

Chapter 33

Articles 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41

African Children's Committee and the Secretariat

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1 Introduction

For a long time, systematic human rights protection in Africa¹ has been neglected on the continent. Even the landmark legal and political document, the Charter of the Organisation of African Unity (OAU),² has made only a subtle reference to the protection of human rights.³ Of course, human rights, as evidenced by the struggle for the decolonisation of Africa and the right to self-determination and independence, was the agenda of the time. Since its establishment, the OAU has been preoccupied with the struggle against colonisation, apartheid and assurance of self-determination.⁴

However, although the OAU contributes significantly in the decolonisation process, a systematic engagement with human rights was not its primary agenda. This can be inferred from its position on non-interference in the internal affairs of member states. Such relegation of human rights as secondary matters requires strengthening of the system with a view to developing a holistic, comprehensive and integrated approach to ensure that all human rights are respected. Therefore, it took decades for the organisation to consider human rights as its main agenda and reach the point where it is today. It was after the 1970s, particularly with the adoption of the African Charter on Human and Peoples'

1 Systematic human rights protection refers to the existence of structured and integrated human rights norms and monitoring bodies and mechanisms at the regional level.

2 Charter of the Organisation of African Unity, adopted by the AU Assembly on 25 May 1963, entered into force on 13 September 1963.

3 F Ouguregouz *The African Charter on Human and Peoples' Rights: A comprehensive agenda for human dignity and sustainable democracy in Africa* (2003) 2.

4 Art 3(e) of the OAU Charter: Freedom from colonialism is a human right.

Rights (African Charter),⁵ that the situation started to slowly alter.⁶ Following the adoption of the African Charter, as part of the treaties that enunciate the African regional human rights system, the African Charter on the Rights and Welfare of the Child (African Children's Charter) was also adopted. The African Children's Charter established a monitoring body – the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) – with a mandate to promote and protect children's rights and welfare in Africa.

As Sloth-Nielsen writes, the notion of the protection of children and fulfilment of their rights has not started with the adoption of the African Children's Charter.⁷ There have been prior initiatives, declarations and resolutions adopted by the OAU and its mechanisms. However, the most notable development with regard to Africa's approach to children's rights has been witnessed through the African Children's Charter, which was adopted in 1990, shortly after the adoption of the Convention on the Rights of the Child (CRC), and came into force in 1999. As of August 2024, the African Children's Charter has been ratified by 51 African countries.⁸ Lloyd explains what has been done during the years between 1990 and 1999 while awaiting the entry into force of the African Children's Charter and the operationalisation of the African Children's Committee. She writes:⁹

A Special Committee on Children in Situations of Armed Conflict was established in 1997. The task of this committee was to follow up on the recommendations of the Conference on Children in Situations of Armed Conflict, held in June 1997 in Addis Ababa, Ethiopia. The Special Committee was composed of five OAU member states: Burkina Faso, South Africa, Togo, Uganda, and Zimbabwe. Working in co-operation with various CSOs, such as Save the Children and the African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN), the Special Committee was created on the understanding that when the ACRWC entered into force and the ACERWC was established, it would cease to exist. During its five years of operation, the Special Committee actively lobbied OAU member states to ratify the ACRWC, as well as lobbying the OAU to ensure there was no discrimination on the basis of age within the OAU. The Special Committee also produced English and French versions of the ACRWC, as well as child-friendly versions for general distribution, produced a handbook and databank and identified good practice in culture. The Special Committee also importantly identified challenges hindering the effective provision of services to children in Africa.

The African Children's Committee was operationalised in 2001. Focusing on the establishment and operations of the African Children's Committee, this chapter examines the provisions of the African Children's Charter that play a significant role in setting the conduct of business of the African Children's Committee and operationalising the substantive part of the Charter. It is through these articles that the African Children's Charter creates an organ to monitor the implementation of the Charter in state parties.

As discussed in the previous chapter,¹⁰ the African Children's Committee is a statutory body of the African Union (AU), established by the African Children's Charter. In 2001, the AU, in line with article 32 of the African Children's Charter, established the African Children's Committee to monitor state parties' compliance with their obligations to implement the standards set in the African Children's

5 The African Charter was adopted by the Assembly of Heads of State and Government of the OAU in 1981 and entered into force five years later in 1986; see African Commission documents, <http://www.achpr.org/instruments/> (accessed 5 July 2024).

6 R Murray *The African Commission on Human and Peoples' Rights and international law* (2000) 10.

7 J Sloth-Nielsen 'Children's rights and the law in African context: An introduction' in J Sloth-Nielsen (ed) *Children's rights in Africa: A legal perspective* (2008) 3.

8 The countries that have not yet ratified are Morocco, Somalia, South Sudan, and Tunisia.

9 A Lloyd 'The African regional system for the protection of children's rights' in Sloth-Nielsen (n 7) 34.

10 See the discussion in the introductory chapter of this *Commentary*.

Charter.¹¹ Drawing its mandate from article 42 of the Charter, the African Children's Committee carries out activities that are meant to protect and promote children's rights on the continent. Accordingly, the core functions of the Committee include the consideration of state party reports;¹² the consideration of communications/complaints against state parties;¹³ the undertaking of on-site investigation;¹⁴ the commissioning of inter-disciplinary assessments of situations on African problems relating to rights and welfare of the child;¹⁵ the formulation of principles and rules aimed at protecting the rights and welfare of the child;¹⁶ interpreting the provisions of the Charter, for instance, through General Comments;¹⁷ and organising meetings, encouraging national institutions working on the rights and welfare of the child and, where necessary, giving its views and recommendations to governments.¹⁸ In discharging its activities, the Committee uses various avenues, including the ordinary sessions, meetings of member states, country visits, seminars and conferences.

The provisions covered under this chapter prescribe the manner in which the Committee is established, how elections are held, including terms of office, the composition of the Committee, its bureau and the modalities of the decision-making processes. The privileges and immunities accorded to the Committee has also been prescribed. The articles determine and inform the practical implementation of the entire Charter and the discharge of the Committee's mandate.

Most of the provisions covered in this chapter are drafted in a general form, hence understanding the meaning and unpacking the elements of the same require further references to other instruments within the AU and the United Nations (UN), including treaties, rules of procedure, resolutions and guidelines. Moreover, the chapter also bases its analysis and examination of the provisions on the practices and jurisprudence of the African Children's Committee and other treaty bodies as relevant.

2 Establishment of the African Children's Committee (article 32)

Article 32: The Committee

An African Committee of Experts on the Rights and Welfare of the Child, hereinafter called 'the Committee',

shall be established within the Organisation of African Unity to promote and protect the rights and welfare of the child.

2.1 The African Children's Committee as an organ of the African Union

Article 32 of the African Children's Charter plays a crucial role in laying the ground for the application and operations of Part II of the African Children's Charter. This provision establishes an organ within the AU. Having a clear establishing instrument, the African Children's Committee resembles the nature and operations within government structures commonly referred as statutory bodies/authorities.¹⁹ The establishment of the African Children's Committee through a treaty has significant practical

11 The African Children's Committee comprises 11 independent experts who are elected by the Assembly of the African Union. Each member is elected for a term of five years, renewable once. According to arts 33-37 of the African Children's Charter, members must be nationals of a state party to the Children's Charter. They must also be individuals of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child.

12 Art 43 African Children's Charter.

13 Art 44 African Children's Charter.

14 Art 45 African Children's Charter.

15 Art 42(a)(i) African Children's Charter.

16 Art 42(a)(ii) African Children's Charter.

17 Art 42(c) African Children's Charter.

18 Art 42 African Children's Charter.

19 Statutory body or statutory authority is a body set up by law (statute) that is authorised to implement certain legislation on behalf of the relevant country.

implications with regard to its continued existence as an organ of the AU. To understand the relevance of having the Committee established through a treaty, it would be important to examine the manner in which other human rights treaty bodies are established.

At the AU, the two major human rights organs – the African Commission on Human and Peoples' Rights (African Commission) and the African Court on Human and Peoples' Rights (African Court) – are established in a fashion similar to the African Children's Committee. The African Commission is established by virtue of article 30 of the African Charter.²⁰ The African Court is also established by the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (African Court Protocol), as prescribed under article 1, primarily to complement the protective mandate of the African Commission.²¹

At the UN, the human rights treaty system comprises nine core treaties. A tenth treaty, the Optional Protocol to the Convention against Torture (CAT), establishes the Subcommittee on Prevention of Torture, with a specific mandate to visit state parties.²² The treaties establish all but one of these committees.²³ The Committee on Economic, Social and Cultural Rights (ESCR Committee) was established by Economic and Social Council Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the Council in Part IV of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The Inter-American system for the protection of human rights is a regional human rights system, and is responsible for monitoring, promoting and protecting human rights in the 35 independent countries of the Americas that are members of the Organisation of American States (OAS). The Inter-American system is composed of two principal entities: the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR). The IACHR was created by a resolution of the Fifth Meeting of Consultation of Ministers of Foreign Affairs of the OAS in Santiago, Chile, in 1959, and began working in 1960. It was through the Protocol of Buenos Aires – 1967 – that the Inter-American Commission transformed into a formal organ of the OAS.²⁴ The IACtHR was established through a statute adopted by the General Assembly of the OAS in 1979 through a resolution.²⁵ In Europe, the European Court of Human Rights was set up in 1959, established through the European Convention on Human Rights.²⁶

20 Art 30 of the African Charter on Human and Peoples' Rights, adopted 27 June 1981, entered into force on 21 October 1986.

21 Arts 1 & 2 of the African Court Protocol, adopted in Ouagadougou, Burkina Faso, on 9 June, 1998, entered into force on 25 January 2004.

22 Treaty bodies, <https://www.ohchr.org/en/treaty-bodies> (accessed 15 June 2024).

23 Art 8 of the International Convention on the Elimination of All Forms of Racial Discrimination (1965) established the Committee on the Elimination of Racial Discrimination; art 28 of the International Covenant on Civil and Political Rights (1966) established the Human Rights Committee; art 17 of the Convention on the Elimination of All Forms of Discrimination against Women (1979) established the Committee on the Elimination of All Forms of Discrimination against Women; art 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) established the Committee against Torture; art 43 of the Convention on the Rights of the Child (1989) established the Committee on the Rights of the Child; art 72 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) established the Committee on Migrant Workers; art 2 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002) established the Subcommittee on Prevention of Torture; art 26 of the International Convention for the Protection of All Persons from Enforced Disappearance (2006) established the Committee on Enforced Disappearances; and art 34 of the Convention on the Rights of Persons with Disabilities (2006) established the Committee on the Rights of Persons with Disabilities; see the *Handbook for human rights treaty body members*, https://www.ohchr.org/sites/default/files/Documents/Publications/HR_PUB_15_2_TB_Handbook_EN.pdf (accessed 12 May 2024).

