

## Chapter 35

### Article 43

### Reporting procedure

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1. Every state party to the present Charter shall undertake to submit to the Committee through the Secretary-General of the Organisation of African Unity, reports on the measures they have adopted which give effect to the provisions of this Charter and on the progress made in the enjoyment of these rights:
  - (a) within two years of the entry into force of the Charter for the state party concerned; and
  - (b) thereafter, every three years.
2. Every report made under this article shall:
  - (a) contain sufficient information on the implementation of the present Charter to provide the Committee with comprehensive understanding of the implementation of the Charter in the relevant country; and
  - (b) shall indicate factors and difficulties, if any, affecting the fulfilment of the obligations contained in the Charter.
3. A state party which has submitted a comprehensive first report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1(a) of this article, repeat the basic information previously provided.

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## 1 Introduction

Article 43, as one of the principal means of monitoring the implementation of the African Charter on the Rights and Welfare of the Child (African Children's Charter), requires states to submit a report to the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) within two years of entry into force of the Children's Charter, and thereafter every three years.

A mechanism common to a number of human rights treaties, state reporting is based, as is the case with its sister body, the African Commission on Human and Peoples' Rights (African Commission), and under the Convention on the Rights of the Child (CRC) Committee, on the principle of constructive dialogue. This has implications, as will be seen below, for how the African Children's Committee has addressed states, particularly when they have failed to fulfil their obligations under this article.

State reporting as a monitoring mechanism is fraught with challenges, such as the failure of states to submit timely reports, the quality of those reports, and a lack of senior level engagement with the treaty body in oral deliberations, as well as vague recommendations (Concluding Observations) emanating from the process.<sup>1</sup> These challenges are also faced by the African Children's Committee. For instance, as at June 2024, the Children's Committee's website notes that eight states still have to submit an initial report, despite some having ratified the Charter a decade or so previously, and 19 states that have submitted an initial report have not submitted any periodic report at all.<sup>2</sup>

Although proposed tentatively early in the life of the African Children's Committee, that the African Children's Charter should be amended to mandate the African Commission to receive state reports and communications,<sup>3</sup> this never came to pass. Instead, and in line with the express wording of article 43 ('each state party shall undertake to submit to the Committee'),<sup>4</sup> this is a role that the Children's Committee has developed through producing guidance, innovative tools and practice. The submission of the first reports at its eighth ordinary session in 2006 prompted discussion of the need to elaborate on the detail of the state reporting process.<sup>5</sup> Although criticised for still exhibiting 'inertia',<sup>6</sup> it was at the eleventh session where the process started to function. Here, the first pre-session meeting was held, enabling the Committee to make progress on aspects of its reporting process.<sup>7</sup>

Two sets of Guidelines have since been adopted by the Committee to clarify what is required by states when drafting their reports: guidelines for initial reports, required to be submitted, in accordance with article 43(1)(a); and for guidelines periodic reports (article 43(1)(b)).<sup>8</sup>

Article 43 requires that the states report on measures taken to implement the African Children's Charter. As will be noted below, the Committee does not require that the report is structured by each article of the African Children's Charter, rather, it specifies themes under which states report. These themes encompass all the substantive rights in the Charter.

1 L Oette 'The UN human rights treaty bodies: Impact and future' in G Oberleitner (ed) *International human rights institutions, tribunals and courts* (2020) 95; J Sarkin 'The 2020 United Nations human rights treaty body review process: Prioritising resources, independence and the domestic state reporting process over rationalising and streamlining treaty bodies' (2021) 25 *International Journal of Human Rights* 1301, 1306; A Abashide and A Koneva 'The process of strengthening the human rights treaty body system: The road towards effectiveness or inefficiency?' (2019) 66 *Netherlands Quarterly of Human Rights* 357; S Egan 'Strengthening the United Nations human rights treaty body system' (2013) 13 *Human Rights Law Review* 209.

2 <https://www.acerwc.africa/en/states-parties/reporting/status> (accessed 15 October 2024).

3 D Olowu 'Protecting children's rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child' (2002) 10 *International Journal of Children's Rights* 127, 133; F Viljoen *International human rights law in Africa* (2012).

4 Viljoen (n 3) 400.

5 PE Veerman 'An African and international perspective on children's rights. Interview with Dr Benyam Dawit Mezmur, Chairperson of the African Children's Rights Committee and for two years (2015-2017) the Chairperson of the UN CRC Committee' (2017) 25 *International Journal of Children's Rights* 672. See B Mezmur 'Still an infant or now a toddler? The work of the African Committee of Experts on the Rights and Welfare of the Child and its 8th ordinary session' (2007) 7 *African Human Rights Law Journal* 258.

6 By not considering reports at its 10th session, see Veerman (n 5).

7 BD Mezmur & J Sloth-Nielsen 'An ice-breaker: State party reports and the 11th session of the African Committee of Experts on the Rights and Welfare of the Child' (2008) 8 *African Human Rights Law Journal* 615-616.

8 As set out in Rule 68(2) of the Committee's Rules of Procedure. Guidelines on the Form and Content of Periodic State Party Reports to be Submitted Pursuant to Article 43(1)(b) of the African Charter on the Rights and Welfare of the Child, adopted 7 November 2013, entered into effect on 7 December 2013.

The state reporting process should be an opportunity for the Committee to identify the extent to which the state has also implemented any other recommendations it may have made with respect to that particular state, including on the implementation of decisions on communications. Indeed, when reporting on ‘general measures of implementation’ in its periodic report, a state should also include reference to implementation of decisions of the Committee on communications, as per article 44.<sup>9</sup>

## 2 Links to other human rights treaties

The African Children’s Committee sits in the shadow of CRC<sup>10</sup> and, at the time when the African Children’s Charter was adopted, the only other African human rights body on the continent was the African Commission. The African Children’s Committee and its mechanisms, consequently, are defined by its relationship with its United Nations (UN) and African peers, imposing a shorter timeframe than CRC, but slightly longer than under the African Charter on Human and Peoples’ Rights (African Charter).

