

Like running on a treadmill? The 14th and 15th sessions of the African Committee of Experts on the Rights and Welfare of the Child

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Summary

The 14th and 15th sessions of the African Committee of Experts on the Rights and Welfare of the Child were held in November 2009 and March 2010 respectively. The Committee has considered more reports and issued its first concluding observations. The continued engagement of the Civil Society Organisations Forum with the African Children's Committee offers an example of positive progress towards supporting the implementation of the African Children's Charter. The development of a relatively well thought-out strategic plan for the African Children's Committee's work for the period 2010 to 2014 (with a better level of participation from stakeholders) also offers an advance in the work of the Committee. Despite these, there remains some room for improvement in order to allow the African Committee to achieve its mandate of the promotion and protection of children's rights in Africa.

1 Introduction

The implementation and monitoring of the African Charter on the Rights and Welfare of the Child (African Children's Charter) is supervised

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by the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee).¹ The Children's Charter provides for an independent 11-member Committee, appointed by the Assembly of Heads of State and Government of the Organisation of African Unity (OAU)/African Union (AU).² Article 33 of the African Children's Charter maps out the criteria that need to be met for selection on the Committee.

The 14th ordinary session³ of the African Children's Committee was held from 16 to 19 November 2009, and the 15th ordinary session was held from 15 to 19 March 2010, both in Addis Ababa, Ethiopia. Nine and ten Committee members respectively participated in these two sessions of the African Children's Committee.

The 14th session of the African Children's Committee coincided with the tenth anniversary of the entry into force of the African Children's Charter in November 1999. The time to take stock of achievements and challenges arose for deliberation at both the second Civil Society Organisations Forum (CSO Forum) held during the week before the Committee meeting, and the seminar to celebrate the tenth anniversary itself (also held in Addis Ababa on 13 November 2009). The 14th session was more focused on the consideration of state reports.

The 15th meeting, on the other hand, allocated more time for consolidating co-operation platforms and collaborative opportunities with partners and stakeholders. It also facilitated discussion on the 2010-2014 Work Plan. Furthermore, a timely thematic discussion on violence against children took place. Follow-up on the two communications received by the Committee and the consideration and granting of observer status were other issues covered during this meeting.

This article summarises some current developments concerning the African Children's Charter and the work of the African Children's Committee. For instance, it looks at the status of ratifications, the status of state reports and concluding observations, and the award of observer status. In addition, it comments on the significance of the CSO Forum, which seems set to become a permanent feature of an emerging dialogue around the implementation of the African Children's Charter. The Work Plan of the African Children's Committee for the five-year period 2010-2014 is mentioned. Some of the efforts that are underway in order to strengthen co-operation between the African Children's Committee and stakeholders and partners are further discussed.

¹ Art 32(1) African Children's Charter.

² Arts 33-36 African Children's Charter. See also art 11(2) of the Rules of Procedure of the Committee.

³ The words 'session' and 'meeting' are used interchangeably throughout this article.

2 Some preliminary points

Over time, the level of attendance of both the number and type of stakeholders of the meetings of the African Children's Committee has increased. This fact was once again evident during the 14th and 15th meetings. Apart from the regular attendees (such as the African Child Policy Forum, the Institute for Human Rights and Development in Africa (IHRDA), Plan International, Save the Children and the United Nations Children's Fund (UNICEF)), other local civil society organisations (CSOs) were present.⁴ Indeed, if the Children's Committee announces the dates and venue of its meetings well in advance, and also attempts to minimise the number of closed sessions it has been having lately, the attendance level of the meetings of the African Children's Committee will increase even more.

The African Children's Committee seems to be fully aware of the fact that in order to increase its visibility on the African continent, it needs to improve upon its efforts to hold its meetings in African countries other than Ethiopia. The last time a meeting of the Children's Committee was held outside of Addis Ababa was in 2007.⁵ As a result, there were initial efforts to hold the 14th meeting of the Children's Committee in Cairo, Egypt. However, this did not materialise. During the 14th meeting, Mrs Dawlat Hassan, the member of the Committee from Egypt, presented to the Committee the apologies of the Arab Republic of Egypt which, due to financial constraints, was not able to hold the 14th meeting of the Committee as it was initially planned.⁶

During the 15th meeting, it was indicated that the terms of office of six Committee members were coming to an end in June 2010. These members were Martha Koome (Kenya); Seynabou Diakhaté (Senegal); Marie Chantal Koffi (Côte d'Ivoire); Mamosebi Pholo (Lesotho); Boipelo Lucia Seithlamo (Botswana); and Mousa Sissoko (Mali).

It is to be recalled that members of the African Children's Committee are not eligible for re-election by virtue of article 48(1) of the African Children's Charter. As long as either the AU Office of the Legal Counsel or the African Children's Committee itself does not follow up on paragraph 8 of Decision EX/CL/233(VII) of 2005 of the Executive Council of the AU that has requested the AU Commission to study measures to renew the terms of office of Committee members for another term, the terms of office of Committee members continue to expire with no possibility of standing for re-election. There is no intention here to reiterate some of the potential advantages of the possibility of standing for re-election in order to assist the realisation of the mandate of the

⁴ Eg, CONAFE country offices (such as from Mali, Senegal and Niger) are increasingly represented.

⁵ This was the 10th meeting held in Cairo, Egypt.

⁶ On behalf of Ambassador Moushira Khatab of Egypt, who is the minister in charge of children's affairs.

