

An ice-breaker: State party reports and the 11th session of the African Committee of Experts on the Rights and Welfare of the Child

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Summary

During its 11th session, the African Committee of Experts on the Rights and Welfare of the Child held its first Pre-Session for the consideration of state party reports. This update highlights the work of the Committee during this session. While little attention is paid to the proceedings of the 11th session, partly as a result of the fact that the session was short-lived (only three days, composed of open and closed sessions), the procedures for the Pre-Session, as well as the substance of the four reports that were discussed during the Pre-Session, occupy centre stage. In conclusion, it is argued that the whole exercise of the Pre-Session was an ice-breaker, and represents progress in its own right. In looking forward, the importance for the African Children's Committee to draw the necessary lessons from the four state party reports and to chart ways of strengthening the reporting regime is underscored. A number of tentative recommendations are made in this regard.

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1 Introduction

The 11th ordinary session of the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) was held in Addis Ababa, Ethiopia, from 26 to 28 May 2008. The session was attended by eight Committee members, a number which was enough to form a quorum.¹

Amongst others, during the 11th meeting, the Committee discussed the Day of the African Child (DAC), the Committee's budget for 2009, participation of Committee members in international meetings, and a Plan of Action for 2010-2015. New items that have not officially featured on the agenda of the meeting of the Committee in the past, such as a detailed plan for the organisation of the Pre-Session to Consider State Party Reports (Pre-Session) were also discussed.

During the Committee's 10th ordinary session, the issue of holding a Pre-Session was briefly highlighted. As already reported in the previous update:²

[t]he discussions on the preparation of the pre-session for the consideration of state parties' reports revolved around the procedure to be followed and the composition of the teams. As for the procedure to be followed, the members of the African Children's Committee decided to summon the pre-session before the 11th ordinary session of the Committee, more precisely in February 2008.

However, the Pre-Session was held neither in February 2008 nor before the 11th meeting in May 2008. Therefore, there was a need to bring up the issue again during the 11th session.

Accordingly, the Pre-Session was held from 29 to 31 May 2008. This was the first time the Committee held a Pre-Session as it moves towards considering the state party reports it has received. The Pre-Session brought together representatives from the United Nations Children's Fund (UNICEF), Plan International, Word Vision, Save the Children, the African Network for the Prevention and Protection Against Child Abuse and Neglect (ANPPCAN)-Nigeria Chapter, the Coalition to Stop the Use of Child Soldiers, the Mauritius Centre for the Education and Development of Children (CEDEM), the Community Law Centre (CLC) of the University of the Western Cape (UWC), Common Market for Eastern and Southern Africa (COMESA), and Ms Ouedraogo Awa N'Deye, former member of the UN Committee on the Rights of the Child (CRC Committee). Scheduled to be discussed during the Pre-Session were

¹ Art 38(3) of the African Children's Charter provides that '[s]even committee members shall form the quorum'. Committee member Mrs Pholo Mamosebi has failed to attend two consecutive sessions of the Committee and it was agreed that, in accordance with art 14 of the Rules of Procedure, a reminder would be sent to her.

² J Sloth-Nielsen & B Mezmur 'Win some, lose some: The 10th ordinary session of the African Committee of Experts on the Rights and Welfare of the Child' (2008) 8 *African Human Rights Law Journal* 219.

state party reports from Egypt, Mauritius, Nigeria, and Rwanda (the four state party reports).

In what follows, this update will highlight the work of the Committee during its 11th ordinary session. While little attention is paid to the proceedings of the 11th session, partly as a result of the fact that the session was short-lived (only three days, composed of open and closed sessions), the procedures for the Pre-Session, as well as the substance of the four reports that were discussed during the Pre-Session, will occupy centre stage.

Generally, it is expected that the brief analysis of the four reports against the backdrop of the Guidelines for Initial Reports of State Parties (Guidelines),³ adopted by the African Children's Committee in 2003, will offer information that is valuable for the reporting process to the Committee as well as state parties. In addition, such an appraisal is expected to shed light on whether or not state parties appreciate the added value of some of the substantive provisions of the African Charter on the Rights and Welfare of the Child (African Children's Charter) when compared to the Convention on the Rights of the Child (CRC). After all, the African Children's Charter, while upholding all the universal standards outlined in CRC, speaks to the specific problems that African children confront, for example the impact of armed conflict and harmful traditional practices.

The degree to which the African Children's Charter will improve children's lives in Africa depends greatly on how state parties implement it and adopt domestic measures to comply with their treaty obligations. The state party reports offer an insight into the understanding of states of the provisions of the African Children's Charter, which directly relates to the domestication and subsequent realisation of the rights therein.

2 Procedural matters

During the initial stages of the 11th meeting, a closed session was held among the Committee members following the opening ceremony of the session. During the closed session, the agenda and programme of work were considered and adopted by the Committee.

It was decided that the theme for the DAC in 2009 will be 'Africa fit for children: Call for accelerated action towards their survival'. The call for accelerated action is a reaffirmation of the need to achieve targets set in the 2001 Plan of Action in Cairo, Egypt, in 2001, during the First Pan-African Forum on Children.

The other procedural matter that took place during the 11th session is the election of three new bureau members. Accordingly, the newly elected members are:

³ Cmttee/ACRWC/2 II. Rev2.

Ms Diakhate Seynabou
 Ms Koffi Marie Chantal Appoh
 Ms Boipelo Seiltamo Lucia

Chairperson
 Deputy Chairperson
 Rapporteur

The election of the new bureau members was mainly necessitated as a result of the end of the term of office of four Committee members, including the former Chairperson.

