

**GENERAL COMMENT NO 5 ON “STATE PARTY
OBLIGATIONS UNDER THE AFRICAN CHARTER
ON THE RIGHTS AND WELFARE OF THE CHILD
(ARTICLE 1) AND SYSTEMS STRENGTHENING
FOR CHILD PROTECTION**

AFRICAN COMMITTEE OF EXPERTS ON
THE RIGHTS AND WELFARE OF THE CHILD

ACERWC



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General Comment no 5 on “State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and systems strengthening for child protection

I. Introduction

The African Charter on the Rights and Welfare of the Child (1990) (African Children’s Charter) is the principle regional document governing the implementation of children’s rights in Africa. It has been widely ratified by member states of the African Union. The mandate of the African Committee of Experts on the Rights and Welfare of the Child (the Committee) is derived from the African Children’s Charter. In particular, the Committee, under article 42 (a)(ii) is expected to formulate and lay down principles and rules aimed at protecting the rights and welfare of children. Further, through the reporting procedure provided for under Article 43 of the Charter, the Committee interacts with States parties by reviewing their reports and issuing observations and recommendations aimed at improving the implementation of the rights of the child where the desired standard of implementation is deemed not to have been achieved. It is in accordance with these mandates that the present General Comment has been formulated.

At the global level, all member States of the African Children’s Charter have also ratified the UN Convention on the Rights of the Child (1989) (CRC). The State Party obligation to implement children’s rights is enshrined in Article 4 of the CRC, which has been explained by the UN CRC Committee’s General Comment no 5 (General Measures of Implementation of the CRC)¹ and General Comment no 19 (Public Budgeting for the Realization

1 CRC/C/GC/5.

of Children’s Rights (Article 4 CRC)).² However, the text of Article 4 CRC differs from the text of article 1 of the African Children’s Charter, which led to the conclusion that the interpretation of Article 1 from a regional perspective, and in the context of its express wording and placement within the Charter as a whole, would be beneficial. It is necessary to elucidate the differences, where appropriate, between the implementation requirements of the CRC and African Children’s Charter. This is the rationale for the present General Comment.

Article 1 of the African Children’s Charter is titled “Obligations of States Parties” and provides the overarching implementation obligation, with cross-cutting implications for the Charter as a whole. It reads as follows:

1. Member States of the Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.

2. Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State.

3. Any custom, tradition, cultural or religious practice that is inconsistent with the rights duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.

2 CRC/C/GC/19.

Through its engagement in the State Party reporting process, the Committee has noted the challenges that State parties experience in understanding the nature and scope of the obligations they have undertaken to implement Charter rights upon ratification of the instrument. Hence, this General Comment has been developed to provide more detailed guidance on the general measures required to improve implementation of the Charter, and to describe the true interpretative meaning of the sub-clauses of Article 1.

The interpretation of Article 1 of the Charter is undertaken against the backdrop of other policy frameworks. Principal amongst these are the Committee’s “Africa’s Agenda for Children 2040”, which recognises the need for effective implementation of the Children’s Charter in order for its aspirations to be realised; the African Union Agenda 2063; and the UN General Assembly’s Sustainable Development Goals (SDGs), consisting of 17 targets and 169 indicators. Many of these have a direct bearing on African Children’s Charter rights, including empowerment, access to equal opportunities, and non-discrimination.

In addition, the Committee is aware of the need to explain to State Parties the constituent elements of a systems strengthening approach to child protection,³ which this Committee has adopted as the lens through which the implementation

3 Child protection systems are defined by UNICEF as “the set of laws, policies, regulations and services needed across all social sectors – especially social welfare, education, health, security and justice – to support prevention and response to protection-related risks. These systems are part of social protection, and extend beyond it. At the level of prevention, their aim includes supporting and strengthening families to reduce social exclusion, and to lower the risk of separation, violence and exploitation. Responsibilities are often spread across government agencies, with services delivered by local authorities, non-State providers, and community groups, making coordination between sectors and levels, including routine referral systems, a necessary component of effective child protection systems (United Nations Economic and Social Council (2008), UNICEF Child Protection Strategy, E/ICEF/2008/5/Rev.1, par. 12-13).

of Charter rights should be pursued. The systems strengthening approach is explained more fully in 6.1 below, and its addition as a focus of implementation distinguishes this General Comment from those issued by the CRC Committee to date.

Although primarily aimed at State Parties to the Charter, the Committee is cognisant of the many duty-bearers involved in children's rights implementation, including national human rights institutions, non-state actors, businesses, civil society and children themselves. This General Comment is therefore also intended to guide these bodies and duty bearers in their work, as well as to assist non-state actors and others listed above to hold their governments to account for the fulfilment of children's rights.

II. Rationale for this General Comment

The concept of "implementation" is embedded in all human rights laws, declarations and resolutions. It refers to a crucial matter: giving effect to the provisions and principles of these instruments. In turn, this involves taking a wide range of measures to combat deprivation, provide protection, enhance access to quality basic services, and improve the overall safety and wellbeing of every individual child. Implementation covers the process whereby governments take the necessary legal, policy, budgetary, administrative and other appropriate measures to ensure the full realisation of all children's rights stipulated in the CRC, the African Children's Charter and other relevant national, regional and international human rights laws and instruments pertaining to children to ensure the wellbeing of all children. Implementation and enforcement can be seen as synergistic concepts. In relation to the International Covenant on Civil and Political Rights, the Human Rights Committee has defined the meaning

of “obligation” saying that “[a] general obligation is imposed on States Parties to respect the Covenant rights and to ensure them to all individuals in their territory.”⁴ In relation to the African Children’s Charter, the overarching state party “obligation” is to respect Charter rights and to ensure fulfilment of all Charter rights to all children in their territory.

In its engagement with State Parties to the African Children’s Charter, the Committee has noted that State parties frequently do not understand the full reach and scope of the obligations that have undertaken regarding implementation by ratifying the treaty. In addressing this identified gap, thus, the present General Comment lays out fully the meaning, scope and import of Article 1, which contains the essence of the implementation obligation for member states, taking account of regional specificities, good practice, and matters of particular concern to the Committee as regards the fulfilment of children’s rights in Africa.

The development of this discrete General Comment also provides the Committee with an opportunity to fully explain its approach to child protection systems strengthening. This explanation and clarification also lays the basis for States Parties to include information about progress made in their domestic system strengthening in their interactions with the Committee.

III. Scope of the overall implementation obligation derived from Article 1

The African Children’s Charter text makes no distinction between different rights

4 CCPR General Comment No 31 “The nature of the general legal obligation imposed on States Parties to the Covenant, adopted on 29 March 2004, CCPR/C/21/Rev.1/Add.13, 26 May 2004, para 3.

(civil, political, social, economic, or cultural rights) as regards the implementation obligation. Article 1(1) simply refers generally to the “provisions of this Charter” without any distinction. Moreover, the Committee endorses the interdependence, indivisibility and mutually reinforcing nature of all rights,⁵ and stresses that the enjoyment of economic, social and cultural rights is inextricably intertwined with the enjoyment of civil and political rights. As the emerging jurisprudence of this Committee shows, the Committee believes that economic, social and cultural rights should be justiciable in the same way as are civil and political rights.⁶ Moreover, whatever their economic circumstances, States Parties are required to undertake all possible positive measures towards the realization of the rights of the child contained in the African Children’s Charter, paying special attention to the most disadvantaged and marginalised groups. This necessarily implies progressive realization in the implementation of some Charter Rights, including economic social and cultural rights but also some civil, political and protection rights, as many African states are still improving the human rights fulfilment of their citizens.

The Committee underlines that there is no reference in Article 1 to “progressive realisation of rights”, or to the degree of realisation within the “maximum extent” of available resources. These phrases have often been adduced with respect to the fulfilment of social and economic rights which appear, at first glance, to

5 See ACERWC/GC/02 (2014) (Article 6 of the African Charter on the Rights and Welfare of the Child) par 25.

6 See for example The Centre for Human Rights (University of Pretoria) and Recontre Africaine pour la defense des droits de l’homme (Senegal) v Government of Senegal Communication 003/2012 in which findings were made (amongst others) concerning violations of the right to education, to health and health services, and to adequate sanitation and nutrition.

entail more intensive dedication of resources, and which also require investment in the systems needed for their administration or delivery (e.g. health systems, educational systems, and systems for the disbursement of poverty alleviation measures such as social cash transfers). The Committee is, of course, fully aware that social spending in State parties in African context oftentimes proceeds off a low base, with reference to the situation that prevailed during the structural adjustment era of the 1980s and 1990s when the African Children's Charter was being adopted. Nevertheless, whilst being aware of fiscal realities, the Charter standards were set intentionally - they do not allow states parties to claim that they do not have any resources for the implementation of social and economic goods for the fulfilment of children's rights. This General Comment urges State Parties, whatever their economic resource base, to comply at least with previously agreed targets relating to social spending (e.g. 15% of GDP on health according to the Abuja Declaration; 9% of GDP on education according to the Dakar Declaration; and 20% of Overseas Development Assistance must go on basic social services), and to include such information in their State Party reports.

