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AN INTRODUCTION TO THE CHILDREN'S RIGHTS REPORTING MECHANISMS

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1 Introduction

This introductory chapter has the modest aim of introducing the reader to the basics of the state reporting mechanism. Apart from this introduction, this chapter is divided into six sections. Section two presents an overview of the main treaties on children's rights as far as they relate to state reporting. Section three discusses the evolution and challenges of state reporting. Section four outlines the reporting requirements and guidelines issued by mechanisms overseeing the implementation of these treaties as to the modalities of preparing state party reports as well as the content and presentation of reports. Section three presents an overview of children's rights norms and mechanisms while section four briefly explores the evolution of and challenges to the reporting system. Section five presents an overview of reporting guidelines providing how the UN Committee and the African Children's Committee receive and consider reports submitted to them while Section six offers some concluding thoughts and recommendations.

2 Implementation of human rights standards: A brief overview

At the beginning of the 21st century it seemed 'clear that the concept of human rights [was] widely accepted as the "idea of our time"',¹ probably because human rights norms, values and standards had increased substantially during the 20th century. The next challenge then was the strengthening of institutional frameworks to affect an efficient implementation of the body of human rights norms and standards. Even though at the close of the 21st century the fundamental elements of a human rights architecture were in place and functioning reasonably, translating human rights into the lived realities of people remains the main challenge facing human rights researchers and policy makers.² There are

1 C Heyns & F Viljoen 'The impact of the United Nations human rights treaties on the domestic level' (2001) 23 *Human Rights Quarterly* 483.

2 M Mutua 'Looking past the Human Rights Committee: An argument for de-marginalizing enforcement' (1998) 4 *Buffalo Human Rights Law Review* 211; see

already sufficient norms and standards; the argument is that what is needed 'are not new standards and procedures, but rather efficient mechanisms to enforce existing standards and recommendations of monitoring bodies and to prevent the occurrence of future human rights violations'.³

The human rights movement has a history of strong standard setting, but a weak institutional framework for the implementation of these standards. This assertion is demonstrated by the fact that of the three core issues the UN was established to handle (peace and security, development, and human rights) it is only human rights that lacks an effective institutional framework for its monitoring and implementation. The UN Security Council was established to ensure global peace and security. The United Nations Development Programme was set up to oversee the development agenda of the United Nations. However, initially, the Human Rights Commission was created within the Economic and Social Council, but with no real powers alone, had a mandate to oversee the implementation of human rights.

Historically, the failure to put in place robust institutional mechanisms to implement human rights norms was not due to a lack of ideas on how best to implement human rights. In fact, many proposals were made with a view to enhancing the institutional frameworks for monitoring and implementing human rights. These included the proposal to establish a World Court of Human Rights, first made in 1947 and repeated from time to time since June 2009,⁴ and the creation of the Office of the World's Attorney General for Human Rights. So far, these remain mere aspirations. Less radical proposals were made in the early 1950s aimed, primarily, at giving the Human Rights Commission fact-finding powers and the authority to initiate inquiries into alleged violations of human rights. These efforts too faced numerous challenges.⁵ Substantially, the Human Rights Commission's only compulsory mandates were to 'study the reports submitted by states parties' and to 'transmit its reports, and such general comments as it may consider appropriate' to state parties, in general, through ECOSOC.⁶

also M Nowak 'A roundtable: On the creation of World Court of Human Rights' (2012) 259.

3 M Nowak 'Proposals for improving the UN human rights programme' (1993) 11 *Netherlands Quarterly Human Rights* 153.

4 Nowak (n 2); see also Agenda for Human Rights 'To commemorate the 60th anniversary of the Universal Declaration of Human Rights: UDHR60' http://www.udhr60.ch/report/hrCourt_scheinin0609.pdf (accessed 12 February 2014).

5 Mutua (n 2).

6 Art 40 of the International Covenant on Civil and Political Rights GA Res 2200A (XX), UN GAOR, 21st Session, Supp No 16, at 52, UN Doc AN6316 (1966) 999

Opinion is divided as to why states are reluctant when it comes to drafting human rights treaties to put in place a strong, functioning and effective institutional framework to oversee the implementation of human rights. Some scholars are of the view that weak human rights monitoring mechanisms are in the best interest of universal human rights norms,⁷ that anchoring human rights norms in strong institutions makes human rights regimes too costly. Since human rights 'institutions with real power cut to the bone of sovereignty',⁸ these scholars argue that strong human rights institutions are a deterrent to universal ratification of human rights norms.

They argue that 'rather than push for a more effective universal supervision and enforcement regime, a noble but an unrealizable goal',⁹ it is more useful to have more states on board with weaker institutions than to have fewer states on board with a stronger institutional framework for enforcement.¹⁰ The argument is that a weaker institutional framework for the implementation of human rights is faithful to the original intention of the states when they negotiated and ratified human rights treaties. According to these scholars, states understand human rights as a system of norms the 'objective of [which] was to avoid evaluation at all costs'.¹¹ Human rights treaty bodies are intended to facilitate the exchange of information and experience among states through constructive dialogue that 'should have no conclusion'.¹²

Other scholars disagree with the proponents of weak institutional mechanisms for the implementation of human rights. They contend that the concept of a right entails a right holder and a duty bearer; it follows, in their view, that if a duty bearer fails to honour his or her obligation then the right holder is entitled to an enforceable remedy. Therefore, monitoring mechanisms that are not 'inquisitorial nor accusative and [whose ends are] neither condemnation nor approbation'¹³ are incompatible with the very concept of human rights. Having human rights norms without able and

UNTS 171.

7 Mutua (n 2); see also, generally, H Steiner 'Individual claims in a world of massive violation: What role for Human Rights Committee?' in P Alston & J Crawford (eds) *The future of human rights treaty monitoring* (2000) 15.

8 Steiner (n 7) 25.

9 Mutua (n 2).

10 Steiner (n 7).

11 P Alston 'The Committee on Economic, Social and Cultural Rights' in P Alston (ed) *The United Nations and human rights: A critical appraisal* (1992) 507.

12 As above.

13 D McGoldrick *The Human Rights Committee: Its role in the development of the International Covenant on Civil and Political Rights* (1991) 89.

willing institutions to enforce the norms is against the object and purpose of the whole enterprise of human rights. This need for enforcement of human rights norms has propelled innovation and some level of activism by human rights treaty bodies to provide some level of accountability and remedy to victims. Consequently, there has, despite the reluctance of states, been progress in the implementation of human rights norms, thanks to the resilience of some of the human rights treaty bodies and the activism of non-state actors,¹⁴ despite the reluctance of states.

It would be inaccurate to blame states alone for structural, institutional, organisational and operational deficits inherent in the design and functioning of the human rights architecture. For instance, some factors contributing to the weaknesses in the functioning of human rights treaty bodies are internal to the human rights treaty bodies, and other factors are simply beyond the control of states.¹⁵ For example, it is safe to assume that the structure, mandate, composition, powers and legal status of the findings of a human rights treaty body are factors within the control of states. However, the extent of independence, style and quality of outputs of the monitoring bodies are factors within the control of a treaty monitoring body.

