

# Out of the starting blocks: The 12th and 13th sessions of the African Committee of Experts on the Rights and Welfare of the Child

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## Summary

*The 12th and 13th meetings of the African Children's Committee were held in November 2008 and April 2009 respectively. With the African Children's Charter entering its 10th year since entry into force, the real work of the African Committee is now beginning. With the consideration of the first country reports to the African Committee, the benefits of a regionally-specific child rights treaty has begun to become apparent. The recent establishment of a formal grouping of civil society organisations and individuals dedicated to furthering the regional influence of the African Children's Charter (first mooted in 2004!) comes at an opportune time. Despite some of the recurring shortcomings in the work of the Committee, it is hoped that the development of a strategic plan for the Committee's work for the period 2010 to 2014 will lay some of these concerns to rest.*

## 1 Introduction

The 11-member African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) monitors

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the implementation of the African Charter on the Rights and Welfare of the Child (African Children's Charter).<sup>1</sup> The 12th session of the African Children's Committee, first inaugurated in 2001, took place in Addis Ababa, Ethiopia, from 3 to 5 November 2008. It was attended by nine members, above the seven members required to form a quorum,<sup>2</sup> and the meeting was, in some respects, a breakthrough due to the consideration of the first state reports under the African Children's Charter. The 13th session took place in Addis Ababa, Ethiopia, from 20 to 22 April 2009, and was followed by a pre-session for the consideration of five state party reports. This occasion, to an extent, developed further the emerging Committee role regarding the consideration of state party reports submitted under the Charter.

As is customary,<sup>3</sup> this overview of the proceedings of the two most recent sessions of the Committee is provided both in order to popularise the African Children's Charter, and to give broad support to the work of the African Children's Committee. In this update, attention is paid to the new membership of the Children's Committee that took effect at the 12th session; to expert presentations made at the meetings under discussion; to the question of the electronic availability and accessibility of information pertinent to the developing work of the African Children's Committee and other related matters. Under discussion will also be the presentation of the two country reports that were made at the 12th session, as well as the pre-session meetings held to consider five submitted reports following the 13th session, and a brief highlight to the first children's rights discussion at the Civil Society Forum that

<sup>1</sup> African Charter on the Rights and Welfare of the Child (1990) OAU Doc CAB/LEG/24.9/49 (1990) For a detailed discussion of the African Children's Charter, see, eg, 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 on Children's Rights* 127; D Chirwa 'The merits and demerits of the African Charter on the Rights and Welfare of the Child (2002) 10 *International Journal on Children's Rights* 157; A Lloyd 'Evolution of the African Charter on the Rights and Welfare of the Child and the African Children's Committee of Experts: Raising the gauntlet' 2002 (10) *International Journal on Children's Rights* 179; M Gose 'The African Charter on the Rights and Welfare of the Child', Community Law Centre, University of the Western Cape, 2002.

<sup>2</sup> Art 38(1) African Children's Charter.

<sup>3</sup> For a report on the 5th, 6th and 7th meetings of the African Children's Committee, see B Mezmur(a) 'The African Committee of Experts on the Rights and Welfare of the Child: An update' (2006) 6 *African Human Rights Law Journal* 549. See also B Mezmur(b) '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* 258; B Mezmur(c) 'The 9th ordinary session of the African Committee of Experts on the Rights and Welfare of the Child: Looking back to look ahead' (2007) 7 *African Human Rights Law Journal* 545; 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* 207; and B Mezmur & J Sloth-Nielsen 'An ice-breaker: State party reports and the 11th session of the African Committee of Experts on the Rights and Welfare of the Child' (2008) 8 *African Human Rights Law Journal* 596.

preceded the 44th meeting of the African Commission on Human and Peoples' Rights (African Commission) on 8 November 2008. Significantly, attention is also drawn to a Civil Society Forum to support the interactions of civil society around the African Children's Committee that was inaugurated prior to the 13th meeting of the Children's Committee in April 2009.

## 2 Some procedural and administrative matters

The 12th meeting of the African Children's Committee was initiated by the inauguration of four new committee members, the terms of office of four members having come to an end immediately prior to this. These committee members were appointed at the meeting of the African Union's Executive Council at its meeting in June 2008 in Sharm El Sheikh, Egypt. They are Mrs Agnes Kabore (Burkina Faso), Mr Ramasoely Andianirainy (Madagascar), Mr Cyprien Yanclo (Benin) and Mrs Maryam Uwais (Nigeria). They replace members from Burkina Faso, Ethiopia, Nigeria and Togo.

