

# ORGANIZATION OF AFRICAN UNITY

## The African Charter on the Rights and Welfare of the Child

*“...the child, due to the needs of his physical and mental development requires particular care with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security”.*  
*Preamble to the African Charter on the Rights and Welfare of the Child*

### Introduction

In 1979, member states of the Organization of African Unity (OAU) adopted a Declaration on the Rights and Welfare of the African Child.<sup>1</sup> Eleven years later, in July 1990, an **African Charter on the Rights and Welfare of the Child** (the African Children’s Charter) - the first regional treaty on the human rights of the child - was adopted by the OAU Assembly of Heads of State and Government. The African Children’s Charter is a codification by member states of the OAU of the responsibilities of the state, community and individual in the protection and promotion of the civil, cultural, economic, political and social rights of the child. It is rooted in other human rights treaties, including the African Charter on Human and Peoples’ Rights and the United Nations (UN) Convention on the Rights of the Child (CRC). The African Children’s Charter emerges out of the social and cultural values of Africa, including those relating to family, community and society. It takes into consideration “the virtues of their cultural heritage, historical background and values of the African civilization which should inspire and characterize their reflections on the concept of the rights and welfare of the child”.<sup>2</sup>

At the time when the African Children’s Charter was adopted, the OAU expressed concern that “the situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger”.<sup>3</sup> More than eight years after the adoption of the treaty, these concerns are still relevant and require an urgent response and long-term commitment.<sup>4</sup>

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<sup>1</sup>AHG/ST.4.Rev.1, adopted by the Assembly of Heads of State and Government of the OAU at its Sixteenth Ordinary Session in Monrovia, Liberia, from 17 to 20 July 1979.

<sup>2</sup>Preamble to the African Children’s Charter.

<sup>3</sup>*Ibid.*

<sup>4</sup> For example, in its publication Overcoming Human Poverty, of October 1998, the UN Development Programme (UNDP) records that thirty-eight countries of Africa have an income definition of extreme poverty (that is indigence or destitution, usually specified as the inability to satisfy even minimum food needs). It is estimated that there are approximately 80 million child workers in the region at the present time, and that, in regard to educational attainment, over 30% of children in sub-Saharan Africa never reach grade five (age 10). The UN Children’s Fund (UNICEF)

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reports that 7.8 million children - over 90% of AIDS orphans - who have lost their mother or both parents to AIDS live in sub-Saharan Africa (see The State of the World's Children, 1999 - Education). The World Health Organization believes there to be between 1.5 million to 2.7 million deaths from malaria every year, mainly of young children, 90% of which occur in sub-Saharan Africa (see Report of the UN Secretary-General on Progress on the implementation of the World Declaration and Plan of Action from the World Summit for Children, A/53/186, 22 July 1998).

### **The treaty**

In some important respects, the African Children's Charter builds upon international human rights law and standards, in particular the CRC, to strengthen the protection it affords the child, defined in Article 1 as "every human being below the age of 18 years".<sup>5</sup> States parties are to ensure that no child takes a direct part in hostilities and refrain, in particular, from recruiting any child (Article 22). Special treatment is to be provided for expectant mothers and to mothers of infants and young children who are guilty of infringing the penal law (Article 30). States parties are obliged to discourage any custom, tradition, cultural or religious practice that is inconsistent with the provisions of the treaty (Article 1(3)) and to take measures to eliminate harmful social and cultural practices, in particular those customs and practices which are prejudicial to the health or life of the child and those which are discriminatory to the child on the grounds of sex or other status (Article 21). Refugee and internally displaced children are accorded the same rights, including appropriate protection and humanitarian assistance in the enjoyment of all the rights set out in the treaty (Article 23).

Once the African Children's Charter enters into force, the compliance of states parties will be monitored by an African Committee of Experts on the Rights and Welfare of the Child (the Committee), consisting of 11 members (Articles 32 and 33). A state party will be required to report on the measures taken to give effect to the African Children's Charter within two years of its entry into force in respect of that state, and thereafter every three years (Article 43).<sup>6</sup> In addition, the Committee is empowered to receive complaints from any person, group or non-governmental organization recognized by the OAU relating to any matter covered by the treaty (Article 44).<sup>7</sup> The Committee is also mandated to resort to any appropriate method of investigating matters falling within the ambit of the treaty (Article 45).

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<sup>5</sup> Article 1 of the UN Convention on the Rights of the Child defines a child "...as every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".

<sup>6</sup> Under Article 44 of the UN Convention on the Rights of the Child, states parties are required to submit periodic reports every five years.

<sup>7</sup> The UN Convention on the Rights of the Child does not have an individual communications procedure.

The African Children's Charter requires 15 ratifications/accessions to enter into force. Yet, eight years after its adoption, only 27 of the 53 member states of the OAU have signed this important regional treaty, and 11 have ratified it. In stark contrast to this, the CRC has been ratified by all African states except Somalia. Whilst this signifies the willingness of African governments to assume international legal obligations to protect and promote the rights of children, it does not excuse the failure of African governments to ratify the regional instrument. As repeatedly argued by the OAU Secretary-General, one of the objectives of adopting the African Children's Charter was "to complement the UN Convention on the Rights of the Child to include African realities", not to duplicate it.<sup>8</sup>

### **Abuses of children's rights**

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<sup>8</sup> Report of the Secretary-General on the African Common Position and the Plan of Action on Child Labour in Africa, Sixty-Eighth Ordinary Session of the OAU Council of Ministers, 1 to 6 June 1998, Ouagadougou, Burkina Faso, CM/2076 (LXVIII).

