committee shall ensure that 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

and the communication is not exclusively based on information circulated by the media.<sup>23</sup> In addition, for a communication to be admissible, the complainant must show that the same issue has not been considered according to another investigation, procedure or international regulation;<sup>24</sup> 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;<sup>25</sup> the communication is presented within a reasonable period after appeal channels at the national level have been exhausted<sup>26</sup> and, finally, the wording of the communication shall not be offensive.<sup>27</sup>

If not all, many international and regional human rights instruments require the exhaustion of domestic legal remedies in human rights disputes against state parties to those instruments before such disputes are presented before supervisory organs. The African Children's Committee is therefore not an exception in requiring the exhaustion of local remedies. However, the phrase used in the Guidelines, stating that 'the author has exhausted all the available appeal channels at the national level', seems to suffer from a degree of ambiguity; perhaps caused by the lack of necessary technical legal drafting skills required. The term 'appeal' need not necessarily be taken to mean a higher judicial court. It could also relate to a tribunal, a commission or any other organ with judicial or quasi-judicial powers.<sup>28</sup> In addition, the main message of the whole phrase should be that a state should have the opportunity to provide redress for a wrong under its own legal system before international redress may be invoked against that state.<sup>29</sup>

Obviously, where there is no local remedy in existence, there is nothing to exhaust.<sup>30</sup> This may include situations where a decree or other measure has ousted the jurisdiction of the courts; where pursuing a remedy is dependent on extra-judicial considerations; where the nature of the relief sought is not possible before domestic courts; where a situation of serious massive violations of human rights and particularly children's rights exists and where complainants are detained without

<sup>23</sup> Ch 2, art 1(III)(b) Guidelines for Communications.

<sup>24</sup> Ch 2, art 1(III)(c) Guidelines for Communications.

<sup>25</sup> Ch 2, art 1(3)(d) Guidelines for Communications.

<sup>26</sup> Ch 2, art 1(3)(e) Guidelines for Communications.

<sup>27</sup> Ch 2, art 1(3)(f) Guidelines for Communications.

<sup>28</sup> But this does not necessarily mean that, for a communication to be admitted, remedies of a non-judicial nature should not be required to have been exhausted.

<sup>29</sup> See *Interhandel* case, 1959 ICJ Reports 27.

<sup>30</sup> The use of the words 'if any' in art 56(5) of the African Charter implies that remedies can be exhausted only if they are available.

trial.<sup>31</sup> Where court proceedings are unduly prolonged, or sometimes even just prolonged, the Committee should be flexible, and on a case-by-case basis consider the communication as having exhausted local remedies. Whether indigence should absolve a complainant from exhausting local remedies is open to debate. However, in the context of the African Commission, Viljoen rightly suggests that 'in order for access not to be denied to individuals on the basis of their indigence alone, admissibility requirements should be relaxed'.<sup>32</sup> Interestingly, the possibility for the complainant requesting that the Committee reconsider its decision by providing additional documents or facts is also provided for.<sup>33</sup> Finally, it needs to be noted that, in proving exhaustion of local remedies, the onus of proof usually would be on the complainant.

The concept of provisional or interim measures, the purpose of which is avoiding irreparable damage to victims, or sometimes complainants, during the course of the consideration of a communication, has received the attention of the African Children's Committee.<sup>34</sup> The state concerned in a communication is to be given the chance to present an explanation or written statement containing its observations on a communication within six months.<sup>35</sup> However, if this deadline is not respected, the Committee may decide to consider the communication anyway.<sup>36</sup>

Much emphasis seems to have been placed by the Committee on the confidential nature of the consideration of communications. Communications are to be considered in a session held *in camera*.<sup>37</sup> It is provided that 'the Committee, working group or Rapporteur shall not make public any communication, document or information relating to a communication',<sup>38</sup> further establishing the principle of confidentiality.