The conclusion is inescapable that there is now a bias towards French-speaking membership of the current committee. In addition to the four new appointees, of whom three are French-speaking, an examination of the language of committee members whose terms did not expire revealed that three members were also French-speaking. However, it is beneficial that the new Chairperson, Mme Diakhate Seynabou, is proficient in both English and French.

The African Children's Committee is also predominantly female — only four members are male.<sup>4</sup> That the position continues to attract nominees of high calibre is evident (even though the nomination and appointments process is shrouded by secrecy and *curricula vitae* of applicants are not made publicly available). It appears, for instance, that the new member from Nigeria was previously the Ombud for Children, a position which carried with it 'hands-on' expertise in human rights protection involving children. However, this by no means should be taken to condone the non-transparent process followed in nominating persons to the Committee.

It could also be argued that there is a tendency towards West African domination of the membership of the current Committee, with members from Benin, Burkina Faso, Mali, Niger, Nigeria and Senegal (virtually more than half of the Committee).<sup>5</sup> This has been reinforced

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<sup>4</sup> The requirements of gender and geographical diversity amongst the members are discussed in Sloth-Nielsen & Mezmur (n 3 above).

<sup>5</sup> See F Viljoen 'Promising profiles: An interview with the four new members of the African Commission on Human and Peoples' Rights' (2006) 6 *African Human Rights Law Journal* 238, highlighting the need for geographical representation in the context of the African Commission.

by the fact that former committee members from Burkina Faso and Nigeria whose terms expired were replaced by fellow nationals.

On a different note, the 13th session, which was attended only by seven committee members, once again witnessed the absence of Mrs Pholo Mamosebi from her fourth consecutive session of the African Children's Committee. During the 11th meeting, it was agreed that, in accordance with article 14 of the Rules of Procedure, a reminder would be sent to her.<sup>6</sup> The 13th session was informed that 'a draft letter had already been prepared', unfortunately hinting that communication of the situation to her was still forthcoming.

As far as the term of office of committee members is concerned, the non-eligibility of committee members for re-election has been a recurring theme. And, as has been observed before, '[t]rying to address this set-back at the eleventh hour when committee members' term of office is about to expire ... is too little, too late'.<sup>7</sup> At this stage, there seems to be no follow-up being taken to address this limitation despite the fact that, under Decision EX/CL/233(VII) of 2005, paragraph 8, the Executive Council of the African Union (AU) had requested the AU Commission to study measures to renew the terms of office of committee members for another term.

During the 13th session, a closed session was held among the committee members following the opening ceremony of the session, and the agenda and programme of work were considered and adopted by the Children's Committee. The theme 'Planning and budgeting for the well-being of the child: A collective responsibility' was adopted for the 2010 Day of the African Child (DAC). The main agenda item for the 13th meeting would appear to have been the adoption of the Committee Plan of Action 2010-2014.

The Chairperson opened by referring to the fact that the AU Commission had indicated that the two annual meetings were to be reduced to one for 2009, but that this was heavily resisted by the Committee who would be unable to complete the barest minimum of work in one meeting. The concession was made that there would therefore be two meetings in 2009. Given the increased workload of the Committee consequent upon the need to consider country reports from far more countries that have been submitted,<sup>8</sup> it is clear that additional Committee meetings are a necessity. The Chairperson also referred to a number of international events to which the Committee had been invited, and had participated.

<sup>6</sup> Mezmur & Sloth-Nielsen (n 3 above) 597.

<sup>7</sup> Mezmur & Sloth-Nielsen (n 3 above) 599.

<sup>8</sup> The Committee had received reports from Burkina Faso, Kenya, Mali, Niger, Tanzania and Uganda, in addition to the reports from Egypt and Nigeria which were considered at the 12th meeting, and that of Rwanda, which should have been considered during that session. A pre-session meeting to formulate the Committee's initial response to these reports was scheduled for the two days immediately following the 13th meeting.

### 3 Delays in taking forward the Committee programme, and length of meetings

The highlight of the 12th meeting was intended to be the presentation by government delegations of the first four country reports received under the African Children's Charter. The reports of Egypt, Mauritius, Nigeria and Rwanda had been considered at a pre-sessional working group convened by the African Children's Committee at its 11th session in May 2008. Notably, however, no delegation from either Rwanda or Mauritius materialised at the 12th meeting, hence only the delegations of Egypt and Nigeria appeared before the Committee. The contents of these sessions are described in more substantive detail below.

