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P. O. Box 3243, Addis Ababa, ETHIOPIA Tel.: Tel: +251-115- 517 700 Fax: +251-115- 517844 / 5182523
Website: www.au.int

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

AFRICAN UNION

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

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"An Africa Fit for Children"

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

UNIÃO AFRICANA

P. O. Box 3243 Roosevelt Street (Old Airport Area), W21K19, Addis Ababa, Ethiopia
Telephone: (+ 251 1) 551 3522 [Internet : http://acerwc.org](http://acerwc.org) Fax: (+ 251 1) 553 5716

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

April 2018

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

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 lia*, to promote and protect the rights of the African child pursuant to the provisions of the Charter.

2. 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), adoption of various documents and many other activities as stated in this Report.

3. This Report summarizes the Recommendations and Decisions of the 30th and part of the 31st Ordinary Sessions of the Committee held on 06-16 December 2017 in Khartoum, Sudan and on 24 April to 04 May 2018 in Bamako, Mali respectively, as well as other activities undertaken between May 2017 and May 2018.

I. DECISIONS AND RECOMMENDATIONS OF THE 30th and 31st ORDINARY SESSIONS OF THE ACERWC

1. DECISIONS AND RECOMMENDATION OF THE 30th SESSION 06-16 DECEMBER 2017 IN KHARTOUM

1.3. ELECTION OF THE BUREAU OF THE ACERWC: CLOSED SESSION

4. The ACERWC held the election of its new Bureau, which will serve the ACERWC for the coming two years. The election was undertaken under the supervision of a representative from the AUC Office of the Legal Counsel. Accordingly, the new Bureau of the ACERWC comprises:

- ✓ Mrs Goitseone Nanikie Nkwe- Chairperson
- ✓ Mrs Dikere Marie Christine Bocoum- 1st Vice Chairperson
- ✓ Prof Benyam Dawit Mezmur- 2nd Vice Chairperson
- ✓ Mrs Sidikou Aissatou Alassane Moulaye- Rapporteur
- ✓ Ms Maria Mapani-Kawimbe- Deputy Rapporteur

1.4. DAY OF GENERAL DISCUSSION ON THE SITUATION OF CHILD LABOUR IN AFRICA

5. The Committee Organised a Day of General Discussion on the Situation Child Labour in Africa. During the Discussion the Committee noted that there is a need to talk about child labour as the situation in Africa shows that there is a high rate of child labour and that the prevalence continues to increase. The Day of the General Discussion looked into the root causes of child labor and the measures that should be taken to address the scourge. Following the deliberations on the Day of General Discussion, the Committee decided to undertake baseline study on the child labour in the continent. The ACERWC will report the findings of the study once it is finalized.

1.5. AFRICA'S AGENDA FOR CHILDREN 2040: FOSTERING AN AFRICA FIT FOR CHILDREN

6. The Committee notes that the Executive Council in its Decision Ex. CL/Dec.977 (XXXI) in July 2017 adopted 'Africa's Agenda for Children 2040 Fostering an Africa Fit for Children'. During the 30th Session the Committee deliberated on the way forward. The Committee notes that the Children's Agenda draws its inspiration from Agenda 2063 of the African Union, which states that "African children shall be empowered through the full implementation of the African Charter on the Rights of the Child". The Agenda intends to establish long-term strategies that will contribute towards sustaining and protecting children's rights in Africa. The overall target is to expand significant goals and priority areas to which the respective Member states and the African Union commit to for the upcoming 25 years. As the document is now the Union's Agenda for children's rights, the ACERWC submits to the Executive Council to urge Member States to translate and popularise the Agenda in local languages; and report to the ACERWC on the implementation of the Agenda.