Here a word of caution should be shared from the experience of the African Commission. It was reported that<sup>39</sup>

the Commission had placed on article 59(1) of the African Charter which prohibits disclosure of 'all measures' taken in respect of protective activities by the Commission 'until such a time as the Assembly of Heads of State and Government shall otherwise decide'. This provision ensured that very little was known or learned about the Commission relative to such recent

<sup>31</sup> S Gumedze 'Bringing communications before the African Commission on Human and Peoples' Rights' (2003) 3 *African Human Rights Law Journal* 133.

<sup>32</sup> Viljoen (n 14 above) 90.

<sup>33</sup> Ch 2, art 2(II)(3) Guidelines for Communications.

<sup>34</sup> Ch 2, art 2(IV)(1) Guidelines for Communications.

<sup>35</sup> Ch 2, art 2 (II)(4) Guidelines for Communications.

<sup>36</sup> Ch 2, art 2(III)(4) Guidelines for Communications.

<sup>37</sup> Ch 3, art 1 Guidelines for Communications.

<sup>38</sup> Ch 3, art 1(3) Guidelines for Communications.

<sup>39</sup> CA Odinkalu 'The individual complaints procedures of the African Commission on Human and Peoples' Rights: A preliminary assessment' (1998) 8 *Transitional Law and Contemporary Problems* 367-368.

African tragedies as the conflicts in Burundi, Rwanda, and Liberia. It also confirmed the sub-ordination of the Commission to the political organs of the OAU. By late 1993, this confidentiality principle was undermining the reputation of the Commission and, it was widely felt, of its members as well. In an interview with this author in 1993, one of the then members of the Commission described the effect of this provision as 'frustrating' and asserted that the confidentiality provision was inserted into the Charter by the leaders of the OAU 'to protect' themselves from undue criticism from outside.

In the last sections of the Guidelines, article 3 of section 3 embeds one of the four cardinal principles of the African Charter, namely 'child participation', into the communication procedure. It highlights that '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'.

Finally, the African Children's Committee recognises the challenge faced by the African Commission of enforcing decisions. In an attempt to fill this gap, the African Children's Committee provides that '[t]he Committee shall designate one of its members to be responsible for monitoring its decisions'<sup>40</sup> and further indicates that '[h]e/she shall regularly report to the Committee'.<sup>41</sup> In the context of the African Commission, it has been suggested that<sup>42</sup>

a Special Rapporteur on follow-up would be an effective appointment. Without such a mechanism, the Commission often believes its job is finished once the decision is published, the communication does not get the necessary publicity, and it is not clear whether the victims received the remedy they deserved.

By establishing a follow-up mechanism to its decisions on communications, the African Children's Committee seems to intend to fill the gap that existed within the African Commission. Here, it should be mentioned that, while drafting its decisions under a communication, the Committee should clearly indicate which actions need to be taken by the state(s) concerned.

## 4 Guidelines on the conduct of investigations

Under item 7 of the agenda of the 8th meeting, the Guidelines on the conduct of investigations (article 45 of the African Charter) were considered. The document was divided as follows: an introduction, part A on definition, aim and types of investigation missions, part B on logistics and part C on follow-up of missions.

The document contains 24 detailed provisions. It is also accompanied

<sup>40</sup> Ch 3, art 4(1) Guidelines for Communications.

<sup>41</sup> Ch 4, art 4(2) Guidelines for Communications.

<sup>42</sup> R Murray 'The African Charter on Human and Peoples' Rights 1987-2000: An overview of its progress and problems' (2001) 1 *African Human Rights Law Journal* 10.



by two appendixes on the 'form for the collection of field information' and a list indicating the principles and guarantees that mission members should have. A definition section elaborates what an investigative mission is,<sup>43</sup> while the aim and types of investigation missions are provided for in subsequent provisions.<sup>44</sup>

Investigation missions can be initiated either by the Committee or at the invitation of a state party.<sup>45</sup> A preliminary report is to be prepared before each investigation,<sup>46</sup> which helps collect all available information on the country concerned.<sup>47</sup> The information on the preliminary report shall be collected from the AU, the UN, from the state concerned, official political parties and civil society.<sup>48</sup>

