

Celebrating 25 Years of the African Charter on the Rights and Welfare of the Child

By Ayalew Getachew Assefa and Kamení Ngankam*

“Looking back to look ahead”

2015 marked the 25th Anniversary of the adoption of the African Charter on the Rights and Welfare of the Child (ACRWC). The African Charter on the Rights and Welfare of the Child (also known as the African Children’s Charter) is the only region focused child rights instrument in the world and can be seen as the legacy of the founders of the Organization of African Unity (OAU) to African children. Shortly after the establishment of the UN Convention on the Rights of the Child (CRC), the OAU Assembly adopted the Children’s Charter in 1990. It has since been ratified by 47 African countries. Though the adoption of this Charter has been influenced by preceding child rights instruments, it has significantly advanced the protection of children in Africa. The African Children’s Charter is crafted in a manner that enables it to address the problems of African children. The ACRWC re-emphasises the African philosophy of human rights, as stated in its preamble:

“...Taking into consideration the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterise their reflection on the concept of the rights and welfare of the child,

Considering that the promotion and protection of the rights and welfare of the child also implies the performance of duties on the part of everyone...”

The monitoring body established by the African Children’s Charter to promote and protect the rights enshrined in the Charter; the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), convened a conference to commemorate the 25th Anniversary of the Charter in November 2015, at the headquarters of the African Union. The objectives of the conference among others were to

assess the impact of the Charter in advancing child rights in Africa over the past 25 years, and to develop an Agenda for the next 25 years based on the lessons learnt. The conference brought together experts on children’s rights, the Chairperson of the Permanent Representatives Committee (Zimbabwe), officials from the African Union Commission, the Special Representative of the UN Secretary General on Violence Against Children, members of AU human rights organs, UN agencies, non-governmental organizations, civil society organizations and academic institutions, who debated on thematic papers ranging from child marriage; right to name, birth registration and nationality; child participation; children with disabilities; children affected by armed conflicts; etc. The outcome of this conference was the adoption of a Children’s Agenda for the next 25 years, in line with Agenda 2063.

Provisions of the African Children’s Charter

The necessity for the adoption of an African specific instrument for African children given the existence of the UN CRC is often questioned. Several arguments account for this. The exclusion or marginalization of African countries in the drafting process of the UN CRC is the major factor which led to the establishment of a region specific instrument. Due to such under representation, most of the concerns of African children were neglected. Moreover, some specific omissions from the CRC, such as the situation of children living under apartheid, factors disadvantaging the female child, socio-economic conditions of African children, and a compulsory minimum age for military service necessitated the adoption of this regional instrument. This is clearly envisaged in the document itself. The preamble of the African



The ACRWC is the only child focused child rights instrument in the world

Photo credit: ACRWC

Children's Charter states that the Charter was established to recognize the situation of African children which 'remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger' (Para 4 of the Preamble).

The African Children's Charter encompasses a wide range of rights and obligations for the advancement of children's rights in Africa. The four 'pillars' of the CRC, namely, the principles of non-discrimination, the best interest of the child, life survival and development, and participation, are also incorporated with the same status in the African Children's Charter. In addition, it also consists of provisions which are articulated in an innovative and progressive manner for the advancement of children's rights in Africa. This enables the Charter to accord a greater degree of protection for African Children.

The first point which should be noted with regard to the progressive nature of the African Children's Charter as it relates to its non-qualified definition of a child is article 2, which defines a child as below the age of 18, without attaching any claw-back clause that allows a situation where a child below the age of 18 could attain majority earlier under applicable law. This may give countries leeway to take actions which contravene the interests of children. For instance, countries might employ such qualification to justify acts such as recruiting child soldiers during armed conflict and allowing early and child marriages.

In addition, the African Children's Charter has also granted a higher degree of protection to children in Africa through its position on social, economic and cultural rights. The Charter avoids the traditional separate treatment of human rights as civil and political rights on the one hand and economic, social and cultural rights on the other hand. The current view

of human rights treats all rights as interdependent, and the Charter is in line with this contemporary understanding of human rights. Moreover, the concept of progressive realization of rights, which is part of the CRC, does not appear in the African Children's Charter.

