



ACERWC

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

STUDY ON

**THE IMPLEMENTATION OF
DECISIONS OF THE AFRICAN
COMMITTEE OF EXPERTS ON
THE RIGHTS & WELFARE OF
THE CHILD (ACERWC)**

An Organ of the

**African
Union**





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LIST OF ACRONYMS

ACDEG	African Charter on Democracy, Elections and Governance
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACRWC	African Charter on the Rights and Welfare of the Child
ACHPR	African Commission on Human and Peoples' Rights
AfCHPR	African Court on Human and Peoples' Rights
AHoS	Assembly of Heads of State
AU	African Union
AUABC	African Union Advisory Board on Corruption
AUC	African Union Commission
CRC	Convention on the Rights of the Child
CRC	Committee on the Rights of the Child
CSO	Civil Society Organisation
EAC	East African Community
EACJ	East African Court of Justice
ECOSOCC	Economic, Social and Cultural Council
ECOWAS	Economic Community of West African States
ECCJ	ECOWAS –Economic Community Court of Justice of ECOWAS
EX	Executive Council
FGM	Female Genital Mutilation
HRC	UN Human Rights Committee
MOUs	Memoranda of Understanding
NHRI	National Human Rights Institution
PAP	Pan-African Parliament
RECs	Regional Economic Communities
UN	United Nations
UNICEF	United Nations Children's Fund

PART 1: INTRODUCTION TO THE STUDY

BACKGROUND

The African Union (AU) has put in place a robust legislative framework for the promotion and protection of children's rights in Africa.¹ This was achieved in 1990 with the adoption of the African Charter on the Rights and Welfare of the Child (African Children's Charter or ACERWC).² The African human rights system is the only regional system that has a separate children's rights instrument. As Sloth-Nielsen puts it, the African Children's Charter is the 'principal framework' for addressing child protection in the African regional context.³ As a continent-specific instrument, the African Children's Charter addresses several issues that are very relevant to the situation of children in Africa.⁴

It has been argued that a human rights guarantee is only as good as its supervision.⁵ This explains the establishment of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC/Committee) under the African Children's Charter to monitor and enforce the implementation of the provisions of the African Children's Charter.⁶ Treaty implementation under the Charter takes the form of State reporting, individual complaints, investigative missions, and other related activities necessary for the execution of the mandate of the ACERWC (Arts 43(1), 45(1) and 42(b) African Children's Charter). All of the decisions emanating from the exercise of these mandates (State Party reporting; communications; and investigative missions) should benefit from both implementation and monitoring of the implementation.

The ACERWC has various mechanisms within its mandate to conduct follow-up of implementation of its decisions in the respective countries such as country visits, implementation hearing on decisions on Communications, receiving reports from States on the level of implementation of decisions and recommendations. The ACERWC further adopts reports on its monitoring and follow-up activities. However, the assessments and the reports are done in piecemeal for each country or activity and hence there is no comprehensive study to assess the factors that contribute to non-implementation and states' non-compliance, and to identify room for improvement in general. Furthermore, the ACERWC established a Working Group on the Implementation of Decisions during its 35th Ordinary Session, held virtually from 31 August to 08 September 2020. The ACERWC decided to establish this Working Group in line with its Rules of Procedures with a view to ensure that its decisions and recommendations are implemented by the respective State Parties. Therefore, the ACERWC recognizing the need to undertake study on implementation of its decisions to assess the factors affecting compliance to the decisions and recommendations of the ACERWC, hence the commissioning of this study as one of the deliverables of the Working Group on Implementation of Decisions serves as a baseline for the ACERWC and its Working Group on the various actions and steps that need to be followed to ensure enhanced implementation of its decisions and recommendations.⁷

OBJECTIVES OF THE STUDY

The objective of the Study is to assess the factors affecting the level of implementation of decisions and recommendations of the ACERWC. The specific objectives include:

- Identifying the factors affecting the decisions and recommendations of the ACERWC and why;
- Assessing the challenges State Parties face in the implementation of the decisions of the ACERWC;
- Documenting good practices on the implementation of the decisions of the ACERWC and identifying the reason for the success;
- Identifying the role of other stakeholders in the implementation of the decisions of the ACERWC;
- Assessing the effectiveness of the monitoring tools of the ACERWC on the implementation of its decisions and Recommendations; and
- Providing recommendations for better and effective implementation of the decisions of the ACERWC.”⁸

These objectives should be viewed against the reality that assessing the implementation of decisions of international and regional human rights bodies is not an easy exercise.⁹ Among others, it depends on the availability of ‘an evidence-based public record of the status quo of implementation at any point in time and determine whether the measures taken do, in fact, satisfy the requirements of the decision,’ the presence of good faith implementation, benefitting from inputs by victims, a meaningful role by CSOs as well as NHRIs, etc.¹⁰ Unfortunately, neither in the UN nor in the regional human rights system are these expectations fully met. This is further exacerbated by a lack of adequate resources,¹¹ which this Study explores further below. Moreover, limited resources, and the willingness and/or availability to engage with the Study at the domestic level have implications on the outcome of the Study.

METHODOLOGY AND TERMINOLOGY

1.3.1. METHODOLOGY

The Study adopts a combination of a literature review, a review of the various decisions of the ACERWC, as well as collection of data through a questionnaire. The importance of comparative information cannot be underestimated. Several studies are looking at the implementation of decisions of both national and international bodies. Similar studies have been conducted in the context of the African Commission on Human and Peoples' Rights (ACHPR), the European Court on Human Rights, UN Treaty Bodies, and others. Such information will help to draw experiences from for the purpose of this Study.

Annexures I, II, III and IV provide the questionnaires used for members of the ACERWC and staff of the Secretariat; Member States of the African Union; NHRIs; and CSOs. A deliberate effort was made to limit the questions to a maximum of 10. While there are a few overlapping questions among the different categories, there are also some tailor-made differences. The questions have attempted to strike a balance between issues covering concluding observations, Communications, and investigative missions. The questionnaires were translated and shared with all stakeholders including Member States. With a view to receive as much responses as possible, the initial deadlines for responses were postponed multiple times. Ultimately the Study benefitted from the responses of 9 State Parties, 12 NHRIs, 4 CSOs, and Members of the ACERWC and its Secretariat. The responses to the questionnaires offer important insights on some of the components for an effective implementation of decisions and its monitoring. Given the limited but improving engagement that exists to date between NHRIs and the ACERWC, it is highly commendable that several NHRIs contributed to this Study, and explicitly underscored the meaningful role they could play, among others, by contributing to the implementation as well as follow-up to decisions.

1.3.2. TERMINOLOGY

It is important to outline in this section how the Study uses some terms and concepts.

DECISION

The term 'decision' is used in a loose sense for the purposes of the Study and will cover recommendations such as Concluding Observations, decisions on individual complaints/ Communications, and recommendations from an investigative mission.¹²

FOLLOW UP, SUPERVISION, MONITOR

The study aligns itself with the definition suggested by Murray and Long who describe follow-up as the 'process by which a treaty body, political body or other actor monitors and seeks information on what steps have been taken by the state following the delivery of a finding.'¹³

The Study uses “**supervision**” and “**follow-up**” to refer to the oversight activities of human rights bodies especially the ACERWC, and the broader term – “**monitor**” - to capture all formal and informal processes and dynamics, including various forms of pressure exerted on States to foster implementation.

IMPLEMENTATION OF DECISIONS AND COMPLIANCE

Implementation of decisions is considered the ‘process by which States take measures at the national level to address issues of concern raised by the human rights treaty bodies in their decisions.’¹⁴ It refers to measures taken to give effect to the contents of a recommendation in a concluding observation or an adverse judgment/decision by the ACERWC or another regional human rights or UN treaty monitoring body.

‘**Compliance**’ is attained if and when a State’s law and practice are in line with the requirements of a given decision, as interpreted by the ACERWC or any responsible international body. As such, the term may be read as referring to the outcome of implementation: a state implements a judgment/decision to ensure that it is in compliance with its obligations under this ruling.

“**Effectiveness**” has been used to refer to the degree to which a legal rule or standard induces the desired change in behaviour.¹⁵

A **National Mechanism for Reporting and Follow-up** ‘is a national public mechanism or structure that is mandated to coordinate and prepare reports to and engage with international and regional human rights mechanisms (including treaty bodies, the universal periodic review and special procedures), and to coordinate and track national follow-up and implementation of the treaty obligations and the recommendations emanating from these mechanisms. It may be ministerial, inter-ministerial or institutionally separate.’¹⁶

PART 2: OVERVIEW ON THE IMPLEMENTATION OF DECISIONS AND RECOMMENDATIONS

2.1 GENERAL OVERVIEW

The African human rights system principally stands on the shoulders of three key institutions: the African Commission on Human and Peoples' Rights, the African Committee of Experts on the Rights and Welfare of the Child, and the African Court on Human and Peoples Rights. All these institutions are treaty bodies established by their respective instruments namely the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, and the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

These human rights organs issue various decisions and recommendations in discharging their mandates. The utility and legitimacy of human rights organizations correlate directly with the ability and capacity either by themselves or requisite authorities to enforce their mandates.¹⁷ However, implementation and enforcement of the decisions of the treaty organs is not without challenges.

Implementation of decisions of treaty bodies faces various challenges globally. Many human rights treaties and institutions struggle with translating normative commitments into tangible actions, resulting in gaps between States Parties' treaty obligations and their practical implementation at the domestic level.¹⁸ The challenge is global affecting various regional human rights system. For example, while the European Court of Human Rights might be a well-resourced and legally more sophisticated system, it is reported to have more than 6150 non-implemented judgments.¹⁹ In Africa, the situation is similar. While statistics are not available, it is reported that there are challenges on level of the implementation of the decisions made by the African Commission on Human and Peoples' Rights and the African Court.

The challenges of non-compliance are due to various factors including the politicisation of the post-adjudication phase, the absence of sanctions against defaulting States and the non-existence of a judicial enforcement mechanism which are not a bug but a feature of international law; the lack of participation of domestic courts in the enforcement of international tribunal's judgments and the misuse of the notion of sovereignty on judicial issues.

Looking at the Human Rights Organs in Africa, they often resort to and relay on the Policy Organs of the African Union to ensure the implementation of their decisions and recommendations to States through their activity reports. However, the challenges with the African Union Policy organs towards ensuring implementation of the AU human rights bodies' decisions including the principle of non-interference into State matters affects the implementation of decisions of the human rights organs including the ACERWC.²⁰

The AU has also acknowledged the implementation gap in human rights decisions in various official documents. For example, it adopted the Human Rights Strategy for Africa,²¹ which provides a guiding framework for collective action by AU, RECs and Member States aimed at strengthening the African human rights system. The Strategy sought to address the

current challenges of the African human rights system to ensure the effective promotion and protection of human rights on the continent. Among the challenges identified are inadequate coordination and collaboration among AU and RECs organs and institutions; as well as inadequate implementation and enforcement of human rights decisions. The implementation mechanism of the strategy lies with the African Governance Architecture's Platform (now known as AGA-APSA Platform including the Peace and Security Architecture), which includes the AUC, ACHPR, AfCHPR, ACERWC, PAP, and Secretariat of the APRM, ECOSOCC, AUABC, RECs, and Regional Mechanisms. The Human Rights Strategy can be resuscitated to provide for an opportunity to facilitate the coordination of follow-up on the implementation of decisions of the various human rights bodies within the African human rights system.

2.2. THE CASE OF THE ACERWC

The level of implementation of decisions, or the lack thereof, at the ACERWC, remains to benefit from a detailed assessment. This study is more qualitative than quantitative, and in part, is intended to contribute to such an assessment. The responses to the questionnaire indicate that there is a lot of room for improvement in the level of implementation of decisions.

It is critical to understand the environment within which the implementation of the decisions of the ACERWC operates as a 'complex system.'²² Multiple institutional actors are critical for the implementation of decisions. For example, the long list of institutional actors that are stakeholders for the effective implementation of the decisions of the Committee can be deciphered from the often large and diverse group of members of States' delegations that are involved during the constructive dialogue with the ACERWC.²³

Such list includes the 'usual suspects' - namely members from the ministries of foreign affairs; justice and/or attorney general's office; children's affairs; education; and health care. However, it is also increasingly becoming common to have representatives from those ministries that are in charge of planning; finance; statistics; defence; immigration and/or home affairs; and local government. These ministries are also often involved, with varying degrees, in the preparation of State Party reports that are submitted to the ACERWC. In the few occasions where the issue of children's rights portfolio has a focal person within the highest offices of the executive branch of a government, for example in the president's or prime minister's office, the involvement of such offices can prove to be critical for the implementation of decisions.

These ministries often have different functions, expertise, competence, and in some instances, different levels of claims to legitimacy. Moreover, since the system has a very complex web of interaction and interdependence between domestic as well as institutional actors (for example, with donor institutions and countries), there is no illusion that any of these institutions or their isolated interactions can manage to secure the implementation of decisions alone. Therefore, the existence and capacity of a coordinating body for the implementation of the treaty body decisions and recommendations at domestic level is another factor that has impact on the level of implementation of decisions and recommendations.

Within the three branches of a government, while the executive has the role, and even the responsibility, to implement decisions of the ACERWC, the other two branches – namely the legislature as well as the judiciary have a non-negligible role too.²⁴ Since the majority of the decisions of the African Committee in respect of individual complaints (including on amicable settlements) require either law reform or a change in judicial practice, the interaction between the executive and the other two branches is critical to ensure the effective implementation of decisions.

Moreover, the extent to which the local environment is conducive for the activities of civil society organisations (including faith-based organisations), national human rights institutions, and other stakeholders (such as labour unions, social movements),²⁵ has implications for the effective implementation of decisions, as well as their monitoring. It is this appreciation of how the systems work that seems to be the main reason why writers such as Huneus emphasise the need to highlight the 'different levels of interrelationships, whether of collaboration, coordination, competition, or oversight.'²⁶

The implementation of decisions by the ACERWC also depends on many factors, comprising those related to availability of internal resources. For instance, the number of recommendations and decisions of the ACERWC has increased exponentially since its inauguration in 2001, the establishment of its secretariat in 2007 and after its relocation to the Kingdom of Lesotho in 2020 with a subsequent rise in the need for follow-up on the implementation of these decisions. However, resources have never matched the rise in State Party Reports and Communications to be considered or to be followed up. Considering the significant challenge that the Committee is facing as a result of limited resources, it is important to note that an effort to expand the monitoring of the implementation of decisions of the African Committee should be accompanied by a parallel process of expanding the human and financial resources available at its disposal.

PART 3: EXAMINING THE IMPLEMENTATION OF DECISIONS AND RECOMMENDATIONS OF THE ACERWC

Most of the functions of the ACERWC in the exercise of its mandate provided in the Charter entail decisions and recommendations by the ACERWC for States. These include the consideration of State Party reports, consideration of complaints on alleged violations of the Charter, and undertaking investigative, fact finding and follow up missions. Following each of the above mentioned activities, the Committee issues decisions and recommendations which provide action points for State Parties to rectify the main issues of concerns raised by the ACERWC which form the sources of recommendations that requires subsequent monitoring of implementation.

3.1 CONCLUDING OBSERVATIONS

3.1.1 BACKGROUND AND SYNOPSIS

The ACERWC has a long experience in monitoring the implementation of the Charter through the State Party reporting process. At the time of writing this report, among the 50 countries who have ratified the Charter, 42 have submitted at least their initial report. However, despite the positive trend of 42 countries having met their initial reporting requirements, there is a significant discrepancy in the number of States Parties consistently fulfilling their reporting obligations. As shown in the table below, of the 42 countries that have submitted their initial reports, 22 had periodic reports due in 2022. Of these 22 countries, 16 have not submitted their first periodic reports. This backlog disrupts the periodicity of the reporting process, creating a concerning gap in monitoring implementation of recommendations and other decisions, thereby posing a significant obstacle to the ACERWC's follow-up activities by limiting its engagement with states parties.

STATE PARTY	LAST REPORT SUBMITTED AND CONSIDERED BY MAY 2023	DUE DATE FOR REPORT SUBMISSION
Algeria	Initial report considered during the 26th Ordinary Session held from 16 to 19 November 2015.	First periodic report due in 2020
Angola	Initial report considered during the 30th Ordinary Session held from 06 to 16 December 2017.	First periodic report due in 2021
Burkina Faso	Second periodic report considered during the 31 st Ordinary Session held from 24 to 04 May 2018.	3 rd periodic report due in 2022

Burundi	Initial report submitted in 2017 and considered during the 31st Ordinary Session, held from 24 April to 04 May 2018	First periodic report due in 2021
Cameroon	First periodic report submitted in December 2014 and considered during its 28th session held from 21st October to 1st November 2016.	Second period report due in 2020
Comoros	Initial report considered during the 29 Ordinary session held from 02 to 09 may 2017.	First periodic report due in 2020
Egypt	Initial report considered during the 12th Ordinary Session held from 03 to 05 November 2008.	First periodic report due in 2012
Eswatini	Initial report considered during the 33rd Ordinary Session held from 18 to 28 March 2019.	First periodic report due in 2022
Gabon	Initial report considered during the 26 th Ordinary Session held from 16 to 19 November 2015	First periodic report due in 2019
Ghana	Initial report considered during the 28 th Ordinary Session held from 21st October to 1st November 2016.	First periodic report due in 2020
Guinea	Initial report considered during the 1st Extra Ordinary Session held from 07 to 11 October 2014	First periodic report due in 2018
Liberia	Initial report considered during the 23rd Ordinary Session from 09 to 16 April 2014.	First periodic report due in 2017
Madagascar	Initial report considered during the 25 th Ordinary Session held from 20 to 24 April 2015.	First periodic report due in 2019
Mali	Initial periodic report considered during the 14 th Ordinary Session held from 16 to 19 November 2009.	First periodic report due in 2013
Mauritania	Initial report considered during the 34th Ordinary Session held from 25 November to 5 December 2019.	First periodic report due in 2022
Nigeria	First periodic report considered during the 33 rd Ordinary Session held from 18 to 28 March 2019.	Second periodic report due in 2022
Sierra Leone	Initial report considered during the 30 th Ordinary Session held from 6 to 16 December 2017.	First periodic report due in 2021

Sudan	Initial report considered during the 20th Ordinary Session held from 12 to 16 November 2012.	First periodic report due in 2016
Tanzania	First periodic report considered during the 29 th Ordinary Session held from 02 to 09 May 2017.	Second periodic report due in 2020
Togo	Initial report considered during the 17th Ordinary Session held from 22 to 25 March 2011.	First periodic report due in 2014

For developing some of the analysis in this section several Concluding Observations were reviewed. These Concluding Observations include but are not limited to the following States: Algeria; Angola; Burkina Faso; Burundi; Cameroon; Congo Republic; Egypt; Eritrea; Eswatini; Ethiopia; Gabon; Ghana; Guinea; Kenya; Lesotho; Liberia; Malawi; Mali; Mauritania; Mozambique; Namibia; Niger; Nigeria; Rwanda; Senegal; Seychelles; Sierra Leone; South Africa; Sudan; Tanzania; Togo; Uganda; Zambia; and Zimbabwe.²⁷ In the interest of space, and since the intention is to shed some light on examples of opportunities, challenges, and where possible trends concerning implementation and follow-ups, neither all countries nor all clusters will be covered. Since the extent to which recommendations are tailor-made and clear assists both with implementation and follow-up, the analysis places closer attention to the issue.