The African Children’s Committee decided to take a creative approach to the reporting process. In ‘a commendable but all too rare example of international-regional cooperation’,<sup>11</sup> it offered states the possibility to use information in reports to the CRC Committee and the African Commission, by submitting the report already sent to the UN together with a ‘supplementary report’ focusing specifically on the articles of the African Children’s Charter that are ‘not duplicated in the CRC’.<sup>12</sup> If no supplementary report is submitted and the state only provides the report already sent to the CRC Committee, this may be rejected by the African Children’s Committee.<sup>13</sup> Although an efficient response to the reporting burden faced by states, this may pose some challenges for those who, as seen below, lack the technical capacity and detailed knowledge of the content of the African Children’s Charter.<sup>14</sup> This prompted those writing early in the Committee’s history to propose that it clarify the differences between the two instruments.<sup>15</sup>

Thus, the African Children’s Committee acknowledges that states may well prioritise CRC, it being ‘regarded as more influential’ than its African counterpart.<sup>16</sup> Yet, it also means that states can draw upon and utilise the national processes created to report under CRC for delivering on article 43 of the African Children’s Charter.<sup>17</sup>

In addition to this innovation, the African Children’s Committee has also gone further and drawn on good practice from the CRC Committee with respect to the process for participation and involvement of stakeholders in its deliberations.<sup>18</sup> Its willingness to continue to reflect on this ‘complementary

9 Guidelines on Periodic Reports (n 8) para II.15(e).

10 See eg P Eriamiatoe ‘An overview of the country studies’ in R Miamingi (ed) *State party reporting and the realisation of children’s rights in Africa* (2020) 33, 39.

11 Viljoen (n 3) 400.

12 B Mezmur ‘The African Children’s Charter @ 30: A distinction without a difference?’ (2020) 28 *International Journal of Children’s Rights* 693, 704.

13 Eg, as it did with Mauritius; see Viljoen (n 3).

14 Viljoen (n 3).

15 A Lloyd ‘Report of the 2nd ordinary session of the African Committee of Experts on the Rights and Welfare of the Child’ (2003) 3 *African Human Rights Law Journal* 342; see also Mezmur & Sloth-Nielsen (n 7) 615-616.

16 P Jones ‘The impact of reporting on the rights of the child: Kenya case study’ October 2015 10, (PDF) *The Impact of Reporting on the Rights of the Child: Kenya case study* (researchgate.net) (accessed 15 October 2024).

17 Jones (n 16) 8-9.

18 Jones (n 16) 16.

relationship'<sup>19</sup> is further apparent from its plans for 'joint annual planning for state reporting' with African Union (AU) and UN organs.<sup>20</sup>

### 3 Legal interpretation

#### 3.1 Purpose of the reporting process

The African Children's Committee considers the reporting process to serve a number of functions. It is 'an important occasion for conducting a comprehensive review of the various measures undertaken to harmonise national law and policy with the Children's Charter',<sup>21</sup> and it is also there to 'monitor progress'.<sup>22</sup>

For states, it considers reporting to be an indication of their commitment to the Children's Charter,<sup>23</sup> providing them with an 'opportunity for self-reflection and assessment on the extent to which the rights guaranteed under the Charter are enjoyed in practice'.<sup>24</sup> The Committee can then, in turn, offer 'insights and recommendations...on measures to reinforce implementation of the Charter'.<sup>25</sup>

This is a two-way engagement, and a key thread is that the state reporting process 'serves as the essential vehicle for the establishment of a meaningful dialogue between the states parties and the Committee'.<sup>26</sup> This 'non-adversarial process',<sup>27</sup> as will be seen, is apparent in the way in which the Committee has approached recalcitrant states, the oral discussion and also, it believes, enables states to 'devise solutions to the challenges'.<sup>28</sup> Although criticised,<sup>29</sup> this stance is considered by the African Children's Committee to be one of its strengths, permitting it to develop a 'good relationship with states – more collaborative, less confrontational which has made states more willing to engage with the ACERWC'.<sup>30</sup>

#### 3.2 Coordination of national reporting processes

One of the challenges with the state reporting mechanism in general, and this is also apparent before the African Children's Committee, is that coordination of the drafting of the report at the national level is often lacking, there being no clarity among ministries on their role, and who should be leading on the process.<sup>31</sup> Ministries of justice may commonly undertake this task, but they can lack the necessary

19 Viljoen (n 3) 392.

20 African Children's Committee Strategic Plan 2021-2025 (2020) 65-66.

21 Guidelines for Initial Reports of State Parties (prepared by the African Children's Committee pursuant to the provision of article 43 of the African Charter on the Rights and Welfare of the Child) Cmttee/ACRWC/2 II.Rev2 para 3.

22 Guidelines for Initial Reports (n 21) para 3; Guidelines on Periodic Reports (n 8) para 3.

23 Guidelines for Initial Reports (n 21) para 4.

24 Guidelines on Periodic Reports (n 8) para 3.

25 African Children's Committee Report of the Experience-Sharing Forum on the Implementation of the African Charter on the Rights and Welfare of the Child held in Mauritius on 27-28 September 2017 (October 2017) 10-22.

26 Guidelines for Initial Reports (n 21) para 4.

27 Guidelines on Periodic Reports (n 8) para 3.

28 African Children's Committee Report of the Experience Sharing Forum (n 25) 9-10.

29 See, eg, an in-depth discussion on the concept of constructive dialogue; D Kretzmer 'Development of committees' procedures on state reports' Geneva Academy of International Law, <https://www.geneva-academy.ch/joomlatools-files/docman-files/David%20Kretzmer%20-%20constructive%20dialogue.docx> (accessed 15 October 2024).

30 African Children's Committee Strategic Plan (n 20) 16 & 17.

31 African Children's Committee Report of the Experience-Sharing Forum (n 25) 11-13.

expertise on children's rights.<sup>32</sup> A specific budget for the reporting may not be provided (not regularly) and it may, therefore, not be clear with which ministry this lies.<sup>33</sup> This has led the United Nations Children's Fund (UNICEF) to step in to support some states.<sup>34</sup> Limited coordination and leadership is one factor in explaining why states do not submit timely reports.<sup>35</sup>

Drafting an article 43 report requires an understanding of the content of the African Children's Charter and this expert knowledge may not be available. Even where it is, some countries have reported that a high turnover of staff in the relevant ministries means that there is little institutional legacy of expertise on the Children's Charter.<sup>36</sup> In addition, an understanding of the processes required to draft the reports may be lost when staff leave, with an example cited whereby an earlier report that had been drafted could not subsequently be found.<sup>37</sup>

Further challenges arise in obtaining information from relevant ministries. While a difficulty for any state report, this is exacerbated as children's rights issues may not be mainstreamed across some ministries.<sup>38</sup> Disaggregated data, up-to-date information and statistics are needed to provide a robust and credible report,<sup>39</sup> and assist the Children's Committee in its exchanges with the state, enabling it ultimately to adopt relevant and implementable Concluding Observations.<sup>40</sup> Unfortunately, this information is not always available,<sup>41</sup> prompting the Committee to recommend that data management systems on child rights are strengthened.<sup>42</sup>

To address this range of difficulties, the African Children's Committee has encouraged states to set up mechanisms to coordinate reporting activities at the national level.<sup>43</sup> These can entail a 'coordinating structure in government' or, for example, 'decentralised, multi-sectoral national coordinating councils for the implementation of children's rights and with thematic sub councils'.<sup>44</sup> What is important is the creation of processes and interactions,<sup>45</sup> and systems for coordination and sharing of information.<sup>46</sup> Although the Office of the United Nations High Commissioner for Human Rights (OHCHR) has been advocating the establishment by states of a 'national mechanism for implementation reporting

32 African Children's Committee Report of the African Children's Committee's Mission to the Republic of The Gambia on Reporting under the African Charter on the Rights and Welfare of the Child, September 2023.