1.6. CONSIDERATION OF THE INITIAL REPORT OF THE REPUBLIC OF ANGOLA ON THE IMPLEMENTATION OF THE AFRICAN CHILDREN'S CHARTER

7. The ACERWC considered the initial report of the Republic of Angola on the status of the implementation of the African Charter on the Rights and Welfare of the Child, during its 30th Ordinary Session, which was held from 6 to 16 December, 2017 in Khartoum, the Sudan. The Committee commends the State Party for the measures it has taken to improve the situation of children's rights in the country including:

- i) Depending on local funds for most projects and programmes;
- ii) The ratification of various international instruments such as the Convention on the Rights of Persons with Disabilities;
- iii) Increased enrolment rate of children in schools;
- iv) Undertaking legislative measures including the adoption of the new Constitution and the 11 Commitments;

- v) Efforts employed towards increasing birth registration including the adoption of a decree to exempt birth registration fees during the campaign; and
- vi) Institutional measures undertaken including the conversion of the Ministry of Justice to the Ministry of Justice and Human Rights, the establishment of the National Council for Children and the Ombudsman.

8. The Committee further notes with appreciation the Special Care Programmes designed to advance the protection and promotion of the rights of children with disabilities, the efforts undertaken by the Government to reduce child mortality rate, the establishment of the various platforms such as child parliament exercises and the establishment of the National Children's Institute (INAC) to facilitate the participation of children, and the various campaigns undertaken by the Government of Angola in 1998, 2001, and 2016 to sensitize communities about birth registration and to provide free birth registration services. Despite these and many other developments the Committee observed crucial limitations in implementation efforts and certain violations of the Charter.

9. As such the Committee expressed concern that there is inadequate funding for child rights related budgetary lines resulting from the proceedings of the oil produce which is the main source of income in the State Party. Furthermore, the Committee voiced strong concern about the impact of corruption and mismanagement of funds on the delivery of social services to children and their families. The Committee expressed disapproval of exceptions on the definition of the child with respect to minimum age of marriage. It was noted with concern that the Family Code sets the minimum age of marriage at 15 for girls and at 16 for boys. The rate of birth registration, which stands to be below 50%, was worrying to the Committee. Especially as birth registration certificates are basis to obtain identity cards, which are proof of Angolan nationality. There is deep concern with regards to the very high maternal mortality and the ongoing child mortality due to preventable diseases, mainly Malaria. The Committee expressed concern about the availability of the Juvenile Court only in the Luanda province and the lack of trained human personnel and financial resources. Moreover, there are no rehabilitation centers for children who are detained and they are detained with adults in prisons.

10. According to the shortcoming observed, the Committee made pertinent recommendations. The Committee entreated that the Government increase the budget allocation to child related matters in line with the increasing demand and the population growth to ensure, among other things, effective provision of social services for children despite the reported decrease of oil revenue. The Committee strongly urged the State Party to undertake a sustained effort to prevent and address cases of corruption by holding individuals as well as entities accountable. The Committee further urged the State Party to take concrete steps in the foreseeable future to revise the Family Code and set the age of marriage at 18, with no exceptions, in line with the Charter. To tackle issues surrounding birth registration, the Committee recommended that the

State Party removes all fees related to birth registration including the fines imposed on late registrations, and establishes mobile birth registration centres to ensure that such services are available and accessible in rural areas. The Committee invited the State Party to undertake a study to identify the main factors leading to high maternal and child mortality to be able to devise programs that can respond to the scourge. To address the challenges of children in conflict with the law, it was recommended that juvenile courts should be established in all provinces to ensure that children are not subjected to the regular court proceedings and appropriate alternative diversion measures are implemented. Additionally, free legal aid and any appropriate assistance to children in conflict or in contact with the law should be provided. Furthermore, the State Party was advised to ensure that non-custodial sentences are applied as a matter of priority and rehabilitation centres should be established for children who are sentenced to custodial penalties.

1.7. CONSIDERATION OF THE INITIAL REPORT OF THE REPUBLIC OF SIERRA LEONE ON THE IMPLEMENTATION OF THE CHARTER

11. The ACERWC considered the initial report of the Republic of Sierra Leone on the status of the implementation of the African Charter on the Rights and Welfare of the Child, during its 30th Ordinary Session, which was held from 6 to 16 December, 2017 in Khartoum, the Sudan.

