

Dawn of a new decade? The 16th and 17th sessions of the African Committee of Experts on the Rights and Welfare of the Child

*Lorenzo Wakefield**

Researcher, Community Law Centre, University of the Western Cape, South Africa

*Usang M Assim***

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

Summary

The 16th and 17th sessions of the African Committee of Experts on the Rights and Welfare of the Child took place at the African Union Commission Headquarters in Addis Ababa, Ethiopia, in November 2010 and March 2011, respectively. This article provides an overview of these sessions, together with the Civil Society Organisations Fora that preceded these sessions. These sessions featured significant developments in the work of the Committee. The first relates to a new collaboration between a network of five non-governmental organisations and the Committee to promote the work of this treaty body. Secondly, the Committee delivered its first communication, finding against the government of Kenya in regard to the right to nationality (amongst other rights) of Nubian children in Kenya. These two activities are major highlights for the Committee in the execution of its mandate. It is argued that, despite the challenges faced by the Committee, it is at the threshold of a new era through which it may be established as a significant regional human rights treaty body.

* LLB, LLM (Western Cape); lorenzowakefield@gmail.com

** LLB (Ife), LLM (Pretoria); usassim@gmail.com. This article was made possible due to the generous funding from the European Union and the Open Society Initiative of Southern Africa. The views in the article are those of the authors and do not reflect the official views of these institutions.

1 Introduction

The 16th ordinary session of the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee), the body responsible for monitoring the implementation of children's rights in Africa,¹ took place from 8 to 12 November 2010 in Addis Ababa, Ethiopia, at the African Union (AU) Commission Conference Centre. The terms of office of six members of the Children's Committee lapsed in June 2010. These members were Boipelo Lucia Seithamo (Botswana); Marie Chantal Koffi (Côte d'Ivoire); Martha Koome (Kenya); Mamosebi Pholo (Lesotho); Mousa Sissoko (Mali); and Seynabou Diakhate (Senegal). To date, neither the African Children's Committee nor the AU Office of the Legal Counsel has conclusively followed up on paragraph 8 of Decision EX/CL/233 (VII) of 2005 of the Executive Council of the AU Commission in terms of measures to renew the terms of office of Committee members.²

Consequently, six new members were elected to fill these vacancies during the 15th Summit of the AU Heads of State and Government, held in Kampala, Uganda, from 19 to 27 July 2010. These new members are Fatima Delladj Sebba (Algeria); Alfas Chitakunye (Zimbabwe); Benyam Dawit Mezmur (Ethiopia); Amal Mohamed Elhengary (Libya); Felicite Muhimpundu (Rwanda); and Clement Julius Mashamba (Tanzania). In January 2011, at the 16th Summit of the AU Heads of State and Government, held in Addis Ababa, Ethiopia, a seventh member was elected – Julia Sloth-Nielsen (South Africa) – taking the place of Dawlat Ibrahim Hassan (Egypt) whose term of office lapsed in January 2011. With five of the seven new members of the Committee being women, the gender representation in the Committee remains more or less balanced, comprising five men and six women. With regard to geographical representation, the continued appointment of members of the Committee from North Africa (Algeria and Libya) appropriately addresses previous complaints in relation to a lack of representation from North Africa on the Committee.³

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

2 In terms of art 37(1) of the African Children's Charter, members of the African Children's Committee 'may not be re-elected' upon the expiration of their specified five-year term of office. This remains a disadvantage to the fulfilment of the Committee's mandate. See J Sloth-Nielsen & BD Mezmur (1) '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; BD Mezmur & J Sloth-Nielsen (2) 'An ice-breaker: State party reports and the 11th session of the African Committee of Experts on the Rights and Welfare of the Child' (2008) 8 *African Human Rights Law Journal* 599; J Sloth-Nielsen & BD Mezmur 'Out of the starting blocks: The 12th and 13th sessions of the African Committee of Experts on the Rights and Welfare of the Child' (2009) 9 *African Human Rights Law Journal* 339.

3 See Sloth-Nielsen & Mezmur (1) (n 2 above) 213.

The 17th session of the African Children's Committee started with a closed preliminary session on 21 March 2011. The official opening of the 17th session of the Committee took place on 22 March and the session lasted until 24 March 2011.

In this article, an update is given of current developments around the African Charter on the Rights and Welfare of the Child (African Children's Charter), and particularly the work of the African Children's Committee, given that the 17th session marked the tenth year anniversary of the Committee's existence.⁴ Other issues covered in the article include the continuing involvement and engagement of civil society organisations (CSOs) with the Committee, particularly around the Committee's strategic plan for the period 2010 to 2014; the presentation of country reports by Rwanda and Togo; communications dealt with by the Committee; and closer collaboration between the African Children's Committee and the United Nations (UN) Committee on the Rights of the Child (CRC Committee).

2 Procedural and administrative matters

The 16th session of the Committee was attended by ten members, more than the seven members required to form a quorum.⁵ Also in attendance were representatives of child-focused CSOs, such as the African Child Policy Forum (ACPF), Addis Ababa; the Child Helpline International (CHI), the Netherlands; Child Protection International Senegal; the Plan Coalition Camerounaise des ONG pour les Droits de l'Enfant (COCADE); the Institute for Human Rights and Development in Africa; the ILO Regional Office Addis Ababa; Plan International Sweden, Cameroon, Kenya and Ethiopia; Save the Children Ethiopia; UNESCO Rwanda; and the United Nations Children's Fund (UNICEF) Liaison Office to the African Union Commission. The attendance at the 17th session by CSOs was quite extensive, along with similar organisations that attended the 16th session as well. What is of concern, though, is the attendance of national children's rights-focused organisations. At the 17th session, only two national CSOs were present: the Community Law Centre of the University of the Western Cape in South Africa and the Child Protection Alliance of The Gambia. That said, both organisations reach out to a more regional focus in their work. There is also a conspicuous absence of national human rights institutions in attendance at the Committee sessions. It is suggested that the Committee reach out to these institutions, as they play a vital role in the

4 While the African Children's Charter entered into force in 1999, the African Children's Committee was formally established in July 2001 and had its inaugural meeting in May 2002.