The reality for many African children is that their human rights are seriously violated every day of their lives, with severe consequences which extend well beyond their childhood and which pose a direct threat to peace, stability and development in Africa.<sup>9</sup> During 1996, for example, 14 of the 53 member states of the OAU were afflicted by armed conflict.<sup>10</sup> That year, the OAU adopted a resolution which affirmed that the use of children in armed conflicts constitutes a violation of their rights and should be considered as a war crime.<sup>11</sup> Yet, the participation of children as soldiers - described by Ms Graça Machel as “..one of the most alarming trends in armed conflict”<sup>12</sup> - shows few signs of decline. At the end of 1997, children under 18 years of age had been reported to participate in either government or opposition forces, or both, in armed conflicts which were on-going or ceased during 1996 or 1997 in the following African countries: Algeria, Angola, Burundi, Congo-Brazzaville, Democratic Republic of Congo, Ethiopia, Liberia, Rwanda, Sierra Leone, Somalia, South Africa, Sudan and Uganda.<sup>13</sup> The UN High Commissioner for Refugees (UNHCR) estimates that at the beginning of 1998 in Africa, there were 3,481,700 refugees - 16% of whom were under the age of 5 - together with some 1,694,000 internally displaced and other persons of concern, as well as 2,149,700

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<sup>9</sup>The OAU recognized the link between respect for human rights, democracy and development when it adopted the Declaration on the Political and Socio-Economic Situation and the Fundamental Changes Taking Place in the World, Twenty-Sixth Ordinary Session of the Assembly of Heads of State and Government, 9 to 11 July 1990, Ethiopia, AHG/Decl.1 (XXVI).

<sup>10</sup>The causes of conflict and the promotion of durable peace and sustainable development in Africa, report of the UN Secretary-General, A/52/871, 13 April 1998.

<sup>11</sup> Resolution 1659 (LXIV) on the Plight of African Children in Situations of Armed Conflicts, adopted by the Council of Ministers of the OAU in July 1996, Yaounde, Cameroon. At the time of writing, twenty OAU member states have signed the Statute of a permanent International Criminal Court which will have jurisdiction to prosecute persons charged with war crimes, genocide, aggression, and crimes against humanity. Included in the list of war crimes in international armed conflicts is “conscripting or enlisting children under the age of fifteen years into national armed forces or using them to participate actively in hostilities”, and in the case of an internal armed conflict, “conscripting or enlisting children under the age of fifteen years into armed forces or groups using them to participate actively in hostilities”. Member states of the UN are also drafting an Optional Protocol to the UN Convention on the Rights of the Child to raise the age currently contained in Article 38 of that treaty from 15 to 18 years as the minimum age for recruitment (voluntary or compulsory) into armed forces and participation in hostilities.

<sup>12</sup>Impact of armed conflict on children: report of the expert of the UN Secretary-General, Ms Graça Machel, A/51/306, 26 August 1996. Subsequently, the UN Secretary-General appointed Olara Otunnu as Special Representative for Children and Armed Conflict on 1 September 1997.

<sup>13</sup>Source: Rädä Barnen, Stop Using Child Soldiers!, published by the Coalition to Stop the Use of Child Soldiers, 1998.

returnees in the early stages of reintegration.<sup>14</sup> In Rwanda alone, there are 400,000 children, many of them returnees, who are believed to be without parents.<sup>15</sup>

In 1998, Amnesty International documented abuses of children's rights in a number of African countries, including Algeria, Angola, Burundi, Democratic Republic of Congo, Rwanda, Senegal, Sierra Leone, Tunisia and Zambia. These abuses included extrajudicial and arbitrary executions, torture and ill-treatment including rape, "disappearance" and abductions, hostage-taking, forced eviction, forced recruitment and sexual slavery, and permanent injuries as a result of anti-personnel landmines. Children have also been harassed and interrogated as a way of exerting pressure on their parents for their political opinions. These abuses have been perpetrated by governments and armed opposition groups.

### **A framework for action**

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<sup>14</sup>Report of the United Nations High Commissioner for Refugees: Assistance to refugees, returnees and displaced persons in Africa, A/53/328, 2 September 1998. See also Report of the UN High Commissioner for Refugees: assistance to unaccompanied refugee minors, A/53/150, 26 August 1998.