12. The Committee commends the measures that the State Party has undertaken to implement the Charter. Particularly, the Committee appreciates the Government for taking the following measures:

- i) The adoption of the Child Rights Act in 2007; the National Youth Commission Act, 2009; the Education Act, 2004, the Human Rights Commission Act (2004), the Anti-Human Trafficking Act (2005);
- ii) The adoption of various Policies such as the Alternative Care Policy (2012), The National Protocol on Gender Based Violence, the Child Justice Strategy, Agenda for Prosperity, the Age Assessment Guidelines, the National Standard for the Protection of Children in the Criminal Justice System, Guidelines for the management and sustenance of child justice; and
- iii) The establishment of the National Children's Commission (NCC) in 2014 with the mandate to monitor and coordinate the implementation of the Charter and other child rights instruments.

13. The Committee further appreciates the State Party's efforts to strengthen the process of family reunification for children who are separated from their families as a result of conflict and the Ebola crisis; and the establishment of the Steering Committee for the implementation of the Child Rights Act of 2007 and designing of an implementation plan.

14. Though Committee noted various commendable progresses in the implementation of the Charter, the Committee observed various limitations in implementation efforts and violations of the Charter. Notably, it was observed that various legislative measures that are necessary for the implementation of the Charter are delayed. The Ministry of Social Welfare Gender and Children's Affairs (MSWGCA), which is tasked with issues of children rights and welfare, receives less than 1% of the National Budget to undertake its work. Female Genital Mutilation (FGM) is highly prevalent in Sierra Leone, with a 70 percent incidence among girls aged 15 to 19 years, and a 10 percent incidence among girls aged 0-14 years. Despite the high rate of prevalence there is no law or policy that explicitly prohibits FGM. The devastating psychosocial impact that the civil war had on children has not been effectively addressed. Child miners and child commercial sex workers are a common occurrence in and around the mines in Sierra Leone.

15. In line with the shortcomings observed, the Committee issued concluding recommendations to the Government of Sierra Leone. The Committee recommended the following, among many others. The State Party was urged to explicitly prohibit and criminalize FGM, and to take the necessary measures to create awareness about the adverse effect of FGM on communities in general and girls in particular, among all relevant stakeholders with the aim of eliminating the practice. The Committee further recommended that the State Party works with communities towards changing mind-sets and promote positive cultural context to replace the practice of FGM. It was recommended that the State Party accelerate the amendment of the Adoption Act and the adoption and immediate implementation of the Alternative Care Policy. It was further advised that the Child Rights Act should be amended in line with the international instruments to provide clarity on criminal procedure that should be followed as a result of unlawful recruitment or use of children and ensure that children who have been associated with armed groups are free from criminal responsibilities. The Committee recommended the accelerated development of minimum standards and protocols for the extractive industry to prevent and mitigate the impact of child labour on children, and the development of a long-term care and protection services for families and children vulnerable or exposed to child labour. The Committee further urged the State Party to allocate adequate budgetary resources for the implementation of children's rights and, in particular, increase the budget allocated to the Ministry of Social Welfare, Gender and Children.

**1.8. DECISIONS ON COMMUNICATIONS/COMPLAINTS AGAINST THE
REPUBLIC OF MAURITANIA: COMMUNICATION NO.
007/COM/003/2015**

16. Pursuant to Article 44 of the African Children's Charter, a communication/complaint was lodged before the African Committee of Experts on the Rights and Welfare of the Child on 15 December 2015. The communication is concerning two brothers who, according to the complainants, have been held as slaves to the El Hassine family in Mauritania. The two boys were required to look the family's

herd of camels, spending the majority of their time out in the bush with the animals, sleeping and eating in a make-shift camp; they were also forced to undertake domestic chores including cooking, cleaning, washing clothes and buying goods from the market. The two boys worked seven days a week without pay, with no time off (even on Fridays), no time to play; instead they regularly faced corporal punishments. They are not called by their given names in the El Hassine family rather they are called 'slaves'. The children are allowed to eat only leftovers. Furthermore, unlike the other children in the family, the two boys did not attend school nor did they learn the Quran.