It is important to note that not all sections of the Concluding Observations and Recommendations require implementation. For example, the 'introduction' as well as the section titled 'Progress in Implementing the Charter' only make observations and do not provide recommendations that require further follow-up and implementation. The latter section, for example, is often congratulatory of the various measures undertaken by a State concerned such as ratification of international and regional human rights instruments; legislative measures such as the adoption of a new law or an amendment of an already existing one; and administrative measures such as allocation of financial resources or the creation, designation or restructuring of an institutional framework that is intended to facilitate the implementation of the provisions of the Charter. It is usually section III titled 'Additional Developments, Areas of Concern and Recommendations' which often contains information that requires follow-up and implementation.

Understandably, countries are at different levels of compliance as far as their reporting obligations are concerned. For example, Burkina Faso, Kenya, Niger, Rwanda, Senegal, and South Africa have each submitted three reports to the ACERWC. Meanwhile, 8 countries whose reports are due never reported to the Committee, and 19 reported only once by 2023. Such a disparity does not have any material bias towards the information provided below.²⁸

It is also worth asking the question whether countries that have submitted more reports and received multiple Concluding Observations have a better track record in implementing the recommendations of the ACERWC than those that have only submitted one report. In other words, a question needs to be asked whether frequent engagement in the form of State Party reporting leads to better implementation of decisions. This is a question that should benefit from a more detailed analysis which is beyond the scope of this Study. However, a browse through the Concluding Observations of Burkina Faso, Kenya, Rwanda,

and Senegal shows measurable progress in some areas than others, and it still contains some repetitive recommendations that have not been fully implemented from previous rounds. For example, almost a decade later, the Government of Senegal was asked to 'take all the necessary measures to fully implement the 2011 recommendations of the ACERWC.'²⁹

3.1.2. CONTENT OF CONCLUDING OBSERVATIONS AND RECOMMENDATIONS THAT REQUIRE FOLLOW-UP

The contents of the concluding observations and recommendations are aligned with what the State Parties are expected to include in their reports in accordance with the Committee's Guidelines on State Party Reports. Accordingly, the concluding observations and recommendations focus on the following major issues: General measures of implementation; Definition of the child; General principles; Civil rights and freedoms; Economic, social and cultural rights; Family environment and alternative care; Rights and protection of vulnerable children; Harmful practices and exploitation' Administration of juvenile justice; and Responsibilities of the child. Focusing on some of the major areas of recommendations, the following paragraphs provide general overview of the nature of the recommendations and how that is linked with the implementation thereof on selected thematic areas.

i. General Measures of Implementation

Recommendations under "general measures of implementation" in concluding observations address the measures it has taken or those anticipated to be taken to implement article 1(1) of the Charter. In particular, these measures cover the areas laid down in the Committee's state party reporting guidelines and which are further elaborated upon in the Committee's General Comment No. 5 (Article 1) on 'State Party Obligations under the African Charter on the Rights and Welfare of the Child and Systems Strengthening for Child Protection' including constitutional, legislative, and policy frameworks; institutional frameworks; budgetary allocations; cooperation mechanisms; the dissemination of the Charter and previous concluding observations; and the collection of data, among other measures.

The recommendations under the cluster 'General Measures of Implementation' are amenable to clear recommendations whose implementation or lack thereof can be followed up without much difficulty. In this category are legislative measures that are delayed for adoption, or need amendment where clear recommendations can be provided.³⁰

LEGISLATIVES MEASURES

The content of the Committee's recommendations on legislative measures ranges from the timely enactment of laws to the 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.³¹ Recommendations asking a State to amend legislation are more amenable to implementation as well as its follow-up if the aspect of the

amendment is explicitly provided for in the recommendation. A good example in this respect can be the recommendation provided to Nigeria to 'amend the Child Rights Act 2003 and recognise accusations of witchcraft against children as a violation and outlaw such accusation to afford comprehensive protection to children...'³² Similarly, Gabon has received a clear recommendation that reads: 'the Committee encourages the State Party to adopt a comprehensive children's rights law.'³³ In the instances where legislation or policy has been in the pipeline, the ACERWC tends to ask for an urgent adoption of the same. Mozambique was recommended 'to expedite the finalization of the regulation for the Basic Law on the Protection of the Child no. 7/2008.'³⁴ Some positive steps and progress have been observed in some State Parties in implementing recommendations aimed at expediting the law reform process. For instance, the Committee commended Rwanda for its implementation of previous recommendations³⁵, particularly on "fast-tracking the law reform process" including, the revision and adoption of relevant laws³⁶, while in 2020 the Committee reiterates its recommendation made on the State Party's initial report in 2014 to expedite the adoption of the Child Bill.³⁷

BUDGETARY ALLOCATIONS

The recommendations on budgets are often general by their very nature. For example, a recommendation that reads 'the Committee recommends that the Government increases the budget allocation, to strengthen investment in children, in line with growing demand and demographic growth,'³⁸ or 'to increase budgetary allocation'³⁹ for various institutional frameworks (such as for the ministry in charge of children's issues), and/or sectoral issues (such as education and health) can be regarded as being general. This is due to lack of indicative standard or commitment on the amount or percentage of budget allocation for children's rights. In some occasions where specific measurable recommendations on budget allocation were made such as the recommendations given to Sierra Leone and Tanzania under the cluster of Health were the Committee recommended the increase of annual budget allocated for health to meet the 15% standard set by the Abuja declaration.⁴⁰ However, in the absence of similar targeted commitment or benchmark with a view to implement such recommendations adequately and facilitate their follow-up, it remains unclear the range of budget increase that is required; the timeframe required for the increase; and the definition of 'growing demand.'

INSTITUTIONAL MEASURES

In the instances where the capacity of institutions that work for and with children needs to be upgraded, for clarity in implementation and its follow-up, the Committee acknowledges, such recommendations would be better served by providing at least non-exhaustive examples of the measures to be undertaken. In this respect, for example, the Government of Nigeria was recommended to '[s]trengthen capacity of National Drug Law and Enforcement Agency (NDLEA) inter alia, by recruiting trained staff so that this agency can be able to effectively discharge its mandate.'⁴¹ Senegal has been asked '...to establish a robust coordination system, which is permanent, integrated, stable, effective, participatory, adequately accountable and guided by the best interests of the child.'⁴²

NATIONAL HUMAN RIGHTS INSTITUTIONS

Often, the ACERWC encourages State Parties to establish or further strengthen the effectiveness and efficiency of the National Human Rights Commission and the Ombudsman including in many occasions the establishment of child rights unit in their structures. Based on the responses to the questionnaires, the Committee notes the need for such recommendations also to underscore the role of NHRIs in assisting implementation as well as follow-up.

TRANSLATING THE CHARTER INTO LOCAL LANGUAGES

The ACERWC often recommends to States to 'translate the Charter into local languages,'⁴³ which is relatively open-ended. On other occasions, State Parties have received a more specific and measurable recommendation. For example, Lesotho was requested to 'translate the full text of the CPWA in Sesotho language...'⁴⁴. As was reflected in the responses to the questionnaire, given the relatively low awareness about the Charter at the domestic level, the Committee notes the important role such recommendations can play in the implementation and follow-up of decisions.

ii. Definition of the Child and Ages

Most of the recommendations of the ACERWC in the context of minimum ages are very clear, hence monitoring of their implementation is less difficult. For example, in the instances where countries have legislation that provides for a minimum age for marriage below 18, recommendations to raise those ages to 18 have been provided to Algeria,⁴⁵ Guinea,⁴⁶ Mozambique,⁴⁷ Angola,⁴⁸ Malawi,⁴⁹ Egypt,⁵⁰ Liberia,⁵¹ Ghana,⁵² and Eswatini.⁵³ In respect of minimum age of criminal responsibility, recommendations to increase or maintain at least 12 years of age is often made.⁵⁴

iii. Socio-economic rights

In principle, given the nature of economic, social and cultural rights, the recommendations such as those on the right to the highest attainable standard of health and education are (or perhaps even should be) often open-ended. This means that the criteria of 'available resources' and 'progressive realization' should be taken into account in the recommendations provided, which often makes the recommendations less specific and leaves more margin for a State to implement. Multiple examples that can demonstrate this exist: Such recommendations include: 'to take all appropriate measures to scale up pre-school education to an acceptable level';⁵⁵ 'increase the availability of pediatrician in all districts';⁵⁶ '...take urgent measures to reduce child mortality due to preventable diseases...';⁵⁷ 'recruit qualified teachers to reduce pupil to teacher ratio';⁵⁸ 'improve the quality of health care services';⁵⁹ and that 'resources be set aside' for education.⁶⁰ The Committee notes, a more deliberate identification of the recommendations about economic, social and cultural rights could assist a State Party to prioritize its implementation of recommendations contained in a concluding observation.

3.1.3. POSITIVE TRENDS AND KEY CONSIDERATIONS FOR ENHANCED IMPLEMENTATION OF CONCLUDING OBSERVATIONS

i. National Mechanism for Reporting and Follow-up and coordination mechanisms

States have been encouraged, to set up national implementation and reporting systems which should include the mandate to monitor and follow-up on the implementation of treaty body recommendations. The establishment and development of these systems by states reveal that their form varies from country to another. In light of this, four primary types of national implementation-reporting systems have been identified: ad hoc; ministerial; interministerial; and institutionally separate/independent.⁶¹

There are already some good examples to consider and draw, such as in Mauritius, where a standing technical interministerial committee on treaty reporting serves as a National Mechanisms for Reporting and Follow-up which was established with a secretariat currently hosted by the Ministry of Foreign Affairs.⁶² In Morocco, the Inter-ministerial Delegation for Human Rights (Délégation interministérielle aux droits de l'Homme) was established in 2011 by decree No 2-11-150. Given its cross-sectoral mission, it is led by an inter-ministerial delegate appointed by the King and answerable directly to the Head of Government.⁶³

Another example comes from the Government of Niger which created an Inter-ministerial Committee on 17 March 2010, responsible for drafting reports to treaty bodies and the Universal Periodic Review, whose activities are coordinated by the Ministry of Justice. This committee has recently changed its name and is called a 'National Mechanism' instead of the Inter-ministerial Committee so that it can include resource persons who are not necessarily representatives of the ministries. The Inter-Ministerial Committee is entrusted with drafting reports to be submitted to human rights mechanisms and follow-up on their recommendations.

Countries such as Namibia and Botswana have put, in addition to National Mechanisms for Reporting and Follow-up, inter-ministerial coordination mechanisms that are also involved in the implementation of Concluding Observations, and other decisions. In Namibia, for example, the Ministry of Gender Equality, Poverty Eradication and Social Welfare established a coordination mechanism on child protection issues including the reporting on the implementation of decisions of the ACERWC. This is done through the Permanent Task Force on Children and the newly established National Advisory Council on Children.⁶⁴ It is reported that the Ministry shares the concluding observations with key implementers, and requests feedback which is then used to compile responses and other related information required for the compilation of the country report. The draft responses as well as the country report are then submitted to the Inter-Ministerial Committee on Human Rights for endorsement before it is submitted to the cabinet for approval. It is reported that these structures provide adequate follow up measures to ensure the effective coordination of reporting to, as well as the implementation of decisions of the ACERWC.

The Committee in various occasions has recommended States to establish or designate such coordination mechanisms to improve the implementation and follow-up to its decisions and notes the imperative to continue to include this in its concluding observations and recommendations.

ii. Follow-up visits by the Committee

The Committee in line with its Rule of Procedures undertakes follow-up visits to assess the level of implementation of its concluding observations and recommendations. This has been operationalised by the Committee and being effective. By 2022, the Committee conducted follow-up missions in Chad, Ethiopia, Ghana, Guinea, Lesotho, Liberia, Madagascar, Mozambique, Namibia, and Zimbabwe. The follow-up missions have proven to be very effective to decrease backlog in reporting on the status on implementation of the African Charter on the Rights and Welfare of the Child. Many countries have submitted their reports after these missions were conducted and reminders were issued. For instance, Lesotho submitted its first periodic report following the follow-up mission conducted from June 14 to 17, 2021, to monitor the implementation of the Committee's concluding observations and recommendations. Similarly, Ethiopia submitted its first periodic report after the follow-up mission held on October 16 and 17, 2018. Namibia submitted its first periodic report following the mission conducted from December 1 to 3, 2021. Mozambique also submitted its first periodic report after the follow-up mission held in December 2018, among others examples.

iii. *Special Mechanism on Follow-up to Concluding Observations*

Since 2016, the African Committee of Experts on the rights and Welfare of the Child has established special mechanisms, either individual member as rapporteurs or group of members as working group, This includes the appointment of 11 Committee members as country rapporteurs, with each member assigned five countries. These rapporteurs have various functions, such as engaging in follow-up activities, monitoring the implementation of the Committee's recommendations and concluding observations through engaging State Parties to comply with their reporting obligations and undertaking follow up missions on implementation of the recommendations and concluding observations of the Committee. Additionally, the Committee appointed 11 thematic rapporteurs, who are tasked among others, with seeking, receiving, examining, and acting upon information related to specific thematic areas. They also collaborate with country rapporteurs during country visits, the State Party reporting process, and the subsequent implementation and follow-up stages.

Furthermore, according to Rule 58 of the Revised Rules of Procedure, the ACERWC, during its 35th Ordinary Session, established the Working Group on the Implementation of Decisions as a special mechanism to continue reviewing progress made in the implementation of its decisions and recommendations, and to undertake activities ensuring the implementation of all its decisions and recommendations by the respective State Parties.

iv. Longer reporting cycle

Article 43(1) of the African Children's Charter requires reporting 'within two years of the entry into force of the Charter for the State Party concerned' and 'every three years' thereafter. This has been highlighted as contributing negatively to implementation for two reasons. One is that such a timeframe is considered to be too short as many recommendations made in the concluding observations require more time. Secondly, since this timeframe is out of sync with other reporting obligations that States have, especially obligations under the CRC where periodic reports are due every five years, it risks straining resources and creating a 'reporting/implementation fatigue.' Further, as one State Party underscored, 'several consultations have to be conducted as recommendations or decisions provided

may involve various partners.' As a result, the Committee notes that there is a need to work towards establishing a realistic reporting cycle timeframe between the issuance of Concluding Observations and the due date for the next periodic report to undertake adequate implementation.

v. Terminology, sense of urgency, and prioritization

The understanding of terminology used in making recommendations by States might also contribute to how a certain recommendation is taken seriously or with urgent attention or not. For example, a few recommendations start by saying 'the Committee encourages...'⁶⁵ The words 'encourages' or 'advises' are not meant to relegate an obligation under the Charter or something that is considered a 'good practice' or an issue which is above the threshold of what is required under the Charter.⁶⁶ However, the various terminology are used in the sense of engaging in those measures deemed necessary to ensure implementation of the recommendations, and need not be taken as meaning consideration prioritizing some over others. This is also in line with the fact that the State is the main duty bearer and implementing entity.

However, in cases where the Committee notes urgent actions is required due to nature of issues involved, the ACERWC provides states with recommendations that require urgent actions. This practice received a significant amount of support from State Party respondents. Prioritisation of issues for urgent action does not and should not be read to go against the indivisibility and interdependent nature of rights. It should also not be read to underscore a hierarchy of rights. What it intends to achieve is a more contextualised and tailor-made approach to the Concluding Observations which assists the State in appreciating the specific areas or rights that need its undivided attention for immediate implementation.

Some of such recommendations were couched in wording that underscores a sense of urgency for implementation for many reasons. For example, the issue is structural in nature affecting a large number of rights or children; or because it relates to a standard that is explicitly provided in the Charter; or if the violation in question constitutes a prohibition that forms customary international law (such as on the prohibition of torture or slavery); or because the ACERWC has given the same recommendation in the past and the State Party has not implemented the same or not implemented it in full; or because the amount of time or effort required to comply with such a recommendation does not need much time or resources.

For example, Nigeria has been asked to '[e]nsure that specialised policing and court services for child victims are adequately resourced and implemented as a matter of urgency';⁶⁷ Lesotho has been recommended 'to speed up the establishment of the National Human Rights Commission and to provide a child sub-committee therein.'⁶⁸ Guinea was asked 'to urgently take appropriate measures to ensure the right to life of children with albinism and protect them from harmful practices endangering their lives'⁶⁹ and also ratify the Convention on the Rights of People with Disabilities urgently.⁷⁰ In an explicit effort to prioritise an issue, the ACERWC has also recommended to the Government of Guinea 'that the elimination of FGM becomes one of the priority areas of the Government...'⁷¹ Senegal was asked to '[s]peed up the adoption of the draft amendments to the Labor Code...'⁷² .