African Children's Committee, as the issue has been covered in previous articles.⁷

As a result of these six vacancies, the African Union Commission (AUC) Legal Counsel had sent out a *note verbale* to member states inviting them to nominate candidates to the Committee. The election of the new Committee members took place during the 15th Summit of the AU Heads of State and Government held in Kampala, Uganda.

As a result of the fact that six members of the Committee were outgoing, and after an extensive discussion of the agenda item relating to the election of the Bureau (comprising the Chairperson and Vice-Chairperson), Committee members decided to postpone the election of the Bureau until the election of the incoming new members. This decision was in part influenced by CSOs who raised concerns about the planned election, arguing that it would be inappropriate as six new Committee members were leaving and six new ones were coming on board beginning from July 2010. Subsequently, it was agreed that the Chairperson, Seynabou Diakhaté, would remain in office up to the end of her term (as Bureau member) at the end of May 2010 and the Vice-Chairperson, Agnès Kaboré, was designated Acting Chairperson. This decision is commendable and constitutes good practice as it paved the way for holding an election of the Bureau once the incoming new Committee members⁸ were already in place.

On a different note, as far as ratification is concerned, the African Union Commission website⁹ confirms the ratification of the African Children's Charter by 45 member states of the AU. However, there are unconfirmed reports that two additional states - namely São Tomé and Príncipe and Djibouti - have ratified. An additional state that is further said to be on course to finalise its ratification process of the Charter is the Democratic Republic of Congo.¹⁰ This is indeed a clear indication that universal ratification of the African Children's Charter is not out of reach in the foreseeable future.

Due to the fact that the Plan of Action had not been translated into both the two working languages, English and French, during the 14th meeting, the African Children's Committee agreed to postpone this agenda item and to have it discussed during a workshop before the

⁷ See, eg, J Sloth-Nielsen & BD Mezmur 'Win some, lose some: The 10th ordinary session of the African Committee of Experts on the Rights and Welfare of the Child' (2008) 8 *African Human Rights Law Journal* 211-212.

⁸ It is relevant to note that the incoming Committee members constituted more than half of the Committee membership.

⁹ <http://www.africa-union.org> (accessed 31 October 2010).

¹⁰ The other remaining five countries that have not ratified the Charter are Central African Republic, Sahrawi Arab Democratic Republic, Somalia, Swaziland and Tunisia. A full list of current ratifications can be found at <http://www.africa-union.org> in the section on Documents.

next session.¹¹ Subsequently, the draft Plan of Action was discussed during the 15th meeting of the Children's Committee. Committee members submitted their comments on the draft and the document was sent to the Social Affairs Department of the AUC for adoption.

3 State reporting

The examination of state reports constitutes a core component of the promotional mandate of the African Children's Committee. This is because state reporting is the most basic of all strategies adopted internationally to assess and oversee compliance with international human rights standards. In this regard, article 43(1) of the African Children's Charter states:

Every state party to the present Charter shall undertake to submit to the Committee through the Secretary-General of the Organisation 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.

Article 43(2) further states as follows:

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.

This said on a general note, the following subsections highlight a number of specific issues pertaining to state reporting. These issues include the status of state reporting.

3.1 The status of the submission of state reports

The low level of reporting to the African Children's Committee by state parties is a recurring theme. To date, the Children's Committee has received the state reports of only 13 countries.¹² Out of the 13 state reports, the African Children's Committee has considered 10. The table

¹¹ It was agreed that resources to organise the workshop to consider the draft Plan of Action would be mobilised. However, it was also agreed that, if funds were not made available in time, the draft Plan of Action would be presented during the 15th meeting of the African Children's Committee.

¹² These countries are Burkina Faso, Cameroon, Egypt, Kenya, Mali, Mauritius, Niger, Nigeria, Rwanda, Senegal, Tanzania, Togo and Uganda. The copies of some of these reports are available at <http://www.crin.org/resources/treaties/index.asp> (accessed 30 September 2010). In the second half of 2010, there are indications that the state reports of Libya and Sudan are almost finalised and to be submitted to the AUC.

below shows in detail the extent to which state parties have so far failed in their reporting obligations to the African Children's Committee.

Dates of signature, ratification, and the submission of initial reports on the implementation of the African Children's Charter:¹³

No	Country	Date of signature	Date of ratification/ accession	Due date of initial reports	Due date for first 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 Republic of Congo	02/02/2010	-	-	-
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
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	The Gambia	-	14/12/2000	14/12/2002	14/12/2005

¹³ It is kindly acknowledged that this table is taken *directly* from Save the Children and Plan (F Shehan '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' (2010).

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
36	Nigeria	13/07/1999	23/07/2001	23/07/2003	23/07/2006
37	Niger	13/07/1999	11/12/1999	11/12/2001	11/12/2004
38	Rwanda	02/10/1991	11/05/2001	11/05/2003	11/05/2006
39	South Africa	10/10/1997	07/01/2000	07/01/2002	07/01/2005
40	Sahrawi Arab Democratic Republic	23/10/1992	-	-	-
41	Senegal	18/05/1992	29/09/1998	29/11/2001	29/11/2004
42	Seychelles	27/02/1992	13/02/1992	29/11/2001	29/11/2004
43	Sierra Leone	14/04/1992	13/05/2002	13/05/2004	13/05/2007
44	Somalia	01/06/1991	-	-	-
45	São Tomé and Príncipe	01/02/2010	-	-	-
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	02/12/2008	02/12/2010	02/12/2013
53	Zimbabwe	-	19/01/1995	29/11/2001	29/11/2004

As the table above shows, the one and only country to date that has reported to the African Children's Committee within the prescribed time frame is Sudan. Sudan ratified the African Children's Charter on 18 July 2008. Pursuant to article 43(1), the initial report of Sudan was due on 18 July 2010. It was indicated by the AU Commission during the second half of 2010 that the initial state report of Sudan had been received.

