

SIMPLIFIED GUIDE TO THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE AFRICAN CHILD

PART I

CHAPTER ONE: RIGHTS AND DUTIES

ARTICLE 1 (OBLIGATION OF STATE PARTIES): Governments that are parties to this charter must recognise the rights, freedoms and duties that arise from it. They shall also domesticate them through their legislative process. This charter however shall not replace any better effective mechanism (in the protection of the rights and welfare of the child as stipulated by international law) within the state. However, customs, traditions, cultural or religious practices that are inconsistent with the rights, duties and obligations contained in this charter must be discouraged by the government.

ARTICLE 2 (DEFINITION OF THE CHILD): The Charter defines a Child as every human being who is below the age of 18 years.

ARTICLE 3 (NON-DISCRIMINATION): This Charter applies to every child within Africa irrespective of his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religious, political or other opinion, national and social origin, fortune, birth or other status. No child should be discriminated against.

ARTICLE 4 (BEST INTEREST OF THE CHILD): All actions and decisions to be taken concerning the child **MUST** of **NECESSITY** have the best interest of the child as the primary objective. This also includes judicial and administrative proceedings that involve a child who is capable of communicating his/her views.

ARTICLE 5 (SURVIVAL AND DEVELOPMENT): Governments must take all necessary measures to ensure the survival, protection and development of the child since the child's right to life must be protected by the law. This charter also states that the government should not pronounce death sentence on crimes committed by children.

ARTICLE 6 (NAME AND NATIONALITY): Every Child has the right to a **NAME**, **BIRTH REGISTRATION** and **NATIONALITY**. Thus Governments are to ensure, through appropriate constitutional legislations, that the right of the child to Nationality in the country of birth is secured or provided for.

ARTICLE 7 (FREEDOM OF EXPRESSION): Every Child has the right to freely express his/her views/opinion in all matters and to disseminate his/her opinion according to what is acceptable by Law.

ARTICLE 8 (FREEDOM OF ASSOCIATION): Every child has the right to free association and peaceful assembly in conformity with the law.

ARTICLE 9 (FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION): Children have the right to their own thoughts and conscience, and to choose what religion to practice.

Parents and legal guardian however have the obligation of guiding and directing the exercise of these rights, in the best interest of the child and in line with the national laws and policies.

ARTICLE 10 (PROTECTION OF PRIVACY): Children’s privacy (at home, school or otherwise) must be protected against unlawful and arbitrary interference, especially to the point where it affects their reputation. However, Parents and legal guardians have the obligation to exercise reasonable supervision over the conduct of their children.

ARTICLE 11 (EDUCATION): Every Child has the right to education. This education should develop each child’s personality, talents and abilities to the fullest. It should encourage children to respect others, human rights and their own and other cultures. It should preserve and strengthen positive African morals, traditional values and cultures. It should also help them learn to live peacefully, protect the environment and respect other people. Children have a particular responsibility to respect the rights their parents, and education should aim to develop respect for the values and culture of their parents. The government has the responsibility to provide free and compulsory basic education, encourage the development of secondary education and make higher education more accessible to reduce rates of drop-out. More still, special measures must be taken in respect of female, gifted and disadvantaged children to ensure equal access to education for all sections of the community – including female children who get pregnant. Also important is the discipline of children at home and school which must have the best interest of the child as well as his/her dignity and humanity.

ARTICLE 12 (LEISURE, RECREATION AND CULTURAL ACTIVITIES): Governments must recognise and promote the rights of children to fully participate in cultural and artistic life as well as engage in play and recreational activities appropriate to their age and good for their growth and development.

ARTICLE 13 (HANDICAPPED CHILDREN): Governments should develop special measures to protect the rights of disabled children and promote their self reliance and active participation in the community.

ARTICLE 14 (HEALTH AND HEALTH SERVICES): Governments must implement adequate measures, in line with the child’s right to enjoy the best attainable state of physical, spiritual and mental health, to reduce infant and child mortality rate. The government must provide necessary medical assistance and health care through primary health care; it must ensure adequate nutrition and safe drinking water; it should combat disease and malnutrition; develop preventive health care and family life education; and ensure the meaningful participation of NGOs (like HURISA), local communities and the beneficiary population in the planning and management of the service programmes for the children as well as support the mobilisation of local community resources in the development of primary health care for children through technical and financial means.

ARTICLE 15 (CHILD LABOUR): This Charter is against all forms of economic exploitation of the child or any work that is hazardous and interferes with the child’s physical, mental, spiritual, moral and social development. Thus, governments must develop appropriate legislative and administrative measures to ensure that this ARTICLE is

implemented in accordance with the provisions of the International Labour Office (ILO) and other International Instruments relating to the Children and Labour or Work.

ARTICLE 16 (PROTECTION AGAINST CHILD ABUSE AND TORTURE): Governments must take specific legislative, social and educational measures to protect the child from all forms of torture, inhuman and degrading treatment, especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse. This should involve effective monitoring and reporting mechanisms to ensure prevention and identification of cases.

