

# REGIONAL DEVELOPMENTS

## PROGRESS, GAPS AND NEXT STEPS: MAPPING ACERWC'S WORK ON THE RIGHTS OF CHILDREN WITH DISABILITIES (2012-2023)

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### 1 Introduction and background

Children with disabilities in Africa face multiple challenges. To start with, the numbers are staggering. For example, according to UNICEF, one in ten of the 290 million children in Eastern and Southern Africa have functional difficulties.<sup>1</sup> At the same time, the absence of disaggregated data in all four corners of the continent continues to undermine legislative and programmatic interventions to uphold the rights of children with disabilities.

Further, there are multiple areas of law and policy in respect of the rights of children with disabilities in Africa which need attention. For example, while it is commendable that many African countries have adopted comprehensive child laws in Africa, few explicitly cover children with disabilities. A case in point is Malawi where concern has been expressed about the absence of explicit efforts to protect the rights of children with disabilities in the Child Care, Protection and Justice Act of 2010.<sup>2</sup>

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1 UNICEF 'Children with disabilities in Eastern and Southern Africa: A statistical overview of their well-being' (2023) 6.

2 CRPD Committee, Concluding Observations on the Combined Initial and Second Periodic Reports of Malawi, 5 October 2023, UN Doc CRPD/C/MWI/CO/1-2 (2023) para 15(a).

The primary legal framework that regulates the rights of children, including those with disabilities in this region is the African Charter on the Rights and Welfare of the Child (African Children's Charter).<sup>3</sup> To date, 50 African Union (AU) Member States have ratified the Charter, with only five remaining.<sup>4</sup> This Charter includes a dedicated provision on the rights of children with disabilities under article 13 according to which children with disabilities are entitled to special protection measures and appropriate assistance, aimed at promoting their social integration as well as individual, cultural, and moral development to the fullest extent possible. It goes without saying that all the remaining safeguards guaranteed by the Charter are equally applicable to children with disabilities.

The African Committee of Experts on the Rights and Welfare of the Child (Committee) is the body responsible for overseeing the implementation of the African Children's Charter.<sup>5</sup> The Committee was established in 2001 in accordance with article 32 of the document. Article 42 of the Charter specifies the Committee's functions, which include (amongst others) the promotion and protection of children's rights, monitoring the Charter's implementation, formulating and laying down principles and rules aimed at safeguarding children's rights in Africa, and interpreting the Charter's provisions. To discharge this broad mandate, the Committee engages in a number of activities as outlined in articles 42-45 of the Charter and its Rules of Procedures.<sup>6</sup> These activities include the consideration of State Party Reports on the status of the implementation of the Charter, examination of communications on alleged violations of the Charter, conducting investigations/country visits to assess the implementation of the Charter, developing norms and standards in the form of general comments and guidelines on matters covered by the Charter, and undertaking research and studies on children's rights issues in the Continent.<sup>7</sup>

Over the years, the Committee has undertaken several initiatives with a view to protect and promote the rights of children with disabilities, as well as to monitor the effective implementation of these rights. One notable initiative was dedicating the commemoration of the 2012 Day of

3 The African Charter on the Rights and Welfare of the Child (ACRWC) was adopted by the Organization of African Unity (OAU) (now African Union (AU) Heads of State and Governments on 11 July 1990 and entered into force on 29 November 1999.

4 ACERWC 'Ratification Table: African Charter on the Rights and Welfare of the Child' <http://www.acerwc.africa/en/member-states/ratifications> (accessed 6 October 2023.) Five Member States have yet to ratify the ACRWC, namely Morocco, Sahrawi Arab Democratic Republic, Somalia, South Sudan, and Tunisia. Among the ratifying countries, three Member States, namely Egypt, Mauritania, and Sudan, have entered reservations to certain provisions of the Charter.