17. The Complainants submitted that though Ahmed Ould El Hassine was found guilty of holding the two brothers in slavery and depriving them of schooling, he was sentenced only to two years of imprisonment while his sister was acquitted of the same charges. Unsatisfied with the effort that the Government employed in trying to avert the situation, the Complainants submitted that the Republic of Mauritania is in violation of various articles of the Charter. After thoroughly deliberating on the matter, hearing both sides and investigating on the ground, the African Committee finds the Respondent State in violation of its obligations under article 1 (obligation of states parties), article 3 (non-discrimination), article 4 (best interests of the child), article 5 (survival and development), article 11 (education) article 12 (leisure, recreation and cultural activities), article 15 (child labour), article 16 (protection against child abuse and torture) and article 21 (protection against harmful social and cultural practices).

18. The Committee therefore recommended for the Government of Mauritania to ensure that all members of the El Hassine family are prosecuted for the enslavement of Said and Yarg and the violation of their rights to equality, survival and development, education, leisure, recreation and cultural activities, protection against child abuse and torture, and protection against child labour, and ensure that they receive sentences commensurate to the crimes committed pursuant to the laws of Mauritania. The Committee, while appreciating the measures taken, recommended for Mauritania to give due regard to the issue of slavery or slavery like practices and make the elimination of the same one of its priorities in issuing policies, allocating budget, and training human resources; and take special measures to take out children from slavery and slavery like practices and ensure that all children in such situations receive psychosocial, educational, as well as all forms of support needed to ascertain that they enjoy their rights as enshrined in the Charter.

1.9. DECISIONS ON COMMUNICATIONS/COMPLAINTS AGAINST THE REPUBLIC OF CAMEROON: COMMUNICATION NO. 010/COM/003/2016

19. The ACERWC has received and considered a communication against the Republic of Cameroon. The Committee notes that Communication has not fulfilled the admissibility conditions as laid down in the Charter and the Committee's Guidelines on Consideration of Communication. The content of the Communication is outside the mandate of the Committee and beyond the scope of protection given in the Charter. Furthermore the Complainants failed to establish a prima facie violation of the Charter

and to exhaust local remedies. The Communication is accordingly declared inadmissible.

II. RECOMMENDATIONS AND DECISIONS OF THE 31ST ORDINARY SESSION WHICH WAS HELD FROM 24 APRIL-04 MAY 2018, BAMAKO, MALI

2.1. CONSIDERATION OF SATTE PARTY REPORTS

20. The ACERWC has received and considered State Party reports from the following Countries: Burkina Faso, Burundi, Malawi and Niger. Pursuant to the Committee's Guidelines on consideration of State Party Reports, the Committee will issue the concluding observations and recommendations and report to the Executive Council during the June/July 2019 Summit.

2.2. UPDATE ON THE AMICABLE SETTLEMENT ON A COMMUNICATION AGAINST THE REPUBLIC OF MALAWI: COMMUNICATION: NO. 004/COM/001/2014

21. In 2014, a communication was submitted before the ACERWC, challenging the definition of child in Malawi's Constitution. At that time, Section 23(6) of the Constitution of Malawi defined a child as a person under the age of sixteen (16), in contravention of article 2 of the African Charter on the Rights and Welfare of the Child, which defines a child as every human being below the age of eighteen (18). As a result of this age discrepancy, persons between the ages of 16 and 18 had not been enjoying the protection they were due under Malawi's international obligations. The Government of Malawi had acknowledged this flaw and had begun taking measures to amend this section of its Constitution, together with other laws related to children, and to align them to international standards. In line with this development, the Government reached out to the Applicant and opted for an amicable settlement of the case that had been slated for hearing during 28th Ordinary Session (October 2016) of the ACERWC, so as to guarantee a more concrete, firm, binding and assuring commitment in its drive towards ensuring greater protection for Malawian children.