The Committee, recognising the need to undertake a well-organised investigation mission, further guides the way in which the logistics are to be handled. Mission dates and mission programmes need to be prepared and communicated well in advance to all concerned.<sup>49</sup> The need to remain independent and impartial in all activities of the mission is underlined.<sup>50</sup>

Article 14 deals with publicising the mission and inviting the public and all individuals likely to contribute to the mission's success. As expected, under article 15(3), the mission should also meet authorities of public and private institutions. The need to have a wide coverage, including rural areas, in the mission is also taken into account.<sup>51</sup>

At the end of the mission and before leaving the country that is visited, the mission delegation must prepare a document presenting the preliminary results of its investigation that should be communicated to the government and the media.<sup>52</sup> Later the mission's final report must be prepared. The mission report is expected to make recommendations.<sup>53</sup> The mission report should be attached to the progress report submitted by the Committee to the Assembly of Heads of State and Government of the AU and can only be published after consideration by the Assembly.<sup>54</sup>

The African Children's Committee does not consider its job done once the mission report is finalised. As a result, the Guideline establishes follow-up mechanisms. The state party visited in the mission could be

---

<sup>43</sup> Art 1 Guidelines on the Conduct of Investigations.

<sup>44</sup> Arts 2 & 3 Guidelines on the Conduct of Investigations.

<sup>45</sup> Arts 4(1) & (2) Guidelines on the Conduct of Investigations.

<sup>46</sup> Art 8(1) Guidelines on the Conduct of Investigations.

<sup>47</sup> Art 8(2) Guidelines on the Conduct of Investigations.

<sup>48</sup> Art 10 Guidelines on the Conduct of Investigations.

<sup>49</sup> Art 11 Guidelines on the Conduct of Investigations.

<sup>50</sup> Art 12 Guidelines on the Conduct of Investigations.

<sup>51</sup> Art 17(1) Guidelines on the Conduct of Investigations.

<sup>52</sup> Art 20(1) Guidelines on the Conduct of Investigations.

<sup>53</sup> Art 23 Guidelines on the Conduct of Investigations.

<sup>54</sup> Art 25(2) Guidelines on the Conduct of Investigations.

requested to present, within six months after the mission or the adoption of a decision by the Committee, a written reply on any measures taken in light of the recommendations made in the mission report.<sup>55</sup> Civil society could also be requested to furnish information on the situation on the ground.<sup>56</sup>

## 5 Criteria for granting observer status with the African Children's Committee

The African Children's Committee drafted the Criteria for Granting Observer Status (Criteria), in conformity with article 42 of the African Children's Charter and articles 34, 37, 81 and 82 of the Rules of Procedure on representation and co-operation with civil society organisations.

The Criteria are divided into six sections: principles to be applied in granting observer status in the AU African Committee of Experts on the Rights and Welfare of the Child; application procedure for NGOs; procedure for consideration of applications by the Committee; participation of observers in the deliberations of the Committee; relations between the Committee and observers; and final provisions.

Under section I, the aims 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 AU and of the African Children's Committee and those enshrined in the African Children's Charter.<sup>57</sup> In order to reduce unnecessary duplication in the granting of observer status, the criteria stipulates that<sup>58</sup>

when there are several NGOs/associations with similar objectives, interests and viewpoints in a given area, they should be encouraged with a view to obtaining observer status with the Committee to form a coalition.

Not only are NGOs expected to be 'registered in a member state without restriction to carry out regional and continental activities',<sup>59</sup> they should also<sup>60</sup>

provide proof of at least three years registration as an organisation of the civil society or the diaspora working to defend, promote and protect the rights of the child prior to the date of submission of the application, as well as proof of operation during this three-year period.

These provisions are meant to prevent those NGOs who are either 'illegal' or inactive from obtaining observer status. However, if experi-

<sup>55</sup> Art 26(1) Guidelines on the Conduct of Investigations.

<sup>56</sup> Art 27(2) Guidelines on the Conduct of Investigations.