It has transpired from responses to the questionnaire that the identification of the issues for urgent action should be done in a consultative manner with the State Party concerned. This could be effected and can help to facilitate better implementation of decisions. There is already a previously established practice of the ACERWC which, during the constructive

dialogue with States and pre-session with CSOs, asks for information about the three priority issues in a State, and such consultation can also form a basis for the identification of the priority issues for urgent action.

vi. The use of the General Comments of the ACERWC in Concluding Observations

The ACERWC has adopted General Comments which can clearly assist in the implementation of its decisions. The integration of these General Comments into the Concluding Observations issued to State Parties, could, among others, help to address the concerns that not all elements of Concluding Observations are understood at the domestic level which are raised in the responses to the questionnaires. Examples include where '[t]he Committee would like to further encourage the State Party to make use of its General Comment No 3 on article 31 of the Charter on the Responsibilities of the Child for better guidance on the implementation of the responsibilities of the child,'⁷³ In respect of children of imprisoned parents or caregivers, the Committee has recommended to Malawi to take into account General Comment No 1 on Article 30 of the Charter,⁷⁴ as well as 'take note of the Joint General Comment on Ending Child Marriage in Africa.'⁷⁵ The Committee has referred the Government of Eritrea 'to the Committee's General Comment on Article 22 of the Charter ...'⁷⁶

Moreover, there are already examples where jurisprudence and information from other African human rights bodies, especially the African Commission, and/or from the UN human rights system are used. In respect of the latter, for example, the Concluding Observations of the CRC Committee have been mentioned in ACERWC Concluding Observations. Moreover, reports from UN special mechanisms have been referred to in ACERWC Concluding Observations. For example, in the Concluding Observations to Malawi, the ACERWC recommended the State Party to '[i]mplement the recommendations of the UN Special Rapporteur on the Right to Food, following a visit to Malawi in 2014.'⁷⁷ Such cross-reference, can help to send a signal to States that by implementing a specific recommendation, they would be complying with obligations that they have under different instruments.

vii. Standard recommendation on the inclusion of implementation information in the next report

The relatively standard recommendation in concluding observations that reads 'The Committee would also like to invite the State Party to submit its combined periodic report by [xxxx-date] and to include in it, information on the implementation of the present concluding observations' plays an important role in implementation. Moreover, during the issuance of *Note Verbal* asking for the submission of a report as well as for undertaking follow-up activities such as missions, etc., the Committee reminds States of this requirement.

Another similar standard recommendation that is provided to States is the one that reads: 'The Committee would like to indicate that it will undertake a follow-up Mission to assess the implementation of these recommendations in the foreseeable future.'⁷⁸ The existence of such a recommendation contributes meaningfully for follow-up on the implementation of the recommendations. It underscores to the State Party concerned, that the Committee views the State Party review exercise as a continuous process, and that conducting follow-ups between reviews is an essential part of this cycle.

3.2 DECISIONS ON COMMUNICATIONS

3.2.1 BACKGROUND

A fundamental component of the protective mandate of the Committee is the communications procedure provided under Article 44 of the Charter, which allows the Committee to receive and consider complaints. Communications can be filed by children or their representatives or CSOs or group of individuals on alleged violations of the Charter against a State Party to the Charter. The Charter, the Rules of Procedure of the Committee and the Revised Guidelines for Consideration of Communications and Monitoring Implementation of Decisions provide the procedures for the submission and consideration of Communications. The Committee issues decisions on the merit of the Communications following a careful consideration which requires implementation. Moreover, some cases may be settled amicably the terms of which need to be implemented and monitored.

The Committee may issue provisional measures prior to considering the merit of the Communication or at any stage of a Communication. Provisional measures help to achieve multiple goals. They have a protective goal and are intended to prevent or minimise irreparable harm to the child. Provisional measures also have a precautionary role, and as such, the measures can assist in preserving a legal situation under consideration by the Committee until the Committee can examine the communication. Moreover, provisional measures create a conducive environment for a State Party concerned in a communication to implement the final decision of the ACERWC and comply with the ordered reparations. The ACERWC does not have extensive experience in engaging with interim measures in the context of individual complaints.. A similar process is followed in the context of other treaty bodies including the African Commission on Human and Peoples' Rights and the CRC Committee. Given the dual nature of interim measures, - one which is precautionary to preserve a legal situation that is being considered by the ACERWC, and another which is protective and intends to avoid irreparable harm, they are an important tool. As a result, interim measures can be issued either at the request of the complainants or where the best interests of the child require it, at the initiation of the ACERWC itself.

While is not the intention of this study to assess the implementation of reparations measures awarded by the ACERWC in its decisions and recommendations, the Committee's diverse approaches in monitoring these recommendations are important to the overall implementation of the cases.

3.2.2 SUMMARY OF THE CURRENT STATUS OF FOLLOW UP ON INDIVIDUAL COMPLAINT DECISION,

By January 2023, the ACERWC has received 23 individual complaints. From the 23 Communications, the Committee adopted decisions on the merit on 8 Communications and amicably settled two communications by January 2023. While it is not the intention of this study to assess the implementation of reparations measures awarded by the ACERWC in its decisions and recommendations, the Committee, in its diverse approaches to monitor the implementation of its recommendations, has developed an internal report on the level of implementation of its Decisions by concerned States Parties. The report provides a comprehensive overview of the follow-up activities carried out to monitor the level of implementation of decisions and provides insight about the status of implementation. The table summarising the follow-up activities and findings until December 2022 has been extracted from the report and annexed to this Study as Annex I.

The first and only provisional measure by the ACERWC in the context of an individual complaint was made in 2021. No report was received on the implementation of the provisional measure. As such, there is not adequate evidence to assess how State Parties treat such measures issued by the ACERWC; what the particular challenges for implementation of such measures would be; etc. Suffice to mention that in the instances where such measures are issued and facilitate implementation, it is important to underscore the legal basis for such issuance; to highlight the importance of the implementation of such a measure; to clarify that such a measure does not in any manner indicate the outcome of the merits consideration of a communication; to explicitly highlight that a failure by the State Party concerned to implement the interim measures would undermine the effectiveness of the individual complaints mechanism and potentially render the case moot; to withdraw on time such a measure where its relevance no longer exists; and systematically and regularly follow-up on its implementation.

3.2.4 EXISTING MECHANISMS/PROCEDURES FOR FOLLOW UP

The Committee has set up various mechanisms to follow up the implementation of its recommendations and decisions, further strengthening its follow-up efforts through the establishment and operationalization of its existing procedures:

3.2.4.1 IMPLEMENTATION REPORT

According to its Revised Guidelines for the Consideration of Communications and Monitoring Implementation of Decisions (Communications Guidelines), State Parties to a Communications are required to report to the ACERWC on the measures taken towards the implementation of its decisions on communications within 180 days from the receipt of the decision of the Committee.⁷⁹This obligation appears as a standard “follow-up” provision in the committee’s Decisions. However, except in the case of Malawi, where the

Communication was amicably settled and the state had subsequently submitted implementation reports, no other respondent States have complied with 180 days rule, despite repeated reminders by the Committee issuing Note Verbal to these States, notifying them of their non-compliance and requesting the submission of reports on the status of implementation within the 90-days⁸⁰ extension granted for this purpose.

3.2.4.2 IMPLEMENTATION HEARINGS

The ACERWC according to Section XXII (2) of the Revised Communications Guidelines has developed the practice of holding an implementation hearing of decisions it has made in respect of individual complaints. The Committee revised its Guidelines to include a section on implementation of decisions noting the need to enhance follow-up procedures including the implementation hearing. During implementation hearings the Committee invites the State Party concerned to participate in the hearing and provide updates on the implementation of the executable part of its decisions. The Committee may also invite the Applicants and other parties involved in various capacities to provide insight on the status of implementation. In the majority of the implementation hearings State Parties continue to express their willingness to implement and highlight. This is evident for examples in the context of the Communication against Senegal in the *Talibe case*, the Communication against Kenya in the *Children of Nubian descent case*, the Communication against Cameroon in the rape case of TFA (a minor), the Communication against Mauritania in the child slavery case of Said Ould Salem and Yarg Ould Salem. From the implementation hearing, it can also be noted that Cameroon and Mauritania have expressed their willingness to implement decisions and are taking some measures. Implementation hearings offer an opportunity for the Committee to take note of the progress achieved and challenges faced in the implementation process from the State and other actors including the Applicants. The Committee will further get the chance to issue guiding recommendations on measures that should be further undertaken to ensure the full implementation of its decisions.

3.2.4.3 IMPLEMENTATION FOLLOW-UP VISITS

It is the Rules of Procedures and the Guidelines for Communications of the Committee to undertake follow-up visits to follow up on the implementation of its decisions and recommendations including decisions on communications. During these follow-up missions, the Committee designates a Delegation composed of its Members accompanied by members of its Secretariat to follow up on the implementation of its decisions. The follow-up involves on-site visits to the relevant countries and engaging the various stakeholders, and reporting back on their findings to the Committee. Undertaking country visits as a follow-up on the implementation of decisions is critical for implementation, at times even serving as a trigger for implementation by a State Party. In this respect, in response to the questionnaire, it is indicated, among others, that States Parties are sometimes waiting for the ACERWC to send a *Note Verbale* asking authorization to undertake a visit before they start to mobilize resources and organize a workshop on the ACERWC decisions or undertake other related measures. In fact, these missions have not been carried-out as much as they should have been mainly due to financial constraints and lack of authorization from the

states despite the fact that the Committee has over the years made repeated requests to several States to accept missions aimed to follow up on implementation of decisions. To address this, the Committee has utilized other on-site activities to assess the status of implementation of its decisions, including country visits to follow up on the implementation of Concluding Observations, as well as fact-finding missions. For instance, as part of the fact-finding mission in the republic of Malawi on matters of children with albinism, the Committee simultaneously followed up and assessed the level of implementation of the amicable settlement reached in Communication No 004/Com/001/2014 between the Institute for Human Rights and Development in Africa against the Republic of Malawi.⁸¹

3.2.4.4 SPECIAL MECHANISMS

The Committee might appoint one or more member of the committee to act as a rapporteur for a communication for the purpose of monitoring the implementation of the Committee's decision by the State Party concerned. The provisions of section XXI (2) of the Communications Guidelines appear to provide adequate room for proactive measures by a designated rapporteur for communication. For instance, based on Section XXI (2) iii, the rapporteur could request for the development of compliance plans by the State concerned, which include timetables for the implementation of specific decisions, as well as precisely defined levels of compliance. This facilitates monitoring the progress on implementation and provides clarity in terms of the specific steps required to achieve full compliance.' It has been rightly suggested in a response to the questionnaires that the role of country rapporteurs as well as thematic rapporteurs within the ACERWC can be operationalised and strengthened to play the role of follow-ups to implementation of decisions to utilise the already existing special mechanisms.

Furthermore, as mentioned above on 8 September 2020 the Committee established the Working Group on Implementation of Decisions as a special mechanism to monitor progress made in implementing its decisions and recommendations and to undertake activities ensuring the implementation of all its decisions and recommendations by State Parties. The Working Group is composed of four members of the ACERWC and mandated to undertake its activities as defined primarily by the African Children's Charter, the Resolution establishing the Working Group and the Standard of Operating Procedures for the establishment of Working Groups as Special Mechanisms within the ACERWC. Toward ensuring the full operationalization and strengthening of its mandate, during the 40th Ordinary Session of the ACERWC from 23 November to 01 December 2022, the Committee adopted an amendment to the 2020 Resolution establishing the working group in order to expand the scope of mandate of the Working Group to follow up on decisions of other organs of the African Union including the AU policy organs' decisions pertaining to children's rights.

In the Resolution establishing the Working Group, the Committee tasked the Working group with submitting an annual status report to the PRC Sub-Committee on Human Rights, Democracy and Governance on implementation of the Committee's decisions and recommendations. The Working Group is also responsible for regularly collecting information from Civil Society actors and NHRIs, on their assessment of the level of implementation of the Committee's Decisions and recommendations; Producing an annual report publication on level of implementation of the Committee's Decisions; and participating in various follow

up Missions and country visits in collaboration with relevant Country and Thematic Rapporteurs; among other follow up activities. The Working Group on implementation of decisions, at its initial meeting held on November 10, 2021, in Bujumbura, Burundi, adopted its workplan for 2022-2023. Accordingly, a first set of activities were approved which include among others the adoption of resolutions and the development of the current Study on the implementation of the decisions of the Committee as decided by the Committee during its 38th Ordinary session held virtually from November 15 to 26, 2021.⁸²

3.2.4.6. REPORTING TO THE POLICY ORGANS

The Committee has enhanced reporting on implementation of its decisions and recommendations to the AU Policy Organs in its activity reports. It is in this context that the Executive Council has been encouraging States Parties to implement the Committee's recommendations and Decisions on Communications. Recently, the Committee has gone further in referring the matter of non-implementation of its decisions in its activity report, bringing these matters to the attention of the AU Executive Council. In its Decisions EX.CL/Dec.1155(XL) of 2022, adopted during the 40th Ordinary Session, and EX.CL/Dec.1201(XLII) of February 2023, adopted during the 42nd Ordinary Session, the AU Executive Council called on the concerned Member States to comply with their obligations under the Charter by responding to the Committee's requests and implementing the Committee's decisions on Communications. Notably, in the latter, the AU Executive Council went a step further by specifically calling on the United Republic of Tanzania to fully implement the recommendations of the ACERWC concerning Communication No: 0012/Com/001/2019.

3.2.4.5. OTHER MANDATES AND FOLLOW-UP ACTIVITIES

The ACERWC also continues to systematically use the State Party reporting process for countries to which it has issued decisions to follow up on the implementation of its decisions on individual complaints. This includes asking about it in the list of Issues, raising it during the constructive dialogue, and subsequently including it in the concluding observations as has been done, for example, in respect of Kenya and the *children of Nubian descent* case as well as Mauritania and *Said Ould Salem and Yarg Ould Salem case*). Moreover, the example of Mauritania where the ACERWC leveraged the presence of the delegation of a State Party during the Session for the consideration of its report to also organize an implementation hearing is a cost-effective example of follow-up to decisions. Moreover, the conscious effort to join the ACERWC's follow-up efforts such as its follow-up mission to utilize them to monitor the implementation of both Concluding Observations, recommendations and decisions. As the Committee conducts follow-up missions to monitor the implementation of its concluding observations, it also request States to provide information about its decisions.

Moreover, the discussions on the establishment of national mechanisms tasked with monitoring and follow-up in the section on concluding observations are critical to the implementation of the decisions of the Committee and hence should be considered to apply to ensure increased implementation of decisions.

3.2.5 KEY CONSIDERATIONS AND IMPLEMENTATION CHALLENGES

3.2.5.1 UNDERSTANDING THE NATURE OF THE DECISIONS OF THE COMMITTEE

Implementation of the decisions of the Committee stems from the obligations which States are bound to upon the ratification⁸³ of international human rights treaties⁸⁴. According to the principles of international law, the ratification of a treaty produces legal effects vis-à-vis the parties according to which States commit to fulfilling in good faith the obligations derived from international treaty. Subsequently, Member States obligation to duly implement the recommendations of the Committee drives from the Charter itself which mandated the Committee to consider Communications and the treaty obligation to implement the Charter and adopt all necessary measures. Moreover, the acceptance of jurisdiction by the ACERWC occurs automatically upon a State's accession as a Party to the Charter and is not contingent upon the ratification of an additional protocol. In this case, compliance with the Committee's decisions forms part of the essence of the Charter since issuing recommendations by the Committee in its decisions on communication brought before it is part of its main functions pursuant to the Charter.

3.2.5.2 DEROGATIONS AND THEIR EFFECT ON THE IMPLEMENTATION OF DECISIONS

Unfortunately, many countries on the African continent continue to be affected as a result of armed conflict, natural disasters and other emergencies. The COVID-19 pandemic has shown how the implementation of rights as well as the implementation of decisions made by courts or treaty bodies can be hampered during emergencies.⁸⁵ In this regard, it is appropriate to pose the question 'What is the extent to which States can legitimately not implement the decisions of the African Committee as a result of derogations declared in a State as a result of an emergency? Are there any legal differences in the expectations of the implementation of decisions in times of peace as compared to in times of war?'

Similar to the African Charter on Human and Peoples' Rights, there is no derogation provision in the African Children's Charter. This is in contrast to other international instruments which permit such action for some rights during times of emergencies. Prime among these is the International Covenant on Civil and Political Rights.⁸⁶ The fact that the African Children's Charter does not contain a derogation provision does not necessarily prevent an interpretation that provides principle-based guidance to States on implementation of the decisions and recommendations of the Committee during such times. At the ACHPR, some of the conceptual clarifications concerning derogations are done within the framework of the

State Party reports where States could be asked about any differentiations in respect of the application of the provisions of the ACHPR in times of peace and in times of war (or for that matter any emergencies; if domestic law or practice provides for any differentiation in this regard; and if so, what safeguards are available to ensure that certain rights are exempt from derogations and that those subject to a derogations regime benefit from a proportionality and necessity test.