24 Art 112 of the Protocol to the Charter of the Organisation of American States (B-31) (Protocol of Buenos Aires) 1967.

25 Adopted by the General Assembly of the OAS at its 9th regular session, held in La Paz, Bolivia, October 1979.

26 Art 19 of the European Convention on Human Rights, adopted in 1950 and entered into force in 1953.

The global practice confirms that most treaty bodies are established through independent instruments, which include explanatory provisions outlining their mandate and major functions.

In light of the discussion above, the fact that the African Children's Committee is established through a treaty makes the Committee's actions binding on state parties. From a practical perspective, this legal foundation allows the Committee to transcend political changes and maintain its presence as a monitoring organ within the AU.

It is important to consider the various initiatives and programmes implemented by the AU that have attempted to change the mandate and functions of human rights organs, including the African Children's Committee. For instance, as part of the ongoing reform process at the AU, there have been numerous suggestions and recommendations from both technical experts (consultants) and political bodies (member states). These recommendations have proposed major structural changes to the African Children's Committee and, in some instances, have even suggested the abolition of the Committee.

The AU Reform Unit proposed three scenarios with varied structures. Among the recommendations of the Reform Unit is to merge the African Commission with the African Children's Committee so as to have one human rights body having the general mandate to promote and protect human rights in Africa, including children's rights. Reflecting on the proposed changes, the African Children's Committee shared its concerns with the Reform Unit, highlighting the potential issues arising from such a proposal. In its submission, the Committee argued that understanding the rationale behind the establishment of the African Children's Charter and the added values of the African Children's Committee is crucial to justifying the Committee's continued existence.

The African Children's Committee's arguments are centred around the following issues:²⁷

- (1) peculiar challenges of African children: The specific and unique challenges faced by children in Africa require specialised attention;
- (2) comparative advantage of the African Children's Committee: The African Children's Committee's specialised mandate and expertise provide a comparative advantage in addressing children's rights;
- (3) continued monitoring of Africa's Agenda on Children's Rights: The ongoing need for dedicated monitoring and promotion of children's rights in Africa supports the case for the African Children's Committee's continued existence.

The African Children's Charter acknowledges the critical situation facing most children in Africa due to unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and that, on account of children's physical and mental immaturity, they need special safeguards and care. In addition, the Charter consists of provisions that are articulated innovatively and progressively for the advancement of children's rights in Africa. The factors that informed the establishment of the African Children's Charter and its monitoring organ apply even more strongly in the current context. African children are yet to achieve the aspirations put by the AU – creating an Africa fit for children.

Despite the progress made by member states, gross child rights violations still occur across the continent. Many children suffer from ongoing conflicts, high levels of poverty, malnutrition, infant mortality, lack of adequate nutrition, lack of education and violations of harmful practices, including female genital mutilation (FGM), child marriage and witchcraft accusations. The protective environment for children to help prevent and respond to violence and safeguard their well-being is lacking in many countries. The births of many children are not registered, many lack legal identity, which is the first step towards protection. Emerging challenges such as climate crises, online sexual

27 The African Children's Committee's Submission to the AU Reform Unit, document available with the author.

exploitation, the trafficking of children, the radicalisation of children and violent extremism also inform why the continent needs a well-functioning, well-funded and independent monitoring organ with subject matter experts in place. These and other challenges, some deeply-rooted in communities, need targeted engagements. Hence, the Committee expressed its strong view that its mandate should be maintained and strengthened, and its independence and autonomy should be enhanced. Such challenges cannot be addressed without having a strong monitoring organ specifically established to deal with the issues.

In addition, it is important to note that the very reason the African Children's Charter established a separate body to monitor its implementation is the aspect of 'special expertise'. As inferred from the naming of the Charter itself, the African Children's Committee deals not only with matters of 'rights', but also with the 'welfare' of children. This, by itself, calls for the establishment of a special body. The monitoring aspect of the Charter does not limit itself to the legal approach to the protection of children's rights, but equally incorporates the welfare aspect. This requires experts from both the legal field and other disciplines. The composition of the African Children's Committee, and how it contributes to the argument for the Committee's continued existence, is discussed under the part dealing with article 33.

Another factor necessitating the continued existence of the African Children's Committee as established through article 32 of the Children's Charter relates to the need for targeted monitoring of an ongoing agenda to promote the rights of the child on the continent. The strategic framework for the socio-economic transformation of Africa is laid down in Agenda 2063 of the AU. Paragraph 53 of Agenda 2063 is of significant importance to the Committee. It states that 'African children shall be empowered through the full implementation of the African Charter on the Rights of the Child'. This general statement in Agenda 2063 captures, in a nutshell, the vision of the AU for African children for the coming years.

Moreover, the African Children's Committee, pursuant to its mandate and following the commemoration of the twenty-fifth anniversary of the adoption of the African Children's Charter, established a 25-year agenda titled 'Africa's agenda for children 2040: Fostering an Africa fit for children'.²⁸ This agenda aims to take stock of past achievements and prioritise future actions, developing a comprehensive plan for the next 25 years based on lessons learned since the adoption of the African Children's Charter. Agenda 2040 has been adopted by the Executive Council of the AU as an AU document.²⁹ The Agenda elaborates on the vision of Africa's Agenda 2063 for 'the Africa we want', which recognises that Africa will promote the growth of the continent and secure its future by nurturing and nourishing its children, and requires that children should therefore be empowered through the full implementation of the African Children's Charter. In view of this, Agenda 2040 sets out ten aspirations, to be achieved by 2040, and identifies action steps, mostly to be taken by AU member states, for the first period of the five-phased 25-year journey ahead. With a view to assessing the implementation of Agenda 2040, the Children's Committee in 2020 commissioned a study. Following the report, the Executive Council '[t]akes note of the African Children's Committee's report on the assessment of the status of implementation of Africa's Agenda for Children (Agenda 2040), and encourages state parties to work towards full implementation of the Aspirations within Agenda 2040'.³⁰ As noted by the Executive Council, there are major issues that need the African Children's Committee's continued engagement and monitoring.

In conclusion, the African Children's Committee, as established through article 32 of the African Children's Charter, needs to be maintained and strengthened as any structural change to merge it with the African Commission has the negative effect of marginalising and diluting the special promotion

28 Agenda 2040, <https://www.acerwc.africa/en/page/agenda-2040> (accessed 20 June 2024).

29 Executive Council Decision EX.CL/Dec.997(XXXI).

30 Executive Council Decision EX.CL/Dec.1111(XXXVIII).

and protection of the rights and welfare of the child in a broader mandate. The two organs need to exist separately as they were established through their respective treaties.

2.2 Promotional and protection mandate of the African Children's Committee

The second aspect of article 32 relates to the general mandate of the African Children's Committee: to promote and protect children's rights and welfare. The establishment of a body with this mandate is linked to global initiatives and practices that have resulted in a comprehensive 'treaty body system' to monitor states' compliance with human rights norms. Promoting and protecting rights is central to the core mandate of not only the African Children's Committee, but also other treaty bodies, both at the UN and regional levels. Given the general nature of these terminologies, it is important to discuss the elements envisaged in the promotional and protection mandate of the African Children's Committee.

The promotion and protection mandates of the treaty bodies are critical aspects of their roles in upholding rights. These mandates encompass a range of activities designed to ensure the effective implementation and monitoring of their respective treaties. The promotional mandate is defined in light of the activities that are meant to raise awareness, address the knowledge gap, disseminate information, set standards and advocate the ratification, domestication and implementation of the respective instruments. The essence of this function is to sensitise the population and disseminate information on children's rights and welfare in Africa. Conversely, the protection mandate is defined pursuant to undertakings linked with the monitoring, inquiry, litigation and investigative power of the respective treaty bodies. A more detailed provision on the mandate of the African Children's Committee is enshrined under article 42 of the African Children's Charter, where the Charter reiterates 'promotion and protection' as the core mandate of Committee.³¹ However, although article 42 explicitly prescribes the main functions of the African Children's Committee, it does not categorise these under promotional and protection mandates. Thus, the question of which function falls under which mandate remains unanswered by the Charter. In this regard, reference should be made to other instruments with a clearer position on the matter.

The African Charter applies a more structured approach that could provide guidance in defining the promotional and protection mandate. The promotional function of the African Commission is explained in article 45(1) of the African Charter. Pursuant to article 45(1) the promotional mandate of the Commission includes to

collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organise seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights and, should the case arise, give its views or make recommendations to governments.

Article 45(1)(b) of the African Charter also requires the African Commission to

formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their legislation. It is also mandated under article 45(1)(c) to co-operate with other African and international institutions concerned with the promotion and protection of human and people's rights.

The protection mandate of the African Commission is stipulated in article 45(2) as 'to ensure the protection of human and peoples' rights under conditions laid down in the Charter'. To achieve this,

31 For more discussion on the mandate of the African Children's Committee, see ch 33 of this *Commentary*.

the Charter provides for the ‘communication procedure’.³² As part of its protective mandate, the Commission also receives and considers reports submitted by state parties in conformity with article 62 of the Charter.³³ The protective mandate requires the Commission to take measure to ensure that citizens enjoy the rights contained in the African Charter. This entails ensuring that states do not violate these rights and if they do, that the victims are reinstated in their rights.

Drawing from the provisions of the African Charter, one can distinguish between the promotion and protection mandates of the African Children’s Committee respectively according to the functions of the Committee.

Activities under the promotion mandate include:

- conducting interdisciplinary assessments of African issues concerning the rights and welfare of children;³⁴
- formulating principles and rules aimed at protecting the rights and welfare of children;³⁵
- interpreting the provisions of the Charter, such as through General Comments;³⁶
- organising meetings to engage national institutions working on children’s rights and welfare, and providing views and recommendations to governments when necessary.³⁷

Conversely, the protection mandate includes:

- considering communications or complaints against state parties;³⁸
- conducting on-site investigations;³⁹
- reviewing state party reports.⁴⁰

Since its establishment in 2001, the African Children’s Committee has engaged in various activities under both its promotional and protection mandates. Further details on the Committee’s activities, as per the relevant provisions of the Charter, are discussed in various chapters of this *Commentary*.

3 Composition, election, candidates, vacancy and term of office (articles 33, 34, 35, 36 & 37)

Article 33: Composition

1. The Committee shall consist of 11 members of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child.
2. The members of the Committee shall serve in their personal capacity.
3. The Committee shall not include more than one national of the same state.