It was argued in previous notes⁴ that the need to extend the term of office of Committee members has become evident through the years. The fact that Committee members are not eligible for re-election after serving one term has been identified as one set-back and continues to potentially affect the smooth operation of the work of the Committee. Trying to address this set-back at the eleventh hour when Committee members' terms of office is about to expire, as the outgoing Committee members attempted, is too little, too late. Rather, it is advisable that a concerted effort is made by the current Committee members to lobby the African Union (AU) Commission to undertake the requested study on measures to renew the terms of office of Committee members.⁵ Nothing to this effect was discussed during the 11th session. The official report of the meeting also testifies to this fact. Nevertheless, the issue remains a worthy one to spend time on and subsequent sessions would fare better if the issue is addressed.

As requested during the 10th meeting,⁶ alternative reports on the four state party reports were submitted by selected non-governmental organisations (NGOs) and intergovernmental organisations working in the respective countries that have submitted state party reports. For instance, UNICEF and Plan International submitted alternative reports on some of the four state party reports. This *ad hoc* arrangement of requesting a selected number of NGOs and intergovernmental organisations to submit alternative reports might have worked for the moment. However, it has also brought into the spotlight the urgent need to facilitate the granting of observer status to civil society organisations in accordance with the Guidelines for the Granting of Observer Status.⁷ Civil society organisations should be central to the general work of the African Children's Committee and their invaluable contribution in the state party reporting and alternative reporting processes should be tapped properly. One

⁴ See, eg, Sloth-Nielsen & Mezmur (n 2 above) 211-212.

⁵ Under Decision EX/CL/233(VII) of 2005, para 8, the Executive Council of the AU has requested the AU Commission to study measures to renew the terms of office of committee members for another term.

⁶ Sloth-Nielsen & Mezmur (n 2 above) 219.

⁷ For further details on these Guidelines, see B Mezmur 'Still an infant or now a toddler? The work of the African Committee of Experts on the Rights and Welfare of the Child and its 8th ordinary session' (2007) 7 *African Human Rights Law Journal* 267-270.

main avenue of achieving this is to formalise their participation in the work of the African Children's Committee by granting them observer status.

The Pre-Session was not generally open to the public, including partner NGOs and intergovernmental organisations. Therefore, the question of who should be allowed to take part in the Pre-Session for the consideration of the state party reports triggered some controversy. This controversy reached its climax when the representative from the regional economic community COMESA was requested to leave the Pre-Session. According to the Committee, it was argued, only representatives 'who had information' on the respective state party reports to be considered were to be allowed. It was not clear what exactly was meant by only representatives 'who had information'. Does it mean that a representative needed to be from the country the report of which was being considered? Are representatives of organisations who have an office in the country the report of which was being considered entitled access to the Pre-Session? No concrete explanation was forthcoming from the Committee that addressed these questions.

In this regard, emulating the practice of the CRC Committee can be of some concrete guidance.⁸ The CRC Committee has developed the CRC Guidelines for the participation of partners (NGOs and individual experts) in the Pre-sessional Working Group of the Committee on the Rights of the Child (CRC Pre-Sessional Guidelines). According to the Guidelines, written contributions are made by NGOs and individual experts.⁹ In addition, as far as participation in the pre-session is concerned, NGOs and individual experts need to submit a request to the Secretariat of the CRC Committee two months before the pre-session.¹⁰ Based on the written information submitted, the Secretariat of the CRC Committee sends out invitations to selected NGOs and individual experts.¹¹ The selection and subsequent invitation is made on the basis of the relevance of the information submitted to the Committee's consideration of state party reports. According to the CRC Pre-Sessional Guidelines, priority is to be given to partners who are working in the

⁸ This has already been suggested in B Mezmur 'Looking back to look ahead: The 9th meeting of the African Committee of Experts on the Rights and Welfare of the Child' (2007) 7 *African Human Rights Law Journal* 552-553.

⁹ NGOs and individual experts should also provide 20 copies of each document submitted to the CRC Secretariat. See CRC Guidelines for the participation of partners (NGOs and individual experts) in the Pre-sessional Working Group of the Committee on the Rights of the Child (CRC Pre-Sessional Guidelines) (UN Doc CRC/C/90, 1999) para 2.

¹⁰ CRC Pre-Sessional Guidelines (n 9 above) paras 2 & 3.

¹¹ CRC Pre-Sessional Guidelines (n 9 above) para 4.

state party concerned and who can provide first-hand information to the CRC Committee.¹² If the Pre-Session of the African Children's Committee is formalised in this manner, there will be certainty about who would be allowed to attend and this will minimise potential disappointment of partners.

3 State party reports

State reporting is the most basic of all strategies adopted internationally to assess and oversee compliance with international human rights standards.¹³ Reporting is found in all the eight core human rights treaties of the UN, including CRC.¹⁴ At the regional level, both the African Charter on Human and Peoples' Rights (African Charter) as well as the African Children's Charter have respective reporting obligations for state parties. In fact, state reporting is regarded as 'the lowest common denominator'¹⁵ of the global and regional human rights protection systems.

It has been observed, in the context of CRC, that, according to article 44, state party reports are expected to contain the following:

Firstly, the states should list the measures they have adopted which give effect to the rights recognised in CRC. At the same time, they also have to give information on the progress made on the real enjoyment of those rights. Secondly, the same article specifies that the reports are to mention the 'factors and the possible difficulties' that have their influence on the compliance with the obligations entailed by CRC. Finally, article 44 mentions that the reports are to contain sufficient information in order to provide the Committee with a comprehensive understanding of the implementation of CRC in the country concerned.¹⁶

¹² As above.

¹³ M Evans *et al* 'The reporting mechanism of the African Charter on Human and Peoples' Rights' in M Evans & R Murray (eds) *The African Charter on Human and Peoples' Rights: The system in practice, 1986-2000* (2002) 37.

¹⁴ The other seven core UN human rights treaties are the International Covenant on Civil and Political Rights (CCPR); the International Covenant on Economic, Social and Cultural Rights (CESCR); the Convention on the Elimination of All Forms of Racial Discrimination (CERD); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CRMW); the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities (CRPD).

