

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

EXECUTIVE COUNCIL
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INTRODUCTION

1. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) was established during the 37th Session of the Assembly of Heads of State and Government held in Lusaka in July 2001 in accordance with Article 32 of the African Charter on the Rights and Welfare of the Child (ACRWC);
2. As stated in article 1 of the African Children’s Charter, States Parties shall recognize the rights, freedoms and duties enshrined in the Charter and shall undertake to the necessary steps to adopt legislative or other measures as may be necessary to give effect to the provisions of the African Charter on the Rights and Welfare of the Child;
3. The ACERWC is established to promote and protect the rights of the child and in particular to monitor the implementation of the African Children’s Charter;
4. Pursuant to its mandate under the Charter, the Committee has undertaken several activities including consideration of State Party reports on the implementation of the Charter, consideration of Communications (individual complaints), adoption of various documents and other activities as stated in this Report;
5. Accordingly, the current report summarizes the Recommendations and Decisions of the 32nd Ordinary Sessions of the Committee held on 12-20 November 2018 in Addis Ababa, Ethiopia as well as other activities undertaken between May 2018 and December 2018.

I. DECISIONS AND ACTIVITIES OF THE ACERWC DURING THE REPORTING PERIOD

1.1. ADOPTION OF THE CONTINENTAL STUDY ON MAPPING CHILDREN ON THE MOVE WITHIN AFRICA

1. Article 42 (a) (i) of the African Children's Charter specifically gives mandate to the ACERWC to 'collect and document information, commission inter-disciplinary assessment of situations on African problems in the fields of the rights and welfare of the child'. In line with its mandate, the Committee has just finalised a continental study on 'mapping the situation of children on the move within Africa'. The study recognises that, as in the case with adults, children are not immune to both small-scale and large-scale movement of persons across the world, either alone or with their parents. The study considers children on the move – as children who have moved from their habitual place of residence to another place within or outside their country, voluntarily or involuntarily, accompanied or unaccompanied by their parents, caregivers or families either as internally displaced persons, refugees, asylum-seekers, economic migrants or trafficked persons and who may suffer or may be at risk of suffering exploitation, abuse, neglect or violence. Geographically, the study fully concentrates on children moving within countries in Africa and across the borders of African countries.
2. The study notes that although migration challenges affect all persons on the move, children on the move are more vulnerable and at risk of exploitation, abuse, and suffer the hazards along their migration route and destinations. The study identifies main factors driving children on the move; migration routes, means and destinations; as well as challenges faced by children on the move in Africa. According to the study, conflict and insecurity; illegal activities such as smuggling, trafficking and child labor; economic and social factors such as poverty, climate change and food insecurity, gender inequality and discrimination, domestic violence, and education are main factors contributing for the movement of children in Africa. With regard to migration routes in Africa, the study identifies six migration routes in Africa. Challenges faced by children on the move as identified by this study include inter alia, discrimination; loss of identity, name and nationality; child abuse and torture; sexual exploitation; child labor and etc.
3. Taking the findings of the study into consideration, the ACERWC would like to draw urgency towards Member States to address the challenges that children on the move are facing; and calls upon Member States to take all necessary measures with a view to address concerns of children on the move and ensure protection of their rights.

1.2. CONSIDERATION OF STATE PARTY REPORTS

4. Article 43 of the African Children's Charter gives the ACERWC a mandate to receive and consider State Party Reports on the implementation of the African Children's Charter. In this regard, the ACERWC has received and considered the Periodic Report from the Republic of South Africa, which was also submitted on time in compliance with the reporting period, and the Initial Report of the Republic of Zambia. Pursuant to the Committee's Guidelines on consideration of State Party Reports, the Committee will

issue the concluding observations and recommendations and report to the Executive Council during the January/February 2020 Summit.