5 Art 32(1) of the ACRWC.

6 ACERWC 'Revised rules of procedure of the African Committee of Experts on the Rights and Welfare of the Child' (2020) <http://www.acerwc.africa/en/key-documents/working-documents/revised-rules-procedure-african-committee-experts-rights-and> (accessed 14 September 2023).

7 Arts 42-45 of the ACRWC.

the African Child (the DAC) to the theme 'The rights of children with disabilities: The duty to protect, respect, promote and fulfil' which provided a platform to draw attention to the challenges that children with disabilities face and to urge governments to undertake appropriate measures.<sup>8</sup>

This article provides an overview of the Committee's initiatives pertaining to the promotion and protection of the rights of children with disabilities since the 2012 DAC. Since the Committee has not yet been presented with communications (in terms of article 44 of the Charter) specifically addressing the right of children with disabilities, nor adopted a General Comment dedicated to this issue, the assessment of the Committee's efforts concerning the rights of children with disabilities focuses on the aforementioned activities.

## 2 Children with disabilities under ACERWC's special mechanisms

One of the most notable initiatives of the Committee towards the protection and promotion of children with disabilities is the establishment of a Working Group on Children with Disabilities (Working Group).<sup>9</sup> During its 36th ordinary session in December 2020 the Committee resolved to launch four working groups to address challenges in key thematic areas, including the Working Group on Children with Disabilities.<sup>10</sup> The primary objective of the Working Group is to safeguard the rights and well-being of children with disabilities on the continent and ensure their inclusion in all spheres by adopting a child-rights based approach to protect their rights.<sup>11</sup> To this end, the Resolution establishing the Working Group outlines its key roles and responsibilities, such as producing (amongst others) a comprehensive report on the status of children with disabilities in Africa, setting standards, and revising and

8 UNICEF 'Summary report by the UNICEF Liaison Office to the African Union and United Nations Economic Commission for Africa: The Day of the African Child – 16 June 2012. Theme: The rights of children with disabilities: The duty to protect, respect, promote, and fulfil' <https://silو.tips/download/summary-report-by-the-unicef-liaison-office-to-the-african-union-and-united-nati> (accessed 28 September 2023).

9 This Working Group was established in accordance with art 38(1) of the ACRWC and Rule 58 of its revised Rules of Procedure, which allow the Committee to create special mechanisms to execute specific programmes and projects. ACERWC 'Standard of operating procedures for working groups as special mechanisms within the African Committee of Experts on the Rights and Welfare of the Child' adopted on 8 September 2020 <http://www.acerwc.africa/sites/default/files/2022-06/Standard-of-Operating-Procedures-for-the-Working-Groups.pdf> (accessed 27 September 2023).

10 The Working Group is composed of four committee members and four external experts. ACERWC Resolution on the Establishment of a Working Group on Children with Disabilities, 4 December 2020 <http://www.acerwc.africa/sites/default/files/2022-10/RESOLUTION%20ON%20THE%20ESTABLISHMENT%20OF%20A%20WORKING%20GROUP%20ON%20CHILDREN%20WITH%20DISABILITIES.pdf> (accessed 28 September 2023).

11 As above.

operationalising the ACERWC's Strategy for Promoting and Protecting the Rights of Children with Disabilities in Africa.<sup>12</sup>

Since its inception, the Working Group has made significant strides in fulfilling its mandate. Its initiatives include the development of a Resolution 19/2022 on the Situation of Children with Albinism in Africa,<sup>13</sup> Guidelines for Action on the Rights of Children with Disabilities in Africa,<sup>14</sup> and a Continental Study on the Status of Children with Disabilities in Africa.<sup>15</sup> Furthermore, considering the need to integrate emerging issues adversely affecting children with disabilities in the region, the Working Group undertook the task of revising the Strategy for Promoting and Protecting the Rights of Children with Disabilities in Africa (Revised Strategy).<sup>16</sup> It is noteworthy that during its 41st ordinary session, the Committee, cognisant of the persisting challenges faced by children with disabilities, decided to extend the mandate of the Working Group for an additional two years.