A combination of states' unwillingness to grant sufficient powers to human rights treaty monitoring bodies and concerns around the style and quality of the outputs of human rights treaty monitoring bodies are contributing factors responsible for the implementation challenges facing human rights norms. In addition, cultural norms and identities of countries play a significant role in the implementation challenges human rights norms face at national level.¹⁶

Some human rights treaty-monitoring bodies have innovatively enhanced their mandate and powers through creative interpretations of the treaty setting them up.¹⁷ Over a period, the style and quality of reasoning of the monitoring bodies also have been improving.¹⁸ Some of these innovations emerge from human rights monitoring bodies dealing with 'softer human rights' issues such as children's and women's rights. Of

14 A Boyle & C Chinkin *The making of international law* (2007) 41.

15 L Helfer & A Slaughter 'Towards a theory of effective supranational adjudication' (1997) 107 *Yale Law Journal* 273.

16 T Zwart 'Using local culture to further the implementation of international human rights: The receptor approach' (2012) 34 *Human Rights Quarterly* 546.

17 K Mechlem 'Treaty bodies and interpretation of human rights' (2009) 42 *Vanderbilt Journal of Transnational Law* 905.

18 Mutua (n 2); and Steiner (n 7).

interest to this chapter are treaties dealing with children's rights, relevant to the African continent.

3 Overview of children's rights treaties: Norms and mechanisms

There are two main treaties on children's rights and wellbeing relevant to countries in Africa: the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (African Children's Charter). The CRC is the first international human rights treaty on children's rights. It defines and delineates childhood, it codifies rights that accrue to children and places state parties under duties to respect, protect, promote and fulfil these rights. The African Children's Charter complements, extends and contextualises the protection offered to children by the CRC, to the African continent. In addition to codifying children's rights, the two child rights treaties codified four cardinal principles that should underline the interpretation and application of children's rights namely: the best interests of the child; non-discrimination; life, survival and development; and child participation. These principles will be discussed later in this chapter.

3.1 The CRC

The CRC confers a wide variety of rights on children. It mandates state parties to ensure the protection and the realisation the rights of all children in their jurisdiction through appropriate legislative, administrative, budgetary, social and educational measures at national, bilateral and multilateral levels. In addition to these measures of general implementation, the CRC provides for and ensures the protection of specific rights. The UN Children's Committee has elaborated general guidelines regarding the form and content of these obligations. These guidelines are briefly outlined here and discussed in more detail later in the chapter.

3.1.1 Obligation to undertake legislative and administrative measures

The CRC mandates state parties to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights to ensure to the maximum extent possible the survival and development of the child. Such laws and administrative measures must respect and ensure the rights of children, without discrimination of any kind.¹⁹ These

19 See below for more details on legislative and policy frameworks expected by the UN Children's Committee.

legislative and administrative measures should protect children and provide for their needs.

3.1.2 Obligation to ensure the protection of children

This obligation expects state parties to ensure the child such protection and care as is necessary for his or her well-being and that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities. Specifically, state parties are expected, for instance, to ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or to ensure that no child is deprived of his or her liberty unlawfully or arbitrarily. In addition, state parties are expected to take positive measures, for example, to combat the illicit transfer and non-return of children abroad, to ensure that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which considers the needs of persons of his or her age; and to ensure respect for rules of international humanitarian law relevant to children, applicable to them in armed conflicts. During times of war, state parties are expected to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities and that parties to the conflict refrain from recruiting any person who has not attained the age of 15 years into their armed forces.

3.1.3 Obligation to provide for children

The CRC expects state parties to adequately resource the implementation of the provisions of the CRC. Institutions providing direct services to children and other coordinating and oversight institutions set up to ensure children's rights are realised, must be adequately funded and staffed.²⁰

3.1.4 Obligation to monitor and report

The CRC requires state parties not only to make the principles and provisions of the CRC widely known, by appropriate and active means, to adults and children alike, but to submit to the UN Children's Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted, which give effect to the rights recognised herein and on the progress made on the enjoyment of those rights, make their reports widely available to the public in their own countries.

20 See details below on how the UN Children's Committee expected this obligation to be realised.

The CRC has 196 parties globally. It is one of the UN human rights treaties that is most ratified and most reported on by African states. All 54 African states who are member states of the UN are state parties to the CRC and 52 of these countries have reported to the UN Children's Committee. Only Somalia and South Sudan are yet to submit a report to the UN Children's Committee.

3.2 The African Children's Charter

The African Children's Charter is a regional treaty specific to the countries in Africa. Even though the CRC is considered the most comprehensive treaty on children's rights, there are many issues that the CRC does not cover.²¹ Those who drafted the African Children's Charter held the view that there were 'specific problems that African children confront'²² that the CRC failed to provide for. These problems include internal displacement of children; apartheid; harmful cultural practices; the situation of children affected by armed conflict, which was thought to be inadequately provided for in the CRC; and the challenges facing especially the girl child, such as child marriage. Therefore, it was argued that there was a need for a regional children's rights framework in Africa to deal with these issues.²³

The African Children's Charter is not in all respects a copy of the CRC. It differs from and improves upon the provisions of the CRC in a few areas. For this work, they will be grouped into two broad categories. First, there are those provisions that offer a higher and broader standard of protection for children in Africa. These are provisions dealing with the definition of a child,²⁴ provisions dealing with the primacy of the provisions of the African Children's Charter over harmful cultural practices,²⁵ children in armed conflicts,²⁶ children of imprisoned mothers,²⁷ internally displaced children, specific protection for the girl child, children who were living under apartheid, and a broader mandate and power for

21 Some of the issues included, for example: the girl child, responsibilities and duties of the child, the role of extended family, children and armed conflicts, internal displacement, children under apartheid, children of imprisoned mothers.

22 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* 330.

23 See generally ANPPCAN 'The rights of the child – Selected proceedings of a workshop on the draft Convention on the Rights of the Child: An African perspective' (1988).

24 Art 2 of the African Charter on the Rights and Welfare of the Child.

25 Art 21 of the African Charter on the Rights and Welfare of the Child.

26 Art 22 of the African Charter on the Rights and Welfare of the Child.

27 Art 30 of the African Charter on the Rights and Welfare of the Child.

its monitoring body, the African Children's Committee.²⁸ These provisions address African specific challenges that either were not sufficiently dealt with under the CRC or that did not offer a sufficiently high threshold of protection to children in Africa.²⁹

The second category of provisions deals with an African-specific philosophy and cultural heritage. Article 31 of the African Children's Charter, conferring duties and responsibilities on children, falls under this category. This provision amplifies the traditional understanding of childhood, that it is a period of learning and preparation for responsible adulthood, as well as reciprocal societal care and goodwill. The other African specific provision provided for in the African Charter on Human and Peoples' Rights, collective rights, is omitted from the African Children's Charter. The rights granted children in the African Children's Charter can be enjoyed only individually.

There have been several concerns with respect to burdening children with duties and responsibilities under the African Children's Charter, but Julia Sloth-Nielsen and Benyam Mezmur adequately address these concerns.³⁰ According to these authors, article 31 makes a valuable contribution to international human rights law. A purposeful interpretation of this article provides a complement to the concept of 'rights of the child' and thus allows children to play positive roles in society in accordance with their age as they mature. Since maturity is a process, allowing children to play responsible roles in families and society should equip children with livelihood skills and make out of them responsible citizens.

