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Strengthening the Monitoring of and Compliance with the Rights of the African Child

Robert Johnson
Consultant in human rights and UN reform, Kenya
rj_bz@yahoo.com

Abstract

The African Charter on the Rights and Welfare of the Child is a progressive human rights instrument by international human rights standards. The provisions of the UN Convention on the Rights of the Child and the African Charter are contrasted, noting stronger African provisions for the child's 'best interests', stronger safeguards in areas of traditional or 'cultural' practices, and provisions concerning the 'duties' of the child and its implications for the child's empowerment. Additionally, the African oversighting Committee holds stronger mandates than exist for the UN Committee on the Rights of the Child. However, reporting and monitoring practice by states parties and the oversight mechanism fall well short of such obligations and mandates. The paper proposes a range of measures to better ensure the rights of the African child, and their importance for the rights of all children and in advancing the international human rights treaty system.

Keywords

African Children's Charter – child rights system – child rights in Africa

The creation of an international human rights system has travelled a rocky road. A critical early indicator of a contended universal foundation was that of USA-led opposition to the legitimacy of economic and social rights in the move to translate the Universal Declaration of Human Rights (UDHR) into a single Covenant on Human Rights.[1] As a consequence, two separate but indivisible

1 The Universal Declaration is, more correctly, Resolution A of an *International Bill of Human Rights*; the associated Resolution F in the original document anticipated a single Covenant

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core human rights instruments resulted. The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) laid the foundations of the international human rights framework, each being adopted in 1966 and entering into force 10 years later.[2]

Much of the debate leading to the construction of that framework took place within and was shaped by the Cold War, with Third World states largely rendered silent bystanders in the development of the component treaties. Exemplifying that global hegemonic character of the drafting processes – as well as the actual content – of such instruments, many Third World states remained circumspect about the professed universality and integrity of such rights, understandably exacerbated by those ideological efforts to assert a divisibility and even hierarchy within that body of rights.

Okafor – citing Baxi – refers to the sense in which the development of international human rights served as a means by which Western interests could scrutinise and sanction the Third World, including to better ensure global capital interests (in particular, see Baxi's arguments of a move toward a 'trade-related market-friendly' human rights paradigm) (Okafor, 2008: 265–270). Alternatively – but not incompatibly – Mutua locates the origins of a human rights system within European efforts to curtail atrocities, effectively between themselves. Its internationalisation was driven by the legacy of European atrocities against colonialized Third World peoples and as a means of legitimising such practices within a 'grand narrative' of Third World 'savages' and 'victims' and of Western 'saviours' thus afforded 'self-redemption' (Mutua, 2001: 208–210). Rajagopal (2006: 772–774) argues that human rights discourse has been a convenient tool of hegemonic international law, and that it has thus been instrumental in thwarting the attainment of an effectively global justice.

Such circumspection – whether from 'east' or 'south' – has barely manifested itself in practice, insofar as 'practice' concerns the process of state ratification and submission to associated accountability processes. This is most evident for the UN Convention on the Rights of the Child (CRC), which entered into force in 1990, less than 10 months after it was adopted.

The CRC is the most ratified of human rights treaties, with 194 state parties having done so. Only two UN member states – South Sudan and the USA – have signed it only, although Somalia announced in late 2009 its intention to ratify

on Human Rights: UN General Assembly, *International Bill of Human Rights*, Resolution 217(III), 183rd plenary meeting, 10 December 1948.

2 Of the core international human rights treaties, the adoption of the Convention on the Elimination of All Forms of Racial Discrimination preceded these two International Covenants by about a year, and entered into force just over seven years prior to them.

it.[3] Regardless, Somalia has ratified the ICESCR – which embraces many of the rights set down in the CRC – whilst the USA has not, so that, in principle at least, the children of the USA are the only children not afforded the guarantees of the international human rights system (the majority of child rights come within the economic, social and cultural context). Issues of state reporting and compliance are, of course, separate matters; the important point concerns joining in the global system of commitment, scrutiny and accountability, even despite shortcomings in such processes.

As background to later discussion, reference also needs to be made to the three optional protocols to the CRC. These concern the involvement of children in armed conflict, and the sale of children, child prostitution and child pornography, thus being focussed on especially vulnerable and at-risk children, including very many African children – the rights of the African child being the focus of this paper. By January 2012, these two instruments were in force in, respectively, 34 and 41 African states.

In principle if not in practice, this means that almost all children around the world are guaranteed most if not all of the body of international child rights, although the weakness of ratification of the two optional protocols remains of concern, especially more than a decade after they came into force. Notable exceptions are, besides the children of the USA, the children of the Western Sahara (Sahrawi Arab Democratic Republic) and of occupied Palestinian territories. The children of the latter two entities are entitled to all such rights under international law, but are denied the associated guarantees of state accountability and scrutiny. This is due to the occupying states of, respectively, Morocco and Israel not complying with the calls by the UN Committee on the Rights of the Child ('CRC Committee') to duly report on such children in their respective CRC state reports. Morocco has been reminded of its duty of care to Sahrawi children, and its reports make – at best – passing reference to them. Israel persistently rejects UN human rights treaty committees' rulings on its duty of care to Palestinian children and confines its CRC state reports to Israeli children only, including those within the illegal settlements in the West Bank and East Jerusalem.[4]

Aside from the question of the coverage of children within the international human rights system is the question of the adequacy of the scope of

3 See http://www.crin.org/resources/infodetail.asp?id = 21323.

4 See, for example, the summary record and concluding observations of the CRC Committee in 2002 for Israel's most recent (initial) CRC report on Israel's obligations toward Palestinian children within the occupied territories, and the Committee's concluding observations in 2003 on Morocco's most recent (second periodic) report reiterating Morocco's duty of care to children of the Western Sahara (para. 57).

that framework. There continue to be debates about the existence of various rights – such as the 'right to participate' or the 'right to resist' – and of the powers of oversighting machinery. For the CRC, the adequacy of that machinery has been, in recent years, somewhat dominated by the absence of an individual complaints mechanism such as those that are in place for several other human rights instruments. The UN General Assembly's adoption in November 2011 of such a mechanism is to be opened for signature in 2012.

In view of the various contested dimensions of the rights of the child – origins, scope, content, scrutiny, accountability, etc. – it is of significance that the CRC is so universally embraced, including by African states. In this context, this paper is especially interested in the parallel emergence – within that essentially political and hegemonic global framework – of the uniquely regional (continental) child rights instrument of the African Charter on the Rights and Welfare of the Child ('African Charter').