### 3 Children with disabilities and ACERWC's development of research and studies

As noted above, the Working Group has conducted a Continental Study on the Status of Children with Disabilities in Africa, the report of which was adopted during the Committee's 41st ordinary session in April to May 2023. The Study focuses on ten African countries representing the five regions of Africa namely: Mauritania, Guinea, Tanzania, Ethiopia, Namibia, Lesotho, Central African Republic, Democratic Republic of the Congo, Algeria, and Egypt.<sup>17</sup> Its primary objectives include examining the adequacy of existing normative frameworks on the rights of children with disabilities in Africa, identifying barriers that hinder children with disabilities from fully exercising their rights, and providing recommendations to Member States, ACERWC, and other relevant

12 As above.

13 ACERWC, Resolution 19/2022 of the ACERWC Working Group on Children with Disabilities on the Situation of Children with Albinism In Africa, adopted on 1 April 2022, during the 39th ordinary session of the ACERWC [https://www.acerwc.africa/sites/default/files/2022-10/Resolution%20No%2019\\_2022%20on%20the%20Situation%20of%20Children%20with%20Albinism%20in%20Africa.pdf](https://www.acerwc.africa/sites/default/files/2022-10/Resolution%20No%2019_2022%20on%20the%20Situation%20of%20Children%20with%20Albinism%20in%20Africa.pdf) (accessed 24 September 2023).

14 ACERWC 'Guidelines for Action on the Rights of Children with Disabilities in Africa' (2022) (on file with authors). The Guidelines were adopted during the 40th ordinary session of the ACERWC, held from 23 November to 1 December 2022.

15 ACERWC 'Continental Study on the Status of Children with Disabilities in Africa' (2023) (on file with authors). The Study was adopted during the ACERWC's 41st ordinary session, held from 28 April to 6 May 2023.

16 ACERWC 'Strategy for Promoting and Protecting the Rights of Children with Disabilities in Africa' (2023) (on file with authors).

17 ACERWC Strategy (n 16) 16.

stakeholders on collaboration and enhancing efforts to promote and protect the right of children with disabilities in Africa.<sup>18</sup>

The study report highlights that children with disabilities in Africa often do not have access to services and resources that are essential for their full development, mainly due to and negative societal attitudes and cultural prejudices.<sup>19</sup> It emphasises that children with disabilities are subjected to various forms of discrimination, including limited access to education and healthcare. This is exacerbated by a lack of reliable and up to date disaggregated data on disability, which in turn impedes the formulation of effective protective strategies.<sup>20</sup> The report further notes that while African States have made various commitments to protect and promote the rights of children with disabilities, the effective implementation of rights for children with disabilities remains a challenge.<sup>21</sup>

The findings further reveal a number of significant gaps, including the lack of clear reference to children with disabilities in most national laws and policies, duplication of efforts and inadequate synergy among stakeholders, a persistent exclusion of children with disabilities from policy development discourses, and a failure to recognise intersectionality.<sup>22</sup> In response to these findings, a series of recommendations were proposed. For example, the study observes that the majority of the case study States rely on institutional care as a way of providing alternative care for children with disabilities. Given the large body of evidence that demonstrates the overrepresentation of children with disabilities in institutional settings across many countries and the negative effects of institutional care on – as well as cases of sexual assault in – these settings, the Study suggests reforming such facilities to ensure the protection of children with disabilities.<sup>23</sup> While these recommendations hold value in recognising the detrimental impact of institutional settings on the overall well-being, a clearer recommendation to gradually transition away from institutionalisation and prioritise family-based alternative care for children with disabilities would have allowed the Committee to fully endorse the global consensus that institutional care adversely affects children's physical, emotional, and social well-being.

