

AFRICAN UNION

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

الاتحاد الأفريقي



"An Africa Fit for Children"

UNION AFRICAINE

**Comité Africain d'Experts sur les Droits
et le Bien-être de l'Enfant**

UNIÃO AFRICANA

P. O. Box 3243 Roosevelt Street (Old Airport Area), W21K19, Addis Ababa, Ethiopia

Tel: (+251 1) 551 3522 Fax: (+251 1) 553 5716 Website : www.acerwc.org

**CONCLUDING RECOMMENDATIONS BY THE AFRICAN COMMITTEE OF
EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD (ACERWC) ON THE
STATE OF ERITREA'S REPORT ON THE STATUS OF IMPLEMENTATION OF THE
AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD**

JANUARY 2017

I. INTRODUCTION

1. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) extends its compliments to the Government of Eritrea and wishes to acknowledge with thanks receipt of the initial report on the status of implementation of the African Charter on the Rights and Welfare of the Child. The Committee congratulates the State Party for sending an important high-level delegation led by the Director General of Social Welfare Department, Ministry of Labour and Human Welfare to discuss the Report during its twenty eight session held in Banjul, The Gambia, from 21st October to 1st November 2016.
2. After considering the report from Eritrea, the Committee has the honour to forward to the Government the following observations and recommendations:

II. PROGRESS IN THE IMPLEMENTATION OF THE CHARTER

A. General Measures of Implementation

3. The Committee notes with satisfaction that the State Party has adopted several legislative frameworks protecting the rights of children. The Committee is however concerned that a specific legislation protecting the rights of children has not been adopted. The Committee also notes that 1997 Constitution which provides for promotion of the rights of children is yet to be implemented.
4. The Committee therefore recommends that the State Party urgently take steps to review the yet to be implemented 1997 Constitution in a transparent and participatory manner to bring it in line with the State Party's obligation with the view to implementing the Constitution. The Committee also recommends that the State Party enact a specific legislation promoting and protecting the rights of children and a legislation dealing with issues concerning trafficking of persons. The Committee further recommends that the State Party establish a Ministerial institution responsible for the coordination of the rights of children.

B. Definition of a child

5. Under the Charter a child is defined as any human being under the age of 18. However; in Eritrea this is implied within the context of "a minor person" as defined by Article 198 of the Transitional Civil Code of Eritrea but due to the pluralistic nature of Eritrean Society, different definitions are given depending on the values of the group. The rights of children are also found in different laws. The Committee, therefore, recommends that the State Party undertake measures to harmonise laws defining a child with the enactment of a law specifically dealing with children and conduct a campaign to sensitize and inform the population on this law.

C. General principles

Non-Discrimination

6. The Committee notes that the yet to be implemented Constitution proscribes discrimination. The Committee is however informed that children belonging to certain religions, economic status, and children affected with HIV/AIDS and minority groups face discrimination preventing them from accessing education and other basic services in their residence. The Committee recommends that the State Party take steps to urgently address such discrimination by undertaking awareness raising campaigns and implementing strategies to combat discrimination. The Committee also recommends that the State Party ensures the availability and accessibility of health, education and other social services in underserved communities.

Best interest of the child

7. The Committee recognises that the State Party has enacted legal provisions pertinent to children. The Committee however notes that these provisions do not properly reflect the best interest of the child and it is also not clear the extent to which judicial and administrative bodies apply this principle. The Committee recommends that the State Party ensure that the principle is clearly reflected in all its legislation dealing with children and that judicial and administrative bodies strictly adhere and apply the principle.

Survival and Development

8. The Committee notes that the State Party had taken measures to attain the Millennium Development Goals and that there exist laws protecting the lives of all children. The Committee however realises that data to track this progress is not available. It was also brought to the attention of the Committee that children are found at the Sawa Military Training Camp. The Committee further notes the growing number of Eritrean children crossing international borders which risks them being subjected to what various reports call 'shoot to kill policy'. The Committee recommends that the State Party undertakes to take all measures to ensure that data on children is available and accessible and that children are not enlisted to the Sawa Military Camp. If the allegations regarding "the shoot to kill policy" are found to be real, the Committee recommends that as a matter of urgency, the State Party do the necessary to alert its military officers to refrain from this gross violation of children's rights who are crossing Eritrean borders and establish accountability against the perpetrators. Moreover, the Committee recommends the State Party to assess the reason why children are fleeing the Country and provide sustainable financial assistance to children from poor households.