Accordingly, Section I describes the rights of the African child with particular attention to the comparative provisions of the African Charter and the CRC. That is, it is not the function of this paper to describe the Charter in detail, especially insofar as there is such a strong degree of congruence between the provisions of both instruments. Section II provides a similar overview of the Charter's 'machinery': its oversight and monitoring body, the African Committee of Experts on the Rights and Welfare of the Child ('African Committee of Experts'), alongside the parallel provisions for the CRC Committee. This section then looks at the current status of the African Charter and of the African state reporting situation. That Charter status and comparative overview in terms of the CRC then informs Section III, in enabling the identification of key policy and reform options for strengthening the situation of the rights of African children within the international and continental child rights frameworks. The broader transformative opportunity for the wider international human rights treaty system is also touched upon, including within the brief concluding comments of Section IV.

I African Child Rights Provisions: A Comparison of Two Instruments

The African Union (AU) is a multilateral body of 54 African states established in 2002 as successor to the Organisation of African Unity (OAU). The AU comprises all African states except Morocco, due to the latter's opposition to the membership of the Western Sahara that it has occupied since the 1970s despite the International Court of Justice 1975 advisory ruling of the Sahrawi people's right to

exercise an act of self-determination.[5] Nevertheless, Morocco participates in and benefits from the services of some of the AU's institutions. South Sudan joined both the UN and the AU in July 2011. The AU Commission, based in Addis Ababa, Ethiopia, is the Union's secretariat, and main decision-making takes place at its Assembly, which comprises the membership's heads of state and government.

The African Charter was adopted by the OAU in 1990 and entered into force on 29 November 1999.[6] That is, it was adopted just months after the adoption of the CRC, but took somewhat longer (nine years, compared to 10 months for the CRC) to gain the requisite 15 state ratifications to enter into effect. The Charter had been anticipated by the OAU's adoption in 1979 of the Declaration on the Rights and Welfare of the Child, and remains the only regional child rights instrument across the world.[7] By January 2012, it had been ratified by all but eight member states: Central African Republic, Democratic Republic of the Congo, Sahrawi Arab Democratic Republic, Sao Tome and Principe, Somalia, South Sudan, Swaziland and Tunisia. All of those non-ratifying states – except for South Sudan – have, nevertheless, signed it; Tunisia was in the process of ratification (prior to its internal reforms of 2011).

A detailed description of the Charter, and of its provisions vis-à-vis the CRC, is well beyond the scope of this paper, which can only do so in a more general sense. There is, however, a range of academic and technical papers that are important in this regard, and that merit the attention of the interested reader.[8] This section concurs with and thus commences from the objective conclusion of all informed commentators that the African Charter is in substantive conformity with the principles and content of the CRC. The following discussion is thus focused on notable areas of sometimes nuanced difference between the

5 International Court of Justice, *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, 12.

6 *African Charter on the Rights and Welfare of the Child*, OAU Doc. CAB/LEG/24.9/49 (1990).

7 'Regional' here equates to continental – African-wide – as distinct from the African Union's categorization of its member states into five regions of Africa.

8 See, in particular, the papers in volume 10 of the *International Journal of Children's Rights* (2002): D. Mzikenge Chirwa, "The merits and demerits of the African Charter on the Rights and Welfare of the Child": 157–177; A. Lloyd, "Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: *Raising the gauntlet*": 179–198; and D. Olowu, 'Protecting children's rights in Africa': 127–136. See also A. Lloyd, "A theoretical analysis of the reality of children's rights in Africa: An introduction to the African Charter on the Rights and Welfare of the Child", *African Human Rights Law Journal* 2002 (2(1)): 11–32. More recently, see A. Lloyd, "The African Regional System for the Protection of Children's Rights", in *Children's Rights in Africa: A Legal Perspective*, ed. J. Sloth-Nielsen (Aldershot: Ashgate, 2008), 33–51.

two instruments, as a means of drawing some useful observations about the place of the Charter within the child rights framework.

I.1 *Main Principles*

The CRC is based on four core principles: non-discrimination, the child's best interests, the child's right to survival and development, and respect for the child's views. These principles are all asserted within the African Charter, with some variations.

The Charter's *non-discrimination* provision is at article 3. Its scope omits reference to 'property' and 'disability' and adds 'fortune' (like the CRC, it includes "or other status"). The provisions of the second part of the CRC's non-discrimination clause (article 2.1) are more generally covered elsewhere within the Charter, but the Charter importantly extends the specific non-discrimination provisions for children to include children living under apartheid or other discriminatory regimes or states subject to 'military destabilization' (article 26).[9]

The principle of *the child's 'best interests'* is considerably stronger in the Charter (article 4.1) than in the CRC (article 3.1). For the former, "In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration". The CRC constrains such rights of the child by making the child's best interests *one* of the factors to be considered, as well as limiting the child's best interests to a range of institutions. This becomes additionally significant when dealing with such issues as professed 'cultural heritage' or traditional practices, or administrative decision-making in accordance with state policy (such as concerning military recruitment), which may be deemed not in the child's best interests. As will be seen below, the Charter is more forthright than the CRC in such regards.

The right to life, survival and development is arguably stronger within the Charter (article 5) than the CRC (article 6): it mandates that the right to life be incorporated within law (which, in the CRC, is generally held to be implicit from other provisions), the survival and development provision includes reference to 'protection', and the prohibition on the death penalty for the child is incorporated within this core provision rather than within a subsequent provision concerning juvenile justice, as is the case for the CRC.

Respect for the child's views is sometimes deemed to be stronger within the CRC (article 12) than the Charter (article 7), but this is not so clear. The Charter's focus is on the child's capacity to *communicate* views and the CRC's focus is on the child's capacity to *form* views; both instruments acknowledge legal

9 Within this paper, references to articles primarily relate to the African Charter unless they are clearly to articles of the CRC.

restrictions on the child's freedom of expression of opinions that may be considered to be better constrained or regulated within the CRC (article 13.2). The CRC explicitly refers to the child's right to be heard in administrative and judicial decision-making on matters affecting the child. However, this principle should also be considered alongside the Charter's provision for the child's best interests, such that it is likely that the Charter may be deemed a more powerful statement of the child's rights in relevant decision-making.