Consequently, the substantive difference between the African Children's Charter and the CRC, in the opinion of these authors, lies in the

28 Arts 21(2), 23 & 32 of the African Charter on the Rights and Welfare of the Child.

29 However, art 1 of the Optional Protocol on the Involvement of Children in Armed Conflict reflects the provisions of art 22(2) of the African Children's Charter. In addition, the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography has extended and expanded the nature and scope of the protection available under the CRC to the girl child. In 2011, the UN Children's Committee hosted a General Day of Discussion on the Children of Incarcerated Parents, something that is provided for only in the African Children's Charter. In its General Comment 14 the Committee defines the child as any human being below the age of 18 without immediate reference to the exception in article 1 (CRC General Comment 14; Art 3 para 1: The right of the child to have his or her best interests taken as a primary consideration (2013) UN Doc CRC/C/GC/14 dated 29 May 2013). See paragraph 21 that states: '*the term "children" refers to all persons under the age of 18 within the jurisdiction of a State party, without discrimination of any kind, in line with articles 1 and 2 of the CRC*'.

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

fact that the former emphasises African-specific challenges facing children, imposes higher standards in this regard and burdens children with duties. However, in its core philosophy as well as underlying values and principles, the African Children's Charter is, to a large extent, substantively the same as the CRC. At its core, the African Children's Charter is like the image of childhood in the CRC. The Child in the African Children's Charter, like the child in the CRC is an autonomous, independent, competent child whose interest is 'a' or 'the' primary consideration and who is entitled to almost all autonomy and liberty rights adults are entitled to in addition to other child-specific rights. So, in the main, the African Children's Charter is but an 'edited' version of the CRC because its textual, conceptual and substantive similarities.

In light of the similarities between the two treaties, there is a question whether the African Children's Charter is a necessary complement to the CRC or an unnecessary and burdensome duplication for state parties and other policy makers. This debate may still be going on in the academic institutions, but for policy makers, the debate is largely moot. For children's advocates, it is never a waste to have an additional layer of human rights protection for the most vulnerable in our society. Protecting human rights might be costly, but the failure to protect them is even more costly, it is urged.

So, for those involved in promoting and protecting children's rights and wellbeing in Africa, although the two instruments (the CRC and the African Children's Charter) may be similar, the existence of the African Children's Charter provides room for potential innovative interpretations that may not only benefit children in Africa, but may also spark international conversations on the rights of children in different contexts.³¹ For this group of scholars the question around the utility of the African Children's Charter is moot, and efforts should be directed towards making the best of the situation.³² According to this group, the value of specific treaties is obvious and that is why different categories of vulnerable people continue to clamour for a category specific treaty to better protect them.³³

31 See, for example, D Chirwa 'The merits and demerits of the African Charter on the Rights and Welfare of the Child' (2002) 10 *The International Journal of Children's Rights* 157, exploring how the complementary provisions as well as the distinctive provisions of the African Children's Charter could be enhanced to offer better protection for children in Africa.

32 B Mezmur 'The African Children's Charter versus the United Nations Convention on the Rights of the Child: A zero-sum game?' (2008) 23 *South Africa Public Law Journal* 1, noting that emphasis should really be placed on the value adding of the African Children's Charter.

33 S Ebobrah 'Towards a positive application of complementarity in the African

For a category that makes up more than half of the population of the continent, it is worthwhile and commendable to offer children in Africa treaty-specific protection.

While there is a strong case for rationality in the architecture of the African human rights system, such rationalisation should not be at the cost of effective protection of vulnerable groups in Africa. The fact that it has taken the African Commission on Human and Peoples' Rights almost three decades to start to discharge its mandate effectively might be indicative of the fact that housing all the treaties within the African human rights system under the umbrella of the African Charter on Human and Peoples' Rights may not be the most prudent way to have proceeded. Nevertheless, the question of streamlining, rationalising and harmonising the African human rights system should never be a moot question. Effective human rights systems continuously reinvent themselves to meet different challenges.³⁴ Either way, however, the requirement is for the African Children's Committee to discharge its mandate creatively and innovatively and to interpret the provisions of the African Children's Charter in such a way that validates its existence, adds value to the promotion and protection of children's rights in Africa and reduces the potential of duplication and redundancy.

3.3 The CRC and the African Children's Charter monitoring mechanisms

The CRC and the African Children's Charter respectively establish the UN Committee on the Rights of the Child (UN Children's Committee) and the African Committee of Experts on the Rights and Welfare of the Child (the African Children's Committee) to monitor the implementation of the CRC and the African Children's Charter. The UN Children's Committee is a body of 18 independent experts responsible for monitoring the implementation of the CRC, while the African Children's Committee is a body of 11 child rights and wellbeing experts responsible for monitoring the implementation of the African Children's Charter. All state parties are required periodically to submit reports on the extent of the conformity of their domestic standards and practices with the provisions of the CRC and the African Children's Charter. These state reports are then reviewed, usually in the presence of state party delegations. At the end

human rights system: Issues of functions and relations' (2011) 22 *European Journal of International Law* 663, highlighting the value adding of the quasi-judicial bodies within the African human rights system with respect to investigating mass violations, amicable settlements etc.

34 S Gutto 'The reform and the renewal of the African human and peoples' rights system' (2001) 2 *African Human Rights Law Journal* 175.

of the review process, the UN Children's Committee or the African Children's Committee issue Concluding Observations on the adequacy of the progress made by a state party towards the implementation of the provisions of the CRC or the African Children's Charter.

4 Evolution of and challenges to state party reporting

It has been said that the reporting process 'is a lecture in the anatomy of [the implementation of] human rights'.³⁵ The reporting mechanism, 'through the interrelated process of introspection and inspection',³⁶ provides states with an opportunity 'to take stock of its achievements and failures'³⁷ in implementing the provisions of a human rights treaty. The reporting mechanism was designed to function as a periodic and comprehensive review and exchange of information on the legislation, policies and programmes, administrative rules and procedures, and practices that the state party has put in place to facilitate the actual enjoyment of rights provided for in a human rights treaty. In addition, it is intended to ascertain progress made, and foster better understanding of the problems and shortcomings encountered in the implementation of human rights obligations. It is expected that reporting will facilitate principled and targeted policy-making as well as public scrutiny and involvement in the formulation, implementation and review of the relevant human rights related policies of government.³⁸

However, the reporting mechanism is still one of the 'weakest in the range of implementation techniques' for the realisation of human rights.³⁹ The texts of the different mandates that empower the human rights treaty bodies to receive and consider state party reports tend to confirm this impression. The different provisions of the treaties that confer powers on treaty bodies do not empower these treaty bodies to proactively consider the situation of human rights in the territory of a state party in the absence of a state report. The passive mandate granted to the treaty bodies with respect to reporting has

35 J Fonseca quoted by A Devereux & C Anderson 'Reporting under international human rights treaties: Perspectives from Timor Leste's experience of the reformed process' (2008) 8 *Human Rights Law Review* 69.

36 F Viljoen *International human rights in Africa* (2012) 349.

37 As above.

38 See, generally, CESCR General Comment 1: Reporting by state parties. Report on the 3rd session: 16-24 February 1989 (1989) UN Doc E/1989/22 E/C12/1989/5 dated 24 February 1989.

