

African Committee of Experts on the Rights and Welfare of the Child and fair and effective criminal justice for children



1. What is the African Charter on the Rights and Welfare of the Child (ACRWC)?

The ACRWC is the only regional treaty on the rights of the child in existence and it is the most important instrument for children's rights within the African Union (AU) human rights system. It draws heavily upon the UN Convention on the Rights of the Child (CRC) and the two instruments complement and reinforce each other. However, the ACRWC is more explicit about issues of particular relevance for children in Africa such as harmful traditional practices and children living in prison with their mothers.

It is based upon four key principles: the best interests of the child; non-discrimination; participation; and survival and development. It is unique as the only human rights instrument to have a provision that outlines the responsibilities which children have to their family, society, State and international community.

ACRWC adopted in 1990, came into force 1999

As of March 2015, it had been ratified by 47 AU Member States (out of 54)

2. What is the African Committee of Experts on the Rights and Welfare of the Child (ACERWC)?

The ACERWC is the body which is responsible for monitoring the implementation and ensuring the protection of the rights laid out in the ACRWC. It reports to the AU Assembly of Heads of State and Government and was established in 2001. It meets twice a year, usually in Addis Ababa, Ethiopia at the AU headquarters.

It has an ambitious mandate which includes: documenting information regarding the situation of children and making recommendations to governments; establishing principles for protecting child rights similar to General Comments; cooperating with other human rights bodies both within the AU and elsewhere; and interpreting the ACRWC. Its most significant function is to monitor implementation of the ACRWC through:

- Examining State Party reports;
- A communications procedure; and
- Conducting in-country investigations.

3. Who is on the Committee?

The ACERWC is composed of 11 members elected by the AU Assembly of Heads of State and Government. They serve in an individual capacity for five years, after which they may be re-elected for a second term if they are appointed to do so by their respective countries. The Committee members must be persons of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child. In serving in their individual capacities, they are independent and do not represent any government. They also serve voluntarily and on a part-time basis.

Members of the ACERWC come from different backgrounds which include civil society, NGOs, academia and state institutions. However to preserve their independence and impartiality, they cannot be part of an inter-governmental organisation, UN agency or hold any politically-binding position such as a minister of State or a member of parliament.

Members of the ACERWC – March 2015

North Africa

Mrs. Fatima Delladj-Sebaa, Algeria (terms ends July 2015)

Dr. Azza Ashmawy, Egypt

Mrs. Amal Muhammad El Henqari – Libya
(Third Vice Chair) (terms ends July 2015)

West Africa

Mrs. Sidikou Aissatou Alassane Moulaye –
Niger, (Chairperson)

Mrs. Suzanne Aho-Assouma, Togo

East Africa

Prof. Benyam Dawit Mezmur – Ethiopia,
(First Vice Chair) (terms ends July 2015)

Mr. Joseph Ndayisenga – Burundi,
(Second Vice Chair)

Dr. Clement Julius Mashamba, Tanzania
(Rapporteur) (terms ends July 2015)

Mrs. Félicité Muhimpundu, Rwanda
(term ends July 2015)

Southern Africa

Prof. Julia Sloth-Nielsen, South Africa,
Justice Alfas Muvavarigwa Chitakunye,
Zimbabwe (term ends July 2015)

4. Civil society engagement

Civil society has been involved in the Committee's work on an informal basis since its inception. Several organisations closely engaged with the Committee's activities established a CSO Forum on the ACRWC in 2009. This Forum, which is now held prior to every meeting of the Committee, supports the Committee's work and provides a strong platform for child rights information sharing, networking and advocacy in Africa. The CSO Forum has been given a standing slot at every ACERWC meeting to share its recommendations and concerns with the Committee. The CSO Forum is open to all child rights organisations and activists and membership is free.

5. Provisions of the ACRWC relevant to criminal justice for children

Article 17 of the ACRWC deals with the: 'Administration of Juvenile Justice.' It has been criticised for lacking key protections for children in conflict with the law which are found in other human rights instruments, such as: encouraging diversion from the formal criminal justice system and the right to cross-examination of witnesses. The ACRWC does not mention that

deprivation of liberty must be lawful and nor does it refer to detention being used only as a measure of last resort. There is no provision for prohibiting life imprisonment without release or for challenging an order of detention. However, it should be remembered that it complements the CRC provisions relating to criminal justice.

