African Charter on the Rights and Welfare of the Child

Introduction

The African Charter on the Rights and Welfare of the Child is an African regional human rights instrument adopted by the Organization of African Unity (OAU), now the African Union (AU), on 11 July 1990. The Charter entered into force on 29 November 1999. It was adopted within a year of the adoption of the United Nations Convention on the Rights of the Child (CRC). One of the reasons for a separate African Children’s Charter was that during the drafting process of the CRC, Africa was under-represented. In addition, it was considered necessary to address issues which are peculiar to Africa but which were not included in the CRC, such as: those practices and attitudes which have a negative effect on the life of the girl child; displaced persons arising from internal conflicts; the African conception of the community’s responsibilities and duties; and the particularly difficult socioeconomic conditions of the continent.

The African Charter on the Rights and Welfare of the Child

The Charter in general

According to the Charter, any human being under the age of 18 is considered a child (article 2). The Convention enshrines the traditional human rights: civil, political, economic, social and cultural rights, such as the right to non-discrimination (article 3); the right to life (article 5); freedom of expression (article 7); right to religion (article 9); the right to privacy (article 10); right to education (article 11); the right of every mentally or physically disabled child to receive special measures of protection (article 13); the right to health (article 14); and freedom from torture (articles 16 and 17). The Charter, furthermore, addresses issues of particular concern to children such as: the best interest of the child shall be the primary consideration in all actions concerning the child (article 4(1)); a child’s view is to be heard and taken into consideration in all judicial and administrative proceedings affecting a child (article 4(2)); the right to a name, nationality and to be registered at birth (article 6); economic and sexual exploitation of children (articles 15 and 27); in relation to the administration of juvenile justice, special protection is to be accorded to children (article 17); the right to parental care and protection (article 19); when necessary, material assistance is to be given to parents and legal guardians in relation to a child’s nutrition, health, education, clothing and housing (article 20); elimination of harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child (article 21); internally displaced and refugee children (article 23); and the prevention of abduction, sale of, or trafficking in children (article 29). Every child, over and above the rights and freedoms conferred to them by the Charter, also has particular responsibilities which inter alia include respecting his/her parents and elders, serving his/her country, and preserving and strengthening African values (article 31).
The following two sections consider those obligations in the Charter that are directly and indirectly linked to the right to health. While reading this section, keep in mind the introduction to this folder discussing the linkages between the implementation of various human rights and the specific right to health.

Direct linkages to health

The right to health is protected in article 14 of the Charter which states that ‘every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health’. The article proceeds to list some of the measures to be taken by States parties in order to fully implement the right to health such as: reducing infant and child mortality rates; providing necessary medical assistance and health care to all children; developing primary health care; ensuring the provision of adequate nutrition and safe drinking water; ensuring appropriate health care for expectant and nursing mothers; developing preventive health care and family life education; and integrating basic health service programmes into national development plans.

A child’s enjoyment of his or her right to health is also linked to the protection and implementation of other provisions in the Charter. These provisions include: the right of the child to be protected from all forms of economic exploitation and from performing work which is likely to be hazardous or to interfere with the child’s physical, mental, spiritual, moral or social development (article 15); the right of the child to be protected from all forms of torture, inhuman or degrading treatment, physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of a parent, legal guardian, school authority or any other person who has the care of the child (article 16); and the right of the child to not be subject to torture or inhuman or degrading treatment or punishment while detained, imprisoned or deprived of his/her liberty (article 17). States parties are, furthermore, obliged to: assist parents and other persons responsible for the child and, if necessary, provide material assistance in particularly in relation to nutrition, health, education, clothing and housing (article 20); take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child, in particular those customs and practices which are prejudicial to the health or life of the child (article 21); ensure that no child takes a direct part in hostilities and refrain from recruiting children (article 22); protect children from all forms of sexual exploitation and sexual abuse (article 27); take all appropriate measures to protect children from the use of narcotics and illicit use of psychotropic substances (article 28); and take all appropriate measures to prevent the abduction, the sale of, or trafficking in children (article 29). It should also be noted that States parties are always to have the best interest of the child as a

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5 See also article 1(3): ‘Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.’
primary consideration in all actions concerning children (article 4), and accordingly this includes actions taken in relation to a child’s right to health.