22. By the settlement agreement, amongst other clauses, Malawi committed "to do everything within its power to amend its Constitution and all other relevant laws to be in compliance with article 2 of the African Charter on the Rights and Welfare of the Child by 31 December 2018", and to report periodically to the ACERWC on "the progress it has made to implement this Agreement". In line with its commitments, Malawi submitted four progress reports and briefed the Committee during its 31 Ordinary Session on measures taken to comply with the agreement. These reports reveal the following:

- ✓ A Constitutional Amendment Bill on the definition of the child had been passed by Parliament on 14 February 2017; the President of the Republic of Malawi assented to the Bill on 2 April 2017, and the Act (No15 of 2017) was gazetted on 7 April 2017.

- ✓ Malawi Law Commission has carried-out an initial audit on all laws on the definition of a child and identified provisions in 27 different legislations which are not in line with the provisions of the African Children's Charter; hence need amendment.

23. From the reports and the briefing, the Committee notes that the Government of the Republic of Malawi has re-affirmed its commitment to the October 2016 settlement agreement, and the steps already taken are commendable and Malawi example should be emulated by other States. The Committee looks forward to seeing the harmonization of other laws completed in a foreseeable future as agreed in the amicable settlement.

2.3. SELECTION OF DAC 2019 THEME

24. Taking the consultations made by children on the theme of Day of African Children into consideration, after further discussions and deliberations, the Committee decided for the theme of DAC 2019 to be on "**Humanitarian action in Africa: children's rights first**".

III. OTHER ACTIVITIES OF THE ACERWC DURING THE REPORTING PERIOD

3.1. CONTINENTAL CONFERENCE ON 'EXPERIENCE SHARING ON IMPLEMENTATION OF THE AFRICAN CHILDREN'S CHARTER'

25. The Committee has organised an Experience Sharing Forum on the Implementation of the African Charter on the Rights and Welfare of the Child was organized by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) in Mauritius on 27-28 September 2017. The Forum was attended by three members of the ACERWC, Representatives of Botswana, Burkina Faso, Burundi, Cameroon, Egypt, Equatorial Guinea, The Gambia, Mauritania, Mauritius, Niger, Tanzania, Tunisia, Seychelles, South Africa, South Sudan, Sudan, Somalia, Swaziland, as well as representatives of the Regional Economic Communities (East African Community), Network of African National Human Rights Institutions and Partners. The main objectives of the Forum are to: accelerate the process of ratification and reporting; encourage the withdrawal of reservations; solicit the implementation of the Charter and the recommendations of the Committee; raise awareness on the Guidelines on State Party Reporting; Identify good practices and challenges in the above issues; and encourage CSOs engagement on reporting and implementation of the African Children's Charter.

26. The Experience Sharing Forum was concluded by pledges Member States, Representative of the East African Community and the Network of African National Human Rights Institutions made following the discussions on ratifications, reservations, and implementation of the African Children's Charter. Accordingly, the representatives of the Government of South Sudan, Somali and Tunisia have pledged to facilitate the ratification of the African Children's Charter by the respective countries.

27. With regard to reservation, the representatives of the Governments of Botswana, Egypt (Regarding Article 21 (2)) and Sudan have pledged to consider the withdrawal of reservations that their countries have placed against the applications of some of the provisions of the Charter. Moreover, the representatives of the following countries have also pledged to expedite the process of submitting their initial reports on the implementation of the African Children's Charter; the countries are Swaziland, Mauritius, Seychelles, and Guinea Equatorial.

28. Besides, the representatives of the Burkina Faso, Burundi, Cameroon and Niger pledged to continue regularly submitting their periodic reports on the implementation of the Charter.

3.2. ESTABLISHMENT OF SPECIAL MECHANISMS

29. Drawing its mandate from Article 38 (1) of the African Charter on the Rights and Welfare of the Child, the Committee developed its Rules of Procedures, which states that the ACERWC may establish special mechanisms if a form of "Special Rapporteurs". Accordingly, the ACERWC decided to establish country and thematic based rapporteurs. The themes that the Committee decided to have Special Rapporteur on are:

- ✓ Violence against children;
- ✓ Children and Armed Conflict;
- ✓ Birth Registration ,Name and Nationality;
- ✓ Child Education;
- ✓ Child marriage and Other harmful practice;
- ✓ Children in vulnerable situations;
- ✓ Health, welfare and development;
- ✓ Children on the move;
- ✓ Juvenile justice;
- ✓ Parental Responsibilities and child responsibilities;
- ✓ Child Participation.