D. Civil Rights and Freedoms

Name, Nationality, Identity and Registration of Birth

9. The Committee commends the State Party for enacting provisions guaranteeing nationality and name through the Nationality Proclamation No.21/1992, the Transitional Civil Code, and the 1997 Constitution and that the registration of birth initially limited to municipal services and religious institutions is gradually being made available in local administrations. However, the Committee was informed that the Constitution despite having the most important provisions guaranteeing nationality is yet to be implemented. The Committee also notes that despite provisions on the recording of births, no such data has been indicated in the report to illustrate the birth registration rate. The Committee recommends that the State Party as matter of urgency implement measures for the registration of births and receiving of birth certificates along with a dedicated organ of government to carry this out. The Committee also recommends that together with civil society organisations, the government embark on a sensitisation campaign to build on the momentum of the importance of birth registration.

Protection against abuse and torture

10. The Committee notes the prohibition of acts of torture, cruel, inhuman and degrading treatment and the recognition on children's need for special protection. However, it was brought to the attention of the Committee that children at the Sawa Military Training Camp are still subjected to acts amounting to torture, inhuman, degrading treatment and to corporal punishment. The Committee is also concerned over the application of Proclamation No 4/1991 to children over 15 years. The Committee therefore recommends that the State Party;

- Strictly enforce the prohibition of torture, cruel, inhuman and degrading treatment to children and ensure perpetrators of such acts are prosecuted and punished accordingly;
- Enforce the legal prohibition of all forms of violence including corporal punishment in all settings, including in military training camps, and ensure that it is no more used as a sentence for crime and devise positive alternatives punishment;
- Conduct awareness - raising campaigns to popularise positive alternative punishments and on the dangers of corporal punishment;
- Remove measures that may prevent children and their families from reporting such cases and provide psychological support to child victims of abuse and torture;
- Provide similar punishment for persons who sexually abuse a child under fifteen years and a child older than fifteen as per Articles 594 and 595 of the Transitional Penal Code;
- Provide measures to eliminate child begging.

Freedom of expression

11. The Committee notes that the State Party has enacted provisions safeguarding freedom of expression. The Committee is however concerned that the report does not indicate how this right is made accessible to children. The Committee therefore recommends that the State Party take urgent measures to implement structures such as children's clubs and a children's parliament to provide a forum for children to take part in decisions affecting them. The Committee also recommends that the State Party ensure that judicial and administrative actions guarantee that children are heard in issues affecting them.

Freedom of Association

12. The report illustrates that there exists in the territory of the State Party, the National Union of Eritrean Youth and Students (NUEYS), which participates in social and economic activities affecting young people. The Committee is however concerned that despite Article 19 of the Constitution which ensures freedom of association, the Constitution is yet to be implemented, as such there currently exists no legal provision safeguarding this freedom. The Committee therefore recommends that the State Party as a matter of urgency, implement measures safeguarding this principle ensuring children have access to it. The Committee also recommends that the NUEYS is decentralised and available throughout Eritrea and the State Party guarantees its independence and adequate funding to ensure its proper functioning. The Committee further recommends that the State Party ensure children from different backgrounds are represented and eligible to be elected to the NUEYS.

Freedom of Thought, Conscience and Religion

13. The Committee notes that Article 14 of the Transitional Civil Code guarantees the right of all persons to think and express their ideas. Besides, the yet to be implemented Constitution also prohibits religious discrimination and provide for freedom of thought, conscience, and belief and the freedom to practice any religion. However, it was brought to the attention of the Committee that despite the existence of the legal protection, children of particular religious groups are not able to enjoy the benefits of this right. A particular concern in this regard are children who belong to the Jehovah Witnesses, as they particularly face harsh treatment. The Committee therefore recommends that the State Party recognise and fully implement a child's Freedom of Thought, Conscience and Religion with no discrimination.