¹⁵ As above.

¹⁶ M Verheyde & G Goedertier 'Article 43-45: The UN Committee on the Rights of the Child' in A Alen *et al* (eds) *A commentary on the United Nations Convention on the Rights of the Child* (2006) 16.

The wording of article 43 of the African Children's Charter on the 'reporting procedure' is drafted in a similar fashion to CRC.¹⁷ Therefore, it imposes the same level of obligations on state parties, which, in some respects, are considered to be relatively onerous obligations when compared to other human rights instruments, such as the International Covenant on Civil and Political Rights (CCPR),¹⁸ the Convention on the Elimination of Discrimination Against Women (CEDAW)¹⁹ and the Convention on the Elimination of Racial Discrimination (CERD).²⁰

Under the African Children's Charter, the purpose of reporting is reflected in the Guidelines adopted by the African Children's Committee. The Guidelines provide that the African Committee²¹

[b]elieves that the process of preparing a report for submission to the Committee offers an important occasion for conducting a comprehensive review of the various measures undertaken to harmonise national law and policy with the Children's Charter and to monitor progress made in the enjoyment of the rights set forth in the Children's Charter. Additionally, the process should be one that encourages and facilitates popular participation, national introspection and public scrutiny of government policies and programmes, private sector practices and generally the practices of all sectors of society towards children.

The Guidelines further expect that the reporting process 'serves as the essential vehicle for the establishment of a meaningful dialogue between the state parties and the Committee'.²²

¹⁷ Art 43 of the African Children's Charter on Reporting Procedure provides in part that: '1 Every state party to the present Charter shall undertake to submit to the Committee through the Secretary-General of the Organization of African Unity, reports on the measures they have adopted which give effect to the provisions of this Charter and on the progress made in the enjoyment of these rights: ... 2 Every report made under this article shall: (a) contain sufficient information on the implementation of the present Charter to provide the Committee with comprehensive understanding of the implementation of the Charter in the relevant country; and (b) shall indicate factors and difficulties, if any, affecting the fulfillment of the obligations contained in the Charter. 3. A state party which has submitted a comprehensive first report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (a) of this article, repeat the basic information previously provided.'

¹⁸ It leaves out the express requirement to supply sufficient information to provide the Committee with a comprehensive understanding of the implementation of the treaty. See Verheyde & Goedertier (n 16 above) 17.

¹⁹ State parties 'may indicate' difficulties (art 18(2) of CEDAW) (our emphasis) as opposed to 'shall indicate' under art 43(2)(b) of the African Children's Charter.

²⁰ Only requires state parties to submit a report on the legislative, judicial, administrative or other measures which they have adopted. See art 9(1) of CERD.

²¹ Para 3 of the Guidelines.

²² Para 4 of the Guidelines.

The Guidelines group the articles of the African Children's Charter into nine broad themes or clusters.²³ Therefore, as opposed to the article-by-article reporting followed by some treaty bodies (notably CCPR), state parties to the African Children's Charter are required to report under the following themes:

- 1 general measures of implementation²⁴ (mainly information on necessary steps undertaken to adopt such legislative or other measures as may be necessary to give effect to the provisions of the African Children's Charter);
- 2 definition of the child;²⁵
- 3 general principles²⁶ (on non-discrimination; the best interests of the child, the right to life, survival and development; respect for the views of the child and provision of information to children and promotion of their participation);
- 4 civil rights and freedoms²⁷ (on the right to a name and nationality; preservation of identity; the right to privacy, and so forth);
- 5 family environment and alternative care²⁸ (on adoption, foster care, inter-country adoption and illicit transfer of children);
- 6 health and welfare;²⁹
- 7 education, leisure and cultural activities;³⁰
- 8 special protection measures³¹ (covering a wide range of issues such as children in conflict with the law, children in situations of emergency; child exploitation and children of minority groups); and
- 9 responsibilities of the child.³²

It is in light of these purposes and expectations that the following brief analysis of the four state party reports submitted to the African Children's Committee should be viewed. The effectiveness of the Guidelines as a means to an end (the end being the supervision of the implementation of the provisions of the African Children's Charter at the domestic level) is weighed on the basis of the four reports submitted to the African Children's Committee. In the brief analysis, commendable practices as

²³ Unfortunately, while the other three reports follow these Guidelines, Egypt's report does not. Egypt's report follows an article by article reporting system, which would make it less accessible for the African Children's Committee in its consideration of the state party report.

²⁴ Paras 8-9 of the Guidelines.

²⁵ Para 10 of the Guidelines.

²⁶ Paras 11-12 of the Guidelines.

²⁷ Para 13 of the Guidelines.

²⁸ Paras 14-16 of the Guidelines.

²⁹ Paras 17-18 of the Guidelines.

³⁰ Paras 19-20 of the Guidelines.

³¹ Paras 21-22 of the Guidelines.

³² Para 23 of the Guidelines.

well as areas where there is room for improvement are identified and tentative recommendations are made.

3.1 General measures of implementation

3.1.1 The process of preparing a state party report

Lloyd observed that³³

[t]he Guidelines regard African society as a resource and paragraph 3 states that the process of preparing a report should encourage and facilitate popular participation and public scrutiny of government policies, private sector practices and generally the practices of all sectors of society towards children.

The state party reports from Rwanda,³⁴ Egypt and Mauritius³⁵ fall short of what the Guidelines require of state parties in embarking on the process of preparing a state party report. However, the Nigerian state party report stands out in offering an example of a good practice as to the kind of process that could be followed and the level of participation required in the preparation of a state party report.