39 F Gaer 'First fruits: Reporting by states under the African Charter on Human and Peoples' Rights' (1992) 10 *Netherlands Quarterly of Human Rights* 29.

compelled treaty bodies to behave, in situations where allegations of massive human rights violations were made, as if nothing has happened and wait for years until the time for the submission of the report was due.⁴⁰

In addition to textual ambiguities, the challenges posed with regards to the reporting mechanism are that its efficacy depends on the political honesty of a state party; on the quality of the report; on available, reliable and independent information; on the quality of participation of other stakeholders in the reporting process; and, finally, on the functionality and efficiency of follow-up mechanisms. A treaty body has no control over most of these factors. Furthermore, the difficulty with the current reporting mechanism is that state parties tend to consider it a 'mere game'. A member of one of the treaty bodies presented this alarming reflection:⁴¹

I think that they [states with bad human rights records] have now learned how to 'play the game'. They, and other countries, seem mainly concerned now with 'treading water' during the dialogue, simply with 'getting through' the two or three days of examination, so that these matters can be shelved again for another few years.

This attitude is found not only among states with dubious human rights records, but also among liberal democracies. In an empirical study of why state parties comply with their reporting obligations, LeBlanc and others note that though government's 'effectiveness is the most important variable affecting state compliance with reporting requirements', surprisingly, 'compliance by liberal democracies has significantly declined in the last decade'.⁴² According to the authors of the study, 'within the period covered, liberal democracies are also less likely to comply with reporting requirements than are other regime types'.⁴³ In addition

officials entrusted with reporting responsibilities often admit privately that they are much more concerned with fulfilling as quickly as possible, and with the least possible effort, the unwanted, boring and burdensome task

40 A Bloed *et al* (eds) *Monitoring human rights in Europe: Comparing international procedures and mechanisms* (1993) 15.

41 R Higgins 'Opinion: Ten years on the UN Human Rights Committee – Some thoughts upon parting' (1996) 6 *European Human Rights Law Review* 581.

42 L LeBlanc *et al* 'Compliance with the reporting requirements of human rights CRCs' (2010) 14 *The International Journal of Human Rights* 789.

43 As above.

of reporting than they are with using the reporting process as a means of determining treaty compliance and working towards improvement.⁴⁴

Since the success of reporting as a monitoring tool depends, primarily, on 'the goodwill and good intentions of reporting states' it is possible for a report to be a 'good report' while the situation of human rights on the ground may not be as good as reported.⁴⁵ Alluding to this possibility, Viljoen notes that it is possible for a human rights treaty body to be 'blinded by the comparatively good quality of the report and lose sight of the inherently poor human rights record of the country in question'.⁴⁶

Nevertheless, 'reduced to its core', ratification of a human rights treaty is indicative of a state party's intention to 'give effect' to its provisions.⁴⁷ State reporting of progress and challenges in implementation remains 'the backbone' of the work of treaty bodies. To make the reporting mechanism more meaningful, human rights treaty bodies, as 'legal bodies',⁴⁸ engaging in 'norm-to-fact decision making'⁴⁹ through interpretation, have improved the human rights treaty regime. For instance, these human rights treaty bodies have turned a reporting system that was intended 'neither to be inquisitorial nor accusative' with an end that 'was neither condemnation nor approbation'⁵⁰ into a constructive dialogue emanating in conclusions.

The bold move by human rights treaty bodies to purposefully interpret their mandates with respect to reporting more generously has been praised and criticised. Pedone and Kloster regard the expansive interpretation of human rights treaty provisions by treaty bodies as a usurpation of power by treaty bodies and, as such, a negation of the principle of good faith.⁵¹ According to these critics, when states ratify a human rights treaty they do so with an understanding, which, in the opinion of these scholars, does not include reporting in the form and format it has evolved into. They argue that law must be certain and predictable. The interpretation of the

44 P Alston & J Crawford (eds) *The future of human rights treaty monitoring* (2000) 131.

45 J Donnelly *International human rights* (1998) 80.

46 F Viljoen 'Review of the African Commission on Human and Peoples' Rights: 21 October 1986 to 1 January 1997' in C Heyns (ed) *Human rights law in Africa* (1999) 95.

47 Viljoen (n 36).

48 Steiner (n 7).

49 As above.

50 D McGoldrick *The Human Rights Committee: Its role in the development of the International Covenant on Civil and Political Rights* (1991) 89.

51 J Pedone & A Kloster 'New proposals for human rights treaty body reform' (2013) 22 *Journal of Transnational Law and Policy* 29.

law must be faithful to the intention of the drafters and those who ratify these laws. A faithful interpretation of the mandate of treaty bodies in respect of reporting translates into the following:⁵²

[A] spectrum of powers between neutrally summarizing the reports, making collective suggestions in consideration of the reports, issuing non-State party specific comments on procedural matters, and issuing suggestions and recommendations for specific states parties.

Those who see the activist posture of the treaty bodies as well-meaning insist that ‘on the one hand, the law ought to be a comprehensive whole, closed and complete; and yet, on the other hand, the need for further determinations is continual’.⁵³ According to them, it is because of this kind of creativity by the different human rights treaty bodies that the reporting mechanism

may prove to be an effective means to develop a universal culture of rights, one in which the actual meaning of rights and their implementations for specific individuals and groups are commonly understood and internalized by governments and civil society alike.⁵⁴

One reason for praising the reporting mechanism is the role Concluding Observations play in advancing the implementation of human rights law. It is not yet settled in international human rights law what the exact legal status of Concluding Observations is, but some scholars argue that ‘a statement of an authoritative body performing an important supervisory function cannot remain without consequences’.⁵⁵

5 Reporting requirements and guidelines of the UN Children’s Committee and the African Children’s Committee

The two treaty bodies have issued guidelines to state and non-state actors aimed at assisting them to make the most out of the reporting mechanism. These guidelines provide guidance about the process of preparing state party reports, the content of the reports as well as how state parties should

52 As above.

53 N Pavel ‘Defining the concept of human rights in the light of juridical value theory’ (2012) 4 *Contemporary Readings in Law and Social Justice* 502, citing G Hegel.

54 J Karp ‘Reporting and the Committee on the Rights of the Child’ in A Bayefsky (ed) *The human rights system in the 21st century* (2000) 37.

55 V Dimitrijevic ‘State reports’ in G Alfredsson *et al* (eds) *International human rights monitoring mechanisms: Essays in honour of Jakob Th. Moiler* (2001) 198.

present their reports. There are similarities and some differences between the guidelines issued by the two children's committees.

5.1 Guidelines for state party reporting by the UN Children's Committee

There are two types of guidelines state parties are expected to take into consideration when elaborating on the obligations under the CRC – the single and harmonised Core Reporting Document outlining common requirements of all human rights treaties regarding the form and content of reports to be submitted by states parties and the CRC specific guidelines.⁵⁶ The exceptions to the common reporting guidelines are those under the two Optional Protocols to the CRC.

The harmonised guidelines are intended to enable the UN Children's Committee 'to obtain a complete picture of the implementation' of the CRC, 'set within the wider context of the state's international human rights obligations and provide a uniform framework within which [the UN Children's] Committee, in collaboration with the other treaty bodies, can work'. In addition, the harmonised guidelines, 'aim at strengthening the capacity of states to fulfil their reporting obligations in a timely and effective manner, including the avoidance of unnecessary duplication of information'.⁵⁷

5.1.1 Guidelines about how to prepare state party reports

Because a state party report is first a national conversation about the status of children's rights and wellbeing in the territory of a state party, treaty bodies recommend a process of preparing a state party report that involves all the relevant departments of government, all levels of government and all relevant stakeholders – civil society organisations, child led organisations and independent national human rights institutions in the preparation of the report. The UN Children's Committee expects and recommends inclusive, coordinated and meaningful participation by all stakeholders in the preparation of a state party report. The reason for an inclusive reporting process is that state parties should see the process of reporting as

56 Resolutions 52/118 and 53/138; the General Assembly related to Harmonised Guidelines on Reporting under the International Human Rights Treaties, including Guidelines on a Core Document and Treaty-Specific Documents.