33 African Children's Committee Report of the Mission to The Gambia (n 32) paras 16-17.

34 African Children's Committee Report of the Experience-Sharing Forum (n 25) 11-13.

35 African Children's Committee Report of the Mission to The Gambia (n 32).

36 African Children's Committee Report of the Mission to The Gambia (n 32) 14; MG Nyarko 'Towards effective implementation of the African Charter on the Rights and Welfare of the Child in Egypt' (2019) 11 *African Journal of Legal Studies* 151-156.

37 African Children's Committee Report of the Mission to The Gambia (n 32).

38 African Children's Committee Report of the Experience-Sharing Forum (n 25) 11-13.

39 Guidelines on Periodic Reports (n 8) para 13.

40 African Children's Committee Report of the Mission to The Gambia (n 32) para 15.

41 African Children's Committee Report of the Mission to The Gambia (n 32); Eriamiatoe (n 10) 47. See, eg, in relation to Algeria, K Murphy 'Children's rights in North Africa: An assessment of the status of children's rights through state party reports by Algeria, Egypt and Morocco' in Miamingi (n 10) 133 para 3.2.1.

42 African Children's Committee Report of the Mission to The Gambia (n 32) recommendation 1(d).

43 African Children's Committee Strategic Plan (n 20) 20 & 21.

44 African Children's Committee General Comment 5 on 'State party obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and systems strengthening for child protection' (2018) 36-37. See also CRC Committee General Comment 5, General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44 para 6) UN Doc CRC/GC/2003/5, 1993 para 37. See S Lorion *Defining governmental human rights focal points: Practice, guidance and concept* (2021) 23.

45 S Lagoutte 'The role of state actors within the national human rights system' (2019) 37 *Nordic Journal of Human Rights* 177, 187.

46 African Children's Committee Strategic Plan (n 20) 21.

and follow-up' (NMIRF) to lead on coordination of reporting across a range of treaties,<sup>47</sup> the African Children's Committee warns that these might not be 'suitable' for children's rights, presumably because they may lack the necessary expertise.<sup>48</sup> In any event, any structure for children's rights should liaise with the NMIRF.<sup>49</sup>

These mechanisms enable the collation of information from a range of ministries, and engagement with other stakeholders, including parliamentarians, national human rights institutions (NHRIs) and civil society, and they can also facilitate follow-up activities after Concluding Observations have been adopted. For instance, the Ministry of Labour and Social Welfare in Eritrea is designated as the focal point for both the African Children's Charter and CRC; and a national steering committee under the ministry responsible for children matters coordinated the reporting process for Kenya.<sup>50</sup> These coordination bodies can ensure clear lines of communication between relevant ministries, and that an appropriate budget is allocated to facilitate the reporting process, rendering the 'preparation of state party reports a day-to-day routine works as opposed to an event'.<sup>51</sup>

### 3.3 Participation and consultation

The African Children's Committee stresses the importance of consultation in the drafting of reports and in the subsequent monitoring of the implementation of Concluding Observations,<sup>52</sup> and that states should explain in the report how they have carried out such engagement.<sup>53</sup> Some states report that in the process of drafting, they consult with civil society and other stakeholders with, for instance, the initial report from Nigeria, seen as an example of good practice, citing its calls for public input including from children, and consultative and validation workshops.<sup>54</sup> In others, this is deficient, for example, with child participation being 'either marginal ... or lacking altogether'.<sup>55</sup>

The African Children's Committee believes NHRIs and civil society organisations (CSOs) play a particularly significant role with respect to article 43, both by being consulted in the drafting process of the state's report,<sup>56</sup> in the submission of their own shadow or alternative reports, and in the monitoring of any implementation, as detailed below.

47 OHCHR 'National mechanisms for reporting and follow-up: A practical guide to state engagement with international human rights mechanisms' UN Doc HR/PUB/16/1 (2016); Human Rights Council Res.42/30, UN Doc A/HRC/42/30 (2019); OHCHR *The status of national mechanisms for reporting and follow-up in Southern Africa: Practices, challenges and recommendations for effective functioning* (2021); OHCHR 'Regional consultations on experiences and good practices relating to the establishment and development of national mechanisms for implementation, reporting and follow-up' UN Doc A/HRC/50/64 (2022). See also J Sarkin 'The tensions that exist in the creation of national mechanisms for (implementation) reporting and follow-up (NMRF/NMIRF) to better comply with state reporting to United Nations treaty bodies' (2021) 29 *Tulane Journal of International and Comparative Law* 285.

48 African Children's Committee General Comment 5 (n 44) 36-37.

49 As above.

50 Eritrea Second and Third Combined Periodic Report (2014-2019) on the Implementation of African Charter on the Rights and Welfare of the Child (ACRWC) December 2020 para 9; Republic of Kenya The Second and Third State Party Periodic Report 2012- 2017 on the African Charter on the Rights and Welfare of the Child Presented to the African Union November, 2018 2.

51 African Children's Committee Report of the Experience-Sharing Forum (n 25) 11-13.

52 Guidelines for Initial Reports (n 21) para 3.

53 Guidelines on Periodic Reports (n 8) para 10.

54 Nigeria's Initial and First Country Periodic Report on the Implementation of the African Union (AU) Charter on the Rights and Welfare of the Child, July 2006 (2006) 158-164; Mezmur & Sloth-Nielsen (n 7) 604-605; African Children's Committee Report of the Experience-Sharing Forum (n 25) 9-10. See also GD Kangaude and N Murungi 'Comparative analysis of the study' in E Fokala, N Murungi & M Aman (eds) *The status of the implementation of the African Children's Charter: A ten-country study* (2022) 1 para 5.3.

55 Murphy (n 41) 196.

56 African Children's Committee Report of the Mission to The Gambia (n 32).

Among those who should be involved in the drafting are children themselves. The African Children's Committee's Guidelines on Child Participation devote a section to state reporting, recommending that children's views should be taken into account in both state processes and the drafting of complementary reports.<sup>57</sup> Although states have noted the involvement of children's organisations or children's parliaments when drafting their reports,<sup>58</sup> others query the reality of this: 'Children are hardly involved in a meaningful way in the reporting process.'<sup>59</sup> Furthermore, there is a balance to be met between the Committee's recommendation that during these consultations 'accompanying adults uphold their primary responsibility for the safety and welfare of the children in their care at all times',<sup>60</sup> and avoiding them being too 'adult-driven'.<sup>61</sup>

### 3.4 Content of the report

Article 43(2) of the African Children's Charter sets out what the report should contain, namely, 'sufficient information on the implementation of the present Charter to provide the Committee with comprehensive understanding of the implementation of the Charter in the relevant country; and ... shall indicate factors and difficulties, if any, affecting the fulfilment of the obligations contained in the Charter'.

