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SC12365

EXECUTIVE COUNCIL

Twenty- fifth Ordinary Session

20 - 24 June 2014

Malabo, EQUATORIAL GUINEA

EX.CL/858(XXV)
Original: English

**REPORT OF THE AFRICAN COMMITTEE OF EXPERTS ON
THE RIGHTS AND WELFARE OF THE CHILD
(ACERWC)**

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INTRODUCTORY NOTE

1. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) is established during the 37th Session of the Assembly of Heads of State and Government held in Lusaka in July 2001 in accordance with Article 32 of the African Charter on the Rights and Welfare of the Child (ACRWC). The ACERWC is mandated inter alia, to promote and protect the rights of the African Child pursuant to the provisions of the Charter.

2. Pursuant to its mandate under the ACRWC, the ACERWC has undertaken several activities including its statutory Sessions. During the Sessions the Committee has considered State Party Reports, received and considered communication, held the day of general discussion and adopted various documents including the Guidelines for Periodic State Party Reports and General Comments on the provisions of the Charter. The Committee has also launched a Campaign which aims at securing a universal ratification of and reporting on the implementation of the ACRWC. Moreover, the ACERWC has taken steps towards further strengthening its collaboration with other AU Organs including the AU Peace and Security Council (PSC), the African Commission on Human and Peoples' Rights (ACHPR) and the African Court on Human and Peoples' Rights (AfCHPR).

3. This Report therefore summarizes the Recommendations and Decisions of the 22nd and 23rd Sessions of the Committee held from 04th to 08th November 2013 and 07th to 16th April 2014 respectively in Addis Ababa, Ethiopia, as well as other activities undertaken.

4. The Report is hereby submitted for consideration by the AU Executive Council.

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*African Committee of Experts on the Rights
and Welfare of the Child (ACERWC)*



UNION AFRICAINE

*Comité Africain d'Experts sur les Droits et le
Bien-être de l'Enfant (CAEDBE)*

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"An Africa Fit for Children"

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Introduction

1. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) was established during the 37th Session of the Assembly of Heads of State and Government held in Lusaka in July 2001 in accordance with Article 32 of the African Charter on the Rights and Welfare of the Child (ACRWC). The Committee is mandated *inter alia*, to promote and protect the rights of the African child pursuant to the provisions of the Charter.

2. Currently, the Committee is composed of members from Ethiopia (Chairperson) Algeria, South Africa and Tanzania (Vice-Chairpersons); Zimbabwe (Rapporteur); and Burundi, Egypt, Libya, Niger, Rwanda, and Togo.

3. Pursuant to its mandate under the Charter, the Committee has undertaken several activities including consideration of State Party reports on the implementation of the Charter, consideration of Communications (individual complaints), Days of General Discussions on selected articles of the Charter, promotional and follow-up missions, adoption of various documents and many other activities as stated in this Report.

4. This Report summarizes the Recommendations and Decisions of the 22nd and 23rd Session of the Committee held from 04th to 08th November 2013 and 07th to 16th April 2014 both in Addis Ababa, Ethiopia as well as other activities undertaken within this timeframe.

5. The Report is hereby submitted for consideration by the Executive Council.

I. Decisions and Recommendations of the 22nd and 23rd Ordinary Sessions of the ACERWC

1. Decisions and Recommendation of the 22nd Session

1.1. Day of General Discussion on Discrimination and Violence against Girls in Africa

6. During this Session, the Committee held a Day of General Discussion on Discrimination and Violence against Girls in Africa. During the discussion, the Committee pointed out the fact that most girls in Africa are discriminated and neglected. In many communities, girls face, among others, physical, sexual and psychological violence, and are discriminated against through inequalities in access to resources. Particularly, it was indicated that in times of conflict and crisis they are special targets of violence and discrimination. The Committee therefore emphasized the fact that discrimination and violence against girls in Africa is one of the most pressing challenges facing the continent. The Day benefitted from inputs by a number of partners including

the UN Special Representative on Violence against Children. Following the General Discussion, the Committee issued the Addis Ababa Declaration on Ending Discrimination and Violence against Girls in Africa. The Declaration identified the various major stakeholders to address the challenges faced by girls and outlines the measures they should undertake to ensure that discrimination against girls is the concern of all and provide a conducive legal and policy environment in advancing child protection issues in the areas of advocacy, research, litigation and support for victims across Africa.