In Nigeria, the lead ministry for the preparation of the state party report, the Federal Ministry of Women Affairs (FMWA), envisaged a process that ensured 'the full ownership by the Federal and State Ministries of Women Affairs as the concerned ministries in charge, and real participation of the Ministries of Finance and National Planning'.³⁶ The 'real participation' of the Ministry of Finance in the drafting (and, hopefully, at a later stage, during the 'constructive dialogue' phase of the reporting process) is indeed a laudable move, and is in keeping with the recommendations of the 2007 General Days of Discussion of the CRC Committee on 'Resources for the rights of the child: Responsibility of states'.³⁷ The National Child Rights Implementation Committee (NCRIC), drawn from a cross-section of governmental and sectoral ministries, co-ordinated and gave direction to the whole reporting process. As the Nigerian state party report indicates, newspaper and television advertisements calling for input from the general public

³³ This is despite the fact that Rwanda's report to the CRC Committee in 2002 contains a section entitled 'Preparation of the present report'. Under this section, issues such as the seminars and workshops that have been held for the preparation of the report, the organisations that were involved in the preparation of the report, the designation by the Prime Minister of the lead institution, establishment of the Co-ordination and Monitoring Committee as well as the establishment by the Co-ordination Committee of the programme of consultation and information gathering, and the actual consultations and steps followed in the preparation of the report are highlighted.

³⁴ Rwanda's state party report, 33.

³⁵ Which briefly mentions that '[i]n preparing the present report, consultations were made with all stakeholders and their views/suggestions have, as far as possible, been taken on board'. See Mauritius's state party report, 8.

³⁶ Nigeria's state party report, 19.

³⁷ See 'Recommendations' http://www2.ohchr.org/english/bodies/crc/docs/discussion/recommendations_2007.doc (accessed 22 September 2008).

into the report, inputs from youth and children, meetings of the core drafting team, UN and NGOs consultative meetings; as well as the final NCRIC and Stakeholders Validation Workshop have added to the participatory dimension of the report-writing process. In fact, the state party report has an annexure showing the detailed work plan followed from inception of the report writing process to its conclusion.³⁸ The practice of the state party in this regard is worth emulating.

3.1.2 Budgeting for children

One of the conspicuous shortcomings of the state party reports is the lack of appropriate and adequate information on budgeting for children.³⁹ Mauritius's report puts this challenge up front, by stating that '[n]one of the ministries concerned has a specific budget for children or for child development activities ... it is difficult to indicate precisely how much is spent exclusively for children'.⁴⁰

Writing in 1993 in the context of the CRC Committee's initial guidelines, Abramson noted that '[o]ne glaring inadequacy of the guidelines is that they do not ask states for any information on spending. Even the most elementary questions about what percentage of the budget goes to children's health or education are omitted.'⁴¹ Abramson's observation is equally valid to the African Children's Committee Guidelines.

Under the 'General measures of implementation' cluster, it is important to include more detailed questions regarding, *inter alia*, the proportion of the budget devoted to social expenditure for children, such as education, health and social security. This information should be requested at the central, regional and local levels and, where appropriate, at the federal and provincial levels. It is also essential to enquire about the budget trends over the period covered by the report. This shortcoming could be addressed by adopting a recommendation amending the current Guidelines, or at a later stage while drafting the guidelines for periodic reports.

3.2 Definition of a child

The definition of a child is a fundamental provision that basically determines the scope of application of the instrument. Article 2 of the African Children's Charter offers a clear and concise definition of the

³⁸ See Annexure 1 to the state party report.

³⁹ While Nigeria's and Egypt's state party reports provide some detail, those of Rwanda and Mauritius are very much lacking. See Nigeria's state party report, 31-34. See too Egypt's state party report, 9-12.

⁴⁰ Mauritius's state party report, 102.

⁴¹ B Abramson 'First state reports: Sunny and ... cloudy' (1993) 10 *International Children's Rights Monitor* 23.

child as 'every human being under 18 years' and, unlike CRC,⁴² there are no limitations or attached considerations, so that it is able to apply to as wide a number of children as possible.

Despite the fact that paragraph 10 of the Guidelines requires state parties to 'provide information, *in conformity with article 2 of the Children's Charter*, regarding the definition of a child under their laws and regulations',⁴³ it does not provide a detailed and clear guideline as to the level of detail to be included.

It is the practice under CRC that the 'Definition of the child' cluster is also expected to illuminate on the legal minimum ages established for various purposes. Unfortunately, since the Guidelines do not expressly require this information, this shortcoming has led to two scenarios. First, state parties might not provide any information under this cluster on the legal minimum ages established for various purposes. Secondly, similar to the Egypt,⁴⁴ Rwanda,⁴⁵ and Mauritius state party reports, the information provided on the legal minimum ages established for various purposes may be incomplete. For instance, the report of Mauritius provides information only in the areas of minimum ages for juvenile offenders, legal counselling without parental consent, consent to medical treatment, and for appearing in court and participating in administrative and judicial proceedings.⁴⁶

In this regard, the Guidelines would fare better if they are amended to expressly require that state parties should indicate the legal minimum ages established for various purposes including, *inter alia*, legal or medical counselling without parental consent, end of compulsory education, part-time employment, full-time employment, hazardous employment, sexual consent, marriage, voluntary enlistment into the armed forces, conscription into the armed forces, voluntarily giving testimony in court, criminal liability, deprivation of liberty, imprisonment and consumption of alcohol or other controlled substances.⁴⁷

⁴² Art 1 of CRC states that a child is any human being under 18, unless majority is attained earlier under the law applicable to the child. This provision is ambiguous and weak, lacking specific protection within the African context in order to take into account child betrothals, child participation in armed conflict and child labour.

⁴³ Our emphasis.

⁴⁴ Egypt's state party report, 13-14.

⁴⁵ The report provides information under this cluster on capacity to marry, employment, participation in labour unions, and testimony before criminal court. See Rwanda's state party report, 19-24.

⁴⁶ Mauritius's state party report, 23-24.