57 See Chapter I para 4 of the Harmonised Guidelines on Reporting under the International Human Rights Treaties, including Guidelines on a Core Document and Treaty-Specific Documents.

an opportunity to take stock of the state of human rights protection within their jurisdiction for the purpose of policy planning and implementation. The report preparation process thus offers an occasion for each State party to:

- a) Conduct a comprehensive review of the measures it has taken to harmonize national law and policy with the provisions of the relevant international human rights treaties to which it is a party;
- b) Monitor progress made in promoting the enjoyment of the rights set forth in the treaties in the context of the promotion of human rights in general;
- c) Identify problems and shortcomings in its approach to the implementation of the treaties; and
- d) Plan and develop appropriate policies to achieve these goals.⁵⁸

5.1.2 Common core reporting requirements

The harmonised guidelines provide for recommendations on what should be common to all reporting processes. For example, the harmonised guidelines expect state parties to adopt a coordinated approach to their reporting for each respective treaty body – setting up an appropriate institutional framework including inter-ministerial committees or focal points for reporting and an efficient system for data collection within each ministry for the preparation of reports. In addition, the harmonised guidelines expect all state party reports to be ‘comprehensible and accurate’, elaborate both the *de jure* and the *de facto* situation regarding the implementation of the provisions of the treaties, provide relevant statistical data – disaggregated – allowing for comparison over time and should indicate data sources.

5.1.3 CRC’s specific guidelines

Broadly speaking, the guidelines of the UN Children’s Committee categorise the content of the state party report into the application and implementation. In terms of content, the UN Children’s Committee expects state parties to report on measures taken to ensure implementation of the *cardinal principles* of the children’s rights treaties. Furthermore, the UN Children’s Committee wants to know measures of a general nature undertaken to ensure full realisation of children’s rights. For instance, how children’s rights and wellbeing have been given full expression in laws and policies, whether *domestic laws* allow for direct application of children’s

58 See art 9 of the Harmonised Guidelines on Reporting under the International Human Rights Treaties, including Guidelines on a Core Document and Treaty-Specific Documents.

rights treaties, legal and administrative measures and *remedies in cases of violations*.

The UN Children's Committee is equally concerned with how national institutions and mechanisms for ensuring the realisation of children's rights and wellbeing are *coordinated* and coherent in approaches to implementing the provisions of the treaties. State parties are expected to report on measures undertaken to put in place *self-monitoring* mechanisms and institutions and how much state parties have budgeted for the realisation of children's rights in national budgets. To help state parties further in terms of detailed guidance on what to include in a state party report, we will use legislative and policy framework, resource allocation, data collection and coordination as well as the cardinal principles of life, survival and development, the best interests of the child, non-discrimination and child participation as examples, to provide indicative areas that are of interest to the UN Children's Committee as well as the African Children's Committee. We have used general comments and Concluding Observations of the UN Children's Committee for this purpose.

5.1.4 Children in laws and policies

The UN Children's Committee expects state parties to report on concrete measures undertaken to ensure that all domestic legislation, including any local or customary law, has been reviewed and fully harmonised with the provisions of the CRC. The preference is the consolidated children's rights statutes, which highlight and emphasise the CRC's principles. But the UN Children's Committee emphasises that it is crucial in addition that all relevant 'sectoral' laws (on education, health, justice and so on) consistently reflect the principles and standards of the CRC.

Additionally, the UN Children's Committee wants to know the constitutional status of children's rights in the territory of a state party. The central concern is if a national constitution reflects key principles of the CRC, if provisions of the CRC can be directly invoked before or can be directly applied and appropriately enforced by the courts and applied by national authorities and where appropriate, allows for the exercise of rights by children themselves, and enables the passage of additional legislative and other measures if necessary. The UN Children's Committee is equally interested to know in the case of a conflict between a domestic law or customary norm and common practice if the CRC will prevail.

The UN Children's Committee expects state parties, in preparing their reports, to give particular attention to measures undertaken to ensure that there are effective, child-sensitive procedures available to children and

their representatives to access justice in cases of violations. These should include the provision of child-friendly information, advice, and advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. If children's rights are found to have been breached, state parties should report if there are appropriate reparations, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration of affected children.

5.1.5 *Children in national budgets*

The UN Children's Committee pays significant attention to the identification and analysis of resources for children in national and other budgets. In this regard, the UN Children's Committee is interested in information about the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly and if there is a published annual 'children's budget' by a state party. State party reports should highlight steps taken at all levels of government to ensure that economic and social planning and decision-making and budgetary decisions are made with the best interests of children as a primary consideration and that children, including marginalised and disadvantaged groups of children, are protected from the adverse effects of economic policies or financial downturns.

It is important to include in a state party report a statement on the adequacy of resource allocations to structures and institutions working on children's rights and wellbeing at all levels of government. So, for instance, state parties are expected to report on resources allocated to ensure the development of training and capacity-building for all those involved in the implementation process – government officials, parliamentarians and members of the judiciary – and for all those working with and for children. These include, for example, community and religious leaders, teachers, social workers and other professionals, including those working with children in institutions and places of detention, the police and armed forces, including peacekeeping forces, those working in the media and many others.

Furthermore, state parties should report on how they are working together with all members of society – individuals, including health professionals, families, local communities, intergovernmental and non-governmental organisations, civil society organisations, as well as the private business sector to realise all rights for all children. Budgetary information should include data on local resources as well as on how a

state party is using international relations and cooperation to advance the realisation of children's rights and welfare on its territory.

5.1.6 *Children in national data collection*

The UN Children's Committee considers self-monitoring and evaluation obligations which state parties should discharge in an independent manner. Therefore, the UN Children's Committee pays particular attention to measures and mechanisms in place to ensure a continuous process of data collection and how data is utilised to predict the impact of any proposed law, policy or budgetary allocation on how children enjoy their rights. It is important to report if there is legislation requiring the preparation and presentation to parliament and/or the public of a formal report on the impact of policies, programmes and practices on children.

In addition, state parties should report on mechanisms for data collection. In this regard, the report should indicate, first, whether there is an effective and efficient system for collecting reliable data on children. Second, states must report if such a system collects disaggregated and detailed statistical and other information covering all rights and all children to enable identification of discrimination and/or disparities in the realisation of rights. Third, the report must explain whether the data collected covers the whole period of childhood, up to the age of 18 years, and throughout the jurisdiction, ensuring nationally applicable indicators. It is important to state in the report if data collected are evaluated and used to assess progress in implementation, to identify problems and to inform all policy development for children.

5.1.7 *Coordination*

In its reporting, state parties need to indicate if there exists a unifying, comprehensive and rights-based national strategy, or national plan of action for children rooted in the CRC. The report should indicate if the process that led to the development of the strategy was consultative, including with children and young people and those living and working with them. The report should also include information on whether the plan of action was endorsed at the highest level of government, is linked to national development planning and included in national budgeting and includes a description of a sustainable process for realising the rights of children throughout the state. The UN Children's Committee expects a strategy or plan of action that goes beyond statements of policy and principle, to set real and achievable targets in relation to the full range of economic, social and cultural, and civil and political rights for all children.

The report should indicate if strategy is not a once-off task and if it is adequately resourced, in human and financial terms?