7. In addition, the Declaration calls upon Member States, among others, to Ratify all the relevant regional child rights and international humanitarian instruments and fully harmonize their national laws with the relevant standards, and criminalize and prosecute to the fullest extent of the law all forms of violence and discrimination committed against children and take all appropriate measures to prevent those violations from occurring. It also calls upon the African Union to endorse the Declaration, establish conceptual clarity around what constitutes violence and discrimination against girls; provide the necessary budgetary and technical support to enable the ACERWC to further integrate the Declaration into existing national plans of action; and undertake a periodic review of the progress made in its implementation.

1.2. Adoption of the Guidelines on the Form and Content of Periodic State Party Reports Submitted Pursuant to Article 43(1)(b) of the ACRWC

8. Pursuant to article 43 of the ACRWC, each State Party has undertaken to submit reports on the measures it has adopted to give effect to the provisions of the Charter and on the progress made in the enjoyment of the rights guaranteed under the Charter. The initial report is due within two years of the entry into force of the Charter for the State Party concerned, and thereafter, every three years for the periodic reports.

9. The Committee therefore adopted Guidelines on the Form and Content of State Party Periodic Reports on the Implementation of the Charter. These guidelines are intended to assist and guide State Parties in fulfilling their reporting obligations. It contains directions on what format periodic reports should take and on what information should be included in the reports. The guidelines relating to the content of the reports are meant to ensure that State Parties provide the ACERWC with a comprehensive understanding of the implementation of the Charter in State Parties. These guidelines apply to periodic reports that are required to be submitted every three years.

2. Recommendations and Decisions of the 23rd Session

2.1. Day of General Discussion on Ending Child Marriage in Africa

10. During this Session, the Committee held a Day of General Discussion on the theme 'ending child marriage in Africa'. Among others, the Day of the General Discussion aimed at supporting the AU Campaign on Ending Child Marriage in Africa. During the Day the Committee discussed various issues and mechanisms on ending child marriage in Africa. The Committee also made clear and concrete recommendations to State Parties and key stakeholders in taking the AU Campaign forward. In addition, the Committee also agreed and welcomed the request from the African Union Commission Department of Social Affairs for the Committee to appoint,

among its members, a Special Rapporteur, on Child Marriage that will be instrumental to advocate for change in the local, national, and regional levels to end child marriage in Africa.

11. Following this Discussion, the ACERWC adopted a Declaration on Ending Child Marriage in Africa. The Declaration identified the major stakeholders and outlined the measures they should undertake to ensure that ending child marriage is the concern of all. As a result, the Declaration calls upon The African Union Commission to: Endorse this Declaration on ending child marriage;

- Provide the necessary budgetary and technical support to enable the ACERWC to advocate for the integration of the Declaration into existing national plans of action; and undertake a periodic review of the progress made in its implementation at national level; and
- Take child marriage as a policy priority and support policy action in addressing the rights of children and promote common standards on children rights by promoting adoption and implementation of the legal instruments at regional and national level.

12. Members States of the African Union, among others to:

- Ratify the ACRWC and all the relevant international child rights instruments and fully harmonise their laws and policies with the international and regional child rights standards on child marriage, and for Member States who have placed reservations to withdraw them;
- Put in place mechanisms to operationalize existing legislation relating to child marriage and the rights of children in general including development of national action plans and provision of legal aid for enforcement of the rights of children to be free from child marriage;
- Develop and implement transformative social policies which include communities, traditional and religious leaders as central stakeholders, and which recognize children and child-led initiatives as key players in mitigating child marriage.

2.2. Consideration of the State Party Report of Liberia

13. In accordance with Article 43 of the ACRWC the Committee received and considered the Initial Report of the Government of Liberia. After taking the floor, the delegation of the Republic of Liberia gave a briefing on the implementation of the Charter in the State Party. Following the briefing, the Committee Members raised a number of issues for clarification including on issues relating to the health of Children under 5 years, access to education of children with disabilities and facilities for people with disabilities. The existence of plural legal systems, including customary, religious and civil laws, and how to use it to support the full realization of children's rights in Liberia was also discussed. Issues related to challenges regarding inter-country

adoption, the quality of education, the administration of juvenile justice, and the low rate of birth registration have also been discussed during the constructive dialogue. At the end of the constructive dialogue, the Chairperson of the Committee commended the Government of Liberia for submitting the Initial Report, and for all the efforts that are being deployed on the ground to create a Liberia fit for its children, and promised that Liberia would receive the recommendations of the Committee in due course.