5 Art 38(3) of the African Children's Charter provides that '[s]even Committee members shall form the quorum'.

implementation of the African Children's Charter and children's rights in their specific countries.

Apart from national organisations possibly not knowing that the African Children's Committee exists, reasons for the minimal interaction of such organisations may have been resource-related.⁶ Apart from having one session in Egypt during 2007, the Committee has always had its sessions in Addis Ababa, Ethiopia. Even though Addis Ababa is in the middle of the African continent, the fact that the Committee has had all but one of its sessions in Addis Ababa is of itself a bar for national organisations in specific countries to attend the sessions. In other words, the more the Committee holds its sessions in different countries, the more diversity there might be in the representation of national organisations of such countries or even neighbouring countries at such sessions.⁷ However, there are logistical issues to consider if Committee sessions are to be held outside of Addis Ababa. Such issues include the need to relocate the Secretariat to the designated location and the fact that the AU houses official translators whose services are required during the sessions. It is therefore more practical for the Committee sessions to be held in Addis Ababa at this point in time.

The 16th session of the Committee was opened by the Director for Social Affairs of the AU Commission, Dr Olawale I Maiyegun, who welcomed the six newly-appointed members of the Committee; urging the Committee, among others, to focus on the consideration of the best interests of the child throughout the session. The acting Chairperson⁸ of the Committee, Mrs Agnes Kabore Outtara, also welcomed in her statement the new members of the Committee and gave an update on the Committee's activities. She expressed gratitude to Save the Children for sponsoring the previously-concluded induction course for Committee members. Subsequent to this, the Committee withdrew for a closed consultative meeting to discuss procedural and administrative issues. These issues included the election of a new bureau,⁹ the adoption of the agenda and programme of work as well as the organisation of work.

The election of a new bureau was preceded by some debate due to the fact that one of the Committee members, Mrs Maryam Uwais, who was absent during the session, had sought to be elected as a member of the bureau. She had sent in a power of attorney to enable her to be elected *in absentia*. The Committee, however, decided that any

6 See L Wakefield 'Setting the trend? Civil society participation with selected structures of the African human rights system' (2011) 16 (unpublished and forthcoming) (copy of paper on file with the authors).

7 As above.

8 Up to May 2010, the Chairperson was Seynabou Diakhate and her term of office lapsed at the end of May 2010. In the interim, until the election of the next bureau, the Vice-Chairperson, Agnes Kabore, was designated the acting Chairperson.

9 Art 32(2) of the African Children's Charter provides for the election of officers from the Committee for a two-year period.

member who is absent from a session would not qualify for election. This decision was made based on advice from the representative of the Office of the Legal Counsel who conducted the elections of the bureau. Accordingly, the newly-elected members of the bureau are as follows:

- Ms Agnes Kabore Ouattara, Chairperson;
- Mr Cyprien Adebayo Yanclo, First Vice-Chairperson;
- Mr Benyam Dawit Mezmur, Second Vice-Chairperson
- Ms Fatima Delladj-Sebaa, Third Vice-Chairperson;
- Mr Clement Julius Mashamba, Rapporteur.

The 17th session of the Committee was opened by Dr Johan Strijdom, Head: Division of Social Welfare, Vulnerable Groups, Drug Control and Crime Prevention, on behalf of the Commissioner for Social Affairs, AU Commission. The commissioner expressed concern in relation to the number of state parties to the African Children's Charter complying with their reporting obligations, as only 14 out of the 45 state parties have reported thus far. The rest of the morning was spent in a closed session in order to adopt the work plan and for other administrative matters. Also during the proceedings of the first day, the representative of the Political Affairs Department within the AU Commission mentioned their plans to review the working procedures of all the human rights structures in order to harmonise these procedures. This is a welcome development which should not go ignored and should be monitored.

All six newly-appointed members of the Committee were in attendance at all the meetings of the 16th session, together with four of the earlier members, while the seventh new member participated during the 17th session. Thus, ten members of the Committee were in attendance at the 16th session while all 11 members were in attendance at the 17th session. What follows is the newly-constituted Committee:

- Ms Agnes Kabore Outtara (Burkina Faso)
- Mr Cyprien Adebayo Yanclo (Benin)
- Mr Benyam Dawit Mezmur (Ethiopia)
- Ms Fatima Delladj-Sebaa (Algeria)
- Mr Clement Julius Mashamba (Tanzania)
- Ms Maryam Uwais (Nigeria)
- Mr Andrianirainy Rasamoely (Madagascar)
- Ms Felicite Muhimpundu (Rwanda)
- Ms Amal Mohamed Elhengary (Libya)
- Mr Alfas Muvavarigwa Chitakunye (Zimbabwe)
- Ms Julia Sloth-Nielsen (South Africa)

3 Induction session

The idea of an induction session for the newly-appointed members of the African Children's Committee was conceived and sponsored by the

Department of Social Affairs of the AU Commission in collaboration with Save the Children. The induction was targeted at the newly-appointed members of the Committee given their diverse educational and professional backgrounds,¹⁰ the complexities of the tasks of implementing and monitoring the African Children's Charter and the emerging nature of the working methods, policies, guidelines and the operating environment of the Committee. The aim was to get the new members properly acquainted with the AU system, the Committee's mandate, roles and responsibilities and the political, legal and socio-economic environment in which the new members would be working for purposes of effectively discharging their mandate under the African Children's Charter. All newly-appointed members of the Committee participated in the induction session together with most of the other members of the Committee who were also present throughout the induction exercise.¹¹ This proved to be invaluable mainly because the new members were able to gain from practical examples and the experiences of the older members.