3.5 The core and universally accepted obligation to respect, protect, promote and fulfil children's rights applies equally in respect of the implementation of the African Children's Charter as a whole.

3.6 The Committee emphasizes that, as part and parcel of a rights based approach, States Parties must see their duty as fulfilling applicable legal obligations to each and every child. Implementation of the human rights of children must not be seen as a charitable process, bestowing favours on children. The clear meaning of "shall recognize" as contained in Article (1) is peremptory, underling the rights - based approach. Furthermore, there is no hierarchy of rights within the African Children's Charter— all rights are equally important and

must be implemented immediately. Progressive realisation should not mean postponement of implementation. Progressive realization must be understood in the context of the urgency required to fulfil children's rights.

3.7 Moreover, the Committee wishes to remind that the fulfilment of children's civil and political rights contained in the African Children's Charter can also require extensive resource allocation, such as maintaining voter's rolls, convening democratic elections and national population surveys, and improving birth registration systems. This, too, explains why no priority is accorded the development of either civil and political, or social, economic and cultural rights, in the text of Article 1: they all attract the same State obligation.

3.8 The Committee is mindful that resources for the fulfilment of children's rights are frequently diluted or even diverted. The Committee has commented, in relation to State Party reports received, on large sums accorded the military spending; on the prevalence of corruption which dissipates resources that could be available for the fulfilment of children's rights; and on inefficient and wasteful expenditure which suffers from a lack of proper monitoring and accountability.

3.9 The Committee is aware of the potential of considerable economic progress that can be achieved in some States Parties which have discovered oil or gas deposits, or newly found mineral resources, or are investing in other forms of development enhancing technologies or suchlike. The Committee is eager to see how such new developments can catapult the progressive realisation of children's rights provided for in the African Children's Charter in those territories, and requests State parties to provide information on how such developments and their economic fruits are planned to positively impact upon children in their reports.

3.10 For all of the above reasons, the Committee will scrutinise diligently claims

that non- fulfilment of rights is linked to non- availability of resources, and will expect that States parties will show rapid forward progress in extending the reach and impact of rights deliverables to children, with a special focus on the most marginalised and excluded groups. State Parties are further reminded that any retrogressive measures, which dilute or cut back on rights already enjoyed, are regarded as being contrary to international law, unless, during times of significant recession or emergency, sound justification can be provided and the status quo ante re-established as soon as circumstances permit.

3.11 The legal meaning of Article 1(2) is self-evident, and the Committee reminds that in the twenty five years since the coming into effect of the African Children’s Charter, human rights standards applicable to children have undergone significant development in a number of areas. Where higher standards have been agreed at the international or regional level, or new treaties adopted and ratified, States Parties will be held accountable to these higher standards. This includes the standards elaborated in General Comments developed by this Committee.

IV. Key Principles

Effective implementation of the whole Charter must take place in the light of the following articles in the Charter identified by the Committee as general principles:

4.1. Non-discrimination in the implementation of the Charter rights (Article 3)

This non-discrimination obligation requires States Parties to actively identify individual children and groups of children in respect of whom

the recognition and realization of their rights may demand special measures. The application of the non-discrimination principle of equal access to all rights does not mean identical treatment. It may require taking special measures in order to diminish or eliminate conditions that cause discrimination, whether it is discrimination in the context of civil or political rights, in relation to the fulfilment of social, economic and cultural rights, or in relation to specific measures of protection.

The Committee has highlighted the importance of non-discrimination the Nubian Children decision:⁷

“Children of Nubian descent who have been born in Kenya are subject to the requirement of their serving their national community by placing their physical and intellectual abilities at the service of the nation, as well as preserving and strengthening social and national solidarity and the independence and integrity of his country....The Committee wishes to emphasise that national solidarity and African unity are best achieved in an environment which *eschews discrimination* and denial of rights.”⁸

A particular focus must prioritize implementation of the rights and needs of the poorest and most marginalized of Africa’s children (rural children, children of imprisoned mothers, children on the move, to name but three vulnerable groups). Further, the particular needs of

7 Decision on the communication submitted by the Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on behalf of children of Nubian descent in Kenya) against the Government of Kenya, No. Com/002/2009 available at <http://www.acerwc.org/download/decision-on-the-communication-against-the-republic-of-kenya/?wpdmdl=9747>.

8 Par 66. Italics added for emphasis.

the girl-child must be addressed in light of all Charter rights in order to achieve gender equality for sustainable development.⁹ States Parties should recognise that implementation of the African Children's Charter rights will require dedicated additional resources, and should strive consciously to identify such resources, to the maximum extent feasible, that can be devoted to implementation.

4.2 The best interests of the child (Article 4(1))

Article 4(1) requires that in all actions undertaken by any person or authority, the best interests of the child shall be the primary consideration. There are no conditions attached to this principle which could dilute its scope, reach or standard of application. Moreover, it applies to both private and public institutions, and it is therefore the responsibility of the State Party to ensure to the maximum extent possible that private actors, including parents, institutions, business entities and various non-state actors engaged with children's rights and services, are aware of and apply the best interests of the child in all of their endeavours. Further, the best interests standard applies across cultural, political and geographical settings, to members of all ethnic groups, and, as "the primary consideration", must be an extremely important consideration, when ranked against any other competing considerations.¹⁰ There are also no limitations to the domains or sectors within which the best interests of the child must

9 Concept note, Day of the African Child, 2017.

10 In the words of the South African Constitutional Court in *Centre for Child Law v Minister for Justice and Constitutional Development* [2009] ZACC 18; 2009 (6) SA 632 (CC); 2009 (11) BCLR 1105 (CC) at para 29 : "The constitutional injunction that '[a] child's best interests are of paramount importance in every matter concerning the child' . . . means that the child's interests are 'more important than anything else', but not that everything else is unimportant".

apply, so that its application can extend to every conceivable domain of public and private life, including - to cite three examples - spatial planning and development, environmental husbandry, and fiscal policy. At minimum, the best interest of the child must be considered in the following matters: public budgeting policies and processes; family and home settings; education and health settings; alternative care settings; work places settings and in community settings.

The child's best interests include short term, medium term and long term best interests. For this reason, State actions which imperil the enjoyment of the rights of future generations of children (eg allowing environmental degradation to take place, or inappropriate exploitation of natural resources) are regarded as violating the best interests of the child standard.

4.3 The right to survival and development and protection (Article 5)

Implementation measures should be aimed at achieving the optimal development for all children, including the child's physical, mental, spiritual, moral, psychological and social development. The Committee has affirmed that all African Children's Charter rights are relevant for children, as they aim to progressively facilitate the proper development of children from childhood to adulthood. States are therefore enjoined to adopt a holistic approach, which is facilitated by adopting a system's strengthening approach, discussed fully in 6.1 below. The Committee has noted that complimenting the African Children's Charter, the SDGs serve as a tool to address implementation of children's rights to survival, development and protection in Africa, particularly the realisation of

socio-economic rights, through good governance, targeted policies and adequate provision of the required services.¹¹

4.4 Participation (Article 4(2) and Article 7)

This principle, which highlights the role of the child as an active participant in the promotion, protection and monitoring of his or her rights, applies equally to all measures adopted by States Parties in their overall efforts to implement the Charter. Respect for the views of the child should be enshrined in all national legislation. Furthermore, Government processes which are aimed at securing children's rights (as highlighted in the remainder of this General Comment) should be transparent and accessible to children so as to enable their participation, consistent with their evolving capacities. Consulting with children and taking their views into account is still a very recent trend amongst State parties, and efforts to include children are still mostly new and uncoordinated. A key challenge is how to conceptualise child participation and translate the concept into practice in different contexts. In order for child participation to be more effective, there is an urgent need to integrate the principle systematically into many more official and government processes, as well as to integrate monitoring mechanisms into these governance processes to ensure the accountability of duty-bearers such as policymakers, parents and educators, and public officials. There is also a need for ongoing investment (of personnel, skills, shared experience and financial resources) in working with children to ensure the sustainability of

11 Day of the African Child concept note 2017 p 8.

child participation initiatives. The Committee has commended States Parties which have supported Children’s Parliaments, at national and subnational levels, sometimes underpinned by legal provisions.