3.3. ADOPTION OF GENERAL COMMENTS

30. The Committee adopted and launched a Joint General Comment by the ACERWC and the African Commission on Human and Peoples' Rights on Ending Child Marriage. The aim of this Joint General Comment is to give direction on State Party obligations in terms of Article 6(b) of the Maputo Protocol and Article 21(2) the African Children's Charter. The Joint General Comment, in its scope, includes children in child marriages, children at risk of child marriage and women who were married before the age of 18.

31. The Committee also adopted a General Comment on Article 31 of the African Children's Charter regarding the responsibility of the child. The African's Children's

Charter in its Article 31 states that children have responsibilities towards the family, society, State, other legally recognized communities and the international community at large. The Committee notes that highlighting responsibilities for children together with outlining their rights is quite a unique approach. However, the Committee also notes that this unique provision may lead to challenges in understanding and appreciating the extent to which children can exercise responsibilities while at the same time enjoy the rights guaranteed by the Charter. The General Comment, therefore, clarifies the principles contained in Article 31 of the African Children's Charter in order to provide practical guidance on its implementation.

3.4. STATE PARTY REPORTS SUBMITTED

32. The African Children's Charter has been ratified by forty-eight Member States of the Union. Out of these ratifying Member States, the Committee, with appreciation, would like to report that thirty-eight of them reported to the Committee at least once. The Countries which have reported more than once are Burkina Faso, Cameroon, Niger, South Africa, Kenya, Rwanda and Tanzania. In this regard the Committee would like to acknowledge the growing adherence of member States towards their reporting obligations under the Charter. During the reporting period, from May 2017 to May 2018, the ACERWC has received State Party Reports from the following Countries: Angola, Burundi, Burkina Faso, Benin, Malawi, Mauritania, Niger, Nigeria, Swaziland, South Africa, and Zambia.

3.5. AMENDMENT TO ARTICLE 5 (1) OF THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE ESTABLISHMENT OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

33. Reference is made to paragraph 8 of the Decision of the Executive Council, (EX.CL/Dec.923(XXIX)), of July 2016 where the Council recommends to the Assembly the amendment of Article 5 (1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights to include the ACERWC among the entities entitled to submit cases to the Court; and requests the ACERWC in consultation with the Commission to prepare the amendment and submit to the Special Technical Committee (STC) on Justice and Legal Affairs for consideration in October 2016.

34. Following the Decision of the Executive Council, the STC on Justice and legal Affairs during its Meetings which was held on 1-9 September 2016, considered the request of the Executive Council and decided that the proposed amendment be referred to the African Union who should study the proposed amendment from a procedural and legal perspective with a view to ensuring compliance with the amendment procedure detailed in Article 35 of the Court's Protocol, prior to re-submission of the Decision to the STC on Justice and Legal Affairs.

35. The ACERWC, through the Office of the Legal Counsel, explained the fact that the request for the amendment was not raised by the Committee in the first place; rather it was suggested by a Member State during the 29th Ordinary Session of the Executive Council which was held in July 2016 in Kigali, Rwanda. The Member State which suggested for the amendment called for the establishment of an enhanced accountability mechanism against violations of children's rights in Africa. The submission was then seconded by Representatives of other Member States and triggered further discussion on the possibility of allowing the ACERWC to directly access the African Court on Human and People's Rights. The discussion subsequently resulted in the proposed amendment of article 5 of the Court's Protocol.