3.1 Course content

The course commenced with a study of the history, content and particularities of the African Children's Charter in order to lay a foundation for subsequent discussions. An overall picture of the impact of the Children's Charter on law and practice on the continent was also given, with particular emphasis on the harmonisation of domestic laws with the standards set in the Charter. Structurally, the course dealt with the AU and the African human rights system generally and the relationship between the Committee and the AU and its place in the African human rights system, particularly the establishment and role of treaty body mechanisms generally, with the emphasis on the CRC Committee. The aim of this was to provide a platform from which the Committee could learn from and build upon. This is important, given that the CRC Committee has been much more active in terms of engaging with state parties' reports, the issuing of concluding observations and general comments, having days of general discussions, engaging with CSOs and generally providing guidance to state parties in the fulfilment of their obligations under CRC.¹²

10 Four of the new Committee members have a legal background while the other three have backgrounds in social work, child psychology and education.

11 The older members of the Committee in attendance were the acting Chairperson, Ms Kabore, Mr Yanclo and Mr Rasamoely. The Secretary to the Committee, Ms Cisse, was also in attendance.

12 While the African Children's Committee is yet to issue a General Comment, the CRC Committee has issued 13 General Comments dealing with diverse children's rights issues. These General Comments have assumed the role of binding (albeit soft) law by which state parties are expected to be guided in fulfilling their mandates to promote and protect the rights of children at a domestic level.

The most important session of the course focused on the establishment, mandate, role and functions of the African Children's Committee as provided under part two of the Children's Charter.¹³ The session was aimed at ensuring a thorough understanding of the role and responsibilities of the Committee under the Charter in order to ensure that the Committee members are equipped to effectively discharge their duties. It was an important session for both the new and older members of the Committee for purposes of continuing the Committee's mandate. The final session focused on ways to build upon the successes of the Committee, addressing existing shortcomings and charting the way forward within and beyond the Committee's 2010-2014 strategic plan.

3.2 Matters arising

The induction course generated lively debates and discussions among the Committee members on matters ranging from substantive rights in the African Children's Charter to the practices of the Committee thus far. On the Charter provisions, the age of the child, child participation, corporal punishment, religious rights and the responsibilities of the child are some of the matters that were discussed. The general conclusion was to the effect that there remains a need for continuing engagement between the Committee and state parties to the Charter for purposes of securing harmonisation with the standards set in the Charter, and a degree of uniformity among state parties based on compliance with the Charter provisions at the domestic level. Achieving this would require proactive and progressive measures on the part of the Committee through means such as the issuing of general comments, the organisation of days of general discussion and highlighting relevant issues in the concluding observations following the consideration of state party reports. These would not only serve as explanatory guides or reference points for state parties in terms of their obligations under the Charter, but would also enrich the jurisprudence of the Children's Committee on children's rights issues in Africa by dealing with specific subjects in ways that resonate with African realities.

On the role and importance of the African Children's Committee within the African human rights system, based on an assessment of the Committees' existence for about a decade, the Committee cannot be considered redundant as major achievements have been recorded despite the enormous administrative, technical, financial and other challenges confronting the Committee. Some of the developments on the African continent in relation to children's rights are the following:

- The near universal ratification of the African Children's Charter and its impact on domestic law reform in various African countries,

¹³ Part II of the African Children's Charter comprises arts 32-48 of the Charter with arts 32-46 focused on the establishment, organisation, mandate and procedure of the African Children's Committee.

with particular reference to the important peculiar features of the Charter on children's rights;¹⁴

- While the Charter represents a positive attempt to give children's rights specific application within the African context, there is a need for the Committee's existence and role, to ensure that due effect is given to those provisions;
- The gradual growth in state reporting to the Committee shows that state parties view the Committee and their obligations under the Charter seriously;
- The matter of childhood and children's rights in Africa has always been subject to debates due to cultural, religious, socio-economic and other issues. The Committee therefore stands in a strategic position to lay down African perspectives on children's rights while furthering the advancement of children's right generally.

Another matter for discussion was the need to enhance the Committee's visibility and credibility as a separate body within the African human rights system network. Dealing with communications and issuing concluding observations on the communications were highlighted as key elements for achieving this goal as it would give the Committee a presence. In relation to this, the importance of renewing the terms of office of Committee members was again discussed. There remains a need for the Committee to look into the possibility of re-election of Committee members, as opposed to serving just one term of five years. This would help the Committee to have a greater impact in terms of knowledge and experiences gained as well as avoiding a premature loss of intellectual input and expertise, improving overall institutional capacity, efficiency and output.

However, since the difficulty with the matter of tenure elongation lies within the African Children's Charter which provides for the term of office of Committee members who do not have the mandate to amend the Charter, it was proposed that former Committee members (as 'Friends of the Committee') should be involved in the process of presenting the issue before the legal department of the African Union to address the matter. During the 16th session the Committee requested Ms Dawlat Ibrahim to take charge of forming such a group. It was agreed that the existence of such a body would also serve the purpose of forging closer working links between current and past members of the Committee in addition to helping to improve the transition process and period between outgoing and incoming members of the Committee.

14 See B Mezmur 'The African Children's Charter versus the UN Convention on the Rights of the Child: A zero-sum game?' (2008) 23 *South African Public Law* 1.