Further detail is provided by Rule 71 of the African Children's Committee's Rules of Procedure, noting that the report should include 'all the necessary information including relevant legislation, policies and programmes', with the Committee being able to request additional information if this is not provided in the report.<sup>62</sup> For initial reports, statistical information and indicators should also be included.<sup>63</sup>

The African Children's Committee does not require states to adopt an article-by-article approach, but rather requests them to report on specific themes. For initial reports, these are general measures of implementation; definition of the child; general principles; civil rights and freedoms; family environment and alternative care; health and welfare; education, leisure and cultural activities; special protection measures; and responsibilities of the child.<sup>64</sup> For periodic reports, the themes vary a little, with separate sections on economic and social rights (instead of health and welfare, education and leisure); vulnerable children; harmful practices; and justice. Information on how the state has implemented previous Concluding Observations, or the challenges it has faced in doing so, should also be included.<sup>65</sup>

For periodic reports, the African Children's Committee requires that they are 'concise and structured', with 'simple and free-flowing language', in one of the AU languages,<sup>66</sup> and not exceeding

57 African Children's Committee *Guidelines on child participation* (2022) para 27.

58 African Children's Committee Report of the Mission to The Gambia (n 32). Members of the children's parliament were consulted in the preparation of the 4th and 5th periodic reports of the Federal Democratic Republic of Ethiopia, Combined 4th and 5th Periodic Reports of the Federal Democratic Republic of Ethiopia to the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) (2014-2019) in pursuance of article 43(1)(b) of the Charter and based on the Guideline on the Form and Content of Periodic State Reports, July 2020 (2020) 10.

59 Eriamiatoe (n 10) 46.

60 African Children's Committee *Guidelines on Child Participation* (n 57) para 27.

61 African Children's Committee Report of the Experience-Sharing Forum (n 25) 11-13.

62 Rules 71(1) & (2).

63 Guidelines for Initial Reports (n 21) para 6.

64 Guidelines for Initial Reports (n 21).

65 Guidelines on Periodic Reports (n 8) para 12.

66 Guidelines on Periodic Reports (n 8) para 9.

80 pages or 35 000 words.<sup>67</sup> The latter is in recognition of the approach of the CRC Committee, and that some reports were extensive in their length<sup>68</sup> making it challenging to translate.<sup>69</sup> Reports do now appear to keep to this limit, with evidence that the introduction of the Guidelines in November 2013 resulted in states that had previously submitted lengthy reports, subsequently adhering to the word limit.<sup>70</sup>

As noted earlier, in an attempt to ease the reporting burden, states are also given the opportunity, which they do not always use,<sup>71</sup> for their initial and periodic reports to use ‘elements’ of a report they have submitted to the CRC Committee and the African Commission, to fulfil their article 43 Charter obligations.<sup>72</sup> For periodic reports, the elements used should only be ‘to the extent of relevance and upon having been tailored for reports under the Charter’, and not be a simple duplication.<sup>73</sup> If the state does use these reports, then it must ‘specify the action taken by the state party in response to any recommendation made to it by the Committee and/or the UN Committee on the Rights of the Child’.<sup>74</sup>

The Guidelines have been criticised for providing insufficient information on what is required. For instance, with respect to the definition of a child (discussed in chapter 2 of this volume) there is no ‘detailed and clear guideline as to the level of detail to be included’, resulting in states not providing full information.<sup>75</sup> Reports themselves have been critiqued for the paucity of information in some sections,<sup>76</sup> detailing how rights are realised in practice,<sup>77</sup> and failing to understand the content of the Charter.<sup>78</sup>

### 3.5 Complementary reports: Shadow/alternative reports

State reports can inevitably lack detail and an objective perspective on the extent of compliance with African Children’s Charter obligations and, as with other human rights treaties, so the African Children’s Committee relies on ‘complementary’ reports from, for example, civil society and NHRIs.<sup>79</sup> These offer the Committee ‘additional, specific, credible and objective information that corroborates or provides alternative information to complement the report presented by the state party’ and, therefore, a ‘complete picture’ of children’s rights in that state.<sup>80</sup> Information in complementary reports also then

67 Guidelines on Periodic Reports (n 8) para 6.

68 See, eg, Nigeria’s initial and first periodic report, of over 150 pages, Nigeria’s Initial and First Country Periodic Report on the Implementation of the African Union (AU) Charter on the Rights and Welfare of the Child, July 2006 (2006).

69 Mezmur & Sloth-Nielsen (n 7) 611-612.

70 Eg, Kenya’s 2nd periodic report submitted in November 2018 was below 80 pages, compared with its first periodic report, submitted in June 2013, which was over 100 pages.

71 Eg, Egypt; Murphy (n 41) para 3.6.2.

72 Guidelines for Initial Reports (n 21) para 24.

73 Guidelines Periodic Reports (n 8) para 5.

74 Guidelines for Initial Reports (n 21) para 25.

75 Mezmur & Sloth-Nielsen (n 7) 606.

76 Eg, ‘The section of Mauritius’s state party report addressing the issue of child soldiers is even more lamentable. The report under child soldiers is only three lines long’; Mezmur & Sloth-Nielsen (n 7) 607.

77 Nyarko (n 36) 151-156.

78 Mezmur & Sloth-Nielsen (n 7) 607.

79 Rule 69(2).

80 Guidelines on Complementary Report, the Conduct of and Participation in Pre-session of the African Committee of Experts on the Rights and Welfare of the Child adopted on 15 November 2012 in Addis Ababa, Ethiopia and entered into effect on 14 December 2012 para 2.

enables the Committee to draft ‘concrete, country-specific, limited in time, realistic and implementable recommendation(s)’.<sup>81</sup>

Although initially an *ad hoc* arrangement,<sup>82</sup> shadow reporting was already common before the African Commission. Guidelines were adopted in 2012 by the African Children’s Committee to clarify both the aims of these reports and their content.<sup>83</sup> The Guidelines state that information in these reports should be ‘factual, reliable and objective’, based on evidence, obtained through a consultative process and should be there to improve the dialogue between the state and the Committee, not ‘condemn or [be] a mere judgmental or antagonistic piece’.<sup>84</sup> In no more than 7 500 words or 30 pages, the report should follow the format of the state report, and give examples of where the state has complied and those where it has not, as well as highlighting any gaps, challenges and good practices.<sup>85</sup> Those submitting the report are required to provide to the secretariat 15 hard copies in English and French, thereby potentially limiting the organisations or individuals to those that may have the resources to undertake such translations.