None of the responses provided to the questionnaire highlighted how derogations that are issued in the context of emergencies have already affected the implementation of decisions. On one occasion a State Party highlighted how the implementation of decisions of the ACERWC continued during the COVID-19 emergencies. Another State Party acknowledged that there may be certain specific circumstances in the future that could by law limit the implementation of the decisions of the ACERWC, such as the declaration of a state of emergency as a result of political unrest, natural disasters, etc. Yet another highlighted how emergencies such as COVID-19 force the diversion of resources and impede the implementation of decisions

The African Children's Charter does not have a general provision that applies to economic, social and cultural rights that limits the nature of obligations of State Parties by introducing the concepts of 'progressive realisation' within available resources. This is a reflection of how children's rights should be prioritised and given due consideration for implementation. In the context of children's rights, the Committee notes that more stringent criteria on derogation must be applied considering the vulnerability of children and the principle of the best interest of the child.

3.2.5.3. INFORMATION SOURCES

There is adequate literature that confirms that assessing and monitoring the implementation of decisions of human rights bodies requires a verifiable evidence base to establish the *status quo* about a specific human rights issue and assess whether any measures taken to implement a decision satisfy (in full, partly, or no implementation at all) what has been decided by the human rights body. There are multiple ingredients to make such an assessment work including proactive measures by the human rights body such as adapting flexible working methods, engagement in good faith by State Parties, active involvement for follow-up by CSOs, NHRIs, UN entities etc., victims having a voice, and adequate resources for follow-up.

There is evidence, including empirical, to show that none of these critical ingredients for the follow-up to the implementation of decisions are met in any of the regional as well as global human rights systems,⁸⁷ in part because of a lack of resources and credible information on the level of implementation due to lack of adequate reporting by States on implementation of decisions or lack of adequate engagement by State Parties with the Committee. This situation calls for a more constructive and proactive engagement by the African Committee to lead it to the adoption of more responsive and flexible working methods and collecting and verifying (as much as possible) information on the status of implementation from diverse sources. The Committee has adopted various modalities of engagement with States including following-up on its decisions on Communications during the State Party report considerations.

Moreover, the context of the exceptional instances where the space for CSO and NHRI engagement in a State Party is too limited, information on the implementation of decisions can be solicited from labor unions, lawyers' associations, faith-based organisations or other grassroots organisations. While preference should be given to organisations with physical in-country presence, as a measure of last resort, such information on the implementation of decisions can be sought from organisations which have knowledge of the issue but do not have in-country presence.

The pragmatic flexibility on the sources from where the ACERWC can receive or solicit information to assess the implementation of its decisions has backing in its working methods. As has been the case in the context of the African Commission (Rules 46 and 112(6)),⁸⁸ the Rapporteur for a communication 'may make such contact as is necessary with the relevant persons and institutions in the State Party concerned and take such action as may be appropriate to ascertain the measures adopted by the State Party concerned'.

3.3 INVESTIGATIVE MISSIONS

The scope and meaning of investigative mission for the purpose of this assessment is limited to investigation on children's rights in the context of Article 45 excluding on-sight investigation in the context of Communications. The reason for the exclusion is mainly due to the fact that the findings on on-sight investigations in the context of communications are preliminary findings which are further concluded by the decision on the merit of a Communication. Article 45 of the Charter mandates the ACERWC to investigate matters which fall within the scope of the Charter, to request information from State Parties, and to assess the extent to which State Parties implement the Charter.

Accordingly, the Committee has developed Guidelines on the Conduct of Investigations ('Investigations Guidelines') which cover the procedures and regulations for investigations as well as a range of issues from the definition of an investigation to the aim and types of an investigation, logistics, and follow-up of missions.⁸⁹ According to these Guidelines, the Committee may undertake two types of investigative missions, whether in response to any matter referred to it, or solely on its own initiative including on the basis of a communication indicating serious and systematic violations of the rights of the child in a State party. Since 2014, the Committee has undertaken five investigation missions which are carried out as per the scope of investigation mission for this assessment. The investigation missions were carried out to Central African Republic on the issue of children in conflict situation, to Malawi on the situation of children with albinism, to Mozambique on the situation of children in conflict situation in the northern Cabo Delgado, to South Sudan on the situation of children in conflict situation, and to Tanzania on the situation of children with albinism.

On-site investigations are followed by mission reports that contain the findings as well as recommendations to the State Party on the measures it should take in relation to the issues under investigation, and subsequently form part of the Activity Report of the Committee to the AU Assembly.

The recommendations of the Committee to the State party from the exercise of its mandate to undertake country visits, including investigations and fact-finding missions, are one of the sources of recommendations of the committee that needs monitoring of implementation. In this regard, the ACERWC has established follow-up mechanisms to ensure that

recommendations made in the report are followed through. For instance, the State Party that is the subject of the mission could be requested to present, within six months after the mission or the adoption of a decision by the Committee, a written response on any measures taken in the light of the recommendations made in the mission report.⁹⁰ CSOs could also be requested to provide information regarding the progress, or lack thereof, of the situation on the ground.⁹¹ The prime investigative mission conducted by the ACERWC is the August 2015 mission to Tanzania on the rights of children with albinism, which proves that the mechanism holds good potential for the realisation and implementation of children's rights.

Moreover, the Committee reports its findings and recommendations to the Executive Council of the African Union which can further issue a decision on the matter under investigation, follow up on the implementation of recommendations and engage the state party concerned. As part of the matters investigated by the Committee and subsequently reported to the AU Executive Council, the situation of children affected by the conflict in Cabo Delgado following the ACERWC's fact-finding mission to Mozambique in May 2022. In addition, the challenges of children with albinism following the ACERWC's fact-finding mission to the Republic of Malawi in August 2022. Regarding both investigated matters, in its Decision EX.CL/Dec.1201(XLII), the Executive Council called on the concerned State Parties to implement and comply with the recommendations of the ACERWC.

Furthermore, the Committee uses its other mandates State Party reporting procedure to further follow-up on the implementation of its recommendations. In its concluding observations to Tanzania on the first period report, the Committee recalled its recommendations from the investigative missions and urged the State Party to implement its recommendations. Moreover, the Committee uses its advocacy visits to follow-up on its recommendations from its investigation missions. The Committee followed-up on the implementation of its recommendations to South Sudan on the investigation mission during its recent advocacy mission for ratification.

PART 4: CROSS-CUTTING INTERVENTIONS FOR EFFECTIVE FOLLOW-UP ON IMPLEMENTATION

4.1 FINANCIAL, HUMAN, AND TECHNICAL RESOURCES

There is a lack of adequate resources both at the ACERWC as well as national levels. The impact of this on the implementation of the decisions of the ACERWC, as well as its follow-up, is a recurring theme that has transpired in most of the feedback provided by all four categories of responders to the questionnaire. The same issue is prominently present in the wealth of literature on the topic.

In this respect, the need to provide adequate resources to support and operationalise fully the mandate of the Working Group relating to the follow-up on decisions of the ACERWC deserves serious attention.

Many African countries might struggle to have the necessary financial resources to establish or designate a permanent body as being responsible for the follow-up to the implementation of recommendations and decisions. In those instances, the role *ad hoc* bodies may be considered to ensure implementation until such time permanent structures are put in place. An instrumental example can be made of Burkina Faso in the *Konaté v Burkina Faso* (2016)⁹² at the African Court, where an *ad hoc* committee was appointed by the executive branch of the Government, which ensured the implementation of the judgment.

4.2 REFERRAL TO THE EXECUTIVE COUNCIL/ ASSEMBLY

The referral of non-compliance with the Committee's decisions to the AU Executive Council and the Assembly is provided for in the Revised Guidelines for the Consideration of Communications and Monitoring Implementation of Decisions ("Communications Guidelines").⁹³ The Committee has begun exploring this avenue by referring the matter of non-compliance by concerned state parties in its activity reports to the Executive Council, as adopted by the Executive Council in February 2022 through Decision EX.CL/Dec.1155(XL) which 'called on the concerned Member States to comply with their obligations under the Charter by responding to the Committee's requests and implementing the Committee's decisions'. The possibility of referring specific cases could be an opportunity to be utilized as such approach has been used by the other organs. The African Commission, referred cases to the Executive Council where States Parties have not implemented its decision. For example, in its activity report, the Commission highlighted specifically the case of *Kenneth Good v Botswana* noting that it would 'like to bring to the attention of the Executive Council the refusal of the Republic of Botswana to implement the Commission's Decision... It will be recalled that this decision was referenced in the Twenty-Eighth Activity report of the Commission which was authorised for publication by the Executive Council through Decision EX.CL/600 (XVII). The Commission is bringing this refusal to the attention of the Council for appropriate action.'⁹⁴

In order to ensure the effective nature of the referral procedure, more engagements are needed with the Policy Organs of the Union to identify modality of enforcement that can be implemented by the Policy Organs.

4.3 MEMORANDUM OF UNDERSTANDINGS OR STRUCTURED ENGAGEMENTS

Some treaty bodies enter into MOUs with various bodies. Some of these MOUs, apart from facilitating collaboration and consistency, can play a role in facilitating the effective implementation of decisions. In this respect, inspiration can be drawn from the experience of the African Commission and the Human Rights Committee. The elements of the MOUs that relate to the 'establishment of regular and systematic modalities for sharing information between the special procedures of the Human Rights Committee and the African Commission; promotion of synergies and collaborative actions to bolster peer-to-peer exchanges and learning; consideration of joint actions including country visits, public statements, press releases, awareness raising events and participation in each other's events and thematic research,'⁹⁵ can consolidate the relationship between the UN and the African regional systems.

Such an approach could be more beneficial in the instances where, for example, a significant number of African countries engage with the UN Committee on the Rights of the Child on a more regular basis but the same cannot be said of their engagement with the African Committee.

There are also few examples, albeit *ad hoc*, of follow-up of the decisions of the African Committee by the UN Committee on the Rights of the Child. For example, in 2016, the CRC Committee recommended to the Government of Kenya that it:

'Fully implement the decision of the African Committee of Experts on the Rights and Welfare of the Child in the case entitled "Institute for Human Rights and Development in Africa and Open Society Justice Initiative on behalf of children of Nubian descent in Kenya v. the Government of Kenya" (decision No. 002/Com/002/2009)...'⁹⁶

In 2018, the CRC Committee recommended to Mauritania that:

'...the State Party cooperate with the African Committee of Experts on the Rights and Welfare of Children of the African Union on the implementation of the Convention and other human rights instruments, both in the State Party and in other States members of the African Union, including by complying with African Committee of Experts Decision No. 003/2017.'⁹⁷

In 2016 the Government of Senegal, under the heading 'Cooperation with regional bodies' was recommended to 'cooperate with the African Committee of Experts on the Rights and Welfare of the Child, of the African Union, on the implementation of the Convention and of other human rights instruments, both in the State Party and in other African Union member

States.⁹⁸ It is not clear why the decision of the ACERWC in the *Talibe Case* was not referenced by the CRC Committee for further follow-up. Such shortcomings can be addressed through MOUs or structured engagements, as also underscored in some of the responses to the questionnaires.

The collaboration between the ACERWC and other similar organs, especially the African Commission and the African Court should be viewed as a 'two-way traffic'. In other words, such a collaboration should add critical value to the two (or three as the case may be) parties involved. In this respect, for example, it is critical for the ACERWC to closely monitor the judgments of the African Court that have children's rights implications and assist in their implementation in the course of exercising its mandate. An interesting case to start with might be the 2018 judgment of the African Court on *the IHRDA and APDF case*,⁹⁹ which among others, found a violation of Articles 2 and 21 of the African Charter on the Rights and Welfare of the Child, on the minimum age for marriage; and Article 3 of the ACRWC on the right to inheritance for women and children born out of wedlock; and Articles 1(3) and 21 of the ACRWC on the elimination of traditional and cultural practices harmful to the rights children.¹⁰⁰ The judgment requested Mali to amend its family code, a topic that ACERWC can help to assist in its implementation by engaging with the State Party during the State Party report considerations.

4.4 OUTREACH/CONSULTATIONS

The use by the African Committee, of its 'convening power' to facilitate more exchange of views on the implementation of its decisions to solicit concrete recommendations, shows that such engagements play a key role in enhancing the implementation processes. The experience of both the African Commission and the African Court could be instructive in this respect.

For example, the African Court¹⁰¹ organised an International Conference on 'The Impact and Implementation of decisions of the Court: Challenges and Prospects' which was held in Dar es Salaam from 1 to 3 November 2021.¹⁰² The Conference offered an opportunity to assess and analyse how the Court's decisions are received and implemented domestically across the African continent and their impacts on the enjoyment of human rights.¹⁰³ The presence of various stakeholders, including the reported representatives from 44 African Union (AU) Member States does indeed assist in enriching the discussions and ultimate recommendations for improvement. In particular, the Executive Council in 2014 made a decision with respect to the African Court that stated that 'the Executive Council called on the African Court to 'propose, for consideration by the PRC, a concrete reporting mechanism that will enable it to bring to the attention of relevant policy organs, situations of non-compliance and/or any other issues within its mandate, at any time, when the interests of justice so.'¹⁰⁴

Moreover, the importance of having direct access to the African Court should not only be appreciated in respect of the 'hard power' it brings for the ACERWC decisions but for its 'soft power' too. In other words, its value should also be appreciated for the kind of potential pressure for implementation that it could create within the structures of a State.

In the latest report to the Executive Council in February 2023, the African Union Commission on International Law (AUCIL) has indicated that it has completed its study on granting the ACERWC direct access to the African Court. This is intended to create a pathway for the ACERWC, similar to the African Commission, to refer cases of non-compliance to the African Court. Unfortunately, the internal process to finalise such a decision has taken too long, and its finalisation will inevitably increase the ACERWC's efforts to improve the implementation of its decisions.

Outreach and engagement with other stakeholders also plays a critical role in increasing implementation. The Committee has increased its collaboration and engagement with CSOs and NHRIs in the areas of implementation of its decisions and recommendations. In 2023, the Committee organised a workshop on the implementation of decisions with NHRIs and CSOs with a view to create awareness about the sources of decisions of the Committee and the role NHRIs and CSOs can play in advancing implementation.¹⁰⁵ The Workshop offered an opportunity to discuss about how implementation of the decisions and recommendations of the Committee can be integrated in the operations and structures of NHRIs and CSO networks.

From the various engagements and the responses of NHRIs and CSOs, suggestions are made to increase engagement in the implementation of decisions is concerned by exploring new modalities. For example, inspiration can be drawn from the European Implementation Network, which 'works with members and partners, lawyers, civil society organisations and communities, from across the Council of Europe region to advocate for the full and timely implementation of judgments of the European Court of Human Rights.'¹⁰⁶ The work of the Network is informed by the thinking that 'most successful work on the implementation of judgments combines advocacy at the national level, with engagement with the supervision process at the Council of Europe and should be done through advocacy, training and resources.

All NHRIs that responded to the questionnaire welcomed the engagement of the ACERWC with NHRIs on the follow-up to the implementation of its decisions. All NHRIs also agreed that the existence of national mechanisms for implementation will have a significant and effective impact on follow-up on the implementation of the decisions of the ACERWC. In addition, since NHRIs enjoy a proven state recognition, it is argued by NHRIs that States are increasingly inclined to accept their opinions and recommendations, and are often keen to avoid being accused by them for not implementing the decisions of the ACERWC. A leaf could also be taken from the African Commission which 'has instituted new procedural rules that strengthen the role of national human rights commissions in compliance monitoring and reporting'¹⁰⁷

Few CSOs and NHRIs underscored the need for the Committee to facilitate the protection of actors (victims, CSOs, NHRIs, whistleblowers and others) from reprisals for their engagement on both the implementation of decisions in the domestic sphere and its follow-up.

Attention has also been drawn by a NHRI that in the instances where a decision by the ACERWC was made during the time of a previous government, and before full implementation of a decision, a new government is in power either through election or other means, implementation, as well as its follow-up, might face a challenge. In such instances, it is recommended that the engagement strategy by the ACERWC should take this reality into account. It could mean, for example, that the new administration would need more background information about the decision to implement to facilitate follow-up. Another

NHRI also highlighted the added value of the ACERWC including in its decisions, as appropriate, an explicit reference to the role of NHRIs. One unique observation made is the role that they can play in amicable settlement in the instances where there is disagreement between the State Party and a complainant on the full implementation or otherwise of a decision. Many NHRIs underscored the role of capacity building of local actors to improve follow-up on the implementation of its decisions. For example, one NHRI underscored the importance for the ACERWC to undertake training sessions (workshops, panels) with lawyers and magistrates who hear juvenile cases, as this could broaden the scope of actors who can assist in the implementation of its decisions.