It has been observed that the process leading to the consideration of the first two country reports was probably unduly protracted, as the Rapporteurs from amongst the members of the African Children's Committee were appointed in May 2007, and the process of getting to the point where engagement with representatives from the state party concerned took (in all) four meetings (May 2007, November 2007, May 2008 and November 2008). The Children's Committee should take steps to address this time lag, by speeding up and telescoping processes to co-ordinate activities such as appointing Rapporteurs (can this not be done before the meetings, electronically?) and then by convening pre-sessional hearings more effectively. More frequent meetings may be required. Alternatively, it has previously been pointed out<sup>9</sup> that Rule 1 of the Rules of Procedure of the Committee indicates that the Committee '... shall hold meetings as may be required for the *effective performance* of its functions in accordance with the African Charter on the Rights and Welfare of the Child'.<sup>10</sup> There, it was suggested that longer periods of time than the current practice of three days should be set aside for Committee meetings in order to achieve a higher output of work.

As will become evident, the scheduling of four presentations of country reports was manageable administratively in the three-day period devoted to the 12th meeting by the Secretariat. However, there is no doubt that the non-appearance of two government delegations who were scheduled to present resulted in unpressurised and relaxed periods during which those that did appear could take the floor. It remains to be seen how the Committee programme might be managed in a three-days session should the stream of state party reports start to increase dramatically.<sup>11</sup>

<sup>9</sup> Sloth-Nielsen & Mezmur (n 3 above).

<sup>10</sup> Our emphasis.

<sup>11</sup> This seems more or less inevitable, given that the reporting cycle provided for under the Charter is a three-year one, in contradistinction to the five-year cycle for reporting under the UN Convention on the Rights of the Child.

This having been stated, it is notable that, although the 13th meeting of the African Children's Committee was set down for three days, as has been the usual practice, two additional days thereafter were allocated for the pre-sessional meetings. At the 12th meeting, committee members had been assigned responsibility as Rapporteurs for the five reports to be considered in the pre-sessional meetings which were to follow the 13th meeting. For the first time, the 12th meeting saw African Children's Committee members assigned to take responsibility for various themes related to the children's rights in the Charter.<sup>12</sup> However, since debates which gave rise to this development took place in a closed session, it is not clear what particular mandate or duties individual members are expected to fulfil in relation to the themes selected, nor how this may (or may not) advance the overall work of the Committee.

At both the 12th and the 13th meetings, the Children's Committee reported having participated in various meetings and international events, including meetings in Dakar, in Banjul and in Addis Ababa. It was noted at the 12th meeting that discussions were underway with the senior executive team of the AU to develop a strategic plan for the work of the Committee 2009-2014, linked to a budget. Indeed, this strategic plan was firmly on the table for discussion at both the Civil Society Forum meeting which preceded the 13th meeting (discussed further below), and at the meeting itself.

In terms of enhanced capacity being availed to the African Children's Committee, it emerged at the 12th meeting that a dedicated UNICEF liaison officer had taken up office as a link to the AU, which could provide for more structured co-operation, and possibly financial support, as well as acting formally as the interface between the African Children's Committee and UNICEF regional and country offices on Charter-related matters (such as the DAC).<sup>13</sup> The liaison officer specially noted her role as providing support to country offices to celebrate the DAC.

#### **4 Electronic resources and the work of the African Children's Committee**

Engagement with the content of the two country reports discussed below is unfortunately at present limited to those who have access to

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<sup>12</sup> The allocations were as follows: Children in Conflict and Natural Disaster Situations (Mr Moussa Sissoko); Violence against Children (Mme Diakhate Seynabou); Child Labour, Trafficking and Exploitation (Mrs Agnes Kabore); Education of Children (Mrs Boipelo Sheitlamo); Administration of Justice to Minors (Mrs Maraim Uwais); Participation of Children (Mr Cyprien Yanclou); The Right to an Identity (Mrs Dawlat Hassan); Integral Early Childhood Development (Mrs Koffi Marie Chantal); Vulnerable Children (Mrs Martha Koome), Survival and Development of Children (Mrs Koffi Marie Chantal), Responsibility of the Family (Mr Rasamoely Andrianirainy).