<sup>57</sup> Sec I art 1 Criteria for Granting Observer Status.

<sup>58</sup> Sec I art 3 Criteria for Granting Observer Status.

<sup>59</sup> Sec I art 4(a) Criteria for Granting Observer Status.

<sup>60</sup> Sec I art 4(b) Criteria for Granting Observer Status.

ence within the African Commission is anything to be guided by, the term 'registered in a member state' should be approached cautiously. It should not be interpreted to mean recognition or registration by a member state in accordance with national laws. This is because there might be a number of reasons for governments failing or refusing to recognise or register NGOs in their countries in accordance with national laws,<sup>61</sup> which in turn means denying observer status to organisations that can actually contribute to the work of the Committee.

Among the requirements, NGOs should have a recognised headquarters,<sup>62</sup> democratically adopted statutes<sup>63</sup> and a representative structure.<sup>64</sup> Although the Paris Principles find no mention in the criteria, it is a reasonable assumption that national human rights institutions fulfil the principles set forth therein.

During application, NGOs should submit:<sup>65</sup>

- (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.

Further clarification is offered by the criteria in terms of what the memorandum of activities should contain. It is therefore indicated that<sup>66</sup>

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.

However, section II on 'Application Procedure for Non-Governmental Organisations' does not clearly indicate to whom the application is to be made. Unfortunately, there is no explicit provision that prohibits applying for observer status being put forward by the Committee without having been previously processed by the Secretariat.<sup>67</sup> Such inclu-

---

<sup>61</sup> The potential tension between NGOs and governments in the work of the African Commission has been illustrated in 1996 when the OAU Assembly 'adopted a resolution calling on the African Commission to suspend review of granting observer status for NGOs until criteria had been clarified. This seemed to be the outcome of concerns by governments of the influence of NGO in the work of the Commission. The Commission did suspend consideration of applications for a number of sessions, until it adopted criteria in 1998.' See R Murray 'The OAU/AU and the African Commission' in R Murray (ed) *Human rights in Africa* (2004) 66-67.

<sup>62</sup> Sec I art 5(a) Criteria for Granting Observer Status.

<sup>63</sup> Sec I art 5(b) Criteria for Granting Observer Status.

<sup>64</sup> Sec I art 5(c) Criteria for Granting Observer Status.

<sup>65</sup> Sec II art 1 Criteria for Granting Observer Status.

<sup>66</sup> Sec II art 2 Criteria for Granting Observer Status.

<sup>67</sup> Ch 1, art 5 Criteria for the Granting of and Maintaining Observer Status with the African Commission on Human and Peoples' Rights (1999).

sions could have helped to avoid the problem that once transpired within the African Commission where representatives of NGOs simply handed to a member of the Commission all the relevant documents during a session and had their applications granted during the session without the information being processed by the Secretariat.

In the procedure for the consideration of an application<sup>68</sup>

the Committee shall, during its ordinary sessions, in conformity with the agenda prepared, consider the applications received within the set deadline. The Committee shall decide on the applications considered during its session and inform, through the Chairperson of the Committee, the organisations and associations of the decisions of the Committee without delay.

Here, mention of the presence of a representative of the NGO during the consideration of an application for observer status is lacking. Preferably a representative should be present to answer questions or present additional information that may be required.

The benefits of being granted observer status are numerous. NGOs with observer status may request the Committee to include a particular issue on the agenda, and are also entitled to receive information on the time, location and agenda of the sessions of the Committee. During the sessions, they may present oral statements as well. They could also be invited, with the authorisation of the Chairperson, to participate in the deliberations of the meetings of the Committee.<sup>69</sup> But this participation is to be undertaken, obviously, with no voting rights.<sup>70</sup> They can also obtain documents provided these documents are not confidential<sup>71</sup> or deal with issues concerning the observers.<sup>72</sup> This right to obtain documents should include state parties' periodic reports submitted to the Committee by states to the Charter.<sup>73</sup>

However, attached to the benefits exist reciprocal obligations by NGOs to the Committee. At a general level, 'the NGOs/associations enjoying observer status undertake to establish close co-operation relations with the Committee and hold regular consultations with the latter on all issues of common interest'. Similar to the African Commission's Criteria on Granting and Maintaining Observer Status, NGOs are required 'to submit analytic reports on their activities every two years (2) years'.<sup>74</sup> However, unlike the African Commission, the African

<sup>68</sup> Sec III arts 1 & 2 Criteria for Granting Observer Status.