1.3. SELECTION OF DAC 2020 THEME

5. Taking the consultations made by children on the theme of the Day of African Children into consideration, after further discussions and deliberations, the Committee decided for the theme of DAC 2020 to be on “**Access to a child friendly justice system in Africa**”.

1.4. DECISIONS ON COMMUNICATIONS/COMPLAINTS AGAINST THE REPUBLIC OF CAMEROON

6. In accordance with its mandate under article 44 of the African Children’s Charter, the ACERWC has received and considered a Communication/Compliant against the Republic of Cameroon. The Communication consists of allegations regarding failure by the Respondent State to investigate the crime of rape committed against a girl child, alleging that the Republic of Cameroon is in violation of article 1 on general measures of implementation, article 3 on non-discrimination and article 16 on protection against child abuse and torture. The Committee conducted a hearing on the communication in the presence of representatives of both the Complainants and the Respondent State and, after carefully considering the complaints submission and the response of the Government, adopted its decision. Hence, the Committee found the Respondent State in violation of its obligations under article 1 (general measures of implementation) due to its failure to duly investigate the rape, article 3 (non-discrimination) and Article 16 (protection against child abuse and torture) of the African Children’s Charter. Particularly, as part of its findings, the Committee pronounced that rape, which is a form of gender based violence amounts to gender based discrimination.
7. The Committee then called on the Government of the Republic of Cameroon to immediately ensure that the perpetrator of the rape is prosecuted and punished for violating the child’s right to be free from inhuman and degrading treatment. The Committee further pronounced for the Government of Cameroon, among others, to enact and implement a legislation eliminating all forms of violence, including sexual violence against children; to train its police, prosecutors, and judiciary; establish a mechanism to support victims of sexual abuse, and to work towards the elimination of practices, custom, and stereotypes that legitimize abuse of children. The Committee will undertake a monitoring mission to the State Party to follow up on implementation of its Decisions.

1.5. DECISIONS ON COMMUNICATIONS/COMPLAINTS AGAINST THE REPUBLIC OF THE SUDAN

8. In accordance with its mandate under article 44 of the African Children’s Charter, the ACERWC has received and considered a Communication/Compliant against the Republic of the Sudan. The Communication which was brought on behalf of Ms Iman Hassan Benjamin against the Republic of the Sudan. The Communication allege that the 2011 amendment of the Sudan Nationality Act of 1994 provides for the automatic revocation of Sudanese nationality of those who became citizens of the Republic of

South Sudan. The amendments further states that Sudanese nationality shall be revoked where the Sudanese nationality of the responsible parent is revoked because of *de facto* or *de jure* entitlement to South Sudanese nationality. Application of this law, according to the facts in the Communication therefore left Ms Iman Hassan Benjamin to be stateless and unable to attend her university education. After a thorough consideration, which included a hearing in the presence of the representatives of both the Government of the Sudan and Complainants, the Committee concluded that the Republic of the Sudan has violated its obligation under the African Children's Charter, specifically article 3 (The right not to be discriminated); article 4 (The protection of the best interest of the Child); article 6 (3) the right to acquire a nationality) and article 6 (4) the obligation to prevent statelessness.

9. Hence, the Committee recommends that the Government of the Sudan, among other things, to urgently grant nationality to Iman as she has a Sudanese mother and as she should not be stateless; revise its nationality act in line with the Charter; to ensure that there are procedural safeguards in determining, conferring, and revoking Sudanese Nationality and to ensure that's children are not deprived of their basic rights in the Charter such as the right to education, health, birth registration, justice, and other basic necessities until their nationality is determined or even when they are found to be stateless.