<sup>13</sup> The theme for the DAC for 2009 was decided at this meeting, and is to be 'Africa Fit for Children: Call for Accelerated Action Towards Their Survival'.

paper copies or who downloaded these in the first half of 2008: For a short while, the first four country reports due to be considered by the African Children's Committee were available electronically via the website of the AU, but evidently due to pressure for web space, these could not remain permanently on the site. The website of the Children's Committee itself is completely out of date and allegedly subject to the same pressure of lack of space which resulted in the four mentioned country reports being available for a very short period only. In addition, as much as these writers could ascertain, no electronic information concerning the actual details, dates, venue or programme of the 12th or the 13th meeting ever appeared on the AU website, indicative both of the degree of marginalisation of the African Children's Committee within AU programmes, and of the desperate need for a dedicated internet domain for the dissemination of information relevant to the implementation of the African Charter and its monitoring mechanism.<sup>14</sup> Indeed, the agenda for the 13th meeting became available only at the meeting itself, whereupon it emerged that the entire second day and all but 45 minutes of the third day were to be held in closed session, thereby excluding civil society organisation (CSO) participation practically from all but the first day's proceedings. The absence of reliable, regular and timeous information about the meetings schedule and agenda of the African Children's Committee enjoyed much attention from CSOs who participated in the Civil Society Forum, who deplored the existing situation in which there was an information vacuum.

## 5 State party reporting

### 5.1 Presentation of country report: Egypt

The Egyptian government delegation, historically, opened the floor for consideration of country reports by the African Children's Committee. An impressive government delegation, led by the head of the National Commission for Motherhood and Childhood (a co-ordinating mechanism), who is also a member of the African Children's Committee, appeared to explain the report and to answer questions. This was an exceptionally lively and thorough session, characterised by the provision of a great deal of detail in relation to legal reforms, harmonisation of law and policy with international and regional human rights standards, innovative programmes and research undertaken to strengthen programmatic development (especially concerning vulnerable groups such as street children and girls). Particular attention was paid to the recent law review process that has culminated in progressive legal reforms coming into

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<sup>14</sup> See Save the Children Sweden & Plan International *Advancing children's rights: A guide to civil society organisations on how to engage with the African Committee of Experts on the Rights and Welfare of the Child* (2009) (available only electronically).

force in June 2008, including reforms for the creation of a new juvenile justice system and the banning of the harmful cultural practice of child marriage and female genital mutilation (FGM). The successful 'social marketing programme' targeting the retention of girls in education was also highlighted as a positive way to influence traditional attitudes which are not in conformity with a children's rights approach.

It was noted by the Egyptian delegation that great strides had been made in addressing budgeting from a children's rights perspective; so too, figures showed considerable progress over time in achieving the Millennium Development Goals (MDGs); relevant indicators, such as the maternal mortality rates (68% decline between 1992 and 2005) and infant mortality rates (67% decline between 1990 and 2008), whilst the under five mortality rates showed a 72% decline over more or less the same period.

Mention was made of the challenge of giving effect to article 4(2) of the African Children's Charter in Egyptian society, since child participation was not traditionally a feature of community life. Achievements in establishing a Children's Parliament were cited, as was the central role played by Egypt in the 2006 study of the Secretary-General on Violence against Children, in so far as the country hosted the regional consultation with children. During the course of the presentation, allusions were made to the involvement of children in policy formulation, and of the simplification of key policy proposals for debates by children's forums. It was evident, though, that no children formed part of the government delegation at the African Children's Committee meeting.

There was, however, some discussion about the positive effects of the introduction of a telephone 'hotline' for children with disabilities, especially effective for poor families who can then access legal and medical advice, as well as assistive devices. It was noted by the presenter that the Egyptian legal review process did not ultimately succeed in parliament in respect of the proposal to prohibit corporal punishment in the home, as this proposal failed to attract parliamentary approval.

The government's detailed presentation was followed by trenchant questions put by members of the African Children's Committee, centring on a wide range of issues. They ranged from discussions about children who beg, children attending religious schools, child labour, street children, a discussion of a specific recent instance of a serious case of child abuse inflicted upon a child by a teacher, resulting in the death of that child, and the impact of technological innovation on child protection, including the possibility of e-mailing complaints related to abuse.

## **5.2 Presentation of country report: Nigeria**

The overall thrust and import of the report submitted by Nigeria to the African Children's Committee has been described as follows:<sup>15</sup>

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<sup>15</sup> n 14 above, 37.



Nigeria's initial and first periodic report to the African Committee is very comprehensive and follows the outline given in the African Committee guidelines closely. It draws extensively from its recent first and second CRC periodic reports. However, it is not simply a duplication of the CRC report since the drafting process for the African Charter report involved a consultative meeting with members of civil society, international organisations and development partners. It was also validated at a stakeholders' workshop at which members of the Children's Parliament were present. The information has been updated since the CRC report was submitted and also incorporates their response to the UN Committee's Concluding Observations.