32 A complaint system through which an individual, NGO or group of individuals who feel that their rights or those of others have been or are being violated, can petition (complain) to the Commission about alleged violations.

33 State parties are required to submit reports to the Commission after every two years, on the legislative or other measures they have taken to give effect to the rights and freedoms recognised in the Charter.

34 Art 42(a)(i) African Children’s Charter.

35 Art 42(a)(ii) African Children’s Charter.

36 Art 42(c) African Children’s Charter.

37 Art 42 African Children’s Charter.

38 Art 44 African Children’s Charter.

39 Art 45 African Children’s Charter.

40 Art 43 African Children’s Charter.

Article 34: Election

As soon as this Charter shall enter into force the 31 members of the Committee shall be elected by secret ballot by the Assembly of Heads of State and Government from a list of persons nominated by the state parties to the present Charter.

Article 35: Candidates

Each state party to the present Charter may nominate not more than two candidates. The candidates must have one of the nationalities of the state parties to the present Charter. When two candidates are nominated by a state, one of them shall not be a national of that state.

Article 36 [Nomination procedure]

1. The Secretary-General of the Organisation of African Unity shall invite state parties to the present Charter to nominate candidates at least six months before the elections.
2. The Secretary-General of the Organisation of African Unity shall draw up in alphabetical order, a list of persons nominated and communicate it to the Heads of State and Government at least two months before the elections.

Article 37: Term of Office

1. The members of the Committee shall be elected for a term of five years and may not be re-elected. However, the term of four of the members elected at 32 the first election shall expire after two years and the term of six others, after four years.

2. Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organisation of African Unity shall draw lots to determine the names of those members referred to in sub-paragraph 1 of this article.

3. The Secretary-General of the Organisation of African Unity shall convene the first meeting of Committee at the Headquarters of the Organisation within six months of the election of the members of the Committee, and thereafter the Committee shall be convened by its Chairman, whenever necessary, at least once a year.

Amendment: The Assembly of Heads of State and Government of the African Union in its Decision Assembly/AU/Dec.548 (XXIV) has approved the amendment of article 37(1) of the African Charter on the Rights and Welfare of the Child as follows: The members of the Committee shall be elected for a term of five years and may be re-elected only once. However, the term of four of the members elected at the first election shall expire after two years and the term of six others, after four years. The amendment entered into force upon adoption.

Article 39: Vacancy

If a member of the Committee vacates his office for any reason other than the normal expiration of a term, the state which nominated that member shall appoint another member from among its nationals to serve for the remainder of the term – subject to the approval of the Assembly.

The provisions mentioned above are discussed in one part due to their interrelated nature.

The African Children's Committee, pursuant to article 33 of the African Children's Charter, is composed of 11 individuals of high moral standing, integrity, impartiality and competence in matters pertaining to the rights and welfare of the child. This article primarily outlines the criteria for electing members to the Committee. Key questions that the provisions attempt to address include who nominates and elects the members, how the election is conducted and the duration of their terms. The provisions also set the procedure in cases of vacancies. In this regard, and focusing on articles 33 to 37 and article 39 of the African Children's Charter, the part below discusses the elements of the provisions with their practical applications within the AU mechanisms. Explaining the elements of the provisions, reference is made to the Revised Rules of Procedure of the African Children's Committee (2020), and the relevant decisions of the Executive Council.

3.1 Criteria of membership

Article 33 of the African Children's Charter provides general guidance on the composition of the members of the African Children's Committee, including defining the number of experts, the required

qualifications, and the nature of representation. The criteria are further explained in the Revised Rules of Procedure of the African Children's Committee. According to article 33, the Committee consists of 11 members of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child. The establishment of 11 members appears to be a consistent practice across other human rights organs of the AU.⁴¹ A joint reading of the criteria set forth in articles 33 and 34 of the Charter, along with Rule 1 and Rule 4 of the Revised Rules of Procedure, provides the comprehensive qualifications necessary to become a member of the African Children's Committee. These criteria are:

- (i) to be a national of a state party to the African Children's Charter;
- (ii) to be a person of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child;
- (iii) to serve in their personal capacity; and
- (iv) to fulfil the regional and gender representation requirement.

A member of the African Children's Committee must be a national of at least one of these ratifying countries. However, debates could arise in situations where a state party is temporarily suspended from the AU.

According to the Statute of the AU, governments that come to power through unconstitutional means are prohibited from participating in the Union's activities.⁴² The consolidated Rules of Procedure of the Assembly, the Executive Council, the Permanent Representatives Committee and the Statute of the Commission, as amended,⁴³ outlines the principles and procedures of suspension of a member state due to unconstitutional changes of government, human rights violations, and threats to peace and stability in member states. Rule 38 specifically mandates that the Assembly shall immediately apply sanctions against the regime that refuses to restore constitutional order, including, but not limited to, 'any additional sanction as may be recommended by the Peace and Security Council (PSC)'.⁴⁴ Whenever an unconstitutional change of government takes place, the Chairperson of the Commission shall '[i]mmediately suspend the member state from the Union and from participating in the Union, provided that exclusion from participating shall not affect that state's membership and its obligations towards the Union'.⁴⁵

The AU Peace and Security Council (PSC) is also empowered to recommend measures, including sanctions and the suspension of member states, in cases of unconstitutional changes of government or other serious violations of AU principles. Article 7(1)(g) of the Protocol on the Establishment of the PSC states that the PSC shall 'institute sanctions whenever an unconstitutional change of government takes place in a member state, as provided for in the Lomé Declaration'.⁴⁶ The Declaration prescribes

41 See art 31 of the African Charter; art 11 of the Protocol for the Establishment of the African Court on Human and Peoples' Rights. At the UN, in total there are of 172 members elected by states for the ten treaty bodies: CERD 18 members; ICESCR 18 members; ICCPR 18 members; CEDAW 23 members; CAT 10 members; CRC 18 members; CMW 14 members; CRPD 18 members; CEDS 10 members; and OPCAT 25 members.

42 Art 30 Constitutive Act of the African Union, 2000.

43 The amended Rules of Procedure of the Assembly as well as the amended statute of the Commission were adopted by decision Assembly/AU/Dec.806 (XXXIV), at the 34th ordinary session of the Assembly held from 6 to 7 February 2021, while the revised Rules of Procedure of the Executive Council and the amended Rules of Procedure of PRC were adopted by Council decision EX.CL/Dec.1099(XXXVII) at the Executive Council session held in October 2020.

44 Amended Rules of Procedure (n 43) Rule 38.

45 As above.

46 The Protocol Relating to the Establishment of the Peace and Security Council of the African Union (PSC Protocol) establishes the African Union Peace and Security Council that was adopted in July 2002 at the inaugural ordinary session of the Assembly of the Union in Durban, South Africa, and came into effect in December 2003. The Lomé Declaration (2000) of July 2000 on the framework for an OAU response to unconstitutional changes of government emphasises the AU's commitment to promoting democratic governance and preventing unconstitutional changes of government in member states.

that 'the governments concerned should not participate in meetings of the Central Organ and Sessions of the Council of Ministers and the Assembly of Heads of State and Government'. The African Charter on Democracy, Elections and Governance (African Democracy Charter)⁴⁷ includes provisions for the suspension of member states in cases of unconstitutional changes of government or serious violations of democratic principles. In line with article 25 of the African Democracy Charter, when the PSC observes that there has been an unconstitutional change of government in a state party, and that diplomatic initiatives have failed, it shall suspend the said state from the exercise of its right to participate in the activities of the Union, which is also in agreement with the provisions of article 30 of the Constitutive Act and article 7(g) of the PSC Protocol.

In light of these provisions, state parties to the African Children's Charter that are temporarily suspended from the AU may not be eligible to submit candidates. This information should be communicated to all member states of the African Union through the Office of the Legal Counsel when calls for applications are announced.

Article 33 of the African Children's Charter stipulates the requirement of high moral standing, integrity, impartiality and competence in matters relating to the rights and welfare of the child for members of the African Children's Committee. The requirements, encompassing both matters of character and professionalism, aim at ensuring the independence and competence of the members. Although nominated by states and elected by the policy organs of the AU, members serve in their personal capacity and do not represent their country of nationality or any other country with which they have connections. They are expected to possess recognised competence, high moral standing and impartiality.

Impartiality refers to maintaining a position that avoids conflicts of interest for any member of the Committee. In line with the requirement of impartiality, the Revised Rules of Procedure of the African Children's Committee include provisions stating that '[m]embership of a Committee is incompatible with any activity that might interfere with the independence, impartiality, moral standing and integrity of such member or the demands of the office of the African Committee of Experts on the Rights and Welfare of the Child'.⁴⁸ Neither the Charter nor the latest Revised Rules of Procedure provide specific examples of such positions that could be considered incompatible with the mandate of the Committee. The previous Rules of Procedure of the African Children's Committee, however, included clearer provisions on incompatibility, where it states that '[m]embers of the Committee may not hold political, diplomatic or administrative positions or function as government national advisers at the national level that the Committee decides incompatible'.⁴⁹ During the call for candidates, the Office of the Legal Counsel cites Rule 4(1) of the Revised Rules of Procedures of the African Children's Committee without elaborating on what constitutes incompatibility or how that might affect the impartiality and integrity of members. Therefore, guidance on the elements of incompatibility should be sought from practices in other organs of the AU.

The African Court Protocol states that '[t]he position of judge of the Court is incompatible with any activity that might interfere with the independence or impartiality of such a judge or the demands of the office, as determined in the Rules of Procedure of the Court'.⁵⁰ The Rules of the Court indicate that 'the judges may not, in particular, hold political, diplomatic or administrative positions or function

47 The African Charter on Democracy, Elections and Governance (African Democracy Charter), adopted in 2007 and entered into force in 2012.

48 Rule 4 of the Revised Rules of Procedure of the African Children's Committee 2020.

49 Rule 4 of the Rules of Procedure of the African Children's Committee 2014. The provision was removed in 2020 when the African Children's Committee revised the Rules of Procedure – they were considered too prescriptive.

50 Art 18 African Court Protocol.

as government legal advisers'.⁵¹ Similarly, the Rules of Procedure of the African Commission provide a more elaborated provision on incompatibility, which reads:⁵²

The position of member of the Commission is incompatible with any activity that might interfere with the independence or impartiality of such a member or with the demands of his or her office such as being a member of government, a minister or under-secretary of state, a diplomatic representative, a director of a ministry or one of his or her subordinates, or the legal adviser to a foreign office, holding any other political function or participating in any activity of such nature as to compromise his or her independence and impartiality.

In defining cases of incompatibility, the African Children's Committee should draw lessons from the practices in the African Commission and the African Court, as prescribed in their respective Rules of Procedure.

