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The UN Committee on the Rights of the Child and the African Committee of Experts on the Rights and Welfare of the Child – a Comparative Perspective

The United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child are often considered to be the two international constitutions of children rights, respectively – universal and regional one. Both the treaties establish the broad catalogue of children rights approved by almost every state in the world. Both the UN Child Convention and the African Child Charter constitute organs aimed at monitoring implementation of and respect for children rights enshrined in their respective provisions. On the basis of provisions of the UN Child Convention and the African Child Charter, respectively – the United Nations Committee on the Rights of the Child and the African Committee of Experts on the Rights and Welfare of the Child have been established.

In this article I try to answer the question about the legitimacy of coexistence of both institutions in the international arena, the meaning and practical dimension of their activities. For this purpose, I compare the UN Child Committee and the African Child Committee. I draw the comparison at levels of committees' aims, functions, organization and procedures of actions. I concentrate on the analysis of the provisions of the UN Child Convention, the African Child Charter, Rules of Procedure of both committees. I also refer to many other documents generated in the course of and in connection with the activities of the two committees.

Key words: children's rights, The United Nations Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child.

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Комітет ООН з прав дитини та Африканський комітет експертів з прав і добробуту дитини — порівняльна перспектива

Конвенція Організації Об'єднаних Націй про права дитини та Африканська хартія прав і основ добробуту дитини часто вважаються двома міжнародними конституціями прав дітей, відповідно — універсальною і регіональною. Обидва договори закріплюють широкий спектр прав дітей, схвалених майже кожною державою у світі. Як Дитяча конвенція ООН, так і Африканська хартія про дітей спрямовані на контроль за дотриманням прав дітей, закріплених у відповідних положеннях. На основі положень Дитячої конвенції ООН і Африканської хартії про дітей, відповідно, були створені Комітет Організації Об'єднаних Націй з прав дитини і Африканський комітет експертів з прав і добробуту дитини.

У цій статті я спробую відповісти на питання про легітимність співіснування обох інститутів на міжнародній арені, сенс і практичний вимір їх діяльності. З цією метою порівнюю Дитячий комітет ООН і Африканський комітет у справах дітей щодо цілей, функцій, організації та процедур дій цих структур. Концентрую увагу на аналізі положень Конвенції ООН про права дитини, Африканської хартії дитини, Правилах процедури обох комітетів. Також посилаюся на інші документи, створені в процесі діяльності обох комітетів.

Ключові слова: *права дитини, Конвенція ООН про права дитини, Африканська хартія прав і основ добробуту дитини.*

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Комітет ООН по правам ребенка и Африканский комитет экспертов по правам и благополучию ребенка — сравнительная перспектива

Конвенция Организации Объединенных Наций о правах ребенка и Африканская хартия прав и основ благополучия ребенка часто считаются двумя международными конституциями прав детей, соответственно – универсальной и региональной. Оба договора закрепляют широкий спектр прав детей, одобренных почти каждым государством в мире. Как Детская конвенция ООН, так и Африканская хартия о детях направлены на контроль за соблюдением прав детей, закрепленных в соответствующих положениях. На основе положений Детской конвенции ООН и Африканской хартии о детях, соответственно, были созданы Комитет Организации Объединенных Наций по правам ребенка и Африканский комитет экспертов по правам и благополучию ребенка.

В этой статье я попытаюсь ответить на вопрос о легитимности сосуществования обоих институтов на международной арене, смысле и практическом измерении их деятельности. С этой целью сравниваю Детский комитет ООН и Африканский комитет по делам детей по целям, функциям, организации и процедурам действий. Концентрирую внимание на анализе положений Конвенции ООН о правах ребенка, Африканской хартии ребенка, Правилах процедуры обоих комитетов. Также ссылаюсь на другие документы, созданные в процессе деятельности двух комитетов.

***Ключевые слова:** права ребенка, Конвенция ООН о правах ребенка, Африканская хартия прав и основ благополучия ребенка.*

The United Nations *Convention on the Rights of the Child* ('*UN Child Convention*' or '*Convention*')¹ and the *African Charter on the Rights and Welfare of the Child* ('*African Child Charter*' or '*Charter*')² are often considered to be the two international constitutions of children rights, respectively – universal and regional one. Both the treaties establish the broad catalogue of children rights approved by almost every state in the world. There are 196 (out of 197 states of the world) State Parties to the *UN Child Convention*, 162 State Parties to *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* ('*Child Involvement Protocol*')³, 171 State Parties to *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* ('*Child Prostitution Protocol*')⁴ and 47 (out of 54 African states) State Parties to the *African Child Charter*.⁵ Both the *UN Child Convention* and the *African Child Charter*

¹ See the United Nations *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) ('*UN Child Convention*').

² See the *African Charter on the Rights and Welfare of the Child*, opened for signature 11 July 1990, OAU Doc. CAB/LEG/24.9/49 (1990) (entered into force 29 November 1999) ('*African Child Charter*').

³ See *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, opened for signature 25 May 2000, 2173 UNTS 222 (entered into force 12 February 2002) ('*Child Involvement Protocol*').

⁴ See *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, opened for signature 25 May 2000, 2171 UNTS 227 (entered into force 18 January 2002) ('*Child Prostitution Protocol*').

⁵ United Nations Human Rights Office of the High Commissioner, *Ratification of 18 International Human Rights Treaties* <<http://indicators.ohchr.org/>>; African Committee of Experts on the Rights and Welfare of the Child, *Ratification Status of the African Charter on the Rights and Welfare of the Child* <<http://www.acerwc.org/ratification-data/>>.

constitute organs aimed at monitoring implementation of and respect for children rights enshrined in their respective provisions. In case of the *UN Child Convention* these are also the provisions of its two optional protocols of 2000. On the basis of provisions of the *UN Child Convention* and the *African Child Charter*, respectively – the United Nations Committee on the Rights of the Child ('*UN Child Committee*') and the African Committee of Experts on the Rights and Welfare of the Child ('*African Child Committee*') have been established.⁶

In this article I try to answer the question about the legitimacy of coexistence of both institutions in the international arena, the meaning and practical dimension of their activities. For this purpose, I compare the UN Child Committee and the African Child Committee. I draw the comparison at levels of committees' aims, functions, organization and procedures of actions. I concentrate on the analysis of the provisions of the *UN Child Convention*, the *African Child Charter*, *Rules of Procedure* of both committees. I also refer to many other documents generated in the course of and in connection with the activities of the two committees.

I. ESTABLISHMENT OF THE COMMITTEES

The UN Committee on the Rights of the Child draws its mandate from articles 43-45 of the *UN Child Convention*. It was established in October 1991 under article 43 paragraph 1 as independent experts' body to monitor implementation of the *Convention* by its State Parties. Original intention of the authors of the *Convention* was to entrust the task of monitoring compliance with the provisions of the *Convention* to the Economic and Social Council acting within the framework of the United Nations. Basic text of the current article 43 of the *Convention on the Rights of the Child* (originally article 22) adopted by the Working Group in 1980 read:

The reports submitted by the States Parties to the present *Convention* under article 21 shall be considered by the Economic and

⁶ *UN Child Convention* art 43(1); *African Child Charter* art 32.

Social Council, which may bring its observations and suggestions to the attention of the General Assembly of the United Nations.⁷

Other suggestions considered by the Working Group in 1987 assumed the establishment of a special implementation body aimed at monitoring the rights of the child expressed in the *UN Child Convention*. The proposals were submitted by Poland and Sweden together with Canada. Poland suggested establishment of a Group of Governmental Experts to assist in the Economic and Social Council's task of examining the reports submitted by States Parties. Polish proposal for the article 23 regulating the issue read:

1. Reports submitted by the States Parties to the present Convention under article 22 shall be considered by the Economic and Social Council, which may bring its observations and suggestions to the attention of the State Party concerned and of the General Assembly of the United Nations.[...]