Child participation efforts should comply with the nine basic principles of child participation: processes should be transparent and informative; voluntary; respectful; relevant; child friendly; inclusive; be supported by training for adults; be safe and sensitive to risk; and be accountable.

Moreover, when children do exercise their right to participate, their views should be given due weight and not formalistically considered without affecting real change. To further children’s participation, Government documents should be broadly and easily accessible to the public. Information should be readily available in child and disability-friendly formats that are appropriate for children of different ages. Government departments must be mandated to produce key documents in child and disability-friendly formats so that all boys and girls have access to a wide range of information from various sources: radio, television, libraries, books, press, Internet, helplines.

Child participation should be institutionalised at all levels, including the local government and community level. Further guidance on implementing children’s participation is provided in 6.8 below.

V. Content of Article 1(1) and member states obligations

5.1 “Recognizing the rights, freedoms and duties” enshrined in the African Children’s Charter

“Recognising” implies a level of formal recognition of the rights, by

law or in Constitutions. The Charter rights, freedoms and duties referred to in this part of Article 1 are those which follow throughout the remainder of the Charter. The Preamble to the Charter affirms the paramountcy of the African Charter on Human and Peoples' Rights, regarded as the source of many rights, freedoms and duties contained in the African Children's Charter. The African Charter on Human and Peoples' Rights agrees that everyone is entitled to all of the rights and freedoms contained therein "without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national or social origin, fortune or other status."¹² The rights and freedoms accorded the child are comprehensive, and include all rights accorded other bearers of human rights, as well as rights specifically necessary for children, such as protection rights.

The Committee has previously articulated the requirement of "due diligence" applicable to human rights obligations under the African Children's Charter. "States' due diligence is translated into the form of prevention of human rights violations, investigation of violations, prosecution of perpetrators and ensuring punishment of perpetrators."¹³ Furthermore, the Committee has emphasised that "due diligence" creates an obligation of result, meaning that the compliance of a State party is assessed against the backdrop of the efficacy and adequacy of the implementation measures it has undertaken to enforce laws and administrative and other measures.¹⁴ The burden of proving that measures were pursued with due diligence lies with the State Party

12 Preamble par 1.

13 Decision on the communication submitted by Minority Rights Group International and SOS-Esclaves on behalf of Said Ould Salem and Yarg Ould Salem Against the Government of the Republic of Mauritania (Decision 003/2017 par 52.

14 Above, Par 53 and 54.

concerned.

The Preamble to the African Children's Charter stresses that the promotion and protection of the rights of the child implies the performance of duties on the part of everyone.¹⁵ This Committee has laid down clear guidelines for States Parties to consider in their approach to Article 31 (Responsibility of the Child) in General Comment no 4.

5.2 “Undertake necessary steps in accordance with Constitutional processes”

Enshrining a detailed array of rights for children in national constitutions has become a continental best practice, which has drawn the Committee's attention in a positive vein. States Parties are encouraged to harmonise their Constitutional rights and protections with the African Children's Charter, wherever possible.

State Parties to the African Children's Charter are characterised by a wide variety of centralized (national) and decentralized (eg federal) governance systems, encapsulated in their national Constitutions. Some State parties have mixed systems of multi-level (or devolved) governance. The Charter does not privilege any one constitutional system over another, but, in accordance with the national system prevailing, the relevant authority, at the relevant level, must take the appropriate steps set out in this General Comment to ensure the implementation of Charter rights. It is not in line with an integrated approach to implementation for a State Party to defer responsibility for one or another aspect of implementation to another organ or sphere

15 Preamble par 7.

of government. The principle of a unitary state with responsibility for implementation must be stressed. The Committee has in the past criticised States Parties for failing to institute overarching coordination mechanisms in federal systems which can ensure equal implementation of the rights contained in the Charter across all parts of a territory, without discrimination. Similarly, it is the responsibility of the State Party to ensure that children in one region are not awarded less protection of their rights than in another, for example, due to different religious systems operating in different parts of a country. Equity and non-discrimination in implementing Charter rights are required.

The State Party which ratified or acceded to the Convention remains responsible for ensuring the full implementation of the Charter throughout the territories under its jurisdiction. In any process of devolution, States Parties have to make sure that the devolved authorities do have the necessary financial, human and other resources effectively to discharge responsibilities for the implementation of the Charter. The National Governments of States Parties must retain powers to require full compliance with the Charter by devolved administrations, regions or local authorities. Since the State is the organ of government which has ratified or acceded to the Charter, it matters not what government is in power, has submitted a report to the Committee, or must defend policies and implementation. The obligations incurred under the Charter are continuous and ongoing.

Further, the Committee wishes to emphasise that enabling the private sector to provide services, run institutions, provide education and so on, does not in any way lessen the State's obligation to ensure for all children within its jurisdiction the full recognition and realization of all

rights in the Charter.

A key aspect of implementation concerns the constitutional law-making process adopted by State Parties, as this is the apex source of legislative progress required for the implementation of Charter rights. It is therefore crucial that law makers (drafters, state law advisers and Parliamentarians) at national and, where relevant, other levels, be made aware of their duties and obligations regarding children's rights in accordance with the Charter. This awareness should extend not only to the substantive content of children's rights norms and principles, but also to efficient and expeditious processes of law-making, as long delays in passing laws, regulations and decrees beneficial to children's rights and welfare are not in the best interests of children.

Including rights for children at the constitutional level is of limited value, however, if these and other legal rights are not justiciable before the courts, and children do not have access to effective legal remedies (of whatever kind available) for rights violations or to secure fulfilment of their rights. There are now numerous examples of constitutional litigation to secure children's rights, such as by declaring unconstitutional corporal punishment, child marriage, and denial of access to education. The Committee does not, however, demand constitutional expression of children's rights as an absolute requirement, although it is recommended

Providing for judicially enforceable constitutional children's rights carries with it the imperative to ensure that children have access to the judicial system, if needs be without parental assistance, to enable them to enforce their rights. State funded systems for legal aid should

include the possibility of funding for children's rights litigation based on constitutional imperatives.

Locus standi refers to the right to approach a court directly to seek appropriate relief in cases arising from an alleged infringement of a fundamental human right or freedom. Access to justice should also be constitutionally secured for a broad church of interest groups and civil society organisations who can litigate causes on behalf of an affected child or group of children. To this end, it is desirable that the Constitution should make provisions for the right to approach a court by any person, including a child, acting in their own interests; any person acting on behalf of another person who cannot act for themselves; any person acting as a member, or in the interests, of a group or class of persons; any person acting in the public interest; and any association acting in the interests of its members.

Since the full potential of constitutional litigation to enforce children's rights and address violations is only in its infancy, States Parties are urged to ensure that child rights sensitive judges are appointed, and that judicial training includes modules on the rights contained in the African Children's Charter.

5.3 “Legislative measures”

The direct reference to legislative measures in Article 1 requires the timely enactment and continuous review of national legislation and related administrative guidance to ensure their compatibility with relevant international norms and related standards on the rights of the child and adherence to the principles set out in par 4.1 - 4.4 of this General Comment. The review needs to consider the Charter

holistically, as well as article by article, recognizing the interdependence and indivisibility of human rights. It must at the same time be borne in mind that in addition, other human rights conventions, standards and principles which also impact on the rights of the child require legislative enactment (for example, the OAU Convention relating to the Status of Refugees and its Protocol, the Convention on the Rights of Persons with Disabilities, and the Convention against Torture, to name a select few).

5.3.1 Child Protection Legislation

As part and parcel of the legislative obligation incurred under Article 1 of the Charter, legislative provisions concerning child protection are required.