<sup>69</sup> Sec IV art 6 Criteria for Granting Observer Status.

<sup>70</sup> Sec IV art 6 Criteria for Granting Observer Status.

<sup>71</sup> Sec IV art 3(a) Criteria for Granting Observer Status.

<sup>72</sup> Sec IV art 3(b) Criteria for Granting Observer Status.

<sup>73</sup> This should in turn allow NGOs to prepare their own alternative reports to be submitted to the Committee.

<sup>74</sup> Sec V art 2 Criteria for Granting Observer Status.

Committee has made it clear what the elements of the activity report should indicate.<sup>75</sup>

Where NGOs are in default regarding their obligations, measures could be taken by the Committee. It is provided that<sup>76</sup>

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 loses its representational character or independence.

Apart from suspending or withdrawing observer status, in the same vein as occurs with the African Commission, the African Committee should consider the sanctions of non-participation in sessions, denial of documents and information, and the denial of the opportunity to propose items to be included in the Committee's agenda and of participating in its proceedings.<sup>77</sup> The decision of the Committee in this regard — namely the suspension or withdrawal of an observer status — is final and cannot be the subject of a judgment of a court or a tribunal.<sup>78</sup>

## 6 State reporting<sup>79</sup>

At the 8th meeting, the representative of the AU Commission informed the meeting that the following four state parties' reports had been received: Egypt, Mauritius, Nigeria and Rwanda. The reports have also been translated and submitted to Committee members. The representative also recalled that, during its last meeting, the Committee had selected the Rapporteurs to examine the report of Egypt and of Mauritius. The Committee then proposed the following Rapporteurs to look at the following reports:

- Egypt: Mrs Sielthamo and Mrs Diakhate
- Mauritius: Mrs Pholo and Prof Ebigbo
- Nigeria: Mrs Koome and Dr Bequele
- Rwanda: Dr Sissoko, Mrs Polo and Mrs Hassan

During the debate on the convening of pre-session meetings, it was highlighted that there was a need for the Committee to obtain addi-

<sup>75</sup> Sec V art 2 of the Criteria for Granting Observer Status in part provides that: '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 organisation.'

<sup>76</sup> Sec V art 4 Criteria for Granting Observer Status.

<sup>77</sup> See Ch IV art 2 Criteria for the Granting of and Maintaining Observer Status with the African Commission on Human and Peoples' Rights (1999).

<sup>78</sup> Sec V art 5 Criteria for Granting Observer Status.

<sup>79</sup> For a more detailed discussion on state reporting under the African Children's Charter, see Mezmur (n 3 above) 559-562.

tional reports and information from the countries and NGOs, if necessary, before convening a pre-session meeting. Here, the role of NGOs should be capitalised upon, having NGOs submit alternative reports and other additional information relevant to the constructive dialogue the African Children's Committee should engage in with state parties. It was also noted that the consideration of reports should be done in a professional way in order to establish the credibility of the Committee. In this regard, therefore, proper preparations are required. It was recommended that the AU Commission should prepare a check-list on the requirements for preparing a pre-session meeting, based on the procedures for the consideration of state party reports which were adopted during the third ordinary session. The check-list, which should comprise a calendar and time-frame, should be forwarded to the Chairperson of the Committee. It was also agreed that a pre-session meeting would be held soon after the next meeting of the Committee in the first semester of 2007.