4 Ratification status

Currently, 46 states have ratified the African Children's Charter, with Zambia being the 45th state to accede in 2010 and Djibouti the 46th state to ratify the Children's Charter during March 2011. The eight states that have not ratified the Charter are Central African Republic, the Democratic Republic of Congo, Sahrawi Arab Democratic Republic, Somalia, South Sudan, São Tomé and Príncipe, Swaziland and Tunisia. The Democratic Republic of Congo has taken the positive step of signing the African Children's Charter on 2 February 2010. São Tomé and Príncipe has also signed the Charter. Of the 46 states that have ratified the Charter, only 14 have so far presented their reports before the African Children's Committee.¹⁵ One can therefore see that there are multiple states that have completely ignored their reporting duties in terms of the African Children's Charter, which leads us to a discussion of state reporting.

5 State reporting

The persistent low level of state reporting before the African Children's Committee, as required by article 43 of the African Children's Charter,¹⁶ was a key theme for discussion during the Committee's induction session and it was concluded that proactive measures would have to be taken by the Committee to get states to submit their reports. Sloth-Nielsen and Mezmur previously highlighted three strategies that may be used in order for the Committee to intensify its efforts in promoting the importance of states reporting on their duties. These are (1) urging state parties who are struggling to comply with the strict timelines for both initial and first periodic reports to do a combined report;¹⁷ (2) reminding state parties who are late in reporting by way

15 See the table prepared by 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) 109-110.

16 Art 43(1) provides: 'Every state party to the present Charter shall undertake to submit to the Committee ... reports on the measures they have adopted which give effect to the provisions of this Charter and of 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.' Art 43(2) provides further: '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.'

17 J Sloth-Nielsen & B Mezmur 'Like running on a treadmill? The 14th and 15th sessions of the African Committee of Experts on the Rights and Welfare of the Child' (2010) 10 *African Human Rights Law Journal* 541.

of a letter;¹⁸ and (3) targeting state parties who have submitted reports to the CRC Committee to follow up by submitting their country reports to the Committee.¹⁹ These are fairly solid recommendations for the Committee to take into account when urging state parties to report on their domestication of the African Children's Charter. What would also be of assistance is if state parties are made aware that what they report to the CRC Committee can also be reported to the African Children's Committee with an addendum of issues that might not be specifically covered in CRC.²⁰

That said, at the 17th session the Committee decided that a *note verbale* should be sent to the 10 countries whose reports are overdue by 10 years, indicating that if they continue to fail to submit any reports to the Committee, the Committee will consider the rights of children in these countries without a report. The Committee will invoke provisions of its Rules of Procedure which allow it to do the latter. This is a welcome, proactive decision by the Committee which the Committee should regard as a priority.

The report of Rwanda was considered during the 16th session, while that of Togo was considered at the 17th session. The government of Cameroon was expected to present its state report at the 17th session, but asked to present at the next session. The first observation relates to the date that these reports were filed. Rwanda ratified the African Children's Charter on 11 May 2001 and only filed its initial report during 2010. Cameroon ratified the Charter on 5 June 1997 and only filed its initial report in 2009, failing to present it in 2011. Togo, on the other hand, ratified the Charter on 5 May 1998, while only filing its initial report in September 2010 and presenting this report to the Committee in March 2011. These reports were respectively seven, 11 and eight years late.²¹ The Committee had to, as a minimum, question the state parties as to reason for their late reporting. This in itself might also serve as a caution to other state parties to the Charter on the lack of reporting of these states to the Committee.

5.1 Presentation of country report: Rwanda

The Rwandese delegation was led by the Minister of Gender and the Family who began by explaining the reason for the delay between the time of Rwanda's signing the African Children's Charter and the date it was acceded to: The delay was due to the upheaval in Rwanda in

18 J Sloth-Nielsen & B Mezmur (n 17 above) 542.

19 As above.

20 Eg, art 31 of the African Children's Charter that deals with the 'responsibility of the child' is not covered in CRC.

21 In terms of art 43(1)(a) of the African Children's Charter, every state party is to present its initial report on the implementation of the Children's Charter two years after the entry into force of the treaty. Togo is eight years late, as the country report stipulates that the African Children's Charter only entered into force during 1999.

the 1990s.²² The report covered five themes: general, legislative and political measures taken to implement the Charter; the protection of vulnerable children; the participation of children in the organisation of the annual summit for children since 2004; resource allocation for child protection; and major challenges and measures to address them. Major challenges facing the implementation of children's rights in Rwanda as highlighted by the Minister include the scourge of AIDS resulting in increasing numbers of orphans; a persistently high infant mortality rate; a low level of enlightenment on children's rights among the populace; inadequate co-ordination among the stakeholders in the children's rights field; and poverty-related difficulties confronting families, fuelled by the consequences of the 1994 genocide. It is very important to note that for each problem, the Minister highlighted measures needed to combat them, which included combating poverty as a priority objective of the millennium development goals (MDGs) and setting up maternity and infant mortality reduction programmes.

The African Children's Committee, in the spirit of constructive dialogue, raised questions in response to the presentation, focusing on areas such as the content and outcomes of the policies and strategies implemented by Rwanda under the African Children's Charter, the role of the National Commission for Children, the proportion of the state budget allocated to the promotion of children's rights and welfare, and the statistics of refugee and working children as well as the benefits, if any, that children derive from self-help organisations. In providing answers to these questions, the Minister stated that the government of Rwanda was determined to secure the protection of children's rights and welfare based on the foundation of good governance advocated by the President of the Republic of Rwanda. The Committee Chairperson congratulated and thanked the Rwandese delegation for the report and particularly for the clarity of the responses provided to the Committee's enquiries. The caliber of the Rwandese delegation was indeed very impressive and was adequately equipped and sufficiently knowledgeable to engage with the Committee and provide proper responses to all questions posed. This was regarded as highly commendable by the Committee.

