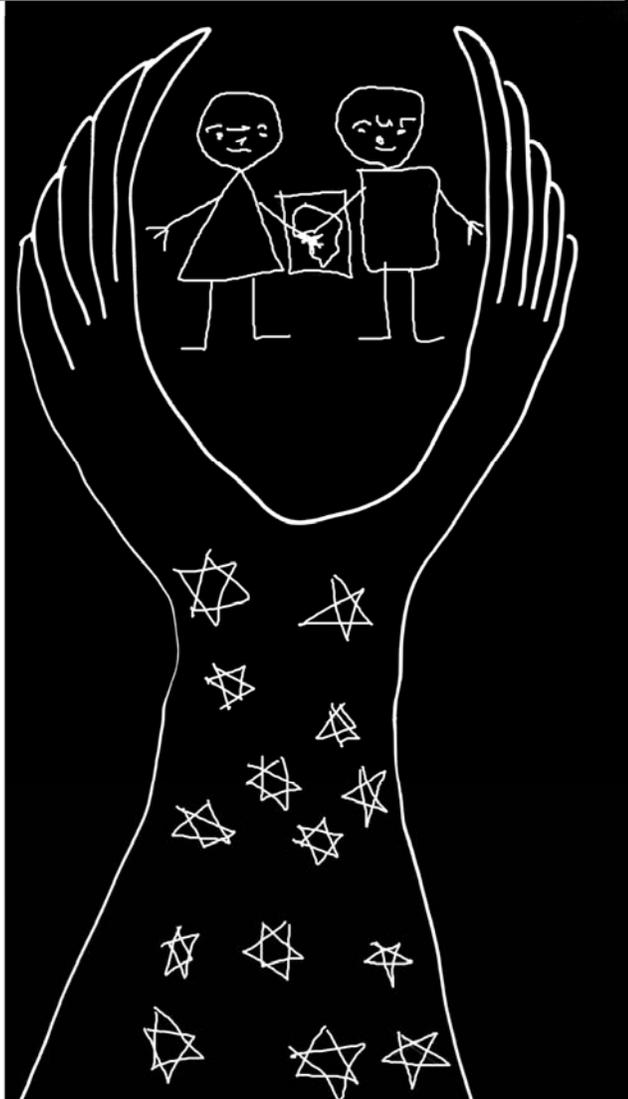


**The African  
Charter on  
the Rights  
& Welfare  
of the Child**

**A Practical  
Guide for  
Civil Society  
Organisations**



**Save the Children**  
Sweden

**October 2008**

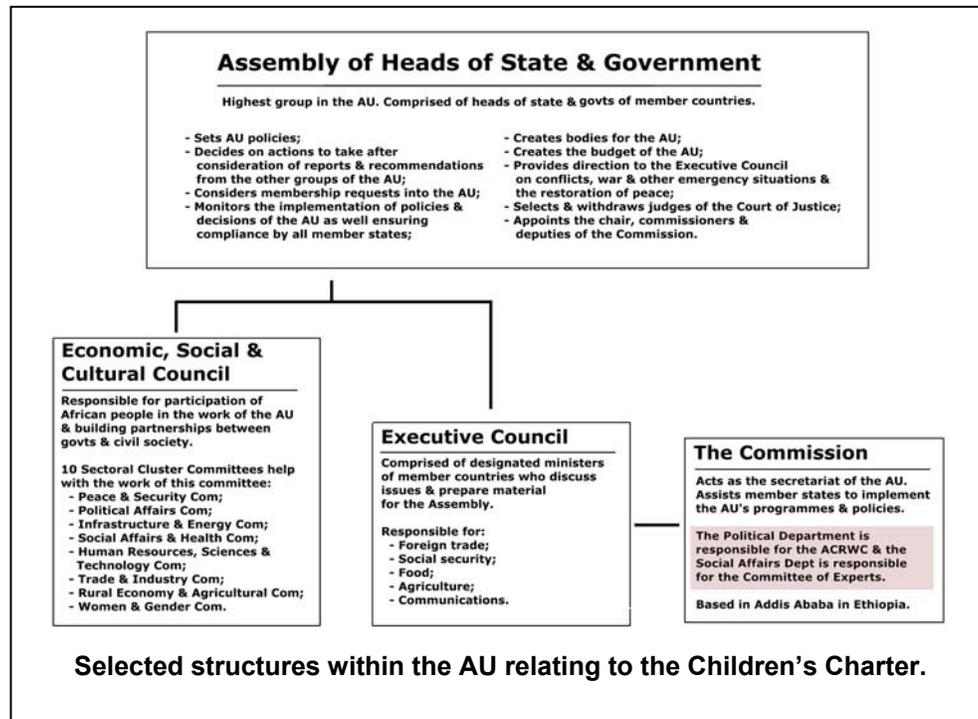
## Why is there a need to focus on child rights in Africa?