ARTICLE 17 (ADMINISTRATION OF JUVENILE JUSTICE): The charter provides that in the event that a child is convicted by Law, his/her sense of dignity and self-worth must be preserved. It also provides that all forms of torture, inhuman and degrading treatment or punishment must be REMOVED.

ARTICLE 18 (PROTECTION OF THE FAMILY): Government should take appropriate measures to ensure equal rights and responsibilities for spouses with regards to the protection of the child during (and in the event of the dissolution of) marriage. The charter insists that NO child shall be deprived of maintenance by reference to the parents' marital status.

ARTICLE 19 (PARENTAL CARE AND PROTECTION): Governments should protect the child's right to enjoy parental care and protection as well as the right to be in regular contact with parents in case of separation (of parents or as adjudicated by the state). Also the child has the right to have his/her parents notified should he/she be apprehended by the state for any wrong-doing.

ARTICLE 20 (PARENTAL RESPONSIBILITIES): Parents or Legal guardians have the responsibility of providing living conditions necessary to the development of the child. They must also insure that domestic discipline is administered in accordance with the dignity and best interest of the child. The government is to assist parents at all levels to achieve these responsibilities, especially in terms of nutrition, health, education, clothing and housing through incentives or financial and material assistance.

ARTICLE 21 (PROTECTION AGAINST HARMFUL SOCIAL AND CULTURAL PRACTICES): Governments should take adequate measures to eliminate harmful social and cultural practices affecting the welfare, dignity and normal growth and development of the child. These can be seen in the clash between cultural practices and the health of the child; discriminatory customs on grounds of sex and other status; and issues such as child marriage, and the betrothal of girls and boys. These must be prohibited and governments should set a legislation to specify that the minimum age of marriage be 18 years and this must compulsorily be registered in the official marriage registry.

ARTICLE 22 (ARMED CONFLICT): The charter provides against the active use of children as soldiers during armed conflicts and the government must take necessary measures to ensure that the child is protected and that humanitarian assistance is provided.

ARTICLE 23 (REFUGEE CHILDREN): Governments should protect children seeking refugee status in accordance with international and domestic laws whether they are accompanied by parents, legal guardians, close relatives or not. This is also applicable to internally displaced children who are victims of natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order etc.

ARTICLE 24 (ADOPTION): The best interest of the Child must be considered in all procedures of adoption. Thus, competent authorities must determine matters of adoption especially with regards to relevant and reliable information. This includes very importantly, the establishment of a machinery to monitor the well-being of the adopted child.

ARTICLE 25 (SEPERATION OF PARENTS): Governments should provide special protection and assistance for children permanently or temporarily separated from their family by the government.

ARTICLE 26 (PROTECTION AGAINST APARTHEID AND DISCRIMINATION): The charter provides protection for children against the apartheid regime and its discrimination.

ARTICLE 27 (SEXUAL EXPLOITATION): Governments must undertake to protect the child from sexual exploitation and abuse by means of legislations to prevent any inducement, coercion or encouragement of a child to engage in any sexual activity. This also involves the use of children for prostitution, pornographic activities, performances, materials and other sexual practices.

ARTICLE 28 (DRUG ABUSE): Governments should develop appropriate measures to protect the child from using narcotics and the illicit use of psychotropic substances as defined in relevant international treaties. *This could also include doping in school sports.*

ARTICLE 29 (SALE, TRAFFICKING AND ABDUCTION): Governments should develop adequate and effective mechanisms to prevent the abduction, sale of, or trafficking of children for any purpose, by any person including parents or legal guardians. This also involves the use of children in all forms of begging.

ARTICLE 30 (CHILDREN OF IMPRISONED MOTHERS): Governments should provide special treatment to expectant mothers and mothers of infants and young children who are convicted. Among other things, the government should ensure that a mother is not imprisoned with her child.

ARTICLE 31 (RESPONSIBILITIES OF THE CHILD): The Child has responsibilities towards her family, the society, the community, the state and the international community. These, subject to his/her age, include: working for the cohesion of the family; respect for parents, superiors and elders at all times; service to the national community, physically and intellectually; preserving and strengthening African cultural values; and upholding the integrity of hi/her country.

PART II

CHAPTER TWO: ESTABLISHMENT AND ORGANISATION OF THE COMMITTEE ON THE RIGHTS AND WELFARE OF THE CHILD

ARTICLE 32 (THE COMMITTEE): The Charter established the African Committee of Experts on the Rights and Welfare (referred in this Charter as “the Committee”) of the Child (within the OAU) to promote and protect the rights and welfare of the African Child.

ARTICLE 33 (COMPOSITION): The Committee is composed of 11 members of high moral standing and integrity who shall serve in their personal capacities. Only one person can emerge from a country.