According to the Revised Rules of Procedure, each member of the Committee shall be responsible to declare to the Chairperson or to the Vice-Chairperson any other activities that might compromise the Committee.⁵³ However, this self-declaration approach may make it challenging to objectively assess the matter. In contrast, the Rules of the African Commission set a better procedure where the Commission can initiate investigations into issues of incompatibility on its own motion. Rule 8(2) of the Rules of Procedure of the African Commission states that 'the Commission shall decide by simple majority whether a situation of incompatibility exists pursuant to paragraph 1 and in accordance with articles 31(1), (2) and 39(2) of the African Charter'.⁵⁴

Moreover, issues of incompatibility, as it is closely linked with impartiality, independence and integrity, should ideally be addressed from the outset during elections of members; however, such a process is entirely missing from the procedures. Despite the legal requirement of both character and competence, the AU has not yet introduced a merit-based assessment for members of the human rights organs, including for the African Children's Committee. As discussed below, the election procedure has not installed a vetting procedure, neither by the Office of the Legal Counsel at a technical level, nor by member states at a political level.

To ensure impartiality and independence when dealing with state parties, whether through the state reporting or other processes, the Committee members must put forward the AU's position in terms of the African Children's Charter and not personal or national viewpoints. They represent neither their country of origin nor their region. The experts need to balance their roles as Committee members with their individual ties with their home countries, especially when issues involving their countries are under consideration by the Committee. For example, a Committee member is not precluded, in their individual capacity, from requesting or pressuring their home country to prepare and present its state report to the Committee, but such a Committee member cannot be (directly) involved in the preparation of their state party report. To do otherwise may amount to a conflict of interest that does not promote the impartiality principle as the objectivity of the Committee member in the state reporting process may be hindered. The Committee's practice underscores that nationals of a specific country do not engage in official activities of the African Children's Committee concerning their state party. They are

51 Rule 5 of the Rules of the Court 2020.

52 Rule 8 adopted by the African Commission during its 27th extraordinary session held in Banjul, The Gambia, from 19 February to 4 March 2020. The Rules of Procedure were adopted by the African Commission during its 2nd ordinary session held in Dakar, Senegal from 2 to 13 February, 1988, revised initially during its 18th ordinary session held in Praia, Cabo-Verde from 2 to 11 October 1995 and once again during its 47th ordinary session held in Banjul, The Gambia from 12 to 26 May, 2010.

53 Rule 4 (2) of the Revised Rules of Procedure of the African Children's Committee.

54 Rule 8(2) of the Rules of Procedure of the African Commission.

not appointed as country rapporteurs, do not participate in country missions, investigations, or other official engagements of the Committee involving their home country.

Regarding competence, both the African Children's Charter and the Revised Rules of Procedure require the members to possess expertise in their respective fields related to children's rights and welfare. The key aspect of competence is subject-matter expertise, which ideally includes formal training, practical professional experience, and demonstrated achievements in the field of children's rights and welfare.

The competence requirement is crafted in different ways in other organs of the AU. For instance, in the election of the commissioners at the African Commission, particular consideration is given to persons having legal experience.⁵⁵ For the African Children's Committee, it is not a must for each one to have a legal background. This has been the practice so far and is an effective approach as it allows for a multi-disciplinary approach in dealing with matters of children's rights and welfare. Currently, the African Children's Committee includes members from fields such as law, social work, sociology, health sciences and economics. This diversity is crucial as it enables the Committee to tackle the complex challenges faced by children comprehensively. The economic cost of excluding children from economic planning requires more than legal experts. The psychosocial problems faced by children as a result of violations of their rights require experts on the subject matter; the right to health, survival and development cannot be achieved without having the right skills and experts on board. The multidisciplinary composition of the African Children's Committee provides a comparative advantage in effectively addressing these issues through various lenses.

However, the author of this chapter argues that the required competence should also take the mandate of the Committee into consideration. The African Children's Committee is a quasi-judicial body tasked with providing authoritative interpretations of the African Children's Charter, and receiving and considering communications on alleged violations of children's rights by states. It is in consideration of this function that the AU considers the Children's Committee as part of the 'judicial, human rights and legal organs' within its structures.⁵⁶ Hence, the presence of legal expertise as part of the composition of the Committee should be highly valued, if not required. The author does not claim that the Committee should be composed exclusively of lawyers, but instead submits that it is essential that some individuals with a legal background are present as part of the Committee, which should have a multidisciplinary composition. This is the case because interpreting the provisions of the African Children's Charter requires a solid knowledge of law, including international law. Therefore, the author proposes the introduction of professional criteria, specifically requiring some candidates to possess legal expertise, as part of the election procedure. This would complement existing considerations such

55 Rule 4(1) of the Rules of Procedure of the African Commission. There are similar provisions in the UN treaty bodies as well where some require specific experience and competence. Eg, ICCPR also indicates that consideration should be given to the usefulness of the participation of some persons having legal experience (art 28(2)), while CAT provides that, in nominating candidates, state parties should bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee and who are willing to serve on the Committee against Torture (art 17(2)). The Optional Protocol to the Convention against Torture indicates that members should have proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to persons deprived of their liberty (art 5(2)). In the case of the Committee on the Rights of Persons with Disabilities, state parties are invited to give due consideration to art 4(3) when nominating candidates (art 34(3)). This requires state parties to closely consult and actively involve persons with disabilities, including children with disabilities, through their representative organisations, in the development and implementation of legislation and policies to implement the Convention and other decision-making processes concerning issues relating to persons with disabilities.

56 AU Handbook, 2023 124, at https://au.int/sites/default/files/documents/31829-doc-African_Union_Handbook_2023_ENGLISH.pdf (accessed 1 July 2024).

as geographical and gender representation, ensuring that states nominate candidates with the requisite legal knowledge to effectively fulfil the African Children's Committee's mandate.

3.2 Election, candidates/nomination and vacancy

The details of the election procedure and call for vacancies are prescribed under articles 34 to 36 of the African Children's Charter. Pursuant to article 34, the first members were elected in 2001 by the Assembly of Heads of State and Government from a list of persons nominated by the state parties. In presenting the candidates, a state party may nominate not more than two candidates. When two candidates are nominated by a state, one of them shall not be a national of that state.⁵⁷ Pursuant to article 36, the Secretary-General of the OAU (currently the Chairperson the African Union Commission (AUC)) shall invite state parties to the present Charter to nominate candidates at least six months before the election and submit the list of persons nominated to the Heads of State and Government at least two months before the elections.⁵⁸ If a member of the Committee vacates their office for any reason other than the normal expiration of a term, the state that nominated that member shall appoint another member from among its nationals to serve for the remainder of the term, subject to the approval of the Assembly.⁵⁹ The Revised Rules of Procedure provide further explanation with regard to vacancies that occurs due to 'resignation, cessation of function or death of a member of the Committee'.⁶⁰ Accordingly, the Chairperson of the Committee should notify the Chairperson of the AUC in case a member resigns, if a Committee member has, in the unanimous opinion of other members of the Committee, stopped discharging their duty for any reason other than temporary absence, or in the event of death.

Pursuant to the above-mentioned provisions, it would be important to discuss some of the practices informing the election procedures together with the challenges that might require reforms in these procedures. The Charter provides a general framework that leave several questions regarding the election and nomination of candidates. Issues that the Charter fails to address include geographical and gender representation; consultation in nominations of civil society organisations (CSOs) and national human rights institutions (NHRIs); vetting the candidates; and timelines for filling vacancies.

The gap in the African Children's Charter with regard to the requirement of geographic and gender representation is addressed through a decision of the Executive Council of the African Union on the Modalities on the Implementation of the Criteria of Equitable Geographical and Gender Representation in AU Organs and Institutions, adopted during its January 2016 session. The decision of the Executive Council reads as follows:⁶¹

- (i) The regional representation, where applicable, shall be East (2), Central (2), North (2), South (2) and West (2), except in cases in which a region which has been duly informed has not presented candidates;
- (ii) Where applicable, one (1) seat shall be a floating seat and will rotate among the five (5) regions;
- (iii) At least one (1) member from each region should be a woman;
- (iv) The modalities shall become effective immediately.

On the floating seat, paragraph 2(ii) of the Executive Council Decision provides that 'where applicable, one (1) seat shall be a floating seat and will rotate among the five (5) regions'.⁶² No candidate shall

57 Art 35 African Children's Charter.

58 Art 36 African Children's Charter.

59 Art 39 African Children's Charter.

60 Rule 5 of the Revised Rules of Procedure.

61 Executive Council Decision, EX.CL/907 (XXVIII) 2016 para 2(i).

62 Executive Council Decision (n 61) para 2(ii).

be nominated from a member state that already has a representative in the Committee. Looking at the practice, as of July 2024, the floating seat is occupied by a member from Botswana. In this regard, state parties from the Central, Eastern, Northern and West African regions will be invited to submit their candidatures/nominations for the floating seat to the Office of the Legal Counsel as per the requirements and deadline. State parties submitting candidatures for the floating seat should clearly indicate so. Since the decision of the Executive Council, the matter of regional and gender representation has been implemented consistently.

The table below shows the current composition of the African Children's Committee in relation to regional and gender representation.⁶³

Central	Eastern	North	South	West
Hermine Kembo Takam Gatsing – Cameroon – Female	Robert Nanima – Uganda – Male	Aboubekrine El Jeri – Mauritania – Male	Wilson de Almeida Adão – Angola – Male	Aver Gavar – Nigeria – Female
Ghislain Roch Etsan – Republic of the Congo – Male	Karoonawtee Chooramun – Mauritius – Female	Sabrina Gahar – Algeria – Female	Ann Musiwa – Zimbabwe – Female	Theophane Marie Xavier Nikyema – Burkina Faso – Male
			Poloko Nuggert Ntshwarang – Botswana – Female	

With regard to filling of a vacancy created by a member of the Committee vacating their office 'for any reason other than the normal expiration of a term', the African Children's Charter established a procedure that is similar to those of other organs of the AU and the UN treaty bodies. For instance, at the African Commission, article 39 of the African Banjul Charter and Rule 5 of the Rules of Procedure provide the procedure of replacing a commissioner who has not completed their term of office due to resignation, death or any other factor preventing them to continue assuming their responsibility. Article 39(3) provides a provision, which is lacking from the African Children's Committee's mechanisms, stating that a member of the Commission elected to replace a member whose term has not expired shall complete the term of their predecessor. However, if the remaining term of office is less than six months, there shall be no replacement. Similarly, at the UN the mandate of a treaty body member ends upon the expiry of the term for which they were appointed. Death, resignation or any other cause that prevents a member from continuing to perform their Committee duties are justifications for early termination of a treaty body member's mandate.⁶⁴ At the CRC Committee, if a member dies or resigns or declares that for any other cause they can no longer perform their duties, the Committee Chairperson shall notify the Secretary-General who shall then declare the seat of that member to be vacant. The same procedure is followed where it is the unanimous opinion that a Committee member has ceased to perform their functions for any cause other than a temporary absence. Practically, there were two instances where members of the African Children's Committee, one from Mauritania and another from Egypt, had to be replaced because of death. A third current member has recently died and will need to be replaced. The office of the Legal Counsel requests the states concerned to send

63 The experts, <https://www.acerwc.africa/en/about/committee/experts> (accessed 2 July 2025).

64 Art 33 ICCPR; art 17(6) CAT; art 43(7) CRC; art 72(6) of the Convention on Migrant Workers; art 34(9) of the Convention on the Rights of People with Disabilities; and art 26(5) of the Convention for the Protection of All Persons from Enforced Disappearance.

representatives of the same gender to replace and finish the remaining term of office. One issue arising from such arrangement of replacing a member would be the start of count of the term of office of the member concerned. This issue is discussed as part of the part on term of office below.