5.2 Presentation of country report: Togo

The Togo country report was presented by Mme Memounatou Ibrahima, who is the Minister for Social Action and National Solidarity. She was accompanied by a high-level delegation from Togo and made an impressive presentation on the domestication of the African Children's Charter in Togo. These include the implementation of free education

22 Rwanda signed the Children's Charter on 2 October 1991 and deposited its instrument of accession on 11 November 1999.

and school feeding schemes, together with passing laws prohibiting female genital mutilation and human trafficking.

Even though the Minister eloquently mentioned all the positive moves by the Togolese government to advance the rights of and protection for children, it was noted that there were no judges or courts that are specialised in children's rights issues. With Togo being a monist state, one expects of the judiciary to know the provisions of both the African's Children's Charter and CRC. Without a judiciary in place, the enforcement of children's rights may be futile. After the presentation by the Minister, the African Children's Committee raised several concerns in relation to various thematic aspects of the report.²³ The Committee failed to raise any major concerns in relation to the training of the judiciary on the African Children's Charter and CRC. The training of the judiciary could also have been inferred from the concerns addressed around juvenile justice and the need for dedicated children's rights legislation.

Another unfortunate situation arising from the country report of Togo relates to the closure of centres for children with disabilities. First, the Togo report refers to children with disabilities as 'handicapped children'. This term was considered derogatory by disability discourse.²⁴ Notwithstanding this, the reason for the use of this term in the country report for Togo could be justified as a direct translation from the French.²⁵ Another reason for the use of this term is because article 13 of the African Children's Charter refers to children with disabilities as 'handicapped children'.²⁶ There is thus a need for the Committee to address the wording within the Charter on the topic of children with disabilities.

5.3 Pre-session for the consideration of the reports (Cameroon, Togo and Senegal)

Rule 69 of the Rules of Procedure of the African Children's Committee clearly makes NGOs and CSOs responsible for the preparation and presentation of alternative/shadow/complementary reports to the African Children's Committee, in accordance with article 42 of the Children's

23 Some of these aspects include juvenile justice, child legislation, education, child labour, traditional practices affecting children, the health system, research in relation to the causes of the problems facing children's rights, and preparations for the Day of the African Child.

24 See generally G Quinn & T Degener 'The moral authority for change: Human rights values and the worldwide process of disability reform' in G Quinn *et al Human rights and disability: The current use and future potential of United Nations human rights instruments in the context of disability* (2002) 9.

25 In French, children with disabilities are referred to as *enfants handicapés*.

26 The 4th CSO Forum to the Committee recommended to the Committee in a Communiqué, giving an advisory opinion on art 13 giving consideration to the language used to promote the dignity of children with disabilities. Please refer to sec 8.3 for more information on the CSO Forum.

Charter. However, it still remains unclear, in the absence of formal guidelines, who may participate in pre-sessions for the consideration of state party reports.²⁷

A third pre-session was held on 8 November 2010 to consider the alternative reports of NGOs from Cameroon and Togo. Preceding the 17th session, another pre-session was held on 21 March 2011 to consider the alternative report, drafted and presented by CONAFE, on Senegal's state party report. The aim of the pre-session, as obtained in the CRC Committee system, is to provide the African Children's Committee with ample information on the situation of children in the country concerned before the consideration of the state party report so as to make constructive engagement between the Committee and the state possible.

6 Communications (individual complaints)

During the 16th session of the African Children's Committee, the Secretary to the Committee presented a report as to the current state of affairs with the two communications pending before the Committee: one in relation to the violation of children's rights in Northern Uganda and the other alleging a violation of the rights of Nubian²⁸ children in Kenya.²⁹ In relation to the former, a three-member working group was appointed to determine the admissibility of the communication and report on its findings at the next session.³⁰ On the communication concerning Nubian children, in response to the fact that the Kenyan government was yet to respond to the Committee's requests to it to submit its written response to the communication, the Committee decided that a last reminder would be sent to the Kenyan government on that note and set up another three-member working group to take charge of that.

27 See Sloth-Nielsen & Mezmur (2009) (n 2 above) 345; Sloth-Nielsen & Mezmur (n 17 above) 543.

28 The Nubian people living in Kenya have been brought there by the British (from Sudan) to be used as soldiers on the border. For years Nubian communities have lived in Kenya without being granted Kenyan nationality; see <http://allafrica.com/stories/201104020089.html> (accessed 4 July 2011).

29 For details on the history of these communications before the Children's Committee, see Sloth-Nielsen & Mezmur (n 17 above) 547; Sloth-Nielsen & Mezmur (2009) (n 2 above) 346.

30 The author of the communication, Centre for Human Rights, University of Pretoria, had requested the Committee to determine the admissibility of the communication. At the 14th session of the Committee, the author of the communication was requested to produce French versions of the communication so as to enable all members of the Committee to look into the application and decide on it. As at the 16th session, the French versions of the documents had been forwarded and so the Committee could proceed with looking into the communication.

Some progress was recorded during the 17th session in relation to the communication concerning the Nubian children. The Committee for the first time in its ten years of existence heard arguments on the merits in a communication brought by the Institute for Human Rights and Development in Africa (IHRDA) at the 17th ordinary session of the African Children's Committee, in which the right to nationality (among others) of Nubian children had been violated by the Kenyan government. Despite the absence of the Kenyan government at the proceedings, the Committee in a preliminary decision found that the Kenyan government had violated the right to nationality of Nubian children within the borders of Kenya, taking into account the fact that the right to nationality is a requirement for the realisation of other rights in the country's laws.³¹

Specifically, the Committee found that there were 'multiple violations of articles 6(2), (3) and (4), article 3, article 14(2)(b), (c) and (g), and article 11(3)' of the African Children's Charter.³² They recommended that the government of Kenya take legislative, administrative and other measures to ensure that children of Nubian descent in Kenya acquire Kenyan nationality; that the government of Kenya implement a birth registration system that does not discriminate against Nubian children; and that the government of Kenya adopt a short-term, medium-term and long-term plan to fulfil the rights to the 'highest attainable standard' of health and education for Nubian children.³³

Finally, the African Children's Committee also recommended that the government of Kenya report within six months to the Committee on the implementation of its recommendations. Considering that the government of Kenya was absent when this communication was considered, the Committee took the positive step of ensuring that its decision is implemented. Such an oversight function played by the Committee should be hailed as a positive step towards ensuring that the rights of children are realised within any country against which a communication is brought.