It is possible that the Charter's provision concerning the responsibilities of the child (article 31: discussed further below) could be classified as an additional principle, however the African Committee's guidelines for initial reports sets down a different general principle: "provision of information to children and promotion of their participation" (ACERWC, 2003: para. 11).

Further important distinctions are apparent when considering broader human rights provisions. The Charter does not accommodate the limitation on rights fulfilment made by the CRC (article 4) in sanctioning the state's limited *resource capacity* as a brake on the fulfilment of economic, social and cultural rights (except in a couple of specific provisions cited below). Although not the intention, this may be claimed by state parties as a basis for the perpetual deferment of such rights within the human rights framework's language of '*progressive realisation*' (Detrick, 1999: 104). That latter qualification on the child's rights is explicitly reiterated within the CRC for the child's health rights (article 24.4) and education rights (article 28.1), and has been argued as giving the Charter "an edge over the CRC by avoiding any ideological differences between the two categories of rights" (economic, social and cultural rights and civil and political rights) (Mzikenge Chirwa, 2002: 158). For the Charter, absent such provisions, a purported lack of resources is more likely to be viewed as a question of skewed budget priorities – especially for public functions for which there are no corresponding international legal obligations – and this makes it more difficult for African than non-African state parties to claim resource constraints as the reason for shortfalls in child rights compliance or their deferral.

Also, the Charter *definition of the child* is "every human being below the age of 18 years" (article 2), in contrast to the CRC's qualification that a lower age may apply under domestic law (article 1). The African child is thus less vulnerable to domestic laws that lower the age of majority in such areas as minimum age of marriage, child labour or military recruitment in a way that weakens the guarantees of the human rights system under such state legislation and public policy.

The possible adverse consequences in terms of permissible state practice within the CRC under the combined conditions of 'resource limitations' in not meeting the child's education and health rights, of 'progressive realisation' in

deferring associated measures to do so, of not ensuring that the child's best interests are *the* primary consideration in administrative and judicial decision-making affecting the child, and of potentially diminished child rights guarantees in some areas where the state deems that a child has attained a majority at an earlier age, collectively underscore the stronger child rights foundations of the Charter compared to the CRC. As is emphasised later in this paper, this is not, of course, to argue a relationship between obligation and practice!

I.2 *General Provisions*

Additional notable differences arise in considering the actual provisions in specific rights. As previously remarked, such discussion within this paper generally disregards the large degree of congruence between the two instruments, and thus focuses on primary areas of divergence. The order of the following discussion follows the sequence of provisions within the Charter, rather than attempting to aggregate issues by thematic groupings of child rights (as, for example, in CRC state reporting).

In the area of *traditional and cultural practices*, the Charter requires that any "custom, traditional, cultural or religious practice" that is inconsistent with the Charter's provisions shall be discouraged (article 1.3), and further requires that states act to eliminate "harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child", with particular reference to the child's health or life and to sex-based discrimination (article 21.1). The CRC obligation is that "traditional practices prejudicial to the health of the child" be abolished (article 24.3). The Charter's reference to harmful practices being 'discouraged' rather than 'abolished' needs to be understood within the wider provisions of article 21 and to the stronger 'best interests' principle. More importantly, the Charter also extends beyond solely 'traditional' practices and beyond only health-related harm. Additional CRC provisions in this regard need to be – and may be – inferred or imputed from its other articles, but this is self-evidently a weaker basis for protection of the child, such that the Charter's provisions on harmful practices are both broader and less equivocal than are those for the CRC.

There are some minor wording differences between the two instruments on the *child's right to an identity* in that the Charter (article 6) does not explicitly include the CRC's reference to the child's "right to know and be cared for by his or her parents" (article 7.1). However, this is generally covered by the Charter's later provisions concerning the family and parental responsibilities (articles 19, 20 and 25). It also does not make provision for the preservation of identity, unlike the CRC (article 8), and this is of concern in instances of disappearances, trafficking or abduction (Mzikenge Chirwa, 2002: 165). On the other

hand, the Charter additionally includes an obligation on the state concerning the child's *right to a nationality* under conditions of potential statelessness (article 6.4).

The CRC requires that the child's *right to an education* occur on the basis of 'equal opportunity' and with priority attention to primary education. In practice, this has left scope for interpretation and application that is not necessarily compliant with the intent of such provisions, especially when qualified by the CRC in terms of 'progressive realisation' and purported resource constraints. Two particular such aspects are explicitly incorporated into the African Charter: the need for special measures to ensure equal access by girls (article 11.3) and to safeguard the education rights of pregnant students (article 11.6). The CRC applies 'progressive realisation' to the overall achievement of the child's right to education – including to basic schooling and concerning the girl-child and to pregnant students – whilst the Charter confines this qualification to secondary education ("progressively make it free and accessible to all"). It is a point meriting emphasis that – amongst the various rights of the child warranting immediate and unqualified realisation within the CRC – the drafters of the CRC could not agree that a basic education should be amongst them. The CRC is even weaker than the ICESCR in this regard (Detrick, 1999: 479; Johnson, 2010: 187–192).

The Charter's only other provision for 'progressive realisation' concerns *children with a disability*, but confines this only to their movement and access to public amenities (article 13.3). The rights of children with a disability are also the only rights within the African Charter that are constrained by 'available resources' (apart from an alternative form of wording with similar meaning referred to below for Charter article 20) which, as noted, applies generally to all children under the CRC. The CRC requires that states provide 'special care' to such children "free of charge, whenever possible, taking into account the financial resources of the parents or [other carers]" (article 23.3). The Charter makes no reference to such services being free, even though that may be the intent of its provision that states ensure such services "subject to available resources" (article 13.2); alternatively, the CRC's reference to the carer's financial capacity infers scope for user contributions to be levied by the state which, of course, is also not precluded by the Charter's provisions.

Reference has already been made to the *child's right to health* being emphasised within the CRC as conditional upon 'progressive realisation' (article 24.4). The Charter additionally makes reference to the importance of mainstreaming health services within national development plans, to the inclusion of community leaders and community workers within measures of information and support, and to broad civil society and local community and 'beneficiary'

engagement in the 'planning and management' of basic child health services (article 14.2).