The following is an overview of key provisions relating to criminal justice in the ACRWC:

– *Minimum age of criminal responsibility*

Article 17(4) 'There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.'

This provision falls far short of prescribing a minimum age although it should be noted that the definition of a child in Article 2 is clear and unequivocal: 'a child means every human being below the age of 18 years.'

– *Need for separate law, procedures and institutions for children*

Article 17(1) 'Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.' Article 17(2)(b) 'States Parties shall... ensure that children are separated from adults in their place of detention or imprisonment.'

Unlike Article 37 of the CRC, the ACRWC does not allow for exceptional circumstances where it may be in a child's best interests to be held with adults. No explicit reference is made to provision for separate courts.

– *Fair trial guarantees*

Under Article 17(2)(c) every child is innocent until proven guilty; shall be informed promptly of the charge(s) against him; shall be given legal and other appropriate assistance; and shall have matters dealt with as speedily as possible and is entitled to appeal. The press is prohibited from attending trials.

– *Rehabilitation*

Article 17(3) 'The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.'

– *Children in prison with their mothers*

Article 30 has an extensive and unique provision relating to ‘Children of Imprisoned Mothers’ under which mothers are entitled to ‘special treatment’ and courts must ensure that a non-custodial sentence is first considered when sentencing. No reference is made to the parenting role of fathers in this Article.

6. ACERWC mechanisms for promoting fair and effective criminal justice for children

– *Developing soft law*

‘The ACERWC has recently developed two new General Comments to add detailed guidance to certain provisions of the ACRWC. General Comment No.1 focuses on Article 30 and the issue of children of imprisoned mothers, an issue not explicitly dealt with in any other human rights treaty. General Comment No.2 provides guidance on Article 6 - birth registration.

– *Reporting mechanism*

The ACERWC is empowered to receive and examine reports submitted by State parties on the measures they have adopted to give effect to the provisions of the Charter as well as the progress achieved in the exercise of the rights recognised. Initial reports are expected to be submitted two years after ratification to the ACERWC and every three years thereafter. The ACERWC commenced examination of State Party Reports during its 11th Session in May 2008.

– *Communications*

Grievances against States parties may concern any issue covered by the Charter, and may be submitted by any individual, group or NGO recognised by the AU, a member State or the UN. The Committee has recently begun to consider communications but none as yet have focussed on issues relating to children in conflict with the law. Although not legally binding, the Committee’s decisions on communications can carry significant moral authority.

– *Investigations*

The Committee can undertake investigative missions to gather information on the situation of the rights of the child in a State Party. These visits allow the Committee to document violations and make recommendations to the state concerned and are critical to gaining first-hand knowledge. Since then there have been no further investigative missions. However, in 2014 the Committee did undertake two advocacy missions; one

to South Sudan and one to Central African Republic, to advocate for improved protection and response to children affected by armed conflict in the countries.

Investigations can be conducted on matters referred to the ACERWC, matters initiated by the ACERWC which may arise from a communication or through a direct invitation by the State Party. The Committee can only visit a State Party if they are permitted to do so. If a State Party refuses to invite them then the Committee can report this lack of cooperation to the AU Assembly which may choose to take further action.

7. Further reading

A short guide to General Comment No.1: children of incarcerated and imprisoned parents and primary caregivers’ <http://www.penalreform.org/resource/short-guide-general-comment-no1-children-incarcerated-imprisoned/>

Website for the ACERWC: <http://www.acerwc.org/>

Website for the CSO Forum: <http://www.csoforum.info/>

State Party and Civil Society reports can be found in a searchable database on CRIN: <http://www.crin.org/resources/treaties/index.asp>

Advancing Children’s Rights: A Guide for Civil Society Organisations on how to engage with the African Committee of Experts on the Rights and Welfare of the Child – Second edition (Save the Children Sweden 2011)

Further Information regarding Communications to the ACERWC: www.ihrda.org

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