2. To assist it in its task, the Economic and Social Council shall establish a Group of Governmental Experts entrusted with the responsibility of examining the reports submitted by States Parties.

3. The Economic and Social Council shall decide on the size of the Governmental Group of Experts, its equitable geographical composition and the periodicity of its meetings.⁸

Sweden together with Canada proposed the establishment of a separate implementation organ – a Committee of Experts ‘to examine the progress made by States Parties in achieving the realization of the obligations undertaken by States Parties in the present Convention.’ (Article 22(1))⁹

Among the countries working on the text of *UN Child Convention* referring to its implementation system, only the representative of Argentina expressed his support for proposal submitted by the delegation of Poland. He stated that the Polish proposal of

establishing a group of government experts to assist the Economic and Social Council in its task of examining states reports was more adequate at the point of drafting the *Convention*. He noticed, however, that from the moment of *UN Child Convention's* entry into force a committee of experts, such as the one suggested in Swedish-Canadian proposal, ‘would be more appropriate’.¹⁰

Most of the countries working on the draft *UN Child Convention's* implementation system supported the Swedish proposal and expressed their preference for a separate committee to monitor the implementation of the *Convention*. Among them were Austria, Denmark, Japan, Netherlands, Norway, Senegal, the United Kingdom, the United States of America and Venezuela.

Beside the proposals of establishing a group of governmental experts or a separate committee of experts as special *UN Child Convention's* implementation bodies, some of the representatives - expressing their concern about the proliferation of monitoring organs, suggested entrusting the task of monitoring the implementation of the *UN Child Convention* to existing committees (established under other international human rights conventions) instead of establishing a new one.¹¹ The representatives from Australia, Belgium and France indicated the committees controlling the compliance with the two *Covenants of 1966*, respectively *on Economic, Social and Cultural Rights* and *on Civil and Political Rights* as those that could monitor the implementation of the *UN Child Convention*, ‘according to whether the reports touched upon economic, social and cultural rights or civil and political ones’.¹² Many other representatives stated however that neither the indicated committees nor any others, either among the United Nations system or among the nongovernmental international organizations, had an overall knowledge of the nature and of various aspects of the problems affecting childhood needed to effective monitoring of implementation of the *UN Child Conven-*

⁷ Sharon Detrick et al, *The United Nations Convention on the Rights of the Child. A Guide to the 'Travaux Preparatoires'* (Martinus Nijhoff Publishers, 1992) 528.

⁸ Ibid 531.

⁹ Ibid.

¹⁰ Ibid 535.

¹¹ Ibid 534-5.

¹² Ibid 534.

tion.¹³ They expressed strong concern that establishing a committee of specialists with expert knowledge on the rights of the child would be of ‘considerable benefit to children and young people.’¹⁴

Finally the members of the Working Group agreed that a separate, independent committee of experts on the rights of the child was needed and adopted the legal basis for establishment of such a committee to be the paragraph 1 of article 22 (current article 43) of the *UN Child Convention*. Official text, as adopted by the General Assembly, states:

For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.¹⁵

Thus a separate monitoring mechanism of *UN Child Convention* – to be the UN Committee on the Rights of the Child – has been established. The Committee held its first session in October 1991.

The African Committee of Experts on the Rights and Welfare of the Child draws its mandate from articles 32-46 of the *African Child Charter* which was adopted by the Heads of State and Government of the Organization of African Unity (since 2001 – the African Union) on 11th July 1990 and came into force on 29th November 1999. The *African Child Committee* was established in July 2001 under the article 32 of the *Chapter* ‘to promote and protect the rights and welfare of the child.’¹⁶ The Committee held its first session in July 2001.

The *African Child Charter* which lays the legal basis of existence of the *African Child Committee* was adopted in 1990 within a year of the adoption of the *UN Child Convention*. It was created partly to complement the *UN Child Convention*. Thoko Kaime in his book *The African Charter on the Rights and Welfare of the Child: A socio-legal perspective*

presents an interesting analysis of reasons that attributed to adoption of a separate African binding document on the rights of the child.¹⁷ One of the reasons was that during the drafting process of the *UN Child Convention* Africa was under-represented. According to Frans Viljoen, ‘only three African states participated for at least five of the nine years that the working group took to draft the final proposal.’¹⁸ That was ‘the lowest percentage of all continents, contrasting sharply with west European (61% of the continental potential) and even Latin American (29%) participation over a similar period.’ Consequently, although the authors included in the final text of the *UN Child Convention* all aspects of the problems of children in general they did not address the specific realities of children in Africa. Thus, it was considered necessary to draft a new international law document that would refer to issues peculiar in Africa but not included in the *UN Child Convention*. Those were, among others: the situation of children living under apartheid, problems of internal displacement arising from civil wars and internal insurrections, the use of children as soldiers, harmful practices with a negative effect on the life of the African girl child (female genital mutilation – FGM), the definition of a child, the African conception of the community’s responsibilities and duties, the role of the extended family in the upbringing of children, the role of the family in adoption and fostering, the duties and responsibilities of the African child towards the family and community, the particularly difficult socio-economic conditions of Africa.¹⁹ According to Lee Muthoga, it was ‘a desire’ to address issues specific in relation to African children which were not reflected in the *UN Child Convention* provisions that was one of the main reasons to adopt a separate African treaty dealing with children’s rights.²⁰ One more reason was the

¹⁷ Thoko Kaime, *The African Charter on the Rights and Welfare of the Child: A socio-legal perspective* (PULP, 2009) 20-4.

¹⁸ Ibid 23.

¹⁹ Ibid.

²⁰ Ibid.

¹³ Ibid 535-9.

¹⁴ Ibid 539.

¹⁵ GA Res 44/25 (20 November 1989).

¹⁶ *African Child Charter* art 32.

belief of the initiators of drafting the *African Child Charter* that as the regional instrument the charter would enhance protection of the rights of African children. It was S. Amos Wako concern that 'each region, with its unique culture, traditions and history, is best placed to handle and resolve its human rights situation.'²¹

II. COMPOSITION OF THE COMMITTEES

A. Members of the committees

According to article 43(2) of the *UN Child Convention*, the UN Child Committee is composed of 18 members. Initially the Committee consisted of 10 members. In discussing the number of members of the Committee, participants of the group working on the *UN Child Convention* draft considered a few options. Some proposed 12 members. Many others stated their preference for committee consisting of 10 members stating that it would be the best solution 'for financial or economic reasons'. The United Kingdom delegation preferred the number of 15 committee members. One representative suggested 'that the number of members should be proportionate to the number of States having ratified the convention, so that it would become higher as more States become parties to the convention.'²² Finally, the authors of the *UN Child Convention* agreed that the committee should be composed of 10 members. The final text of the first sentence of article 43(2) of the *UN Child Convention* adopted in 1989 read: '[t]he Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention.'²³ In resolution 50/155 of 21 December 1995 the UN General Assembly approved the amendment to paragraph 2 of the article 43 of the *UN Child Convention*, extending the number of the Committee's members from 10 to 18.²⁴ Since the amendment's entry into force on 18th November 2002 the Un Child Commit-

tee works in its extended composition of 18 members. If we divide the number of State Parties to the *UN Child Convention* (196 State Parties in 2016)²⁵ by the number of Committee members (18) we note that one member of the committee 'is assigned to' almost 11 countries.