This quotation ably encapsulates the approach followed by the Nigerian delegation in its presentation to the African Children's Committee. As was the case with the delegation from Egypt, that from Nigeria can only be described as high-powered. Moreover, child representation on the team was worthy of praise, especially since the contribution was articulate and in no way tokenistic.

Much attention was focused in the presentation on the progress of the Nigerian Children's Act of 2003, which has been adopted at federal level, but is still awaiting adoption by several states, notably Islamic states (at the time of the presentation, 22 out of 36 states had passed the Act). Problems stem from the recognition in the Act of the possibility of adoption, which is generally regarded as not being recognised under Islam. However, it was also pointed out that the problematic consequences of inheritance and adoptive children can be mitigated by a will made to give a share to the adoptive child during the lifetime of the testator, and that this has encouraged people from all faiths to adopt. The age of marriage — set at 18 — also poses a formidable challenge to some states. The development of child-friendly institutions — such as family courts, a dedicated children's rapporteur in the National Human Rights Commission, a National Child Rights Implementation Committee, and the introduction of child helplines using cellular phone technology (in an environment characterised by low access to landlines) — were alluded to as substantiation for the claim that Nigeria was making considerable progress in the domestic realisation of children's rights. The creation of 34 children's parliaments in 19 states was the vehicle for giving effect to hearing children's views, and many children's clubs had been set up at state level.

The African Children's Committee raised numerous questions in response to the presentation, focusing on areas such as trafficking of children, FGM, child labour, children in prison with their mothers and corporal punishment. Programmes which respond to these concerns were thereafter highlighted, including the establishment of transit centres for trafficked children, and legislative developments to prohibit FGM and curb trafficking were explained. In addition, a Bill on the Elimination of Violence submitted in 2006 was before the National Assemblies of 10 states, which would apply for the protection of all members of the family, including children. The issue of child care centres and model crèches came up for discussion, as did child justice and

the detention of children. It was argued that, by law, children cannot be held in prison, and child desks at police stations see to it that detained children are referred back to court.

The Rapporteur, Mrs M Koome, congratulated the delegation on the collaborative effort made in preparing the state party report, which included line ministries, CSOs and children. She noted further that much progress had been made in domesticating the African Children's Charter, and that the report had been compiled with the African Children's Committee's guidelines as a framework.

In conclusion, with the consideration of the first country reports to the African Children's Committee, the benefits of regionally-specific child rights treaties have begun to become apparent. The members of the treaty-monitoring body are sufficiently familiar with local exigencies to be able to engage immediately and with authority on African issues, such as children who beg, harmful cultural practices, religious and secular conflicts of law, to cite but three specificities which rear their head in most places on the continent.

Second, it is evident that state parties are taking their reporting obligations seriously, and providing extensive and detailed data to underpin their presentations. This bodes well for the monitoring role that the African Children's Committee can play in future. In addition, the presence of a true spirit of 'constructive dialogue' between the government and the Committee is promising.

### **5.3 Pre-session for consideration of five reports (from Burkina Faso, Kenya, Mali, Niger, Tanzania and Uganda)**

At the time of writing, the report from the pre-session working group was not available. Nonetheless, it is observed once again that, in the absence of a formal guideline, the question of who should be allowed to take part in the pre-session for the consideration of the state party reports remained unclear. In order to usher clarity, the need for guidelines along the lines of 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) is still evident.

Since 'complementary reports' (also known as 'alternative reports'), according to rule 69 of the Rules of Procedure of the African Children's Committee, are the preserve of NGOs,<sup>16</sup> a selected number of NGOs from the respective countries whose reports were scheduled for consideration had submitted complementary reports to the African Children's Committee. This, of course, had a major role in increasing

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<sup>16</sup> Rule 69(1) of the Rules of Procedure provides that '[t]he Committee may invite RECs, the AU, specialised agencies, the United Nations organs, NGOs and CSOs, in conformity with article 42 of the Children's Charter, to submit to it reports on the implementation of the Children's Charter and to provide it with expert advice in areas falling within the scope of their activities'.

the information base of the Committee in the consideration of the state party reports.

In connection with the pre-session, it is also important to mention that, if indeed the government delegations from Rwanda and Mauritius were invited and did not appear for the second time during the second pre-session, it would be apposite for the Committee to be pro-active and take measures. In the main, one of these measures includes considering the reports in the absence of a government delegation.