1.6. AN ADVOCACY MISSION TO THE FEDERAL REPUBLIC OF SOMALIA FOR THE RATIFICATION OF THE AFRICAN CHILDREN'S CHARTER

10. The ACERWC has undertaken an advocacy mission to Federal Republic of Somalia on the ratification of the African Charter on the Rights & Welfare of the Child on 30-31 July 2018. The mission aims at engaging the relevant Ministries as well as Civil Society on the possibility of expediting the process of ratification of the African Children's Charter. During the Mission, Consultations were made with various stakeholders including H.E the Minister for Women & Human Rights, AMISOM's Deputy Head of Delegation, and representatives of Meeting with CSOs. Considering the added values, the representatives of the Government of Somalia have confirmed that the Government will work towards ratification of the Charter in a foreseeable future. Hence, the ACERWC hopes that the Government of Somalia will employ its greatest effort to ratify the Charter and work towards its full implementation by ensuring a Somalia fit for children.

1.7. FOLLOW UP MISSION TO MADAGASCAR ON THE IMPLEMENTATION OF THE CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

11. The ACERWC has conducted a mission to Madagascar to follow up on the status of the implementation of the concluding observations and recommendations of the Committee which was sent to the State Part in 2015. The Mission was held on 10 -14 September 2018. During the Mission, consultations were undertaken with Representatives of the Government and other stakeholders. The Committee notes that the Government is employing its effort in trying to address the challenges that children are facing. However, the delegation notes challenges which are yet to be addressed

by the Government of Madagascar and recommends the following measures to be taken:

- i. Strengthen the mechanisms for birth registration and address cultural barriers that are used by some communities to negate efforts to register births on cultural grounds;
- ii. Support schooling, especially with infrastructure; as well as by providing quality learning and teaching materials;
- iii. Develop more policies and action plans to enable the Member State to take conduct necessary measures to tackle major problems addressed by the Committee on its Recommendations;
- iv. Improve the quality of Teachers;
- v. Improve structure of health services centers as it is difficult to reach those centers due to insecurity;
- vi. Put in effect an efficient mechanism to reduce malnutrition, to improve access to safe drinking water, especially in rural areas; and
- vii. Develop more policies and action plans to conduct necessary measures to tackle major problems addressed by the Committee on its Recommendations.

1.8. FOLLOW UP MISSION TO ETHIOPIA ON THE IMPLEMENTATION OF THE CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

12. The Committee undertook a follow up mission in Ethiopia to monitor the implementation of its concluding observations and recommendations which were sent to the State Party in 2015. The mission was held on 16-17 October 2018. During the Mission, consultations were undertaken with Representatives of the Government and other stakeholders. The Committee notes that the Government of Ethiopia is taking various initiatives and working towards better protection and promotion of the right of the child. However, the Committee also notes that there are still challenges that the Government needs to address and recommends the following measures to be taken:

- a. Fast-track the process of the adoption of a comprehensive child rights law;
- b. Revise the age of criminal responsibility to make it consistent with international standards;
- c. Identify causes for girl's dropout from school and devise strategies to retain girls in school;
- d. Undertake extensive sensitization on birth registration and make birth registration accessible in all parts of the State Party;
- e. Ensure that children in all parts of the State Party are not detained with adults and ensure that children benefit from diversion programs by expediting the revision of the Criminal Procedure Code;
- f. Undertake concrete measures to address the situation of children on the street including establishing more rehabilitation centers and providing rehabilitation, training, and reunification programs; and
- g. Address recurrent challenges such as conflict and drought and minimize their impact on children by giving due regard to children's vulnerability as well as by providing special support to internally displaced children and unaccompanied minors.

1.9. FOLLOW UP MISSION TO MOZAMBIQUE ON THE IMPLEMENTATION OF THE CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

13. The Committee undertook a follow up mission in Mozambique to monitor the implementation of its concluding observations and recommendations which was sent to the State Party in 2015. The mission was held on 03-04 December 2018. During the Mission, consultations were undertaken with Representatives of the Government and other stakeholders. The Committee notes that the Government of Mozambique is taking various initiatives and working towards better protection and promotion of the right of the child. However, the Committee also notes that there are still challenges that the Government needs to address and recommends the following measures to be taken:

- a. Build the capacity of its institutions to ensure effective implementation of laws and policies;
- b. Create systems of accountability and effective management of funds in various government organs both at national and sub-national level;
- c. Undertake urgent revision of the Family Code to outlaw any form of child marriage and remove the exception of child marriage with parental consent;
- d. Amend Decree No 39/2003 which prohibits pregnant girls from enrolling in day schools and ensure that pregnant girls who wish to enroll in day schools do so as well as ensure that children do not face violence in schools;
- e. Lift the fine on late birth registration and ensure that birth certificate is issued to those who have registered as birth certificate is a requirement to enroll in schools;
- f. work toward the introduction of school feeding program as a strategy for retention of children in schools; and
- g. fight violence against children by adopting legislation and undertaking other measures such as banning corporal punishment and prosecution of perpetrators of any kind of violence.

1.10. Popularization of Agenda 2040 and cross boarder issues affecting children's rights in the RECs

14. The ACERWC, in 2015, has developed Africa's Agenda for Children: Fostering an Africa fit for Children (Agenda 2040). The Agenda emerged as an outcome of the conference but mainly as an elaboration of the bigger part of Agenda 2063 which aims at empowering African children through the full implementation of the African Children's Charter. Agenda 2040 has been adopted by the Executive Council of the AU through its decision no EX.CL/Dec.997(XXXI) as an Africa Union document.

15. Taking into account the wide scope of Agenda 2040 and its significance for the protection and promotion of children's right, the ACERWC believes that the Agenda should be well known and understood by all stakeholders, mainly Member States of the AU. Hence, the ACERWC has been utilizing the Regional Economic Communities (RECs) to popularize Agenda 2040. The ACERWC has engaged the East African Community (EAC), Economic Community of West African States (ECOWAS), and Southern African Development Community (SADC) and their Partner States on the popularization of Agenda 2040.

16. The workshop helped the ACERWC and the respective RECs to identify collaboration areas on popularization and implementation of Agenda 2040 including the possibility of organizing annual summits of technical representatives from Ministries dealing with children's rights. Besides, to further study the challenges of cross border issues affecting children's rights in the respective RECs, the ACERWC will undertake a continental study on the matter in the year 2019, the findings of which will be reported to the Executive Council.

II. CHALLENGES

2.1. The need for restructuring the Secretariat of the ACERWC

17. The Secretariat is currently domiciled within the Department of Social Affairs of the African Union Commission. The Committee is supported by a Secretariat headed by a Secretary and at time of writing includes 2 additional regular and 2 short term staff, 2 youth volunteers and 2 seconded staff. The efforts of the Committee to effectively discharge its mandate have been hampered by serious lack of human, financial and material resources. The Secretariat has never been subjected to a systematic Organisations and Methods (O&M) which would among others determine the functions, the capacity needs/constraints and staffing levels needed to facilitate ACERWC to deliver its mandate.

18. The need for restructuring of the Secretariat staff is now urgent taking into consideration the decision to relocate the Secretariat and the increased demand for the Committee to protect and promote the Rights of the Child and the need for a harmonized structure across the Organs of AUC. The draft has already been submitted to AHRM and waiting to be consider by the Subcommittee on Structure.

2.1.1. Relocation of the Secretariat out of the AUC premises

19. The Executive Council, through its Decision: EX.CL/Dec.1010 (XXXIII) in July 2018 accepted the offer from the Kingdom of Lesotho and decided for the Kingdom of Lesotho to host the Secretariat of ACERWC. The Executive Council also requested the Commission (i) To finalize the Host Agreement with the Kingdom of Lesotho, in accordance with the AU Rules and Regulations; and (ii) to revise the structure of the Secretariat of the ACERWC and to prepare a comprehensive report on the financial needs of the Secretariat of the ACERWC through the relevant Sub-Committees and report to the Ordinary Session of the Executive Council scheduled in February 2019.