According to article 33(1) of the *African Child Charter*, the African Child Committee is composed of 11 members. If we divide the number of State Parties to the *African Child Charter* (47 State Parties in 2016)²⁶ by the number of Committee members (11) we note that one member of the committee 'represents' more or less 4 countries. That is three times less than in the case of the UN Child Committee where one member represents almost 11 countries. We notice, however, that the number of State Parties to the *African Child Charter* is lower than the number of African countries that are the *UN Child Convention* parties. In 2016 the provisions of the *African Child Charter* are binding to 47 out of 54 African countries²⁷ whereas the provisions of the *UN Child Convention* are binding to all 54 African countries.²⁸

The *UN Child Convention* describes members of the UN Committee as 'experts' with 'recognized competence in the field covered by [...] Convention.'²⁹ The *African Child Charter* uses the term 'members' and requires them to possess 'competence in matters of the

²¹ Ibid.

²² Detrick, above n 8, 534-40.

²³ A/RES/44/25 (20 November 1989).

²⁴ A/RES/50/155 (21 December 1995).

²⁵ United Nations Treaty Collections: <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en>

²⁶ African Committee of Experts on the Rights and Welfare of the Child, *Ratification Status of the African Charter on the Rights and Welfare of the Child* <<http://www.acerwc.org/ratification-data/>>.

²⁷ Except for Central African Republic, Democratic Republic of Congo, Sahrawi Arab Democratic Republic, Somalia, Sao Tome and Principe, South Sudan and Tunisia.

²⁸ United Nations Treaty Collections: <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en>

²⁹ *UN Child Convention* art 43(2).

rights and welfare of the child.³⁰ The expression used in the *African Child Charter* seems to be broader than the one found in the *UN Child Convention*. Members of the African Child Committee should be competent in all issues within the field of rights and welfare of the child, not only those reflected in the provisions of the charter as it is found in the *UN Child Convention*. In practice, however, competence in the field covered by the *UN Child Convention* indicate competence in the field of children rights which the *Convention* is dedicated to. It refers to nearly every aspect of children rights. Moreover, as the field of the rights of the child is very broad, one cannot expect a single member of the committee to have knowledge in its every branch. Thus we can assume that both the UN and African child committees' members should possess similar competence. Additionally the *UN Child Convention* requires this competence to be 'recognized' one. However, it does not explain this requirement. We can find some understanding of this expression in the Committee's members election practice. When we look at biographies of current and former members of the UN Child Committee, we note that among them there are specialists representing different scientific disciplines dealing with child issues. There are lawyers, sociologists, psychologists, historians and many others. There are experts working in national institutions and in international ones. There are both experts recognized within the country and at international arena.³¹ The *African Child Charter* does not use the adjective 'recognized' to describe competence required to be qualified to be a member of the African Child Committee. Nevertheless among its members we can no-

³⁰ However, though not explicitly named in article 33(1) as 'experts', members of the African Committee are of course experts in the field of the rights and welfare of the child. The terminology 'experts' is used in the name of the committee – the African Committee of Experts on the Rights and Welfare of the Child and on the official website of the committee: <<http://acerwc.org/experts/>>.

³¹ Committee on the Rights of the Child, *Membership*: <<http://www.ohchr.org/EN/HRBodies/CRC/Pages/Membership.aspx>>.

tice children rights experts with knowledge and experience similar to those forming the UN Child Committee.³²

In the aspect of personal qualifications of committee members, both the *UN Child Convention* and the *African Child Charter* require them to be persons of 'high moral standing'. The *African Child Charter* adds two more features: integrity and impartiality. It does not allow African Child Committee members to act in any politically binding function that might interfere with the independence or impartiality requirements.³³ There are no doubts that though not explicitly expressed in the *UN Child Convention* those two traits of character apply to UN Child Committee members too. Upon assuming their duties, members of the committees make respectively the declaration (UN Child Committee members) and the oath (African Child Committee members) in which they declare (UN Child Committee members)/ undertake (African Child Committee members) to perform their duties honourably, faithfully, impartially and conscientiously (UN Child Committee members)/ faithfully impartially, in all loyalty, discretion and conscience (African Child Committee members).³⁴ Additionally, the Rule 15 of the *African Child Committee Rules of Procedure* emphasizes that each member of the African Child Committee shall discharge his/ her functions 'with only the interests of the Child in view.'³⁵ That rule reflects 'the best interest of the child' rule which is the primary rule of both the *UN Child Convention* and *African Child*

³² African Committee of Experts on the Rights and Welfare of the Child, *Experts*: <<http://www.acerwc.org/the-experts/>>.

³³ *Rules of Procedure for the African Committee of Experts on the Rights and Welfare of the Child*, Cmtee/ACRWC/II. Rev 2 ('*African Child Committee Rules of Procedure*') Rule 11(1).

³⁴ *Rules of Procedure for the Committee on the Rights of the Child*, 18 March 2015, CRC/C/4/Rev.4 ('*UN Child Committee Rules of Procedure*') Rule 15; *African Child Committee Rules of Procedure*, Rule 15.

³⁵ *African Child Committee Rules of Procedure*, Rule 15.

Charter, expressed respectively in article 3 of the *UN Child Convention* and article 4 of the *African Child Charter*. According to the rule, in all actions concerning children, ‘the best interest of the child shall be a primary consideration.’³⁶ Thus, this rule is binding for members of both committees.

Members of both committees should have nationality of one of State Parties, respectively to the *UN Child Convention* and the *African Child Charter*. None of the committees can include more than one national of the same state.³⁷ Additionally, the *UN Child Convention* establishes the election rule according to which in decision - making process ‘equitable geographical distribution’ and ‘the principal legal systems’ should be considered.³⁸ That rule does not apply to the *African Child Charter* which is a regional treaty binding only within the borders of African continent.

Members of both committees serve in their personal capacity. They are independent in exercising their duties and enjoy privileges and immunities provided for, respectively in the *Convention on the Privileges and Immunities of the United Nations*³⁹ and in the *General Convention on the Privileges and Immunities of the Organization of African Unity*.^{40,41}

³⁶ *UN Child Convention* art 3; *African Child Charter* art 4.

³⁷ *UN Child Convention* art 43(3); *African Child Charter* art 33(3).

³⁸ In draft version of the current provision one more rule has been proposed to consider in decision – making process ‘the representation of the different forms of civilization’. In the end, on the grounds that the concept was not sufficiently defined, it was deleted from the final text. See Detrick, above n 8, 540.

³⁹ See *Convention on the Privileges and Immunities of the United Nations*, opened for signature 13 February 1946, 1 UNTS 15 (entered into force 17 September 1946).

⁴⁰ See *General Convention on the Privileges and Immunities of the Organization of African Unity*, opened for signature 25 October 1965, OAU Doc. CAB/LEG/24.2/13 (entered into force 25 October 1965).

⁴¹ The ACRWC has got the adequate direct provi-

sion regulated in article 43(3-5) of the *UN Child Convention* and in articles 34-36 of the *African Child Charter*. Members of both committees are elected by secret ballot from a list of persons nominated by States Parties. The candidates must have one of the nationalities of the States Parties respectively to the *UN Child Convention* and the *African Child Charter*. Each State Party may nominate not more than one person from among its own nationals.⁴² Detailed procedure of election process is described in *Rules of Procedure* of both committees.⁴³

Members of the UN Child Committee are elected for a term of four years and may be re-elected if renominated.⁴⁴ Members of the African Child Committee are elected for a term of five years. However, they are not eligible for re-election.⁴⁵ According to article 43(7) of the *UN Child Convention* and article 39 of the *African Child Charter*, in case of vacancy of the office⁴⁶ at one of the committees, it is the State Party which nominated the member that should appoint another member from among its nationals to serve for the remainder of the term. The appointed member needs the approval respectively of the UN Child Committee and the Assembly of Heads of State and Government.⁴⁷

sion referring to the above mentioned convention (Article 41 of the *African Child Charter*) whereas the *UN Child Convention* lacks this direct reference.