4.5 OTHER/MISCELLANEOUS CONSIDERATIONS AND LAYING BASIS FOR RECOMMENDATIONS

- One of the critical roles for the implementation as well as follow-up to decisions of the ACERWC, is that of Parliaments. This role has been emphasised, especially by few NHRIs, and one area of consideration, for example, is whether the inclusion of a member of Parliament in the delegation of a State Party during a constructive dialogue could facilitate the implementation of decisions and their follow-up.
- The possibility of preparing action plans by a State Party on the implementation of decisions has been highlighted as a good example. A similar exercise has been undertaken, for example by South Africa, where the recommendations of the ACERWC were shared with the relevant cabinet ministers and parliamentarians which was followed up by an action plan for implementation.
- A more systemic use of the various mandates of the ACERWC, especially during the follow-up visits within the State party reporting process, to follow up on decisions under individual complaints should be strengthened. There are multiple examples where the African Commission's promotional mandate has been instrumental in following up on the implementation of its decisions- this is the case for example in respect of a landmark African Commission decision on statelessness and the right to citizenship in Cote d'Ivoire.¹⁰⁸
- Some countries maintain a database to monitor the recommendations from the UN system and/or other regional human rights organisations. It might be difficult to argue that developing such a database is part and parcel of the obligations of States Parties to the Charter. The ACERWC will consider if such a recommendation in the concluding observations or other decisions it issues to State Parties is appropriate or useful. The role of online platforms (digital uplift) in supplementing *in-situ* visits for follow-ups on the implementation of decisions needs closer consideration.
- There are already promising examples of enhanced use of IT tools within the African Union. Such tools can help to enhance and facilitate human rights monitoring. For example, HURIDOCS, which has also worked with organisations (such as the Institute for Human Rights and Development in Africa) on the African continent, has undertaken useful work in respect of preserving information about human rights violations and managing complaints of human rights abuses made to independent monitoring bodies

etc. It could be worth exploring the possibility of a partnership between the ACERWC and like-minded organisations to develop an interactive online tool that helps to collect information on the implementation of recommendations and decisions of the former.¹⁰⁹

- The nature and magnitude of the decisions made in the context of individual communications, and the kind of complexities they entail for their implementation by States need closer scrutiny. For example, the level of engagement with a State, as well as the amount of time allocated for implementation, in respect of a case that will request the release of a child who has been deprived of his liberty should surely be different from a decision that is asking for the amendment of a provision in the criminal law or from one that is asking for the establishment of a commission of inquiry to investigate alleged systemic violations of a right.
- The designation (or lack thereof) of focal points for follow-up on the implementation of decisions is an important element for supranational bodies to monitor the implementation of their decisions. Within the African continent, such a request to designate a focal point is not peculiar to the bodies within the African human rights system. For example, there are instances where member States of the AU have designated focal points for monitoring and/or reporting on the implementation/enforcement of decisions. In this respect, a case in point is the ECOWAS Community Court of Justice (ECCJ) which has benefited from the adoption of mechanisms for the implementation of its decisions by Burkina Faso, Ghana, Guinea, Mali, Nigeria and Togo.¹¹⁰
- The importance of continued engagement with complainants to include their voices and undertake an assessment and follow-up to the implementation of decisions is obvious. What is less obvious is whether there should be a differentiation of the level of engagement based on the nature of the remedy recommended by a decision. For example, if a decision under the communications procedure has explicitly provided for redress for an individual child, it can benefit more from the direct involvement of the child and/or his or her legal representative as compared to a decision that is aimed at non-repetition of a violation, or amendment/adoption of a law. Hence the level of engagement with complainants needs to appreciate these nuances. However, their role in popularizing the decisions of the Committee, monitoring implementation, and engaging local actors is critical. Engagement with complainants should also continue during the ACERWC's visit a country for follow-up to concluding observations, investigative missions, meetings, etc.
- It is also provided by few respondents that the current approach to follow-up to the implementation of decisions should not be based on the assumption that State entities have a good understanding of the Charter and the ACERWC's decisions. It is also recommended that mechanisms/platforms for countries to learn from each other, including on the implementation of decisions, should be facilitated often.

PART 5: RECOMMENDATIONS

The following areas present significant avenues to improve the implementation of the recommendations and decisions of the ACERWC by monitoring stakeholders:

5.1 RECOMMENDATIONS TO STATES

States Parties to the ACERWC are recommended to:

- Submit the reports on the implementation of decisions and recommendations to the Committee in a timely manner, in compliance with their obligations under the Charter, the State Party Reporting Guidelines, and Guidelines for Consideration of Communication for schedules and periodicity established for reporting ;
- Timely disseminate the recommendations and decisions of the ACERWC from its various mandates such as concluding observations and recommendations on State Reports, decisions on communications, recommendations on findings of missions, letter of urgent appeals, among others, with key implementers, while actively monitoring its effective implementation through an established calendar ;
- Establish or strengthen existing inter-ministerial coordination mechanisms that are involved in the implementation of Concluding Observations and other decisions of the Committee to ensure effective coordination among relevant ministries, agencies. States parties should therefore ensure these mechanisms include robust follow-up procedures to facilitate related action in different sectors and levels for timely reporting and effective implementation of the ACERWC's decisions;
- Adopt or review legislation that explicitly recognises the decisions issued by the ACERWC and establishing their legal status within domestic law including mechanisms for domestic enforcement procedures for enforcing the decisions of the ACERWC ;
- Ensure the continuity of the implementation of decisions and recommendations issued by the ACERWC, particularly in situations where a change of government occurs during the process. This includes considering the establishment of mechanisms for knowledge transfer between outgoing and incoming governments, ensuring that the decisions and recommendations of the ACERWC are duly considered within the scope of their mandate ;
- Establish or strengthen National Mechanism for Reporting and Follow-up with a mandate that includes the implementation and follow-up of recommendations and decisions of the ACERWC ;
- Establish or designate a permanent body responsible for the follow-up to the implementation of recommendations and decisions ;

- Give due consideration to the establishment or designation of *ad hoc* bodies by the executive branch of the Governments, to ensure the implementation and facilitate the follow up of the decisions on Communications ;
- Designate specific national focal points within governments relating to the implementation of the ACERWC's decisions. These focal points should be responsible for ensuring timely communication and coordination among government entities and external stakeholders. Where applicable, they should also engage with the Committee and follow-up on the ACERWC's decisions ;
- Invest in capacity-building initiatives for government officials and relevant stakeholders to enhance their understanding of the ACERWC's decisions and recommendations. Training programs should focus on the technical, legal, and procedural aspects of effective implementation ;
- Ensure that the recommendations and decisions of the ACERWC are integrated into national legislation, policies, and action plans to create a clear roadmap for implementation ;
- Develop action plan on the implementation of decisions that outlines specific actions, timelines, and responsibilities for the implementation of the ACERWC's recommendations and decisions. The plan should be regularly reviewed and updated to reflect progress and emerging challenges ;
- Prioritize transparency in the implementation process by making information about the implementation of ACERWC decisions accessible to the public and stakeholders;
- Promote greater involvement of civil society, NGOs, NHRI's and academic institutions in the implementation process. Collaborative platforms should be established to ensure that non-governmental stakeholders have a voice in the implementation and monitoring of decisions ;
- Develop a database or integrate the Committee's recommendations into an existing system to ensure it includes a comprehensive record of all decisions and recommendations issued by the Committee ;
- Allocate adequate financial and human resources to ensure the effective implementation of the ACERWC's decisions and recommendations. This includes ensuring that relevant ministries and agencies have the necessary resources and authority to carry out these tasks effectively ;
- Ensure a continuous engagement with the committee on the implementation of decisions and recommendations, through facilitating follow-up activities of the committee, consultations, and dialogue. This ongoing engagement should involve facilitation of visits and follow-up on recommendations and decisions issued by the Committee ;
- Strengthen the engagement and interaction with the Committee's special mechanisms, including the country rapporteurs, by facilitating contact and meetings as is necessary with the parties, relevant persons and institutions in the State Party, and if requested, provide information and clarification on steps taken to implement the recommendation.

5.2. RECOMMENDATIONS TO NHRI'S

NHRIS ARE RECOMMENDED TO:

- Promote the ACERWC's decisions and recommendations by disseminating, popularizing and making them known at the national level ;
- Advocate for the timely and systematic implementation of the Committee's decisions and recommendations through active engagement with relevant national stakeholders, including government ministries, National Mechanism for Reporting and Follow-up and CSO's;
- Provide support to governments on measures that should be undertaken to implement through their advisory role;
- Integrate the decisions and recommendations of the Committee in their activities and pragmatic interventions;
- Contribute to the collection, verification, supplementation and clarifications of information on the implementation of decisions and recommendations of the ACERWC at the national level;
- Leverage their affiliate status with the ACERWC to monitor the implementation of its recommendations and decisions. This includes collect updates and ensuring that their activity reports to the Committee clearly highlight the progress made, or the lack thereof, in implementing the ACERWC's decisions and recommendations within their respective countries;
- Monitor the effective implementation at national level by ensuring proper oversight of legislation and practices in relation to ACERWC's decisions and recommendations;
- Collaborate with the Committee during its follow-up undertaken regarding implementation of decisions and submission of subsequent reports.

5.3 RECOMMENDATIONS TO CSO'S

CSOs ARE ENCOURAGED TO:

- Advocate for the timely implementation of decisions and recommendations issued by the ACERWC at the national level through public campaigns, media outreach, and direct engagement with national authorities. This advocacy should focus on ensuring that these decisions are prioritized, implemented effectively, and given continuous attention ;
- Track and collect information on the status of implementation from diverse sources at national level. This includes the verification of information received on the implemented recommendations and the progress made on the non-implemented ones;
- Engage and work closely with national governments, ministries, and relevant stakeholders to ensure that decisions are incorporated into domestic policy frameworks. This can include providing legal and technical expertise, conducting awareness-raising activities, and advocating for necessary reforms;
- Provide Training to both governmental bodies and the general public on the importance of the decisions and their implementation. This should involve enhancing the capacity of relevant stakeholders to effectively implement and monitor decisions;
- Civil society organizations engaged in litigation should be proactive on the follow-up stage and communicate information on the progress made or lack of implementation to the Committee;
- Ensure continued engagement with complainants to include their voices and undertake an assessment and follow-up to the implementation of decisions and report the same to the Committee;
- Integrate implementation and follow up considerations as one of the fundamental parts of their litigation strategies.

ANNEXURE I : REPORT ON THE LEVEL OF IMPLEMENTATION OF THE DECISIONS OF THE ACERWC

BACKGROUND

In accordance with Article 44, the African Committee Experts and Rights Welfare of Child (ACERWC/the Committee) has the mandate to consider Communications against States Parties of alleged violations of the African Charter on the Rights and Welfare of the Child (African Children's Charter/the Charter). If the Committee finds a violation of the Charter, it will issue recommendations for the concerned State Party to comply with, in order to rectify the violation. As of December 2022, the ACERWC had issued decisions on the merits of seven (8) Communications against the following State Parties, Cameroon, Kenya, Mauritania, Senegal, Sudan, Tanzania, Uganda and Mali and amicably settled two (2) Communications against Malawi and Sudan. The Decisions of the Committee in each of the Communications contain recommendations that need implementation through concrete measures by the Respondent State to redress the violations the Committee found. The Committee has various modalities of follow-up mechanisms to ensure the effective implementation of its decisions either it's a decision on the merits or an amicable settlement, through the Respondent's State implementation report, the implementation hearings and the Committee's follow-up country visits. In addition, the Committee utilize State Party reporting procedures to follow up the implementation of its decisions and the updates shared by the NHRIs that is granted an Affiliate status before the Committee on the implementation of decisions of the Committee by their respective State Parties.

The purpose of this report is to provide information on the status of implementation of the decisions issued by the ACERWC as of December 2022.

METHODOLOGY

This report is developed based on the available information from:

- Implementation reports on Communications submitted by Respondent States;
- Sessions reports pertaining to constructive dialogue during the state reporting procedure and implementation hearings;
- State party reports;
- Follow-up mission reports; and
- Information obtained from the ACERWC's engagement with NHRIs and CSOs.

CASE NO	FOLLOW-UP ACTIVITIES	RECOMMENDATIONS	INFORMATION ON IMPLEMENTATION
<p>Communication No. 1/2005</p> <p>Michelo Hunsungule and others (on behalf of children in northern Uganda) v. The government of Uganda</p>	<p>No follow-up mission undertaken</p> <p>No implementation report submitted by the State.</p> <p>Fact-finding mission carried out while the case was pending and the main violation found by the Committee is the use of children in hostilities.¹¹¹</p> <p>Other sources: information provided by the NHRI in Uganda</p>	<p>Summary: The Communication concerns the recruitment and use of children, sexual violence against children, the killing and maiming of children, the abduction of children, and attacks on schools and hospitals by the Lord's Resistance Army (LRA) and abuse caused by the UPDF Solders.</p> <p>The decision on the merits adopted in April 2013.</p> <p>Violations Found: The Committee found a violation of</p> <p>Article 1(1) Obligation of State Parties</p> <p>Article 22 Armed Conflicts</p>	<p>The following information was provided by the Uganda Human Rights Commission.¹¹²</p>

		<p>1. In the interest of curbing an environment that perpetuates impunity and limits accountability for violence against children, provide an explicit and comprehensive provision in its Penal Code providing for the criminal responsibility of anyone who recruits or use persons below the age of 18 in situations of hostilities, tension or strife, in line with its obligations under the African Children's Charter, and other applicable instruments.</p>	<ul style="list-style-type: none"> • The Government of Uganda signed a Peace Agreement with the LRA and it was unanimously agreed that the Government should set up both formal and non-formal justice mechanisms to address accountability and reparations on atrocities committed in Northern Uganda. • The Government also enhanced its legislative framework to cover some of the crimes committed during the LRA. the Penal Code Act CAP 120 and the Uganda Peoples' Defence Forces Act 2005 provide for criminalisation of the recruitment of children in armed forces. • Uganda ratified the Rome Statute of the International Criminal Court on 14th June, 2007 and domesticated it by enacting the International Criminal Court Act, 2010 which prohibits forceful recruitment of children during armed conflict. • In 2008, the Government of Uganda established a special division of Uganda's domestic judicial system with jurisdiction over those accused of serious crimes and crimes against humanity thus the War Crimes Division of the High Court was established which later evolved in the International Crimes Division of the High Court in 2010 with jurisdiction to try crimes under the Rome Statute. • The Government of Uganda also enacted the Amnesty Act, 2000 leading to the Amnesty Amendment Act, 2006 and established the Amnesty Commission. • The Government also developed the Transitional Justice Policy and enacted the Transitional Justice Act.
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		<p>2. Recommends that the Government of Uganda should implement fully the standard operating procedures (SOPs) for the reception and handover of children separated from armed groups or forces, as well as undertake comprehensive DDR programmes, in collaboration with African Union, United Nations, and other partners, in a child-centered manner so as to promote children's best interests</p>	<ul style="list-style-type: none"> • The process of DDR was spearheaded by the Amnesty Commission and assisted by Humanitarian organisations such as World Vision, UNICEF and Save the Children, UHRC, CSOs among others who offered medical assistance, family tracing and resettlement, counselling and psychosocial support and educational programmes such as life skills to resettle children back in normal life. • About 35,000 children abducted by the LRA and used in direct and indirect conflict have since returned to Uganda while more continue to return. • The government developed a strategic plan on resettlement and re-integration of war victims and established programmes such as the Northern Uganda Reconstruction Programme and the Peace, Recovery and Development Plan. • Under the PRDP, the strategy for the DDR focused on provision of resettlement packages to all ex-combatants, rehabilitation of the victims, facilitating reunion with their families and providing opportunities to access existing service providers. • Under the African Union Commission project, about 400 LRA Ex-child soldiers were provided with skills training in tailoring, bicycle repair, brick laying, carpentry and joinery. • Deliberate efforts were made by the government to increase budgetary allocation to the education sector to cater for the LRA returnee children to ensure that children have access to education for example in the Financial Year 2006/07 the Education sector budget was increased from shs 683.60 billion which is 24% of the national budget allocation to shs.717.80 billion in the FY 2007/08. • The government also embarked on infrastructure development such as construction of roads, dams and ensured that there are adequate schools and classrooms within easy reach of all categories of children including girls and children with disabilities. • In 2007, the Government launched Universal Secondary Education in addition to the Universal Primary Education as a measure to ensuring that all children access education. • In May, 2011 UPDF developed Standard Operating Procedures for the reception and handover of children rescued from the LRA.
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		<p>3. To take all necessary legislative, administrative, and other measures to ensure that children are registered immediately after birth and that they and their parents or guardians have prompt and free access to their birth certificates. Comprehensive measures, including legislative and administrative measures, should be put in place as a matter of urgency to improve the birth registration system in such a way as to ensure that it is universally accessible to all children on the basis of nondiscrimination.</p> <p>4. To prepare and effectively implement a national action plan to proceed with the registration of those children who have thus far not been registered, and to issue full birth certificates, free of charge, to those who have registered but have not been able to access a birth certificate</p>	<ul style="list-style-type: none"> • The government embarked on countrywide sensitisation of the masses on the importance of birth registration. • Registration of Persons Act, 2015 was enacted and it provides that a child should be registered immediately after birth either by a parent, guardian or caretaker. Registration of every birth in Uganda is free and compulsory. • Registration at birth is also allowed in the hospitals since mothers are allowed to register at the point of delivery in the hospital or when they take the children for immunisation.
		<p>5. To establish administrative procedures and practices in relation to all armed forces and units of defence, including private security operations, which ensure that, in instances where there is no credible proof of age, or in the case of conflicting or inconclusive evidence of age, the person alleged to be or alleging to be a child shall not be recruited or used in any situations of hostilities, tension or strife until conclusive proof of age is provided to confirm that the person is aged over 18 years.</p>	<ul style="list-style-type: none"> • UPDF has made it compulsory for those applying to join the Forces to present their birth certificate as well as age verification report from the Doctor in addition to the National Identification cards
		<p>6. The Government of Uganda should rely on forms of accountability other than detention and criminal prosecution, that take the best interest of the child as the primary consideration and promote the reintegration of the child into his or her family, community and society, including the use of restorative measures, truth-telling, traditional healing ceremonies, and reintegration programmes</p>	<ul style="list-style-type: none"> • The Amnesty Act (Cap 294) provides amnesty to persons for participating in hostilities including children and provides for rehabilitation and reintegration of children associated with armed conflicts. • The Amnesty Commission provided amnesty to children involved in conflict and registered and assisted over 5,677 children who were involved in Northern Uganda conflict. • The Government dropped charges against children who were abducted by rebel forces
		<p>7. To report on the implementation of these recommendations within six months from the date of notification of this decision.</p>	<p>No report submitted</p>