Legislation to underscore the right of children to protection from all forms of abuse, neglect, maltreatment and degradation is a necessary element of the fulfilment of the right provided for in Article 16 of the Charter, as well as selected other Charter rights such as Article 15; Article 20(2); Article 21; Article 27; and Article 29. Such legislation should include within its ambit the protection of refugee, migrant, stateless and internally displaced children. The legislation to provide for responses to child abuse and neglect should contain the entire array of protective measures, which “shall include effective procedures for the establishment of special monitoring units to provide support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up in instance of child abuse and neglect” (Article 16(2) African Children’s Charter). The Committee has in the past stressed that legislation must be adopted to outlaw

corporal punishment in all settings, that is, as a judicial punishment, in the alternative care system, in schools and in the home.¹⁶ To this end, constitutional provisions which aim to protect children from all forms of violence whether from public or private sources can be usefully deployed to support such legislation. Furthermore, it must be born in mind that the abolition of corporal punishment in all settings might need sector-specific legislation (eg education law, penal law, etc). Appropriate sanctions for violations should be enacted.

The legislation should specify clearly the requirements for declaring a child to be in need of alternative care, and for a range of responses to reported incidents of abuse, neglect, maltreatment and degradation, bearing in mind that the removal of the child from the family should be a last resort, and that parental poverty should ordinarily not be a sufficient ground for the separation of children from their families. Instead, the African Children's Charter clearly provides that State should support parents who are unable to fulfil their parental responsibilities (Article 20(2)).

The law must provide for an initial and thereafter periodic judicial review of any placement of a child in alternative care. The legislation should identify the role players responsible for actions aimed at the protection of children from abuse and torture, and outline in suitable detail their duties, responsibilities and functions. The legislation should

16 "The Committee appreciates the prohibition of corporal punishment as a sentence and recommends the State Party to explicitly ban corporal punishment in all settings including in school, the home and in alternative care centres. The State Party should ensure the respect of children's right to be protected from violence. The Committee also calls upon the State Party to encourage positive discipline and to support families through awareness raising and training for those who are working for and with children such as teachers and care givers." (ACERWC Concluding Observations Mozambique 2015 par 18).

cover all actors, including law enforcement officials, community based volunteers or child protection committees, professionals and other role players in the social workforce. A legislative basis for monitoring of the steps taken by all of these role players to ensure children's wellbeing and their protection from abuse and torture is highly desirable.

A valuable element of child protection legislation is the adoption of measures to ensure that persons who have been found previously to have harmed children are not employed (whether as paid workers or as volunteers) in positions where they can have access to children. In particular, a legislatively based screening process must be developed to ensure that wholly unsuitable persons wishing to work in schools and in institutions linked to the care system (for instance children's homes, orphanages, reform schools) are not employed there.¹⁷ Legislation should detail whether a compulsory reporting system is contemplated, and, if so, which professionals or persons are required to report suspected child abuse and neglect (eg doctors, teachers, child care workers). The consequences of failure to report when bound to do so need to be spelt out too.

As the Committee has previously commended, in its consideration of States Party reports, the establishment and governmental support of Child Helplines, to enable children to report on instances of violations, is a good practice which enables children to better secure their rights.

While the Committee prioritises the promulgation of consolidated child

¹⁷ States Parties could conduct comprehensive audits, by child rights experts, of jobs under its jurisdiction that require contacts with children and jobs that impact on children to facilitate such screening processes.

protection legislation, domestic violence legislation and anti-trafficking legislation should also provide for the protection and reintegration of trafficked children. Torture in all forms should be criminalised. Specific legislation might be required to respond to allegations of sexual offences against children, including sexual exploitation which takes place in the online environment. Legislation should detail the array of measures permitted to enable children to engage effectively with a child-sensitive justice system, including by giving testimony in child-adapted environments and via intermediaries.

Guidelines for the rehabilitation of victims should be provided, and provisions made for access to redress by victims, eg in the cases of sexual offences committed against them whilst under the age of 18 years. Statutes of limitations should not apply where child victims seek reparations and redress for past violations.

The Committee has in the past recognised that certain groups of children may be more vulnerable to infringements than others, such as children with disabilities, children in the justice system and children who are subject to customary or informal legal systems. Special protective measures for these vulnerable children may need to be enacted.

5.3.2 Legislation relating to children in conflict with the law

It is in line with international best practice to ensure the development of a separate child justice system which is underpinned by legislation. This legislation should take account of the dedicated child justice provision of the Charter, namely article 17. There is also substantial

guidance at the international level to underpin appropriate legislation in this sphere. In addition, there are Africa-specific documents: these include the 1999 African Union Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa, the Robben Island Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel Inhuman or Degrading Treatment or Punishment in Africa, and the Kampala and Ougadougou Declarations which also relate to conditions of detention of prisoners.

Guidelines on Action for Children in the Justice system in Africa (hereafter “Guidelines”) were developed and adopted at a continental conference in Kampala, 2011, and these have been endorsed by this Committee. All these provide the substantive basis for the development and drafting of child justice legislation.

Not all aspects of Article 40 of the CRC (relating to the administration of child justice) are subsumed in the African Children’s Charter equivalent: for instance Article 40 (2)(iv) which provides for protection against self-incrimination, and importantly, Article 40(3)(b) which encourages States Parties to provide for alternative measures without resorting to judicial proceedings where appropriate (“diversion”) are absent. Article 37 of the CRC, which deals with children deprived of their liberty, is only partly accommodated in Article 17 of the African Children’s Charter as the principle that where child are deprived of their liberty, this shall be a last resort and for the shortest appropriate period of time, has not been included. Since all States Parties to the African Children’s Charter are also State Parties to the CRC, the higher standards on child justice contained in the CRC instrument apply in any event. The “last resort” and “shortest period of time” principles

entail that strict limitations on deprivation of liberty (pre-trial and as a sentence) should be put in place, and that alternatives to custody must be legislatively enshrined to ensure that custody is used as a last resort.

Legislation to give effect to a child justice system should also ensure the protection of the detained child from torture or inhuman or degrading treatment or punishment (this extends to a prohibition of corporal punishment as a sentence in the penal system or in institutions); should provide for the separation of children under 18 from adults whilst in any form of detention; should include procedural or fair trial guarantees; and should ensure that the aim of the juvenile justice system is rehabilitative and restorative, and not retributive only.

The law should set the minimum age for criminal responsibility; this should not be lower than 12 years of age and States must endeavour to raise this progressively to at least 15 years of age (Guidelines, par 46 and as provided for in the African Union Principles on the Rights to a Fair Trial and Legal Assistance in Africa). No child below the minimum age for criminal responsibility should be liable to arrest, detention or trial. Legislation should further describe the measures in place to ensure “independent and competent assessment of the age of a child” (Guidelines, par 26) where birth registration or birth certification is not available. The law should provide for the obligation to inform parents, guardians or families immediately upon the apprehension of a child (Guidelines, par 48), and for them to be further involved in providing assistance in all further criminal procedures against the child.

Legislation should provide clearly for diversion and community-

based alternatives to pre-trial detention and custodial sentencing, and spell out the roles and responsibilities of all actors concerned with the delivery of services in the juvenile justice system (police, correctional officers, social welfare workers, courts and prosecutors, legal representatives, as well as diversion service providers and, as necessary, civil society organisations involved with juvenile justice matters). Case management and data collection systems which have their basis in legislation are recommended.

The law should specify time limits for various phases of the criminal justice process and in particular time limits to ensure that the detention of a child is imposed for the shortest period of time. Maximum limits for the duration of trials should also be set, as trials of children should be concluded speedily and without delay. The child's right to privacy in court and in the media should be spelt out by law. The death sentence, life imprisonment, indeterminate sentences and corporal punishment must be prohibited as sentences for children.

The Committee is of the view that isolated provisions relating to children contained in a general Penal Code do not meet the requirements of the Charter, as indicated by the use of the words "special treatment" in Article 17(1). A dedicated and detailed statute which deals with children in conflict with the law, which could also be part (and often is) of a more comprehensive child welfare and protection statute, is needed.

Where informal justice systems (traditional, customary, chieftain based) co-exist with formal court systems, States Parties must consider how Charter rights, including children's rights to participate in proceedings

which concern them, are to be protected, and awareness of child rights standards amongst role-players in informal justice systems must be furthered.

The Committee supports the development of dedicated courts devoted to children's cases, both criminal and civil. These should have an appropriate legislative basis, including related to the required specialized personnel and services that they must offer.

The Committee does not advocate that separate legislation concerning child victims should be a requirement for the implementation of the Charter, As long as the appropriate protections are to be found elsewhere in legislation, this is adequate. However at minimum, the law should contain provisions enabling testimony to be given *in camera*, provisions should enable child victims to give evidence without taking the oath or affirmation; legal provisions should provide for the possibility of a child to testify through a one way mirror or closed circuit television, or with the assistance of an intermediary; and the entitlement of children to trials conducted by court officials with adequate skills in dealing with children to handle cases involving children should be provided for. Children's privacy rights should be legislatively assured, and their rights to redress and a remedy secured.