The Charter's declared aim of the *administration of juvenile justice* is the young person's "reformation, re-integration into his or her family and social rehabilitation" (article 17.3), and is arguably preferable to and clearer than the CRC's reference to the mere "desirability of promoting the child's reintegration and the child's assuming a constructive role in society" (article 40.1). However, associated provisions are stronger in the CRC. The CRC encourages the adoption of child-specific penal laws and associated agencies and procedures, measures for diversion from formal court proceedings, and measures for diversion from institutional sentencing (articles 40.3 and 40.4). Furthermore, the Charter does not include the greater detail of due process that is in the CRC, such as that the offence not be subject to retrospective law, that judicial proceedings be adapted to the child's capacities and best interests, that the child not be compelled to give testimony, and that detention be a last resort and subject to the child's right to have that decision reviewed (CRC articles 37 and 40.2). Whilst both instruments prohibit the application of the death penalty to a child, the Charter does not similarly prohibit – as does the CRC (article 37 (a)) – a sentence on a child of life imprisonment without the possibility of release. This sits somewhat inconsistently with the Charter's "essential aim" of the justice system for the child found guilty of an offence. Such comparative weaknesses within the Charter are further underscored by the additional provisions within the CRC's optional protocol on the sale of children, child prostitution and child pornography (article 8) on the rights of child victims within the justice system.

The CRC provides that the *social protection of the child* include state support to parents in ensuring an adequate standard of living, including via social assistance and material support (articles 26 and 27). The Charter similarly elaborates the primary responsibilities of parents for the child's living conditions, and similarly obliges the state to ensure all appropriate measures of support, albeit "in accordance with [the state's] means and national conditions" (article 20.2). This likely includes the limitation of 'available resource capacity' that more generally applies to the CRC provision as qualified by its article 4 conditional application to the child's economic, social and cultural rights, and accordingly does not evidently diminish the Charter's scope vis-à-vis CRC provisions. The Charter's reference to the administration of "domestic discipline" (article 20.1(c)) is susceptible to malinterpretation in the context of corporal punishment, but seemingly no more so than parallel CRC provisions (quite apart from Committee efforts to impute particular substance to those provisions).

Although the CRC is silent on the question of *child marriage* (unless it is argued – as it obviously may be – that it is a traditional practice contrary to the girl child's health), state parties largely and increasingly include within their periodic reports comments on its prevalence and measures taken to curtail, if not eliminate, the practice. The African Charter explicitly prohibits marriage for persons under 18 years and requires enabling domestic legislation to be adopted (article 21.2). This is included within the Charter's provisions for 'protection against harmful social and cultural practices'.[10]

The Charter is similarly concise on the issue of *children, armed conflict and recruitment*, requiring states to ensure that no child (that is, under 18 years old) be recruited or be permitted to take "direct part" in hostilities (article 22.2). The CRC's parallel provisions are for children aged under 15 years (articles 38.2 and 38.3). The subsequent associated optional protocol to the CRC increases to 18 years the prohibition on engagement in hostilities but still permits (voluntary) recruitment from 15 years, while applying the Charter's under 18 prohibition to armed groups as distinct from the state's armed force (see optional protocol articles 1, 2 and 4).

In general, the Charter and the CRC make similar provisions for the refugee child, except that the Charter includes a specific clause that extends such rights to all *internally displaced children* regardless of the cause of that displacement (article 23.4). This is of particular importance to many children across Africa, but equally affects many children outside of the African continent.

This is similarly the case for children subject to *adoption*. That is, there is general congruence between the two instruments, except that the Charter explicitly defines inter-country adoption as "the last resort": this is implicit in the CRC but not universally acknowledged as such – temporary domestic remedies such as institutional care are sometimes (incorrectly) held to be the last resort. The Charter also adds a requirement that machinery be established to "monitor the well-being of the adopted child" that, in the context of the provision, includes a child subject to an inter-country adoption (article 24 (b) and (f)).

In the area of the *sexual exploitation and sexual abuse of children* there is an important difference between the two instruments. Unlike the CRC, the Charter prohibits the coercion or exploitation of the child for sexual activities or practices or in pornography (article 27), whereas the CRC limits that prohibition to

10 Prohibition of child marriage within international human rights treaties is contained not in the CRC but in the *Convention on the Elimination of all forms of Discrimination Against Women* (article 16.2). This requires that the marriage of a child have no legal effect, and that states specify a minimum age. In the context of the CRC's article 1 provision, an age below 18 years may be established in law.

sexual activities or practices that are considered to be "unlawful" and to pornographic purposes that are deemed to be "exploitative" (article 34). The CRC's qualifications to such forms of exploitation and abuse are redressed in the associated and subsequent optional protocol, which also extends the rights and means of protection of such child victims. In this sense, the optional protocol may be considered to have 'corrected' the CRC and to have provided an elaboration of the substance of the Charter's provisions.

The Charter has been noted as being the first international rights instrument to specifically prohibit the use of children in begging (article 19 (b)) within its provisions on the *trafficking and abduction of children*. Whilst this is an issue of particular relevance to the rights of children across Africa, it is hardly confined to that continent and is also not directly included within the relevant optional protocol to the CRC.

The Charter includes a provision that asserts the primacy of the child's best interests in practice: in instances of the *sentencing of women* who are pregnant or are mothers of young children (article 30). The state is obliged to establish non-custodial options and to apply a non-custodial sentence as a first resort, to ensure that the mother is not imprisoned with her child, to establish special institutions for such women who cannot be afforded a non-custodial sentence, and to ensure that a death sentence is inapplicable to such women. There is no such provision in the CRC, and the best interests of children under such circumstances need only be one factor to be taken into judicial consideration in sentencing the woman.

Finally, it is necessary to make particular reference to the African Charter's article 31 on the *responsibilities of the child*. Various human rights instruments include duties and responsibilities of the person, including the core international treaties of the UDHR, ICCPR and ICESCR, and the Charter's provisions on the child's duties to parents and elders are similar to those of the American Convention on Human Rights (Sloth-Nielsen and Mezmur, 2008: 187; Kaime, 2009: 77). The Charter provides that "every child shall have responsibilities towards his family and society, the State and other legally recognized communities and the international community… subject to his age and ability, and such limitations as may be contained in the present Charter", thus including – inter alia – the 'best interests' principle as an overriding consideration. The associated elaborated duties focus on the achievement of family cohesion, strengthening of national solidarity and cultural values, and the promotion of African Unity.

Within the Charter's earlier subordination of traditional and cultural practices to the best interests of the child and potentially contentious guarantees to abandon harmful traditional practices, this is a carefully considered and

drafted provision, especially within the spectrum of cultural relativism and the universality of human rights that the Charter deftly treads. As an example, the duty on the child "to respect his parents, superiors and elders at all times" is to be understood within the broader and overarching obligations to ensure the child's 'best interests', protection from harmful practices, and assurance of the Charter's guarantees in such areas as the particular freedoms of articles 7–9.