⁴² The *African Child Charter* (article 35) allows each State Party to nominate maximum two candidates one of whom cannot be a national of the state nominating.

⁴³ *UN Child Committee Rules of Procedure*, Rules 19-22; *African Child Committee Rules of Procedure*, Rules 59-61.

⁴⁴ *UN Child Convention* art 43(6).

⁴⁵ *African Child Charter* art 37(1).

⁴⁶ Due to death or resignation of the committee member or any other reason precluding him or her to perform the duties of the committee.

⁴⁷ Detailed procedures of filling casual vacancies are described in *UN Child Committee Rules of Procedure*, Rule 14; *African Child Committee Rules of Procedure*, Rule 14.

B. The Bureau

The Bureau of the UN Child Committee is composed of the Chairperson, the four Vice-Chairpersons and the Rapporteur.⁴⁸ The Bureau of the African Child Committee is composed of a Chairperson, three Vice-Chairpersons, Rapporteur and a Deputy Rapporteur.⁴⁹ Both the UN Child Committee and the African Child Committee elect their officers for a period of two years.⁵⁰ The officers are eligible for one re-election (except for the Chairperson).⁵¹ If the officer ceases to be a member of the committee, he or she cannot hold office any longer.⁵²

Both the committees established their own *Rules of Procedure*.⁵³ According to Rule 45 of the *UN Child Committee Rules of Procedure*, a quorum is constituted by twelve UN Child Committee members and respectively according to article 38(3) of the *African Child Charter* and Rule 38 of the *African Child Committee Rules of Procedure* seven members of the committee constitute a quorum.

Official languages of the UN Child Committee are Arabic, Chinese, English, French, Russian and Spanish and its working languages are English, French and Spanish.⁵⁴ Official languages of the African Child Committee are those of the African Union⁵⁵

⁴⁸ *UN Child Committee Rules of Procedure*, Rule 16(1).

⁴⁹ *African Child Committee Rules of Procedure*, Rule 16.

⁵⁰ *UN Child Convention* art 43(9); *African Child Charter* art 38(2); *UN Child Committee Rules of Procedure*, Rule 23(1); *African Child Committee Rules of Procedure*, Rule 17.

⁵¹ *UN Child Committee Rules of Procedure*, Rule 23(2); *African Child Committee Rules of Procedure*, Rule 17.

⁵² *UN Child Committee Rules of Procedure*, Rule 23(3); *African Child Committee Rules of Procedure*, Rule 17.

⁵³ *UN Child Committee Rules of Procedure*; *African Child Committee Rules of Procedure*.

⁵⁴ *UN Child Committee Rules of Procedure*, Rule 34.

⁵⁵ The Constitutive Act of the African Union indicates only the working languages of the African Union which include African languages, Arabic, English, French and Portuguese. (*Constitutive Act*

and its working languages are English and French.⁵⁶

Decisions of the UN Child Committee are made available in the official languages of the committee whereas decisions of the African Child Committee – in the working languages of the committee.⁵⁷ All official documents of the UN Child Committee are issued in the working languages but upon the UN Child Committee decision any of them may be issued in the other official language.⁵⁸ All official documents of the African Child Committee are issued in the working languages.⁵⁹

C. Meetings of the committees

Article 43(10) of the *UN Child Convention* and article 37(3) of the *African Child Charter* provide that respectively the UN Child Committee and the African Child Committee shall normally meet at least once a year. This general norm is extended in committees' rules of procedure. According to Rule 1 of *Rules of Procedure* of the UN Child Committee and the African Child Committee, both the committees 'shall hold meetings as may be re-

of the African Union, opened for signature 1 July 2000, 2158 UNTS 3 (entered into force 26 May 2001) art 25.) In 2003 the Assembly of the African Union adopted Protocol on Amendments to the Constitutive Act of the African Union (yet not in force). In article 11, authors of the protocol propose to replace the provision of article 25 of the Constitutive Act on working languages of the African Union with a new one concerning official languages of the African Union instead. According to the proposed wording of the provision of the article 25(1) '[t]he official languages of the Union and all its institutions shall be Arabic, English, French, Portuguese, Spanish, Kiswahili and any other African language.' See: *Protocol on Amendments to the Constitutive Act of the African Union* available on: <<http://www.au.int/en/treaties>>.

⁵⁶ *African Child Charter* art 38(5); *African Child Committee Rules of Procedure*, Rule 28.

⁵⁷ *UN Child Committee Rules of Procedure*, Rule 38 (first sentence); *African Child Committee Rules of Procedure*, Rule 31.

⁵⁸ *UN Child Committee Rules of Procedure*, Rule 38 (second sentence).

⁵⁹ *African Child Committee Rules of Procedure*, Rule 31.

quired for the effective performance of [...] their functions.’⁶⁰ The *UN Child Committee Rules of Procedure* distinguish between regular and special sessions of the UN Child Committee.⁶¹ The UN Child Committee convenes annually three regular sessions⁶² consisting of a three-week plenary and a one-week pre-sessional working group.⁶³ The *African Child Committee Rules of Procedure* distinguish between ordinary and extraordinary sessions.⁶⁴ The African Child Committee holds annually two ordinary sessions of maximum two weeks’ duration.⁶⁵ There are four situations when special sessions of the UN Child Committee and extraordinary sessions of the African Child Committee could be convened: 1) upon the decision of the committee; 2) upon the decision of the Chairperson: a) in consultation with the other committee officers; b) at the request of a majority of the committee members; c) at the request of a State party respectively to the *UN Child Convention* and *African Child Charter*.⁶⁶ Special/extraordinary sessions should be convened as soon as possible.⁶⁷

The UN Child Committee usually holds its sessions at the United Nations Office at Geneva and the African Child Committee – at the Headquarters of the African Union in Addis Ababa. There is a possibility to convene

⁶⁰ *UN Child Committee Rules of Procedure*, Rule 1; *African Child Committee Rules of Procedure*, Rule 1.

⁶¹ *UN Child Committee Rules of Procedure*, Rules 2-3.

⁶² *UN Child Committee Rules of Procedure*, Rule 2(2).

⁶³ Committee on the Rights of the Child, *Monitoring children’s rights*: <<http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx>>

⁶⁴ *African Child Committee Rules of Procedure*, Rules 2-3.

⁶⁵ *African Child Committee Rules of Procedure*, Rule 2(1).

⁶⁶ *UN Child Committee Rules of Procedure*, Rule 3(1); *African Child Committee Rules of Procedure*, Rule 3(1).

⁶⁷ *UN Child Committee Rules of Procedure*, Rule 3(2); *African Child Committee Rules of Procedure*, Rule 3(2).

a session at any other place regarded convenient by the committees. Another place may be designated by the UN Child Committee and the African Child Committee respectively in consultation with the UN Secretary General and the African Union Commission.⁶⁸

The committees convene both public and private sessions. In principle meetings of the UN Child Committee and the African Child Committee are held in public unless the committees decide otherwise.⁶⁹ Rule 32 of the *African Child Committee Rules of Procedure* distinguish two more situations where session is closed to the public. These exceptions refer to administrative and budgetary matters to be discussed during the meeting of the African Child Committee.⁷⁰ Furthermore, the African Child Committee convene a closed pre-session at the beginning of each ordinary session. Those closed pre-sessions may be attended only by the committee members and selected partners who work together to prepare the next session.⁷¹ At the end of each private meeting, the UN Child Committee and the African Child Committee may issue a communiqué for the use of the information media and the general public.⁷² At the close of each public session, the Chairperson of the African Child Committee issues a communiqué and organizes a press conference with the media.⁷³ The *UN Child Committee Rules of Procedure* do not have a similar provision.