Finally, unfortunately, the concluding observations in relation to the first country reports considered were not released prior to the 13th meeting, nor was this important initial jurisprudence made available during the meeting itself. If indeed the concluding observations had not actually been prepared by this time, it would indicate some loss of momentum between the 12th and the 13th meeting. However, the official draft report from the 13th meeting highlights in passing that the concluding observations would be shared amongst committee members soon.

## 6 Communications (individual complaints)

Although the African Children's Committee had been seized with a communication prepared by the Centre for Human Rights of the University of Pretoria as early as 2005, the consideration of the communication was postponed until the 13th meeting.<sup>17</sup> The appearance of this item on the agenda of the Children's Committee during the 13th session was a long-awaited positive move.

In any event, the 13th meeting session at which the communication featured on the programme was held in closed session. At the end of the 13th session, the communication had still not been dealt with and it was agreed that a response be sent to the Centre for Human Rights acknowledging receipt, and reassuring it that the necessary actions were being taken to consider the communication. The urgent need to translate the communication into French and disseminate it to all committee members was also underscored.

It is this backdrop that mainly motivated the CSO Forum to include a recommendation on the need to consider communications submitted to the African Children's Committee within a reasonable period of time. The longer the consideration of a communication takes, the more it allows the perpetuation of the violation of children's rights.

To mention but one irony, the concept of provisional or interim measures, the purpose of which is avoiding irreparable damage to victims,

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<sup>17</sup> In the official report of the 12th meeting, the communication is erroneously referred to as having emanated from the University of the Western Cape, and in the official agenda for the 13th meeting refers to the communication as having come from the University of Cape Town.

or sometimes complainants, during the course of the consideration of a communication, has received the attention of the African Children's Committee.<sup>18</sup> If the Children's Committee takes an unduly long period of time in the consideration of a communication, the role that interim measures would play to protect and promote children's rights in Africa would be dealt a major blow.

During the 13th meeting, the attention of the African Children's Committee was drawn to the fact that another communication had been received from the Institute for Human Rights and Development in Africa based in The Gambia. It is hoped that the consideration of these communications is not unduly prolonged further.

## 7 Civil society collaborations and related matters

CSOs have been actively involved in African Children's Committee meetings since they began their work in 2002. There is now a growing network of support and collaboration amongst CSOs around the Children's Committee. This was alluded to substantively by Sloth-Nielsen and Mezmur in 2008.<sup>19</sup> This trend continued in the ever-widening number of representatives and delegates who attended both the 12th and the 13th meeting, and was given a further boost with the establishment of the first Civil Society Forum around the African Children's Committee, fashioned deliberately to mirror the NGO Forum which precedes the African Commission meetings.<sup>20</sup> Significantly, the African Children's Committee meetings traditionally commence with introductory comments provided to the forum by 'partners' (as the Committee terms the diverse array of international donor organisations, academic institutions, humanitarian relief and service delivery agencies, experts and networks that attend the bi-annual meetings on a frequent basis). They share recent events, like conferences hosted or activities planned, books launched or measures taken to promote the African Children's Charter, thereby creating a solid platform for regional sharing of experience, and updating of committee members on relevant matters. Below is a highlight of the work of CSOs related to the activities of the Children's Committee,

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<sup>18</sup> Ch 2, art 2(IV)(1) Guidelines for Communications. The state concerned in a communication is to be given the chance to present an explanation or written statement containing its observations on a communication within six months. Ch 2, art 2(II)(4) Guidelines for Communications. However, if this deadline is not respected, the Committee may decide to consider the communication anyway. Ch 2, art 2(III)(4) Guidelines for Communications.

<sup>19</sup> See Sloth-Nielsen & Mezmur (n 3 above). See also J Sloth-Nielsen & B Mezmur 'Surveying the research landscape to promote children's legal rights in an African context' (2007) 7 *African Human Rights Law Journal* 352.

<sup>20</sup> Presentation by Ms Hannah Foster of the African Centre for Democracy and Human Rights Studies at the 1st Civil Society Forum in and around the African Charter on the Rights and Welfare of the Child, Addis Ababa, 18-20 April 2009.