Another innovative articulation of the African Children's Charter is article 4(1), which states that the best interest of the child is 'the' primary consideration in all actions concerning the child and is paramount over the other three principles. The same principle is embodied in article 3(1) of CRC, but differently from the African Children's Charter, in that it states that in all actions concerning children, the best interests of the child shall be 'a' primary consideration. The article 'a' in the CRC shows that in determining on issues which pertain to the child's interest, the best interest principle may not be the only principle to be consulted. The Convention allows other principles and considerations to be taken into account. However, the African Children's Char-

ter takes a different stance and uses the article 'the', which basically means, the best interest of the child is the only principle to be consulted in matters of the child's interests.

The other added value of the African Children's Charter has been manifested through the inclusion of the concept of children's duties. Proceeding from the view that a child is part of a community of people, the African Children's Charter gives children the responsibility to work for the cohesion of the family, to respect their parents, superiors and elders at all times and to assist them in case of need. This unique feature of the Charter contributes towards the provision of a forum of participation for African children. It allows children to be involved in matters which might affect their interests and experience adulthood in advance and hence secures the realization of 'true' participation.

Moreover, the Charter includes the child's rights to participation, which includes the right for the child's

25 Key messages on the African Charter on the Rights and Welfare of the Child

Advocacy Messages to State Parties to the ACRWC and AU Member States for an Africa Fit for Children

- Ratify the African Charter on the Rights and Welfare of the Child.
- Submit periodic reports to the Committee on the Implementation of the Charter.
- Withdraw reservations placed against the application of some of the provisions of the Charter.
- Adopt domestic laws and policies to give effects to the provisions of the Charter.
- Popularize the Charter and make it accessible to all segments of the society in a friendly language.
- Take into account the rights of the child in the definition of all development policies and allocate the resources needed.
- Enforce immediate, compulsory and free birth registration for all children as stipulated in the General Comment on Article 6 of the Charter.
- Harmonize civil, customary, and common law definitions of the child in line with article 2 of the Charter and make effective article 21(2) which prohibits child marriage and set the minimum age of marriage to be 18.
- Harmonize the minimum age of employment with the provisions of the Charter (Art. 15).
- Harmonize the age of military enrolment with the provisions of the Charter (Art. 22).
- Adopt and strengthen strategies to fight against female circumcision, female genital mutilation and harmful cultural practices.
- Prohibit corporal punishment and intensify combatting all forms of violence against children, especially girls.
- Ensure quality, free and compulsory education for all children.
- Promote the creation of recreational facilities and opportunities for all children.
- Promote, protect and fulfill the rights of orphans, children with disabilities and other vulnerable children.
- Promote freedom of expression, freedom of association, freedom of conscience and religion and establish children's assemblies across countries.
- Take appropriate measures to combat child trafficking, child labour and sexual exploitation.
- Establish child-friendly justice systems and raise the minimum age of criminal responsibility to 12 years.
- Promote universal access to health care and facilities, to ensure child survival.
- Extend the special treatment of incarcerated and imprisoned mothers and expectant mothers (General Comment No.1 on article 30)
- Promote family welfare services especially in grassroots/rural communities.
- Cooperate with the Committee in dealing with communications (complaints), and respect the decisions and recommendations of the Committee on such communications.
- Establish specific dissemination protocols to popularize the Day of the African Child theme and Concept Note, and engage with children, youth organizations in implementing the recommendations in the Concept Note.
- Ensure the inherent right to life of every child, including the prohibition of death penalty against children and youth organizations in implementing the recommendations.
- Ensure that all children are protected from all forms of economic exploitation.

ACRWC 25 Years
Celebrating the 25th Anniversaries of the Adoption of the African Charter on the Rights and Welfare of the Child
1990 - 2015

An Africa Fit for Children
Date the celebration on our social media:
#ACRWC25
#MyCharterMyRights
#RatifyReport

This brochure was realised thanks to the support of

ACRWC - P. O. Box 3243 Roosevelt Street (Old Airport Area), WZ1K19, Addis Ababa, Ethiopia - Tel: (+251 1) 551 3522 - Fax: (+251 1) 553 5716 - Website: www.aconw.org

views to be held in all judicial or administrative proceedings affecting his/her interests, and provides that those views must be taken into consideration. The Charter also guarantees the right of participation of the child in artistic and cultural life and in administrative justice. Considering the child as an autonomous individual, these provisions are of great importance in Africa, where children are considered to be the property of both their parents and the community at large.

Trying to address the plight of the girl child in Africa, article 11(3)(e) of the African Children's Charter obliges member states to take affirmative action and measures with regard to female, disadvantaged and gifted children. This in turn addresses social imbalances, which can be corrected by states' actions.