2.3. Day of the African Child (DAC)

14. As it is a practice every year, the Committee decided on the theme of the 2015 Day of the African Child to be **'25 years after the adoption of the African Children's Charter: Accelerating our collective efforts to end child marriage in Africa'**. The Committee believes that the theme is very timely especially for 2015 when the Charter celebrates 25 years of existence. It is also the opinion of the Committee that this theme will help to follow-up on the 2014 DAC theme which is on education.

2.4. Adoption of the General Comment on Article 6 of the Charter

15. General Comments or Recommendations are tools used by treaty bodies like the ACERWC to provide a substantive elaboration of the meaning of treaty provisions, as well as an in-depth analysis of procedural concerns regarding the respective instrument. Article 42 of the ACRWC gives such mandate to the ACERWC and accordingly the Committee developed and adopted a General Comment on Article 6 of the ACRWC, which is on 'Name and Nationality'. The General Comment notes the fact that notwithstanding its heading (Name and Nationality), Article 6 recognizes three interlinked rights namely the right to a name (Art 6 (1)), the right to birth registration (Art 6 (2)) and the right to a nationality (Art 6 (3)). It also provides for state obligations with regard to the implementation of the right to a nationality (Art 6 (4)) and underscores the need to address childhood statelessness.

16. It also took into account the existence of up to date, comprehensive and international law-compliant legislation underpinning civil registration as fundamental to the fulfilment of the child's right to a name, and to registration of birth. Legislation should specify, inter alia: the regulation of the role of government agencies involved in civil registration; the regulation of any semi government authorities involved in civil registration; the regulation of time periods for the registration of birth; details concerning the attribution of names and surnames in accordance with both custom and practice (albeit with due attention to the principles of non-discrimination on the basis of gender and birth status); the regulation of the use of technology to ensure that civil records maintain their probative value; regulations related to costs, access, and privacy of data; and regulation of late and delayed registration procedures.

17. Like other children's rights, the General Comment states that, the rights to a name, to birth registration and to acquire a nationality cannot be fully implemented unless the cardinal principles of children's rights are carefully observed. The implementation of those rights requires taking into account the best interests of the child, non-discrimination principles, the child's survival, development and protection as well as his/her participation. It is also indicated in the General Comment that the implementation

of Article 6 also depends on good understanding of the principle of interdependence and indivisibility of children's rights in general and the interdependence and indivisibility of the three rights provided for under Article 6 in particular. The Committee looks forward to engaging with stakeholders, in particular, States Parties, in popularizing the contents of the General Comment to offer assistance to States in implementing Article 6 of the Charter.

2.5. Adoption of the Rules of Procedures

18. The ACERWC, in accordance with Article 38 of the ACRWC adopted the revised Rules of Procedures. These rules regulate the organization and establish the procedure of the Committee. Through the process of revision, the necessary measures have been undertaken to harmonize this document with the rules of procedures of the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights. The Committee would like to express its gratitude to the members of these two Organs for offering their views on the Draft Rules of Procedure before their adoption.

2.6. Adoption of a Strategy to Promote and Protect the Rights of Children with Disabilities

19. The Committee developed and adopted a strategy to Promote and Protect the Rights of Children with Disabilities in Africa which is in part informed by its follow-up to the celebration of the DAC in 2013 under the same theme. The Strategy has gratefully benefitted from inputs by a number of Member States. The vision of this strategy is: to promote and protect the rights of children with disabilities, where children with disabilities fully enjoy all their human rights and fundamental freedoms on an equal basis with others; their dignity is ensured and where their self-reliance and active participation in the community is promoted. The strategy recommends that Member States should adopt a three-fold approach to develop a medium term strategy consisting of development, implementation and monitoring and evaluation which should all receive due attention in the process of respecting, protecting and fulfilling the rights of children with disabilities. The strategy finally spells out the roles and responsibilities of the Member States, the ACERWC and partners.