Children in Africa are affected by many different types of abuse, including economic and sexual exploitation, gender discrimination in education and access to health, and their involvement in armed conflict. Other factors affecting African children include migration, early marriage, differences between urban and rural areas, child-headed households, street children and poverty. Furthermore, child workers in Sub-Saharan Africa account for about 80 million children or 4 out of every 10 children under 14 years old which is the highest child labour rate in the world.

### African Union (AU)

In 2001, the Organisation of African Unity (OAU) that was formed in 1963, legally became the African Union (AU). Back in 1963 the main focus for African states was independence and post-colonial development. In the years since then, human rights issues have become more important in Africa and the world. Thus several sections dealing with human rights were included in the AU principles and it also sets out how African states can work together to intervention in very serious cases of human rights violations.

Since it was officially launched in Durban, South Africa, in 2002, the AU has been adopted by 53 countries in Africa (only Morocco has not adopted it). Thus, it is important for people to understand how the AU functions and to



determine the openings or gaps through which civil society can interact with it.

The African Union's objectives are different and more comprehensive than those of the OAU.

### **Which international treaties specifically protects African children?"**

There are two main documents or instruments which protect the rights of children in Africa. One is the United Nation's (UN) *Convention on the Rights of the Child* (CRC), and the other is the AU's *African Charter on the Rights and Welfare of the Child* (Children's Charter or ACRWC).

### **Convention on the Rights of the Child**

The CRC was adopted as a United Nations (UN) treaty in 1989 and was the result of about ten years of work and negotiations between governments and NGOs. It started to shift people's views of children from victims and recipients of welfare to individual rights holders. It was the most rapidly and widely ratified

international human rights treaty in the world (to date, only USA and Somalia have not ratified the CRC).

### **African Charter on the Rights and Welfare of the Child**

The Children's Charter was adopted in 1990 by the Organisation of African Unity (OAU) and was entered into force in 1999. Like the CRC, the Children's Charter is a comprehensive instrument that sets out rights and defines universal principles and norms for the status of children. The African Charter and the CRC are the only international and regional human rights treaties that cover the whole spectrum of civil, political, economic, social and cultural rights.

### **What are the differences between the Children's Charter and the CRC?**

The Children's Charter originated because the member states of the AU believed that the CRC missed important socio-cultural and economic realities particular to Africa. It emphasises the

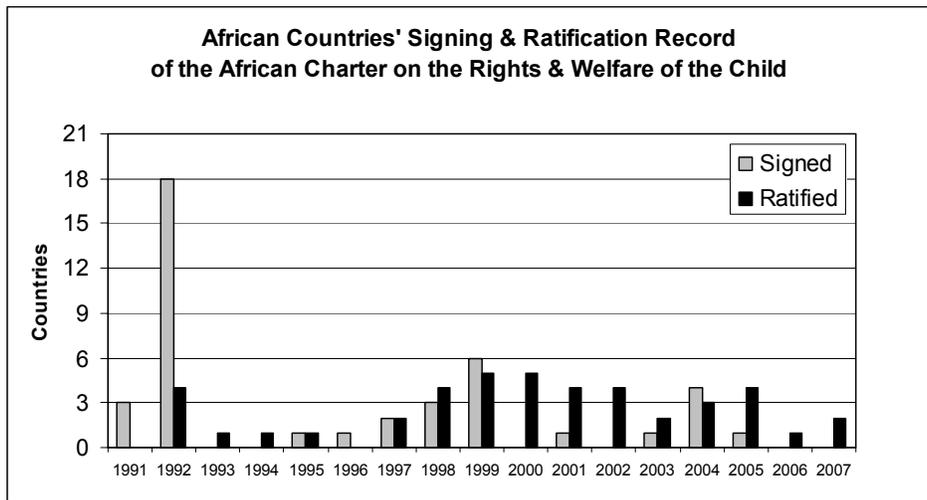
#### **The regional system for the protection of human rights in Africa**

The African Regional Human Rights System is comprised of five treaties of the African Union, two of which include implementation mechanisms.

1. The Convention on Specific Aspects of the Refugee problem in Africa, (entered into force in 1974);
2. The African Charter on Human and Peoples' Rights (entered into force in 1986). This charter establishes an implementation mechanism to work towards ensuring the protection of human and peoples' rights under the conditions laid down by the present charter;
3. The African Charter on the Rights and Welfare of the Child, (entered into force in 1999). This charter establishes an African Committee of Experts on the Rights and Welfare of the Child to promote and protect the rights and welfare of the child;
4. The protocol on the establishment of an African Court on Human and Peoples' Rights (entered into force January 2004);
5. The protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

need to include African cultural values and experiences when dealing with the rights of the child in such as:

- Challenging traditional African views which often conflict with children's rights such as child marriage, parental rights and obligations towards their children, and children born out of wedlock;
- Expressly saying that the Children's Charter is higher than any custom, tradition, cultural or religious practice that doesn't fit with the rights, duties and obligations in the Charter;
- The Children's Charter has a clearer definition of the child as a person aged under years old;
- Outright prohibition on the recruitment of children (i.e. under 18 years old) in armed conflict and deals with conscription of children into the armed forces ;
- Prohibiting marriages or betrothals involving children;
- Prohibiting the use of children as beggars;
- Granting girls the right to return to school after pregnancy;
- Promoting affirmative action for girls' education;
- Tackling specific African issues that affect children. For example it called for the confrontation and abolishment of apartheid and similar systems; and although, apartheid is now over, this provision is still applicable to children living under regimes practicing ethnic, religious or other forms of discrimination;
- Protecting internally displaced and refugee children;
- Protecting imprisoned expectant mothers and mothers of infants and young children;
- Providing a way for children



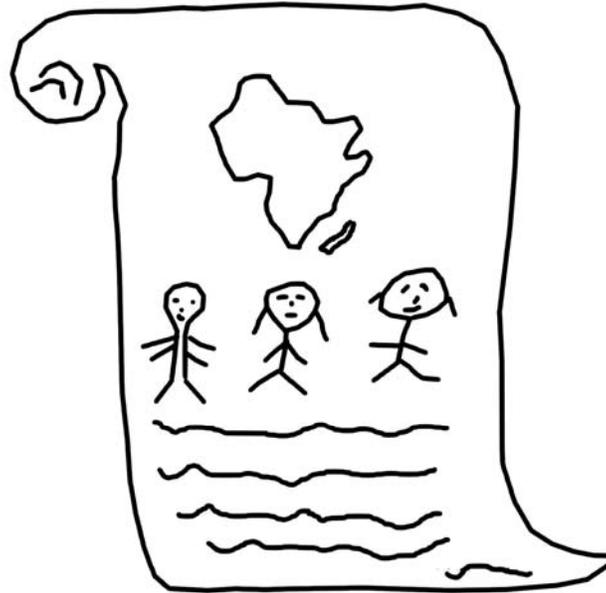
**This graph shows the slow progress of both the signing and ratification process of the Children's Charter since it was adopted in 1991.**

themselves to petition the Children's Charter's Committee of Experts regarding infringements of their rights;

- Including special reference to care of the child by extended families;
- Encouraging the state to provide support for parents "in times of need";
- Protecting handicapped children.

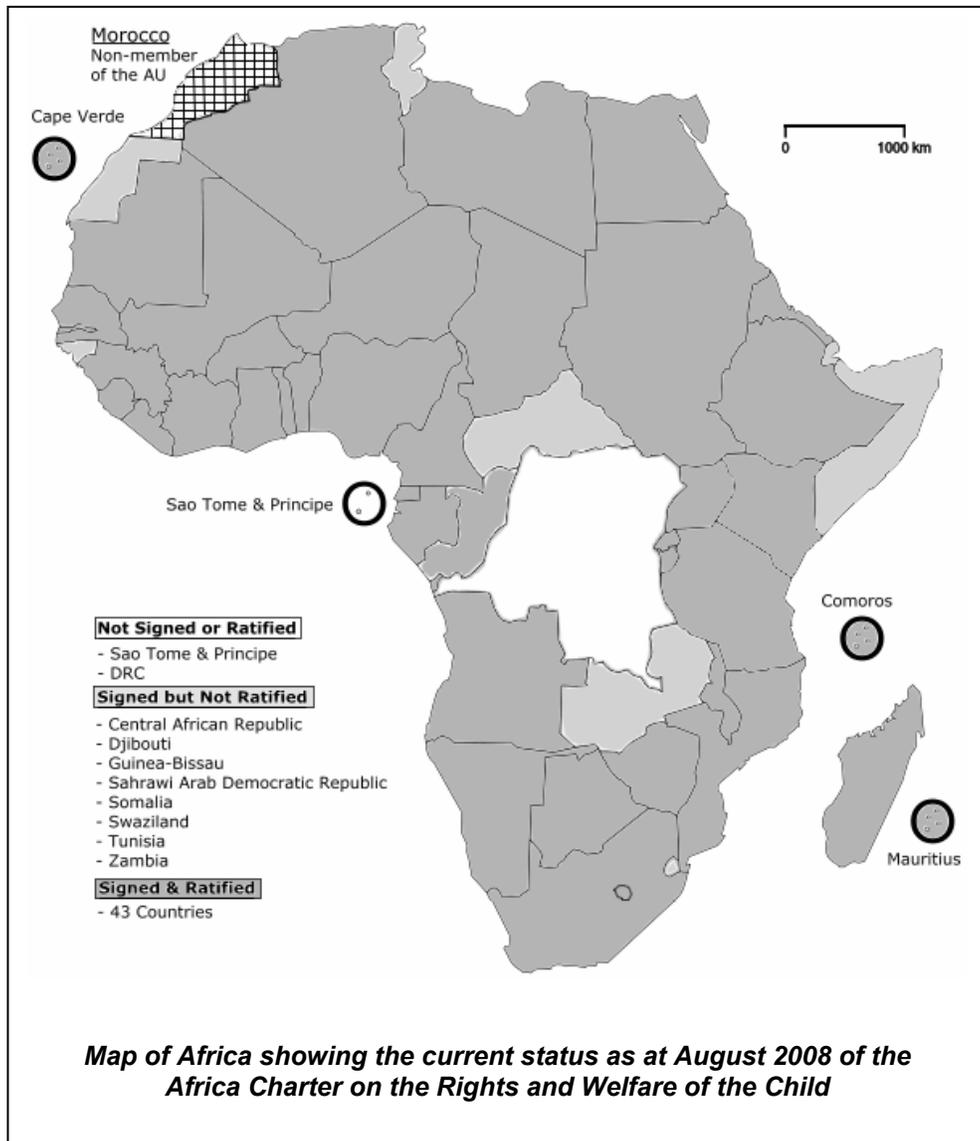
The fundamental principles guiding implementation of these rights include:

- Non-discrimination;
- The best interests of the child;
- The life, survival and development of the child;
- Child participation;
- Providing for the responsibilities that every child has with regard to their and society, the state and the international community.



#### Abbreviations

ACRWC	African Charter on the Rights & Welfare of the Child
AU	African Union
Children's Charter	African Charter on the Rights & Welfare of the Child
Committee of Experts	African Committee of Experts on the Rights & Welfare of the Child
CRC	Convention on the Rights of the Child
CSO(s)	civil society organisation(s)
FGM	female genital mutilation
NEPAD	New Partnership for Africa's Development
NGO(s)	non governmental organisation(s)
OAU	Organisation of African Unity
UN	United Nations



## Ratification

The African Charter has been ratified by 43 of the 53 countries in the continent. The DRC and the islands of Sao Tome and Principe have not signed or ratified the charter and 8 countries have not ratified it.

Some of the states which are non-signatories are also gross violators of human rights. Examples include the DRC, Sahrawi Arab Democratic Republic, Somalia and the Sudan. These violations range from recruitment of child soldiers, early child marriages, and child trafficking to enslavement, drug abuse, sexual exploitation, child labour and harmful cultural practices like FGM and male child preference.

## What are the drawbacks of the Children's Charter?

It doesn't protect children from life imprisonment without the possibility of release.

When dealing with criminal activities, there is no provision for alternative measures such as community rehabilitation.

No mention of the rights such as to remain silent, to be protected from retroactive legislation, to challenge detention, or to be compensated for miscarriages of justice.

Article 20 can be construed as supporting physical punishment by parents as it is unclear regarding the meaning of "domestic discipline."

There is some confusion regarding Article 31 that deals with children's responsibilities. Children are required to respect parents, superiors and elders at

### **Treaty:**

- A contract in writing between two or more political authorities (as states or international organisations such as the UN or AU) that is formally signed by representatives duly authorized and usually ratified by the lawmaking authority of the state;
- A document in which such a contract is set down;
- It can be called by many other different names, such as: international agreements, protocols, covenants and conventions.

### **Signing:**

- This is the process by which a state indicates their general agreement with a treaty's contents and an intention to ratify it.

### **Ratify:**

- Ratification is the act of giving official sanction or approval to a formal document such as a treaty or constitution;
- The next stage after a state has signed a treaty is to ratify it, whereby the state agrees to be bound by the articles of the treaty.

### **Accession:**

- The act of assenting or agreeing;
- The act by which one nation becomes party to an agreement already in force between other powers.

all times which could conflict with the child's right to participate in decisions that affect them.

The omission of a provision which requires countries to fully commit and use their resources means that the Children's Charter has no way to ensure or force states to provide resources to ensure the realisation of children's rights.

Although the Children's Charter makes provision for special protection measures for the disabled, it fails to expressly include disability as a prohibited ground of discrimination.

Unlike the CRC, which specifically ascribes rights to children of minorities, there is no similar provision in the African Charter, despite many countries in the region having significant populations of minority and indigenous groups.

## What is the African Committee of Experts on the Rights and Welfare of the Child (Committee of Experts)?

This section looks at how the Committee of Experts is organised and how it ensures that all the aspects Children's Charter are implemented, reports are examined and conducted investigations.