Generally, the Charter imposes an obligation upon member states to take special measures with regard to children with disabilities. It completely prohibits use of and recruitment of children in armed groups, and provides a provision for state parties to take all appropriate measures to eliminate harmful social and cultural practices prejudicial to the welfare, dignity and development of the child.

Ensuring Accountability

To monitor the implementation of this instrument, the African Committee of Experts on the Rights and Welfare of the Child was established in 2001 in accordance with article 32 of the African Children's Charter. The Committee comprises 11 independent experts who are elected by the Assembly of the African Union. Each member is elected for a non-renewable term of five years. According to articles 33-37 of the African Children's Charter, members must be nationals of a state party to the Children's Charter. They must also be individuals of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child. Drawing its mandate from article 42 of the African Children's Charter, the Committee undertakes a number of activities

with a view to promoting and protecting the rights and welfare of the child in Africa.

The ACERWC launched a campaign on the Universal Ratification of and Reporting on the Implementation of the ACRWC in 2013 to be carried out over a two-year period culminating in November 2015 during the commemoration of the 25th anniversary of the adoption of the ACRWC. The campaign aimed at achieving universal ratification and states parties' fulfillment of their reporting obligations by November 2015, promoting the effective implementation of the ACRWC, and advocating for the withdrawal of reservations. Since the launch of the campaign, the Secretariat of the Committee has witnessed an unprecedented flow of state parties reports, i.e. 19 since January 2014.

State parties are required to submit an initial report within 2 years of the ratification of the Charter, and periodic reports subsequently every 3 years. To date, 32 states parties have submitted their reports, thanks to the continuous advocacy of the Committee and 5 countries have also submitted their periodic reports. Though some reports are overdue for years now, the Committee still pushes states parties to expedite the reporting process and submit their reports. Concurrently, civil society organizations contribute to give an alternative voice to state parties' reports by submitting complementary reports to the Committee. Promotional visits to countries that have not ratified the Charter were conducted by the Committee in the past. Advocacy missions to South Sudan (July 2014) and Central African Republic (December 2014) were fruitful as the South Sudanese National Legislative Assembly voted to ratify the African Children's Charter in October 2014. Hopefully, we will welcome the 48th State Party to the ACRWC in the days ahead.

Also invested with the mandate to interpret the provisions of the Charter, the Committee has the power to issue authoritative interpretation of the Charter, in order to clarify its meaning and scope. This is generally done through “General Comments”. These are tools used by treaty bodies to provide a substantive elaboration of the meaning of treaty provisions, as well as an in-depth analysis of procedural concerns regarding the human rights treaties. To date, the Committee has issued two General Comments respectively on article 6 and 30 of the Charter. General Comments N°1 (GC 1) on article 30 deals with children of imprisoned parents, while General Comment N° 2 (GC 2) is concerned with the right to a name and nationality recognized by article 6 of the Charter. Two general comments are being finalized, one on Article 31 of the Charter which deals with the responsibility of the Child, and a Joint General Comment on Child Marriage with the African Commission on Human and People’s Rights.

There is much to celebrate as we mark the 25th anniversary of the African Children’s Charter. At the time of writing, (June 2016), 47 Member States of the African Union have ratified the Charter and there is an encouraging pace with regard to state parties’ compliance on their reporting obligations on the implementation of the Charter. State parties to this instrument are taking legal and practical measures to harmonize their national laws and policies on children with international and regional standards. The constitutions of many African countries cover the rights of the child in considerable detail, which

evidently helps to ensure the full realization of the rights and well-being of children in Africa. Moreover, tangible progress has been witnessed towards the achievement of the Millennium Development Goals (MDGs) and the fulfillment of children’s rights to survival, development and protection.

However, with all the progress towards the protection of children’s rights, grave child rights violations remain an urgent and serious concern in many African countries. While many children in Africa are able to grow, learn and thrive as part of loving families and communities, others suffer due to issues like poverty, conflict, natural disasters, and harmful practices such as early marriages. Many children in Africa are still affected by different types of abuse, including economic and sexual exploitation, gender discrimination in education, child labour, child marriage, and their association in armed conflicts.

Therefore, celebrating the 25th anniversary of the African Children’s Charter is an urgent reminder that we have still a long way to go and much remains to be done to create an Africa fit for children.

Ayalew Getachew Assefa and Kameni Ngankam are respectively Legal Researcher and Communication Officer at the Secretariat of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), African Union Commission.