E. Family environment and alternative care

Parental Responsibilities and protection of children

14. The Committee notes the existence of laws which ensure that since parents are the custodians of the child, they shoulder all responsibilities of guardian and

tutor. The Committee however notes with concern that children separated from their parents for reasons not caused by the State may be placed in a group home or institution. The Committee also notes that no data is provided in the report on the number of children in such placements. The Committee further notes with concern that despite provisions on the maintenance of a child; this only refers to children born within marriage. The Committee therefore recommends that children should be put in group homes of institutions only for a short period of time pending long-term solutions being sought. The Committee also recommends that regulations should be developed for the coordination and monitoring of such institutions or group homes. The Committee further recommends that legal provisions on maintenance should be amended making them applicable to both children born in and out of wedlock.

Adoption

15. The Committee notes the existence of legal provisions to guide adoption process and that the opinion of children is sought prior to a decision being reached. The Committee however was informed that there are challenges on monitoring of post adoption process. The Committee therefore recommends that regulations should be developed for the regulation of post adoption process. The Committee further recommends that the State Party consider acceding to the Hague Convention on International Adoption.

F. Basic health and welfare

16. The Committee notes that the State Party recognises the importance of providing equal access to publicly funded social services and the importance of ensuring the health of children by implementing free health services to all children, and that there is an increase in trends on the number of births assisted by health professionals although???. The Committee is however concerned that healthcare and medical facilities are understaffed with most of these in urban areas and cannot be easily accessed by people living in rural areas. The Committee is also concerned at the under 5 mortality rate particularly the number of deaths from preventable diseases and poor sanitation. The Committee is further concerned at the low number of health personnel trained on the handling of HIV/AIDS and the availability of ART to pregnant women and children infected with HIV along with the deterioration of nutritional status of children under 5 since 2001. The Committee therefore recommends that the State Party to:

- Ensure provided health care is appropriate to children's health needs and health services are adequately staffed with trained health personnel;
- Increase budgetary allocation to the health sector and ensure health services are easily accessible to children in rural areas;
- Implement measures to address the under 5 mortality rate and improve sanitation;
- Provide families with financial support to enable them adequately care for their children;

- Increase measures to eliminate communicable and non-communicable diseases and ensure they reach rural areas;
- Undertake campaigns to increase the immunisation rate of children to prevent deaths from vaccine preventable diseases;
- Increase the number of health professionals trained on management of HIV/AIDS and the availability of ART to pregnant women and children with HIV/AIDS ensuring children in underserved communities or where the disease is most prevalent have access to ART;
- Devise measures and undertake campaigns to address the prevalence of tuberculosis and acute respiratory infection particularly amongst poor and malnourished communities;
- Undertake campaigns to increase the rate of breast feeding;
- Undertake to remove all fees attached to its free health services to children and ensure essential medicines are available in all health facilities.

G. Education, leisure and cultural activities

The right to education

17. The report indicates that education is basically and literally free at all levels, including graduate and postgraduate and that the Marco-Policy document of 1994 and the National Educational Policy (2003) all provide for pre-school, basic and secondary education, vocational and technical education, adult and continuing education, and special needs education. The Committee is however informed that accessibility of education especially for children from poor households, the hidden costs of school material, uniforms and transportation particularly for those living in rural areas along with the closure of the University of Asmara are some of the issues adversely affecting the full realisation of the right to education. The Committee also notes that parity has not been achieved between the enrolment of girls and boys. The Committee further notes that through the educational policy, high school students in their final year are enrolled to Warsay Yikealo which as part of Sawa Military Training Centre keeps children under strict military discipline. The Committee therefore recommends that the State Party undertakes;
- To ensure that primary education is indeed free and compulsory with removal of any hidden costs and ensure that education standards are improved and regulations are implemented;
 - To ensure the strict application of the proclamation on the National Service (1994) that children are not at any time conscripted into the military services or trained with the view to conscripting them;
 - That tertiary education is made available, accessible, affordable and qualitative through the establishment of more educational institutions and the reopening of the University of Asmara;

That measures are implemented to address issues preventing children particularly girls from attending school and those from underserved communities;

- In addition to recognising the importance the rights of children with disabilities, the State Party develops measures aimed at providing this and encouraging inclusive education for disabled children;
- Measures to improve the quality of education should be implemented and the State Party should conduct an assessment to inform the revision of adopted and new measures;
- Regulations should be developed for the monitoring of the private schools and the State Party should undertake to create more public pre-schools to and ensure their availability to children from poor households;
- Increase budgetary allocation to the education sector to ensure the realization of the right;
- Provide ongoing training to teachers to improve the quality of education and adopt measures to increase their retention along with initiatives for teachers to go to schools in underserved communities;
- Adopt measures to encourage individuals become teachers;
- Roll out the pilot on special needs education where the concept of inclusive education and educational facilities are made accessible to children with disabilities;
- Establish more special needs schools and decentralise them throughout the territory of the State Party ensuring their availability.