There are at least 27 state parties whose deadline for the submission of their first periodic report has already passed, despite the fact that they still have not yet submitted their initial reports. These countries are Algeria, Angola, Benin, Botswana, Burundi, Cape Verde, Chad, Côte d'Ivoire, Comoros, Congo Brazzaville, Equatorial Guinea, Eritrea, Ethiopia, The Gambia, Ghana, Guinea, Lesotho, Madagascar, Malawi, Mozambique, Mauritania, Namibia, Seychelles, South Africa, Sierra Leone and Zimbabwe.

Against this background, the African Children's Committee needs to intensify its efforts or adopt new ways in building on a number of strategies that can be pursued in the interest of facilitating the submission of state reports. Three of these strategies are offered below.

Firstly, it might be appropriate for the African Children's Committee to issue a decision that would allow state parties that are encountering problems in complying with the strict time frame for submission of reports established by the Children's Charter in article 43(1), to submit a combined report of their initial and first periodic reports.¹⁴ Such a decision will need to emphasise that these rules apply only on the basis of an exceptional measure taken for one time only by a state party in an attempt to provide an opportunity for them to respect the strict reporting periodicity foreseen in article 43(1) of the African Children's Charter.

¹⁴ It is to be recalled that the CRC Committee has undertaken a similar measure. In addition to its guidelines for reporting (CRC/C/5 and CRC/C/58), the Committee also adopted recommendations that are relevant to state parties' reporting obligations. These recommendations provide guidance to state parties that are encountering problems in complying with the strict time frame for submission of reports established by the Convention in art 44, para 1, or the consideration of whose reports has been delayed. These recommendations apply as an exceptional measure taken for one time only (see CRC/C/139). See CRC Committee 'Working methods' <http://www2.ohchr.org/english/bodies/crc/workingmethods.htm#a2c> (accessed 30 September 2010).

Secondly, writing a letter to state parties that are very late in submitting their reports can be undertaken.¹⁵ Perhaps a good starting point of doing this could be to send letters to countries whose initial state reports were due in 2001 but still have not yet reported to the African Children's Committee.¹⁶ These letters should indicate to the state parties that should they not report within a certain period of time specified by the Children's Committee, the Committee would consider the situation of children's rights in the state in the absence of the initial report as foreseen, at least through interpretation, by Rule 66 of the African Children's Committee's Rules of Procedure.¹⁷

Thirdly, there are a number of African countries that continuously report to the Committee on the Rights of the Child (CRC Committee). For instance, the latest countries that have reported to the CRC Committee include Guinea Bissau, Sudan, Burundi, Egypt, Libya, Liberia, Madagascar, Namibia, São Tomé and Príncipe and Seychelles. It might be a good option for the African Children's Committee to select some of these countries and target them for lobbying and follow-up so that they also submit their reports to the African Children's Committee. As allowed by the Guidelines for State Reporting, these countries will be able to submit to the African Children's Committee a report similar to the one already submitted to the CRC Committee, after highlighting the peculiarities of the African Children's Charter. Not only will this facilitate the work of the Children's Committee in reviewing state reports, but it will also help it to receive information that is not outdated, while at the same time reducing the burden of states in preparing and submitting their reports.

¹⁵ Eg, in June 2003, the CRC Committee sent letters to three state parties whose initial reports were due in 1994 and never submitted. The Committee further decided to inform those state parties in the same letter that should they not report within one year, the Committee would consider the situation of children's rights in the state in the absence of the initial report.

¹⁶ These countries include Angola, Benin, Cape Verde, Eritrea, Guinea, Lesotho, Malawi, Mozambique, Seychelles and Zimbabwe.

¹⁷ Rule 66 of the African Children's Committee's Rules of Procedure, entitled 'Non-submission of reports' provides:

'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 para 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 (our emphasis).

3.2 The content of state reports

Unfortunately, there is a continued insufficiency (especially in terms of concrete details that particularly highlight the added value of the African Children's Charter) in some of the reports that are being submitted to the African Children's Committee. Again, what was already alluded to while reporting on the 11th session of the African Children's Committee in 2008 bears repeating.¹⁸ It is to be recalled that in recognition of the dual reporting burden that states may need to shoulder, article 24 of the Guidelines provides that:

[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.

The effectiveness of the Guidelines as a means to an end is partly dependent on to what extent state parties understand the requirements of the Guidelines. The consideration of state reports during the 14th and 15th sessions of the African Children's Committee has once again reconfirmed that there is an *urgent* need to communicate to state parties through a *note verbale* or memorandum what these 'areas of rights that are specific to the Children's Charter' that need to be highlighted are while reporting to the African Children's Committee.

3.3 Pre-session for the consideration of state reports

The African Children's Committee continues to benefit greatly from alternative reports submitted by CSOs in its information-gathering efforts while considering state reports. To date, generally, the alternative reports submitted to the African Children's Committee are fairly comprehensive, organised, and often have clear recommendations in order to improve the implementation of children's rights in the state parties concerned. It is also commendable that many of these reports are starting to be submitted by a coalition or group of CSOs acting together. A good example of this is the alternative report on Kenya that involved a number of CSOs in its preparation. Experience so far also shows that, generally, the half day the African Children's Committee allocates for the consideration of one alternative report is sufficient.