⁴⁷ CRC Guidelines, art 12, general guidelines regarding the form and content of initial reports to be submitted by state parties under art 44, para(a) of the Convention (30/10/91 CRC/C/5) (basic reference document).

3.3 Protection rights

A number of protection-related rights under the African Children's Charter provide a higher normative standard than CRC. These rights include those pertaining to child soldiers, refugee children, children of imprisoned mothers, the use of children in the form of begging, disabled children, child labour, adoption and harmful social and cultural practices, such as child betrothal and child marriage.⁴⁸ This subsection only highlights the first four and makes an appraisal of the extent to which the four state party reports under investigation have addressed them in their reporting.

3.3.1 Child soldiers

A lack of understanding of paragraph 24 of the Guidelines that explicitly requires that '[t]he report shall, in particular, *highlight the areas of rights that are specific to the Children's Charter*'⁴⁹ is displayed under the section of Egypt's state party report on the use of children in armed conflict. Egypt reports that it 'regulates the military treatment of volunteers in accordance with the provisions stipulated in the Second Protocol'⁵⁰ to CRC, namely the Optional Protocol on the Involvement of Children in Armed Conflict (Optional Protocol). Accordingly, the Coalition to Stop the Use of Child Soldiers reports that legislation in Egypt allows the voluntary recruitment of children who are 16 years of age and above.⁵¹

Egypt's voluntary recruitment age of 16 is concordant with CRC, if the state party report submitted was to the CRC Committee. This is because article 38(2) of CRC entrenches that state parties must take all feasible measures to ensure children up to the age of 15 are not recruited. In addition, since Egypt is a party to the Optional Protocol,⁵² which allows for voluntary recruitment beginning from the age of 16,⁵³ its minimum

⁴⁸ For a discussion of how these provisions of the African Children's Charter offer better standards than the African Children's Charter, see generally B Mezmur 'The African Children's Charter versus the UN Convention on the Rights of the Child: A zero-sum game?' (2008) 23 *SA Public Law* 1-28.

⁴⁹ Our emphasis.

⁵⁰ Egypt's state party report, 88. It is to be noted that Egypt reports on the issue of the involvement of children in armed conflict in a very brief three-liner paragraph.

⁵¹ Coalition to Stop the Use of Child Soldiers *Child soldiers: Global report* (2008) 288.

⁵² Acceded to 6 February 2007

⁵³ Art 3(1) of the Optional Protocol. In its declaration on accession, the Egyptian government has stated that 'in accordance with current laws ... the minimum age for voluntary recruitment into the armed forces is 16 years. The Arab Republic of Egypt is committed to ensuring that voluntary recruitment is genuine and entirely willing, with the informed consent of the parents or legal guardians after the volunteers have been fully informed of the duties included in such voluntary military service and based on reliable evidence of the age of the volunteers.' See Egypt's Declaration on accession to the Optional Protocol <http://www2.ohchr.org> as cited in Coalition (n 51 above) 134.

age for voluntary recruitment does not violate the provisions of the Optional Protocol.⁵⁴

However, the same cannot be said of Egypt's minimum age for voluntary recruitment as far as the African Children's Charter is concerned. Article 22(2) of the African Children's Charter provides for a blanket prohibition against the recruitment of children into the armed forces of the parties to the Charter. Although it is only the direct participation of children in hostilities that is prohibited, not their participation *per se*, the prohibition of their recruitment by article 22(2) renders children's participation in hostilities less likely. There is no room for voluntary recruitment for *children* — by definition, persons below the age of 18.⁵⁵ Therefore, Egypt's position that allows for voluntary recruitment beginning from the age of 16 is a clear violation of article 22 of the African Children's Charter, which was hopefully noticed by the African Children's Committee during the Pre-Session.

The section of Mauritius's state party report addressing the issue of child soldiers is even more lamentable. The report under child soldiers is only three lines long and in full provides as follows:⁵⁶

Mauritius not having been directly involved in any armed conflict, has not had the opportunity of *applying articles 38 and 39 of the Convention*, although we abide by these provisions.

Not only does this fail to address the requirements of the African Children's Charter as per article 22 on child soldiers, it also indicates gross negligence on the part of Mauritius's reporting team as it seems to be a cut and paste from its report to the CRC Committee, as it wrongly refers to 'applying articles 38 and 39 of the Convention' as opposed to article 22 of the African Children's Charter.

Rwanda's state party report does not indicate legislative efforts, although it highlights administrative and programme interventions in order to address the problem of child soldiers.⁵⁷ Despite the fact that a number of news and other reports have indicated that children were recruited from Congolese refugee camps in Rwanda by armed units under the command of armed group leader Laurent Nkunda, and deployed in Eastern Democratic Republic of Congo (DRC) in 2007 and before,⁵⁸ Rwanda's report does not highlight this as a challenge. Such an admission would have created an opportunity for the African Chil-

⁵⁴ See ML Hackenberg 'Can the Optional Protocol for the Convention on the Rights of the Child protect the Ugandan child soldier?' (2000) 10 *Indiana International and Comparative Law Review* 417. See also A Leibig 'Girl child soldiers in Northern Uganda: Do current legal frameworks offer sufficient protection?' (2005) 3 *North-western University Journal of International Human Rights* 6.

⁵⁵ Art 1 African Children's Charter.

⁵⁶ Mauritius's state party report, 106 (our emphasis).

⁵⁷ Rwanda's state party report, 59.