The summary records of public meetings of both committees are generally available

⁶⁸ *UN Child Convention* art 43(10); *African Child Charter* art 37(3); *UN Child Committee Rules of Procedure*, Rule 4; *African Child Committee Rules of Procedure*, Rule 4.

⁶⁹ *UN Child Committee Rules of Procedure*, Rule 39; *African Child Committee Rules of Procedure*, Rule 32.

⁷⁰ *African Child Committee Rules of Procedure*, Rule 32 (1st sentence).

⁷¹ *African Child Committee Rules of Procedure*, Rule 33.

⁷² *UN Child Committee Rules of Procedure*, Rule 40; *African Child Committee Rules of Procedure*, Rule 33 (2nd sentence).

⁷³ *African Child Committee Rules of Procedure*, Rule 32 (2nd sentence).

whereas the summary records of private meetings are distributed only to the committees' members and to other participants in the meetings. However, upon the decision of committees and under their conditions, the summary records of private meetings may be made available to other subjects.⁷⁴

III. FUNCTIONS OF THE COMMITTEES

The purposes that constitute the basis for establishment of the UN Child Committee and African Child Committee are reflected in provisions of article 43(1) of the *UN Child Convention* and article 32 of the *African Child Charter*. Those are respectively 'examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention'⁷⁵ and 'promotion and protection of the rights and welfare of the child.'⁷⁶ The formulation of the African Child Committee aim seems to be broader than the formulation of the aim entrusted to the UN Child Committee. Promotion and protection of children rights assigned to the African Child Committee seems to contain also the task of examining the progress in implementation of the obligations of the State Parties to the convention. After a closer look at other provisions defining the functions of both committees we assume that purposes for establishment of both committees are very similar. Thus, what are the functions of the committees?

The functions assigned to the UN Child Committee are contained in articles 44-45 of the *UN Child Convention* and the functions assigned to the African Child Committee are expressed in articles 42-45 of the *African Child Charter*. The main competence of the UN Child Committee and the African Child Committee is monitoring and reporting on the fulfillment of children rights enshrined respectively in the *UN Child Convention* and the *African Child Charter*. The UN Child Committee monitors implementation, by

⁷⁴ *UN Child Committee Rules of Procedure*, Rule 43; *African Child Committee Rules of Procedure*, Rule 36.

⁷⁵ *UN Child Convention* art 43(1).

⁷⁶ *African Child Charter* art 32.

State Parties, of the Convention on the Rights of the Child and its two optional protocols on the involvement of children in armed conflict⁷⁷ and on the sale of children, child prostitution and child pornography.⁷⁸ The African Child Committee monitors implementation of the African Charter on the Rights and Welfare of the Child by its State Parties.

To accomplish their mandate, the committees perform various functions. These functions could be classified into groups such as: 1) examination of reports submitted by State Parties and issue of recommendations to State Parties; 2) cooperation with other bodies; 3) undertaking investigative / fact-finding missions; 4) issue of statements, decisions and recommendations; 5) interpretation of the provisions (general comments, setting rules, principles and standards); 6) organization of days of general discussion; 7) initiating studies; 8) consideration of individual complaints. Both the committees may also perform other tasks entrusted to them that fall within the scope of their mandates.

A. Reporting procedure

The main function of both committees is examination of reports submitted by State Parties in accordance with article 44 of the *UN Child Convention* and article 43 of the *African Child Charter*. Under provisions of those articles which, except for the length of submission period, are identical, State Parties accept the duty to submit to the UN Child Committee and the African Child Committee regular reports 'on the measures they have adopted which give effect to the rights recognized [...]' respectively in the *UN Child Convention* and the *African Child Charter* and 'on the progress made on the enjoyment of those rights' in their territories.⁷⁹ In order to help State Parties with writing their reports, both committees adopted guidelines regarding the form and content of the reports.⁸⁰ Reports

⁷⁷ *Child Involvement Protocol*.

⁷⁸ *Child Prostitution Protocol*.

⁷⁹ *UN Child Convention* art 44(1); *African Child Charter* art 43(1).

⁸⁰ See *General guidelines regarding the form and content of initial reports to be submitted by States*

should indicate, inter alia: ‘sufficient information’ to provide the committees ‘with a comprehensive understanding of the implementation of’ the *UN Child Convention* or the *African Child Charter* in the country concerned; ‘the progress achieved in the enjoyment of children’s rights’; ‘factors and difficulties’ encountered by the State in the implementation of the *UN Child Convention* or the *African Child Charter* together with ‘steps taken to overcome them’; ‘the plans envisaged to improve further the realization of the rights of the child’; ‘implementation priorities’ and ‘specific goals’ for the future.⁸¹ All State Parties are obliged to submit initial reports two years after acceding to/ ratification of the *UN Child Convention* or the *African Child Charter* and then periodic reports every five years – in relation to the *UN Child Convention* and every three years – in relation to the *African Child Charter*.⁸² The committees examine each report and adopt their concerns and recommendations in the form of *Concluding Observations* addressed to the State Party concerned which is obliged to implement them.⁸³ *The Concluding Observations* are made public and should be made widely available in the country concerned. In order to better assess the situation of children in the country the UN Child Committee and the African Child Committee may request from the State Party concerned additional

Parties under article 44, paragraph 1(a), of the Convention, CRC/C/5 (1991); General guidelines for periodic reports, CRC/C/58/Rev.3 (1996); Guidelines for Initial Reports of States Parties (prepared by the African Committee of Experts on the Rights and Welfare of the Child pursuant to the provision of Article 43 of the African Charter on the Rights and Welfare of the Child), Cmttee/ACRWC/2 II. Rev2.

⁸¹ *UN Child Convention* art 44(2); *African Child Charter* art 43(1); *General guidelines for periodic reports*, above n 81.

⁸² *UN Child Convention* art 44(1); *African Child Charter* art 43(1).

⁸³ *UN Child Convention* art 45(d); *African Child Charter* art 42(a); *UN Child Committee Rules of Procedure*, Rule 75; *African Child Committee Rules of Procedure*, Rule 71.

information relevant to the implementation of the *UN Child Convention* or the *African Child Charter*.⁸⁴ The committees can make other general recommendations, as they consider appropriate, based on the information relating to the situation of children received by them pursuant to articles 44-45 of the *UN Child Convention* and article 42 of the *African Child Charter*.⁸⁵

It should be noted that all the State Parties to the *African Child Charter* are the State Parties to the *UN Child Convention* as well, and thus they are obliged to submit reports on the implementation of the *African Child Charter* and the *UN Child Convention* which in most of the aspects are sister treaties. Thus in order ‘to avoid repetition between the reports to the African Child Committee and the UN Child Committee and in order to encourage governments to fulfill their obligations towards both committees’ the African Child Committee elaborated appropriate guidelines for reporting process contained in Rule 70 of the *African Child Committee Rules of Procedure*,⁸⁶ *Guidelines for initial reports of States Parties*⁸⁷ and *Procedures for the consideration of State Party reports*.⁸⁸ According to Rule 70 of the *African Child Committee Rules of Procedure*:

[...] a) If a State Party has already submitted an initial report to the UN Committee on the Rights of the Child, whether that report has been reviewed by the UN Committee or not, the State Party may be invited to update the information already submitted and add

⁸⁴ *UN Child Convention* art 44(4); *UN Child Committee Rules of Procedure*, Rule 73; *African Child Committee Rules of Procedure*, Rule 68.

⁸⁵ *UN Child Committee Rules of Procedure*, Rule 76; *African Child Committee Rules of Procedure*, Rule 72.

⁸⁶ *African Child Committee Rules of Procedure*, Rule 70.