5.3.3 Education

The purpose of this General Comment is not to undertake an exploration of the expansive nature of the state obligation to provide for the right of the child to education, as enshrined in Article 11 of the Charter (which could form the basis of a self-standing General Comment). Rather, it aims to clarify that several matters that are indeed the concern of this

General Comment relate specifically to the education sector. This part deals with legislative measures.

The Committee finds it desirable that legislative measures relating to aspects of children's education rights, and to education policy imperatives, are necessary in the education sector as part and parcel of the implementation obligation. First, the State's obligation (and right of the child) to provide (or receive) free and compulsory basic education usually has a legislative foundation. The Committee understands "free" to mean substantively free for the poor who would otherwise be excluded, without collateral costs being required (such as donations, additional payments to teachers, or levies). Second, since the nature of the obligation involves progressively realising children's right to secondary education, the means by which this might be achieved (through fee waivers which relate to parental income bands) might need legislative embodiment. Third, the state obligation as provided for in article 11(3)(d) to encourage regular attendance at school and reduce drop-out rates frequently requires one or other form of legislative enactment to specify when pupils may be expelled, what the consequences of expulsion of learners might be, and crucially, the measures contemplated to ensure that girls who fall pregnant are enabled to continue their studies.

Fourth, reference has already been made to the requirement of legislative abolition of corporal and other harmful punishments in schools, and the need for legislation to reinforce the requirement of positive discipline practices in the education sphere.

Fifth, legislation should spell out the process for the accreditation

and functioning of private educational institutions, and should clearly make it illegal for unregistered educational institutions to operate. The means of monitoring education offered by the private sector – including religious educational establishments, must be legislatively enshrined, and follow up of monitoring mechanism must be enforced. State Parties should ensure that public and private educational institutions provide inclusive, quality education of a comparable standard.

5. 3.4 Health

The purpose of this GC is not to undertake an exploration of the expansive nature of the state obligation to provide for the highest attainable standard of health for the child, as enshrined in Article 14 of the Charter (which could form the basis of a self-standing General Comment). Rather, it aims to clarify that several matters that are indeed the concern of this General Comment relate specifically to legislation for the health sector. .

The Committee finds it desirable that legislative measures relating to aspects of children’s health needs, and to policy imperatives, are necessary in the health sector as part and parcel of the implementation obligation. First, the obligation to provide access to primary health care - and what that all entails – should be legally encapsulated and hence able to be enforced against the State. Ideally, primary health care services should be free. Similarly, access to reproductive health services for children, howsoever spelt out – should receive legislative backing and not be a discretionary act on behalf of health officials. Key aspects of child participation, such as the age at which children can consent to treatment or surgery, also need to be laid down in law.

Health related issues are not static. It is therefore incumbent upon States parties to keep health and health related laws under review to ensure that the laws regulating various dimensions applicable to children's health remain relevant and provide maximum protection. Examples in point include legislation in the HIV/ Aids domain, regulations relating to the advertising or distribution of breast milk substitutes, restrictions on advertising or marketing of less healthy foodstuffs to children, prohibitions related to children's access to alcohol and toxic substances, and, depending on the local context, the introduction of a legal framework to ensure the protection of the rights of children to be born from Artificial Reproductive Techniques.

The law needs to provide for accountability for health care violations, including violations of children's health care rights.

5.3.5 Labour

Legislation in the labour sector should specify the minimum age at which children may enter the workforce, and under what conditions, prior to that age, they may undertake light work. Further to this, the law should (in accordance with national conditions) detail the forms of hazardous work which children are not allowed to perform. Slavery, debt bondage and other harmful practices must be outlawed and subject to criminal sanction which must be diligently enforced.

5.3.6 Other legislative measures, including ratification of other Human Rights Treaties and withdrawal of reservations

The Committee is mindful that legislative measures not detailed above could assist protect the rights of children as enshrined in the Charter,

and urges State parties to consider the impact of all legislation being tabled in legislatures on children and the fulfilment of their rights.

The Committee has consistently commended State Parties for their ratification of other AU treaties, as well as UN treaties and their Optional Protocols. State Parties are therefore urged to examine and keep under continuous review the status of their ratification of treaties and to strive to maintain as comprehensive a ratification record as possible.

In particular, State Parties are urged to consider ratification of the Hague Convention on Inter-country Adoption (1993), the Hague Convention on the Civil Aspects of International Child Abduction (1980) and the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (1996).

States Parties which have entered reservations to any Charter provision are encouraged as a general measure of implementation to withdraw these reservations, and provide details in their reports to the Committee about the extent to which such withdrawals have been effected.

VI. “Other measures”

At the outset it is important to note that many of the topics raised under this overarching heading, although described as “other measures”, nevertheless require a legislative basis for their implementation. “Other measures” should therefore not be seen as entirely separate from legislative measures. They also include the array of policies,

regulations, directives, subsidiary legislation, and implementing tools (such as protocols) necessary to breathe life into principal legal sources. The Committee has noted considerable delays in implementation of legislation due to the non-enactment of subsidiary rules. Where required, these should be adopted without delay.

6.1 Systems strengthening for child protection

The Committee has, in its interaction with State Parties, noted that child protection efforts remain weak in many State Parties, leading to multiple violations of children's rights. This gap has led the Committee to advocate that a systems strengthening approach to child protection should be adopted by States Parties as the most beneficial way in which to improve implementation of the Charter's protection rights. "Systems strengthening" in child protection refers to identifying, establishing and strengthening the (coordinated) response to violations relating to abuse, neglect, maltreatment and exploitation.

By implementing a system-strengthening approach, States Parties address the full spectrum of the rights of the child as a systems-wide approach would aim to protect all the rights of all children including – and especially - the most vulnerable and marginalised. These include (but are not limited to) internally displaced or migrant and refugee children, including unaccompanied children, children with disabilities, girls, children affected by conflict or disaster, orphaned children, children with a disability or those belonging to a minority group. It would also take into account the different gender- and age-based needs of girls and boys.

The systems approach differs from earlier child protection efforts, which

have traditionally focused on single issues such as child trafficking, street children, child labour, emergencies, institutionalization, or HIV/ AIDs. This diffused approach often resulted in a fragmented child protection response, marked by numerous inefficiencies and pockets of unmet need.

Therefore, this General Comment advocates that State Parties adopt a systems strengthening approach. All systems reflect a nested structure—in the case of child protection, children are embedded in families or kin, which live in communities, which exist within a wider societal system. Given the nested nature of systems, specific attention needs to be paid to coordinating the interaction of these sub-systems so that the work of each system is mutually reinforcing to the purpose, goals, and boundaries of related systems. Well-functioning systems pay particular attention to developing and fostering cooperation, coordination, and collaboration among all levels of stakeholders, from community level upwards. The coordination extends to managers and those involved in service delivery components. A systems approach entails that rather than treating each child protection issue separately, a holistic view of children and child protection is promoted, and all stakeholders who are involved in child protection responses are involved. Systems include both formal and informal local contexts, and the contours of the system should be deliberately mapped out. The goals to be achieved should be specified, so that it can be seen whether the functioning of the system is improving and whether the goals are being accomplished. It must also be remembered that the child protection system may interact with other systems – health, education – and that coordination between interrelated and overlapping

systems is often also required.

Child protection system structures describe how the fundamental elements of the system are work together. These are usually found spelt out in laws, policies, standards, regulations, and the mechanisms to facilitate coordination across service sectors. “Capacity” refers to the facilities, material resources, skilled personnel, and funding needed to operate the system. With specific respect to child protection systems, system functions have been described as falling into one of two categories: those related to case decision making (e.g., assessments, gate-keeping, investigation, placement, etc.) and those designed to support system performance (e.g., capacity building, research and evaluation, allocation of resources, cross-sector coordination). The effective and efficient operation of the child protection depends on a clear articulation of how all the elements relate to each other

The elements of a systems strengthening approach are as follows:

- a clear foundation in national legislation, as well as accompanying policies and guidance that support its implementation.
- The development of comprehensive and rights-based national strategies rooted in the Charter. An effective strategy needs to relate to the situation of all children and to all the rights in the Charter and be developed through a process of consultation with civil society and other stakeholders, including with children and young people. Particular attention should be given to identifying and giving priority to marginalized and disadvantaged groups of children, as well as those in vulnerable situations, to ensure no child is left behind. Specific attention should be paid to gender

relevant issues.