Regarding timelines of applications, the AUC, through the Office of the Legal Counsel, sets a deadline for submission of nominations, usually two months before the date of the election. This deadline serves the practical purpose of allowing sufficient time for the document containing the list of nominees and their resumés to be compiled and translated into the official languages and circulated to all member states in time for states to weigh the merits of their candidatures and decide for which nominees to vote. As a standard format, the Office of the Legal Counsel uses the following as an introductory paragraph to announce the call for nomination:

The Commission would like to invite state parties to the Charter to submit their candidatures/nominations accompanied by curricula vitae (CVs) of the candidates in a sealed envelope addressed and delivered to the Office of the Legal Counsel, AU Commission or submitted to the Office of the Legal Counsel registry via the following email address ... on or before ... Further, the CVs should not be more than three (3) pages, single-space and should be submitted at least in two (2) working languages of the Union. a model format of the CVs is attached hereto for ease of reference. In addition, the CVs should also be submitted in soft copies (Word format).

The Office of the Legal Counsel plays a crucial role in guiding member states through the election process. The Office conducts a preliminary review of the applications, verifying compliance with mandatory requirements, including gender and geographical representation, deadlines, and submission of all application documents in the required language, with a specific indication of which vacancies the nomination is for. These verifications focus more on procedural requirements than on the merit of the nominees.

In fact, the AU has not yet introduced a merit-based election procedure for the human rights organs. Hence, the requirements discussed above of impartiality, independence, moral standing, integrity and competence are nowhere to be verified in the process – neither at technical nor political levels. No independent body is established in the nomination process to help ensure that the selection process is transparent, impartial, free from discrimination and based on merit.

Therefore, it is high time for the AU to address this gap and introduce a vetting procedure. Such mechanism can be established in a form of regional review/advisory committee, and led jointly by the AUC/Office of the Legal Counsel and representatives of state parties. The vetting procedure, among others, should include verifications of the qualifications, competence and professional experience of the candidates; a background check, including their current and previous engagements, and whether they are involved in an activity or post that could affect their impartiality; whether their current position at the national level passes the test of compatibility; and the process of the nomination at the national level including whether the nominations are made in a transparent and non-discriminatory manner. The independent body should be empowered to reject candidates, subject to the approval of the Executive Council, who are manifestly unqualified for service as member of the African Children's Committee. Part of the verification process may include interviews and written submissions including from CSOs and NHRIs as well as children's groups on the qualifications (or lack thereof) of nominated candidates.

Consultation is a crucial component in ensuring that the selection process at the national level is done in manner that is transparent, impartial, free from discrimination and based on merit. Unfortunately, the requirement of consultation with the concerned stakeholders is entirely missing from the African Children's Charter, and is not prescribed in the Revised Rules of Procedures. With

a view to rectifying this gap, the Office of the Legal Counsel in its call for nominations includes a paragraph that reads as follows:

States parties may wish to also consider whether or not to apply the following additional factors submitted to the Commission by civil society organisations:

- (i) The procedure for nomination of candidates should be, at the minimum, that for appointment to the highest judicial office in the state party.
- (ii) States parties should encourage the participation of civil society, including judicial and other state bodies, bar associations, academic and human rights organisations and women's groups, in the process of selection of nominees.
- (iii) The employment of a transparent and impartial national selection procedure in order to create public trust in the integrity of the nomination process.

The Office of the Legal Counsel's stance on this appears to be too lenient, as it does not make it mandatory for member states to establish national nomination procedures that ensures the selection of a competent and independent candidate through consultation and oversight. The AU should actively encourage member states to establish national legal framework or a transparent procedure for nominating individuals for the regional human rights mechanism, including for the African Children's Committee. Reports indicate that across Africa, almost no countries issue open calls for applications and none has a written procedure to guide the nomination process.⁶⁵ The Open Society Justice Initiative, in partnership with the International Commission of Jurists, published a report on the domestic nomination process of candidates to regional human rights systems in Africa, the Americas and Europe. In the African context, the report provides a detailed profile of Algeria, Ethiopia, Côte d'Ivoire, Mozambique, South Africa and Uganda. It identifies shortcomings where states and regional bodies often do not fully meet their international legal obligations concerning nomination and election processes. The report recommends that states engage in meaningful consultations with civil society to enhance the nomination process at the domestic level, among other suggestions.⁶⁶

Furthermore, states also frequently disregard the criteria set out for a merit-based independent membership and engage in vote trading to garner support for their candidates.⁶⁷ The author contends that, in the current state of affairs, election processes seem politically influenced, with states placing less emphasis on expertise and competence, contrary to the principles outlined in various instruments, including the African Children's Charter. Addressing this issue primarily requires member states to undertake reforms aimed at enhancing the integrity of the election procedures of the human rights organs within the African Union.

The crucial role of CSOs in ensuring that nominations for members of the African Children's Committee meet the requirements set forth in the relevant rules should also be emphasised. As previously discussed, the Office of the Legal Counsel typically issues an announcement calling for nominations prior to elections. Although the information provided by the AUC is not as comprehensive as it is supposed to be, CSOs can still utilise such announcements. Hence, regular monitoring of the relevant pages of the AU for information about upcoming elections and nominees being considered for election is crucial. In this regard, it would be important to mention the Arusha Initiative – the African Human Rights Mechanisms Nomination and Selection Initiative, aimed at promoting human rights by supporting state parties in the nomination and selection of members of human rights mechanisms in

65 Strengthening from within – Law and Patrice in the Selection of Human Rights Judges and Commissioners, Open Society Initiative and International Commission of Jurists 2017 16.

66 As above.

67 Strengthening from within (n 65) 71.

Africa. By doing so, the Initiative aims to contribute to greater effectiveness, independence and impact of the mechanisms.⁶⁸

3.3 Term of office

Pursuant to article 36 (2) of the African Children's Charter, as amended by the AU Assembly, members of the Committee serve for a five-year term and are eligible for re-election once.

The Assembly of Heads of State and Government of the African Union in its Decision Assembly/AU/Dec.548 (XXIV) has approved the amendment of article 37(1) of the African Charter on the Rights and Welfare of the as follows: The members of the Committee shall be elected for a term of five years and may be re-elected only once. However, the term of four of the members elected at the first election shall expire after two years and the term of six others, after four years. The amendment entered into force upon adoption.

There appears to be different experiences with regard to terms of office of the AU human rights organs and the UN treaty body members. For the African Commission and the African Court, the commissioners and the judges respectively are elected for a six-year term and are eligible for re-election. Members of the UN treaty bodies serve for terms of four years that are renewable. However, for bodies such as the Committee on the Rights of Persons with Disabilities (CRPD), the ESCR Committee and the Subcommittee on Prevention of Torture (SPT), terms may be renewed only once. To ensure continuity in membership, half of the membership is elected every two years for these treaties.

The provisions on the terms of office of the African Children's Committee have significant gaps in addressing some of the practical challenges in determining terms of office. For instance, in cases where a member could not complete their term of office due to resignation, death or any other factor preventing them from continuing to assume their responsibility, one issue arising from replacing the member would be the start of count of the term of office of the member concerned. As mentioned above, in a situation where a member of the Committee could not finish their term of office, they can be replaced by another member from the same country. In a situation where the replacing member finishes the remaining term and seeks re-election, the question of when the term of office starts to count remains unanswered.

Another issue not addressed by the Children's Charter is the implication of the swearing-in ceremony on the term of office. There were instances where some members of the Committee interpret the start of their five-year term from the first session that they are sworn in. The swearing-in ceremony is an activity that the African Children's Committee has established by practice, as in the case with the practice at other human rights organs. The act should be considered nothing but a ceremony of inducting the member concerned into office by administering an oath and formally promising to be honest or loyal. No legal implication on the mandate of the individual members should be drawn from such activity. It is crucial to note that the members of the Committee draw their mandate from the Executive Council as adopted by the Assembly. Therefore, their term of office logically begins from

68 The signatories of the Initiative include African defenders; the Centre for Human Rights, University of Pretoria; the Centre for Rights Education and Awareness; Coalition for an Effective African Court on Human and Peoples' Rights; Defend Defenders; Initiative for Strategic Litigation in Africa; Institute for Human Rights and Development in Africa; International Service for Human Rights; Pan-African Lawyers Union; Robert F Kennedy Human Rights; Synergia – Initiatives for Human Rights; and the Network of African National Human Rights Institutions. See more about the Initiative at <https://www.ihrda.org/2024/02/csos-nhris-call-for-more-transparency-and-announce-new-initiative-on-nomination-and-selection-of-members-of-human-rights-mechanisms-in-africa/> (accessed 15 July 2024).

the date that the Assembly of the AU adopts the decision of the Executive Council appointing them as members of the Committee.