⁸⁷ *Guidelines for Initial Reports of States Parties (prepared by the African Committee of Experts on the Rights and Welfare of the Child pursuant to the provision of Article 43 of the African Charter on the Rights and Welfare of the Child)*, above n 81.

⁸⁸ African Committee of Experts on the Rights and Welfare of the Child, *The reporting process*: <<http://www.acerwc.org/state-reports/>>.

information on the provisions specific to the Children's Charter.

b) If a State Party's initial report has been reviewed by the UN Committee on the Rights of the Child, the concluding observations and the recommendations may be considered by the Committee when preparing the list of issues for the governments and adopting its own concluding observations and recommendations.

c) If a State Party has not yet submitted an initial report to the UN Committee on the Rights of the Child, the State Party shall be invited to prepare a complete report on all the provisions of the Children's Charter. [...] ⁸⁹

These provisions provide for African country, which is party to both the *African Child Charter* and the *UN Child Convention*, the possibility of submission of report only to one of the committees. If the state have already submitted the report to the UN Child Committee, in such a case the African Child Committee can only invite the State Party 'to update the information already submitted and add information on the provisions specific to the Children's Charter.' ⁹⁰ There is only one situation when the African Child Committee can demand from the African State to submit a complete report on all the provisions of *African Child Charter*. It is when the state has not yet submitted an initial report to the UN Child Committee. ⁹¹

The reporting procedure is designed to promote public debate. It provides a framework for a constructive dialogue between the committees and State Parties. It is also oriented towards international cooperation and exchange of information. It is aimed at defining problems and agreeing on solutions to difficulties in cooperation with State Parties and other international bodies.

B. Interpretation of the provisions (General Comments)

Among other functions entrusted to both committees is the function of interpreta-

⁸⁹ *African Child Committee Rules of Procedure*, Rule 70(a)-(c).

⁹⁰ *African Child Committee Rules of Procedure*, Rule 70.

⁹¹ *African Child Committee Rules of Procedure*, Rule 70(c).

tion of the articles and provisions of the *UN Child Convention* or the *African Child Charter* and their publication in the form *General Comments* on thematic issues, resolutions or declarations. ⁹² This role is aimed at assisting countries in fulfilling their duties under those treaties and promoting further implementation of the *UN Child Convention* and the *African Child Charter*. So far the UN Child Committee has issued *General Comments* on the following subjects: The aims of education (2002); The role of independent human rights institutions (2003); HIV/AIDS and the rights of the child (2003); Adolescent Health; General measures of implementation for the Convention on the Rights of the Child (2003); Treatment of unaccompanied and separated children outside their country of origin (2005); Implementing child rights in early childhood (2005); The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (2006); The rights of children with disabilities (2006); Children's rights in Juvenile Justice (2007); Indigenous children and their rights under the Convention (2009); The right of the child to be heard (2009); The right of the child to freedom from all forms of violence (2011); The right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31) (2013); State obligations regarding the impact of the business sector on children's rights (2013); The right of the child to the enjoyment of the highest attainable standard of health (art. 24) (2013); The right of the child to have his or her best interests taken as a primary consideration (art. 3, para.1) (2013); Harmful practices (2015) and Draft General Comment on Public Spending and the Rights of the Child. ⁹³ To date the African Child Committee has issued two *General*

⁹² *African Child Charter* art 42(a)(ii), art 42(c); *UN Child Committee Rules of Procedure*, Rule 77; *African Child Committee Rules of Procedure*, Rule 73.

⁹³ Committee on the Rights of the Child, *General Comments*: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11>.

Comments: General Comment No. 1 (Article 30 of the African Charter on the Rights and Welfare of the Child) on 'Children of incarcerated and imprisoned parents and primary caregivers' (2013) and General Comment No. 2 (Article 30 of the African Charter on the Rights and Welfare of the Child) 'Right to birth registration, name and nationality' (2014).⁹⁴ Pursuant to article 46 of the *African Child Charter* it also draws inspiration from the UN Child Committee *General Comments*.

C. Days of General Discussion

In accordance with Rule 79 of the *UN Child Committee Rules of Procedure* and Rule 76 of the *African Child Committee Rules of Procedure*, both committees organize *Days of General Discussion* which are 'public meetings open to representatives of States Parties, UN agencies and bodies, NGOs, national human rights institutions, professional groups, academics, youth groups, and other interested parties.'⁹⁵ They are devoted to deeper consideration of one specific article of the *UN Child Convention* or the *African Child Charter* or the subject related and aimed at better understanding of the content and implications of the treaties. Furthermore, when they consider it necessary, the committees issue their statements on matters relating to fulfillment or violation of the rights of the child.⁹⁶ So far, the UN Child Committee has organized 14 *Days of General Discussion* and adopted relevant recommendations relating to the subject discussed. These are: Children in armed conflict (1992); Role of the family (1994); The girl child (1995); Juvenile justice (1995); The

child and the media (1996); Children with disabilities (1997); HIV/AIDS (1998); 10th Anniversary: General measures of implementation (1999); State violence against children (2000); Violence against children within the family and in school (2001); The private sector as a service provider (2002); The rights of indigenous children (2003); Implementing child rights in early childhood (2004); Children without parental care (2005); The right of the child to be heard (2006); Resources for the Rights of the Child - Responsibility of States (2007); The right of the child to education in emergency situations (2008); Children of incarcerated parents (2011); The rights of all children in the context of international migration (2012); Digital media and children's rights (2014).⁹⁷ 'The African Child Committee has held thematic discussions on issues: children and armed conflict, duties of the African child under article 31 of the *African Child Charter*, child participation, and the 'best-interest' principle, the impact of HIV/AIDS, poliomyelitis and malaria on children. The African Child Committee, at its 12th Ordinary Session adopted eleven key themes to be assigned to the Experts to take charge of. These were: Violence Against Children; Education of Children; Juvenile Justice; Child Participation; Integrated Development of Early Childhood; Survival and Development; Orphaned and Other Vulnerable Children; Family Responsibilities and Child Responsibilities; Registration of Children; Children Abuse and Exploitation; and Children in Armed Conflicts and Natural Disasters, Refugee and Displaced Children.'⁹⁸

D. Initiating studies

Pursuant to article 45(c) of the *UN Child Convention* together with Rule 80 of the *UN Child Committee Rules of Procedure* and pursuant to Rule 77 of the *African Child Committee Rules of Procedure*, the committees are entitled to recommend to the General

⁹⁴ African Committee of Experts on the Rights and Welfare of the Child, *General Comments*: <<http://www.acerwc.org/general-comments/>>.

⁹⁵ Committee on the Rights of the Child, *Days of General Discussions*: <<http://www.ohchr.org/EN/HRBodies/CRC/Pages/DiscussionDays.aspx>>.

⁹⁶ Committee on the Rights of the Child, *Statements*: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=68>; African Committee of Experts on the Rights and Welfare of the Child, *Statements*: <<http://acerwc.org/statement/>>.

⁹⁷ Committee on the Rights of the Child, *Days of General Discussions*: <<http://www.ohchr.org/EN/HRBodies/CRC/Pages/DiscussionDays.aspx>>.

⁹⁸ African Union, *Achievements of the African Child Committee*: <<http://pages.au.int/acerwc/pages/achievements-acerwc>>.