36. While the Committee takes the position that there is no procedural flaw with regard to the July 2016 Decision of the Executive Council in July 2016, the African Court on Human and Peoples' Rights, exercising its power under Article 35 of its Protocol, in a letter written on 24 March 2017, AFCHPR/2017/043, proposed for the amendment of Article 5(1) of the Protocol on the African Charter on Human and Peoples' Rights on the Establishment of the African Court; with a view to include the ACERWC as one of the Organs which can directly access the Court. Following the Court's request the Third Ordinary Session of the Specialized Technical Committee (STC) on Justice and Legal Affairs was held in Addis Ababa, Ethiopia from 06 to 11 November 2017 (Expert Session) considered the request of the Court and again requested the African Committee of Experts on the Rights and Welfare of the Child to prepare a comprehensive report on its mandate, challenges being faced and why the Committee would require to have access to the Court. The STC also requested for an independent analysis of the legal implications of the amendment.

37. The ACERWC would like to submit to the Executive Council the fact that the overarching goal of the Protocol establishing the Court is to create an institutional framework for complementarity between the Court and the African Human Rights system. Both the African Commission on Human and Peoples' Rights and the Committee being quasi-judicial bodies making non-binding recommendations should be complemented by the Court, which has stronger enforcement mechanisms.

38. In view of the above, the ACERWC would like to submit that the Executive Council requests the STC on Justice and Legal Affairs and the African Union Commission to expedite the process of amendment of Article 5(1) of the Court's Protocol.

IV. CHALLENGES

39. The ACERWC would like to draw the attention of the Executive Council to the challenges it is facing in undertaking its activities. For the Committee to effectively deliver on its mandate, it requires a strong, well-staffed and competent Secretariat. As the Committee has now receiving and considering more State Party reports and complaints on violations of children's rights, the need for strengthening the Secretariat, in terms human and material resources is very critical. It was in due consideration of the

capacity challenges that the ACERWC is facing that the Executive Council made a Decision (Doc.EX.CL/797 (XXIII)), where the Council requested the AUC to undertake an assessment on financing and human resource needed by the Committee with a view to adequately equipping the Committee to discharge its mandates effectively as envisaged in the African Charter.

40. The ACERWC also notes the Decision of the Executive Council, EX.CL/Dec.991(XXXII), where the Council encouraged the Kingdom of Lesotho and the Republic of The Sudan to continue consultations on which Country will be hosting the Secretariat of ACERWC; and requested the Commission to facilitate such consultations and report to ordinary session of the Executive Council scheduled in Jane/July 2018. Once the Decision is made and if the Secretariat has to be relocated to one of the above stated Countries, the Secretariat will face challenges with regard to resources, both human and material.

41. The numbers of State Party and alternative reports and communications submitted have continued to increase at a higher rate than the corresponding capacity needed to manage them. Therefore, the ACERWC would like to bring to the attention of the Executive Council that the Secretariat of the Committee still faces a significant systemic capacity deficit and there is a need further strengthens its capacity.

V. RECOMMENDATIONS

42. 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:

- i) Seven Member States have not yet ratified the ACRWC, namely: Democratic Republic of Congo, Morocco, Tunisia, Sao Tome and Principe, Saharawi Arab Democratic Republic, South Sudan, and Somalia. Therefore, the ACERWC would like the Executive Council to urge these countries to expedite the ratification of the Charter;
- ii) To congratulate State Parties which have submitted their reports on the implementation of the African Children's Charter and to urge State Parties which have not yet reported to the Committee to comply with their reporting obligations;
- iii) To encourage the Republic of Angola and the Republic of Sierra Leone to implement the Committee's recommendations;
- iv) To appreciate the Government of Egypt for withdrawing the reservation it had placed against the application of article 21 (2) of the African Children's Charter and urge State Parties, namely Botswana, Egypt (for the reservations on the remaining articles), Mauritania and Sudan, that have placed reservations on the implementation of some of the provisions of the ACRWC to withdraw their reservations;