- Implementation of children's rights requires a national policy for children that provides a common, unifying, comprehensive and rights-based framework of action for all role-players. The policy should be rooted in the specifics of the child protection issues being faced in the respective State Party. The policy needs to be developed inclusively and must pay particular attention to the specific steps that should be taken by particular role-players to realise the rights of marginalised and vulnerable children. It is important that the national policy for children has political support at the highest levels, and it must be linked to national development strategies and planning processes. National policies should be costed, have measureable targets, and have budget allocations for their implementation.

Crucially child protection responses are heavily reliant on the availability of human resources, in whatever mix is appropriate and sufficient for the local context (skilled social workforce, community based auxiliaries, investigative and forensic staff, and so forth). All systems strengthening endeavours must be underpinned by the steady expansion capacitation of the necessary human resources to respond to violence against and abuse of children. Even in States where the primary response to child protection lies in the informal sector, or in the community, certain professionals are needed to undertake (for instance) assessments and referrals. A good practice in one State Party is that each local council must employ two social workers to be present and available in courts. Promotion of the availability of social workers might, in turn, require special

measures such as dedicated bursaries and cross border training initiatives to boost the numbers of staff in the social workforce.

Typically State Party spending on child protection and systems strengthening is far too low, and lacks visibility in government budgets. The Committee urges State Parties to increase the resources dedicated to child protection, and to set targets for annual increases.

The Committee, in relation to reporting on the systems strengthening approach, urges State Parties to include specific information relevant to this issue in its interactions with the Committee, including in State Party reports, with sufficiently detailed indicators and results to enable the Committee to assess progress made.

6.2. Coordination

The multi-sectoral nature of children's rights makes it almost impossible to implement them fully under a single agency. The overarching responsibility of governments is therefore to put in place a child rights governance system that ensures the visibility, advancement and realisation of all children's rights across the full implementation processes of all role players. The Committee, in its interaction with States Parties, has noted that many experience significant shortcomings in their coordination of the implementation of Charter Rights, or that the agency accorded the coordinating role is in a weak position relative to other government priorities (either due to its location within a specific Ministry, or because children's issue are joined together with a range of other interest groups, and their specific concerns risk getting crowded out.) The Committee has also noticed

when examining State Party reports that where dedicated children's Ministries exist, they are often under resourced and lack weight at the governmental level. All too frequently, they operate seemingly in a silo (not necessarily through any fault of their own) and struggle to hold other departments and agencies to account.

Effective implementation of the African Children's Charter requires visible cross-sectoral coordination between government departments to recognise and realise the rights of the child. Vertical coordination between central and other levels of government is also a necessity, as is coordination between government and other actors. Implementation is not the obligation only of large departments with a substantial impact on children – education, health, welfare etc. – but runs right across the entire government, including for example departments concerned with finance, planning, employment, youth, gender, defence, migration and asylum, security, infrastructure, and agriculture. Coordination therefore serves an important function in the implementation process, and State Parties should give careful thought to the placement of a coordinating structure in government as a whole. The possibility of decentralised, multi- sectoral national coordinating councils for the implementation of children's rights and with thematic sub councils should be considered. The Committee advises that the mechanism for coordination need not be the same entity as that which is responsible for reporting under the African Children's Charter. Some States Parties might have National Reporting Mechanisms in place for all treaty reports, in accordance with UN Guidelines;¹⁸ this reporting structure might not be a suitable

18 See http://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf and http://www.ohchr.org/Documents/Publications/HR_PUB_16_1_

coordinating mechanism for children’s rights, but close liaison between the coordinating mechanism and the National Reporting Mechanism must be fostered.

Effective coordination requires that State Parties develop and strengthen governmental mechanisms for coordinating action among central government departments (between ministries and departments), among different provinces and regions, between central and other levels of government and between Government and civil society. Coordination supports quality and efficiency through the collective use of expertise and resources in planning and delivery, and through the standardisation of practices and processes. The Committee has found a paucity of good practice regarding coordination in State Party reports, and urges State Parties to pay particular attention to remedying this deficit.

6.3 Budgeting, efficient resource use and domestic revenue mobilisation

Legislation, policies and programmes cannot be implemented without sufficient financial resources being mobilised, allocated and spent in an accountable, effective, equitable, transparent and sustainable manner. The adoption of national public budgets is part and parcel of the fulfilment of both legislative measures (see above at 6.3) and “other measures”. Budget allocation and spending priorities must be made with the best interests of the child as a primary consideration. The Committee has noted in its interaction with State Parties that allocation and spending of resources for the implementation of African

Child's Charter rights remains a matter of serious concern with respect to a great number of State Parties (if not all), and has identified budgeting, efficient resource use and domestic revenue mobilisation as key aspects of the implementation obligation envisaged in Article 1(1) of the Charter.

6.3.1 Budgeting and efficient resource use

States Parties to the Charter must design and implement child sensitive national budgeting by developing and using tools for making children visible in budgetary processes at the national and sub-national levels, including in the context of international cooperation, and in the context of regional economic imperatives. As previously endorsed by the CRC Committee, sustainable public finances budgets must be agreed through effective, efficient, equitable, transparent and evidence-based financial; spending plans.¹⁹ The implementation of the Charter requires that cognisance of the rights of the child be taken at all stages of the public budgeting process: planning, enacting, executing and budget tracking, and follow up.²⁰ Fulfilment of children's rights requires States Parties to take measures that equip all levels and structures of the executive, legislature and judiciary with the resources required to advance the rights of children in an equitable and sustainable manner. They are expected to demonstrate that they have mobilized, allocated and spent budgets to maximise the fulfilment of all children's rights; all too often, monies allocated for critical children's rights such as education and health remain underspent, and States must therefore pay particular attention to the absorption capacity of executing entities

19 CRC Committee GC 19 (2016) par1.

20 CRC Committee GC 19 (2016) par 25.

to ensure that available resources are in fact utilised. They must obviously avoid dissipating available resources through wastage, corruption and by permitting rent-seeking practices to proliferate.

Since the implementation of children's rights is ongoing, there is a need to take future generations into account in the budgeting process, and ensure that multi-year revenue streams are available for projected spending needs.²¹ Costly, fanciful and unnecessary expenditure on "white elephants" and the trappings of power should be avoided if they have the likely effect of diminishing available resources for future generations. This Committee has previously commented adversely upon excessive spending on the military and military equipment which has the effect of denuding the public purse for children's rights. Debt financing is another drain on available resources - generally, government spending in Africa has risen rapidly, but revenues have regressed, leading to growing deficits, resulting in debt financing, which prejudices what is available to fulfil children's rights.

There are important principles which inform the budgeting process from a child rights perspective. These include:

- Enhancing an equity focus in budgeting: In line with the principle of non-discrimination in the Charter States should ensure that public investment in children creates equal opportunities for all children to realize their rights. To achieve equity in public spending, states should develop fiscal policies that will ensure that poorest and most excluded children are reached with essential services for their survival, learning and protection. These include: girls, internally displaced children, refugees, children affected by disasters and conflict, children without

21 CRC Committee GC 19 (2016) par 51.

appropriate care, children with disabilities and orphaned children.

- Removing financial barriers that hinder children from accessing essential services: states should remove cost barriers to basic services, including through Universal Health Coverage and free quality pre-primary and primary education.
- Ensuring minimum financial security for all children through child-sensitive social protection approaches.
- Ensuring the budget classification systems allow for the allocations to child focused programs to be identified: states should develop clear budget classification systems, that allow States and other entities to monitor how budget allocations and actual expenditures on children are allocated and utilized. This calls for budget lines and codes which, at a minimum, disaggregate all planned, enacted, revised and actual expenditures that directly affect children by age, gender, programme, geographic location, and administrative units.
- States Parties should create opportunities for citizens, including children, to actively participate in fiscal and public finance management processes and to hold governments to account for their decisions and actions. To enable meaningful participation in the budget process, States should ensure children have access to user-friendly budget documents.
- States Parties should ensure that children's rights are deliberately reflected and adequately catered for in all donor aid agreements, including with global finance institutions.