Article 44 of the African Children's Charter does not give guidance on what happens if the Children's Committee finds against a member state in a communication procedure without hearing the member state's views. Considering that the government of Kenya had been given multiple opportunities to oppose this communication and lodge a defence, their absence does not necessarily mean that the finding against them should not be executed. Therefore a decision against

31 For further information on this, see: <http://www.ihrda.org/2011/06/kenya-nubian-children-should-be-given-nationality-at-birth/> (accessed 17 June 2011).

32 *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice on behalf of Nubian Children in Kenya v The Government of Kenya* Communication 002/2009 para 69.

33 As above.

them *in absentia* should still be valid, as long as they had been given an opportunity to present their arguments.

7 Day of the African Child 2011: 'All together for urgent actions in favour of street children'

During its 15th session, the African Children's Committee decided that the theme for the 2011 Day of the African Child (DAC) celebration would be 'All together for urgent actions in favour of street children'.³⁴ Although there has been a low level of compliance on the part of states to submit reports to the Children's Committee on how the DAC was celebrated each year,³⁵ the words of the Ghanaian Minister of Women and Children's Affairs during this year's DAC celebration in Ghana highlight the importance of the DAC to children's rights in Africa.³⁶

The Day of the African Child has become a significant annual calendar event for AU member states to reflect, sensitise and strategise on current issues affecting the welfare and development of the African child. The Day seeks to draw the attention of all actors involved in improving the conditions of children on the continent and to unite their efforts to improve the living conditions of children in Africa.

In the concept/explanatory note guiding the 2011 DAC, the Committee outlined the objectives of this year's celebration as follows:³⁷

- to determine strategic guidelines to be taken into account in efforts to enhance prospects for children living in families at risk to enjoy their rights, as a means of keeping them off the streets;
- to propose innovative strategies that are more effective in child protection and care;
- to take stock of the phenomenon of street children in African states;
- to sensitise African populations on the vital necessity of acting to protect street children since their basic rights cannot be guaranteed in a hostile environment;
- to undertake advocacy with African governments and civil society for greater resource mobilisation for the protection of children living on the street;
- to analyse current strategies which address children's needs in a bid to identify their strengths and weaknesses;

34 Sloth-Nielsen & Mezmur (n 17 above) 549.

35 As above.

36 Statement by the Honourable Minister of Women and Children's Affairs on 16 June 2011 – Africa Union Day of the Child <http://www.obuobafm.com/local-news/africa-child-celebration-2011> (accessed 22 June 2011).

37 African Children's Charter Concept Note on the commemoration of the 21st edition of the Day of the African Child on 16 June 2011 under the theme 'All together for urgent actions in favour of street children' 5 (copy of note on file with authors). See also Message of the Chairperson of the African Committee of Experts on the Rights and Welfare of the Child on the occasion of the 21st edition of the Day of the African Child (2011) http://www.streetchildren.org.uk/_uploads/publications/message_english_african_day_of_the_child.pdf (accessed 22 June 2011).

- to reflect on the problems related to data on street children; and
- to provide overall care for children living on the streets, including accommodation, psychosocial mentoring and reinsertion.

The concept note further provides guidelines to state parties on how to celebrate the 2011 DAC, and obliges them to report on this to ensure monitoring and evaluation.³⁸ Some of the suggested measures include, among others, the raising of public awareness through multimedia campaigns and the organisation of programmes that offer material assistance and other forms of support to affected children.³⁹

Moving forward, at the 17th session, the Committee also decided the theme of the DAC for 2012 to be 'The rights of children with disabilities: The duty to protect, respect, promote and fulfil'. This, as in the past, is a welcome theme as the rights of children with disabilities have been overlooked and the levels of violence and unfair discrimination faced by these children are great.⁴⁰

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

8.1 Consideration of observer status applications

Based on the recommendation of the CSO Forum, the African Children's Committee released an amended version of its guidelines on the criteria for granting observer status to NGOs before the Committee. The amendment was geared towards increasing flexibility in the criteria which would in turn enable more CSOs to qualify for observer status before the Committee.⁴¹ With such observer status, CSOs will be able to participate in certain sessions of the Committee which might not be open to everyone, and will be able to have easier access to documentation produced by the Committee.

However, during the 16th session, the application for observer status by Collective Defence for Right to Energy (CODDAE) of Niger was rejected on the basis that it did not comply with the guidelines. The Community Law Centre at the University of the Western Cape submitted its observer application during the 17th session and this will be considered during the 18th ordinary session.

Currently, only three organisations have been granted observer status before the Children's Committee. One application is still pending. This is a remarkably low number, considering that the Committee has

38 African Children's Charter Concept Note (n 37 above) 5.

39 African Children's Charter Concept Note (n 37 above) 6.

40 H Combrinck 'The hidden ones: Children with disabilities in Africa and the right to education' in J Sloth-Nielsen (ed) *Children's rights in Africa: A legal perspective* (2008) 302.

41 Sloth-Nielsen & Mezmur (n 17 above) 551.

been in operation for 10 years. It is recommended that the reasons for this low number of CSOs with observer status should be investigated by the Committee.