State parties should provide information on the nature and scope of coordination between all levels of government. Such information should not be limited to only government departments that are perceived to have a substantial impact on children such as departments of education, health or welfare and so on but right across government, including for example departments concerned with finance, planning, employment and defence, and at all levels. It is important to mention if there are coordination mechanisms, for example, inter-ministerial and interdepartmental committees for children and whether these mechanisms are close to the heart of government reporting directly, for example, to the Prime Minister, the President or a Cabinet Committee on children for instance.

In the cases of decentralised state structures, the state party should report on the impact of decentralisation on the full realisation of children's rights and wellbeing. For instance, does decentralisation in any way reduce the direct responsibility of the state party's government to fulfil its obligations to all children within its jurisdiction, regardless of the state structure? Do the devolved authorities have the necessary financial, human and other resources effectively to discharge responsibilities for the implementation of the CRC? In a situation where a state party outsources a service to a private service provider, the state party report should indicate whether or not such decentralisation does not in any way lessen the state's obligation to ensure for all children within its jurisdiction the full recognition and realisation of all child rights.

5.1.8 Life, survival and development

The UN Children's Committee expects state parties to report on measures, including positive measures, taken to protect the life of children by preventing arbitrary deprivation of life including abandonment, selective abortions, extra-legal, arbitrary or summary executions, accidents, suicide, through armed conflicts, by police brutality or any situation of enforced disappearance. In addition, the report should provide information on steps undertaken to prevent separation of children from the family and the phenomenon of unaccompanied children, infanticide in particular girls and children with disabilities, child sacrifice, trafficking, sale and kidnapping or abduction of girls.

Furthermore, the state party report should indicate whether domestic law prohibits capital punishment for offences committed by persons below 18 years of age. State parties should report on measures undertaken to

prevent child marriage and other harmful cultural practices to abolish traditional practices prejudicial to health of children, selling of children for purposes of sexual or other exploitation or involvement in criminal activities which could result in harm to the child, or in extreme cases, death. State parties should report on measures undertaken to improve perinatal care for mothers and babies, to ensure an adequate standard of living, a healthy and safe environment, education and play, ensure family planning policy designed to avoid any threat to the life of children, particularly girls, and ensure protection from all forms of violence, torture and cruel, inhuman or degrading treatment or punishment, reduce infant and child mortality, increase life expectancy, eliminate malnutrition and epidemics, combat diseases and rehabilitate health, provide adequate nutritious foods and clean drinking water.

State parties should report on measures undertaken to ensure there is remedial action for example, if there are mechanisms for full investigation of serious violations of children's rights, and if perpetrators were brought to justice and how many. In addition, there should be a report on whether the state provided the family of the victims with adequate support and compensation.

5.1.9 The best interests of the child

In reporting about how a state party has interpreted and implemented the principle of the best interests of the child, the UN Children's Committee expects state parties to report on concrete and targeted measures such as the adoption of laws, policies, strategies, programmes, plans, budgets, legislative and budgetary initiatives and guidelines to ensure that the child's right to have his or her best interests assessed and taken as a primary consideration when different interests are being considered is guaranteed.

In addition, state parties are expected to report on actions taken to ensure that the child's best interests are appropriately integrated and consistently applied in every action taken by a public institution, especially in all implementation measures, administrative and judicial proceedings which directly or indirectly impact on children. It is helpful to the UN Children's Committee for state parties to elaborate on what happens when legal provisions that are open to more than one interpretation are being applied. In particular, the Committee would wish to know whether there are mechanisms in place that ensure that the interpretation which most effectively serves the child's best interests is preferred and whether there are concrete examples of judicial or administrative decisions and processes where the child's best interests have been a primary consideration. This

could include describing how the best interests were examined and assessed, and what weight was ascribed to them in the decision.

State parties should not restrict reporting to the public sector. It is important to include in the report how the interests of the child have been assessed and taken as a primary consideration in decisions and actions taken by the private sector, including those providing services, or any other private entity or institution making decisions that concern or impact on a child and the best interests principle; information on any judicial and administrative proceedings at any level, both as a substantive right and as a rule of procedure; upholding the best interests of the child in the coordination and implementation of policies at the national, regional and local levels should also be provided.

State parties need to report on how they are upholding the child's best interests in the allocation of national resources for programmes and measures aimed at implementing children's rights, and in activities receiving international assistance or development aid. Reports should also include concrete and targeted measures to ensure that when a state party establishes a monitoring, evaluation and data collection framework, that state party ensures that the child's best interests are explicitly spelt out and, where required, supports research on children's rights issues.

A very important component of the best interest principle is child participation. Therefore, state parties should report on measures taken to ensure that in any decision affecting a child or children, those taking such decisions respect the child's views and the child's identity. States parties should also ensure as much as possible the preservation of the family environment and maintaining relations, prioritise the care, protection and safety of the child and pay particular attention to children in situations of vulnerability and that such decisions do not jeopardise the child's right to health and right to education. This must include how a state party has applied the best interests as a rule of procedure when making laws, policies or programmes or when handling issues related to separation of a child from parents, family reunification, parental responsibilities, deprivation of family environment and alternative care, adoption, and separation from adults in detention.

5.1.10 Non-discrimination

State parties are expected to report on laws, policies and programmes that 'respect and ensure' all the rights in the CRC to all children in their jurisdiction without

any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all children, on an equal footing, of all rights and freedoms.⁵⁹

In addition, in reporting, state parties are expected to differentiate between positive and negative discrimination and are expected, with respect to affirmative action, to report on measures undertaken to identify individual children and groups of children, the recognition and realisation of whose rights may demand special measures, and what specific actions including changes in legislation, administration and resource allocation, as well as educational measures to change attitudes have been taken.

Further, state parties should report on disaggregation of data to show the effect of laws, policies and programmes on children including the girl child, the boy child, children with disabilities, children with HIV/AIDS, and children in the urban and rural settings. With respect to these categories of vulnerable children, state parties are expected to report on challenges including reduced levels of nutrition; inadequate care and attention; restricted opportunities for play, learning and education; or inhibition of free expression of feelings and views; and any harsh treatment and unreasonable expectations, which may be exploitative or abusive.

The UN Children's Committee is particularly concerned and expects state parties to report on specific circumstances especially where health, education, welfare and other services are not universally available and are provided through a combination of state, private and charitable organisations. In addition, state parties are expected to report on actions taken including through public education programmes and the eradication of social misconceptions that guarantee that all children have an equal opportunity to benefit from available services. More generally, states parties should report on measures to raise awareness about discrimination against young children in general, and against vulnerable groups in particular.

5.1.11 Participation

In reporting, state parties are expected to provide information that indicates that the right of all children to be heard and taken seriously has been taken into account on the territory of a state party. State party reports

59 The definition of discrimination as provided for in many international human rights treaties, general comments. Take, for example, article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965.

should see and treat the right to be heard not only as a single event, but a process as well as a right that should be considered in the interpretation and implementation of all other rights. With respect to the reporting process, state parties are expected to demonstrate that they ensure that the interests and priorities that are reported are those of the children themselves and not only of the adults or organisations they work with.