## 7.1 Observer status

It must be noted that the 'partners' mentioned above do not equate to being accorded observer status: The African Children's Committee had, by the conclusion of the 13th meeting, yet to grant observer status to any organisation, although any number of applications are known to have been submitted.<sup>21</sup> The Children's Committee approved the 'Criteria for Granting Observer Status in the African Committee of Experts on the Rights and Welfare of the Child to Non-Governmental Organisations (NGOs) and Associations' in 2007, and it is possible that applications submitted before the release of these practice guidelines may not be fully compliant with the criteria that were subsequently laid out. But further to this, the criteria are also such that qualifying for the award of observer status may be out of reach for many CSOs: Not only are those who qualify required to have an organisational structure headed by a majority of persons who are African or are of African descent in the Diaspora but, in addition, they must have child representation on their governing structure. Clearly international organisations based abroad, even those working extensively with children's rights in Africa, will have difficulty meeting the first requirement, whilst most local CSOs are unlikely in practice to meet the second requirement at this stage. That the criteria for eligibility for observer status may have to be revised was debated with some ardour at the Civil Society Forum preceding the 13th meeting.

The 13th meeting was supposed to have considered applications for observer status already received in a closed session, but this item was deferred. It was agreed that the Rapporteur of the Committee (who was not present during the 13th meeting), who had been requested to compile a list of all applications received for observer status and prepare a report on them, should be sent an e-mail to request him to send the applications.<sup>22</sup> It is predicted that the issue of who successfully obtains observer status, and what criteria are applied, may occupy the attention of both the African Children's Committee and organs of civil society in future, as this is presently an area of contention.

## 7.2 Presentations of research

Recent sessions of the African Children's Committee have been characterised, in addition to general partner information sharing, by more detailed presentations of research or of jurisprudential interpretation of key articles of the African Children's Charter. Accordingly, the unique

<sup>21</sup> The report of the 12th meeting notes the receipt of an application for observer status from Save the Child, Sweden, from the Institute for Human Rights and Development in Banjul, and from the Botswana Centre for Human Rights. The Community Law Centre of the University of the Western Cape is known to have submitted an application before the Committee criteria were released.

<sup>22</sup> It was also agreed that the organisations that have applied for observer status should be requested to re-send their applications in both English and French.

provisions of article 31 of the Charter (focusing on the duties of the child) were flagged, as was the best interests of the child under the Charter, and the Community Law Centre of the University of the Western Cape was invited to prepare a paper on the former and to present it at the 10th ordinary session in Cairo, Egypt, in November 2007.<sup>23</sup> The discussion of the best interests principle under the Charter, as requested by the African Children's Committee, took place at the 12th session.

The presentation first highlighted an overview of the principle and underscored its historical roots in the private law domain of parental separation and divorce disputes. Its gradual extension to cover all matters affecting children was described. This was followed by a discussion of some of the complexities that are generated by the principle. Particular focus was placed on cultural relativism, and the question whether the best interests of the African child could accommodate positive African cultures and values as incorporated under article 4 of the African Children's Charter was answered in the affirmative. Concrete recommendations for the African Children's Committee to consider in relation to the principle were made, including how the principle should be expansively be utilised, in the African context, to permit an inquiry into the best interests of children beyond the contribution of state parties. Here the role of international donor agencies, that of CSOs and other actors such as multi-nationals in promoting or impeding the realisation of children's best interests comes to mind.

The Children's Committee welcomed the presentation and remarked on the need for training of judges and other stakeholders in order for them to have a balanced view of what the principle of a child's best interests entails. The need for further research on the implications of the principle in specific thematic areas was also underscored.

This presentation was followed by the sharing of research on children's mental health in the context of sexual abuse, trafficking and HIV/AIDS in selected jurisdictions in West Africa, based on a research report 'Psychosocial support to children in difficult circumstances in West Africa'. It was highlighted that there was a lack of social reintegration and support programmes for child victims who are in need of these services.

A third substantive input, from the Southern African Network to End Corporal Punishment, exhorted the African Children's Committee to take all necessary measures to support the campaign for the eradication of the scourge of corporal punishment against children, in particular through supporting calls for this form of violence to be removed as a legal sanction in the criminal justice system, in schools, as a disciplinary measure in child care institutions, and in the home.

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<sup>23</sup> J Sloth-Nielsen & B Mezmur 'A dutiful child: The implications of article 31 of the African Children's Charter' (2008) *Journal of African Law* 159.