⁵⁸ See Coalition (n 51 above) 288-289; Human Rights Watch 'Army should stop use of child soldiers' (April 2007).

dren's Committee to consider questions relating to technical assistance and international co-operation during the 'constructive dialogue' stage of the process.⁵⁹

3.3.2 Refugee children

The peculiar point that transpires under the African Children's Charter in the context of refugee children is that article 23(4) provides that '[t]his provision applies *mutatis mutandis* to internally displaced children whatever the reason for displacement'. In other words, by recognising the problem of internal displacements, the African Children's Charter extends 'its provisions on refugee children to cover internally displaced persons'.⁶⁰

Neither Nigeria's⁶¹ nor Egypt's⁶² state party reports clearly indicate how internally displaced children are protected. Rwanda's report seems to provide a better understanding of the rights of children who are internally displaced, as its section in the report is also entitled 'Refugee and displaced children'.⁶³ However, as far as internally displaced children are concerned, the position of Mauritius is once again more regrettable.

Mauritius's report admits that there is no legislation available for the promotion and protection of the rights of refugee children.⁶⁴ It justifies the lack of such legislation on the absence of refugee children in Mauritius at present.⁶⁵ After reporting to the CRC Committee in a similar manner in 2006, the CRC Committee did not take issue with the lack of legislation addressed towards refugee children,⁶⁶ perhaps as a result of the absence of refugees as conventionally defined under international law as persons who have crossed international borders.

However, since Mauritius is a country where 'disaster management is a regional priority due to the permanent threat of cyclones and floods',⁶⁷ it is not far-fetched to assume the possibility of the occurrence of internally displaced children at some point in time.⁶⁸ It is

⁵⁹ Though the African Children's Committee might still raise it.

⁶⁰ D Olowu 'Protecting children's rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child' (2002) 10 *International Journal of Children's Rights* 130.

⁶¹ Nigeria's state party report, 133-135.

⁶² Egypt's state party report, 88-89.

⁶³ Rwanda's state party report, 58-59.

⁶⁴ Mauritius's state party report, 106

⁶⁵ As above.

⁶⁶ As neither the list of issues nor the concluding observations allude to the issue of refugee children.

⁶⁷ See UNDP Mauritius http://un.intnet.mu/UNDP/html/mauritius/crisis_prevention_recovery.htm (accessed 23 September 2008).

⁶⁸ Besides, irrespective of the fact whether states have, eg, the problem of refugee children, child soldiers or children in exploitative circumstances, they should have legislative, administrative and other appropriate measures set in place in order to comply with their obligations under the African Children's Charter.

argued, if the government of Mauritius had understood article 23(4) of the African Children's Charter in a correct way (as provided above), it would have realised that the fact that it does not have refugee children that have crossed international boundaries does not absolve it from its obligation to take legislative, administrative and other measures to cater for children who are internally displaced.

3.3.3 Use of children in the form of begging

Still within the protection threshold, one of the added values that the African Children's Charter compared to CRC is its explicit prohibition of the use of children in the form of begging.⁶⁹ It is a clear standard that needs to be reflected in domestic legislation in countries that are state parties to the African Children's Charter and be reported on.

Nigeria's state party report underscores that section 30 of the Child's Rights Act includes the '[p]rohibition of buying, selling, hiring or otherwise dealing in children for the purpose of hawking or begging for alms or prostitution'.⁷⁰ Rwanda's⁷¹ and Egypt's⁷² state party reports also highlight efforts undertaken to address the problem of the use of children in the form of begging. However, Mauritius's report is completely silent on this point. This shortcoming can once again be attributed to the lack of knowledge on the part of the state party of the 'areas of rights that are specific to the Children's Charter',⁷³ as Mauritius's report seems to rely heavily on its report to the CRC Committee.

3.3.4 Children of imprisoned mothers

Article 30 of the African Children's Charter introduces a special provision that aims to protect the infants and young children of imprisoned mothers and the unborn children of expectant imprisoned mothers. This has been described as a unique feature of the African Charter,⁷⁴ which finds no counterpart in CRC, and has been ascribed to the fact that the mother is considered to be the primary caretaker in most parts of Africa.⁷⁵

Egypt's report provides in a detailed manner the legislative efforts set in place to address the problem of children of imprisoned mothers.⁷⁶

⁶⁹ Art 29 African Children's Charter.

⁷⁰ Nigeria's state party report, 84.

⁷¹ Rwanda's state party report, 66.

⁷² Egypt's state party report, 96-97.

⁷³ Para 24 of the Guidelines.

⁷⁴ M Gose *The African Charter on the Rights and Welfare of the Child* (2002) 12 13. See also DM Chirwa 'The merits and demerits of the African Charter on the Rights and Welfare of the Child' (2002) 10 *International Journal of Children's Rights* 168.

⁷⁵ Gose (n 74 above) 105-106.

⁷⁶ Egypt's state party report, 97-98. This is despite the fact that Egypt has entered a reservation to this provision. For further details on reservations, see sec 3.5.3 below.

Nigeria's report also refers to sections 221-225 of the Child's Rights Act which entrenches special treatment rights for expectant or nursing mothers.⁷⁷ Rwanda's report under this section admits the lack of legislation⁷⁸ providing for special treatment rights for expectant or nursing mothers, while Mauritius's report does not indicate any legislative effort to address the problem of children of imprisoned mothers. Rather, Mauritius's report highlights that, when passing sentence, courts provide special treatment when dealing with cases that involve expectant mothers, and mothers of infants and young children.⁷⁹

3.4 Responsibilities of the child

All four state party reports highlight the 'responsibilities of the child' (article 31 of the African Children's Charter) under cluster 9 and the line of manner they have followed in implementing the provisions.