<sup>15</sup>Statement by the UN High Commissioner for Refugees, Mrs Sadako Ogata, to the Third Committee of the UN General Assembly, 11 November 1998

The OAU is undertaking a number of initiatives to tackle some of the severe problems faced by children all over Africa. In June 1998, the OAU Assembly of Heads of State and Government endorsed the Addis Ababa Declaration on Violence against Women Related to Harmful Traditional Practices.<sup>16</sup> Amongst other recommendations, the Declaration calls on African governments to ensure that by the year 2005 the practice of female genital mutilation (FGM) will have been completely eradicated or its incidences drastically reduced.<sup>17</sup> Other regional strategies include the implementation of an African Common Position and Plan of Action on child labour<sup>18</sup>, and giving greater priority to children in the context of existing strategies and commitments, for example the OAU Decade for Education and resolutions and declarations on HIV/AIDS in Africa.<sup>19</sup>

However, without the framework of the African Children's Charter, these initiatives risk becoming *ad hoc* and temporary solutions to a considerably wider and more complex range of problems. The African Children's Charter is an essential foundation for building regional strategies to promote and protect the rights of children across the continent.

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<sup>16</sup>Report of the Secretary-General on the Twenty-first Ordinary Session of the OAU Labour and Social Affairs Commission, June 1998, CM/Dec (LXVIII)

<sup>17</sup>Twenty-nine countries in Africa are identified as having communities which practise FGM, which is estimated to have afflicted some 100 million African women and girls. The practice may be carried out during infancy, childhood, at the time of marriage or during a first pregnancy. The most common age seems to be between four and ten and it is believed that each year a further 2 million girls around the world are at risk of the practice. See Report of the UN Secretary-General on traditional or customary practices affecting the health of women, A/53/354, September 1998, for information about initiatives being undertaken by the UN in eradicating FGM, as well as legislative changes made by the governments of Côte d'Ivoire, Tanzania, Togo and Uganda aimed at eradicating the practice.

<sup>18</sup> *Supra*. note 8.

<sup>19</sup>Progress Report of the Secretary-General on the Implementation of Resolution AHG/RES.251(XXXIII) on the Decade of Education in Africa, (1997-2006): Programme of Action, Section 5, paragraph 11, Sixty-Eighth Ordinary Session of the OAU Council of Ministers, 1 to 6 June 1998, CM/2077 (LXVIII). See also Report of the Secretary-General on the Follow-Up to the OAU Resolutions and Declarations on HIV/AIDS in Africa, Sixty-Eighth Ordinary session of the OAU Council of Ministers, 1 to 6 June 1998, CM/2079 (LXVIII).

At the national level, the treaty is an important legislative tool for the design and discharge of policies. In implementing the rights contained in the treaty, it is clear that governments will need to take bold initiatives to ensure the progressive realization of all the rights enshrined in the African Children's Charter. Governments will have to ensure that legislative changes are accompanied by genuine changes in the conditions of the lives of children, including through examining their economic and social policies and allocating additional funding for projects and initiatives which would directly improve the human rights of children, and in particular, girls.<sup>20</sup> Notwithstanding the severe effects of the debt crisis facing several African states, it is possible to make progress if there is political will and foresight.<sup>21</sup>

### **Towards 2001**

In three years' time, governments from all over the world will gather at the UN to review the achievement of the goals and targets agreed upon at the World Summit for Children (the Summit) in 1990, which were to be accomplished at the global level by the year 2000. While some advances have been made in Africa towards meeting the goals set at the Summit, the situation of the human rights of children on the continent remains critical.<sup>22</sup> By ratifying the African Children's Charter, governments will be supporting global efforts to promote the development, protection and survival of children. This will be a significant achievement for the review process that will take place in 2001.

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<sup>20</sup>UNICEF has calculated what it would cost to make up the difference between present education spending and the additional spending that would be needed to achieve the goal of universal primary school enrolment by the year 2010. To meet this target globally would cost an additional US\$7 billion a year - less than Americans spend annually on cosmetics and Europeans on ice cream. See The State of the World's Children, 1999 - Education, published by UNICEF in 1998.

<sup>21</sup>*Ibid.* For example, Mozambique must devote almost half of its budget to debt repayments, more than it can spend on health and primary education combined and Tanzania is not untypical in spending six times more on debt repayments than on education. See the Report of the UN Committee on the Rights of the Child, A/53/41, 7 July 1998, for information about initiatives welcomed by the Committee in the implementation of the CRC. These include measures taken by the Zimbabwe government to improve living conditions and alleviate poverty, including through the expansion of the income-generating capacity of people in rural areas (CRC/C/3/Add.35); by the Mauritian government in the implementation of a National Programme of Action for the Survival, Development and Protection of Children (CRC/C/3/Add.36); by the Ethiopian government in the field of information on HIV/AIDS and information campaigns on harmful traditional practices affecting children (CRC/C/8/Add.27).

<sup>22</sup>Report of the Secretary-General on Progress on the implementation of the World Declaration and Plan of Action from the World Summit for Children, A/53/186, 22 July 1998.



More immediately, in January 1999 the OAU will convene a Ministerial Conference to celebrate the 50th anniversary of the Universal Declaration of Human Rights. Amnesty International believes that this occasion presents a unique opportunity for those governments who have not yet done so to ratify the African Children's Charter in 1999 so that the treaty enters into force before the year 2000. By doing so, governments will not only pledge to promote and protect the rights of children: they will be making a substantial and long-term investment in the future of their people and of their region.