Reports should be submitted at least three months before the date of the pre-session and six months prior to when the state report is to be considered.<sup>86</sup> Unlike at the UN, where alternative reports are posted on the website of the OHCHR, and the African Commission, where there is no restriction on these reports being public, before the African Children’s Committee they are confidential unless it deems otherwise.<sup>87</sup> If the organisation or individual had previously submitted a report to the CRC Committee, it can be sent to the African Children’s Committee with an addendum on the specific African Children’s Charter provisions.<sup>88</sup>

CSOs with observer status and NHRIs with affiliate status before the African Children’s Committee are encouraged to consider how they can contribute to the state reporting process through submission of these reports.<sup>89</sup> Such reports, when submitted, have been employed as a tool by individual organisations as well as by consortium,<sup>90</sup> for instance, to highlight gaps in the state report, and to provide a focus on vulnerable groups, for instance, and can be of particular value when they draw upon evidence obtained first-hand by these organisations.<sup>91</sup> However, the Committee will still consider a state report in the absence of a complementary report.<sup>92</sup>

### 3.6 The reporting process before the African Children’s Committee

The reporting process before the African Children’s Committee consists of three stages: pre-session working group, plenary and Concluding Observations.

81 Guidelines on Complementary Report (n 80) para 2.

82 Mezmur & Sloth-Nielsen (n 7) 599.

83 Guidelines on Complementary Report (n 80).

84 Guidelines on Complementary Report (n 80) para 3.

85 Guidelines on Complementary Report (n 80) paras 4 & 5.

86 Guidelines on Complementary Report (n 80) para 5.

87 As above.

88 As above.

89 African Children’s Committee ‘Guidelines on observer status of non-governmental organisations (NGOS) and associations’ para A.V.5(c); African Children’s Committee ‘Guidelines for granting affiliate/associate status to national human rights institutions (NHRIs) adopted during the 32nd session of the African Children’s Committee November 2018.

90 Eg, see re Madagascar, Civil Society Consortium on Children’s Rights ‘Alternative report on the application of the African Charter on the Rights and Welfare of the Child 2005-2014’ (2014), as cited in A Miamingi ‘The effects of state reporting on the rights of the child in Southern Africa: Madagascar, Malawi, Mauritius and Tanzania’ in Miamingi (n 10) 186, 208.

91 See, eg, information submitted by a Kenyan CSO coalition; Jones (n 16) 10-11.

92 35th session of the African Children’s Committee 31 August-8 September 2020 Virtual ACERWC/RPT (XXXIII).

### 3.6.1 *Pre-session*

The purpose of the pre-session is to identify a list of issues and questions to be sent to the state, to which it will respond, before the oral examination of its report.<sup>93</sup> Once a state party report has been received by the Committee, CSOs and others are invited to submit their complementary reports. Authors of those reports must make a specific request to be invited to the pre-session.<sup>94</sup> The pre-session is held at least three months in advance before the state report is due to be considered.<sup>95</sup>

In the early days of the African Children's Committee, it was not clear who should be present during the deliberations. Although at one stage the Committee stated that it was only those 'who had information' on the state party under consideration who should be present,<sup>96</sup> this was clarified in the Guidelines adopted in 2012.<sup>97</sup> Thus, these meetings are confidential, on invitation only, although requests can be made by organisations or individuals to the secretariat three months in advance,<sup>98</sup> with those attending covering their own costs.<sup>99</sup> In this way, the process of identifying key issues and questions is made a little more transparent than that before the African Commission.

The Guidelines prescribe that there are opening presentations by individuals or organisations, limited to 10 minutes, after which AU or UN or other experts can make statements.<sup>100</sup> Questions can be posed by Committee members to which a response of a maximum of five minutes can be received.

Pre-sessional meetings can also be held with children who may have been invited to submit complementary reports.<sup>101</sup> In terms of a pre-session with children, although the state can 'supervise and coordinate' representatives (and together they should be representative of gender, geography and status), they are not permitted to provide any reports or information to those chosen to attend.<sup>102</sup> Children are instead encouraged to submit their own complementary reports.<sup>103</sup> At the pre-session meeting, children will be given an opportunity to discuss their report, as well as comment on the 'accuracy' of the state report.<sup>104</sup> Technical assistance is provided to the children attending these sessions and they should also be 'child friendly', confidential and held in private.<sup>105</sup> The meetings are held in the same week as those with the state. Issues submitted by children in their reports will also be taken into account in the drafting of the list of issues, to which the state will then be expected to respond.<sup>106</sup>

93 Guidelines on Complementary Report (n 80) para 6; AG Assefa 'Advancing children's rights in Africa: The role of the African Children's Charter and its monitoring body' (2013) 2 *Mekelle University Law Journal* 87-88; Viljoen (n 3).

94 Guidelines on Complementary Report (n 80) para 5.

95 Guidelines on Complementary Report (n 80) para 8.

96 Mezmur & Sloth-Nielsen (n 7) 599.

97 Guidelines on Complementary Report (n 80).

98 Guidelines on Complementary Report (n 80) paras 7 & 8(ix).

99 Guidelines on Complementary Report (n 80) para 7.

100 Guidelines on Complementary Report (n 80) para 8.

101 African Children's Committee Guidelines on Child Participation (n 57) 29-31. The CRC Committee also offers similar engagement; see, in general, 'Working methods for the participation of children in the reporting process of the Committee on the Rights of the Child' UN CRC/C/66/2.

102 African Children's Committee Guidelines on Child Participation (n 57) para 31.

103 As above.

104 As above.

105 As above.

106 ACERWC Guidelines on Child Participation (n 57) paras 38 & 39.

### 3.6.2 Plenary stage: Oral examination

At the plenary stage, states are invited to send a delegation ‘of persons from the relevant government organs’ to the session at which the report will be examined,<sup>107</sup> having been informed of the session at least 60 days in advance.<sup>108</sup> If no representative is sent, then the Committee’s Rules enable it to reschedule the examination to the next session and, if still no one attends, then it will proceed to examine the report in their absence.<sup>109</sup> A threat to do so may be sufficient to prompt attendance, as occurred with Seychelles in 2021.<sup>110</sup>

In practice, delegations have been composed of senior figures in government,<sup>111</sup> including ministers,<sup>112</sup> not only illustrating the degree of importance accorded the African Children’s Committee, but also increasing the likelihood that any recommendations will be acknowledged and ultimately implemented. States are also encouraged to include child representatives in their delegation, but only after the report has been submitted.<sup>113</sup>

After introduction of a series of questions, the African Children’s Committee will welcome the delegation who will then proceed to make introductory remarks. A couple of rounds of questions and responses by the delegation makes it a little easier to keep track of the answers, in contrast to, for example, the process before the African Commission where all questions are asked before the replies are given.<sup>114</sup> Children’s representatives, if present, will also be given the opportunity to make comments.