According to the UN Children's Committee, state party reports should indicate how child participation in their territory complies with the following principles:

- *Transparent and informative*: Children must receive full, accessible, diversity-sensitive and age-appropriate information about their right to express their views freely and to have their views given due weight, and about how this participation will take place, its scope, purpose and potential impact.
- *Voluntary*: Children should not be coerced into expressing views against their wishes and must be informed that they can cease involvement at any stage.
- *Respectful*: Children's views have to be treated with respect, and children should be provided with opportunities to initiate ideas and activities. Persons and organisations working for and with children should respect children's views with regard to participating in events and meetings.
- *Relevant*: Children should draw on their knowledge, skills and abilities to express their views on relevant issues. Space needs to be created to enable children to highlight and address issues they have identified as relevant and important.
- *Child-friendly environment*: Environments and working methods should be adapted to children's capacities. Adequate time and resources should be available to ensure that children are well prepared and have the confidence and opportunity to contribute their views to the process.
- *Inclusive*: Children are not a homogeneous group and participation needs to provide for equality of opportunity for all, including marginalised children, without discrimination on any grounds, including age, and be culturally sensitive to children from all communities. Special measures should be taken to include very young children and children from marginalised communities.
- *Supported by training*: Adults need preparation, skills and support to facilitate children's participation effectively. Children also require capacity-building to strengthen their skills relevant to the reporting process, for example, in effective participation, awareness of their rights, public speaking and advocacy.
- *Safe and sensitive to risk*: Adults have a responsibility towards the children with whom they work and must take every precaution to minimise the

risk of violence, exploitation or any other negative consequences of their participation. Organisations facilitating child participation in the reporting process must have a clear child-protection policy in place for all the children who take part in activities related to this process.

- *Accountable*: Child-led organisations, children's groups, NGOs and UNICEF should ensure that children have a clear understanding of their role in the reporting process and, more specifically, in meeting with the Committee. A commitment to follow-up and evaluation is essential. Children who have taken part in the reporting process – be it in research, consultations, drafting the report or meeting the Committee – should be informed about how their views will be interpreted and used.⁶⁰

5.2 Guidance on the presentation of reports

Once the state report is ready for presentation, the UN Children's Committee expects and recommends a high-level representation and composition of the delegation that reflects the fact that the report being presented is a state party report and not a report of the government of the day. The UN Children's Committee has recommended that state party delegations be composed of ministers representing inter-ministerial committees, child representatives and representatives of civil society organisations. The emphasis on a high-level delegation is to enhance the quality of the constructive nature of the dialogue that takes place between the treaty bodies and the delegations. The UN Children's Committee expects and recommends a delegation with authority to answer and address the concerns of the treaty bodies as comprehensively and conclusively as possible.

At the end of the dialogue, the treaty bodies issue recommendations where a state party is doing well and recommendations as to where more efforts, attention and resources might be required for better implementation. These Concluding Observations build on previous recommendations and expect national mechanisms such as national plans of action for the implementation of Concluding Observations to be put in place to ensure systematic implementation, documentation and follow up of recommendations.

60 Committee on the Rights of the Child 'Working methods for the participation of children in the reporting process of the Committee on the Rights of the Child' (2014) UN Doc CRC/C/66/2 dated 16 October 2014.

5.2.1 *Guidelines for state party reporting by the African Children's Committee*

With a few exceptions, the guidelines for state party reporting from the African Children's Committee are very similar to that of the UN Children's Committee. Due to these similarities, the African Children's Committee has instructed state parties to the African Children's Charter as follows:⁶¹

A State Party that has already submitted to the UN Committee on the Rights of the Child a report based on the provisions of the CRC may use elements of that report for the report that it submits to the Committee as required by the Children's Charter. The report shall, in particular, highlight the areas of rights that are specific to the Children's Charter ... The report must specify the action taken by the State Party in response to any recommendations made to it by the Committee and/or the UN Committee on the Rights of the Child.

There are no clear reporting guidelines from the African Children's Committee about 'the areas of rights that are specific to the Children's Charter'. While we recommend that the African Children's Committee should provide clear reporting guidelines to state parties about what a report containing only areas of rights that are unique to the African Children's Charter should look like, we propose the following:

5.2.2 *Definition of the child*

State parties should provide information on necessary steps and other measures taken to ensure that all domestic laws dealing with children are harmonised with the African Children's definition of the child as anyone below the age of 18 years without any exception or discrimination. For instance, where international or national law makes exception or provides for a lower cut off age including for recruitment or participation, directly or indirectly in an armed force or in armed conflict, lower age prescription related to age of marriage and any difference in age of marriage between girls and bodies or to child labour. So, state party's laws, policies and practices should comply with the higher standard of protection provided for in the African Children's Charter.

5.2.3 *Non-discrimination*

In a Charter-specific report, state parties should note that the African Children's Charter extends the forbidden grounds for discrimination to

61 See guidelines 24 and 25 of the States Parties Reporting Guidelines of the African Committee of Experts on the Rights and Welfare of the Child.

include the race, ethnic group, colour or fortune of the parents or the legal guardians of a child. So, state parties need to report on measures – negative and positive – undertaken to ensure that children in their jurisdiction are not discriminated against on the grounds of the status and special circumstances of their parents or those of their legal guardians.

5.2.4 Protection rights

State parties in their Charter specific reports need to note and report on the higher protection the African Children's Charter provides to children. This includes extending the same level of protection available to refugees' children to internally displaced children, protection of children from harmful traditional beliefs and practices including child marriage and genital mutilation, and the blanket prohibition of recruitment of anyone below the age of 18 into armed forces. State parties should also report on concrete and targeted measures taken to ensure that children exercise their duties and responsibilities to participate in societal welfare. In this regard, the African Children's Committee will require information from state parties – on laws, policies, programmes and practices – that protects and provides for these rights.

5.2.5 Economic, social and cultural rights

The obligation of state parties to the African Children's Charter to 'recognise the rights, freedoms and duties' and 'to give effect to' these rights, freedoms and duties apply also to economic, social and cultural rights without the *proviso* of progressive realisation. In the preparation of a Charter specific report on socio-economic rights, state parties should report on laws, policies, programmes and practices in place that give effect to the realisation of children's socio-economic rights. In addition, state parties should report on what budgetary measures have been undertaken to ensure effective realisation of these rights as well as how the state party is using such resources in the most cost-effective way. Furthermore, the African Children's Committee will be interested to know if there are mechanisms in place to monitor the full realisation of children's socio-economic rights, what indicators are used to monitor implementation and against what benchmarks.

The African Children's Committee is interested to know from state party reports what structural and other barriers exist to the realisation of children's social-economic rights. In addition, the African Children's Committee will be interested to know if children's socio-economic rights

are justiciable before domestic courts and if remedies are provided and if such remedies are meaningful and effective.

5.3 Non-state party reports

The treaty bodies expect and recommend that civil society – individuals or organisations – prepare and submit a complementary, shadow or alternative report to enable the treaty bodies to have access to broader sources of information as much as possible. The treaty bodies expect complementary reports to be a factual, objective and succinct representation of the actual situation of children on the ground. Complementary reports should address ‘any perceived omissions, deficiencies or inaccuracies in the state report and not simply duplicate it’.⁶² A good complementary report, according to the *Guidelines on complementary reports, the conduct of and participation in pre-session* of the African Children’s Committee, should, for example, serve the following purposes:

- 1) To provide the Committee with additional, specific, credible and objective information that corroborates or provides alternative information to complement the report presented by the State Party.
- 2) To provide the Committee with a complete picture of the status of children and implementation of the Charter in the territory of the State Party.
- 3) To provide the Committee with concrete, country-specific, limited in time, realistic and implementable recommendation(s); and
- 4) To further improve the status of children in Africa and implementation of the Charter in the territory of the respective State Parties.