6.3.2 Domestic Resource Mobilisation

The availability of resources depends crucially on effective taxation systems being put in place. This enables governments to tap into domestic revenues, which is then also sustainable for future generations. With many African countries developing mining, oil and gas industries, rapid escalation of digital connectivity and increasing urbanisation of the population, it becomes crucial to invest in robust tax collection systems, which can also monitor outflows and detect and react to illicit financial drain. Where foreign multinationals operate in a State party, it should be required of them to report annually on the profits earned in that individual state party, and the rate of tax paid to the incumbent State Party, rather than reporting an aggravated total for the company as a whole, so that taxes due to the country in which the profits were made are obscured.

State Parties should furthermore adopt measures in their taxation systems to mitigate against base erosion and profit shifting, which result in missed opportunities for tax collection, and fewer resources available to fulfil children's rights. Leakage of potential tax revenues through aggressive tax planning schemes and mispricing should be curbed to the extent possible. Loopholes in policies and laws that allow for treaty shopping and other manifestations of tax dodging should be eliminated. Taxes should be designed in such a way that the burden of taxation does not fall disproportionately on the poor.

6.4 Data Collection

Collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the

realization of rights, is an essential part of implementation. The Committee reminds States parties that data collection needs to extend over the whole period of childhood, up to the age of 18 years. It also needs to be coordinated throughout the jurisdiction, ensuring nationally applicable indicators. States should collaborate with appropriate research institutes and aim to build up a complete picture of progress towards implementation, with qualitative as well as quantitative studies.

The Committee has noted with dismay that many State Parties are unable to provide accurate and disaggregated data on a great number of important child rights indicators. This impedes the Committee's ability to make a proper assessment of the situation of children in the State Party, and to determine whether progress towards implementation is being made. Disaggregated data is crucial if inequality and discrimination are to be addressed effectively and therefore ensure that no child is left behind. For this reason, the Committee regards data collection as a vital component of implementation, as envisaged in Article 1(1),

Examples of information, based on credible data, that the Committee is desirous of receiving includes (but is not limited to): facts and figures relating to violations of the rights of the child, or gaps in implementation; numbers and characteristics of the children concerned (disaggregated according to gender, age, income, disability and other factors); and facts and figures on marginalised, vulnerable and hard-to-reach groups. Data collection should promote solid results frameworks to track progress achieved for child rights through relevant indicators, sound baselines and a relevant chain of results. States should

strengthen the capacity of National Statistics Agencies to generate data on a range of various aspects of children's rights, including their administrative, technical and financial capacities. Coordination between different agencies collection data on children's rights should be promoted.

The Committee takes note of countries which have established dedicated Observatories for the Rights of the Child as focal points for the collection and analysis of child-specific data, and commends this as a good practice. States Parties which have introduced the annual publication of comprehensive reports on the state of children's rights throughout their jurisdiction can also be commended. Publication and wide dissemination of, and debate on, such reports, including in Parliament, can provide a focus for broad public engagement in the implementation of children's rights.

6.5 Training, Capacity building and awareness raising

Building the capacity of government officials, parliamentarians, members of the judiciary, community and religious leaders, teachers, social workers, health workers, the police, peacekeeping forces, religious and traditional leaders, organs of civil society, communities and parents, and all other functionaries working with and for children, including through training, and capacity building is a crucial part of implementing the African Children's Charter. Specific training on the rights of the child and their cross-cutting nature should be available at all levels, and to staff working on all thematic areas, including those not commonly perceived as relevant to the rights of the child.

Training and awareness raising can play a valuable role in changing

social norms that are prejudicial to the fulfilment of children's rights and their protection against harmful cultural practices (Article 1(3) of the Charter as set out above, and discussed further below). Whilst noting the existence of good practices in relation to training capacity building and awareness raising in some State Parties, these are not as extensive and far reaching as the Committee would like to see.

The Committee also expects to see the provisions of the Charter reflected in professional training curricula, codes of conduct and educational curricula at all levels. Understanding and knowledge of human rights must be promoted among children themselves, through the school curriculum and in other ways. It is also desirable for knowledge about constitutional rights to be widely available, including being disseminated to children through human rights education in schools.

The annual Day of the African Child (DAC) celebrated around a theme chosen by this Committee, and supported by a concept note outlining the rationale for that choice, presents an ideal opportunity for public awareness raising around the Charter and the rights it enshrines for children, and State parties are advised to maximally utilise the DAC theme for events, promotions, lectures, media engagement, and to involve children in the planning and execution of the various activities.

6.6 Policy development

The Committee has generally commended State Parties who have drafted comprehensive national child policies, which are in place for a set period and which have been adopted via a consultative process, including a consultative process with children themselves. National

Action Plans serve as overarching frameworks for the coordination of national interventions. National Child Policies should set specific targets and estimated costs for achieving them, and seek to further the SDGs and the African Children’s Agenda 2040 to the greatest extent possible. Further, a mechanism for monitoring the implementation over time must be put in place to enable adjustments to be made where required.

In addition, sectoral policies frequently target children (as well as adults); examples include crime prevention policies, gender based violence strategies, policies concerning mothers with babies in prisons, strategies to curb the involvement of children in gangs and armed groups,²² and anti -trafficking measures, to cite just a few examples drawn from State Party practice.

The Committee has also commended States Parties for the adoption of overarching National Development Plans aimed at reducing poverty and ending inequality. Such plans should seek to achieve the SDGs to the extent possible.

State parties are encouraged to keep the policy environment under continuous review to enable policy responses to new and emerging issues which impact the fulfilment of Charter rights to be developed.

6.7 Collaboration with CSOs, CBOs and the private sector

The Committee is cognisant of the major role in the delivery of services to children that is played by civil society organisations (CSOs),

22 Concluding observations Kenya (2015) par 52.

community-based organisations (CBOs) and the private sector in the fulfilment of Charter Rights. The Committee has encouraged State Parties to collaborate with CSOs, CBOs, and the private sector in the formulation of policy, and has suggested strongly that State Parties devise a more inclusive and participatory process to involve them in the development and implementation of policies, laws, budgets and programs, that affect the realization of children's rights.²³ Further, the Committee urges State Parties to review the legislation governing the registration and operation of CSOs to ensure that it does not provide any impediment to their optimal functioning.

States Parties should ensure that CSOs and International Organisations that work directly with children must be required to adopt child safeguarding policies. Persons who have abused children should be prevented from working with them, including in civil society organisations, even as volunteers.

The Committee reminds, though, that despite the valuable role played by civil society in the delivery of services to children, the existence and operation of civil society in this sphere does not alleviate the State Party from the obligations it incurs under the Charter, which it is under a duty to fulfil: State Party abdication of these duties to CSOs has in the past attracted negative sentiments from the Committee.

Where services relating to children are privatized, or where the private sector is permitted to offer services alongside the public sector (such as health services or education), State Parties must take measures to ensure that private actors or businesses do not lead to the creation

23 Concluding observations South Africa (2015) par 13.

of dual and unequal systems.²⁴ Furthermore, the delivery of such services by private actors should be properly regulated, and the Committee reminds that the rights of the child must be fully protected where religious groups are involved in service delivery too.

There are many settings in which children's rights are placed at risk by business operators. An example is in the arena of sex tourism: The Committee has urged affected State Parties to improve law enforcement, and elevate the level of accountability of hotels and tour guides by adopting a code of conduct. The State Party should devise a system in which such actors will be held accountable; they should not be left entirely to self-regulate.²⁵ State parties are reminded of the Children's Rights and Business Principles of 2012.²⁶

Businesses must be brought into the fold in furtherance of children's rights. This includes State Parties monitoring of businesses to ensure that they do not use child labour, do not cause environmental degradation to the prejudice of children's rights, that any negative impact of business activities upon children is mitigated, and that businesses are encouraged invest in community programmes which benefit children.

6.8 Child participation and the role of the state

As noted in 4.4 above, child participation is a core principle underpinning the African Children's Charter. The Committee has commended States who have introduced a children's parliament and commented

24 Concluding observations Kenya (2015) par 43.

25 Concluding Observations Kenya (2015) par 46.

26 https://www.unglobalcompact.org/docs/issues_doc/human_rights/CRBP/Childrens_Rights_and_Business_Principles.pdf

favourably on other initiatives specifically aimed at soliciting the views of children. The Committee has previously called on State Parties to develop an action plan for participation to involve the children's parliaments in decision making and policy devising, including providing oversight over budgets aimed at securing children's rights. The State should additionally ensure that all children participate in different forums apart from those in the children's parliament. The Committee encourages State Parties to build the capacity of children's parliaments and educate the community on child participation to enable children to partake in a meaningful manner. More broadly, States Parties are further encouraged to consult children in the formulation of plans, policies and laws that have a bearing on their interests, and to ensure that child participation in governance is devolved to regional and district level. The participation of children's groups should be systematically developed. State Parties should ensure that children's voices are reflected in reporting to treaty bodies, including to this Committee.²⁷

6.9 Independent monitoring

Self-monitoring and evaluation is an obligation for Governments. But the Committee also regards as essential the independent monitoring of progress towards implementation by, for example, parliamentary committees, CSOs, academic institutions, professional associations, youth groups and independent human rights institutions and child rights ombudsmen.