Nothing in article 31 is to be interpreted as modifying or limiting the African child's full enjoyment of the other articles: article 31 is an individually and collectively empowering provision. It needs to be interpreted and applied in a way that understands the additional obligations on parents, communities and the state to enable the child to fulfil her or his responsibilities in this regard. Article 31 thus envisages "a positive developmental context that aims to nurture child participation, cherish communitarian traditions, further peace-building and harmonious social development as well as foster African unity" (Sloth-Nielsen and Mezmur, 2008: 188).

II African Child Rights Monitoring Frameworks

II.1 *Committee Structures and Mandates*

Both the CRC and the African Charter make provisions for reporting, review and monitoring machinery and procedures. The CRC establishes the UN Committee on the Rights of the Child. It comprises 10 members, elected by secret ballot for renewable four-year terms. The Charter establishes the African Committee of Experts on the Rights and Welfare of the Child. It comprises 11 members, elected by secret ballot for non-renewable five-year terms.

As with the scope of the rights of the child, the oversight mandate of the respective Committees is stronger for the Charter than for the CRC. The CRC Committee's purpose is described as being "to examin[e] the progress made by States Parties in achieving the realization of the [CRC's] obligations" (article 43.1). The African Committee's purpose is "to promote and protect the rights and welfare of the child" (article 32), and associated functions are elaborated as its wider mandate (article 42).

The corresponding powers of each Committee are markedly different in key regards. The CRC Committee may 'recommend' that studies be undertaken, may make 'suggestions and general recommendations' to the state party, may 'invite' relevant specialist agencies to submit reports on CRC implementation, and may 'indicate' to relevant agencies a need for technical advice and assistance (article 45). The African Committee has substantially stronger powers: it may directly commission relevant studies, it may interpret Charter provisions,

it may establish principles and rules to promote and protect children's rights, it may receive communications from individuals, agencies or institutions, and it may initiate its own investigations on Charter-based matters (articles 42, 44 and 45).

The African Committee of Experts is thus empowered to be far more proactive in its application, interpretation and advocacy of the rights of the African child. The absence of a complaints mechanism within the CRC framework is presently in the process of being rectified following considerable concerted lobbying; the African Charter contains such provision, and does so to a higher standard than is generally applicable to such mechanisms within international human rights treaties. Brief comparative observations are made in the next sub-section.

Finally, whilst the African Committee of Experts enjoys a far more proactive mandate than its UN counterpart, there is an evidently critical difference that appears to adversely constrain the former body: whilst the CRC provides that the UN Secretary-General "shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention" (article 43.11), the African Charter simply says that the AU Secretary-General "shall appoint a Secretary for the Committee" (article 40). This likely underpins many of the performance shortfalls in Charter monitoring that are apparent from later in this section and that are considered further in Section III.

II.2 *State Reporting Status*

State parties are required to submit their initial state reports within two years of ratification, and to thereafter submit periodic reports each three years (Charter) and five years (CRC). There are guidelines for states on preparing their reports, although the African Committee has not yet produced its guidelines for periodic reports beyond initial reports. Even so, it is at least noted that such reports need not repeat the background information presented in initial reports. The African Committee's guidelines for initial reports embrace two important features: firstly, the reporting structure generally follows the structure used for CRC state reports – including the thematic framework in grouping articles – plus the addition of a section on the Charter-based provision for the responsibilities of the child and, secondly, it invites states to adapt their reports from the parallel CRC state reports. (This would be of more utility to states if there was also harmony between the two reporting periods.)

It is no secret that there is an overwhelming problem of non or delayed state reporting under the CRC. The same is at least as true for the African Charter: by January 2012, 13 initial state reports had been submitted, and the initial state

reports for 32 of the 46 state parties to the Charter were overdue (25 were at least five years overdue). Also, by January 2012, for the CRC optional protocol on the sale of children, child prostitution and child pornography, of the 41 ratifying African states, 34 had initial reports overdue and just seven had submitted such reports; for the CRC optional protocol on the involvement of children in armed conflict, the corresponding figures were 34, 29 and six.[11] State reports are typically submitted late (this is not a characteristic confined to African states).

As alluded to in an earlier comment about poor technical and administrative resourcing of the African Committee, even once a state report is submitted there is no guarantee of its timely consideration by that Committee. Of 14 initial state reports submitted up until the end of 2011, 12 had been considered by the Committee, nine Committee reports ('recommendations and observations') had been issued to the state party, and two initial state reports were awaiting the Committee's consideration.[12]

The Committee clearly has negligible capacity to effectively deal with the quite hypothetical situation of timely state reporting, which would presently average 15 state reports lodged annually to be considered at the mere one or two Committee meetings per annum scheduled by the AU. The primary values of the concluding recommendations are to identify gaps or limitations in state reports for rectifying in the next report and to identify areas requiring state action prior to the next report falling due. Delays in the Committee considering state reports and then in issuing its concluding recommendations mean – in principle if not in practice – that states receive responses to their Charter reports sometime after their next periodic report is due: an unwanted situation that is only being avoided by states not submitting periodic reports as they fall due. (Again, this is not unique to the Charter or to African states, but is more acute in this regard).

The African Committee issued its first two concluding recommendations at its 12th session (November 2008), for Egypt and Nigeria. Unsurprisingly, given resource constraints, those reports were considerably shorter and less detailed than corresponding CRC Committee observations and recommendations to

11 It is worth recording the duly reporting African states under these protocols: Egypt, Rwanda, Sudan, Tanzania and Uganda have reported on both, Morocco and Sierra Leone have reported on the former and Tunisia on the latter protocol.

12 By the end of 2011, it had issued reports to Burkina Faso, Egypt, Kenya, Mali, Nigeria, Rwanda, Tanzania, Togo and Uganda; Committee reports on its consideration of the initial reports from Cameroon, Niger and Senegal were pending; and initial state reports from Libya and Niger were awaiting Committee consideration.

states ("short on concrete insights, and [often resort to] vague generalities ... with little original or unexpected detail" (Sloth-Nielsen and Mezmur, 2010: 545)[13]), and the African Committee continues to iron out matters of scope and consistency in such reporting to state parties. With the allocation of so comparatively few state reports to individual Committee members serving five-year non-renewable terms, each member may only deal with one or two state reports before their acquired institutional expertise is lost under the non-renewable terms provision.

