Chapter 12

The African Committee of Experts on the Rights and Welfare of the Child

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1 Introduction

On the back of the 1979 UNESCO Year of the Child, the Assembly of the Organization of African Unity (OAU) adopted a Declaration on the Rights and Welfare of the African Child.1 Whilst not legally binding, this instrument nevertheless ensured that the topic of children’s rights was firmly placed on the OAU agenda, with states being encouraged within the domestic context to engage in introspection with regards to the rights and welfare of the child and to adopt positive measures in this regard.2 Whereas the Declaration acknowledged the various United Nations (UN) efforts and affirmed existing international standards in respect of the rights of the child, it also hinted at a distinctly African *leitmotief*, one that would be picked up on and developed more fully in later instruments such as the African Charter on Human and Peoples’ Rights (African Charter),3 adopted in June 1981, two years after the Declaration.

Given the apparent earlier importance attached to the rights of the child by the OAU, it is perhaps surprising that whilst children were clearly to benefit from the rights afforded to ‘everyone’ within the African Charter, express reference to children as rights bearers was made only once. Thus, Article 18(3) somewhat obliquely provided for the protection of children alongside women, as ‘stipulated in international declarations and conventions’. The lack of specificity of this provision in detailing the rights of the child and the failure of international instruments,

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2 Thus, for example, states were encouraged to: consider the creation of domestic mechanisms to advocate for the child (Article 1), examine ‘cultural legacies and practice[s] that are harmful to normal growth and development of the child’ (article 3), review legislation (Article 2), take measures to abolish harmful cultural practices (article 3), formulate and implement programmes in respect of health, nutrition and education and expand services to the most deprived (Article 6).
3 OAU Doc. CAB/LEG/67/3 rev. 5.
in particular the UN Convention on the Rights of the Child (CRC)\(^4\) adopted in 1989 to address issues of special concern to Africa, are frequently cited as providing the impetus for the adoption in 1990 of the first regional treaty on the rights of the child, namely the African Charter on the Rights and Welfare of the Child (ACRWC).\(^5\) The latter instrument not only provided for a host of civil and political as well as economic and social rights to be accorded to ‘every person below the age of 18 years’, but further mandated the creation of an African Committee of Experts on the Rights and Welfare of the Child – assigning to it broad promotional as well as protectional functions.\(^6\) This chapter considers the normative, as well as institutional framework of the ACRWC, focusing specifically on the work of the African Committee of Experts on the Rights and Welfare of the Child (the African Committee of Experts).

\section{The African Charter on the Rights and Welfare of the Child}

The ACRWC was adopted on 11 July 1990, less than eight months after the CRC.\(^7\) Unlike the latter instrument, which entered into force a little under a year after it was adopted, the ACRWC took almost a decade to receive the requisite number of ratifications allowing it to ultimately enter into force on 29 November 1999. The travaux préparatoire of the ACRWC, reveals that rather than being intended as a simple elaboration of article 18(3) of the African Charter or as a replacement of the CRC, the instrument was proposed as ‘...a complementary mechanism to that of the UN in order to enhance the enjoyment of the rights of children in Africa’.\(^8\)

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\item \(^4\) UN Doc. A/44/49 (1989), entered into force 2 September 1990.
\item \(^6\) See Article 2 and Articles 32 and 42 of the ACRWC respectively. The term child is more strictly defined in ACRWC than in the CRC, with article 1 of the latter instrument adding the following qualifier, – ‘a child as every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier’.
\item \(^8\) Draft Resolution on the Signature and Ratification of the African Charter on the Rights and Welfare of the Child, CM/Draft/Res.13 (LXIII) Rev.1. This is further reinforced by the fact that the functions of the Committee include performing any other task entrusted to it by the UN (see Article 42(d) of the Children’s Charter) and by the fact that the reporting guidelines adopted by the Committee on the Rights and Welfare of the Child enable States Parties to ‘resubmit’ to the African Committee elements of reports already submitted to the UN and further requires that reports to the African Committee specifies ‘the action taken by the State Party in response to any recommendation made to it by the [African] Committee and/or UN Commit-