The Committee was formed in July 2001, one and half years after the Children's Charter came into force. The members are elected by the Assembly of Heads of State and Government of the African Union. The criteria for the selection of members are:

- Members must be nationals of a State Party to the Children's Charter (i.e. a country that is a signatory);
- They must be individuals of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child;
- Members are nominated by signatory countries and elected by the

Name	Country	Position
Ms. Seynabou Ndiaye Diakhate	Sénégal	Chairperson
Ms. Marie Chantal Koffi Appoh	Cote d'Ivoire	Vice-Chairperson
Ms Boipelo Lucia Seitlhamo	Botswana	Rapporteur
Hon. Justice Martha Koome	Kenya	Member
Mrs. Mamosebi T. Pholo	Lesotho	Member
Mr. Moussa Sissoko	Mali	Member
Mrs. Dawlat Ibrahim Hassan	Egypt	Member
Mr. Cyprien Adébayo	Benin	Member
Mrs. Agnès Kabore	Burkina Faso	Member
Mrs. Andrianirainy Rasamoely	Madagascar	Member
Mrs. Maryam Uwais	Nigeria	Member

Assembly of Heads of State of the African Union;

- Members are elected for a term of five years and serve voluntarily in their individual capacity. They may not be re-elected.

The Committee of Experts meets twice each year, usually in May and November in Addis Ababa, Ethiopia. The exact dates depend on other items on the AU agenda around these times.

They are empowered to receive and examine the country ("state") reports on the measures they have adopted to implement the provisions of the Children's Charter as well as the progress achieved regarding how the rights are being protected.

The final protective function of the Committee of Experts is related to the investigations procedure. They are empowered to resort to any appropriate method of investigation in respect of any issue covered in the Children's Charter.

### **What are the challenges faced by the Committee of Experts?**

- **Functional secretariat:** The Committee of Experts have yet to establish a fully functional secretariat which means that it cannot carry out its activities or deal with communications as well as country reports. It suffers from a serious lack of resources;
- **Attitude of member states:** Many member states are unenthusiastic about the Children's Charter and are often unwilling to nominate suitable people to sit on the Committee of Experts. Often, the committee

members resign mid-way through their term;

- **Non-state reporting:** A look at states' reporting history to the Committee of Experts also shows non-commitment by countries to fulfil their treaty obligations in respect of the Children's Charter. The responsibility for preparing and submitting country reports differ from country to country, which makes it difficult for the Committee of Experts to follow up with defaulting states;

#### **Definition of Pendency:**

Being undecided or in continuance;  
suspense: as in the pendency of a law suit.

- **The rule of pendency & appropriate bodies:** Cases cannot be tried or investigated at the same time in two or more human rights bodies. Thus once a case has been brought before the Committee of Experts, it has to remain there until the legal process has been exhausted. The problem is that it takes an average of two and a half years for cases to be decided by the Committee of Experts;
- **Other problems:** Other important setback identified are the constant lack of legal counsel present at sessions of the Committee to give legal guidance on decisions being taken by the Committee; lack of coordinated cooperation and communication between the African Commission and the Committee and the non- prioritising by the AU of the work of the Committee resulting in delays and cancellation of sessions.

## State Party reporting

Countries which have ratified the Children's Charter must submit initial reports within two years of ratification or the entry into force of the Charter and every three years thereafter. In 2008, the Committee of Experts started the process of reviewing the first four state reports that had been received from Egypt, Mauritius, Nigeria and Rwanda in May 2008.

The state party report must contain specific information pertaining to children in their country. This includes political, legal, administrative issues that are linked to the requirements of the structure supplied by the Committee of Experts.

Ideally it should be a comprehensive report that includes input from the state, civil society and other recognised bodies at the regional, continental, international levels. But usually, the state report doesn't include much information from civil society. So CSOs can submit a second or "alternative" report that contains the information that they have gathered.

Until very recently, this "alternative" report could only be accepted after the state had submitted their report. But now a process has been put into place whereby the state is given 18 months to submit their report, failing that, the "alternative," civil society report will be accepted as that state's report.

Once received, the report then becomes available as a public document and it undergoes a process of:

- **Elaboration:** The elaboration process is the first process that occurs. The Committee of Experts determines the report's completeness, representivity, its conformity to the guidelines, etc. and specific information is extracted regarding the children's rights;
- **Consideration:** The consideration process examines the reports to determine if the information supplied reflects the true situation in the country as a kind "photocopy" or "clear picture" at that point in time. This includes determining if there are any gaps or inconsistencies in the information supplied in both the official and the alternative reports;
- **Follow-up:** The follow-up process is where the state and civil society are contacted again to explain and complete any discrepancies or missing information. Further information and interviews may be required before the Committee is satisfied;
- **Submission to the AU:** Once the State Party and Alternative reports have been finalised, they are submitted to AU Secretariat for translation into the other working languages (English, French, Portuguese and Arabic). Then different Committee of Expert members review the report in a pre-

According to the minutes of the 11<sup>th</sup> meeting of the Committee of Experts held in Addis Ababa in May 2008, the 1st pre-session was scheduled to meet on 29-31 May 2008 to consider the only State Party reports that have been received from Egypt, Nigeria, Mauritius and Rwanda.