8.2 CSO Consortium and the African Children's Committee

As part of its continuing efforts to collaborate with the Committee on the fulfilment of its mandate, a group of NGOs in the sector teamed up to promote the work of the Committee. The aim of the proposed project, entitled 'The African Children's Charter Project', is to promote the implementation of the Children's Charter through the institutional, political and other platforms of the AU. The project, which is funded by the Swedish International Development Agency (SIDA) in close collaboration with the African Child Policy Forum, the University of the Western Cape's Community Law Centre, the Institute for Human Rights and Development in Africa, Plan International and Save the Children Alliance, was first presented to the Committee during the 16th session and guided by the following objectives:

- (i) to strengthen the Committee's capacity to implement portions of its strategic plan for 2010-2014;
- (ii) to promote collaboration between the African Children's Committee and other bodies within the AU and regional human rights mechanisms; and
- (iii) to strengthen civil society's capacity to engage with AU bodies on children's rights issues in Africa.

A three-member working group was subsequently constituted by the African Children's Committee to scrutinise the document and provide the Committee's views and comments on it, in a bid to improve the document and formulate recommendations for the relevant partners. The improved document was subsequently presented and considered during the 17th session.

At the 17th session, the recommendations by the three-member working group were discussed and the Committee's endorsement of the project sought. After discussion during a closed session on this project, the Committee gave its endorsement and agreed to collaborate in the activities and towards the objectives of this project.

8.3 CSO Forum to the African Children's Committee

The fourth CSO Forum on the African Charter on the Rights and Welfare to the Child took place between 18 and 20 March 2011 in Addis Ababa, Ethiopia. The Forum was attended by 97 people across 23 countries. Three members of the Committee (including the Chairperson) also participated in the Forum. These Committee members presented their mandate, plans, objectives and challenges in relation to the implementation of the African Children's Charter. The Forum

thus constitutes a worthy platform for CSOs to interact with members of the Committee.

At every CSO Forum, recommendations are drafted for the Children's Committee to take into consideration. The 4th CSO Forum drafted its recommendations to the Committee under the broad theme of children without appropriate care and categorised the following five thematic areas for consideration:

8.3.1 Children living and/or working on the streets and refugee and internally-displaced children

In relation to children living and/or working on the streets, the CSO Forum recommended that the African Children's Committee should consider having a day of general discussion on this topic and invite the relevant stakeholders to this day. The goal of such a day of general discussion should be to establish agreed-upon indicators for research that would inform policy and programmatic interventions. The CSO Forum also recommended that the African Children's Committee should urge state parties to the African Children's Charter to ratify and domesticate the AU Convention for the Protection and Assistance of Internally-Displaced Persons in Africa⁴² in order to grant greater protection to refugee and internally-displaced children.

8.3.2 Alternative care

This recommendation was framed with the notion that the institutionalisation of children should be kept to a minimum and, where possible, family-related options should be explored where biological parents are no longer able to provide care. The CSO Forum noted that there exists a lack of consensus on when adoption (including inter-country adoption) should be considered in such an instance. It therefore recommended that the African Children's Committee adopt a general comment on the interpretation of article 24 of the African Children's Charter,⁴³ with a view to giving consideration to issues relating to alternative care, inter-country adoption and the best interests of the child in an African context.

8.3.3 Rights of children with disabilities

The terminology used to describe persons (including children) with disabilities has undergone various philosophical reconceptions with the aim of ensuring that the dignity of persons with disabilities is not

42 This Convention is also known as the Kampala Convention and has not yet come into force as 15 African states have to ratify it and thus far this number has not been reached.

43 Art 24 of the African Children's Charter is entitled 'Adoption'.

violated.⁴⁴ Therefore, terminology such as 'imbeciles, idiots and handicapped persons' is no longer considered to promote the human dignity of persons with disabilities. Article 13 of the African Children's Charter refers to children with disabilities as 'handicapped children'. Two possible reasons for using this term are: Firstly, in French, children with disabilities are described as *enfants handicapés* and therefore a direct translation from the French version might have resulted to the use of 'handicapped children' in article 13. Secondly, at the time of drafting the term, 'handicapped persons' might have been considered a justifiable description of persons with disabilities. Therefore, the African Children's Charter does not deliberately violate the human dignity of children with disabilities by heading article 13 'handicapped children'. For this reason, the CSO Forum recommended that the Committee give an advisory opinion on article 13, giving consideration to language that promotes the dignity of children with disabilities. The CSO Forum was of the opinion that an advisory opinion should rather be sought, instead of an amendment to the Children's Charter, as an amendment might open the entire Charter to review by state parties. Considering that the focus for the 2012 DAC is to be children with disabilities, this would constitute an opportune time for the Committee to adopt such an advisory opinion.

8.3.4 Child participation

Child participation is one of the key elements needed to ensure that the rights of children are realised. The CSO Forum recommended that the African Children's Committee adopt guidelines on how child participation will be realised in the fulfilment of their mandate, especially in relation to the identification of the theme of the Day of the African Child.

8.3.5 Rights of children in non-member states of the African Children's Charter

The CSO Forum raised concern with regard to the plight of children in the eight countries where the African Children's Charter has not been ratified. In this regard, the CSO Forum recommended that the African Children's Committee liaise with the African Commission on Human and Peoples' Rights (African Commission) and other regional and international human rights bodies to ensure and monitor the protection of the rights of children in these countries and to strongly urge the eight member states that have not ratified the Charter to do so.

Apart from the above recommendations communicated to the Committee, the CSO Forum also thought it best to request the Committee to consider the rights of children in Libya and Côte d'Ivoire where, at

⁴⁴ See generally Quinn & Degener (n 24 above).

the time, a fair amount of conflict was taking place. In this regard, the CSO Forum asked that the Committee request specific responses from the state delegation of Libya to ensure that all parties to the conflict ensure the right to free movement, the protection of children in armed conflict, the transit of humanitarian supplies and personnel to Libya and to respect the distinction between military and non-military targets.