2.1.2. The increasing activities of the ACERWC

20. For the Committee to effectively deliver on its mandate, it requires a professional, effective, capacitated, well-staffed and competent Secretariat. Due to the increasing visibility of the Committee, the ACERWC is now receiving more State Party Reports and Communications (Complaints), the need for strengthening the Secretariat, in terms of financial, human and material resource, is very critical. This could be inferred from the Decision of the Executive Council-Decision on the African Committee of Experts on the Rights and Welfare of the Child Doc.EX.CL/797(XXIII)- which requests the

Commission to undertake an assessment on financing and human resource needed by the Committee with a view to adequately equipping the Committee to discharge its mandates effectively as envisaged in the African Charter. It would be impossible for the ACERWC to effectively discharge its functions and deliver on its mandate with the very limited number of staff that the Secretariat currently has. Indeed, the Committee has been trying to mobilize resources to have more seconded staff with a view to slightly mitigating the challenge.

2.2. Creating an enabling environment for the ACERWC to fully discharge on its mandate as an Organ of the Union

21. Despite its establishment as an Organ of the Union, the ACERWC has been facing various forms of challenges which are hindering the Committee from fully exercising its mandate as other Organs of the Union. These challenges mainly relate with lack of financial resources and limited enforcement of its Decisions and recommendations by Member States.

2.2.1. Lack of financial resources

22. The ACERWC budget was part of the DSA's overall budget until 2015, but since then has its own budget allocation from the AU with 5% annual increment. The AU is funding 100% of the operational budget while almost 100% of the program budget is covered by partners. Due to this strained financial situation, the ACERWC could not fully undertake to fully discharging its mandate as outlined in the African Children's Charter.

23. The Committee notes, the recent developments with the decision of the Assembly of the African Union to finance the African Union Operational, Program and Peace Support Operations budgets. This Decision is crucial for the sustainability of the ACERWC as well. However, the problem with actual implementation of programs would likely remain a challenge if the implementation of the Decisions takes more time than what is proposed.

2.2.2. Limited enforcement of the Committee's Decisions and Recommendations

24. As per article 43 of the African Children's Charter, the ACERWC has the mandate to receive and consider State Party reports on the status of the implementation of the Children's Charter. After considering State Party reports it issues concluding observations and recommends measures that States Parties may take to improve implementation of the Children's Charter. In accordance with Article 44, ACERWC also has the mandate to consider complaints against States Parties of alleged violations of the Children's Charter. If it finds a violation it will issue recommendations for the State Party to comply with in order to rectify the violation. Under Article 45 ACERWC may also undertake investigations in African countries, followed by recommendations to the State Party on the measures it should take in relation to the issue under investigation.

25. The ACERWC notes that its recommendations and decisions arising out of these aspects of its mandate can lead to better implementation of the Children's Charter only if States implement them. Monitoring State compliance with the decisions and recommendations of ACERWC is therefore key to the full realization of children's rights. Despite this fact, the ACERWC is facing challenges due to non-implementation of States with its decisions and recommendations. As mentioned above, for instance, from the three Countries that the ACERWC has undertaken a monitoring missions to, namely Ethiopia, Madagascar and Mozambique, it is noted that the State Parties are not in full compliance of the Recommendations of the Committee. Similarly, the Committee also notes that most its Decisions on the Communications it received are hardly implemented. Various reasons contribute to this non-compliance, including:

- i. Lack of (Inadequate) legislative and institutional frameworks that can facilitate the implementation of the decisions of ACERWC and sometimes lack of capacity to implement;
- ii. Lack of political will from some States to implement the decisions of ACERWC;
- iii. Lack of budgetary allocation to implement the decisions and recommendations of ACERWC- Recommendations and decisions require budgetary allocation for their realization;
- iv. Lack of collaboration among Government Organs and other stakeholders- Decisions and recommendations require an "owner" entrusted to implement them at national level. When State Parties receive ACERWC recommendations and decisions they seldom communicate the recommendations to the organ responsible for implementing them, or assign an organ for their implementation. This generates a situation where no national organ is accountable for their implementation.
- v. Lack of effective and functional monitoring- In order to ensure the implementation of its recommendations and decisions, the ACERWC undertakes follow-up missions to countries that have received recommendations and decisions. However, the missions are not undertaken timely mainly due to lack of funding for such activities. With respect to the recommendations provided after investigative missions, there is no follow-up, both at the Committee and AU Policy Organs level, to monitor compliance with such recommendations.