The Mauritius and Egypt reports display a lack of basic understanding of their obligations under article 31 of the African Children's Charter on the responsibilities of the child. The Mauritius report, apart from reproducing what article 31 of the African Children's Charter provides, does not indicate any effort towards domesticating the provision.⁸⁰ Egypt's report dealing with article 31 is equally insufficient. Apart from quoting article 7 of the Egyptian Constitution that entrenches that 'society is based on the social solidarity' and article 9 that provides that 'the family is the basis of the society' and that 'its foundation is the religion, good characters and patriotism',⁸¹ it does not highlight any concrete legislative, administrative or any other appropriate measure undertaken to implement article 31.⁸²

The Nigeria report fares better, as it indicates a more clear understanding of what article 31 of the African Children's Charter entails. After highlighting the legislative effort undertaken to domesticate the responsibilities of the child in its Child Rights Act (section 19), the Nigeria report highlights that the Child Rights Act 'mandates parents, guardians, institutions and authorities in whose care children are placed, to provide the necessary guidance, education and training to enable the children live up to these responsibilities'.⁸³ In addition, since children's capacities to undertake their responsibilities can only materialise by creating a conducive environment that empowers them, the establishments of child's rights clubs, children's parliament, children-oriented

⁷⁷ Nigeria's state party report, 145.

⁷⁸ Rwanda's state party report, 62.

⁷⁹ Mauritius's state party report, 114.

⁸⁰ Mauritius's state party report, 126.

⁸¹ The report also quoted art 12 of the Constitution about society's commitment to caring and protecting morality as well as empowering the authentic Egyptian tradition.

⁸² Egypt's state party report, 99.

⁸³ Nigeria's state party report, 154.

print and electronic media programmes and the like have rightly been identified as a crucial element for the realisation of article 31 of the African Children's Charter.⁸⁴

Compared to the other three state party reports, Rwanda reported under 'the responsibilities of the child' cluster in more detail.⁸⁵ Articles 25, 26 and 27 of Decree 27/2001 of 28 April 2001 relating to the Rights and Protection of the Child Against Violence have been identified as entrenching the responsibilities of the Rwandan child. While these provisions seem to be in tandem with article 31 of the African Children's Charter, the general limitation that all these responsibilities should be undertaken by the child by taking into account his or her age and capacity is missing from the report. As observed elsewhere,⁸⁶ one can decipher that⁸⁷

[t]he preambular paragraph, which introduces the specifics of article 31, contains within it two internal limitations. First, the duties of the child are subject to his or her age and ability. Secondly, the child's duties are subject to 'such limitations as may be contained in the present Charter'.

It is argued that the fact that duties are subject to a limitation (the child's age and ability) clearly distinguishes the responsibilities of the child from harmful or hazardous labour which is not appropriate for their development or which interferes with their education.⁸⁸ Indeed, it is on the basis of this limitation that the caution that article 31 opens the way to exploitation of children within the family has been found to be misplaced.⁸⁹ Therefore, the absence of this limitation (the child's age and ability) in domestic legislation while providing for the responsibilities of the child should be a cause for concern to the African Children's Committee while considering state party reports.

3.5 Other related matters

There are few issues that the state party reports and their consideration during the Pre-Session have brought to the fore. What is highlighted below covers the length of the reports, the determination of the status of reports as either 'initial' or 'initial and first periodic' report, and reservations entered to the African Children's Charter.

3.5.1 Length of state party reports

One of the issues that transpired from the state party reports is the fact that either the Guidelines or the Committee's Secretariat need to set

⁸⁴ As above.

⁸⁵ Nigeria's state party report, 70-72.

⁸⁶ J Sloth-Nielsen & BD Mezmur 'A dutiful child: The implications of article 31 of the African Children's Charter' (2008) 52 *Journal of African Law* 159.

⁸⁷ Sloth-Nielsen & Mezmur (n 86 above) 170.

⁸⁸ Sloth-Nielsen & Mezmur (n 86 above) 171.

⁸⁹ Sloth-Nielsen & Mezmur (n 86 above) 172.

the maximum page limit for a state party report. The CRC Committee requires that '[s]uch a report should not exceed 120 pages'.⁹⁰ This limitation helps to minimise repetitions, save time spent on translations and facilitate the timely consideration of state party reports.

In the context of the African Children's Committee, the Nigeria report, for example, is 166 pages, while Mauritius's report is 126 pages. Since states can report in any one of the five AU official languages (and not also an additional AU official language), this places a heavy burden on the AU Commission's translations department.⁹¹ The longer the reports are, the more time it takes to have them translated. As a result, the possibility of considering a state party report in a timely manner could be hampered. Therefore, the need to set a maximum page limit for state party reports is evident.

3.5.2 'Initial' report or 'initial and first periodic' reports?

The African Children's Committee has not yet prepared its guidelines for the submission of periodic reports. It is still at the early stages of its first consideration of initial state party reports. However, the reports from Nigeria⁹² and Mauritius⁹³ indicate that the submitted reports combine initial and first periodic reports. The legal implications of this are not clear, and during the Pre-Session of these two reports, the African Children's Committee did not discuss this point.

The submission of combined state party reports is currently possible before the CRC Committee. However, the current attendant situation before the African Children's Committee and the experience of the CRC Committee in requesting and accepting combined reports have to be differentiated. In the context of the CRC Committee, the need to support state parties in an effort to ensure compliance with the strict timeframe established by CRC (article 44(1)) led to the adoption of the 'Recommendation on the Methods of Work: Exceptional Submission of Combined Reports'.⁹⁴ The Recommendation paved the way for the possibility of submitting combined reports to the CRC Committee. In the absence of a similar decision on the part of the African Children's Committee, the state party reports of Nigeria and Mauritius have no legal basis and should not be considered as combined reports. The

⁹⁰ Verheyde & Goedertier (n 16 above) 22. See also the decision of the CRC Committee at its 30th session (2002, CRC/C/118).

⁹¹ Sometimes, a report such as that of Egypt might be submitted in an Arabic version. This means that it needs to be translated both into English and French for the African Children's Committee members and could end up being a very lengthy exercise, especially if the report is too long.

⁹² This is reflected in the cover page as well as the preface of the report at page 11. Furthermore, the heading of sec 3 of the report reads 'Preparatory Process for the Initial and First Periodic Report' (p 19 of the report)

⁹³ This is reflected in the cover page as well as the preface of the report at p vii.