<p>Communication: No. Com/002/2009</p> <p>Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of children of Nubian descent in Kenya v. The Government of Kenya</p>	<p>Through the State Party reports, the Committee received information that the situation has improved. The Committee recommended for improved implementation.</p> <p>The Committee also carried out follow-up mission in 2013.¹¹³</p> <p>In 2014, the Applicants submitted a status report.</p> <p>Implementation hearing during in 2017 during the 29th session.</p> <p>Other sources- Report of the NHRI in Kenya, CSO complementary report,</p>	<p>Summary: The Communication raised the issue of the right to birth registration and nationality of children of Nubian Descents in Kenya.</p> <p>The decision on the merits was adopted on 22 March 2011.</p> <p>Violations Found: The Committee found a violation of</p> <ul style="list-style-type: none"> • Article 3 Non-discrimination; • Articles 6(2), (3) and (4) Name and Nationality; • Article 11(3) Education • Article 14(2) (b), (c) and (g) Health and Health Services; • The Committee recommended that the Government of Kenya should: 	
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		<p>1. Take all necessary legislative, administrative, and other measures in order to ensure that children of Nubian descent in Kenya, that are otherwise stateless, can acquire a Kenyan nationality and the proof of such a nationality at birth.</p> <p>2. Take measures to ensure that existing children of Nubian descent whose Kenyan nationality is not recognized are systematically afforded the benefit of these new measures as a matter of priority.</p> <p>3. Implement its birth registration system in a non-discriminatory manner, and take all necessary legislative, administrative, and other measures to ensure that children of Nubian descent are registered immediately after birth</p>	<ul style="list-style-type: none"> • The descendants of migrants and stateless persons and migrants and stateless persons eligible for registration for citizenship according to the 2010 constitution. • Establishment of a guideline on orphan and vulnerable children; • Distribution of registration guidelines to registration agents, ensuring that, government registers all birth as soon as they occur irrespective of any circumstance, • Putting in place a monitoring plan in health facilities to ensure that every birth is registered at any maternal health outlets, conducting accelerated mobile Registration; • Opening an 8 year window of registration of children up to 29 August 2019.¹¹⁴ <p><u>State party report 2018:</u>¹¹⁵</p> <ul style="list-style-type: none"> • Right to nationality guaranteed by the Kenyan Constitution in Articles 14,15 and 16 provide for the right to nationality in Kenya by birth or registration and dual citizenship. Article 53 of the Constitution guarantees every child the right to a name and nationality from birth. Accordingly, birth registration is not tied to citizenship and therefore children of Nubian descent born in Kenya are accorded birth registration. • The Kenya Citizenship and Immigration Act No. 12 of 2011 provides for citizenship by birth, dual citizenship, and citizenship by presumption for foundlings who are or appear to be less than eight years old, citizenship by marriage, stateless persons, migrants and descendants of stateless persons and migrants. Children of Nubian descent born in Kenya are accorded citizenship as per the provision of this Act in so far as they meet the required measures set out. • The State Party has implemented the Integrated Population Registration System which will be a database of all the details of an individual including information on birth and death, marriage and citizenship status. In March 2015, the system had recorded information for 16 million Kenyans and 200,000 refugees. <p><u>KNCHR</u> ⁻¹¹⁶</p> <ul style="list-style-type: none"> • The Children Act (No. 29 of 2022) provides as follows: • Every child shall have a right to a name and nationality and, as far as possible, the right to know and be cared for by their parents. • Every child has the right to be registered in the Register of Births immediately after birth in accordance with the Births and Deaths Registration Act (Cap. 149). • A child found in Kenya who is or appears to be less than eight years of age, and whose nationality and parents are not known, shall be presumed to be a citizen by birth <p><u>CSO report:</u>¹¹⁷</p> <ul style="list-style-type: none"> • The Nubian Rights Forum (NRF) in collaboration with UNHCR and the Department of Civil Registration have previously mounted birth registration campaigns in various parts including Kibra, to ensure registration of all children. • The just concluded Kenya Population and Housing Census 2019 identified Nubians an ethnic code which provided room for children and adults of Nubian descent to be identified and literally count.
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		<p>5. To report on the implementation of these recommendations within six months from the date of notification of this decision.</p>	<p>One report submitted</p>

<p>Communication: No. Com/003/2012</p> <p>The Centre for Human Rights (University of Pretoria) and La Rencontre Africaine pour la Defense Des Droits de l'homme (Senegal) V. The Government of Senegal</p>	<p>- There was an implementation hearing held during the 29th Session of the Committee.</p> <p>- No monitoring mission has been conducted.</p>	<p>Summary: The Communication was submitted against Senegal concerning the violation of rights talibé children face in Senegal. These children are supposed to receive education, but instead they are being forced to beg on the streets without being provided with education, health services, and food. The talibé are also separated from their parents.</p> <p>The decision on the merits was adopted on 15 April 2014.</p> <p>Violations Found: The Committee found a violation of</p> <ul style="list-style-type: none"> • Article 4 Best interests of the child • Article 5 Survival and development • Article 11 Education • Article 14 Health and health services • Article 15 Child labour • Article 16 Protection against abuse and torture • Article 21 Protection against harmful social and cultural practices • Article 29 Sale, trafficking and abduction <p>The Committee recommended the Government of Senegal :</p>	
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		<p>1. To ensure that all talibés are immediately taken back from the streets to their families</p> <p>2. Through cooperation with the neighboring countries (from where some children are coming), international and national organizations, facilitate the reunion of the talibés with their families</p>	<ul style="list-style-type: none"> On the issue of the children of the street, it was started, on June 30, 2016, a withdrawal plan structured around three components (Withdrawal and reintegration, Communication And Coordination). This initiative Results from the presidential directive during the Council of Ministers of June 22, 2016. This plan is operationalized by a steering Committee composed of all stakeholders. It has resulted in the removal of 1,585 children from the streets and for their social reintegration, 24 families and 15 koranic schools "Daaras" have received food kits, hygiene products and financial aid. Also 60 families were enrolled in the Family Security Scholarship Program (PNBSF). The Directorate of Air and Border Police (DPAF) has increased control of migration flows to prevent children from being transported by traffickers. Thus, border checkpoints have increased from 45 in 2014 to 77 in 2018. Children must now be accompanied by their legal representative to cross the border, or they will be deported to the country of origin and handed over to the police of that state.
		<p>3. To establish functioning and effective institutions and mechanisms to provide the talibés with short and long term, appropriate psychological, medical and social assistance in order to promote their full recovery</p> <p>4. To establish minimum norms and standards for all daaras relating to health, safety, hygiene, education content and equality, and accommodation;</p> <p>5. To integrate the daaras into the formal education system.</p> <p>6. To inspect the daraas regularly to ensure that the standards set out in the Charter and local legislation are compiled with and close all the daaras which are not in compliance with the required standards</p>	<ul style="list-style-type: none"> During the implementation hearing held at the 29th session from May 2 to 9, 2017, the delegation of the Government of Senegal provided updates on the implementation including; the allocation of budget for the implementation of the recommendations (one hundred million CFA), supporting Daras with nutrition, collaborating and signing of bilateral agreements with border countries for the return of children to their homes, accelerating the adoption of a child rights code, the creation of 3 new children's courts in areas that do not have any, construction of 74 Daras in the Northern part of the region, drafting of curriculum for Daras that includes learning of Quran, Arabic and French subjects, setting up of norms, standards and time schedules for Daras and strengthening access to medical coverage for Talibé children with initiative for universal health coverage for children.

		<p>7. Ensure that all the perpetrators are brought to justice and held accountable for their actions with penalties commensurate with the severity of their crimes</p>	<ul style="list-style-type: none"> • The Ministry of Justice has, through circular n°4131 MJ/DACG of August 11, 2010, instructed prosecutors to systematically prosecute the perpetrators of these acts (child trafficking) and to request firm sentences against them. • All forms of trafficking in persons are severely criminalized by law and accordingly several prosecutions and convictions were noted in the annual report of the National Unit for Combating Trafficking in Persons (CNLTP) and in the study on the evaluation of the law.
		<p>8. On the talibés right to education:</p> <p>i. Make sure that education contributes in promoting and developing their personality, talents and their physical and mental abilities to their fullest potential,</p> <p>ii. The government's education policy should be reviewed in light of fostering respect for human rights and fundamental freedoms, and</p> <p>iii. Ensure the provision of free and compulsory basic education.</p>	No information available
		<p>9. To train law enforcement and judicial personnel, social workers, traditional and religious leaders, parents and the community at large on children's rights in general and prohibitions of child begging in particular;</p>	<ul style="list-style-type: none"> • In 2016, the Ministry of Health and Social Action validated a contingency plan for the emergency child protection sector and the training of actors.
		<p>10. To conduct joint studies with the concerned neighboring State Parties on the situation of Talibés' children in Senegal and countries of origin;</p>	No information available

		<p>11. To fully recognize and implement the rights included in the African Children's Charter and in other international instruments;</p> <p>12. While complying with its reporting obligation in accordance with article 43 of the Charter, the state party should provide the Committee with sufficient information on the progress of implementing of the current decision;</p> <p>13. To cooperate with the African Union, International and National Organizations, the Un Agencies, particularly Unicef, ILO, WHO, with a view to fully implement these recommendations and alleviate the challenges of talibés in Senegal; and</p> <p>14. Report to the Committee on all measures taken to implement the decision of the Committee within 180 days from the date of receipt of the decision.</p>	No information available
<p>Communication: No. Com/004/2014</p> <p>Institute for Human Right and Development in Africa V. The Government of Malawi</p>	<ul style="list-style-type: none"> - The Government submitted 8 reports on the implementation. - The Committee also held implementation hearing in the presence of both parties. - Fact finding mission was conducted in 2022 where the Committee followed-up on the implementation of the amicable settlement 	<p>Summary: This Communication concerns the age of the Child in Malawi where it is argued that the definition of the child was set at 16 in the Malawi Constitution at the time of the submission of the case.</p> <p>The Communication was amicably settled in October 2016.</p> <p>The Parties decided to resolve the case amicably and agreed on the following terms:</p>	

		<p>1. The respondent State undertakes to do everything within its Constitution and all other relevant laws to be in compliance with article 2 of the CHARTER by 31 December 2018</p> <p>2. The respondent State shall hold National Stakeholders Conference before the end of 2016 to build consensus on the necessity of amending section 23(6) of the Constitution without the need for voting in a referendum.</p> <p>3. The respondent State shall within the same period through the Ministry responsible for child affairs engage members of parliament on the urgent need to consider amending section 23(6) as a matter of priority in the spirit of promoting the best interests of the child.</p> <p>4. The respondent State shall, subject to obtaining a national consensus at the national stakeholders' conference, table a Bill to amend its Constitution before its Parliament by 31 December 2017.</p>	<p>In 2017, Malawi amended its Constitutional provisions in conformity with the African Children's Charter. the Constitutional Amendment Bill on the definition of the child which defines a child as a person under the age of 18 had been passed by Parliament on 14 February 2017; the President of the Republic of Malawi assented to the Bill on 2 April 2017, and the Act (No15 of 2017) was gazetted on 7 April 2017.¹¹⁸</p>
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		<p>6. The respondent State shall submit a report to the ACERWC, by 31 January 2017 on the progress it has made to implement this agreement. Thereafter, the Respondent State shall submit a periodic report every three (3) months to the ACERWC on the progress it has made to implement this AGREEMENT.</p>	<p>Eight (8) reports on the implementation of the Agreement submitted by the government of Malawi.</p>

<p>Communication: No. Com/005/2015</p> <p>African Centre of Justice and Peace Studies (ACJPS) and People's Legal Aid Centre (PLACE) V. the Government of Republic of Sudan</p>	<p>- No monitoring mission or hearing has been held.</p> <p>- No implementation report has been received.</p> <p>-Reminders have been sent</p> <p>- Respondent State did not respond to the request of the Committee to undertake a follow-up mission.</p> <p>- Other Sources-Information from NHRI in Sudan</p>	<p>- The Communication is in relation to the right to nationality of a minor whose mother is from Sudan and whose father had a Sudanese Nationality but was born in Juba. The Child, Ms Iman, was not allowed to get Sudanese nationality on the ground that her father would have been South Sudanese if he was alive.</p> <p>The decision on the merits was adopted in May 2018.</p> <p>Violations Found: The Committee found a violation of</p> <ul style="list-style-type: none"> • Article 6(3) Name and Nationality • Article 3 Non-discrimination, • Article 4 Best interest of the child. <p>The Committee also decided that the denial of nationality has impacted the right to education of the child in Article 11.</p> <p>The Committee recommended that the Government revises its Nationality Act to remove all discriminatory provisions which did not allow mothers to transfer their nationality to their children and to ensure that it prevents statelessness, among others.</p>	<p>The following limited information on the implementation of the decision was provided by the National Commission for Human Rights of Sudan</p>
		<ol style="list-style-type: none"> 1. To urgently grant nationality Ms. Iman as she has a Sudanese Mother and as otherwise she would be stateless. 2. The Committee also recommends that the respondent State confers its nationality to children I its territory who are either stateless without taking prolonged procedure to prove their link with other State. 	<p>The case was followed up with the Ministry of Justice and Ms. Iman obtained the Sudanese nationality</p>

		<ul style="list-style-type: none"> • To revise its Nationality Act with a view to: • Ensure that children born to Sudanese mothers automatically obtain Sudanese nationality same as children born to Sudanese fathers; • Ensure that children born to South Sudanese parents are not discriminated against in obtaining Sudanese nationality where the child demonstrates clear link with the Respondent State; • Ensure that its nationality law does not leave children born in the territory of the respondent state stateless and are provided with Sudanese Nationality without mere assumption that they have acquired South Sudanese Nationality; • Ensure that Sudanese nationality is not revoked from a child unless there is sufficient and admissible evidence that the child has acquired other nationality. In doing so, the proof of other nationality should be based on the laws on the acceptable proof of nationality of the State which is assumed to have conferred its nationality to that child; and • Ensure that revocation of Sudanese nationality of child's parents or children born to South Sudanese father and Sudanese mother get equal protection of the law in this regard. 	<p>The Nationality Law as amended in 2018 guarantees every child born to a Sudanese mother or father the right to obtain citizenship.</p>
		<p>3. To adopt a law or regulation in line with acceptable international standards that regulate the manner in which Sudanese Nationality is revoked; and limit the discretion given to officials by providing factors needed to be considered in detail before effecting revocation of Sudanese nationality;</p>	<p>No information available</p>

		4. To ensure that there are procedural safeguards in determining, conferring, and revoking Sudanese Nationality. Such procedural safeguard should follow due process of law and the right of the child to fair trial, to be heard and participate in the process and also the right to challenge the decision of authorities in this regard in a court of law;	No information available
		5. To ensure that the grant of certificate of nationality is done in a legally prescribed timeline once application is submitted to obtain such document in order to avoid uncertainty in relation to entitlement of nationality and situation where statelessness is prolonged. Moreover, the respondent State should ensure that its organs and officials respect the said timeline without making any discrimination on any ground whatsoever in granting certificate of nationality To children; and	No information available
		6. To ensure that 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 or at the risk of being stateless.	

<p>Communication: No. Com/006/2015</p> <p>The Institute for Human Right and Development in Africa and Finders Group Initiative on behalf of TFA (a minor) V. The Government of Republic of Cameroon</p>	<p>-Implementation hearing was held during the 37th Ordinary Session of the Committee.</p> <p>- Respondent State did not respond to the request of the Committee to undertake follow-up mission.</p>	<p>The Case was submitted on behalf of a minor who was raped on several occasions but, did not receive justice on the violations she faced. The Minor's aunt reported the case to the police and following investigations, the Magistrate Court dismissed the case and refused to provide with the decision for appeal. The aunt of the minor was also summoned for defamation.</p> <p>The decision on the merits was adopted in May 2018.</p> <p>Violations Found: The Committee found a violation of</p> <ul style="list-style-type: none"> • Article 1 Obligation of States Parties • Article 3 Non-discrimination) • Article 16 Protection against child abuse and torture <p>The Committee recommended for the prosecution of the perpetrator, the adoption of a law that fully criminalizes all forms of sexual violence, establishment of children's units in police and children's courts and the payment of a compensation for the minor.</p>	<p>No information available</p>
		<p>1. Immediately ensure that the perpetrator of rape against TFA is prosecuted and punished for violating TFA's right to be free from inhuman and degrading treatment and ensure effective remedy for TFA</p>	<p>The Cameroon State had commenced the prosecution of the alleged perpetrator of the violation. The case is still pending before the Court of High Instance in Bamenda. The defendant was sentenced to 12 years imprisonment (Judgment n° 29/CRIM/22 of the 30 August 2022) and has appealed against this decision.¹²²</p>
		<p>2. Pay a sum of 50 million CFA to TFA as a compensation for the non-pecuniary damage she suffered as a result of the above-mentioned violations;</p>	<p>The compensation of 50 Million CFA to the victim is not yet implemented.(from the implementation hearing)</p> <p>The Ministry of Social Affairs in collaboration with some Civil Society Organizations have been in charge of supporting TFA's education and providing her psychosocial support until her majority (CHRC)</p>

		3. Enact and implement a legislation eliminating all forms of violence, including sexual violence against children;	<p>No law has been adopted.(IH 2021)</p> <p>The 2016 Penal Code includes offenses related to female genital mutilation (FGM), damage to the growth of an organ related to the phenomenon of breast ironing and rape (Articles 277(1), 277(2) and 296 respectively).(CHRC)</p>
		4. Train the police, prosecutors, judges and other responsible Government agencies on how to protect and advance Children's rights.	<p>Judges and prosecutors are trained on protection of human rights during pre and in-service trainings in two modules namely protection of children's rights and police for minors whereby police are trained on techniques of investigation to find out whether children are victims. (IH 2021)</p> <p>Human rights education is provided in training schools for magistrates, police officers, gendarmes, prison administration personnel, as well as defense and security forces. Some specific training workshops including:</p> <p>Capacity building workshop for magistrates and Forces of the law and order on the rights of children organized by the Ministry of Justice on the 22 and 23 of September 2022 in Yaounde ;</p> <p>training workshop from 16 to 22 July 2018 in Ebolowa, for gynaecologists, psychiatrists, midwives and other health personnel involved in the medical care of rape victims;</p> <p>training workshop for juvenile justice actors in the Adamawa Region, organised by the Ministry of Justice in Ngaoundere from 5 to 7 February 2020 ;</p> <p>capacity building session for actors of the judicial chain on juvenile justice organised from 12 to 14 December 2022, in Garoua by the Ministry of Justice, in collaboration with UNICEF</p>
		5. Creation of specialized police units and courts handling cases of violence against children	<p>During the implementation hearing held at the 37th session, the Government provided that no such unit or bench has been established, however, in 2023 the CHRC provided that new structures for the care and support of victims of gender-based violence have been set up:</p> <p>10 reception centres for women and girls in distress with call centres within the Centre for the Promotion of Women and the Family (CPFF),</p> <p>10 gender desks in police centres within the CPFFs,</p> <p>10 gender desks in police stations,</p> <p>4 women's cohesion spaces in refugee camps and displaced families</p>