2.7. Adoption of the Logo of the ACERWC

20. In order to raise awareness on the mandate of the Committee, and by so doing increase its visibility and public recognition, the ACERWC adopted its logo during its 23rd Ordinary Session. The logo accompanied with a slogan "An Africa Fit for Children", reflects the vision and mission the ACERWC wants to achieve for the wellbeing of children in Africa. It reproduces all the features of the AU Logo, which gives the ACERWC the institutional backup to effectively discharge its mandate.

21. Looking at the features, as it appears as a letterhead of this Report, the boy and girl child at the heart of the continent, with their hands up, symbolize the hopes and aspirations as the future of Africa. The palm leaves shooting up on either side of the outer circle stand for peace. The gold circle again symbolizes Africa's wealth and bright

future. The plain map of Africa without boundaries in the inner circle signifies African unity. The small interlocking rings at the base stand for African solidarity and the blood shed for the liberation of Africa.

III. Other Activities

3.1. The Campaign on the Universal Ratification of and Reporting on the implementation of the African Charter on the Rights and Welfare of the Child

22. The ACERWC notes that more than ten years after the entry into force of the ACRWC, the number of ratification stands at forty-seven (47) out of 54 African Union (AU) Member States and only twenty-three (23) out of 47 State Parties have submitted their reports to the ACERWC. Moreover, four (4) countries made a reservation on certain key provisions of the ACRWC.

23. Based on this premise the ACERWC has decided to launch a Campaign for the Universal ratification of and Reporting on the implementation of the African Charter on the Rights and Welfare of the Child. The ratification and reporting Campaign is planned to be conducted within a two-year period culminating to 2015 during the commemoration of the 25th Anniversary of the adoption of the ACRWC (1990) and events in 2014 celebrating 15 years since its entry into force (1999). The Campaign aims to secure a universal ratification, reporting on the implementation of the ACRWC and withdrawal of reservations, and the Committee continues to rely on, among others, the good will and support of Member States for the realization of the objectives of this Campaign

3.2. Advisory Opinion

24. The Committee submitted a *locus standi* application to the African Court on Human and Peoples' Rights requesting for its advisory opinion so that the Committee can bring cases before the Court as an organ established, recognized and operating within the framework of the AU.

3.3. Lobbying Missions for the ratifications of the Charter

25. One of the priorities of the ACERWC is to achieve the ratification of the Charter by all Member States which to date stands at 47 out of 54 Member States of the African Union. In this context, the ACERWC undertook an advocacy mission to the Republic of Tunisia for the acceleration of the ratification of the Charter on 25-29 November 2013. During this Mission, the Committee Members met with the Government officials and other stakeholders. The Government of the Republic of Tunisia welcomed the initiative and promised to ratify the Charter.

26. The Committee also undertook a mission to the Saharawi Arab Democratic Republic (SADR) to lobby for the ratification of the Charter. The mission was undertaken from 9-17 December 2013. During this mission the Committee had interactions with the Government and Stakeholders in the SADR, who appreciated the Committee's

approach, and gave assurance that an acceleration of the ratification process would follow.

3.4. Follow up Mission on the implementation of the recommendations of the ACERWC

27. Following the consideration of each report, the Committee adopts Concluding Observations which are then forwarded to the concerned State Party. In order to follow up and support the measures and actions taken by State Parties, the Committee undertakes a field mission to the concerned State Party after two years of forwarding the Recommendation. On 9-14 December 2013, the Committee undertook a mission to the Republic of Niger where it met with the Government Officials, CSOs and other stakeholders in the country. In all of its meetings, the delegation of the Committee outlined the objectives of the mission, which is to monitor and support the implementation of the provisions of the Charter and the Concluding Observations of the Committee. At the end of the mission, the Committee noted with satisfaction that the Government of Niger has taken into account the Concluding Observations of the Committee in implementing the provisions of the Charter and encouraged the Government to continue its efforts, among others, to allocate the necessary human and financial resources for the full implementation of the Concluding Observations.