However, here again, the need to formalise the submission of documents for the pre-session and the eligibility to attend the pre-sessions are issues that need clarification from the African Children's Committee. This can only be effectively done by the adoption of Guidelines on the consideration of alternative or complementary reports during a pre-session. In fact, the process of preparing such a document need not

¹⁸ See, generally, BD Mezmur & J Sloth-Nielsen 'An ice breaker: The 11th ordinary session of the African Committee of Experts on the Rights and Welfare of the Child' (2008) 8 *African Human Rights Law Journal* 596-616.

're-invent the wheel'. It is recommended that the Committee should take the Guidelines of the CRC Committee used for a similar purpose and adapt it to its needs.

3.4 Constructive dialogue

The presence of state representatives to present and discuss a state report before the African Children's Committee in open and public meetings of the Committee is a critical stage of the state reporting process. The constructive dialogue stage should be able to create the space to analyse progress achieved and factors and difficulties encountered in the implementation of the African Children's Charter.

As the purpose of the whole process is supposed to be constructive, and as is the practice by the CRC Committee, *sufficient time* should be given to discussions about implementation priorities and future goals. However, if past experience is of any guidance, the consideration of the state reports of countries during the 14th session has reconfirmed the concern that the time allocated for the presentation and discussion of a state report (often two hours) is insufficient for a concrete constructive dialogue to take place. This in turn further shows the validity of earlier recommendations that the practice of the AU to allow the African Children's Committee to meet only for three to five days twice a year is indeed insufficient given the mandate and increasing work load of the African Children's Committee.

In order to have a meaningful constructive dialogue, it is important that the representation of the state party is composed of a delegation with significant involvement in strategic decisions relating to the rights of the child. Treaty body practice indicates that, when delegations are headed by someone with governmental responsibility, the discussions are likely to be more fruitful and to have more impact on policy-making and implementation activities.

The calibre, rank and relevant knowledge of state delegates who presented their state reports before the African Children's Committee so far continues to be highly commendable. For instance, during the consideration of the state report of Burkina Faso, representatives of the Ministry of Social Action, the Ministry of Foreign Affairs, the Ministry of Promotion of Human Rights and National Solidarity of Burkina Faso were present. The delegates from Tanzania included representatives from the Ministry of Community Development, Gender and Children, the Ministry of Labour, Youth, Women and Children Development, the Commission for Human Rights and Good Governance and the Registration Insolvency and Trusteeship Agency (RITA). This commendable composition of the delegates of state parties that have presented their reports has helped to make the constructive dialogue between the African Children's Committee and the delegates as smooth and fruitful as possible.

3.5 Concluding observations/recommendations

For a meaningful state reporting exercise, there is a need to provide state parties with clear, comprehensive and concrete concluding observations/recommendations. The inaccessibility and insufficiency of concrete and clear concluding observations also undermines the efforts of civil society to follow up on the implementation of the African Children's Committee's concluding observations by the respective countries.¹⁹

The 12th session was notable for the fact that it principally concerned the consideration of the first two country reports, those of Egypt and Nigeria.²⁰ Reporting on the 13th session, it was lamented that the concluding observations of the Children's Committee had not been produced, resulting in a delay.²¹ A full year after the reports were debated orally, concluding observations were issued shortly before the start of the 14th meeting.²² Even then, it is alleged that the release of the concluding observations to civil society was a result of pressure from civil society, as it was originally planned only to remit these to the state parties concerned.

The net fruits of the effort of the African Children's Committee can only be described as rather limited. Apart from the brevity (five pages and seven pages respectively), the observations are short on concrete insights, and more often that not resort of vague generalities. Further, the African Children's Committee fails to elaborate substantive jurisprudential standards for the interpretation of Charter provisions (failing even to mention those articles governing the particular recommendations and conclusions proffered). It is noticeable that the format and thrust of the two concluding observations differ significantly, leading inevitably to the conclusion that the suggestion that a standard format (or guidelines) for concluding observations might be valuable.²³ There is little original or unexpected detail in regard to the concluding observations, which are predictable as regards the obvious concentration of concern around vulnerable groups, such as child victims of labour and trafficking, harmful cultural practice, child marriage and infant mortality.

¹⁹ The concluding observations made by the African Children's Committee in respect of Egypt and Nigeria show that there is some room for improvement in terms of concretising the Committee's recommendations.

²⁰ This is described fully in Sloth-Nielsen & Mezmur (n 18 above) 342-345.

²¹ Sloth-Nielsen & Mezmur (n 18 above) 346.

²² These concluding observations were widely circulated to CSOs the week before the 14th meeting.

²³ This constitutes one of the recommendations of the 2nd CSO Forum, where it was learnt that the production of concluding observations was the responsibility of the individual rapporteur assigned to the study of a particular country report to produce the initial draft. Until the 15th meeting, it seemed that little effort is made thereafter to ensure consistency in format, tone and level of analysis.

Of greater potential were the five reports which initially fell to be considered at the 14th meeting. These are the initial reports of Burkina Faso, Kenya, Mali, Tanzania and Uganda.²⁴ Fortunately, the concluding observations on these five countries mark progress over the previous two (those of Egypt and Nigeria). The concluding observations on Tanzania, for instance, are 12 pages long and offer more detailed recommendations.²⁵

However, room for improvement still exists. For instance, there are some conspicuously missing points in some of these concluding observations. Except for the one on Tanzania, it is a common limitation of all four concluding observations that they hardly contain any general observations on budgeting for children. All the concluding observations are also thin on both data analysis and drawing conclusions from such an analysis. In the context of Tanzania, save in the context of the definition of a child, some of the challenges that are faced by children as a result of the application of religious law (such as Islamic or Shari'a law) do not get mentioned in the concluding observations. Apart from making a brief mention of and requiring the state party to provide more information in its subsequent reports in relation to child soldiers, the concluding observations on Uganda do not offer any concrete recommendations on the situation of the use of child soldiers in Northern Uganda, and especially the state's duty to protect in this regard. In addition, the same concluding observations do not say anything about the violations of children's rights in the context of inter-country adoptions in the country. The concluding observations on Mali are silent on the need to address discrimination in the context of nationality as current provisions prevent children from deriving nationality from their mothers. As a result of the joint operation of articles 3 and 6 of the African Children's Charter, the state party should have been called to undertake the necessary legislative measures to ensure that the child can derive nationality not only from the father but also from the mother.