		<p>6. Establishment of effective special monitoring units to provide necessary support for children who are victims of torture, inhuman or degrading treatment and for those who have the care of the child</p>	<p>During the implementation hearing held at the 37th session, the Government informed that TFA received psychosocial support through a social worker assigned by the Ministry of Social Affairs. Moreover, in 2023 the National Human Rights Institution of Cameroon, informed has been endowed with a mandate as a National Mechanism for the Prevention of Torture (NMPT) by Law N° 2019/014 of 19 July 2019, relating to the establishment, organization and functioning of the Cameroon Human Rights Commission, which empowers it to carry out regular, impromptu or notified visits to all places of deprivation of liberty, including detention centres for minors focusing on detention conditions. The NMPT also has a specific mandate in children's facility centres.</p> <p>Establishment of a toll-free number 1523 by the Cameroon Human Rights Commission for the reporting of all allegations of human rights violations.</p>
		<p>7. Develop and widely implement awareness raising as well as educational and communication strategies aimed at eradication of beliefs, practices and stereotypes which legitimize and exacerbate the persistence and tolerance of violence against children</p>	<p>The government has conducted awareness raising activities on eradication of violence against children and abuse including sexual violence, child marriage, child trafficking and others practices amongst parents and the educational community.</p>

<p>Communication: No. Com/007/2015</p> <p>Minority Rights Group International and SOS-Esclaves on behalf of Said Ould Salem and Yarg Ould Salem V. The Republic of Mauritania</p>	<ul style="list-style-type: none"> • One report on implementation submitted. • Implementation hearing was held during the 34th Ordinary Session. 	<p>Summary: The Communication is submitted on behalf of two children who were in a contemporary form of slavery without the provision of education, adequate food, and other basic services.</p> <p>The decision on the merits was adopted on December 2017.</p> <p>Violations Found: The Committee found a violation of</p> <ul style="list-style-type: none"> • Article 1 Obligation of States parties • Article 3 Non-discrimination • Article 4 Best interests of the child • Article 5 Survival and development • Article 11 Education • Article 12 Leisure, recreation and cultural activities • Article 15 Child labour • Article 16 Protection against abuse and torture • Article 21 Protection against harmful social and cultural practices 	
		<p>1) Ensure that all members of the El Hassin family are prosecuted for the enslavement of Said and Yarg and the violation of their rights to equality, survival and development, education, leisure, recreation and cultural activities, protection against child abuse and torture, and protection against child labor, and ensure that they receive sentences commensurate to crimes committed pursuant to the laws of Mauritania;</p> <p>2) Ensure that all involved in the servitude of said and Yarg are prosecuted and that the conviction of the slave masters meets at least the minimum years of imprisonment prescribed in the slavery Act;</p>	<p>6 trials have been taken among which only one reached the high courts while the others are in specialized courts. It was further mentioned that the sentence for the trials goes up to 20 years and the fine is between 1 and 2 million.¹²³</p> <p>The establishment of special courts with nationwide jurisdiction to prosecute crimes of slavery and to handle offences relating to slavery-like.¹²⁴</p> <p>The sentence for the trials goes up to 20 years and the fine is between 1 and 2 million.¹²⁵</p>

		Take measures to ensure that Said and Yarg obtain all the necessary documents including birth registration certificate and identity cards; this measure should further be expected to all children who find themselves in slavery or slavery like practices;	The government provided identity cards for the victims.(IH)
		<p>Ensure that they enjoy their right to education particularly by facilitating their enrolment in public schools within the shortest possible time;</p> <p>Take special measures to support Said and yarg in their education in order to accelerate their learning and development;</p> <p>Provide psychosocial support to said and yarg, and reintegrate them in the society and to minimize to the maximum extent possible the negative psychological impact of their enslavement for 11 years</p>	<p>The victims have been reintegrated into the community and are attending schools for free in line with the education Policy. (IH 2019)</p> <p>No psychosocial support provided: a social assessment was carried out on the victims and the assessment revealed that the victims do not have any psychosocial needs which requires support. (IH 2019)</p>
		Provide Said and Yarg with adequate compensation that is commensurate with the 11 years of slavery or slavery like practices; and other national strategies aiming at the elimination of slavery and slavery like practices;	Paying the guardians of the victims a compensation of 3 million Mauritanian Ouguiya and that the payment of compensation has been transferred to the guardians of the victims on 02 July 2018.(IH 2019)
		<p>Give due regard to the issue of slavery or slavery like practices and make the elimination of the same one of its priorities in issuing policies, allocating budget, and training human resources;</p> <p>Ensure that all the government organs work in collaboration in issues involving slavery pr slavery like practices and to this end give training to law makers, police, prosecutors, judges on the seriousness of slavery and the measure they should be taking to protect children from the scourge of modern slavery;</p> <p>Closely work with and support civil society and other stakeholders working in the eradication of slavery or slavery like practices in all its time; and</p>	<p>In collaboration with CSOs, Mauritania has established a road map to end slavery which also has an action plan; provided training to police, lawyers and teachers to inform about the protection of the child; ensure the social integration of children; and established centers of training for children with special needs.</p> <p>A number of training sessions had been held for prefects (hakem), mayors, gendarmes, police officers, magistrates and judicial officers on the need for rigorous application of the legislative provisions criminalizing slavery and punishing slavery-like practices.¹²⁶</p>

		Undertake baseline survey to know the number children in slavery or slavery like practices and identify their situation to inform State intervention in the elimination of the practice as well as prosecution perpetrators;	No information available
		Take special measures to takeout children from slavery and slavery like practices and ensure that all children in such situations receive psychosocial, educational, as well as all forms of support needed to ascertain that they enjoy their rights as enshrined in the charter;	No information available
		Undertake an accelerated campaign and sensitization to create awareness on the negative impacts of slavery like practices and its prohibition under national and international law to fast-track the elimination of slavery or slavery like practices in Mauritania within the shortest possible time;	Awareness-campaign caravans, with a particular focus on reaching religious leaders and traditional dignitaries, had covered the country to disseminate the fatwa adopted by the assembly of ulemas reaffirming the strict prohibition on any form of exploitation. ¹²⁷
		Design child friendly mechanisms for reporting of instances of any form child abuse in the domestic setting and intervention means	No information available
		Report to the Committee on all measures taken to implement the decision of the Committee within 180 days form the date of receipt of the Committee's decision.	One report submitted
Communication: No. Com/011/2018 Project Expedite Justice et al Against the Republic of the Sudan	No report has been received from the State on the implementation. Reminders have been sent The Committee conducted country visit to assess the implementation of the Amicable Settlement in 2021 and issued a report on its findings where it found very limited implementation of the decisions.	The Communication was submitted with regards to the violations faced by children in the South Kordofan and Blue Nile regions during the conflict that took place since 2011. The case was settled amicably by the parties in 18 December 2020 who agreed on the following terms:	The following information was provided by the the National Commission for human Rights in Sudan

		<p>Acknowledgment and Apology</p> <ol style="list-style-type: none"> 1. Acknowledgment and Public Recognition of Responsibility 2. Publicization of Agreement 3. Installation of memorial structure 	<p>A press conference was held for the Minister of Social Security. He presented an apology which is required within Sudan's obligations¹²⁸</p>
		<p>Humanitarian Aid Access:</p> <ol style="list-style-type: none"> 1. Guarantee of Unfettered Access by Aid Organizations 2. Circumstances for Limitation of Access and Reporting Procedures 	<p>No information available</p>
		<p>Assessment of Educational- and Health-Based Harms:</p> <ol style="list-style-type: none"> 1. Obligation to Investigate in Blue Nile 2. Acceptance of Civil Society Reports in Blue Nile and South Kordofan 	<p>No information available</p>
		<p>Education:</p> <ol style="list-style-type: none"> 1. Restoration of Educational Infrastructure; 2. Provision of Education, School Supplies, and Teacher Training; 3. Development of Curriculum 	<p>UNICEF committed itself to rehabilitating children in schools in cooperation with the National Council for Child Welfare</p>
		<p>Health</p> <ol style="list-style-type: none"> 1. Restoration of Health and Water Infrastructure 2. Provision of Health Services to Children; 	<p>No information available</p>

		<p>Treaty Ratification</p> <p>1. Commitment to Ratification of Human Rights Treaties</p> <p>2. Withdrawal of Treaty Reservations, Understandings, and Declarations</p>	<p>In 2021, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 was ratified.</p> <p>- Juba Peace Agreement, which stipulates improving the conditions of children in conflict areas, has been activated.</p> <p>- In 2020, the transitional government of Sudan removed three reservations previously placed in the African Charter on the Rights and Welfare of the Child, which were on Articles: (11, 10, Paragraph 6, and 21, Paragraph 2) of the Committee's Charter, and related to the following:</p> <p>(1) Children's privacy</p> <p>(2) Marriage of children under the age of eighteen</p> <p>(3) Pregnant girls continue to learn.</p> <p>- The transitional government in Sudan has also approved Article 141 of the Sudanese Penal Code, which effectively criminalizes the practice of female genital mutilation.</p> <p>- The Ministry of Justice was committed to ratifying some treaties and reviewing national legislation, especially the criminal law, in matters relating to crimes against humanity and war crimes, because there is a confusion between the two.</p>
		<p>Reforms to Laws Concerning Atrocity Crimes and Sexual/Gender-Based Violence and Harmonization with the 2019 Constitutional Document :</p> <p>Obligation to Investigate and Purpose of Legal Reforms;</p> <p>Reforms to Laws Concerning Atrocity Crimes</p> <p>Reforms to Laws Concerning Sexual and Gender-Based Violence</p>	<p>No information available</p>

		<p>Monitoring Mechanisms and Closure of the Agreement:</p> <p>1. Execution of the Agreement. This Agreement shall be executed at the time of signature by all Parties and the approval of the Agreement by the Committee.</p> <p>2. Supervision and Periodic Reporting. The Parties agree that the Committee will continuously supervise the implementation of this Agreement. To this end, Respondent State shall permit access to the members of the Committee who wish to undertake monitoring missions in the Two Areas. Further, either six months from the date of the execution or at the time of the next session of the Committee in 2021, whichever is later, the Respondent State shall submit a report to the Committee on the measures it has undertaken to implement this Agreement. Thereafter the Respondent State shall submit reports every six months to the Committee highlighting the implementation steps it has taken in the past reporting period, and underscoring the steps it plans to take in the next period.</p> <p>3. Dispute Resolution and Closure. The Parties agree that if a dispute arises over the interpretation and/or implementation of this Agreement, they shall attempt to negotiate a resolution. If negotiations are unsuccessful after a period of six months, they shall submit the dispute for resolution by the Committee. Finally, the Parties agree that the Committee shall remain seized of this matter until the Committee determines that the Respondent State has comprehensively implemented the terms of the Agreement, and shall close this Communication upon such a determination.</p>	No information available
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<p>Communication: No. Com/012/2019</p> <p>Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) against the United Republic of Tanzania</p>	<p>No report submitted</p>	<p>The Case was filed on behalf of schoolgirls in Tanzania who were subjected to forced pregnancy testing and subsequently expelled from school when found pregnant with no possibility of re-entry. The issue of the expulsion of married girls from school and the detention of pregnant schoolgirls for purposes of disclosing who impregnated them were also issues raised by the Communication.</p> <p>The decision on the merits was adopted on April 2022.</p> <p>Violations Found: The Committee found a violation of</p> <ul style="list-style-type: none"> • Article 1 Obligation of states parties • Article 3 Non discrimination • Article 4 Best interests of the child • Article 10 Protection of privacy • Article 11 Education • Article 14 Health and health services Article 16 Protection against child abuse and torture • Article 21 Protection against harmful social and cultural practices. <p>The Committee recommended for revision of the Education Regulation Act which provides for the expulsion of married girls and is used also to expel pregnant girls. The Committee recommends that the Respondent State should prohibit forced pregnancy testing of schoolgirls, expulsion of pregnant and married girls from schools, and the detention of pregnant girls.</p>	
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<p>Communication No.0013/Com/001/2020</p> <p>APDF and IHRDA on behalf of AS a minor against the Republic of Mali</p>	<p>No report submitted</p>	<p>The decision on the merits was adopted on December 2022.</p> <p>Violations Found: The Committee found a violation of:</p> <p>Article 1 (1) Obligation of states parties</p> <p>Article 3 Non discrimination</p> <p>Article 4 (1)Best interests of the child</p> <p>Article 16 Protection against child abuse and torture</p>	
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ANNEXURE II: QUESTIONNAIRE 2

Respondent Group: ACERWC Members/Secretariat

PROJECT: STUDY ON THE IMPLEMENTATION OF DECISIONS OF THE ACERWC OF THE AFRICAN UNION

Respondent information

FULL NAMES :

TITLE :

E-MAIL :

DATE (DD/MM/YYYY) :

NOTE: THE ABOVE INFORMATION IS REQUIRED ONLY FOR PURPOSES OF FOLLOW UP, IF NECESSARY, REGARDING CLARIFICATION OF INFORMATION PROVIDED.

CONSENT	
	Consent to use the information internally only (e.g. for statistical purposes of the number of persons interviewed and types of information recorded)
	Consent to use the information internally and publicly but <u>without</u> personally identifiable data (PID) (e.g., highlight in public reports, but in a way that protects the Respondent's identity)

Note for Respondents:

The TOR for the Study underscores that “[t]he main objective of the consultancy is to assess the level of implementation of decisions and recommendations of the ACERWC. The specific objectives include:

- Identifying what aspects of the decisions and recommendations of the ACERWC are complied with and why;
- Assessing the challenges State Parties face on the implementation of decisions of the ACERWC;
- Examining the decisions and recommendations of the ACERWC if they are measurable and easily understandable for States;
- Documenting good practices on the implementation of the decisions of the ACERWC and identifying the reason for the success;
- Identifying the role of other stakeholders in the implementation of the Decisions of the ACERWC;
- Assessing the effectiveness of the monitoring tools of the ACERWC on the implementation of its decisions and recommendations; and
- Providing recommendations for better and effective implementation of the decisions of the ACERWC.”

The term “**decision**” is used in a loose sense for the purposes of the Study and will cover recommendations such as **concluding observations, decisions based on the communications procedure, and recommendations from an investigative mission.**

This **questionnaire** aims to collect information for this Study.

. Please return the **completed** questionnaire by email: **implementationACERWC@gmail.com**, no later than **xxxx 2022**. All responses will be **anonymous** and will not be linked to you personally.

INSTRUCTIONS FOR COMPLETION OF THE QUESTIONNAIRE

Please complete the questionnaire as fully as possible. Indicate your response with a circle (where there are multiple options) or by marking the relevant box with an ‘X,’ or write down your response in the space provided below the question, as appropriate. Please feel free to expand the space provided for responses, as necessary.

General information

1. How would you rate your level of familiarity with the status of implementation of decisions (concluding observations; decisions on individual communications; etc) made by the ACERWC?
 - a. Slightly familiar
 - b. Moderately familiar
 - c. Very familiar
 - d. Extremely familiar

2. In general, in your perception, how would you rate the extent to which the decisions of the ACERWC are implemented?
 - a. Not good
 - b. Fair
 - c. Good
 - d. Excellent

Please elaborate:

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Specific information

3. In your view, are there adequate follow up measures (including resources) put in place within States as well as within the ACERWC to monitor the implementation of decisions of the ACERWC?

Yes: ... No: ...

Please elaborate:

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4. What type of information and data should States parties provide to enable the ACERWC to conduct a comprehensive analysis of the status of the implementation of decisions of the ACERWC?

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5. Please provide any suggestions you may have on how States parties can ensure that their ACRWC reports/ response to List of Issues can reflect the linkages and synergies between decisions of the ACERWC and their implementations.

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6. Please provide any suggestions you may have on how the role of the special rapporteurs within the ACERWC and/or the African Union Summit and/or engagement with other AU/UN bodies can be utilised for the purpose of improving the monitoring of the implementation of decisions.

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7. Is there a possibility for the ACERWC to facilitate greater dialogue with a State concerned with a decision and stakeholders, and could it consider having a range of different deadlines depending on the recommendation (e.g. that the State provide the name of the government ministry or body responsible for coordinating implementation within, for example, a month; and that other recommendations may take 3 or 6 months or perhaps longer, etc.)?

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8. Please indicate any examples whereby States (expressly or tacitly) showed disagreement with the decision of the ACERWC, which in your view might in turn has affected both effective implementation of the decision by the State as well as the efforts of the ACERWC to monitor the implementation of the decision. Please also provide any examples whereby a state expressed agreement, which facilitated both implementation as well as monitoring of the implementation.

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Other relevant information

9. Please provide any other information (including laws/policies/other documents) that you consider useful to enhance the understanding of the implementation of decisions of the ACERWC for the Study.

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THANK YOU FOR YOUR COOPERATION!

ANNEXURE III: QUESTIONNAIRE 3

Respondent Group: States

PROJECT: STUDY ON THE IMPLEMENTATION OF DECISIONS OF THE ACERWC OF THE AFRICAN UNION

Respondent information

FULL NAMES :

TITLE :

E-MAIL :

DATE (DD/MM/YYYY) :

NOTE: THE ABOVE INFORMATION IS REQUIRED ONLY FOR PURPOSES OF FOLLOW UP, IF NECESSARY, REGARDING CLARIFICATION OF INFORMATION PROVIDED.