Assembly to request the Secretary-General (the UN Child Committee) and to the Assembly of the African Union to request the Chairperson of the Commission (the African Child Committee) to undertake – on their behalf, studies on topics related to the rights of the child. So far the UN Child Committee has twice requested for such studies on the issues of impact of children in armed conflict and violence against children. The UN Study on the impact of children in armed conflict was adopted in 1996⁹⁹ and the study on violence against children in 2006.¹⁰⁰ The African Child Committee has not used its competence in this area yet. The committees may also consider relevant studies submitted by other bodies concerning the issues reflected in the *UN Child Convention* and the *African Child Charter* respectively.¹⁰¹

E. Consideration of individual complaints

The *African Child Charter* provides a special communication procedure mandating the African Child Committee with the competence to receive and consider individual complaints regarding violations of child rights. Pursuant to article 44 of the *African Child Charter*, ‘any person, group or non-governmental organization recognized by the Organization of African Unity, by a Member State, or the United Nations’ may raise complaints ‘denouncing acts that are prejudicial to the right or rights of the child’ reflected in the *African Child Charter*.¹⁰²

⁹⁹ *Impact of Armed Conflict on Children, Report of the expert of the Secretary-General, Ms. Grac'a Machel, submitted pursuant to General Assembly resolution 48/157, UN Doc A/51/306 (1996).*

¹⁰⁰ *Report of the independent expert for the United Nations Paulo Sérgio Pinheiro study on violence against children, UN Doc A/61/299 (2006).*

¹⁰¹ *UN Child Committee Rules of Procedure, Rule 80(2); African Child Committee Rules of Procedure, Rule 77(2).*

¹⁰² *African Child Charter art 44(1); Revised Guidelines for the consideration of Communications provided for in Article 44 of the African Charter on the Rights and Welfare of the Child, ACERWC/8/4/Rev (2014) ('Revised Guidelines') art 1.*

In accordance with Rule 74 of the *African Child Committee Rules of Procedure*, the African Child Committee elaborated guidelines relating to the admissibility and consideration of communications.¹⁰³ So far the African Child Committee has received four communications and has issued decisions on three of them.¹⁰⁴

Until 2014, the UN Child Committee had no mandate to consider individual complaints regarding violations of the rights of the child.¹⁰⁵ The situation has changed in April 2014 with the entry into force of a third *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure* of 19th December 2011.¹⁰⁶ According to Article 5(1), the protocol allows individuals or group of individuals to submit complaints (communications) regarding violations of child rights set forth in the *UN Child Convention* or its two optional protocols of 2000.¹⁰⁷ When exercising its functions conferred on the UN Child Committee by the *third Optional Protocol*, it follows special *Rules of Procedure* adopted by the UN Child Committee in 2013.¹⁰⁸ So far the UN Child

¹⁰³ *Revised Guidelines.*

¹⁰⁴ Decision on Communication No 1/2005; Decision: No 002/Com/002/2009; Decision: N°03/Com/001/2012. African Committee of Experts on the Rights and Welfare of the Child, *Communications*: <<http://acerwc.org/communications/>>.

¹⁰⁵ Till that time, violations of the rights of the child could have been raised before other bodies provided with competence to accept and review individual complaints. Among them, there were, inter alia: the Human Rights Committee; the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Committee on the Elimination of All Forms of Racial Discrimination and the Committee on the Elimination of Discrimination Against Women.

¹⁰⁶ See *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*, opened for signature 19 December 2011, UN Doc A/RES/66/138 (entered into force 14 April 2014) ('*Third Optional Protocol*').

¹⁰⁷ *Child Involvement Protocol; Child Prostitution Protocol.*

¹⁰⁸ *Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child*

Committee has received one communication which it declared inadmissible under the *third Optional Protocol*.¹⁰⁹

F. Investigative/fact-finding missions

Pursuant to article 45 of the *African Child Charter*, the African Child Committee is empowered to investigate any matter falling within the ambit of the *African Child Charter*, including alleged or observed violations of child rights and its welfare. The African Child Committee conducts these investigations within the framework of the *African Child Charter* and special guidelines elaborated under Rule 74(2) of the *African Child Committee Rules of Procedure*.¹¹⁰ The African Child Committee undertakes investigations to gather information on the situation of the rights of the child in a State Party. It documents violations and makes recommendations to the country concerned. The State Party visited by the mission may be asked for a written reply on measures taken in light of the recommendations addressed to it.¹¹¹

The *UN Child Convention* does not contain the provision on investigative missions of the UN Child Committee. The UN Child Committee itself established the practice of informal visits to States Parties. However, in contrast to the African Child Committee's investigative missions, visits of the UN Child Committee have other dimension. They are aimed at helping to prepare the discussions of a State Party report or to follow-up recommendations adopted by the UN Child Committee.

G. Cooperation with other bodies

Both the *UN Child Convention* and the *African Child Charter* emphasize the impor-

on a communications procedure, CRC/C/62/3 (2013).

¹⁰⁹ Communication No. 1/2014, 8 July 2015, CRC/C/69/D/1/2014.

¹¹⁰ *Guidelines on the conduct of investigations by the African Committee of Experts on the Rights and Welfare of the Child under article 45 of the African Charter and article 74 of the Rules of Procedure*, ACERWC/8/5.

¹¹¹ In 2005 the African Child Committee conducted a fact-finding mission to Northern Uganda and in 2014 – in Tanzania (investigation on alleged violations of the rights of children with albinism).

tance – in realization of the committees' functions – of the UN Child Committee's and the African Child Committee's cooperation with other bodies (such as inter alia government representatives, United Nations bodies, specialized agencies, non-governmental organizations) concerned with the protection of children's rights.

The UN Child Committee and the African Child Committee may invite, respectively - the specialized agencies, the United Nations Children's Fund, and other United Nations organs and the RECs, the African Union, Specialized Agencies, the United Nations organs, NGOs and Civil Society Organizations to submit to them reports on the implementation of the Convention and the Charter and to provide them with expert advice in areas falling within the scope of their activities.¹¹²

Representatives of the specialized agencies, the United Nations Children's Fund and other United Nations organs have the right to be represented at the consideration of the implementation of such provisions of the *UN Child Convention* as fall within the scope of their mandate and may - when invited by the UN Child Committee, participate in private meetings of the Committee or its subsidiary bodies. Representatives of other competent bodies concerned may - when invited by the UN Child Committee, participate in public or private meetings of the Committee or its subsidiary bodies.¹¹³

Representatives of the African Union Specialized Institutions are entitled to be represented in the public sessions of the African Child Committee and its subsidiary bodies and to participate, without voting rights, 'in deliberations on issues which shall be of interest to them and to submit, on these issues, proposals which may be put to vote at the request of any member of the Committee or the interested subsidiary body.'¹¹⁴

¹¹² *UN Child Convention* art 45(a); *African Child Charter* 42(a)(iii); *UN Child Committee Rules of Procedure*, Rule 74; *African Child Committee Rules of Procedure*, Rule 69.

¹¹³ *UN Child Convention* art 45(a); *UN Child Committee Rules of Procedure*, Rule 41.

¹¹⁴ *African Child Charter* art 42(a)(iii); *African*

Representatives of other African Inter-governmental Organizations and representatives of the United Nations Agencies and other international organizations may participate, without voting rights, respectively – in the deliberations of the Committee and in its public sessions on issues that fall within the framework of their activities.¹¹⁵

As they may consider appropriate, both the UN Child Committee and the African Child Committee transmit to relevant agencies and bodies any reports from States parties that contain a request or indicate a need for technical advice or assistance, along with the committees' observations and suggestions.¹¹⁶ The African Child Committee may consult non-governmental organizations and allow representatives of civil society and non-governmental organizations to participate as observers in its and its subsidiary bodies' public sessions.¹¹⁷

SUMMARY

The main question for writing this article was the question of the legitimacy of co-existence of the UN Child Committee and the African Child Committee in the international arena. A comparative analysis of the two committees in the context of their organization, functions, tasks and methods of operation leads to the clear conclusion that African Child Committee is a faithful copy of its original - the UN Child Committee, with that distinction that its scope of influence is limited to the African continent. Both institutions can be called 'twin bodies'. The main task of both committees is to monitor implementation of provisions respectively – the *UN Child Convention* (and its two optional protocols of 2000) and the *African Child Charter*. This

Child Committee Rules of Procedure, Rule 78.