⁹⁴ See CRC Committee (CRC/C/90, 22nd session, September 1999).

African Children's Committee needs to underscore this point to the respective countries and remind them of their obligations to submit a first periodic report to the Committee.

3.5.2 Reservations

In a similar fashion to the African Charter, the African Children's Charter is silent on reservations. This could be interpreted in two contradictory ways — on the one hand that reservations are allowed while on the other, that they are not. One could argue, if reservations were to be disallowed, it is international practice that a specific provision to that effect is explicitly provided.⁹⁵

Fortunately, there are not many reservations entered to the African Children's Charter by state parties. What could be ascertained is that reservations were made by Egypt,⁹⁶ Botswana and Mauritania to specific provisions of the African Children's Charter. In its introduction, Egypt's state party report provided that the state party had expressed reservations to articles 21(2) (which prohibits marriage for boys and girls under 18), article 24 (dealing with adoption), articles 30(a)-(e) (on children of imprisoned mothers), article 44 (a provision that gives the African Children's Committee the mandate to receive communications) and article 45(1) (regarding the African Children's Committee's a mandate to conduct investigations into state parties).⁹⁷

Even though the African Children's Charter itself is silent about its position on reservations, for an appraisal of Egypt's reservations, guidance can be sought from the 1969 Vienna Convention on the Law of Treaties. In particular, article 19 of this Convention provides that any reservation to a treaty must be compatible with the object and purpose of the instrument — in this case, the African Children's Charter. It is argued, while the reservations made to articles 44 and 45(1) of the African Children's Charter might be acceptable, the rest of the reservations seem to hamper the promotion and protection of the best interests of the child principle and appear to be incompatible with the object and purpose of the African Children's Charter.

Even though it does not appear that during the Pre-Session of Egypt's state party report the reservation issue was properly addressed, the African Children's Committee should raise it with the state party. This also presents a good opportunity for the African Children's Committee to deliberate on the position of the African Children's Charter on reservations. It also should serve as a platform to require Egypt to withdraw its reservations as most are not, in these authors' view, compatible with the object and purpose of the African Children's Charter.

⁹⁵ See eg art 40 of The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (1993).

⁹⁶ See Egypt's state party report, 6.

⁹⁷ As above.

4 Conclusion

During its 11th session, the African Children's Committee held its first Pre-Session for the consideration of state party reports. The whole exercise was an ice-breaker, and demonstrates progress in its own right. In looking forward, it is important for the Children's Committee to draw the necessary lessons from the four state party reports and to chart ways of strengthening the reporting regime. A number of tentative recommendations can be made in this regard.

Generally speaking, the need to provide state parties with clear reporting guidelines is evident in order to minimise huge varieties in quality, style and length of reports submitted. One of the cornerstones for a successful reporting procedure is 'the willingness of governments to fulfil their reporting obligations in an accurate way, ie in time and submitting a report of good quality'.⁹⁸ Clearly, the quality of the reports determines the quality of the debate between government representatives and the African Children's Committee.

Writing in 2003, Lloyd indicated that one of the strategies that the African Children's Committee had identified to strengthen the state reporting process was to make state parties aware of the differences between the African Children's Charter and CRC for the purpose of reporting under the Charter.⁹⁹ For such purpose, it was agreed, a document on the differences between the African Children's Charter and CRC was to be attached to the Guidelines and sent to state parties, when it is requested.¹⁰⁰ As discussed above, a closer look at the four state party reports strongly suggests that this strategy is even more apposite at the present time in order to strengthen the state reporting procedure.

Even though it could be argued that it is premature to assess the effectiveness or otherwise of the Guidelines, the four state party reports have shed light on some of the gaps that are inherent in the Guidelines. These gaps are understandable, since at the time of drafting (2003-2004), the African Children's Committee did not have a clear view of some of the implications of what the reporting would entail in practice.

Some of the gaps in the Guidelines, such as the absence of a clear requirement on states to report on the legal minimum ages established for various purposes, could be addressed without formally amending the Guidelines. The same is true for the issue of budgeting for children and the length of state party reports. In addition, Rwanda's report has a separate section on 'constraints to the implementation

⁹⁸ Verheyde & Goedertier (n 16 above) 43.

⁹⁹ A Lloyd 'Report of the 2nd ordinary session of the African Committee of Experts on the Rights and Welfare of the Child' (2003) 3 *African Human Rights Law Journal* 342.

¹⁰⁰ As above.

of the Charter'.¹⁰¹ It is advisable that state parties be requested by the African Children's Committee to provide similar information on the challenges that are hampering the full realisation of children's rights in their respective countries. The African Children's Committee can adopt a recommendation addressing these and similar issues and communicate it to state parties. It is advisable, in order to minimise repetitive amendments to the Guidelines, that specific concerns at this stage be addressed through recommendations.

In due course, if (and when) an amendment of the Guidelines is to be pursued at a later stage, a leaf could be taken from the experience of the sister organisation, the African Commission on Human and Peoples' Rights (African Commission). In 1997, the African Commission amended its Guidelines, based on its own experience as well as the recommendations of two seminars that were specifically organised for such purpose. In this regard, it is important to engage civil society in the process, which in turn reinforces the need to expedite the granting of observer status before the African Children's Committee.

Regarding administrative issues, the very limiting three-day sessions that have come to typify the African Children's Committee sessions have a negative impact. With so much to do, there is a need to seriously consider extending the amount of time the African Children's Committee meets per session. On a positive note, however, since the appointment of a Secretary to the African Children's Committee in the second half of 2007, the flow of information between the Children's Committee and partners has improved significantly. For instance, the availability of the four state party reports on the website of the AU is laudable and should continue to be a practice for forthcoming reports.

¹⁰¹ Rwanda's state party report, 73.