Leisure, Recreation and Culture

18. The Committee notes the effort of the State Party to integrate cultural activities, sports, music, arts into the educational system in Eritrea with the Cultural Affairs being the governmental body responsible for preserving, managing and developing the national cultural heritage, cultural values and recreation among students. In light of this, the Committee recommends that the State Party undertake to designate accessible recreational areas in all its communities.

H. Special Protection Measures

Children with disabilities

19 The Committee notes measures taken by the State Party to protect persons with disabilities. The Committee however notes that the report makes no reference on measures to ensure children with disabilities are able to enjoy the protection provided by the Charter especially protection from discrimination. The Committee therefore recommends that the State Party:

Develop and continually update a national database of children living with disabilities for effective, inclusive response

- Assess the extent to which adopted measures do not discriminate against children with disabilities;

- Endeavour to improve and increase inclusive schools along with teachers provided the necessary training to ensure children with disabilities are able to enjoy their life;
- Ensure facilities are made accessible to children with disabilities;
- Provide necessary services to increase their standard of living and health and ensure other government facilities are made accessible to them;
- Support children with disabilities from poor households.

Child Labour

19. The Committee notes the adoption of measures by the State Party to address child labour with the enactment of the Labour Proclamation No. 118/2001 and regulations issued by the Ministry of Labour and Human Welfare on jobs a child cannot be engaged in. The Committee notes with concern over the number of children involved in child labour, which in 2000 was estimated by the ILO to be 183,000 children. The Committee is also concerned over the lack of comprehensive measures to protect children from economic exploitation and the worst forms of child labour. The Committee therefore recommends that the State Party;
- Undertakes to address the root causes of child labour with the implementation of financial assistance to children from poor households and increase school attendance;
 - Strengthen the legal framework to eradicate child labour;
 - Harmonize laws on the age of employment to bring it in line with the Charter's definition of a child;
 - Supply the Committee with up to date data on the number of children engaged in child labour and children the State Party has removed from exploitative labour.

Administration of Juvenile Justice

20. The report indicates that Articles 52-56 of the Transitional Penal Code deals with infants and juvenile delinquency and sets the age of criminal responsibility at 12 years. It is also indicated that the Transitional Criminal Procedure has put in place special measures for a child criminal justice system. The Committee is however informed that despite indication in the report that the State Party does not support children being subjected to the death sentence, no reference is made to any provision prohibiting the sentencing of children to death. The Committee therefore recommends that the State Party;
- Remove reference to infants in Articles 52-56 of the Transitional Penal Code since the age of criminal responsibility is 12 years;
 - Enact a law clearly prohibiting the use of death sentence as a form of punishment especially for children;
 - Ensure that corrective or rehabilitative centres are staffed with appropriate and well trained personnel and children are provided with adequate health and educational services;

- Ensure that custodial orders are used as measures of last resort and devise alternative orders to custody with rehabilitation provided to children.

Protection against Harmful Social and Cultural practices

21. The Committee notes with satisfaction that the State Party has enacted laws prohibiting FGM and child marriage. The Committee would also like to commend the State Party for launching the AU Campaign on ending child marriage and for the various initiatives against HTPs affecting the girl child. The Committee however observes that structural problems have affected the application of the various laws against HTPs which resulted in for instance a large number of girls being subjected to FGM. The Committee also notes the prevalence of child marriage especially in the rural areas, food taboos and bloodletting during high fever. The Committee further notes that child betrothal is not in line with the Charter along with child marriage. The Committee therefore recommends that the State Party;

- Apply the 2007 law on FGM strictly and improve institutional structures;
- Increase awareness raising campaigns together with CSOs, religious and community leaders to sensitise the population on the dangers of FGM and child marriage and on laws prohibiting the practices of other forms of traditional harmful practices;
- Provide financial, medical and psychological assistance to victims of FGM and child marriage;
- Provide sustainable support to children from poor households and address the causes of child marriage;
- Amend Sub-Article (4) of Article 46 of the Civil Code and bring it in line with the Charter to prohibit child betrothal.