Structurally, there are also a number of aspects that call for improvement. For instance, the concluding observations on Mali's, Uganda's and Kenya's state reports provide the general observations of the African Children's Committee in its last three paragraphs but, logically, these would have featured better early in the documents. The numbering of paragraphs of the concluding observations is also recommended as it would enable easier reference to specific issues. Some sensitivity to the use of terminology is also called for. In this respect, despite the fact that article 13 of the African Children's Charter is captioned 'Handicapped

²⁴ The concluding observations on Burkina Faso, Kenya, Mali, Tanzania and Uganda are available at <http://www.crin.org/resources/infodetail.asp?id=23051> (accessed 30 September 2010). It is important to highlight that the Uganda reports were only considered during the 15th session.

²⁵ However, structurally, Tanzania's concluding observations are not strong.

children',²⁶ this terminology has increasingly become inappropriate and the use of the more sensitive terminology 'children with disabilities' is encouraged in the concluding observations.

As such, a general key concern relates to the need to develop jurisprudential depth, similar to what the CRC Committee has achieved in the 21 years of the existence of CRC. To achieve such a level of analysis, an in-depth study related to the textual interpretation of the African Children's Charter is required. One suggestion that has been put to the African Children's Committee to address this would be to draw on legal interns to prepare first drafts of the concluding observations, which the Children's Committee could then elaborate on, synthesise and debate prior to issuing formally. Collaboration with academic institutions is crucial in this regard. This idea is not alien to other treaty bodies at the United Nations (UN) level.

During its 15th session, the African Children's Committee adopted a format for concluding observations to ensure uniformity and consistency in the recommendations sent to state parties after the consideration of the contents of their reports. This is indeed a positive move, even though it remains to be seen the extent to which this format will help to improve consistency, depth and clarity in future concluding observations.

4 Communications (individual complaints) procedure

Article 44 of the African Children's Charter provides:²⁷

The Committee may receive communications from any person, group or non-governmental organisation recognised by the Organization of African Unity, by a member state, or the United Nations relating to any matter covered by this Charter.

Indeed, this is the main mandate that the African Children's Committee has over the mandates of the CRC Committee.²⁸

To date, the Children's Committee has received two communications. As confirmed during the 6th session of the African Children's Committee, the first communication was received in 2005 and relates to the plight of children in Northern Uganda. It highlights the dire situation of the children in the area, the manner in which their rights were being violated as a result of the 20 year-old civil war between the Ugandan government and the Lord's Resistance Army (LRA), and underscores the

²⁶ It is to be noted that the African Children's Charter was adopted in 1990 and at that time, the use of the term 'handicapped children' was considered normal.

²⁷ Art 44(1) African Children's Charter.

²⁸ It is important to mention that there is currently an advanced process to adopt an optional protocol on complaints procedure under CRC.

obligation of the Ugandan government under the African Children's Charter. This communication was submitted by the Centre for Human Rights of the University of Pretoria. The second communication was submitted jointly by IHRDA, Banjul, and the Open Society Justice Initiative and alleges the violation of the rights of Nubian children in Kenya. This communication was received by the African Children's Committee in 2009.

During the 14th session of the African Children's Committee, the Secretariat of the Children's Committee mentioned that correspondence had been dispatched to the authors of the communications requesting them to forward the French version of the documents to be considered, to enable all members of the Committee to look into the applications and be in a better position to decide on the admissibility of the communications. Since the French versions of these documents in question had reportedly not yet been received by the Secretariat at that stage, the Committee decided to postpone discussion on the admissibility of the two communications to its next session.

However, after four months, not much progress was reported in the consideration of these two communications during the 15th session of the African Children's Committee. This meagre level of progress is the main reason why the CSO Forum that preceded the 14th session of the Children's Committee explicitly recommended that the Committee should consider amending

... its guidelines for the consideration of communications to include a time-frame of six weeks for the African Children's Committee to acknowledge receipt of a communication, to make a decision on admissibility and finally to give its decision on the merits of the communication within a reasonable period of time to ensure that victims are not left without redress.

While some might quibble with the prescriptive nature of this recommendation in relation to the six-week time frame, there should be no doubt that communications need to be dealt within a reasonable time. Indeed, the unnecessary delay in the consideration of communications can contribute, amongst other things, to do (irreparable) harm to children. It is now high time that the African Children's Committee makes concrete progress in its consideration of the two communications that it has been seized with.

5 The Day of the African Child

The African Children's Committee has continued to select themes for the celebrations of the Day of the African Child (DAC). It is to be recalled that the DAC has been recognised by the OAU since 1991. It is celebrated every year on 16 June, and has been used as the main advocacy tool by the African Children's Committee. One of the roles of the DAC is not only to popularise the African Charter, but to also draw attention to priority issues affecting children in Africa.