- v) To urge the Government of Mauritania to better enhance its efforts to eliminate slavery or slavery like practices; and take special measures to take out children from slavery and slavery like practices and ensure that all children in such situations receive psychosocial, educational, as well as all forms of support needed to ascertain that they enjoy their rights as enshrined in the Charter;
- vi) The ACERWC would like the Executive Council to adopt the theme of the 2019 DAC, which is on “**Humanitarian action in Africa: children’s rights first**”;
- vii) To commend the Government of Malawi for re-affirming its commitment to the October 2016 settlement agreement by amending its Constitution to raise the age of majority from 16 to 18 years of age, which is in line with the African Children’s Charter, and encourages the Government to work towards the full harmonisation of its other legislations, which are not in line with the Provisions of the African Children’s Charter;
- viii) To welcome the initiative of the ACERWC with regard to studying the situation of children on the move in Africa and look forward to receive the reports on the findings of the study;
- ix) To take note of the current relocation process of the Secretariat of the ACERWC and requests the AUC to take measure on the human and financial implication of the relocation;
- x) To refer to its Decision Ex. CL/Dec.977 (XXXI), where the Council adopted the ‘Africa’s Agenda for Children 2040 Fostering an Africa Fit for Children’ as the Union’s document and urge member States to work towards the full implementation of the Agenda;
- xi) To request the STC on Justice and Legal Affairs and the African Union Commission to expedite the process of amendment of Article 5(1) of the Protocol on the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights;
- xii) To welcome the ACERWC’s initiative to establish Special Rapporteurs and request Member States to cooperate with the established mechanisms;
- xiii) To take note of the current process of relocation of the Secretariat of the ACERWC and to request the Commission to take the necessary measures to respond to the human and financial resource needs of the Secretariat of the ACERWC.

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

DRAFT
DECISION ON THE REPORT OF THE AFRICAN COMMITTEE OF EXPERTS ON
THE RIGHTS AND WELFARE OF THE CHILD (ACERWC)
Doc. EX.CL/1091(XXXIII)

The Executive Council,

1. **TAKES NOTE** of the Report of the African Committee of Experts on the Rights and Welfare of the Child;
2. **ADOPTS** the Report and commends the Committee for the work done in monitoring **the** implementation of the African Charter on the Rights and Welfare of the Child;
3. **URGES** Member States who have not yet ratified the Charter, to expedite their ratification process; and State Parties which have placed reservations on the application of the provisions of the Charter to consider withdrawal of the same;
4. **APPRECIATES** State Parties which have submitted their Reports on the implementation of the African Children's Charter and **CALLS UPON** States Parties that have not yet submitted their reports to do so in line with their obligations under the Charter;
5. **ADOPTS** the theme for the Day of the African Child 2019: "**Humanitarian action in Africa: children's rights first**" and **REQUESTS** Member States to commemorate the Day of the African Child;
6. **URGES** the Government of Mauritania to better enhance its efforts to eliminate slavery or slavery like practices among children;
7. **COMMENDS** the Government of Malawi for re-affirming its commitment to the October 2016 settlement agreement by amending its Constitution to raise the age of majority from 16 to 18 years of age, which is in line with the African Children's Charter, and **ENCOURAGES** the Government to work towards the full harmonisation of its other legislations, which are not in line with the Provisions of the African Children's Charter;
8. **ENCOURAGES** the Republic of Angola and the Republic of Sierra Leone to work towards the full implementation of the ACERWC's Recommendations;
9. **WELCOMES** the initiative of the ACERWC with regard to studying the situation of children on the move in Africa and look forward to receive the reports on the findings of the study;

10. **REFERS** to the Councils' Decision (Decision No. Ex. CL/Dec.977(XXXI)) where the Council adopted the 'Africa's Agenda for Children 2040: Fostering an Africa Fit for Children' as the Union's document and **URGES** Member States to work towards the full implementation of the Agenda;
11. **REQUESTS** the STC on Justice and Legal Affairs and the African Union Commission to expedite the process of amendment of Article 5(1) of the Protocol on the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights;
12. **TAKES NOTE** of the current process of relocation of the Secretariat of the ACERWC; and to **REQUESTS** the Commission to take the necessary measures to respond to the human and financial resource needs of the Secretariat of the ACERWC;
13. **WELCOMES** the ACERWC's initiative to establish Special Rapporteurs; and **REQUESTS** Member States to cooperate with the established mechanisms.

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