The African Charter on Human and Peoples' Rights explicitly requires States parties to "allow the establishment and improvement of

27 Concluding Observations Ethiopia (2015) par 18.

appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed” by that Charter. This Committee has repeatedly commended State Parties on the establishment of independent monitoring mechanisms at the national and subnational or regional level,²⁸ such as via the inauguration of a National Human Rights Institution (NHRI) in conformity with the Paris Principles.²⁹ The Committee regards it as desirable that such institutions have their legislative mandate in the Constitution. This mandate should be fleshed out in an Act of Parliament, and not function in a manner which depends on the government of the day.

The Committee regards it as essential that such institutions be sufficiently well resourced and capacitated to optimally fulfil their monitoring tasks, through the allocation of dedicated funds by national governments. The relevant institutions should be able independently and effectively, to monitor, promote and protect children’s rights. Furthermore, the Committee advocates that at least one commissioner be devoted exclusively to children’s rights, or a that desk focussing on children’s rights be identified and staffed with persons with expertise in children’s rights, and clothed with sufficient authority to make binding determinations in instances of violations of children’s rights. The mandate should explicitly include an ability to respond to complaints

28 See State Party Report Ethiopia to the ACERWC (2013) p 16.

29 The Principles relating to the status of national institutions for the promotion and protection of human rights (General Assembly resolution 48/134 of 20 December 1993, annex). These minimum standards provide guidance for the establishment, competence, responsibilities, composition, including pluralism, independence, methods of operation, and quasi-judicial activities of such national bodies. See further, too, further the standards elaborated by the International Coordinating Committee (ICC) Subcommittee on Accreditation in General Observation 1.4 of 2012. The ICC is now named GANHRI (Global Alliance of National Human Rights Institutions).

of rights violations.

The Committee has previously expressed concerns regarding the adequacy of measures taken to establish NHRIs, as well as the extent to which the processes at NHRIs are known by the public and are made accessible to children.

The Committee recommends that State parties give due consideration the possibility and added value of establishing a Children's Ombudsperson, with a view to further strengthen the reach, accessibility, effectiveness and impact of the work of NHRIs³⁰ in the promotion and protection of children's rights in the State Party.

The Committee further perceives a role for NHRIs in the process of compilation of state reports under article 43 of the Charter, and, additionally, in the provision of independent reports to complement the State party report.³¹ The Committee will entertain requests from NHRIs for a private audience during a Pre-session.³² Post the State party reporting process and the issuance of this Committee's Concluding Observations, the Committee expects the relevant NHRI and related monitoring structures to monitor government's implementation of the Committee's recommendations.

In line with its past practice,³³ the Committee will routinely meet with the NHRI when conducting field visits and investigative missions, and

30 See Concluding Observations South Africa, par 16.

31 See ACERWC Guidelines On the Complementary Report, the Conduct of and Participation in Pre-sessions. (2015) available at www.acerwc.org (hereafter Guidelines)

32 Although NHRIs are not expressly listed as a category of recipients of Committee invitations under the Guidelines (7.iv.a), they can nevertheless request an audience provided they submit a request 3 months before the pre-session (Guideline 7.iii).

33 Eg in South Sudan (2014), Kenya (2013) and Tanzania (2015).

encourages NHRIs to avail themselves.

The Committee encourages NHRIs to collaborate regionally with one another and to build a community of good practice in relation to the implementation of the rights of children in the Charter.

VII. “Discouraging customs, traditions, cultural and religious practices inconsistent with the rights, duties and obligations in the ACRWC” (Article 1(3))

7.1 Relationship between Article 1(3) and Article 21

Article 21 is the Charter provision specific to harmful social and cultural practices, and since Article 21 might be the subject of a detailed exposition in a future General Comment, this General Comment will deal only with the specific nature of the measures required by Article 3(3). First, in order to fulfil the obligation to “discourage” customs, traditions, cultural or religious practices which are inconsistent with the rights contained in the Charter, it is necessary to identify those practices which are potentially inconsistent with the African Children’s Charter. A mapping exercise, in collaboration with local stakeholders, at grassroots level, including children themselves, needs to be undertaken. At the same time, practices that are not inconsistent with the Charter, which foster a child’s enjoyment of his or her culture and heritage,³⁴ should be identified and their continuance, consistent with evolving norms and societal developments, promoted. It must

34 “...taking into consideration the virtues of their cultural heritage, historical background and the values of African civilisation which should inspire and characterise their reflection on the concept of the rights and welfare of the child” (Preamble: ACRWC).

further be recalled that Article 21 does not advocate, in respect of harmful cultural practices, that these be discouraged, but that they be eliminated. This stronger language indicates that there is no leeway for defending harmful cultural practices on the basis of custom, tradition, religion or culture. State Parties are reminded of this Committee's Joint General Comment no 3 on Ending Child Marriage.

State Parties should be aware that customs, traditions, cultural and religious practices should be kept under continuous review, as it has been known to happen that customs and practices become distorted over time and no longer resemble what used to take place, or no longer function positively.

7. 2 Measures which “discourage” inconsistent practices

The State Party should adopt a proactive stance towards discouraging practices which are inconsistent with the rights enshrined in the Charter by seeking collaborative relationships with communities, and traditional and religious leaders who wield influence and support a rights-based approach. State functionaries at all levels must be the champions for the elimination of such practices. The objective must be to change social norms which support inconsistent practices, and to address their underlying determinants (such as poverty, gender discrimination and social exclusion). Measures which promote good practice should be widely publicised, using all forms of available media. The State Party should co-operate with African Union structures, as well as with national and international partners, to build momentum and grow the support base for social change amongst affected societies.

It cannot be stressed enough that the legislative and policy framework

must be congruent in all respects with the State's intention to discourage the relevant practices, and that the necessary implementation measures and structures must follow. Where necessary, this may include the adoption and vigorous enforcement of penal sanctions for perpetrators who persist in violating Charter rights, and in any prosecution of this kind, reliance on cultural or religious norms should not be permitted as a defence. Private prosecutions against perpetrators of harmful practices which have violated children's rights should be permitted.

VIII. Dissemination of the ACRWC and the Concluding Observations of the ACRWC, and publicising this GC

State Parties incur the overarching obligation to ensure the wide dissemination of the provisions of the Charter within its territory, including in forms and via means that are accessible to children and young people. States parties are obliged to popularise the Charter to all, including all public officials that work with and for children, children themselves, traditional, religious leaders, politicians, civic leaders, community based organisations and parents. This General Comment encourages States parties to develop comprehensive public education programmes and lead information dissemination on child rights principles and standards as contained in both the Convention and the Charter. The Committee would regard it as a good practice if these General Measures of Implementation and Systems Strengthening for Child Protection becomes a mandatory requirement of governments' general orders and public service commission regulations.

The obligation extends to ensuring wide dissemination of this

Committee's Concluding Observations in relation to any State Party report presented to the Committee, and the remedial plans that the State party intends to adopt to give effect to these recommendations. Ideally, there should be a comprehensive strategy for making the contents of the Charter widely known, and this should extend to the translation of the Charter into local languages and to it being made accessible in formats which reach those with disabilities and those who are not literate. Child friendly forms of dissemination should be developed.

In line with Committee practice, the dissemination obligation also extends to relevant other work of the Committee, such as findings on communications decided and reports of investigative missions, where appropriate to a particular State Party. The State Party should make the contents of this General Comment widely known too, especially amongst officials and non-governmental organisations responsible for systems strengthening, the judiciary and those working directly with children in other settings. Non- state actors can also play a valuable additional role in disseminating the African Children's Charter, and other Committee documents, including this General Comment.

African Committee of Experts on the Rights and Welfare of the Child
African Union Commission
PO.Box: 3243 Roosevelt Street (Old Airport Area) W21K19
Addis-Ababa, Ethiopia
www.acerwc.africa