For 2010, the theme 'Planning and budgeting for the welfare of the child: A collective responsibility' was selected. This theme is indeed a timely one. For instance, in the context of realising the Millennium Development Goals, the progress of which was reviewed in 2010, sufficient budgeting for children is a crucial one. The selection of this theme was also intended to highlight that the lack of resources alone does not explain the problems associated with budgeting and planning for the African child. Indeed, as it was alluded to by the Acting Chairperson of the African Children's Committee on 16 June 2010, several factors hinder the design and implementation of programmes geared towards the protection and promotion of the rights and welfare of the child on our continent, both at central and operational levels. These factors include the failure to take proper account of certain aspects of child protection in national programmes, the non-efficient use of resources, the lack of participation of children in planning and budgeting for programmes, the lack of strategic information and statistical data and a reliable target on the situation of children in some areas, the poor co-ordination and programming, and the lack of reliable financial records.

The notion of 'collective responsibility' in the theme of the DAC of 2010 is aimed to highlight the responsibility of all stakeholders such as governments, development partners, CSOs, communities and families in Africa and worldwide. This is in part in recognition of the fact that on a developing continent such as Africa, decision makers on budgeting extend beyond national governments, and also include foreign governments, intergovernmental organisations and CSOs.

During her speech on 16 June 2010, the Acting Chairperson of the African Children's Committee also alluded to the fact that the Committee favourably considered one of the recommendations of the CSO Forum, namely, the need to allow children to participate in the identification of themes of the DAC in the future. It remains to be seen how the Committee will act upon this important recommendation in order to ensure children's participation.

After a number of proposals and lengthy discussions during the 15th session the theme for the 2011 DAC was selected: 'All together for urgent actions in favour of street children'. This theme is expected to address some of the rights and needs of street children in Africa. It is expected that states will try to address both the causes and subsequent impacts of being a street child. It is anticipated that, for the first time, the African Children's Committee will prepare and share a document highlighting why this theme is selected and the various issues states have to address in celebrating the day under this theme.

Member states are obliged to submit reports on how the DAC was celebrated at national and local levels. However, in the past, there has been a significant lack of compliance with this obligation on the part of states and the very few reports submitted did not suffice for a meaningful assessment of the celebration and impact of the DAC. As a result, this remains an area where the African Children's Committee

will have to develop creative ways of encouraging states to report on the celebration of the DAC.

6 Co-operation with civil society organisations, the CRC Committee and other stakeholders

6.1 The consideration and granting of observer status by the African Children's Committee

Despite the fact that international law identifies states as primary duty bearers, including in the promotion and protection of children's rights, other important actors also play a role as duty bearers, such as inter-governmental organisations and international and national non-governmental organisations (NGOs/CSOs). At the African continent level, generally, the role of CSOs on the continent in furthering human rights is significant. This is in accordance with global trends, in national contexts, regional arrangements and institutions of global governance, where the paradigm is consistently shifting toward effective partnerships between governments and civil societal groups.

In conformity with article 42 of the African Children's Charter and Rules 34, 37, 81 and 82 of the Rules of Procedure, the African Children's Committee prepared and adopted the Criteria for Granting Observer Status in the African Committee of Experts on the Rights and Welfare of the Child to Non-Governmental Organisations and Associations, in 2006.²⁹ The role of granting observer status to formally involve NGOs in the work of the African Children's Committee is crucial, whether in the preparation of complementary reports, the submission of communications or undertaking of lobbying and/or investigation missions. It was as early as the 9th session of the Children's Committee that the then Chairperson of the Committee called on partners to submit their requests for observer status by the latest in May 2008.³⁰

One of the recommendations of the second CSO Forum requested the African Children's Committee

[i]n order to facilitate improved interaction between CSOs and the African Children's Committee and in accordance with the African Children's Committee Guidelines on Observer Status, act upon applications submitted to the Committee from NGOs/CSOs seeking observer status and considering the difficulty in qualifying for observer status, consider revising the guidelines ...

²⁹ 'Annexure 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' (2007) 7 *African Human Rights Law Journal* 559.

³⁰ During the 9th session, hard copies of the final version of Criteria for Granting Observer Status with the African Children's Committee were distributed to all partners.

During the 14th session, following the presentation of the report on the consideration of the observer status applications by the appointed Rapporteur and the ensuing discussions, the African Children's Committee decided to defer deliberation on the applications submitted to the subsequent session of the Committee, and to embark upon amending the Guidelines for granting observer status. There was a clear indication that the practice of the Committee in the year preceding the 14th session has revealed some of the shortcomings of these Guidelines.

One of the commendable moves of the African Children's Committee that emerged from the 15th session was an amended version of these Guidelines. This decision was informed by the need to make the criteria more flexible, thereby enabling a greater number of CSOs to obtain observer status before the Committee. This is indeed one clear example that the Children's Committee takes the recommendations of the CSO Forum seriously, and undertakes measures to act upon them as appropriate. In early 2010, the revised Guidelines of 2010 were shared with partners and stakeholders.

Again marking progress, during the 15th session, the Committee granted observer status to three organisations and rejected or postponed the application of one organisation. As a result, while the African Child Policy Forum was granted observer status without any reservations, Save the Children (Sweden) and IHRDA (based in The Gambia) were granted observer status subject to the submission to the African Children's Committee of sufficient copies of the requisite documents in both French and English.

6.2 The CSO Forum around the work of the African Children's Committee

It was as early as 2004 that the need to establish an NGO Group for the African Children's Charter, similar to the NGO Group for CRC, as a coalition of international, regional and national NGOs which work together to facilitate the implementation of the African Children's Charter was mooted. The idea was for the NGO Group to support participation of the NGOs, particularly national coalitions, in the reporting process to the African Children's Committee as well as other supplementary activities to ensure the implementation of the African Children's Charter.