II.3 *Complaints and Investigations Status*

As noted, these two mandates of the African Committee granted it considerably stronger powers than the counterpart CRC Committee. They point to the scope for an African child rights system to be proactive and interventionist in ways that continue to elude the global system via the CRC. Even so, the current optional protocol to the CRC on a communications procedure marks some very important advances in both complaint and investigative provisions at the global level.

That impending CRC communications mechanism falls short of the scope of the existing African Charter's provisions in several important ways. The following (necessarily cursory) commentary is based on the provisions of the CRC optional protocol as adopted by the UN General Assembly in November 2011, and the African Committee's guidelines on communications. Provisions within the African Charter not reflected in the CRC scope include a shorter time period for states to respond to the Committee on its investigations (three months compared to the CRC's six months), provisions for perceived conflict of interests by a Committee member on a communication, requirements for the participation of children in relevant communications (the CRC merely includes a 'guiding principle' on the child's views), and provisions for the monitoring of the state's actions on the Committee's decisions (the CRC provision is that the state report back to the Committee within six months, plus that the Committee may 'invite' the state to provide further information). As an important footnote to the earlier reference to the primacy of the child's best interests within the Charter, the African Committee's guidelines for communications includes a provision that a communication may be received on behalf of a child within an African state that is not a party to the Charter: a measure precluded in the CRC document (effectively exempting communications by or on

13 The authors note some improvement in subsequent such reports. This is quite apparent from the most recent reports (Mali, Rwanda, Togo and Uganda), which are generally consistent and detailed, technically competent, and useful as feedback to state parties.

behalf of children of the USA). On the other hand, the CRC optional protocol includes a provision for making amendments to the protocol, albeit only binding on those states that accept such amendments. Importantly, its provision for initiating action toward a 'friendly settlement' of a matter (article 9) may prove to be an important means of non-adversarial dispute resolution within the human rights framework.

The African Charter's communication procedure has been described as "worth noting for its relative clarity and precision" except for some ambiguity about the exhaustion of domestic remedies (Mezmur, 2007: 261). This concerns the provision within the guidelines on communications that all domestic remedies be exhausted before submitting a communication, or otherwise that "the author of the Communication is not satisfied with the solution provided" (*ibid*: 263). Potentially equally ambiguous is the CRC's new optional protocol's provision that a communication is admissible where a domestic remedy "is unreasonably prolonged or unlikely to bring effective relief" (article 7(e)). These are, presumably, measures to be clarified in their application.

The African Committee's investigative mandate is also wide-ranging and deserves citing:

> The Committee may resort to any appropriate method falling within the ambit of the present Charter, request from the States Parties any information relevant to the implementation of the Charter and may also resort to any appropriate method of investigating the measures the State Party has adopted to implement the Charter.
>
> article 45(1)

Similarly to that for communications, the African Committee has adopted guidelines for investigations, clarifying that the Committee may initiate an investigation either on its own initiative or at the request of a state party. It has also included follow-up mechanisms beyond the issuance of its investigative report and any associated recommendations.[14] Aspects of child rights that have received some attention by the Committee within this mandate have included general considerations of such issues as HIV and AIDS and the African child, and the situation of children associated with armed forces and armed groups.

14 The African Committee's guidelines for investigations and communications are reproduced as, respectively, Annexure B and Annexure C to B. D. Mezmur, "The 9th ordinary session of the African Committee of Experts on the Rights and Welfare of the Child: Looking back to look ahead", *African Human Rights Law Journal* 2007 (7(2)): 562–575.

It is important to note that the new CRC optional protocol includes a provision for an 'inquiry procedure' (articles 13 and 14), which appears to go some way toward ameliorating the CRC Committee's lack of investigative autonomy that is enjoyed by the African Committee. This extends the CRC Committee's powers beyond the scope of a submitted communication, to enable it to act on its receipt of 'reliable information' concerning child rights' violations. However, that Committee may only 'invite' the relevant state party to cooperate in its inquiry, and there is provision for state parties to deny – at the time of signature or ratification of the new instrument – the Committee's competence to inquire into any aspect of the rights of the child to which it is otherwise a state's party (article 13.7).

The CRC Committee has moved over the years to partially ameliorate some of these effective weak mandates through its adoption of 'general comments' and of detailed recommendations within its concluding observations on state reports. But these are mechanisms that lack the force of the actual provisions of the respective child rights instruments, and continue to leave the global child rights framework somewhat weaker than its African counterpart. (It could be alternatively argued that such roles are adequately and perhaps even more appropriately provided for within the UN Human Rights Council's Universal Periodic Review process, although this is hardly a sufficiently child-focussed mechanism and still lacks the potential force of the African framework).

As a consequence, the African Charter provisions in these regards remain much stronger. The problem, of course, is the manifest weakness of the African Committee in exercising these mandates, especially evidenced by its responsibilities concerning communications. It received its first communication from the University of Pretoria's Centre for Human Rights in 2005, concerning the Ugandan government's failure to duly exercise its duties to the child in the context of the protracted violations by the Lord's Resistance Army. A second communication was received in April 2009, concerning the situation of children of Nubian descent in Kenya.

In March 2011, at its 17th meeting, the Committee issued its first decision, which dealt with that second communication.[15] The Committee's decision is a considered document that will hopefully serve to strengthen the Committee's technical competence and/or confidence in higher quality observations and

15 African Committee of Experts on the Rights and Welfare of the Child, *Institute for Human Rights and Development in Africa* (*IHRDA*) *and Open Society Justice Initiative on behalf of children of Nubian descent in Kenya* v. *the Government of Kenya*, Decision No 002/Com/002/2009 (22 March 2011).

recommendations on state reports and also serve to facilitate action on other communications. That decision concludes with a series of recommendations to the Government of Kenya, for which that government's response and the Committee's follow-up will be keenly awaited. However, the Kenyan government's failure to respond to repeated requests from the Committee for information to assist its deliberations and failure to even attend the meeting considering the matter are unfortunate signs of the Kenyan government's attitude to the African child rights framework.[16]

Meanwhile, the first communication – relating to very serious child rights violations – took fully five years (the 16th meeting in November 2010) to reach the stage of appointing a working group to determine the admissibility of the communication, and agreed to such admissibility at its 17th meeting in March 2011. This also needs to be viewed in the light of the communication guidelines: communications shall be dealt with *in order of receipt* "except in cases that require promptness on a decision". Without entering debate about the comparative merits of different child rights and violations, it remains unclear how the African Committee decided that the communication of 2009 concerning the nationality rights of Nubian children in Kenya was more pressing than the communication of 2005 concerning the Ugandan Government's alleged failure of a duty of care toward children suffering violations at the hands of the Lord's Resistance Army.