Armed Conflicts

22. The Committee notes that Article 8 of Proclamation 82/1995 prohibits the recruitment of children into the army and children are given full care and protection in situations of armed conflict. The Committee however notes reports of forced conscription of children into the army. The Committee therefore recommends that the State Party:

- Strictly apply Article 8 of Proclamation 82/1995 and ensures that those who violate it are punished.
- Ensure that the application of this law extends to the non-recruitment of children into other security forces.
- Ensure that the educational system is not used for military training prior to full military service.

Refugee children

23. Concerning refugee children, the report indicates that they enjoy the same rights as nationals without discrimination and there are present in Eritrea, Somali and

Sudanese refugee children. The Committee however notes that a comprehensive law addressing the needs of refugees is yet to be implemented and reference is only made to the Umkulu Camp on the provision of services. The Committee further received reports on the number of unaccompanied Eritrean refugee children. The Committee therefore recommends that the State Party;

- Ratify international instruments safeguarding the rights of refugees and internally displaced persons and domesticate them to ensure adequate protection for refugees in its territory;
- Provide all refugee camps in its territory with health care and educational facilities;
- Prevent sexual exploitation and abuse of refugee children;
- Address the causes of unaccompanied Eritrean refugee children using a child rights approach.

Sexual Exploitation

24. The Committee notes the State Party's efforts with the adoption of a plan of action against sexual exploitation and a law punishing persons who commit sexual assault. It was however observed that rape constitutes the majority of abuse against children taken to court. The Committee also notes that reports of sexual harassment and rape happen particularly in military training camps and educational institutions or during interrogations. The Committee therefore recommends that the State Party;

- Adopt appropriate measures in dealing with early pregnancy which sees girls and their families supported whilst sexual and reproductive education is provided to children in school and at family planning facilities;
- Include in the national action plan against sexual exploitation the creation of safe environment for children in their homes, schools and broader environment to decrease risks of sexual exploitation;
- Introduce a mechanism to ease the reporting of sexual exploitation by concerned persons and children;
- Investigate and prosecute offenders promptly.

Sale, Trafficking and Abduction

25. The Committee notes the efforts of the State Party in criminalising trafficking in, sale and abduction of children. The Committee however notes that no data on the rate of trafficked, number of traffickers caught along with prosecution and conviction rates together with psychological, financial and other rehabilitative measures are indicated in the State Party's report. The Committee also notes that the high number of unaccompanied Eritrean refugee children who become victims of trafficking particularly within the Sinai Desert and in neighbouring countries. The Committee therefore recommends that the State Party in addition to enforcing legal mechanisms also implement measures to address the health and trauma aspect of child victims of trafficking. The Committee also recommends that the State Party undertake measures to address the root

causes of trafficking, abduction and sale of children. The Committee further recommends that the State Party ratifies the Palermo Protocol to enable it implement an all-encompassing framework to assist victims of trafficking and deal with traffickers.

Children of Imprisoned Mothers

26. The Committee notes efforts of the State Party to ensure children are not imprisoned with their mothers with the enactment of Article 206(a) of the Transitional Criminal Procedure Code and Article 118 of the Transitional Penal Code on the non-execution of the death sentence for pregnant women and those with infant children. The Committee however notes that despite such measures, children can still be imprisoned with their mothers. The Committee also notes that that no reference is made in the report over how mothers with children in prison are treated. The Committee therefore recommends that the State Party;
- Provide measures preventing children from being imprisoned with their mothers through the application of suspended sentence;
 - Use the General Comment No. 2 of the ACERWC on 'Children of incarcerated mother, father and care givers' as a guidance on its efforts to address the challenges.

19 Conclusion

27. The African Committee of Experts on the Rights and Welfare of the Child observes that the Government of Eritrea has adopted several texts and measures for the protection and promotion of the Rights and Welfare of the Child. However it is observed that certain texts are not in harmony with the Charter and the majority of these texts and measures have remained ineffective due to lack of implementation strategies or because of the inadequate resources allocated for their implementation. The Committee recommends the that State Party undertake measures to implement Eritrea's 1997 Constitution after having taken steps to harmonize it and other texts with the African Charter on the Rights and Welfare of the Child and adopt strategies for effective implementation. The Committee avails itself of this opportunity to renew to the Government of Eritrea the assurance of its highest consideration.