3.4 Bureau of the Committee

Article 38 of the African Children's Charter, titled 'Bureau of the Committee', extends beyond bureau matters and encompasses the establishment of rules of procedure, voting procedures and working languages. The Charter empowers the Committee to establish its own Rules of Procedure,⁶⁹ and elect its Bureau for a period of two years.⁷⁰ For the purpose of making decisions and discharging its functions, seven Committee members shall form the quorum,⁷¹ and the Chairperson shall have a casting vote.⁷² The working languages of the Committee shall be the official languages of the OAU.⁷³

The African Children's Committee initially established its Rules of Procedure immediately after its operations in 2002. Since then, the Rules of Procedure of the Committee have been revised on different occasions between 2002 and 2024. The Committee resolved to revise its Rules of Procedure for the first time under its Strategic Plan 2010-2014. The initiative to revise the Rules of Procedure was part of the then African Children's Charter project (ACCP) that was supported by SIDA-Sweden and implemented by five consortia of organisations, namely, African Child Policy Forum (ACPF), Institute for Human Rights and Development in Africa (IHRDA), Save the Children International, Plan International and Dullah Omar Institute (DOI). Implementing the approved activities of the project, DOI took the responsibility of suggesting a revised text of the Rules of Procedure covering the chapter on 'Communication', while IHRDA took the responsibility of harmonising the African Children's Committee Rules of Procedure with that of the African Commission. The African Children's Committee adopted the First Revised Rules of Procedure during the twenty-third ordinary session in 2014.⁷⁴ The Rules of Procedure were last updated and adopted by the Committee in 2020 during the thirty-fifth ordinary session.⁷⁵ The Revised Rules of Procedure consist of 89 Rules covering various aspects on the structure, composition and functions of the African Children's Committee and its Secretariat.

With regard to the structure of the Bureau, Rule 6 of the 2014 Rules of Procedure established an office composed of a Chairperson, two ViceChairpersons, a Rapporteur and a Deputy Rapporteur. The Revised Rules of Procedure, which currently are in force, established a Bureau of three officers including the Chairperson, the Vice-Chairperson and the Rapporteur.⁷⁶ As prescribed in article 38 of the Charter, the term of office of the members of the Bureau of the Committee shall be two years. The Revised Rules Procedure further elaborate the provision of the Charter and state that 'the term of office shall run from the date of election until the election held the next election'.⁷⁷ The members of the Bureau are eligible for re-election only once. However, the position of the Chairperson shall not be eligible for re-election. Other members of the Bureau may be re-elected to their various position only once during their membership of the Committee provided that their term of office does not come to an end before the expiry of the term of office of the Bureau. If any member of the Bureau, before the

69 Art 38(1) African Children's Charter.

70 Art 38(2) African Children's Charter.

71 Art 38(3) African Children's Charter.

72 Art 38(4) African Children's Charter.

73 Art 38(5) African Children's Charter.

74 ACERWC/ RPT(XXIII), Report on the 23rd ordinary session of the African Children's Committee, 9-16 April 2014, Addis Ababa, Ethiopia, para 96.

75 African Children's Committee RPT(XXXV), Report on the 35th ordinary session of the African Children's Committee, 31 August-8 September 2020 para 109.

76 Rule 6 of the Revised Rules of Procedure of the African Children's Committee 2020.

77 Rule 8(2) of the Revised Rules of Procedure of the African Children's Committee 2020.

normal expiry of their term of office, ceases to be a member of the Committee or resigns from the Bureau, the Committee shall as soon as possible elect a successor to hold office for the remainder of the their term.⁷⁸ Rule 7 of the Revised Rules of Procedure describes the process of election of the Bureau. The conduct of election of the Bureau is usually done through the assistance provided by the Office of the Legal Counsel in a closed session, and as it is required by the Revised Rules of Procedure, it is done in a secret ballot.

One of the added values of the Revised Rules of Procedure is the fact that the Rules require the selection of the Bureau to be done on the basis of rotation, taking regional and gender representation into consideration. In implementing the regional and gender representation, the Committee has developed criteria for rotation and equitable representation for the election of the African Children's Committee's Bureau. Pursuant to the criteria, the African Children's Committee adopts a regional consultation process to nominate the Chairperson. In case the region has more than one female or one male member, they should agree in the region and inform the outgoing chairperson and the Secretariat of the African Children's Committee on the results of their consultations. If they could not agree, the two candidates from the region can be presented for all the members of the African Children's Committee to vote. The voting should be by secret ballot and the candidate will be elected by a simple majority of members present and voting.

The table below presents the list of Chairpersons including their geographical and gender representation over the years.

Chairperson	Gender	Region	Timeframe
Joyce Aluoch	Female	East Africa	2003-2005
Jean-Baptiste Zoungrana	Male	West Africa	2005-2007
Seynadou Ndiaye Diakhate	Female	West Africa	2007-2010
Agnes Kabore Ouattara	Female	West Africa	2010-2012
Benyam Dawit Mezmur	Male	East Africa	2012-2014
Sikidou Aissatou (served only for one year)	Female	West Africa	2014-2015
Benyam Dawit Mezmur	Male	East Africa	2015-2017
Goitseone Nanike Nkwe	Female	Southern Africa	2017-2019
Joseph Ndayisenga	Male	Central Africa	2019-2023

Rule 9 of the Revised Rules of Procedure provides the powers and functions of the Bureau. It reads as follows:

- (1) The Bureau shall coordinate and supervise the promotional and protective activities of the members of the Committee and its special mechanisms as established from time to time.
- (2) The Bureau shall oversee and coordinate the work of the Secretariat of the Committee which shall include the preparation of work plan and budget of the Committee.

⁷⁸ Rules 8(3) & (4) of the Revised Rules of Procedure of the African Children's Committee 2020.

- (3) The Bureau shall provide recommendations to the Chairperson on the appointment of the Secretary and shall make an annual assessment of the performance of the Secretary to the Committee, and submit this assessment to the Committee for its consideration.

Establishing the overall power and function of the Bureau, Rule 9(1) of the Revised Rules of Procedure particularly mentions the role of the Bureau in coordinating and supervising the promotional and protective activities of the special mechanisms as established from time to time. The contents of the provisions under Rules 9(2) and (3) are discussed as part of the chapter dealing with the Secretariat. The paragraphs below focus on the offices of the special mechanisms as established by the African Children's Committee.

Dedicating a chapter to explain the establishment and operations of such mechanisms,⁷⁹ the Revised Rules of Procedure define 'special mechanisms' to include Special Rapporteur, working group, study group, sub-committee or other subsidiary body established by the Committee with a specific mandate.⁸⁰ With a view to operationalising the special mechanisms, the African Children's Committee has adopted term of references (ToR), resolutions and standard operating procedures on the special mechanisms, which address their establishment, activities and conduct.⁸¹

Among the mechanisms that the African Children's Committee has established over the past years are the special/thematic rapporteurs, country rapporteurs and working groups. The thematic and country rapporteurs are established through a ToR that was adopted at the twenty-eighth ordinary session, held from 21 October to 1 November 2016 in Banjul, The Gambia.⁸² As per the ToR, the African Children's Committee has established two types of rapporteurs, namely, country rapporteurs and thematic rapporteurs.⁸³ Country rapporteurs are assigned members of the African Children's Committee who are responsible for monitoring child rights issues in a given country, including guiding and overseeing the reporting processes, and coordinating the considerations of communications in cases where complaints are submitted against the concerned state party.⁸⁴

The following table presents the list of thematic and country rapporteurs as at July 2024.

Name	Country Rapporteur	Thematic Rapporteur
Wilson de Almeida Adão	Mozambique, Sao-Tome, Cabo Verde, Guinea Bissau, Egypt	Special Rapporteur on Vulnerable Situations
Theophane Nikyema	Benin, Cameroon, Liberia, Gabon, Chad	Special Rapporteur on Child Justice
Robert Nanima	Nigeria, Malawi, Eswatini, Namibia, Tanzania	Special Rapporteur on Children in Conflict Situations

79 Ch XI, arts 57-61 of the Revised Rules of Procedure.

80 See the definition of 'special mechanism' on the Revised Rules of Procedure of the African Children's Committee 2020.

81 More information about the special mechanisms within the African Children's Committee is available at <https://www.acerwc.africa/en/page/about-special-mechanisms> (accessed 12 July 2024).

82 Terms of Reference for the Establishment of Country Rapporteurs and Thematic Rapporteurs within the African Children's Committee; Report of 28th ordinary session of the African Children's Committee, ACERWC/ RPT(XXVIII).

83 Sec I of the Terms of Reference for the Establishment of Country Rapporteurs and Thematic Rapporteurs within the African Children's Committee.

84 For more information on the country rapporteurs, see <https://www.acerwc.africa/en/page/country-rapporteurs> (accessed 12 July 2024).

Karoonawtee Chooramun	Angola, Burundi, CAR, Zimbabwe, Congo Republic	Special Rapporteur on Birth Registration and Nationality
Hermine Kembo Takam Gatsing	Burkina Faso, Cote d'Ivoire, Ethiopia, Gambia, and Ghana	Special Rapporteur on Child Marriage and Other Harmful Practices
Aboubekrine El Jera	Senegal, Algeria, Comoros, Saharawi Arab Democratic Republic, and Niger	Special Rapporteur on Health
Aver Gavar	Botswana, Kenya, Rwanda, Sierra Leone, Zambia	Special Rapporteur on Violence against Children
Anne Musiwa	Eritrea, Somalia, Uganda, South Sudan, Seychelles	Special Rapporteur on Children without Parental Care
Sabrina Gahar	Djibouti, Libya, Equatorial Guinea, Mauritius, Tunisia	Special Rapporteur on Children on the Move
Ghislain Roch Etsan	Guinea, Mali, Mauritania, Morocco, Togo	Special Rapporteur on Child Participation
Poloko Nuggert Ntshwarang	South Africa, Lesotho, DRC, Sudan, Madagascar	Special Rapporteur on Education

Membership to the special mechanisms including as thematic rapporteur and country rapporteur is determined by consensus. In the absence of consensus, the decision is put to vote and requires a simple majority of those present and voting. The Committee takes into consideration the official languages of the country concerned in assigning country rapporteurs, that is, it is preferable that the member speaks the language of the country that they will be serving as a rapporteur. Both country and thematic rapporteurs shall serve for a period of two years, renewable once, unless the mandate of the special mechanism terminates earlier. The mandates of both country and thematic rapporteurs will be periodically evaluated and will also be subject to review, renewal or termination. The Committee may, before the expiry of the term, decide to replace a member of a special mechanism for reasonable cause.⁸⁵

Looking at the practice, since the establishment of the mechanisms the Committee has made revisions on the various aspects of the mechanisms, including changes in names, major functions and membership of both the thematic and country rapporteurs. Most of the changes were done following the end of term of office of the various mechanism in 2021 at the thirty-seventh ordinary session.⁸⁶

At the core of the challenges affecting the operations of the offices of both the Special Rapporteur and the country rapporteurs are resource limitations. The inadequate budget allocated annually to support the activities of the special mechanisms, coupled with the limited number of technical staff at the Secretariat, hampers the effective engagements of the rapporteurs. Due to such factors, for instance,

⁸⁵ Sec 7 of the Terms of Reference for the Establishment of Country Rapporteurs and Thematic Rapporteurs within the African Children's Committee.