## **7 Interaction with civil society, the media and other matters**

NGOs have provided and continue to provide crucial support in strengthening the mandate of the Committee and in improving its efficacy. In fact, without the support of NGOs, financial and otherwise, the Committee might not have been where it is today. The African Charter, itself, recognises the role that NGOs could play; and under article 42 it provides that the Committee shall 'co-operate with other African, international and regional institutions and organisations concerned with the promotion and protection of the rights and welfare of the child'.<sup>80</sup> The preparation and subsequent adoption of the Criteria for Granting Observer Status by the Committee further affirm its recognition of the crucial role civil society plays in strengthening the efficiency of the Committee.

During the 8th meeting, brief presentations were made by partners. Save the Children Sweden, through its representative, pointed out that Save the Children would engage with other partners to profile the work of the Committee and maintain its visibility, as well as lobby for more resources for the Committee. However, the Committee was reminded of the need to include child's participation as a key principle in its work. The representative also called on the Committee to start examining the state party reports which had been received without delay. In this regard, the representative requested the Committee to encourage

---

<sup>80</sup> See also arts 34, 37, 81 & 82 of the Rules of Procedure on representation and co-operation with civil society organisations.

NGOs to provide supplementary reports and offered to provide technical support in that respect.

The representative of the African Child Policy Forum (ACPF) noted that the Forum had been working very closely with the Committee on a number of occasions. She recalled that the members of the Committee were very much involved in the Second International Conference on Violence against Girls in Africa, which was organised by the ACPF in May 2006.

The representative of the Institute for Human Rights and Development in Africa recalled the longstanding co-operation and partnership existing between itself and the Committee and underlined the fact that, among its activities, the Institute conducted two training workshops on the African Charter for NGOs and CSOs. However, he raised the concern that NGOs did not have observer status with the Committee and called upon the Committee to expedite the adoption of the criteria for granting observer status to NGOs to enable further interaction between the Committee and NGOs.

A thematic presentation by the African Network for the Prevention and Protection Against Child Abuse and Neglect (ANPPCAN) entitled *Overview on the African Charter on the Rights and Welfare of the Child and Proposals for a Renewed Popularisation Campaign* was also presented. The presentation elaborated the reasons why there should be a renewed campaign to popularise the African Charter. In this regard, it was highlighted that the African Committee should learn from good practices and experiences. The Committee should be given time to carry out its mandate effectively. Furthermore, the Committee should mobilise resources, make the Charter available in all forms, targeting different groups; use institutions to conduct studies on sections of the Charter, provide training and information to ministries on the ratification and implementation of the Charter, make the Charter known and undertake missions to member states to lobby for its ratification, establish a reporting mechanism on the violation of the rights of children, and develop a strategic plan with a specific time frame on the popularisation campaign of the Charter.

It was recommended that the need exists to strengthen the Secretariat as well as the capacity of the Committee. The AU should ensure that its website is updated with a view to giving visibility to the Committee and providing more information on good practices; there was also a need to prepare a briefing kit on the African Charter and the work of the Committee which would be distributed to governments and other partners; and that advocacy missions to critical areas should be undertaken by Committee members. Joint missions with other partners such as UNICEF, Save the Children and Plan International were also envisaged.

Notwithstanding the above submissions, the African Children's Committee does not enjoy optimal support from NGOs. The number of NGOs consistently present in its sessions is very low. In comparison

with the African Commission, the African Committee could be labelled a 'step-child' as the level of NGO involvement in its work is minimal. Therefore, there is room for improvement.

In a similar vein to what has occurred with the African Commission, workshops could be arranged by NGOs in collaboration with the Committee prior to each of its sessions. These workshops could influence the work and efficiency of the Committee. These workshops could also serve as an information-sharing session where items for the agenda of the Committee, both on topics pertaining to children's rights in specific African countries and thematic issues, could be discussed. The participation of Committee members at these workshops would allow for a free exchange of views and enhance the relationship between the Committee and NGOs.<sup>81</sup>

This does not mean that the African Committee itself needs not be proactive. There are a few areas where the Committee should be able to increase its efficiency and room for improvement continues to exist.