These recommendations from the CSO Forum to the Children's Committee are welcomed, as they are very specific in what is needed, yet not too detailed for the Committee to be of the view that CSOs are prescribing to the Committee how it should go about executing these. Considering that most of the previous recommendations by the CSO Forum to the Committee have not been implemented, it would be wise for the Committee to possibly prioritise one or two of these recommendations for execution.

8.4 Collaboration with the CRC Committee

Flowing from a decision taken during the 15th session, some members of the African Children's Committee were in Geneva in September 2010 to attend the CRC Committee's session and held meetings with members of the CRC Committee as part of efforts to ensure greater collaboration between the Children's Committee and the CRC Committee.⁴⁵ The Chairperson of the CRC Committee had proposed the establishment of a joint working group comprising members from both committees 'to exchange views and come up with proposals for a collaboration strategy'.⁴⁶ Six members of the Committee were appointed to work on the joint working group and due to the expiry of the terms of office of three of the six members in mid-2010, one current member of the Committee was appointed to join the working group.⁴⁷

During the 16th session, as a follow-up to the first meeting of the joint working group of the African's Children's Committee and the CRC Committee on 15 September 2010 in Geneva, Mr Mezmur was also appointed to work with Mr Kernal Filali who had been appointed by the CRC Committee to work on a comparative analysis of the African Children's Charter and CRC. In furtherance of this, during the 17th session it was revealed that the two Committees would jointly conduct two activities: 'a sensitisation mission on the African Charter to a member country and a joint workshop on the recommendations and

45 Sloth-Nielsen & Mezmur (n 17 above) 555.

46 As above.

47 The former members of the working group whose terms of office expired in mid-2010 are Seynabou Diakhate, Moussa Sissoko and Mamosebi Pholo, while the new Committee member appointed to join the working group is Benyam Mezmur. See Sloth-Nielsen & Mezmur (n 17 above). With the appointment of Mr Mezmur, the number of the Committee's members appointed to be in the joint working group has been reduced from six to four, the fourth person being the Secretary to the Committee.

observations of the two committees'.⁴⁸ It is hoped that UNICEF will provide support for the implementation of these activities.⁴⁹ This is a significant development which would go a long way in harmonising the work of both committees in the realisation of children's rights.

Another highlight of the African Children's Committee's 16th session in this area is the elaboration of certain activities to be jointly carried out by both Committees in 2011. The activities are as follows:

- (i) sharing and exchanging of information;
- (ii) advocacy to increase the visibility of the African Children's Charter in Africa;
- (iii) carrying out a joint mission in a state party that has submitted reports to both Committees to follow up on the implementation of the recommendations made by both committees; and
- (iv) carrying out a joint capacity-building workshop.

9 Conclusion

Both the 16th and 17th sessions of the African Children's Committee are significant for breaking new grounds as far as the Committee's work is concerned. First, the 16th session was preceded by an induction/training course organised as an orientation and knowledge-sharing exercise for the newly-elected members. Such a unique exercise is probably the first public treaty body induction/training course ever conducted as no precedent to it has thus far been found. Secondly, during the 17th session, the Children's Committee dealt with a communication for the first time since it was established about a decade ago. That said, the communication should also be seen in the context of when the complaint was first lodged with the Committee. It was first filed in 2009 and one of the main reasons for it being delayed was because of the Kenyan government's absence at the Committee sessions when the matter was set down to be heard. Despite these delays, that a decision was reached by the Committee within two years of a communication being brought before it is commendable in terms of speed and realising the goal of the best interests of the child.

From a substantive point of view, in order for any communication to be heard by the African Children's Committee, it has to be ensured that all its domestic remedies have been exhausted.⁵⁰ In this case, the matter was brought before the High Court of Kenya, where the matter was unduly prolonged without any judgment. The Committee innovatively

48 See the Committee's report on its 17th session, <http://www.acerwc.org/wp-content/uploads/2011/03/acerwc17-report-2011-eng.pdf> (accessed 18 October 2011) 11.

49 As above.

50 *IHRDA* (n 32 above) para 24.

found that the exhaustion of the local remedies rule is not rigid.⁵¹ Even though that might sound as if the Committee has effectively set a precedent that would see many cases being heard before they have strictly complied with the exhaustion of local remedies rule, this should be read with the best interests of the child principle in mind. In this judgment, the Committee argued that it could not be in the best interests of the Nubian children to allow their fate to be in a legal limbo for a really long time.⁵² Thus, all in all, a welcomed precedent was set by the Committee.

The African Children's Committee also launched a new website after the conclusion of the 17th session,⁵³ and which is reasonably up to date, compared with its previous website that was part of the AU website. The newly-established African Children's Charter Project⁵⁴ is also bound to increase the visibility of the Children's Committee within other structures of the African human rights system and CSOs on the continent, thereby aiding the Committee towards fulfilling its mandate. The Committee has adopted its 2010–2014 strategic plan. This plan sets out clear targets for the Committee to be reached within the next three years. The Committee's collaboration with civil society will thus serve as a tool to reach the defined targets set by the Committee in this strategic plan, especially in a project of this nature.

Thus, significant progress has been made which leads the African Children's Committee to the dawn of a new era, which many in the African children's rights sector can look forward to. With regard to dealing with communications, improving the frequency of state parties' reports and the CSO-Committee collaboration, it is hoped that these developments will give the Committee the impetus to make more positive strides in the realisation of children's rights in Africa.

51 *IHRDA* (n 32 above) para 28.

52 *IHRDA* (n 32 above) para 29.

53 <http://www.acerwc.org> (accessed 31 October 2011).

54 Discussed in section 8.2.