It has been reported in the past that the first CSO/NGO Forum around the work of the African Children's Committee was held in April 2009.³¹ The Forum intends to bring together CSOs working on children's issues from across Africa. It also provides an opportunity for CSOs to engage with the mechanisms of the African Children's Committee as well as to

³¹ See J Sloth-Nielsen & BD Mezmur 'Out of the starting blocks: The 12th and 13th ordinary sessions of the African Committee of Experts on the Rights and Welfare of the Child' (2009) 9 *African Human Rights Law Journal* 347.

discuss issues directly with Committee members who attend the meetings. The added value of this forum as a platform for partnership and networking and its role as a catalyst for advocacy around children's rights in Africa cannot be over-emphasised.

It is promising to witness that the CSO Forum is now being held prior to every session of the African Children's Committee. As a result, in November 2009, the second CSO Forum preceded the 14th session of the Children's Committee. During the presentation of the recommendations from the CSO Forum to the Committee, it was underscored that over 103 NGOs from over 20 countries met in Addis Ababa during the second week of November 2009 for the CSO Forum.

Some of the recommendations from this CSO Forum to the African Children's Committee included the need to make use of all available channels and means, including forging progressive and sustained relationships with relevant AU bodies and all other relevant stakeholders in order to ensure the effective implementation of the African Children's Charter; and the need to amend the Guidelines for state reporting in order to reflect in further detail what the specificities of the African Children's Charter are in order to allow state parties that have submitted reports to the CRC Committee to submit a similar report to the African Children's Committee after highlighting the specificities of the African Children's Charter.³² Other recommendations refer to the need to amend the African Children's Committee's Guidelines for the consideration of communications to include a time frame of six weeks for the African Children's Committee to acknowledge receipt of a communication; to make a decision on admissibility and finally to give its decision on the merits of the communication within a reasonable period of time to ensure that victims are not left without redress; the importance to develop general comments including on the provisions provided in articles 11, 16 and 20 of the African Children's Charter concerning the prohibition of corporal punishment in all settings; and the need to continuously update the African Children's Committee's webpage to facilitate the improved flow of information between the Committee and all relevant stakeholders.

Similarly, the main objectives of the third CSO Forum, which preceded the 15th session of the African Children's Committee in March 2010 were:

- to contribute to proper implementation of the African Children's Charter and the Call for Accelerated Action for an Africa Fit for Children;
- to foster closer collaboration and co-operation among civil society organisations, the Africa Union Commission, its structures and

³² Rules 70 and 71 of the African Children's Committee Rules of Procedure provide that state parties can submit a similar report to the CRC Committee to the African Children's Committee after highlighting the specificities of the African Children's Charter. Furthermore, the Guidelines for State Reporting under art 24 provides for the same rule.

- organs, the African Children's Committee and other stakeholders, for promotion and protection of children's rights and wellbeing in Africa;
- to educate, share and learn from one another on important child rights issues, mechanisms and processes;
- to provide recommendations to the African Children's Committee on various important child rights topics.

During the third CSO Forum, 89 individuals and organisations from 24 countries attended the event, which clearly indicates the increasing continent-wide attention this Forum is drawing.

As a testament to the fact that the CSO Forum's focus on thematic issues that are timely for the situation of the African child, the deliberations of the third CSO Forum centred on relevant issues such as promoting child wellbeing in Africa; the African Children's Charter and its mechanism to monitor children's rights; the Livingstone's Formula: What is it and how can child-focused CSOs engage with it?; the state of infant, child and maternal health and development in Africa: Where are we in achieving MDGs 4 and 5?; and budgeting for children.

It is important for CSOs to continue supporting the work of the CSO Forum. If the CSO Forum is to be a success and achieve its objectives, it needs to be sustainable. Sustainability requires, amongst other things, that the CSO Forum is supported financially and technically by all stakeholders. It is important for CSOs to attend the CSO Forums and actively engage with partners and the African Children's Committee.

6.3 Potential collaboration with the African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights (African Commission) in 2009 adopted a resolution on collaboration with the African Children's Committee and that, to this end, Commissioner Soyata Maiga had been appointed as the focal point of the Committee.³³ The possibility of holding back-to-back sessions (which would help the African Children's Committee increase its visibility), as well as the possibility of technical co-operation (for instance, in the area of communications) between the two treaty bodies are two examples that collaboration would strengthen the monitoring and implementation of human rights in general.

During the 14th session, the members of the African Children's Committee welcomed this decision and reaffirmed their readiness to work purposefully to establish fruitful partnership with the African Commission. Meanwhile, it was agreed that the Secretariat of the Committee will continue to serve as the point of contact with the African Commission. However, even though it was decided to establish a working group to elaborate a document to formalise this collaboration, this has

³³ ACHPR/Res144(XXXV)09: Resolution on Co-operation Between the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child in Africa, done in Banjul, The Gambia, 27 May 2009.

not materialised by the end of the 15th session. It is also recommended that the Children's Committee should appoint one of its members as a focal person to work with Commissioner Soyata Maiga.

6.4 Potential collaboration with the CRC Committee

At the beginning of the 14th session, under Item 2 entitled 'Consultation among Committee members', the Children's Committee considered it necessary to put on the agenda an item on partnership with the CRC Committee. During the session, the Chairperson of the African Children's Committee informed the members that she had received correspondence from the Chairperson of the CRC Committee who proposed that a joint working group be established for the two Committees to exchange views and come up with proposals for a collaboration strategy, together with the names of their members that would serve on that working group. Members of the African Children's Committee also welcomed this proposal and appointed the following persons to serve on the working group: Seynabou Diakhaté; Moussa Sissoko; Agnès Kaboré; Cyprien Yanclo; Andrianirainy Rassamoely; and Mamosebi Pholo. As the terms of office of three of the members of this working group were coming to an end in mid-2010, it is hoped that the African Children's Committee will elect additional members to fill the vacancies in the working group.