26. The Committee further notes that there is a perceived lack of finality in the decisions and recommendations of the ACERWC as states do not consider them as being legally binding despite the obligations of Member States articulated in Article 1 of the Children's Charter. In this regard, the Committee would like to reiterate the ongoing discussion on the possibility of amending article 5 of the Protocol on the establishment of the African Court with a view to include the ACERWC as an AU Organ which can directly access the Court.

III. RECOMMENDATIONS

27. In conclusion, the African Committee of Experts on the Rights and Welfare of the Child would like to draw the attention of the Executive Council on the following issues:

- i. To urge the Seven Member States which have not yet ratified the ACRWC, namely: Democratic Republic of Congo, Morocco, Tunisia, Sao Tome and Principe, Saharawi Arab Democratic Republic, South Sudan, and Somalia, to expedite the ratification of the Charter;
- ii. To congratulate State Parties which have submitted their reports on the implementation of the African Children's Charter and to urge State Parties which have not yet reported to the Committee to comply with their reporting obligations;
- iii. To welcome the report of the ACERWC on its study regarding children on the move within Africa and call upon Member States to take all necessary measures with a view to address concerns of children on the move and ensure protection of their rights; particularly to treat the situation of children on the move as a child protection issue and view children on the move foremost as children regardless of their status and to take all necessary measures to protect children on the move in their respective territories; and disseminate and implement the findings of the ACERWCs study on children of the move;
- iv. To congratulate the Republic of South Africa for submitting its periodic report on time and the Republic of Zambia for submitting its initial report on implementation of the African Children's Charter urge on State Parties which have not submitted their reports to comply with their reporting obligations.
- v. To adopt the theme for DAC 2020 to be on "**Access to a child friendly justice system in Africa**".
- vi. To urge the Government of Cameroon to implement the recommendations of the ACERWC, particularly to immediately ensure that the perpetrator of the rape in the above mentioned Communication is prosecuted and punished for violating the child's right to be free from inhuman and degrading treatment; to enact and implement a legislation eliminating all forms of violence, including sexual violence against children; establish a mechanism to support victims of sexual abuse, and to work towards the elimination of practices, custom, and stereotypes that legitimize abuse of children;
- vii. To urge the Government of the Sudan to implement the Committee's recommendations, particularly to urgently grant nationality to Ms. Iman as she would otherwise be stateless; revise its nationality Act in line with the Charter; to ensure that there are procedural safeguards in determining, conferring, and revoking Sudanese Nationality and to ensure that's children are not deprived of their basic rights in the Charter such as the right to education, health, birth registration, justice, and other basic necessities until their nationality is determined or even when they are found to be stateless;
- viii. To urge the Government of Somalia to uphold its commitment to ratify the African Children's Charter;
- ix. To call up on RECs to work closely with the ACERWC in organizing an annual Summit on children's rights at RECs level; and welcomes the ACERWC's plan to undertake a continental study on cross border issues affecting children's rights in RECs;

- x. Calls upon the Governments of Ethiopia, Madagascar and Mozambique to work towards the full implementation of the ACERWC's Concluding Observations and Recommendations;
- xi. To take note of the current reform process at the AU and the process of relocation of the Secretariat of the ACERWC and to request the Commission to take the necessary measures to respond to the human, financial, and structural needs of the Secretariat of the ACERWC; and
- xii. To Call up on the Kingdom of Lesotho to expedite the process of relocation of the Secretariat of the ACERWC.