ARTICLE 34 (ELECTION): The Assembly of Heads of State and Governments elect members from a list of nominated candidates through a secret ballot system.

ARTICLE 35 (CANDIDATES): Each state is entitled to nominate at least two candidates – one from a different country.

ARTICLE 36 (NOMINATION OF CANDIDATES): This is done at least 6 months before the election, and the OAU Secretary General must communicate the list of nominated persons to the Heads of State and Governments at least two (2) months before elections.

ARTICLE 37 (TERM OF OFFICE): Members of the Committee are elected for a 5 year term with no re-election. However the term of 4 elected members expired after two years, and the other 6 members after 4 years of election when this Charter came into force.

ARTICLE 38 (BUREAU): The Committee has its own rules of procedures; elects its officers for a period of 2 years; and seven (7) Committee members form the Quorum.

ARTICLE 39 (VACANCY): The Charter prescribes that if a member of the Committee vacates his office for any reason other than the normal expiration of a term, the State which nominated that member shall appoint another member from among its nationals to serve for the remainder of the term - subject to the approval of the Assembly.

ARTICLE 40 (SECRETARIAT): The Secretary-General of the Organization of African Unity shall appoint a Secretary for the Committee.

ARTICLE 41 (PRIVILEGES AND IMMUNITIES): In discharging their duties, members of the Committee shall enjoy the privileges and immunities provided for in the General Convention on the Privileges and Immunities of the Organization of African Unity.

CHAPTER THREE: MANDATE AND PROCEDURE OF THE COMMITTEE

ARTICLE 42 (MANDATE): The charter lays down some functions of the Committee such as: promoting and protecting the rights enshrined in this Charter by collecting and document information, commissioning inter-disciplinary assessment of situations on African problems around the rights and welfare of the child, organizing meetings, encouraging national and local institutions concerned with the rights and welfare of the child, and where necessary giving its views and making recommendations to Governments. It is also obliged to formulate principles and rules aimed at protecting the rights and welfare of children in Africa and cooperate with other African, international and regional Institutions and organizations concerned with the promotion and protection of the rights and welfare of the child. The committee is also supposed to monitor the implementation and ensure protection of the rights enshrined in this Charter; interpret the provisions of the present Charter at the request of a State Party, an Institution of the Organization of African Unity or any other person or Institution recognized by the Organization of African Unity, or any State Party; and perform other task as may be entrusted to it by the Assembly of Heads of State and Government, Secretary-General of the OAU and any other organs of the OAU or the United Nations.

ARTICLE 43 (REPORTING PROCEDURE): The Charter provides that governments should submit reports on the measures that have been adopted in accordance with the provisions of the Charter to the committee through the secretary-general. These reports should be submitted every three (3) years – the first reports were to be submitted within two years of the adoption of the Charter and when it entered into force. The report must also indicate factors and difficulties, if any, affecting the fulfilment of the obligations contained in the Charter.

ARTICLE 44 (COMMUNICATIONS): The Charter prescribes that the Committee may receive communication as well as reports, from any person, group or nongovernmental organization recognized by the Organization of African Unity, by a Member State, or the United Nations relating to any matter covered by this Charter. For the sake of credibility, this communication or report should contain the name and address of the author and shall be treated in confidence.

ARTICLE 45 (INVESTIGATIONS BY THE COMMITTEE): In investigation reports, the Committee may, resort to any appropriate method of investigating any matter 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. The Committee also submits a report every two (2) years during each Ordinary Session of the Assembly of Heads of State and Government on its activities. Its reports are published after it has been evaluated by the Assembly of Heads of State and Government.

CHAPTER FOUR: MISCELLANEOUS PROVISIONS

ARTICLE 46 (SOURCES OF INSPIRATION): The Committee draws inspiration from International Law on Human Rights, particularly from the provisions of the African Charter on Human and Peoples' Rights, the Charter of the Organization of African Unity, the Universal Declaration on Human Rights, the International Convention on the Rights of the Child, and other instruments adopted by the United Nations and by African countries in the field of human rights, and from African values and traditions.

ARTICLE 47 (SIGNATURE, RATIFICATION OR ADHERENCE): The Charter is open to signature by all the Member States of the Organization of African Unity; it is subject to ratification or adherence by Member States of the Organization of African Unity.

The Charter came into force 30 days after the reception by the Secretary-General of the Organization of African Unity of the instruments of ratification or adherence of 15 Member States of the Organization of African Unity.

ARTICLE 48 (AMENDMENT AND REVISION OF THE CHARTER): The Charter can be amended or revised if any State Party makes a written request to that effect to the Secretary-General of the Organization of African Unity, provided that the proposed amendment is not submitted to the Assembly of Heads of State and Government for consideration until all the States Parties have been duly notified of it and the Committee has given its opinion on the amendment. But for that amendment proposal to go through, it must be approved by a simple majority of State Parties.