To read these country reports, go to <http://www.africa-union.org/root/AU/Conferences/2008/may/sa/child/documents.htm>

sessional working group in order to identify issues for further discussion with the state and request for any other information that may help when considering the report. Other organisations, CSOs, UN groups, who have contributed alternative reports or who are considered relevant may be invited to attend the session on an informal basis. This is where CSOs can bring information to the process. A pre-sessional report is produced after this meeting.

After the pre-sessional report has been produced, the members who have been appointed to review the State Party / Alternative Report meet to discuss an in-depth review of the report. Their findings are submitted to the respective state concerned and discussed with high level government representatives. There is no NGO or civil society input at this level.

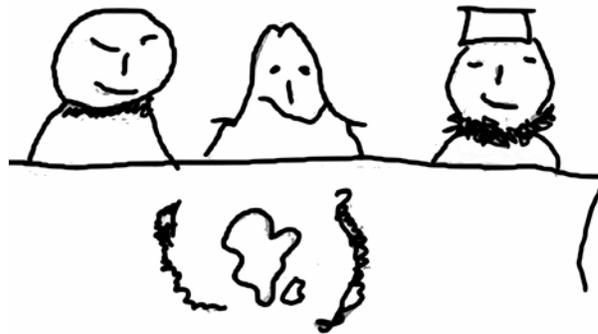
As a result of the in depth discussion, the Committee of Experts will identify problems, progress and differences in implementation of the Children's Charter by the State Party. These recommendations are called "concluding observations" and may include the following:

- The steps that need to be taken;
- Agree on recommendations;
- Suggest unique decisions suitable for each country;
- Changes in the country since the report was prepared;

- Follow-ups by the Committee of Experts to obtain more information or clarity.

After the initial State Party / Alternative report has been accepted, the state will then have to submit additional reports every 3 years. These reports are called "periodic reports." This will allow for comparison with the previous report to determine whether there has been progress or if the situation has worsened.

There may also be follow-ups and country visits. The State Party / Alternative Report and recommendations are sent to the Summit of the Heads of States and Government. Civil society is also able to intervene every 3 years to encourage the state to make improvements ahead of the preparation of additional reports.



## **Questions on Civil Society Participation in the Children's Charter Process**

*- addressed to Mr Jean-Baptiste Zoungrana, then Chair of the African Committee of Experts on the Rights and Welfare of the Child, at the **Pan-African Civil Society Workshop on the African Child Rights Charter, Save the Children Sweden and held in Pretoria, South Africa in November 2007.***

### **Q1: Regarding civil society participation in the reports. Is it better to have two reports (i.e. the State Party / Alternative Report) or one combined report?**

It is better for civil society to work with the government to present one report. However, this is not always practical and some issues may need to be presented differently – so two separate reports can also be presented.

### **Q2: How important are CSOs?**

They are crucial in the compilation of the State Party Report. They can really strengthen the Report.

### **Q3: How will you invite civil society to comment on the reports?**

We invite representatives from the CSO coalitions at the pre-session level where the CSO alternative report is reviewed. At the deliberation level, we may invite civil society as observers only.

### **Q4: Why does the Committee of Experts need to be invited by a government to undertake country visits?**

The Committee of Experts sends verbal requests to certain states and waits for their reaction. We need to have a government invitation before we can make a visit. There are reports to prepare, meetings to be arranged, answers to questions need to be prepared. Just to go there is no use. A state can also invite the committee without us asking first.

### **Q5: What sanctions can be applied to a country?**

In the case of a country which has ratified, but not implemented, we need to instigate a time frame or schedule. Have to remind the country to send reports. Otherwise we must warn them that we determine the country's situation without any government input.

### **Q6: What happens when the government interferes or infiltrates a CSO so it isn't objective anymore?**

Civil society should be organised and independent. If it is weakened or influenced by the state, then we need to find a way to obtain clear information. If there is a pro-government NGO, then find people to let us know and highlight the problems. We need different sources of information. We also need to double check the veracity of the information. I am sure that when we reach the pre-session stage we will uncover these bad facts. Especially when we invite different CSOs to participate.

### **Q7: Can we send the same report as the one we send to CRC? There is similar information in both reports and writing two reports is difficult.**

This is a concern we have. The CRC has its own specific guidelines. The problem is how to adapt the report to the specific guidelines. Probably the best way is to use the information in the CRC report as a base, as some information will be the same. Sometimes we use CRC information and add it to the country information. We need civil society to show up deficiencies and gaps.