### **7.3 NGO Forum preceding the 44th session of the African Commission and children's rights**

It is to be noted that, in November 2008, during the NGO Forum preceding the African Commission's 44th session, held in Lagos, Nigeria, a half-day of panel discussions on children's rights was held.<sup>24</sup> It is believed that this is the first time that children's rights have been placed at the forefront of the agenda, and the programme included addresses by Prof A Adeyemi of Nigeria, Dr Tilley Gyado of Plan International and others. Strictly speaking, the presentations during the NGO Forum held before the African Commission meeting shortly after the meeting of the African Committee on 8 November 2008 should not form part of the subject matter of an article on the proceedings of the African Children's Committee. Yet it is included here for two reasons: First, it historically placed children's rights at the centre of the African Commission's agenda and, second, it reinforces and supports the claim that better integration between the various structures of the AU stand to benefit the overall development of a regional children's rights focus.

### **7.4 The first Civil Society Organisations Forum in and around the African Children's Committee**

As noted earlier, the first Civil Society Forum was held during the three days immediately preceding the 13th meeting. Several organisations initiated the Forum, including Plan International, the Save the Children Alliance, and the African Child Policy Forum. The Forum gathered over 60 participants from all over Africa. It was also attended by committee members and the Secretary of the Children's Committee. In fact, one part of the meeting was dedicated especially to giving input into the 2010-2014 Strategic Plan/Plan of Action of the African Children's Committee, by request from the Committee itself. By the conclusion of the event, a permanent structure had been agreed, which will ensure that the contribution of civil society to the African Committee is taken forward.

Probably the first important output of the group was a submission to the Committee itself, presented during the Committee's 13th session. It motivated a range of proposals, not only targeting the African Children's Committee, but also suggesting a specific and concrete role for civil society.<sup>25</sup> These recommendations included a number of different issues pertaining to communications, state party reporting, and the sharing of information. It is true that the formal endorsement of the

<sup>24</sup> See CRIN 'Nigeria: Towards child survival and development: Improved partnerships for the promotion and protection of the rights of the African child' (2008) <http://www.crin.org/resources/infoDetail.asp?ID=18887> (accessed 22 April 2009).

<sup>25</sup> For a detailed report on the Civil Society Forum, see CRINMAIL [http://www.crin.org/email/crinmail\\_detail.asp?crinmailID=3134](http://www.crin.org/email/crinmail_detail.asp?crinmailID=3134) (accessed 29 April 2009).

CSOs Forum on and around the African Children's Committee by the participating organisations was also an important accomplishment.

## 8 Conclusions

With the African Children's Charter entering its 10th year since entry into force, the real work is now beginning. With the consideration of the first country reports to the African Children's Committee, the benefits of regionally-specific children's rights treaties have begun to become apparent. The task now remains for the African Children's Committee to compile and publicise its concluding observations, and to begin to develop its own jurisprudence around Charter provisions. However, with a number of additional state party reports already clamouring for attention, there is a real danger that backlogs will arise, as the second meeting of the African Children's Committee for 2009 was already under threat. We have previously argued that more time should be set aside for the Children's Committee meetings to enable existing work to be completed, a call which we reiterate. Even more to the point, it appears that little interaction between committee members amongst themselves, or between the committee members and the Secretariat, takes place between meetings, which is leaving matters falling between the cracks. The failure to promptly agree and finalise concluding observations to the state party reports presented in November 2008 is an example in point. The communication submitted in 2005 has not yet been formally responded to, and the question of observer status for applicants remains unresolved.

However, it is hoped that the development of a strategic plan for the Children's Committee's work for the period 2010 to 2014 will lay some of the above concerns to rest. A strategic plan will hopefully see the Children's Committee not only plan for the growing workload but, in addition, will draw funders to the table to enable more frequent interaction between the committee members, and between them and their Secretariat. As the Committee Chairperson noted during her opening presentation at the 13th meeting, the absence of financial resources to support the work of the African Children's Committee remains an enormous challenge.

That the CSO community is waiting in the wings to support this is evident. The establishment of a formal grouping of organisations and individuals dedicated to furthering the regional influence of the African Children's Charter (first mooted in 2004) comes at an opportune time. Members of the Committee attended the first CSO Forum as observers and participants, and later expressed the wish to work collaboratively and in partnership with the civil society community. Such collaboration can only hold promise for improving children's rights in Africa.

Finally, it must be noted that, at the time of writing, the African Children's Charter is on its way to achieving universal ratification amongst



member states of the AU, with 45 ratifications now having been received (the latest country to deposit its instrument of ratification being Zambia). The steady progress towards near universal ratification must be credited to the work of the previous Committee, and to civil society, for popularising the Charter and encouraging ratification by state parties.