3.5. Follow up on the implementation of Executive Council Decisions

28. The Executive Council, through two of its Decisions, (EX. Council Decision Ex. CI/Dec 776(XXII)), of May 2013, as well as Executive Council Decision Ex. CI/Dec 233 (VII) of July 2005 requested the AUC to undertake a study on the measures required to ensure continuity of the membership of the Committee, including the possibility of the renewal of the mandate of the members for another term. As a result of these Executive Council Decisions, the Committee, through its Secretariat at the Department of Social Affairs sought advice from the Office of the Legal Counsel who recommended that to renew the term of office of the Committee Members, the Charter (Article 37 (1)) has to be amended. The Office of the Legal Counsel also proposed that, among others, the amended version of Article 37(1) should read 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.”.

29. As required by Article 48(1) of the Charter, the Committee expresses its support for the amendment, and the possible procedure necessary for the coming into force of such an amendment (Please see the full opinion of the Committee on this matter as required by Article 48 of the Charter). Among others, the Committee believes that such an amendment will help to ensure continuity and expertise to effectively discharge the mandate of the Committee. The Committee is also of the view that such an amendment will harmonise the term of office of Committee members with other similar Organs such as the African Commission on Human and Peoples’ Rights and the African Court on Human and Peoples’ Rights that allow members to stand for re-election.

30. In addition, the two Executive Council Decisions were highly supported by Member States during adoption, and in their use of wording appear to express the strong will of AU Member States including States Parties to the ACRWC to modify the latter to “ensure continuity of the membership of the Committee, including the possibility of the renewal of the mandate of the members for another term”. The Committee also recognizes the fact that the proposed amendment is mainly a procedural one and does not affect the nature of obligations in the Charter. In addition, the Charter does not have a requirement of adoption and ratification and coming into force of amendments and only speaks of the fact that “[a]n amendment shall be approved by a simple majority of the States Parties”. Because of these and various related reasons, the Committee strongly believes and humbly submits that a Decision of the Executive Council, which in any case is composed of the 47 States Parties (thereby complying with Article 48(2) requiring approval by a simple majority), would suffice for such an amendment to take place and come into force with immediate effect.

31. The Executive Council has also requested the AUC to undertake an assessment on financing and human resources needed by the Committee with a view to adequately equipping the Committee to discharge its mandate effectively as envisaged in the African Charter. In this regard, a letter enquiring on the progress of the implementation of this Decision was written to the Administration and Human Resource Directorate of the AUC. The Committee is awaiting to receive a response from the AHRD.

3.6. Follow up with submissions of State Party Reports

32. In line with the Universal Ratification and Reporting Campaign and Executive Council Decision (Ex.CL 797(XXIII)), the Chairperson of the ACRWC visited 13 Embassies of Member States in Addis Ababa who have ratified the ACRWC but whose Initial Report was overdue for more than 10 years. The purpose of the visits was to engage with the States Parties and engage in a constructive dialogue and offer any possible assistance to expedite their reporting efforts. The Chairperson visited the following Embassies: Angola, Benin, Botswana, Chad, Gambia, Guinea, Lesotho, Malawi, Mauritius, Mozambique, Seychelles, South Africa and Zimbabwe. During his visits, the Chairperson recalled that the role of the ACERWC is to ensure that State Parties to the Charter submit their periodical reports two years after ratifying the Charter and every three years thereafter. He further recalled the Executive Council Decision passed during the May 2013 Session Decision (Ex.CL 797 (XXIII)) to urge State Parties that are yet to submit their reports to the Committee to comply with the provisions of the ACRWC. Following the visits, the Republic of Mozambique, the Republic of South Africa and the Republic of Guinea submitted their report. Among the issues that came out of the discussions is the proposal by a number of States on the need to align the periodic reporting time from a (3) three years cycle to a (5) five years cycle (similar to the procedure in the UN Convention on the Rights of the Child) which requires the amendment of the Charter, a move the African Committee is in support of as one way of reducing the dual reporting obligations of States Parties. The Committee would like to thank these States Parties for receiving the Chairperson of the Committee, and for promising the submission of their initial reports in the foreseeable future and for engaging with the Committee in a constructive manner.