## Observer status for CSOs

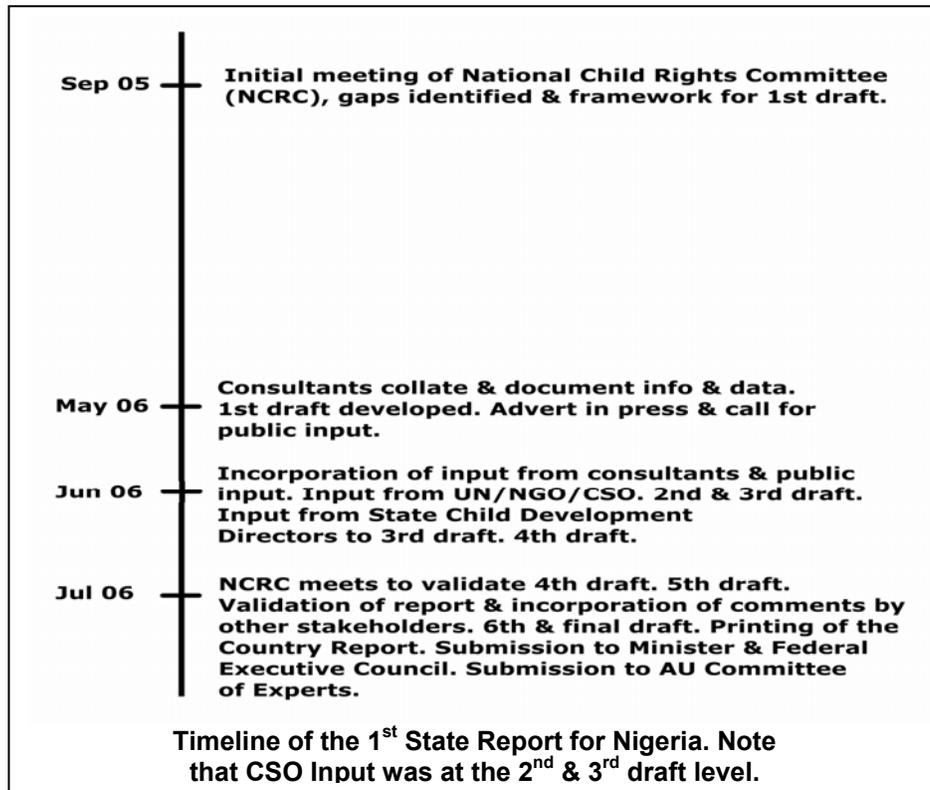
CSOs and international institutions have played a significant role in the work of the Committee of Experts and they have served as the backbone of the committee's work since inception. International NGOs have been particularly involved in the work of the committee, providing different kinds of expertise and financial support to most of the work.

Although CSO involvement was minimal in the beginning, over the intervening years they have since taken a pivotal role in ensuring that the committee fulfils its mandate and in

providing the necessary support needed to facilitate its work. The adoption of the guidelines for granting observer status will now also ensure that more CSOs are able to formally participate and contribute in the process.

According to the proposed guidelines for observer status some of the ways CSOs and associations will be allowed to participate will include:

- Attending opening and closing ceremonies of the Committee of Experts sessions;
- Participating in the committee's meetings;
- Accessing documents that are not



confidential and do not deal with issues concerning the observers;

- Being invited to participate in closed sessions dealing with issues that concern them;
- Making statements on issues that concern them, provided the statement has been sent to the committee in advance;
- Responding to questions they may be asked in meetings.

The guidelines encourage the formation of coalitions by CSOs with similar objectives. The following are the requirements for the participation of CSOs for observer status are:

- They must be registered in a member state with the mandate to carry out regional and international activities;
- Must have been registered for a minimum of three years;
- Must have done work in the defence of children's rights;
- They must have a recognised headquarters, democratically adopted statutes and a representative structure;
- They must submit a list of documentation to aid their application at least three months before a session of the Committee of Experts.

Once the organisation has obtained observer status, it may request the Committee of Experts to include issues of interest on their agenda and to make oral statements at the sessions. They are entitled to receive information on the time, location and agenda of the

sessions of the committee. The committee can invite a CSO to participate in the deliberations of the meetings of the Committee without a voting right.

The CSOs are also under an obligation to establish close relations with the committee and to hold regular consultations on all issues of common interest. CSOs are required to submit reports on their activities every two years. When CSOs default on their obligations, the committee may suspend or withdraw the observer status.

## Communications to the Committee of Experts

### What is a "communication"?

A communication is a complaint submitted to the Committee of Experts regarding a violation of the rights of children under the Children's Charter.

The following are some guidelines for those wanting to submit a communication to the Committee of Experts:

- A communication may be submitted by individuals, groups, associations, NGOs, etc;
- These individuals or groups **MUST** be recognised by the state, AU or international body;
- The state is excluded from the complaints process;
- Any violation of child rights may be considered;
- The country where the violation has occurred must be a signatory of the Children's Charter.