CONSENT	
	Consent to use the information internally only (e.g. for statistical purposes of the number of persons interviewed and types of information recorded)
	Consent to use the information internally and publicly but <u>without</u> personally identifiable data (PID) (e.g., highlight in public reports, but in a way that protects the State's identity)

Note for Respondents:

The TOR for the Study underscores that “[t]he main objective of the consultancy is to assess the level of implementation of decisions and recommendations of the ACERWC. The specific objectives include:

- Identifying what aspects of the decisions and recommendations of the ACERWC are complied with and why;
- Assessing the challenges State Parties face on the implementation of decisions of the ACERWC;
- Examining the decisions and recommendations of the ACERWC if they are measurable and easily understandable for States;
- Documenting good practices on the implementation of the decisions of the ACERWC and identifying the reason for the success;
- Identifying the role of other stakeholders in the implementation of the Decisions of the ACERWC;
- Assessing the effectiveness of the monitoring tools of the ACERWC on the implementation of its decisions and recommendations; and
- Providing recommendations for better and effective implementation of the decisions of the ACERWC.”

The term **“decision”** is used in a loose sense for the purposes of the Study and will cover recommendations such as **concluding observations, decisions based on the communications procedure, and recommendations from an investigative mission.**

This **questionnaire** aims to collect information for this Study.

. Please return the **completed** questionnaire by email: **implementationACERWC@gmail.com**, no later than **xxxx 2022**. All responses will be **anonymous** and will not be linked to you personally.

INSTRUCTIONS FOR COMPLETION OF THE QUESTIONNAIRE

Please complete the questionnaire as fully as possible. Indicate your response with a circle (where there are multiple options) or by marking the relevant box with an ‘X,’ or write down your response in the space provided below the question, as appropriate. Please feel free to expand the space provided for responses, as necessary.

GENERAL INFORMATION

1. In your view, are there adequate follow up measures including coordination and reporting mechanisms, as well as resources put in place by your state to implement the decisions (concluding observations, individual communications, investigation reports) of the ACERWC?

Yes: ...

No: ...

Please elaborate:

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SPECIFIC INFORMATION ON NATIONAL LEVEL VARIABLES FOR EFFECTIVE IMPLEMENTATION

2. Does your State view any of the decisions of the ACERWC as binding? While it is understood that the factors that dictate implementation are often diverse, and can range from legal, political, social, and financial, does the State believe that the binding or otherwise status of decisions (including in domestic law) of the ACERWC necessarily and ultimately affect a willingness to comply? Please explain.

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3. While the format for all concluding observations should be followed as appropriate, in the view of your State, to what extent are the contents of concluding observations tailored-made and as reflective of the reality as possible based on the State Party report; the response to the list of issues; the constructive dialogue held; and if applicable, any other written inputs provided by the State and/or other stakeholders; so as to facilitate subsequent effective implementations?

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4. Do you see an added value of the creation of the position of a Special Rapporteur on Follow-up to Concluding Observations within the ACERWC similar to those within the UN treaty bodies system that asks the State Party to provide, no later than a year after the issuance of the Concluding Observations, information on the measures it has taken to address no more than 5 issues that have explicitly been identified in the Concluding Observations for urgent action?

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5. Does the process of the drafting/preparation (participatory process as much as possible including the document reflecting any discussions held with the State, the possibility for the State to receive an advanced version of a decision as a courtesy copy etc) of a decision (especially a decision on an individual communication) by the ACERWC have any implications on the extent to which States can implement such a decision? Please explain.

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6. Is there room for flexibility that could/should be explored by the ACERWC that could facilitate the implementation of decisions by States? For example, is there a possibility for the ACERWC to facilitate greater dialogue with a State, and could consider having a range of different deadlines depending on the recommendation (e.g. that the State provide the name of the government ministry or body responsible for coordinating implementation within, for example, a month; and that other recommendations may take 3 or 6 months or perhaps longer, etc.)?

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7. To what extent is ministerial engagement and ownership of the decision and response to it at the highest level a central factor necessary for the implementation of decisions and what are the various measures that could ensure such ownership at the national level aimed at effective implementation of decisions of the ACERWC? As the decisions of the ACERWC often include recommendations or orders directed to the executive, judicial, or legislative branches of the state structure, does a lack of or inadequate formalized channels of communication among these different branches in matters relating to implementation often results in limited action? Is there room for improvement in this respect?

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8. Are there any specific circumstances in the context of emergencies (such as conflict contexts, natural disasters, declaration of a state of emergency by law etc...) that have limited/could limit in the future a State's effective implementation of decisions made by the ACERWC? Please explain.

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9. Based on Article 45(1) of the African Children's Charter which mandates the African Committee to investigate matters which fall within the scope of the Charter, the ACERWC has developed Guidelines on the Conduct of Investigations ('Investigations Guidelines') which cover a range of issues from definition of an investigation, the need for the Committee to remain impartial and independent during its missions and fact-finding work, the preparation of a document presenting the preliminary results of its investigations which should be transmitted to the government and the media, and the mission report being attached to the progress report submitted by the African Children's Committee to the Assembly of Heads of State and Government of the AU etc. In your State's view, are there aspects that you believe are critical that the ACERWC should pay close attention to that could affect the effective implementation of recommendations emanating from such mission reports?

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OTHER RELEVANT INFORMATION

10. Please provide any other information (including laws/policies/other documents) that you consider useful to enhance the understanding of the implementation of decisions of the ACERWC by States.

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THANK YOU FOR YOUR COOPERATION!

ANNEXURE IV: QUESTIONNAIRE 4

Respondent Group: NHRIs

PROJECT: STUDY ON THE IMPLEMENTATION OF DECISIONS OF THE ACERWC OF THE AFRICAN UNION

Respondent information

FNAME OF NHRI :

TITLE/NAME OF RESPONDENT:

E-MAIL :

DATE (DD/MM/YYYY) :

NOTE: THE ABOVE INFORMATION IS REQUIRED ONLY FOR PURPOSES OF FOLLOW UP, IF NECESSARY, REGARDING CLARIFICATION OF INFORMATION PROVIDED.

CONSENT	
	Consent to use the information internally only (e.g. for statistical purposes of the number of persons interviewed and types of information recorded)
	Consent to use the information internally and publicly but <u>without</u> personally identifiable data (PID) (e.g., highlight in public reports, but in a way that protects the State's identity)

Note for Respondents:

The TOR for the Study underscores that “[t]he main objective of the consultancy is to assess the level of implementation of decisions and recommendations of the ACERWC. The specific objectives include:

- Identifying what aspects of the decisions and recommendations of the ACERWC are complied with and why;
- Assessing the challenges State Parties face on the implementation of decisions of the ACERWC;
- Examining the decisions and recommendations of the ACERWC if they are measurable and easily understandable for States;
- Documenting good practices on the implementation of the decisions of the ACERWC and identifying the reason for the success;
- Identifying the role of other stakeholders in the implementation of the Decisions of the ACERWC;
- Assessing the effectiveness of the monitoring tools of the ACERWC on the implementation of its decisions and recommendations; and
- Providing recommendations for better and effective implementation of the decisions of the ACERWC.”

The term “**decision**” is used in a loose sense for the purposes of the Study and will cover recommendations such as **concluding observations, decisions based on the communications procedure, and recommendations from an investigative mission.**

This **questionnaire** aims to collect information for this Study.

. Please return the **completed** questionnaire by email: **implementationACERWC@gmail.com**, no later than **xxxx 2022**. All responses will be **anonymous** and will not be linked to you personally.

INSTRUCTIONS FOR COMPLETION OF THE QUESTIONNAIRE

Please complete the questionnaire as fully as possible. Indicate your response with a circle (where there are multiple options) or by marking the relevant box with an ‘X,’ or write down your response in the space provided below the question, as appropriate. Please feel free to expand the space provided for responses, as necessary.

General information

1. How would you rate your level of familiarity with the status of implementation of decisions made by the ACERWC?
 - b. Slightly familiar
 - c. Moderately familiar
 - d. Very familiar
 - e. Extremely familiar

2. In general, in your perception, how would you rate the extent to which the decisions of the ACERWC are implemented?
 - a. Not good
 - b. Fair
 - c. Good
 - d. Excellent

Please elaborate:

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Specific information

3. In your view, are there adequate follow up measures, including resources, put in place both by the ACERWC and/or States to monitor the implementation of decisions of the ACERWC?

Yes:

No:

Please elaborate:

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4. What is the extent to which you believe the presence or otherwise of National mechanisms/procedures for implementation could improve effective implementation of decisions of the ACERWC?

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5. What information and data should NHRIs provide to enable the ACERWC to conduct a comprehensive analysis of implementation of decisions of the ACERWC? What, in your view, are the key opportunities available as well as challenges faced by NHRIs to contribute to the assessment and monitoring of the implementation of decisions of the ACERWC?

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6. While it is true that implementation of a decision often has human and financial implications (even if they do not involve compensation for the victims) what other measures do you believe are needed to ensure effective implementation and follow-up to implementation of decisions of the ACERWC?

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7. What key stakeholders should the ACERWC consult in its monitoring of the implementation of its decisions? What should be the role of consultation with the victim and other stakeholders such as NHRIs for the purpose of ensuring effective implementation of decisions on individual communications at the domestic level?

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8. Is there a need for the ACERWC to facilitate greater dialogue with a State concerned with a decision and other stakeholders, and could it consider having a range of different deadlines depending on the recommendation (e.g. that the State provide the name of the government ministry or body responsible for coordinating implementation within, for example, a month; and that other recommendations may take 3 or 6 months or perhaps longer, etc.)?

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9. Are there potential benefits of greater specificity / prescriptiveness in decisions in the context of communications that help to reduce the risk of obfuscation or minimalist implementation by a State as well as the assessment of implementations by stakeholders such as NHRIs? Are there potential risks of greater specificity / prescriptiveness in decisions, especially decisions in respect of individual communications?

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Other relevant information

10. Please provide any other information (including laws/policies/other documents) that you consider useful to enhance the understanding of the implementation of decisions of the ACERWC:

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THANK YOU FOR YOUR COOPERATION!

ANNEXURE V: QUESTIONNAIRE 5

Respondent Group: CSOs

PROJECT: STUDY ON THE IMPLEMENTATION OF DECISIONS OF THE ACERWC OF THE AFRICAN UNION

Respondent information

NAME OF CSO :

TITLE/NAME OF RESPONDENT:

E-MAIL :

DATE (DD/MM/YYYY) :

NOTE: THE ABOVE INFORMATION IS REQUIRED ONLY FOR PURPOSES OF FOLLOW UP, IF NECESSARY, REGARDING CLARIFICATION OF INFORMATION PROVIDED.

CONSENT	
	Consent to use the information internally only (e.g. for statistical purposes of the number of persons interviewed and types of information recorded)
	Consent to use the information internally and publicly but <u>without</u> personally identifiable data (PID) (e.g., highlight in public reports, but in a way that protects the State's identity)

Note for Respondents:

The TOR for the Study underscores that “[t]he main objective of the consultancy is to assess the level of implementation of decisions and recommendations of the ACERWC. The specific objectives include:

- Identifying what aspects of the decisions and recommendations of the ACERWC are complied with and why;
- Assessing the challenges State Parties face on the implementation of decisions of the ACERWC;
- Examining the decisions and recommendations of the ACERWC if they are measurable and easily understandable for States;
- Documenting good practices on the implementation of the decisions of the ACERWC and identifying the reason for the success;
- Identifying the role of other stakeholders in the implementation of the Decisions of the ACERWC;
- Assessing the effectiveness of the monitoring tools of the ACERWC on the implementation of its decisions and recommendations; and
- Providing recommendations for better and effective implementation of the decisions of the ACERWC.”

The term “**decision**” is used in a loose sense for the purposes of the Study and will cover recommendations such as **concluding observations, decisions based on the communications procedure, and recommendations from an investigative mission.**

This **questionnaire** aims to collect information for this Study.

. Please return the **completed** questionnaire by email: **implementationACERWC@gmail.com**, no later than **xxxx 2022**. All responses will be **anonymous** and will not be linked to you personally.

INSTRUCTIONS FOR COMPLETION OF THE QUESTIONNAIRE

Please complete the questionnaire as fully as possible. Indicate your response with a circle (where there are multiple options) or by marking the relevant box with an ‘X,’ or write down your response in the space provided below the question, as appropriate. Please feel free to expand the space provided for responses, as necessary.

General information

1. How would you rate your level of familiarity with the status of implementation of decisions made by the ACERWC?
 - a. Slightly familiar
 - b. Moderately familiar
 - c. Very familiar
 - d. Extremely familiar
2. In general, in your perception, how would you rate the extent to which the decisions of the ACERWC are implemented?
 - a. Not good
 - b. Fair
 - c. Good
 - d. Excellent

Please elaborate:

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Specific information

3. In your view, are there adequate follow up measures, including resources, put in place both by the ACERWC and/or States to monitor the implementation of decisions of the ACERWC?

Yes: ...

No: ...

Please elaborate:

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4. What is the extent to which you believe the presence or otherwise of National mechanisms/procedures for implementation could improve effective implementation of decisions of the ACERWC?

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5. What information and data should CSOs provide to enable the ACERWC to conduct a comprehensive analysis of implementation of decisions of the ACERWC? What, in your view, are the key opportunities available as well as challenges (registration, engagement space, risk of reprisals, access to information etc) faced by CSOs to contribute to the assessment and monitoring of the implementation of decisions of the ACERWC?

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6. While it is true that implementation of a decision often has human and financial implications (even if they do not involve compensation for the victims) what other measures do you believe are needed to ensure effective implementation and follow-up to implementation of decisions of the ACERWC?

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7. What key stakeholders should the ACERWC consult in its monitoring of the implementation of its decisions? What should be the role of consultation with the victim and other stakeholders such as CSOs for the purpose of ensuring effective implementation of decisions on individual communications at the domestic level?

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8. Is there a need for the ACERWC to facilitate greater dialogue with a State concerned with a decision and other stakeholders, and could it consider having a range of different deadlines depending on the recommendation (e.g. that the State provide the name of the government ministry or body responsible for coordinating implementation within, for example, a month; and that other recommendations may take 3 or 6 months or perhaps longer, etc.)?

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9. Are there potential benefits of greater specificity / prescriptiveness in decisions in the context of communications that help to reduce the risk of obfuscation or minimalist implementation by a State as well as the assessment of implementations by stakeholders such as CSOs? Are there potential risks of greater specificity / prescriptiveness in decisions, especially decisions in respect of individual communications?

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Other relevant information

10. Please provide any other information (including laws/policies/other documents) that you consider useful to enhance the understanding of the implementation of decisions of the ACERWC:

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THANK YOU FOR YOUR COOPERATION!

ENDNOTES

- 1 The African Charter on the Rights and Welfare of the Child (1990) OAU Doc CAB/LEG/24 9/49 (1990).
- 2 African Union Commission 'African Charter on the rights and Welfare of the Child <https://www.au.int/web/en/treaties/african-charter-rights-and-welfare-child/> (accessed 13 September 2023).
- 3 J Sloth-Nielsen 'Regional framework for safeguarding children: The role of the African Committee of Experts on the Rights and Welfare of the Child' (2014) 3 *Social Sciences* 951.
- 4 A Lloyd 'Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: Raising the gauntlet' (2002) 10 *International Journal of Children's Rights* 180.
- 5 GM Wachira & A Ayinla 'Twenty years of elusive enforcement of the recommendations of the African Commission on Human and Peoples' Rights: A possible remedy' (2006) 6 *African Human Rights Law Journal* 466.
- 6 The African Children's Charter (n 6) art 32.
- 7 ACERWC, Terms of Reference, Study on the implementation of decisions of the ACERWC (2021)
- 8 ACERWC, Terms of Reference, Study on the implementation of decisions of the ACERWC (2021).
- 9 A Donald, D Long & A Speck 'Identifying and Assessing the Implementation of Human Rights Decisions' (2020) 12 *Journal of Human Rights Practice* 125–148.
- 10 As above.
- 11 As above.
- 12 Relevant Decisions from the various AU policy organs such as the Executive Council etc could be mentioned.
- 13 R Murray & D Long *Implementation of the Findings of the African Commission on Human and People's Rights* (2014) Cambridge University Press at page 28.
- 14 As above.
- 15 D Hawkins & W Jacoby 'Partial Compliance: a Comparison of the European and Inter-American Courts of Human Rights' 6(1) *Journal of International Law and International Relations* (2010): 35 & 40; L Helfer 'The effectiveness of international adjudicators' in KJ Alter, C Romano & Y Shany *Oxford Handbook of International Adjudication* Oxford University Press (2013) Chap 21; K Raustiala 'Compliance and effectiveness in international regulatory cooperation' 32 *Case Western Reserve Journal of International Law* (2000) 387.
- 16 Office of the High Commissioner for Human Rights (2016) https://www.ohchr.org/sites/default/files/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf (accessed 15 September 2023) 2.
- 17 Murray, Rachel, and Elizabeth Mottershaw. «Mechanisms for the implementation of decisions of the African Commission on Human and Peoples' Rights.» *Hum. Rts. Q.* 36 (2014): 349.
- 18 Olukayode, Omoleye Benson. «Enforcement and Implementation Mechanisms of the African Human Rights Charter: A Critical Analysis.» *JL Poly & Globalization* 40 (2015): 47)
- 19 The Committee of Ministers of the Council of Europe (2019) 57.
- 20 B Nwabueze *Constitutional Democracy in Africa* 1-5 1–5, (Ibadan: Spectrum Books, 2003–2004) at 83.
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STUDY ON THE IMPLEMENTATION OF DECISIONS OF THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD

MAY 2023



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