The African Children’s Committee reports in detail in its session reports on the responses of the state authorities to the specific question posed. This provides for greater transparency and accountability not apparent in the African Commission, thereby enabling stakeholders who are not present at the session to have information on the government’s response.

### 3.6.3 Concluding Observations and follow-up

Rule 73 of the African Children’s Committee’s Rules of Procedure requires it to adopt Concluding Observations ‘at the conclusion of the examination of the report’. Following a set format, after an outline of its international and African Children’s Charter obligations, the Committee will outline the positive steps the state has taken, before challenges and areas of concern.<sup>115</sup> Each set of Concluding Observations also calls for recommendations to be implemented and disseminated widely, that an update on the measures taken to implement the Concluding Observations to be included in the next periodic report and the date at which it should be presented.<sup>116</sup>

<sup>107</sup> Rule 70(3).

<sup>108</sup> Rule 70(2).

<sup>109</sup> Rule 70(4).

<sup>110</sup> Communiqué of the 38th ordinary session, 22 December 2021 para 6, whereby the Committee stated that it would consider the initial report at the 39th session of the Committee, to which Seychelles sent a delegation; see Concluding Observations and Recommendations of the African Children’s Committee on the Initial Report of the Republic of Seychelles on the Status of the Implementation of the African Charter on the Rights and Welfare of the Child, June 2022 para 1.

<sup>111</sup> A ‘high-level inter-ministerial composition’ was the delegation from Egypt; see Nyarko (n 36) para 172. See also Jones (n 16) 17-18; Viljoen (n 3).

<sup>112</sup> Eg, Cabinet Secretary, Minister of Labour and Social Protection presented the third periodic report of Kenya, 35th session of the African Committee (n 92) para 84.

<sup>113</sup> African Children’s Committee Report of the mission to The Gambia (n 32) para e.

<sup>114</sup> Eg, see with respect to the examination of Kenya, 35th session of the African Committee (n 92).

<sup>115</sup> Eg, African Children’s Committee Concluding Recommendations by the African Children’s Committee on the Liberia Report on the Status of Implementation of the African Charter on the Rights and Welfare of the Child.

<sup>116</sup> Rule 73(2).

Concluding Observations aim to ‘assist’ the state in implementing its Charter obligations.<sup>117</sup> In order for this to be achieved, they need not only be timely but also sufficiently specific to be implementable.<sup>118</sup> With respect to the former, although they should be transmitted to the state within 30 days after the session at which they were adopted, and subsequently posted on the African Children’s Committee’s website,<sup>119</sup> this has not always occurred<sup>120</sup> and it is sometimes difficult to tell if this has been done on every occasion, as some of the Concluding Observations are not dated.

In addition, while some of the recommendations in the Concluding Observations are very specific (for instance, ‘[c]hildren in pre-trial detention at the Monrovia Central prison are kept in the same environment where adults are also held. Hence, the Committee urges the state party to create separate detention facility for children’),<sup>121</sup> others are more vague.<sup>122</sup> The African Children’s Committee has been criticised in this regard for erring too much on the side of diplomacy rather than being more specific in what it is expecting states to do.<sup>123</sup>

The visibility of African Children’s Committee recommendations at the regional and domestic level may increase the likelihood of their implementation, but is often lacking.<sup>124</sup> It therefore is to be welcomed that the Committee’s Activity Report includes an overview not only of the oral examination, but also the recommendations made to the state.<sup>125</sup> Furthermore, the Concluding Observations, along with the state reports and other related reports, and comments from the state, are also sent to the AU Assembly and other organs.<sup>126</sup> If there is a national mechanism or lead institution responsible for the reporting process and a national action plan,<sup>127</sup> these can also facilitate the implementation of the Concluding Observations.<sup>128</sup> The involvement of children in any implementation processes can also have an impact.<sup>129</sup>

### 3.6.4 Failure to comply with reporting obligations

As noted above, the reporting process before the African Children’s Committee suffers the same challenges faced by other treaty bodies. A concerted campaign by the Committee in 2014 to encourage the submission of reports by states bore fruit, with an initial ‘flood of reports’ and subsequent ‘steady flow’ of reports being submitted.<sup>130</sup>

117 Rule 73(1).

118 Assefa (n 91); R Murray & C Sandoval ‘Balancing specificity of reparation measures and states’ discretion to enhance implementation’ (2020) 12 *Journal of Human Rights Practice* 101.

119 Rule 73(2).

120 Viljoen (n 3).

121 African Children’s Committee Concluding Recommendations on the Liberia Report (n 115) 33.

122 See, eg, concerns raised by some states; Eriamiatoe (n 11) 51-52; and in relation to Egypt, Concluding Recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the Arab Republic of Egypt: Report on the status of implementation of the African Charter on the Rights and Welfare of the Child (2008); Murphy (n 41) 158.

123 Viljoen (n 3).

124 Kangaude & Murungi (n 54) para 5.4, regarding also issues of translation.

125 Report of the African Committee of Experts on the Rights and Welfare of the Child, Executive Council, February 2022, item III.

126 Rule 73(3).

127 See, eg, with respect to Ethiopia and Cameroon, Kangaude & Murungi (n 54) para 5.4.

128 See with respect to Egypt, eg, where the National Council for Childhood and Motherhood (NCCM) is tasked with following up on the Concluding Observations, but where this is no action plan; Nyarko (n 37) 151-152.

129 Eg, see Ethiopia and Mozambique, Kangaude & Murungi (n 54) 13.

130 J Sloth-Nielsen ‘The African Charter on the Rights and Welfare of the Child’ in T Boezaart (ed) *Child law in South Africa* (2017) 424, 437-438.