## **What are the specific requirements of a Communication?**

A communication must meet the following criteria:

- It cannot not be anonymous;
- It must be written;
- It must be submitted within a reasonable deadline or timeframe, depending on the nature of the complaint;
- It must be written in a reasonable and non-defamatory tone;
- It must be compatible with the AU rules and laws or the Children's Charter;
- It must not be exclusively based on information in the media;
- Issues must not have been already decided by another investigation, procedure or international regulation;
- It must only be submitted when all local / domestic remedies have been exhausted or when the author of the communication is not satisfied with the solution provided at the local / domestic level;
- The Committee of Experts can also review its own decision in a communication where the complainant can provide additional information to support his/her case;
- The Committee of Experts can receive a communication from a non-State Party (eg. CSO, individual, group of people) if it is in the best interest of the child.

If the communication meets the above requirements, then it may be considered by the Committee of

Experts. When a complaint reaches the committee, a group will be assigned to work on it to decide if it is acceptable. If it is acceptable then they will give feedback both to the country where the problem is located. If there are gaps, then the committee will ask the country to take measures to protect the complainant while it is being investigated further.

The work on the complaint is confidential and is held in closed session debates. Once a decision has been taken, a communication is sent to the country's state department. A member on the Committee of Experts is designated to follow up and coordinate the process. Once the process has been completed, a report is sent to the Committee of the Heads of State and Government.

Children who are the authors or who are the victims in the communication process now have an opportunity to express their opinions to the Committee of Experts. This provision guarantees the cardinal principle of child participation in issues concerning them.

## **What is an Investigation?**

Investigations may be initiated because the Committee of Experts has received a communication indicating a serious violation. Investigation missions can be initiated either by a state referring a matter to the Committee of Experts, or the committee can undertake its own investigations, although the Committee may only visit a State Party if invited to do so by the government.

To ensure the investigative mission team has background knowledge of the situation, a preliminary report according to certain guidelines and based on available information is prepared before each investigation. The mission will meet with available state and non-state organisations and people in the country where they will be investigating.

Once the mission has finished its investigation, it has to release a preliminary result to the government and the media in the country of investigation. A final report is then prepared which incorporates the mission's recommendations. This mission report must be attached to the progress report

of the Committee to the African Heads of State and Government.

The country that has been investigated has up to 6 months after the adoption of a decision by the Committee of Experts to submit a written reply on what they have done regarding the requirements or measures in the mission report.

The country's response should also include information on any measures in reaction to the recommendations made by the Committee after the mission. CSOs and 'specialised institutions' like children's CSOs could also be requested to provide information on the situation of children in that state.

### Useful websites

- Download a copy of the Children's Charter and a list of countries that have signed and ratified it: [www.africa-union.org/root/au/Documents/Treaties/treaties.htm](http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm)
- A comprehensive site with information and lots of resource links regarding the Children's Charter: [www.crin.org/RM/acrwc.asp#dif](http://www.crin.org/RM/acrwc.asp#dif)
- To read the 4 country reports so far received from Egypt, Rwanda, Mauritius and Nigeria, go to [www.africa-union.org/root/AU/Conferences/2008/may/sa/child/documents.htm](http://www.africa-union.org/root/AU/Conferences/2008/may/sa/child/documents.htm)
- To read the concept note on procedures to be followed at a pre-sessional meeting, go to [www.africa-union.org/root/ua/Conferences/2008/MAI/SA/26-28mai/Concept%20note%20pre-session.doc](http://www.africa-union.org/root/ua/Conferences/2008/MAI/SA/26-28mai/Concept%20note%20pre-session.doc)
- The web site for the African Committee of Experts on the Rights and Welfare of the Child is a little outdated, but it still has useful information: [www.africa-union.org/child/home.htm](http://www.africa-union.org/child/home.htm)
- Guidelines for the Initial Reports of State Parties: [www.africa-union.org/child/Guidelines%20for%20Initial%20reports%20\\_%20English.pdf](http://www.africa-union.org/child/Guidelines%20for%20Initial%20reports%20_%20English.pdf)
- The Danish Institute for HR document on African Human Rights Complaints Handling Mechanisms published in April 2008: [www.africancourtcoalition.org/editorial.asp?page\\_id=134](http://www.africancourtcoalition.org/editorial.asp?page_id=134)
- The African Child Information Hub is a platform for the exchange and dissemination of information and networking among organisations, experts and advocates for the rights and welfare of the child. Documents such as the minutes of the Committee of Experts meetings can be found under the "events" section: [www.africanchild.info](http://www.africanchild.info)

### Contact Details for the African Committee of Experts on the Rights and Welfare of the Child

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Tel: +251-1-51-35-22 | Fax: +251- 1-53-57-16  
Email: [dsocial@africa-union.org](mailto:dsocial@africa-union.org) | Internet: [www.africa-union.org/child/home.htm](http://www.africa-union.org/child/home.htm)