¹¹⁵ *African Child Charter* art 42(a)(iii); *African Child Committee Rules of Procedure*, Rules 79-80.

¹¹⁶ *UN Child Convention* art 45(b); *African Child Charter* art 42(a)(iii); *UN Child Committee Rules of Procedure*, Rule 78; *African Child Committee Rules of Procedure*, Rule 7.

¹¹⁷ *African Child Charter* art 42(a)(iii); *African Child Committee Rules of Procedure*, Rules 81-2.

task is carried out by the two institutions in the same way (examination of reports submitted by State Parties and issue of recommendations to State Parties; issue of statements, decisions and recommendations; interpretation of the provisions of the *UN Child Convention* and the *African Child Charter* – general comments, setting rules, principles and standards; organization of days of general discussion; initiating studies; undertaking investigative/fact-finding missions; consideration of individual complaints; cooperation with other bodies). Members of both committees are experts specializing in the field of protection of children's rights, acting in an impartial manner and in their personal capacity. Provisions of the *African Child Charter* reflect the core of the provisions of the *UN Child Convention*.

Thus arises the question of what was the goal of enacting a separate regional convention on the protection of the rights of the child – the *African Child Charter*, and then – of establishing a separate committee – the African Child Committee, entrusted with the task of monitoring compliance with its provisions?

Thoko Kaime in his book indicates some of the reasons that led to adoption of a separate *African Child Charter*. Among them, he indicates the reason of under-representation of African specialists during the drafting process of the *UN Child Convention* and the lack of regulations in the *Convention* addressing the specific realities of African children (among others: the situation of children living under apartheid, problems of internal displacement arising from civil wars and internal insurrections, the use of children as soldiers, harmful practices like female genital mutilation, the definition of a child, etc.).¹¹⁸ However, may this argument be considered sufficient? It seems not. Not only every continent, but every country has its own history, tradition, culture, socio-political situation, etc., which are not without impact on the situation of children in a given region or country, thus making it 'a special situation'. In addition, problems like child-soldiers, FMG, poverty are not exclusive specificity of African

¹¹⁸ Thoko Kaime, above n 18, 20-4.

countries. Similar problems face for example children in some Asian and South American countries. These problems have not been overlooked by the creators of the *UN Child Convention*. Its articles 37 and 38 together with its two optional protocols of 2000 protect children from the involvement in armed conflicts and from violence and other cruel treatment. If in the opinion of some African countries such solution seemed insufficient - nothing stood in the way, that these countries have raised appropriate reservations to adequate provisions of the *UN Child Convention* or have adopted 'provisions which are more conducive to the realization of the rights of the child'¹¹⁹ in their national laws.

Another argument, which may be considered as an argument for the establishment of a separate regional committee monitoring compliance with the rights of the child, is a question of number of the African Child Committee members carrying out the functions of the committee, which in comparison with the number of the UN Child Committee members is definitely in favor of the African Child Committee. The UN Child Committee is composed of 18 members, whereas the African Child Committee is composed of 11 experts. However, if we divide the number of State Parties to the *UN Child Convention* (196 State Parties in 2016)¹²⁰ by the number of Committee members (18) we note that one member of the committee 'is assigned to' almost 11 countries. Whereas, if we divide the number of State Parties to the *African Child Charter* (47 State Parties in 2016)¹²¹ by the number of Committee members (11) we note that one member of the committee 'represents' more or less 4 countries. That is three times less than in the case of the UN Child Committee. The second argument could be

¹¹⁹ *UN Child Convention* art 41.

¹²⁰ United Nations Human Rights Office of the High Commissioner, *Ratification of 18 International Human Rights Treaties* <<http://indicators.ohchr.org/>>.

¹²¹ African Committee of Experts on the Rights and Welfare of the Child, *Ratification Status of the African Charter on the Rights and Welfare of the Child* <<http://www.acerwc.org/ratification-data/>>.

the argument determining the frequency of submission of periodic reports to both committees – in the case of the UN Child Committee – this is 5-year period, whereas in the case of the African Child Committee – 3-year one. But have these arguments got a practical dimension? Statistics suggest a negative response. The UN Child Committee from the beginning of its activity, ie since 1991 received from the State Parties 710 reports,¹²² while the African Child Committee since its establishment in 2001 - 35.¹²³ In addition, special reporting procedure (Rule 70 of the *African Child Committee Rules of Procedure*) provides for the African country, which is party to both the *African Child Charter* and the *UN Child Convention*, the possibility of submission of report only to one of the committees. If the state submitted the report to the UN Child Committee, in such a case the African Child Committee - in order to avoid repetition between the reports, can only invite the State Party 'to update the information already submitted and add information on the provisions specific to the Children's Charter.'¹²⁴

The UN Child Committee convenes annually three regular sessions¹²⁵ consisting of a three-week plenary and a one-week pre-session working group,¹²⁶ whereas the African Child Committee holds annually two ordinary sessions of maximum two weeks' duration.¹²⁷ Thus, the African Child Committee actions do not seem to be more intense

¹²² Committee on the Rights of the Child, *State Parties Reports*: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=29&DocTypeCategoryID=4>.

¹²³ African Committee of Experts on the Rights and Welfare of the Child, *Statements*: <<http://www.acerwc.org/ratification-data/>>.

¹²⁴ *African Child Committee Rules of Procedure*, Rule 70.

¹²⁵ *UN Child Committee Rules of Procedure*, Rule 2(2).

¹²⁶ Committee on the Rights of the Child, *Monitoring Children's Rights*: <<http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx>>.

¹²⁷ *African Child Committee Rules of Procedure* Rule 2(1).

than those carried out by the UN Child Committee.

The argument in favor of the African Child Committee could be – since its establishment in 2001, its practice of consideration of individual complaints regarding violations of child rights. This procedure has been introduced by the UN Child Committee in 2014 with the entry into force of the *third Optional Protocol*. However, if we look at the practical dimension of this competence of both committees, we note that during over a dozen years of its activities the African Child Committee has received only four communications and has issued decisions on three of them.¹²⁸ So far the UN Child Committee has received one communication which it declared inadmissible under the *third Optional Protocol*.¹²⁹ Currently, due to the very short period of the UN Child Committee practice of communications procedure, it is too early to assess its effectiveness. It does not seem, however, that in view of existing statistics the procedure carried out by the African Child Committee would have a broader scope than the one carried out by the UN Child Committee.

The final argument, which let me leave as open question, is: if we assume that the provisions of the *African Child Charter* are closer to the problems of children in Africa, why there are less African states which are parties to the *African Child Charter* in comparison with the *UN Child Convention*?¹³⁰

The summary of the arguments and the comparison of the two institutions raises the concern about proliferation of monitoring organs in such an important field which is protection of children rights. The idea behind the creation of the UN Child Committee was the establishment of a supranational, even more than the continental body which is independent in issuing its opinions and assessments on the situation of children in various countries. Thus its role is to give those countries the opportunity to look at certain issues relating to children's rights and their protection – perhaps with a little other than national or even continental perspective. Hasn't African countries – through establishment of a separate African monitoring body, deprived themselves of such a valuable opportunity?

¹²⁸ Decision on Communication No 1/2005; Decision: No 002/Com/002/2009; Decision: N°03/Com/001/2012. Available at: <http://acerwc.org/communications/>

¹²⁹ Communication No. 1/2014, 8 July 2015, CRC/C/69/D/1/2014.

¹³⁰ In 2016 the provisions of the *African Child Charter* are binding to 47 out of 54 African countries whereas the provisions of the *UN Child Convention* are binding to all 54 African countries.