The role of the media as a means of pushing the boundaries of the promotion and protection of children's rights cannot be gainsaid. It provides a good opportunity for the transmission of information about issues regarding children's rights on the continent. The need on the part of the Committee to use the media to promote its work should be maximised and need not be left to NGOs. The Committee should maintain a high profile so as to enhance its work and image, particularly during investigative missions. The Day of the African Child also offers a good opportunity for positive publicity. The preparation of press releases before, during and after each session is also crucial. The need to prepare an advocacy strategy that includes the media should be made a priority by the Committee.

If possible, developing a practice of determining the date and location of the next meeting of the African Committee at its previous session is advisable. If done in this way, it will help both civil society and governments to plan well in advance to take part in the sessions of the Committee. The distribution in advance of draft agendas, as is lately done by the African Commission, should be considered both as a means of increasing the visibility of the Committee and its work, as well as enhancing the crucial involvement of civil society in the process.

The need to avoid the appearance of a lack of organisation at sessions is very crucial. Discussions should be focused and debates should remain relevant. The role of the Chairperson in making this a reality cannot be overemphasised. Because there are only two sessions a year that last only five days, the Committee does not have the luxury of

---

<sup>81</sup> Here it should be mentioned that, in the context of the African Commission, the participation of some governments in these workshops has prevented NGO representatives of some governments from those countries from expressing their views openly. See A Motala 'Non-governmental organisations in the African system' in Evans & Murray (n 14 above) 253.



wasting time on unnecessary discussions. The need to develop a practice of a coherent policy by the African Children's Committee for disseminating its reports, decisions and other documents at all levels — local, national and international — is also important.

## 8 Conclusion

The cancellation of the 8th meeting of the African Children's Committee, initially planned for May 2006, cast some doubt on the work of the African Children's Committee, since it is supposed to meet at least twice a year. The cancellation was called for, among other things, to allow the Committee members to prepare the three documents presented during the 8th meeting. Both in the interest of time and resources, there was no point in having a meeting unless concrete issues were to be presented and addressed.

Subsequent to this, the 8th meeting of the African Children's Committee saw the development of the Guidelines for Communications, Guidelines for Conducting Investigations and the Criteria for Granting Observer Status. All these documents were sent to the AU Legal Office for further technical polishing as some final touches were required. There is no doubt that a standard document will soon emerge.

The African Children's Committee also dealt with a number of other concrete issues during its 8th meeting. The discussion and adoption of the revised Work Plan (2005-2009) enjoyed some attention. The theme for the 2007 Day of the African Child was also adopted. In this regard, it was noted that the momentum of the June 2006 theme, 'Right to Protection: Stop Violence against Children', should be maintained and that the theme for Day of the African Child 2007 should be 'Combat Child Trafficking'. The need to include violence against children on the AU Summit agenda was highlighted. The consideration of the questionnaire to be sent to member states for the Mid-Term Review Meeting on the African Common Position, 'Africa Fit for Children' was also deliberated upon.

The notion that a core group of the Committee members are to follow up on the issue of resource mobilisation was also proposed. After considering the countries that have not ratified the Charter and taking into consideration the regional balance, the Democratic Republic of Congo, Liberia, São Tomé and Príncipe, Tunisia and Zambia were identified. Committee members were nominated to undertake lobbying missions to these countries.

The recurring theme of the lack of a permanent Secretary for the African Children's Committee continues to hinder the work of the Committee. It is an issue the AU Commission needs to address speedily. However, the recruitment of a Senior Policy Officer to assist the Committee under the AU/UNICEF project is notable progress.

As pointed out above, some challenges still remain to translate into

reality. The weak start of the African Children's Committee, the lack of adequate resources for its effective functioning and a lack of interest on the part of member states of the AU in meeting their obligations, particularly with regard to state reporting, still continue to prevent the African Children's Committee from maximising its potential. However, signs of improvement in recent years are abundant and it is this author's belief that the African Children's Committee is on its feet and has started to walk. So, slowly but surely, the African Children's Committee is progressing — from an infant to a toddler.