However, since then the African Children's Committee has acknowledged the 'downward trend' in submission of reports,<sup>131</sup> and the fact that reports may not follow the reporting guidelines.<sup>132</sup> It has approached this in the spirit of cooperation and constructive dialogue. Its approach has therefore been, first, to explore why the state has failed to comply through, for example, workshops and its missions, and subsequently by providing assistance in understanding the African Children's Charter.<sup>133</sup> It has drawn upon the support of UNICEF to also provide the necessary assistance to states, with some degree of success.<sup>134</sup>

In addition, in terms of failure to submit reports, although states will be reminded of their obligations through the channel of the African Union Commission (AUC) Chairperson, this is still 'in the spirit of dialogue'.<sup>135</sup> If this does not prompt a response, then, at most, it will 'consider the situation as it deems necessary', and 'shall include a reference to this effect' in its report to the AU Assembly.<sup>136</sup> In general, however, it appears much more comfortable in taking 'every opportunity' to engage with states,<sup>137</sup> whether that be at Committee sessions or AU meetings, or members contacting governments in their home states 'to establish a rapport',<sup>138</sup> and building their capacity.<sup>139</sup> The African Children's Committee has allowed for submission of combined reports, of which states have taken advantage.<sup>140</sup>

A key tool in prompting submission of reports are advocacy missions, enabling state authorities to highlight some of the challenges they face and for the Children's Committee to offer pragmatic solutions. These have resulted in states submitting their reports. For example, the government upheld its promise, made during an advocacy mission to Botswana in June 2021,<sup>141</sup> to submit its report by the end of December that year.<sup>142</sup> However, despite the effectiveness of such direct in-country engagements, these resource-intensive activities can neither be carried out for every country nor as frequently as one might wish.<sup>143</sup>

Although the African Children's Committee has been criticised for '[leaning] too far towards deferring to the state', this approach 'to help and assist' rather than 'name and shame' is not unique to the Children's Committee and is a criticism also directed to CRC.<sup>144</sup> To counter this concern, it has

131 African Children's Committee Strategic Plan (n 20) 38-39.

132 African Children's Committee Report of the Experience-Sharing Forum (n 25) 7. See also Assefa (n 93) 87-88.

133 African Children's Committee Strategic Plan (n 20) 38-39.

134 African Children's Committee Report of the Experience-Sharing Forum (n 25) 10-22.

135 Rule 75(2); African Children's Committee Strategic Plan (n 20) 32.

136 Rule 75(3).

137 African Children's Committee Strategic Plan (n 20) 33.

138 African Children's Committee Strategic Plan (n 20) 38-39.

139 African Children's Committee Strategic Plan (n 20) 25-26.

140 Eg, see Uganda, which combined its second and third periodic report, Periodic Report to the African Children's Committee on the Implementation of the African Charter on the Rights and Welfare of the Child (2020).

141 African Children's Committee Report from an Advocacy Mission to the Government of the Republic of Botswana, 22-26 June 2021 para 10.

142 Republic of Botswana, Combined 1st, 2nd, 3rd, 4th, 5th, 6th and 7th report submitted by the Republic of Botswana to the African Children's Committee on the Implementation of the African Charter on the Rights and Welfare of the Child (2003 -2021) October 2021.

143 African Children's Committee Strategic Plan (n 20) 17.

144 Talking about CRC, Veerman (n 5) 672.

been recommended that more specific recommendations be adopted by the Committee,<sup>145</sup> an approach which can facilitate implementation by the state.<sup>146</sup>

### 3.7 Implementation and monitoring

The African Children's Committee has reflected on the lack of implementation of its recommendations, attributing this to 'inadequate national legislative frameworks harmonised with the Charter; lack of coordination, lack of political commitment, and insufficient budgetary allocation'.<sup>147</sup> States have acknowledged that a lack of resources, competing priorities and long-standing cultural beliefs also impeded implementation.<sup>148</sup>

Considering follow-up to be a 'core' element of its promotional mandate,<sup>149</sup> the Committee has addressed these challenges by calling on state parties in March 2022 to undertake a range of activities, including creating national mechanisms; strengthening coordination across departments; developing a roadmap on implementation; ensuring that its recommendations are taken into account when there is budgetary allocation; providing sufficient resources; and raising awareness of children's rights.<sup>150</sup> States should also ensure that children themselves can access the Concluding Observations and, in any of the Committee's follow-up visits, they should be facilitating meetings with children.<sup>151</sup>

States have commented on how they disseminate Concluding Observations across all ministries, as well as civil society and other stakeholders,<sup>152</sup> developed action plans and roadmaps that identify respective responsibilities of ministries and timelines,<sup>153</sup> and translated Concluding Observations to facilitate their dissemination.<sup>154</sup>

#### 3.7.1 *Advocacy and follow-up missions*

The Rules of Procedure provide for a process for following-up on the Concluding Observations. This is part of the promotional mandate of the African Children's Committee, with a specific focus on urgent matters.<sup>155</sup> The Committee can undertake 'advocacy missions' that aim to 'convey key messages to states' and can focus on 'compliance with the reporting obligation of states'.<sup>156</sup> 'Follow-up missions' are there to determine the compliance with the recommendations, including Concluding Observations, of the Committee.

<sup>145</sup> Viljoen (n 3).

<sup>146</sup> Murray & Sandoval (n 118).

<sup>147</sup> Resolution 16/2022 of the African Children's Committee Working Group on Implementation of Decisions and Recommendations of the African Committee of Experts on the Rights and Welfare of the Child, 16 March 2022.

<sup>148</sup> African Children's Committee Report of the Experience-Sharing Forum (n 25) 13-18.

<sup>149</sup> Rule 74(1).

<sup>150</sup> Resolution 16/2022 (n 147).

<sup>151</sup> African Children's Committee Guidelines on Child Participation (n 57) para 41.

<sup>152</sup> Eg, see experience of Cameroon and Mauritius; African Children's Committee Report of the Experience-Sharing Forum (n 25) 13-18; Jones (n 16) 37.

<sup>153</sup> Eg, in Cameroon; African Children's Committee Report of the Experience-Sharing Forum (n 25) 13-18.

<sup>154</sup> Eg, in Tanzania; African Children's Committee Report of the Experience-Sharing Forum (n 25) 13-18.

<sup>155</sup> Rule 74.

<sup>156</sup> <https://www.acerwc.africa/en/missions/advocacy-missions> (accessed 15 October 2024).

A follow-up mission was undertaken to Liberia in November 2019 ‘to monitor the level of implementation of the Concluding Observations and recommendations’.<sup>157</sup> This was carried out through a ‘constructive dialogue with representatives of the government of Liberia to learn about the progress achieved, the challenges faced, and opportunities in the implementation of the Concluding Observations and recommendations’, as well as to ‘boost collaboration’ with other stakeholders and ‘enhance and accelerate the implementation of its recommendations’.<sup>158</sup>

During these follow-up missions, the African Children’s Committee will meet with government officials as well as CSOs, and organise ‘consultative workshops’ with key stakeholders.<sup>159</sup> States are required to organise consultations with children during these follow-up missions and their views will be included in any report from the mission.<sup>160</sup> The report in part follows the format of the Concluding Observations but this is not consistent, and the mission report does not always pick up on every recommendation made in the Concluding Observations.<sup>161</sup> Although the effectiveness of these missions can be difficult to discern, there is some evidence that on-site presence increases the visibility of the Committee, which in turn can increase the likelihood of the implementation of their recommendations.<sup>162</sup>

### 3.7.2 Role of CSOs and NHRIs

As with other aspects of the reporting process, CSOs and NHRIs play essential roles in determining the effectiveness of the process.<sup>163</sup> They have been seen to contribute to the development, for example, of national action plans, raise awareness of the Concluding Observations,<sup>164</sup> and in the subsequent feeding back to the African Children’s Committee on the extent of their implementation.<sup>165</sup> NHRIs can provide an independent perspective on the state’s compliance with the Charter obligations, as well as, according to the Children’s Committee, a ‘neutral and objective space’ subsequently to engage in the monitoring of implementation.<sup>166</sup>

For some time there was no framework through which NHRIs could interact with the Committee.<sup>167</sup> Now the Guidelines for Granting Affiliate Status to NHRIs detail how they can engage with the Committee during the reporting process as well as in the monitoring of the implementation of Concluding

157 African Children’s Committee Report of the African Children’s Committee on the Follow-up Mission Conducted to Monitor the Implementation of its Concluding Observations and Recommendations to the Republic of Liberia, 6-8 November 2019, January 2020 paras 1 & 2.