The treaty bodies expect and recommend an inclusive and participatory process of preparing and presenting civil society reports. A civil society report prepared and presented by a national coalition, for instance, is likely to be inclusive, comprehensive and credible. The treaty bodies, before engaging in a constructive dialogue with representatives of a state party, will invite representatives of civil society organisations who have submitted a civil society report to a pre-session conversation on the state of children’s rights and well-being in the territory of that particular state

62 African Committee of Experts on the Rights and Welfare of the Child *Guidelines on complementary reports, the conduct of and participation in pre-session*.

party. According to the *Guidelines on complementary reports, the conduct of and participation in pre-session*, a pre-session is convened:

- 1) To conduct a preliminary review of a state party report and to examine complementary information.
- 2) To identify areas of concern, the list of issues and potential questions that will need to be addressed by the state party either in a written submission or orally.
- 3) To finalize preparation for the session in which a state party report is scheduled for consideration.

6 Conclusion

Human rights norms will largely remain hallow if they are not translated into the lived realities of people on the ground. Given the diversity and complexities of human rights norms, the arrays of institutions and mechanisms required to give full effect to these norms and the resource requirements, implementation of human rights norms is a continuous and progressive undertaking. Progress, to be meaningful, should have milestones and mechanisms for tracking it. The reporting mechanisms are human rights' monitoring and evaluation plans and systems to track progressive implementation.

To achieve this stated goal, the process of preparing and presenting state reports as well as implementing the outcomes of the conversation with treaty bodies should conform to certain processes and principles. Thus, the mechanism of reporting and its constructive rather than confrontational nature is designed to create at the national level an understanding and awareness of treaty standards, engender a process of review of laws, policies and practices against those standards, facilitate planning of concrete actions to improve the shortfalls revealed, provide a platform for monitoring the implementation of those plans, and ensure reporting and feedback from a dialogue with the treaty bodies.⁶³ We recommend the following:

The report must be a state report: Reports to treaty bodies are not reports of a government. A government is an agent and a subset of a state. Therefore, the process of planning for and preparing a state party report should be consultative and inclusive of all relevant components of the state. The government is a manager of this process, which should include local authorities, traditional and religious leaders, civil society organisations,

63 AF Bayefsky *The UN human rights system: Universality at the crossroads* (2001).

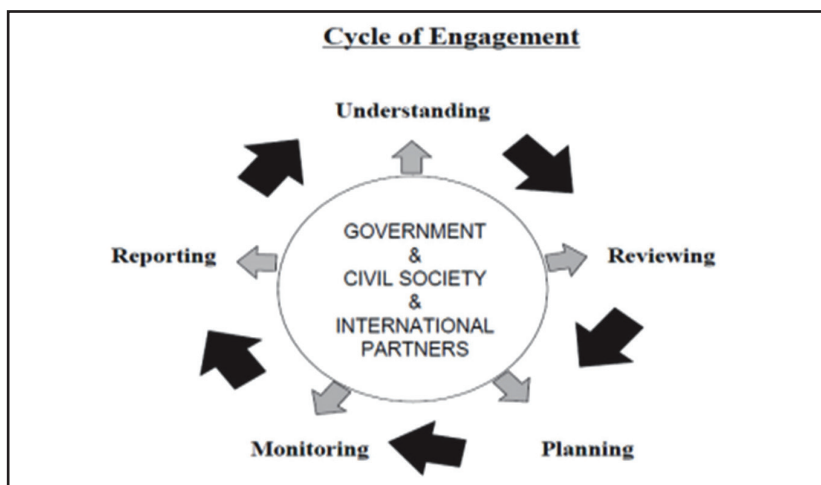
children, research institutions and relevant government departments in a meaningful conversation around the content of the report.

Reporting is an honest self-assessment: The process of preparing a report should not be akin to preparing a brief to a court of law meant to defend the records of a client. A state report should be the climax of an open, frank and honest national conversation and assessment of progress made, challenges encountered and ideas on what needs to change, to be improved and to be introduced to overcome outstanding challenges as well as maintain achievements.

A good state party report should adopt a four-by-four approach: In reporting on each item of the CRC or the African Children's Charter, a state party needs to report on the core elements of each right. We recommend that in addition to reporting based on the core elements of each right, state parties need to keep in mind the four cardinal principles and ask themselves four important questions: firstly, what has the state done with respect to this item that helps or hinders the realisation of life, survival and development of all children in all settings? Secondly, was the action or omission in the overall best interests of all children and in all settings? Thirdly, in implementing such an item, was care taken to ensure that there was no distinction, exclusion, restriction or preference, which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all children, on an equal footing, of all rights and freedoms. Finally, were children consulted, and was such consultation of children transparent and informative, voluntary, respectful, relevant, child-friendly, inclusive, supported by training, safe and sensitive to risk as well as accountable? The other four fundamental issues a state party must keep in mind while reporting on a right are: First, has the right been incorporated into domestic legislation and policy and has it been directly applicable by national courts with justiciable remedies? Second, are there institutions and mechanisms at national level ensuring effective and efficient coordination of state efforts at implementing this right? Third, are the laws, policies, administrative measures, institutions and mechanisms adequately resourced from the national budget? Finally, is there a credible and systematic modality for data collection on all the rights and all the children in all settings?

A national schedule for reporting: It is important for a state party to have a national schedule on its reporting obligation, describing what needs to happen, by when, and who is responsible for what. All stakeholders should

have access to such a schedule, which should include all the important milestones in the reporting cycle.



Source: *Human Rights at Cross Road? AF Bayefsky The UN human rights system: Universality at the crossroads* (2001)

Reporting is a continuous conversation: Each state party report should be considered as a building block on the previous report and should adequately reflect progress made since the last reporting cycle and indicate Concluding Observations that were implemented, those that were not implemented and why and if there are current plans intended to implement the outstanding recommendations.

Robust follow up mechanism: In addition to each report serving as a follow up mechanism in its own right, state parties should put in place a national strategy and a SMART compliant plan of action on the implementation of Concluding Observations. Such plan of action should incorporate key milestones and regular evaluation and reporting on progress to an inter-ministerial committee responsible for the issues covered in the Concluding Observations. All relevant stakeholders should have clear roles in the development, implementation and monitoring of the national plan of action.

Adoption of an integrative approach to reporting: State parties should endeavour to include information about children's rights and wellbeing in all their relevant reporting obligations. For instance, when reporting to the ACHPR, the APRM, the UPR and other reporting obligations, state parties should include information relevant to the girl child, for example,

when preparing and submitting a report under the Maputo Protocol. Such an approach will enable state parties to constantly monitor progress, receive timely recommendations and undertake remedial action between its reporting schedules with the UN Children's Committee or the African Children's Committee.

Reporting to schedule: the African Children's Charter provides for periodic reporting every three years. However, an amendment to article 43(1)(b) submitted by the African Children's Committee, when effective, will change the reporting cycle to every five years. The implication will be that the UN Children's Committee and the African Children's Committee would have harmonised their reporting periods to a five year cycle for periodic reports. The information required by the two treaty bodies is very similar except for the unique features of the African Children's Charter. This has lessened the burden on state parties to prepare two different reports for these treaty bodies. Because time changes, some of the recommendations of the treaty bodies are time bound. Delayed reporting has serious implications for implementation of such recommendations