3.7. Collaboration with AU Organs

33. The Committee has continued in its efforts to build and strengthen partnerships with various AU Organs with Human Rights mandates. Particularly, the Committee is strengthening its collaboration with the AU PSC, the AfCHPR and the ACHPR.

34. The Committee also held a consultative meeting with the Peace and Security Council in pursuant to the Executive Council Decision EX.CL/Dec.712 (XXI) that was adopted in June 2012 at its 21st Ordinary Session in which the Executive Council requested the PSC to take into account the rights of the Child in its agenda and cooperate actively with the ACERWC, in its efforts aimed at promoting the welfare of children in Africa. During the meeting the Council welcomed the call for an institutionalized collaboration between itself and the ACERWC in engaging AU Member States to take necessary measures and initiatives to ensure the protection of the rights of children in armed conflicts. The Council also indicated the need for the ACERWC to champion initiatives at national, regional and continental levels to bring more awareness on children's rights and welfare to various stakeholders. Moreover, the Council also welcomed the suggestion made by the ACERWC to organize a regular Open Session on children and armed conflict and a High Level Meeting on Peace and Security and Children Rights in Africa.

35. With regard to the collaboration between the Committee and the African Court on Human and Peoples' Rights (AfCHPR) and the African Commission on Human and Peoples' Rights (ACHPR), the Committee held a joint consultative meeting in November 2013, in Arusha. Following the Arusha meeting, the Committee also held a collaboration meeting during its 23rd Ordinary Session. During these meetings, these Organs discussed and reached to an agreement to collaborate in a number of activities which fall under their common mandates.

36. The Committee also held a Workshop to harmonize its Rules of Procedure with those of the African Commission on Human and People's Rights as well as those of the African Court on Human and People's Rights. This is in cognizant of the 2011 Human Rights Strategy for Africa adopted by the African Union calling for greater coordination among AU human rights institutions that envisions harmonization of the rules of procedure with the African Court and African Commission.

3.8. Collaboration with UN Bodies

37. The Committee participated in the June 2013 Session of the UN Committee on the Rights of the Child (UNCRC) where the ACERWC and the UNCRC agreed to revitalize their joint working groups for the implementation of their March 2010 Recommendations, complement and work towards harmonizing their jurisprudence, particularly on areas of interest in respect to child rights, which would include in the area of concluding observations, General comments and in future the communications. The two Committees could also harmonize the State Party Reporting system, issuance of joint general comments, statements and press releases as well as conducting joint missions to State Parties. Moreover, in September 2013 the ACERWC participated at a side-event organized by the Chairperson of the UN Human Rights Council, in

collaboration with the ACERWC, the AfCHPR and the ACHPR, on the situation of Human Rights in Africa.

IV. Recommendations

38. In conclusion, the African Committee of Experts on the Rights and Welfare of the Child would like to draw the attention of the Executive Council on the following issues:

- Seven Member States have not yet ratified the ACRWC, therefore, the ACERWC would like the Executive Council to urge these countries to expedite the ratification of the Charter before the celebration of the 25th anniversary of the Charter in 2015;
- The ACERWC would also like to draw the attention of the Executive Council to urge State Parties which have not yet reported to the Committee to comply with their reporting obligations;
- Four State Parties, namely Botswana, Egypt, Mauritania and Sudan, have placed reservation on the implementation of some of the provisions of the ACRWC. The ACERWC therefore would like the Executive Council to engage these State Parties so that they withdraw their reservations;
- The ACERWC would like the Executive Council to adopt the theme of the 2015 DAC, which is on **'25 years after the adoption of the African Children's Charter: Accelerating our collective efforts to end child marriage in Africa'** as the theme for the Day of the African Child 2015';
- The ACERWC would like the Executive Council to adopt the proposal of the AUC for the Committee to appoint a Special Rapporteur on Child Marriage from its members; and
- The ACERWC would like the Executive Council, based on its Decisions, (EX. Council Decision Ex.CI/Dec 776(XXII)) of May 2013, as well as Decision Ex.CI/Dec 233 (VII) of July 2005, and based on the written opinion in support of the amendment and its coming into force with immediate effect expressed by the African Committee as required by Article 48(1) of the Charter to decide to amend Article 37(1) of the ACRWC, in relation to renewal of the term of office of members of the Committee so that Article 37(1) can read 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."

2014

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