II.4 *Synthesis of Analysis and Observations*

The foregoing discussion points to three primary observations.

First, the African continent – via the African Union – has developed and put in place a strong and internationally ground-breaking human rights system for children. Not only is the African Charter more far-reaching and progressive than the CRC, but the mandate of the African Committee of Experts is more responsive and powerful than that of the CRC Committee (impending reforms via the new CRC optional protocol notwithstanding). Secondly, the associated infrastructure and machinery for the African Charter are quite inadequate for the broad and progressive mandates assigned to the associated Committee and Secretariat, evidently in terms of administrative capacity, technical competence and procedural efficiency. And thirdly, the framework collectively adopted by African states is primarily being weakened by the individual non-compliance by those same states in meeting their voluntarily embraced obligations in a sufficiently detailed and in any sense timely manner, as well as a

16 At its 18th Session (27 November – 1 December 2011), the African Committee appointed a member to follow up with the Kenyan government on its recommendations.

collective failure to adequately resource, via the AU, the very system that it has put in place.

A fourth observation is also merited. The inter-connectedness between the international and continental child rights systems present critical opportunities for accelerating synergies between the two systems in order to build stronger and more progressive child rights systems at both international and continental levels.

III Opportunities for System Strengthening

A number of measures that need addressing in order to improve the work of the African Committee have been identified by various commentators.[17] These include accelerating the completion of procedures and guidelines on areas of reporting and review of state reports and communications; addressing procedural barriers to Committee efficiency, including the terms and non-reappointment of members; more frequent and/or longer meetings; and the need to formally address the burgeoning number of civil society organisations (CSOs) attending and participating in open sessions of the Committee.[18]

Such measures would go some way to addressing the time available to and capacity of the Committee to better meet its own core obligations in state reporting, communications and investigations. If the foregoing discussion in this paper indicates any one single conclusion it is surely the need for the African Committee to more concertedly focus on its core mandates, and to be adequately resourced to do so. This needs to be a forward-looking rather than reactive process and, in that regard, several actions seem to have merit for progressing the African child rights system within the broader global human rights framework.

First, it is clear that the AU must ensure a more appropriate level of recurrent financing of the African Committee of Experts (wherever that Committee's secretariat ends up being located). The present resourcing situation simply

17 See, for example, Mzikenge Chirwa (2002), above n 8: 170; B. D. Mezmur, "The African Committee of Experts on the Rights of the Child: An update", *African Human Rights Law Journal* 2006 (6(2)); Mezmur (2007); J. Sloth-Nielsen and B. D. Mezmur, "Out of the starting blocks: The 12th and 13th sessions of the African Committee of Experts on the Rights and Welfare of the Child", *African Human Rights Law Journal* 2009 (9(1)); and Lloyd (2008), above n 8: 41–50.

18 An AU Executive Council decision in 2005 requested a study of measures to renew the terms of office of Committee members (see Sloth-Nielsen and Mezmur, 2010: 536). On CSO attendance, see Sloth-Nielsen and Mezmur (2009), above n 17: 347–348.

ensures that the vibrant and progressive child rights system that has, in principle, been put in place across Africa is largely ineffective and unsustainable.

Secondly, it is essential that the African Committee and the AU Commission – especially via its Department of Social Affairs and formal liaison with member states – more actively and forcefully advocate with state parties on the need for timely state reporting on the African Children's Charter. This needs to include a more strategic plan of action by African Ministers on state compliance with their reporting obligations within the next Pan-African Forum on Children, especially in advancing the continental agreement on the need for accelerated action toward the African Common Position on Africa Fit for Children.[19]

Thirdly, the African Committee must ensure that it rapidly acts to achieve more timely, strategic and consistent reporting to state parties on those state reports (including better focussing of the business of Committee meetings). It is worrisome that the African Committee has a stronger mandate than the CRC Committee, but that the latter (admittedly much more strongly resourced) issues more rigorous and forceful – if unenforceable – concluding comments and observations. The current belated, weak and inconsistent standard of African Committee state reports constitutes a missed opportunity in this regard.

A fourth and parallel action – already canvassed above – is the importance for the African Committee to tackle the current problem with its meeting procedures, and to focus more explicitly on its core mandates. It certainly appears to be the case that longer or more frequent meetings are required but, although this is also intertwined with the Committee Secretariat's weak resource levels, this is difficult to argue until the Committee refocuses its time management. A key test will be the extent to which the Committee interprets its own criteria for granting observer status (first applied at its 15th Session in March 2010) and whether this is accompanied by actions to curtail the burgeoning number of organisations that sit in on open sessions of the Committee outside of that formal observer status. Parallel collaboration between the Committee and the CSO Forum – as a non-governmental group for the African Children's Charter – will be pertinent in this regard (Sloth-Nielsen and Mezmur, 2010: 550–553).

Fifthly, coinciding with earlier proposals for reform of the Committee's membership structure – especially duration of appointment and scope for a second term – is the need to abandon triennial periodic state reporting and

19 Second Pan-African Forum on Children, *Call for Accelerated Action on the Implementation of the Plan of Action towards Africa Fit for Children (2008–2012)*, AU Doc. PANAF/FORUM/CHD/MIN/2(II), Cairo (2007), http://www.africa-union.org/root/au/Conferences/2007/November/sa/Children/doc/call/CALL_FOR_ACCELERATED_ACTION.doc (accessed 15 January 2012).

embrace the quinquennial (five-yearly) CRC timeframe. Current practice for both instruments shows that even this is ambitious, but it is a prerequisite for necessary reforms toward their better harmonisation. It is difficult to see any state party to the African Charter not supporting such a change! Some 20 African states are presently at least four periodic reports behind in their Charter reporting obligations, and many of them are hampered in periodic reporting by the absence of responses to their initial reports.