⁸⁶ See the Report on the 37th ordinary session of the African Children's Committee, ACERWC/ RPT(XXXVII) 15-26 March 2021 para 111.

some thematic rapporteurs are less active than others in their operations. Mechanisms such as the Special Rapporteur on Children in Conflict Situations, the Special Rapporteur on Child Marriage and Other Harmful Practices, the Special Rapporteur on Violence against Children and, to some degree, the Special Rapporteur on Children without Parental Care get support from various organisations that relatively help them discharge their functions in a more proactive way than other mechanisms.

An additional challenge lies in the fact that the mandate of some of the Special Rapporteurs overlap to the extent it affects the functionalities of the other offices. In situations where resources are highly limited, the African Children's Committee could consider merging some of the Special Rapporteur offices. For instance, the mandate of the Special Rapporteur on Children in Vulnerable Situations appears to be broad in that it covers most of the thematic areas within the special mechanisms. Similarly, harmful practices could be covered under special rapporteur for Violence Against Children as the latter is broad enough to cover the mandate of the Special Rapporteur on Child Marriage and other Harmful Practices.

In addition to the rapporteurs, the African Children's Committee has also established working groups through a standard operating procedure that was adopted at the thirty-fifth ordinary session held virtually from 31 August to 8 September 2020.⁸⁷ The working groups were established considering the challenges observed in some specific thematic areas and the need to take a systematic approach by the Committee to address them sustainably. The standard operating procedures and the resolutions on the establishment of the working groups prescribe detailed provisions on the roles and responsibilities, composition and structure, selection and appointment of members, proceedings and terms of office and code of conduct of the working groups and their members. By July 2024 the African Children's Committee has established the following working groups:

- (1) Working Group on Children with Disabilities
- (2) Working Group on Business and Children's Rights
- (3) Working Group on Climate Change and Children's Rights, and
- (4) Working Group on Implementation of Decisions

A working group shall be composed of a maximum of eight members, out of which at least three shall be members of the African Children's Committee, and the remaining could be external experts. From the start, the Working Groups on Children with Disability, Children's Rights and Business and Climate Change have external experts as per their establishing Resolutions.⁸⁸ The Committee has recently, in April 2024 at the forty-third ordinary session, decided to include external experts in the Working Group on Implementation of Decisions.⁸⁹ Each working group shall have a bureau composed of a Chairperson and a Vice-Chairperson. Only a member of the African Children's Committee shall become Chairperson of a working group. Gender, geographic representation and language shall be taken in to consideration in the composition of working groups.⁹⁰

3.4 Privileges and immunities (article 41)

Pursuant to article 41 of the African Children's Charter, 'in discharging their duties, members of the Committee shall enjoy the privileges and immunities provided for in the General Convention on the

87 See African Children's Committee Working Groups, <https://www.acerwc.africa/en/page/about-working-groups> (accessed 12 July 2024).

88 As above.

89 Report of the 43rd ordinary session of the African Children's Committee para 191, https://www.acerwc.africa/sites/default/files/2024-05/Communique%20Final%2043rd%20Session_Eng.pdf, ACERWC/ RPT(XLIII) (accessed 12 July 2024).

90 Sec III of the Standing Operating Procedures for the Working Groups within the African Children's Committee 2020.

Privileges and Immunities of the Organisation of African Unity'. The General Convention on the Privileges and Immunities of the Organisation of African Unity (General Convention) was adopted on 25 October 1965 in Accra, Ghana, and entered into force on the same day. As of July 2024, the General Convention is ratified by 44 member states of the AU.⁹¹

The privileges and immunities granted to the members of the African Children's Committee aim at ensuring the smooth operation and the independent exercise of their functions during the period of their missions. It guarantees that the members are free from any interference while on mission. Such missions may include all official duties of the members, such as attending the sessions of the Committee, conducting country visits, attending seminars, workshops and performing any other activity that falls under the mandate of the African Children's Committee.

For the purpose of privileges and immunities as prescribed in the General Convention, the members of the African Children's Committee are considered 'experts on missions'. Pursuant to article VII of the General Convention, they 'shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions'.⁹² Elaborating on the privileges they are accorded to, the General Convention prescribes:

- (a) immunity from personal arrest or detention as well as any official interrogation and from inspections or seizure of their personal baggage;
- (b) in respect of words spoken, written or votes cast and acts done by them in the course of the performance of their mission; immunity from legal process of every kind; the said immunities from legal process continue to be accorded notwithstanding that persons concerned are no longer employed on missions for the Organisation of African Unity;
- (c) inviolability for all papers and documents;
- (d) for the purpose of their communications with the Organisation of African Unity, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

A similar approach is adopted for members of the other human rights organs of the AU and the UN treaty bodies. At the UN, for instance, according to article VI section 23 of the Convention on the Privileges and Immunities of the United Nations, privileges and immunities are granted to the members of the treaty bodies in the interests of the UN and not for their personal benefit. The Secretary-General, as is the case with the Chairperson of the AUC, 'has the right and the duty to waive the immunity of any member in any case where, in his or her opinion, immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations'.⁹³

It would be important to also consider the privileges and immunities that emanate from the host agreement between the Kingdom of Lesotho and the AU on the hosting of the Secretariat of the African Children's Committee.⁹⁴ Article 10 of the host agreement prescribes the privileges and immunities of both the Secretariat and members of the African Children's Committee. Accordingly,

91 See https://au.int/sites/default/files/treaties/7760-sl-GENERAL_CONVENTION_ON_THE_PRIVILEGES_AND_IMMUNITIES_OF_THE_OAU.pdf (accessed 14 July 2024).

92 Art VII General Conventions.

93 *Handbook for human rights treaty body members* (n 23) 33.

94 Host Agreement between the Kingdom of Lesotho and the African Union on hosting of the Secretariat of the African Children's Committee, February 2020.

members of the African Children's Committee shall enjoy, with and within the host country, privileges, immunities for the effective exercise of their functions as established by the General Convention. They shall enjoy, among others:

- (a) immunity from legal process of any kind with respect to words spoken or written, and all acts performed by them in their official capacity;
- (b) immunity from personal inviolability, including immunity from arrest or detention;
- (c) immunity from criminal, civil and administrative jurisdiction in conformity with the Vienna Convention and the General Convention;
- (d) immunity from inspection and seizure of their personal and official baggage;
- (e) exemption from immigration restrictions and alien registration, together with their immediate families residing and dependent on them including their personal employees who are not nationals or permanent residents of the host country;
- (f) the same facilities in respect to exchange facilities and right to operate foreign currency accounts and to own foreign securities as accorded to the officials and other staff of comparable rank in diplomatic missions or international organisations in the host country;
- (g) on termination of employment [mission], the right to take out of the host country funds in any foreign currencies under conditions no less favourable than that afforded to officials and staff of diplomatic missions or international organisations of comparable status.

4 The Secretariat of the African Committee of Experts on the Rights and Welfare of the Child (article 40)

Article 40: The Secretariat

The Secretary-General of the Organisation of African Unity shall appoint a Secretary for the Committee.

The AUC officially established the Secretariat of the African Children's Committee Secretariat in 2007, six years after the African Children's Committee began its operations. The appointment of the secretary was carried out in accordance with article 40 of the African Children's Charter. Although the title of article 40 reads 'The Secretariat', the provision generally outlines only the appointment of the secretary. The article states that '[t]he Secretary-General of the Organisation of African Unity shall appoint a Secretary for the Committee'. The Charter does not provide details regarding the mandate, functions and structure of the Secretariat; these are outlined in the Revised Rules of Procedure of the African Children's Committee.

In this context, the current part aims to examine the operations of the African Children's Committee Secretariat primarily in line with the provisions under the Revised Rules of Procedure. Since its establishment in 2007, significant changes have been made to the Secretariat's structure. This part examines the developments within the Secretariat over the years, including staffing and financial matters.

4.1 Establishment of the Secretariat

The Secretariat of the African Children's Committee is implicitly established by article 40 of the African Children's Charter. The Charter does not expressly mention the establishment of the Secretariat; instead, it prescribes the appointment of the secretary by the Secretary-General of the then Organisation of African Unity. The practice within the African Commission and the African Court appears to be different as the treaties establishing the respective organs provide more information regarding the staff of the Secretariat. Article 41 of the African Charter states that '[t]he Secretary-General of the Organisation of African Unity shall appoint the Secretary of the Commission. He shall also provide

the staff and services necessary for the effective discharge of the duties of the Commission.⁹⁵ Similarly, article 24 of the African Court Protocol also provides clearer provisions regarding the registry of the Court where it reads ‘the Court shall appoint its own registrar and other staff of the registry from among nationals of member states of the OAU according to the Rules of Procedure. The office and residence of the registrar shall be at the place where the Court has its seat.’⁹⁶

The first secretary to the African Children’s Committee was appointed in 2007. Between 2001 and 2007 the Department of Social Affairs of the AUC provided the secretariat services to the African Children’s Committee. Partner organisations, such as the United Nations Children’s Fund (UNICEF), supported the Department by seconding staff to support the Committee’s work. This arrangement affected the work the African Children’s Committee in various ways. Due to such gaps in the technical wing of the Committee, there were considerable delays in undertaking the Committee’s major activities, including the consideration of state party reports and communications. For instance, the first communication to the Committee was *Northern Ugandan Children*, submitted in 2005, only to be declared admissible in 2011.⁹⁷ The absence of a well-functioning Secretariat at the time, combined with a lack of guidelines for consideration of communications, contributed to such significant delays in executing activities. It was only from 2011 that the AU Commission started recruiting staff dedicated to the work for the African Children’s Committee Secretariat.

Pursuant to article 40 of the African Children’s Charter, the Chairperson of the AU Commission (AUC) appoints the secretary and, by extension, the staff of the Secretariat. The practice within the AU human rights organs appears to be inconsistent in this regard. In the case of the African Children’s Committee and the African Commission, the role of the Chairpersons of the respective organs in appointing and recruiting the secretaries and staff of the organs is not envisaged in their establishing instruments. However, the appointment of the registrar of the Court is assigned to the president of the Court and not to the Chairperson of the AUC. Although it is absent in the African Children’s Charter itself, the role of the Chairperson of the African Children’s Committee in appointing and recruiting the secretary of the Committee is prescribed in the Revised Rules of Procedure of the African Children’s Committee. In listing the powers and functions of the Chairperson of the Committee, Rule 10(2) of the Revised Rules of Procedure states that ‘the Chairperson of the Committee shall consult with the Chairperson of the AUC on the appointment of a secretary to the Committee whenever the post is vacant’.⁹⁸

Practically, the role of the Chairperson of the Committee in matters of recruitment of the secretary and the staff of the Secretariat is considerably limited, if it at all exists. The Chairperson’s lack of structural involvement in the recruitment process has affected the process, resulting in significant delays in bringing the staff of the Secretariat on board in a timely manner. For instance, as of July 2024, the position of the secretary has been vacant since 2017, and the role of the Chairpersons over the past seven years has been minimal. One contributing factor is that the Chairperson’s position, unlike that of the president of the Court, is not a full-time position. Thus, the Chairperson is considered only a political head, with no role in the administrative, human resource and financial operations of the Committee. In light of these challenges, the African Children’s Committee has recommended to the AU Reform Unit the establishment of a permanent office where the Chairperson holds a full-time position. This challenge is cross-cutting in nature, as the African Commission is also facing a similar issue.