158 As above.

159 African Children’s Committee Report of the African Children’s Committee on the Follow-up Mission to Liberia (n 157) para 6.

160 African Children’s Committee Guidelines on Child Participation (n 57) paras 40-42.

161 Eg, the Concluding Observations note child mortality from preventable diseases but this is not mentioned in the mission report.

162 With respect to the UN Human Rights Committee in Morocco and Rwanda, A Ibrahim ‘Raising the bar: The role of the reporting procedure of the United Nations Human Rights Committee in the Protection of Human Rights in Africa’ (2022) 9 *Groningen Journal of International Law* 282.

163 See, eg, J Sloth-Nielsen ‘The role of national human rights institutions in enhancing the impact of children’s rights reporting in Africa’ in Miamingi (n 10) 283.

164 Nyarko (n 36) 151-152.

165 African Children’s Committee Report of the Experience-Sharing Forum (n 25) 13-18; Resolution 16/2022 (n 147); African Children’s Committee Strategic Plan (n 20) 37. See also Ethiopian Human Rights Commission, Kangaude & Murungi (n 54) 20.

166 African Children’s Committee Strategic Plan (n 21) 36. See also D Zipoli ‘National human rights institutions and the United Nations human rights treaty body system: A rebuttal to the sceptics’ in J Gomez & R Ramcharan (eds) *National human rights institutions in Southeast Asia* (2020) 55.

167 African Children’s Committee Report of the Experience-Sharing Forum (n 25) 13-18.

Observations. This includes assisting in the dissemination of the Concluding Observations,<sup>168</sup> as well as the Committee then requesting information from the NHRI on their implementation.<sup>169</sup>

## 4 Domestic impact of state reporting

The extent to which the state reporting process under the African Children's Charter impacts on the law, policy and practice in any state is difficult to measure.<sup>170</sup> First, the inter-relationship between not only the content of the rights in the African Children's Charter and CRC as well as the integrated reporting for both instruments, makes it difficult to distinguish any impact CRC and its reporting process has from that of the African Children's Charter. Indeed, CSOs and other stakeholders may make strategic decisions to focus their attention on CRC when it is perceived to be 'the key driver for subsequent domestication of child rights and therefore for child related policies'.<sup>171</sup> The African Children's Charter may therefore benefit from the profile and influence of the CRC state reporting process and any initiatives taken therein.<sup>172</sup>

Where evidence is available, it does appear that some concerns raised in Concluding Observations have been addressed by state parties, even if a causal link cannot be directly made with the measures taken and the Concluding Observations.<sup>173</sup> For instance, Namibia has been reported to amend its legislation to ensure free basic education and facilitate access to payment of grants.<sup>174</sup> Egypt made progress on waiving reservations to the Charter, withdrawing its reservation (albeit only on one article (article 21(2)), and has taken actions on dissemination of the Charter, and adopted measures to provide for facilities for birth registration and birth certificates to be issued.<sup>175</sup>

More generally, the reporting process can raise awareness of children's rights in general, as well as alerting the state authorities to gaps in protection and the need for coordination and a collaborative approach across ministries.<sup>176</sup>

Furthermore, the broader impact of the Charter on domestic legislation has on occasion been acknowledged, with new laws being introduced, and amendments to legislative provisions incorporating principles in the African Children's Charter.<sup>177</sup> Mezmur and others have lamented the lack of reference by national judiciaries to the jurisprudence of the African Children's Committee, thereby preventing it from being embedded at the national level.<sup>178</sup> However, there are many jurisdictions in which the African Children's Charter have been cited, if not the Committee's case law, including in Tanzania, South Africa and Kenya. The African Children's Committee could use the state reporting process

168 African Children's Committee Guidelines for Granting Affiliate/Associate Status (n 89) para 6(1)(e).

169 African Children's Committee Guidelines for Granting Affiliate/Associate Status (n 89) para 6(2).

170 See, eg, A Adeola 'Moving beyond baby steps? An examination of the domestic implementation of Concluding Observations from state parties' reports on the African Children's Charter' (2023) 26 *Potchefstroom Electronic Law Journal* 1. With respect to CRC, see UM Assim 'The effects of reporting on the realisation of children's rights in Central Africa (Chad, Congo and the DRC)' (2020) University of the Western Cape, <https://repository.uwc.ac.za/handle/10566/7471>. (accessed 15 October 2024).

171 Eg, in Kenya, see Jones (n 16) 2.

172 Jones (n 16) 12-13.

173 Eriamiatoe (n 10) 48-49.

174 Basic Education Act 3 of 2020, and Child Care and Protection Act 23 of 2015; see Kangaude & Murungi (n 54) 24.

175 Nyarko (n 36) 151-156.

176 African Children's Committee Report of the Experience-Sharing Forum (n 25) 9-10.

177 Eg, in Egypt, see Mezmur (n 12) 696.

178 Mezmur (n 12) 696.

to request states to cite the African Children's Charter in national case law. This will increase the 'jurisprudential value' of the African Children's Committee's jurisprudence.<sup>179</sup>

## 5 Conclusion

The African Children's Committee has taken innovative steps to lighten the reporting burden on states, facilitate the participation of children in the process, and has not been shy in drawing upon good practice from other bodies. Its missions have been shown to have impact in encouraging the submission of reports by states and increasing the visibility of its mandate. However, just as other treaty bodies suffer from the shortcomings of the state reporting system, so does the African Children's Committee, recognising that 'state reporting challenges it faces are not unique to it'.<sup>180</sup> It is encouraging, therefore, that the Children's Committee sees itself as playing a role in engaging with discussion on reforms to the reporting processes at the international level.<sup>181</sup> As national mechanisms to coordinate action at the national level become more embedded and gain experience, so it is hoped that they can take on the cycle of reporting, leading to the drafting of quality reports, and a process for coherent follow-up.

179 Mezmur (n 12) 699.

180 African Children's Committee Strategic Plan (n 20) 38-39.

181 As above.