This enables a sixth, and critical, opportunity for reform. It has been contended earlier in this paper that the body of child rights within the African Charter largely meets a higher standard than the parallel provisions of the CRC. This includes that, generally, the provisions of the CRC's two optional protocols are broadly sufficiently accommodated within the Charter. This points to the opportunity to move toward African state parties to both instruments preparing a single state periodic report that satisfies the African Charter and, in the process, also meets CRC standards. Those few areas of the CRC not adequately reflected within the African Charter are still subject to African state reporting by virtue of the latter's preamble and article 46, as well as its 'guidelines for initial reports' (Part XI), in anticipation of periodic reporting guidelines. The status of the Charter's article 31 provisions may warrant special consideration vis-à-vis the CRC, including insofar as the African Committee's reporting guidelines appear to miss the point of the responsibilities of duty bearers in enabling children to fulfil their duties under the Charter (see the last two paragraphs of sub-section I.2 above).

It is difficult to see that state reporting on any of those additional child rights specified within the Charter that are not explicitly included within the CRC are at variance with the CRC and thus would be inimical to inclusion within a CRC state periodic report. Whilst the current guidelines for initial reporting under the African Charter advocate harnessing CRC state reports in preparing African Charter state reports, it is apparent that – should harmonisation be achieved – the inverse ought to be the case for African states, especially when the CRC reporting framework is utilised for the African Charter and the latter applies a higher test of child rights.

This leads to a seventh – and even more important – action. A single state report on the rights of the child logically leads to a single state defence and Committee response process. In principle, this would preferably occur via the African Committee, and certainly appears to comply with the provisions and intent of the UN Charter, notably under Chapter VIII (regional arrangements) and Chapter IX (international economic and social co-operation). It would need to be accompanied by a number of provisions to ensure conformity with the international human rights system, including a position on the Committee for a representative of the CRC Committee (at least when state reports are

being considered) and/or formal monitoring and reporting procedures for the African Committee to regularly appraise the CRC Committee of the status of African states' reporting and compliance. This is (in this writer's view) far preferable to a double reporting process – even one that worked, and utilised a single state report for both the Charter and the CRC – and is certainly preferable to the current status quo of separate reports and non-aligned timeframes (alongside reporting associated with CRC optional protocols). The primary challenge under present conditions is the achievement of an African Committee administrative and technical capacity that is on a par with that of the CRC Committee, and in which that Committee – on behalf of the international human rights treaty system – has the necessary degree of confidence.

A consequential further – eighth – action is that the CRC Committee would be ideally placed under such reforms to assist the African Committee with administrative and technical resources, especially with the impact of the diminished demands on its own resources with more than a quarter of CRC state reporting being managed via the African Committee. This would not only facilitate in-house capacity-building of the African Committee, but would also better enable the necessary level of inter-Committee collaboration and cooperation toward a strengthened child rights system. This resource assistance ought, however, to remain contingent upon clear assurances from the AU of more realistic levels of core resourcing and from its member states of improved reporting quality and timelines.

Although not central to the other actions already canvassed, a ninth measure indicated by the cursory comparison of the two child rights instruments within this paper is the merit of a substantive revision of the CRC itself. This ought to take full account of the provisions and scope of the African Charter, and its capacity to help shape a higher standard for a new international child rights system. With the CRC being little short of 25 years of age and so universally valued, this would seem to be a timely reform to pursue.

Tenth and finally, judicial space has been opened to progress the justiciability of the rights of the African child with the AU's reform of the continental judicial framework that redresses the previous situation by enabling the African Committee to bring cases before the African Court of Justice and Human Rights on any violations under the African Children's Charter.[20] This requires early elaboration and is especially important at a time when African

20 *Statute of the African Court of Justice and Human Rights*, Annex to the Protocol, Adopted at the 11th ordinary session of the AU Assembly (1 July 2008), article 30(c). Regrettably, the merger instrument for the new Court has still not entered into force, threatening current AU efforts to ensure that the 'roadmap' for its Human Rights Strategy for Africa is more than an exercise in under-resourced managerialism.

regional courts are under threat.[21] It may also open new opportunities to consider the juridical character of the Committee's exercise of its communication mandate, toward strengthening domestic obligations in such matters.

IV Concluding Observations

At its 15th Session in March 2010, the African Committee held a one-day dialogue with representatives of the UN Committee on the Rights of the Child that has led to continuing collaboration and exchanges between the two bodies (this had been agreed at the previous Committee meeting in November 2009). At least in these initial stages of inter-Committee collaboration, the emphasis appears to be upon mutual representation at each body's meetings and joint discussions on each Committee's observations and recommendations to state parties, and some joint missions. However, scope remains for that partnership to move into more substantive issues such as have been canvassed within this paper. There certainly seems to be a current alignment of factors that present unprecedented opportunities to pursue such concerted and far-reaching reforms in accelerating progress toward much improved compliance by African states in better fulfilling their obligations as duty bearers to African children.

To return to the historical and political context canvassed at the outset of this paper, the African Charter needs to be understood as a critical African contribution to the international human rights system – including by its states parties. It is a progressive and transformative instrument that serves to dispel any lingering claims that the child rights – and even the broader human rights – framework (at least the treaty reporting system) remains hegemonic in its conceptual and substantive intent. The capacity of the Charter to inform and enable the sorts of reforms canvassed in the previous section possesses larger transformative capacity that would contribute meaningfully to "help overcome the alienation of international law from the poor and marginal sections in the third and first worlds" (Chimni, 2007: 514–515).[22]

21 See, for example, R. Johnson, "Political solidarity with Zimbabwe takes priority over regional rule of law in Southern Africa", *Tasmanian Times* (13 June 2011), concerning the SADC Tribunal, http://tasmaniantimes.com/index.php/article/political-solidarity-with-zimbabwe-takes-priority-over-regional-rule-of-law.

22 Chimni distinguishes three necessary forms of transformations of international law – structural, interstitial and diffusing – that may all derive, to varying extents, from the above-mentioned actions.

At an operational level, there is no reason to assume that frequency of state reporting is somehow directly proportional to quality of child rights standards or compliance. The current dual procedures for African states requires approximately nine state reports over a decade (two five-yearly reports for each of the CRC and its two optional protocols, and three triennial reports under the Charter), for those states that are parties to all child rights instruments. This equates to roughly one state report and one Committee defence and review process per year – and still every second year if states include optional protocol reporting within their CRC reports: a manifestly untenable situation (as evident in practice). What is of more value to the African child is a far more focussed and accountable reporting process along the lines of a single five-yearly cycle such as has been advocated herein, for the collective body of international and continental rights of the child that need to be as indivisible in their oversight as in their application.

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