95 Art 41 African Charter.

96 Art 24 African Court Protocol.

97 *Hansungule & Others (on behalf of Children in Northern Uganda) v Uganda*, No 1/Com/001/2005, decided April 2013.

98 Rule 10(2)(g) of the Revised Rules of Procedure of the African Children’s Committee 2020.

The challenges related to recruitment have been brought to the attention of the Permanent Representative Committee (PRC) and Executive Council of the AU, primarily through the activity reports of both the African Children's Committee and the African Commission. In its 2023 decision, the Executive Council requested the AUC to 'provide guidance on the possibility of allowing the African Children's Committee to recruit its own staff'.⁹⁹ Similarly, the Executive Council requested the AUC to come up with

a report on the financial, structural and legal implications of the proposal of granting full-time positions to the Chairs of both organs (African Commission on Human and Peoples' Rights and the African Union Advisory Board Against Corruption) in order to allow them to execute financial and administrative duties, should be solicited and approved by the PRC Sub-Committee on General Supervision.¹⁰⁰

This appreciation aligns not only with the Revised Rules of Procedure of the African Children's Committee but also with the Assembly of the AU's decision regarding the African Commission, which was to regularise the status of this body as an organ of the AU.¹⁰¹

4.2 Structure and function of the Secretariat of the African Children's Committee

Pursuant to Rule 14 of the Revised Rules of Procedure, the Secretariat of the Committee comprises the secretary, and other professional, technical and administrative staff that the African Children's Committee may require for the effective exercise of its functions. In line with the Revised Rules of Procedure, the Committee defined the structure, powers and functions of the Secretariat and submitted it before the Executive Council of the AU.¹⁰² Consequently, in 2020 the Executive Council approved a new structure of the Secretariat consisting of 46 personnel.¹⁰³ As part of its general mandate, the Secretariat coordinates the work of the African Children's Committee, maintains effective links between the Committee and member states, ensures effective partnership between the Committee and the stakeholders, and mobilises resources and raises awareness for the Committee's activities. According to Rule 16 of the Revised Rules of Procedure, the functions of the Secretariat, under the authority of the executive secretary, include:

- providing the Committee with technical and logistical support desired for the effective functioning of the Committee;
- preparing draft documents, reports and statement of the Committee and processing correspondences, petitions and communications addressed to the Committee;
- requesting relevant information from interested parties, and
- undertaking any other technical or administrative assignments entrusted to it by the Committee or by the Chairperson.

The Head of the Secretariat is the executive secretary who is responsible for the overall coordination of the work of the African Children's Committee. The executive secretary ensures that all planned activities are executed in accordance with the African Children's Committee's mandate and work plans. This role involves overseeing the implementation of activities, supervising the Secretariat staff, and coordinating the appointment of other positions in consultation with the relevant department of the AUC and the Chairperson of the Committee. The staff of the Secretariat are governed by the staff

99 Executive Council Decision EX.CL/Dec.1201(XLII) 42nd ordinary session of the Executive Council, 15-16 February 2023.

100 As above.

101 Assembly/AU/Dec.200 (XI).

102 Rule 14(2) of the African Children's Committee Revised Rules of Procedure 2020.

103 AU Assembly Decision, Assembly/AU/Dec.750 (XXXIII) 11th ordinary session 30 June- 1 July 2008, Sharm El-Sheikh, Egypt.

rules and regulations of the AUC and must adhere to the principle of confidentiality regarding all matters deemed confidential by the Committee, as outlined in the Charter and the Revised Rules of Procedure.¹⁰⁴

The Secretariat is structurally located within the Department of Health, Humanitarian Affairs and Social Development (HHS) of the AUC. This entails that the Secretariat is considered one of the divisions of the Department, with the staff, including the executive secretary, reporting to the Department's management.

Initially, the Secretariat was housed within the HHS of the AUC in Addis Ababa when it was established. However, in 2020 the Secretariat relocated to Maseru, in the Kingdom of Lesotho, following a decision by the Executive Council. The Committee also moved to Maseru in December 2020. The headquarters of the Secretariat in Maseru, Lesotho, were officially inaugurated in June 2021. The move was occasioned by the desire to confirm the independence of the Committee from the AUC.

As of July 2024, the Secretariat has only six regular staff members: two officers on fixed-term contracts, and four staff members on special service contracts. Additionally, there are short-term consultants seconded by partner organisations, youth volunteers and interns. Despite the Executive Council's decision to establish a Secretariat with 46 personnel, only four positions have been filled since the Secretariat's relocation in 2020. This has resulted in a significant gap in human resource capacity, affecting the effective implementation of activities. These challenges, however, have been partially mitigated through strategic partnerships with various organisations. Support from entities such as the Centre for Human Rights of the University of Pretoria, the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Save the Children International, Plan International, IHRDA, SIDA Sweden, and the European Union has been instrumental in bolstering the Secretariat's capacity.

Through targeted projects and collaborations, these partner organisations have provided crucial support by seconding officers and placing paid interns who have played a vital role in assisting the Committee. For example, over the past decade, Plan International and Save the Children International have consistently seconded officers through the African Children's Charter Project (ACCP) since 2013. This partnership has been fundamental in ensuring continuity and expertise within the Secretariat. Additionally, the Centre for Human Rights of the University of Pretoria has made significant contributions by placing interns on an annual basis since 2016. These interns have brought fresh perspectives and have contributed to various aspects of the Committee's work. Similarly, GIZ, in collaboration with IHRDA, has seconded officers who have played a pivotal role in operationalising the working groups of the African Children's Committee, thereby enhancing the Committee's capacity to effectively address specific thematic areas. Moreover, the European Union has implemented projects that have provided funding for short-term positions within the African Children's Committee Secretariat, filling critical gaps and enabling the Secretariat to maintain its operations without interruption. These partnerships have not only filled immediate human resource needs but have also fostered long-term collaboration, which is essential for the sustained functioning of the African Children's Committee.

The very limited number of staff, coupled with the small amount of budget allocated to the operations of the African Children's Committee, makes the Committee one of the most under-resourced organs of the AU. For the Committee to effectively deliver on its mandate, it is important to have an effective, capacitated, well-staffed, sustainable and competent Secretariat. The increase in state party reports and communications brought to the Committee require a robust Secretariat, with adequate financial, human and material resources.

104 Rules 15 & 18 of the African Children's Committee Revised Rules of Procedure 2020.

The Executive Council has recognised this need and has repeatedly requested the AUC to assess the financing and human resource needs of the Committee to adequately equip it for its mandate as outlined in the African Children's Charter. Since 2011 there have been numerous decisions of the Executive Council urging the AU Commission to expedite the finalisation of recruitment of the African Children's Committee Secretariat's staff.¹⁰⁵ However, despite the positive tone set through such decisions, implementation has been hindered primarily due to lack of political will to strengthen AU treaty bodies such as the African Children's Committee. Recruitment requires financial resources, which should be provided through member states' assessed contributions. Requesting the AUC to finalise the recruitment of the staff without increasing the budget to cover additional expenses would render the effort ineffective.

The effective functioning of the African Children's Committee as a monitoring organ is intrinsically linked to the adequacy of its Secretariat. A pertinent example can be drawn from the UN system, where the General Assembly in Resolution 68/268 'underlines the importance of all stakeholders of the treaty-body system, as well as the Secretariat, respecting fully the independence of treaty-body members and the importance of avoiding any act that would interfere with the exercise of their functions'.¹⁰⁶ Since the adoption of Resolution 68/268, considerable financial resources have been consistently allocated to the secretariats of the treaty bodies in order to provide better support for treaty bodies. With budget increase, significant changes are exhibited in reviewing the state party reports and especially in overcoming backlogs of reports pending consideration.

5 Conclusion

The discussions in this chapter underscore the robust framework established by the African Children's Charter, which outlines the establishment, composition and other procedural aspects of the African Children's Committee and its Secretariat. They provide details on the procedural aspects of the African Children's Charter, which is further elaborated by additional frameworks such as rules of procedure, election procedures, and practices within the Committee and other relevant bodies. These elements collectively unpack the Charter's provisions covered in this chapter. However, despite these detailed provisions, significant gaps remain, particularly in the nomination and election processes. There is a notable absence of legislative and institutional mechanisms for rectifying deficiencies in regional review and oversight.

The Chapter also explains how the effective operation of the African Children's Committee as a monitoring organ is fundamentally dependent on having a well-equipped Secretariat. The current staffing and financial levels, however, fall short of enabling the African Children's Committee to fully perform its functions or meet its mandate. Adequate staffing and resources are crucial for the Secretariat to effectively manage its responsibilities and support the African Children's Committee's role in implementing its mandate. Without these essential resources, the Committee's ability to operate efficiently and fulfil its objectives is significantly compromised.

Addressing these gaps requires normative and institutional reforms to ensure independent vetting of candidates and to correct possible procedural flaws at the national level. The AU should consider developing guidelines that elaborate on the provisions discussed in this chapter.

105 Executive Council Decision, EX.CL/Dec.655 (XIX) June 2011; Executive Council Decision, EX.CL/ Dec.712(XXI), July 2012; Executive Council Decision, EX.CL/Dec.776(XXIII), May 2013; Executive Council Decision, EX.CL/ Dec.843(XXV), June 2014; Executive Council Decision, EX.CL/Dec.947(XXX), January 2017; Executive Council Decision, EX.CL/Dec.977(XXXI), July 2017; Executive Council Decision, EX.CL/Dec.991(XXXII), January 2018; Executive Council Decision, EX.CL/Dec.1043(XXXIV), February 2019.

106 United Nation General Assembly, A/RES/68/268, Resolution 68/268 para 35.

In conclusion, while the African Children's Charter and the African Children's Committee frameworks provide a solid foundation for protecting children's rights in Africa, there is a pressing need for reforms to further strengthen oversight mechanisms and enhance effectiveness of the African Children's Committee and its Secretariat.