Indirect linkages to health

The implementation of a child’s right to health is also linked to the protection and implementation of several provisions in the African Charter of the Child other than those already mentioned above. These provisions, which may indirectly impact on a child’s enjoyment of health, include: the right to non-discrimination (article 3); the right to life (article 5); the freedom of expression (article 7); the right to privacy (article 10); and the right to education (article 11). States parties must, moreover, take all appropriate measures to ensure that children who are seeking refugee status or are considered refugees, or internally displaced children receive appropriate protection and humanitarian assistance to enjoy the Charter rights and other international human rights and humanitarian instruments to which the States are parties (article 23); ensure that parentless children or children temporarily deprived of their family environment are provided with alternative family care and necessary measures are taken to trace and reunite children with their parents or relatives (article 25); and ensure the right of mentally or physically disabled children to receive special measures of protection under conditions that ensure his/her dignity and promote self-reliance and active participation in the community (article 13). It should also be noted that States parties are always to have the best interest of the child as a primary consideration in all actions concerning children (article 4), and accordingly this includes actions taken that indirectly impact on a child’s right to health.

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

The Committee in general

The Committee of Experts on the Rights and Welfare of the Child was established under article 32 to promote and protect the Charter rights, monitor the implementation of the Charter and interpret its provisions (article 42). The Committee examines reports submitted by States parties on the measures that they have adopted to give effect to the provisions of the Charter and on the progress made in the enjoyment of the rights contained in the Charter (article 43). After having considered a State party’s report, the Committee will make suggestions and general recommendations to the State party in question. The Committee may also issue general recommendations in addition to those provided following consideration of a State party’s report, based on information received in accordance with its mandate (article 42). It may also issue general comments on provisions of the Charter to promote its implementation and to assist States parties in fulfilling their reporting requirements. The Committee may, furthermore, receive communications from any person, group or nongovernmental organization recognized by the African Union, by a Member State or by the United Nations relating to any matter covered by the Charter (article 44). The rules for this procedure have yet to be developed6 and the procedure has so far not been employed. The Committee may resort to any method of investigation of

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any matter falling within the ambit of the Charter (article 45). The Committee also holds thematic discussions during its regular sessions in order to enhance a deeper understanding of the content and implications of Charter. Following a resolution by the OAU, now the AU, in 1990, the Member States of the AU celebrate 16 June as the ‘Day of the African child’.8

How can the Committee help in ensuring the right to health?

Having considered a State party’s report, the Committee may highlight in its suggestions and general recommendations the State party’s shortcomings in relation to implementing the right to health, but also for other directly or indirectly related rights. The Committee may also indicate how the State party should go about correcting these shortcomings. In both its general recommendations and general comments the Committee may consider and elaborate on the right to health as well as other rights which are directly or indirectly linked to the right to health. Once the communications procedure has been set up it will be possible for individuals, groups or nongovernmental organizations to submit such communications to the Committee regarding inter alia issues directly or indirectly related to health. Furthermore, the Committee may resort to any form of investigation of any matter falling within the scope of the Charter, and accordingly it may look into health and health-related issues. The Committee’s thematic discussions have focused upon issues related directly or indirectly to health, including children and armed conflict and the impact of HIV/AIDS, malaria and poliomyelitis on children. The ‘Day of the African child’ may also raise health-related issues, such as ‘the right to protection: stop violence against children’, the theme for 2006. The Committee also disseminates information regarding the theme.

Additional instruments dealing with children’s rights and health

The UN Convention on the Rights of the Child is the international instrument which deals with the rights of the child and in its article 24 the right to health is recognized. The African Charter on Human and Peoples’ Rights is another regional human rights instrument which although not specifically aimed at children obviously protects the human rights of children too. The right to health is enshrined in its article 16.

Eastern Mediterranean Region ratifications

The countries of the Eastern Mediterranean Region that have ratified the Charter are Egypt and Libyan Arab Jamahiriya. The total number of States parties to the African Charter on the Rights and Welfare of the Child is 38 (as of December 2005).9 Note that this is an African regional instrument, and some of the Member States of the WHO Eastern Mediterranean Region will therefore not have been eligible to sign or ratify the Charter.

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8 See also ibid. rule 76.
9 Resolution CM/RES 1290 Resolution on African Decade for Child Survival, Protection and Development adopted by the OAU Council of Ministers at its 52nd ordinary session on 3–8 July 1990.