There are a number of areas on which the two Committees can and should collaborate. Two of these areas that call for immediate collaboration are discussed below.

Firstly, there is an ongoing process to develop an optional protocol for CRC to establish a complaints procedure. This is as a result of the fact that the UN Human Rights Council decided, in its resolution 11/1 of 17 June 2009, to establish an open-ended working group to explore the possibility of elaborating an Optional Protocol to CRC to provide a communications procedure complementary to the reporting procedure under CRC.

This individual complains mechanism will be very similar to the one the African Children's Committee has under the African Children's Charter. Once adopted, it is highly likely that the African Children's Committee will have to work hand in hand with the CRC Committee and other stakeholders in order to promote the signature and ratification of the proposed Optional Protocol by African countries. There will also be other activities that the African Children's Committee will have to undertake to support the impact of this proposed Optional Protocol, including the synergy that will exist with the individual complaints procedure under the African Children's Charter. As a result, it is important that the Children's Committee familiarises itself with the processes unfolding in connection with the proposed Optional Protocol. There is no indication to date that the AU or the African Children's Committee has been involved in this process, and it might be worthwhile to

discuss it with the CRC Committee to identify areas of co-operation and allow the African Children's Committee to give whatever input it can in the whole process.

Secondly, another potential area of immediate collaboration relates to the possibility of the CRC Committee encouraging countries that report to it and that have not ratified the African Children's Charter, to do so, and also to report to the African Children's Committee. The CRC Committee systematically and consistently asks state parties that submit reports to it to ratify and implement various international instruments other than CRC and its two Optional Protocols.³⁴ A good example of this is the Hague Convention on Inter-Country Adoption,³⁵ which the CRC Committee has been recommending to state parties to ratify since 1994. In fact, a trend that shows the level of vigorous effort the CRC Committee has exerted to have as many ratifications as possible of the Hague Convention is evident from the changing tone used in the concluding observations of the CRC Committee.³⁶

It might be worthwhile for the working group established by the African Children's Committee to explore the possibility that the CRC Committee can systematically ask African countries that have not ratified the African Children's Charter to do so when they report to it. In addition, it might also be worthwhile to explore, if at all possible, if the CRC Committee can ask in its concluding observations African countries that report to it, to also submit their reports to the African Children's Committee.

During the 15th session, a meeting between the African Children's Committee and the CRC Committee took place. The CRC Committee was ably represented by Agnes Aidoo (Ghana) who is one of the three Vice-Chairpersons of the Committee. It was mentioned that three members of the African Children's Committee and the Secretary of the Children's Committee will attend the September 2010 session of the CRC Committee in Geneva, and will also have meetings with members of the CRC Committee. This is a move in the right direction to

³⁴ The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, adopted on 25 May 2000 and entered into force on 18 January 2002; and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, adopted on 25 May 2000 and entered into force on 12 February 2002.

³⁵ The Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption, adopted on 29 May 1993 and entered into force on 1 May 1995.

³⁶ This shift in emphasis and tone is notable starting from 'the hope that the state party will become a party' (CRC Committee, Concluding Observations: Belarus (February 1994) para 13) to recommending that 'the state party ... [r]atify' (CRC Committee, Concluding Observations: Benin (October 2006) para 45(c)), to 'recommend that the state party ... [s]peedily ratify' (CRC Committee, Concluding Observations: Kazakhstan (June 2007) para 44(a)), to the CRC Committee 'notes with regret that the state party has still not ratified' the Hague Convention (CRC Committee, Concluding Observations: Chad (January 2009) para 51).

strengthen the collaboration between the two Committees that is long overdue.

7 Concluding remarks

In 2009, the African Children's Charter celebrated 10 years since its entry into force. Immediately after the 14th session of the African Children's Committee, a half-day celebration of the Children's Charter was organised by CSOs. Various individuals and organisations took part in the celebration, the main part of which involved a panel discussion on the Charter.³⁷

The African Children's Committee will also turn 10 years in two years' time, perhaps offering a good opportunity to take stock of its achievements and challenges in its existence for a decade. In order to make such a stock-taking exercise a bright and promising one, the African Children's Committee and all stakeholders (such as CSOs, intergovernmental organisations, the AUC and the AU) will need to fast-track their efforts on a number of fronts and issues, some of which are highlighted in this article.

In the context of fast-tracking efforts, there are a number of promising activities being undertaken by various stakeholders. These include the fact that the Permanent Representatives' Committee of the AU approved the possibility of holding a second session of the Committee in 2010; the recruitment of two persons to support the work of the Secretariat of the African Children's Committee which is underway; the fact that Save the Children has committed funds to offer an induction training to the incoming Committee members; that a group of five CSOs have prepared a proposal to be submitted to the Swedish International Development Co-operation Agency (SIDA) in order to support the work of the African Children's Committee; and that UNICEF commissioned a consultant to review the work of the Children's Committee who proposed concrete recommendations. As such, almost all stakeholders seem to be aware that there is no time to slow down but to aggressively build on the momentum created. The work of the African Children's Committee indeed is not and cannot be like running on a treadmill where, if one stops, one moves backward.

³⁷ One of the authors, Prof Sloth-Nielsen, was one of the panellists.