18 ACERWC Strategy (n 16) 13-14.

19 ACERWC Continental Study (n 15) 9-13.

20 ACERWC Continental Study (n 15).

21 As above.

22 ACERWC Continental Study (n 15) 5-8.

23 ACERWC Continental Study (n 15) 67.

## 4 Children with disabilities and ACERWC's development of norms and standards

In line with its mandate the Committee, through its Working Group, has developed four sets of standards pertaining to the rights of children with disabilities. However, it should be noted that these standards are not legally binding on States. Nevertheless, they serve to elucidate the nature of States' obligations in respect of the rights of children with disabilities enshrined in the Charter and the accompanying measures required for their effective implementation at the national level.

### 4.1 Strategy for promoting and protecting the rights of children with disabilities in Africa (2023)

The Committee has undertaken a review of the Strategy for Promoting and Protecting the Rights of Children with Disabilities in Africa (Revised Strategy).<sup>24</sup> This Strategy was initially adopted by the Committee in 2014.<sup>25</sup> At its second meeting in March 2022 the Working Group decided to update the content of this Strategy to highlight the progress and challenges encountered in the advancement of the rights of children with disabilities in the African region. The latter include the insufficient implementation of the Committee's recommendations and the urgent need to strengthen the existing protection mechanisms for children with disabilities.<sup>26</sup> It outlines several areas of concern requiring immediate attention from all stakeholders, such as the links between poverty and disability; the rights to education and to health; the right to be heard and to participate; and violence against children with disabilities.<sup>27</sup>

In order to address these concerns, the Strategy proposes a three-fold approach, which emphasises the stages of development, implementation, and monitoring and evaluation for a medium-term plan. For instance, during the implementation phase, the Strategy urges Member States to consider emerging issues such as the COVID-19 pandemic, armed conflicts, climate change and other emergencies in order to protect the rights of children with disabilities in all circumstances.<sup>28</sup> While the recognition of the need to integrate these considerations is commendable, the Strategy could have benefited from a more nuanced approach. For instance, given the heightened vulnerabilities of children with disabilities in Africa to climate change impacts, linking the Revised Strategy with recommendations from the Working Group on Climate Change and

24 ACERWC Strategy (n 16).

25 ACERWC Strategy (n 16).

26 ACERWC Strategy (n 16) 4.

27 ACERWC Strategy (n 16) 5-6.

28 ACERWC Strategy (n 16) 7-8.

Children's Rights would have strengthened the level of guidance given to Member States in this regard.

In the monitoring and evaluation phase, Member States are required to establish robust monitoring mechanisms and include information regarding the implementation of this Strategy in their reports to the Committee. The Committee's ability to follow up on the implementation of the Revised Strategy remains to be seen. Both the initial and revised Strategies stipulate that States are expected to include information on their progress in implementing the Strategy in their periodic reports to the Committee.<sup>29</sup> The Committee, in turn, is responsible for overseeing the status of information included in these reports. The lack of follow-up in respect of the initial Strategy can thus be attributed to non-compliance on the part of both States and the ACERWC, with States failing to report on progress and the Committee failing to demand this information and to scrutinise such progress in its Concluding Observations and Recommendations to States.

#### **4.2 Guidelines for Action on the Rights of Children with Disabilities in Africa (2023)**

A second document introduced by the Working Group is the Guidelines for Action on the Rights of Children with Disabilities in Africa (the Guidelines) which were adopted during the 40th ordinary session of the Committee. The Guidelines were developed to address the widespread exclusion of children with disabilities from mainstream support services (these could include health services and child-friendly spaces, which children with disabilities are unable to access) leading to their marginalisation and hindering the realisation of their rights as outlined in key international frameworks, including the African Children's Charter, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol),<sup>30</sup> the CRC, and the Convention on the Rights of Persons with Disabilities (the CRPD).<sup>31</sup> The Guidelines provide direction to State Parties by elucidating the state obligations flowing from the human rights instruments listed above. The obligations are categorised as protection rights (protection of children with disabilities against amongst others abduction, exploitation, violence, and abuse), social and economic rights (ensuring that children with disabilities have access to quality education and an adequate standard of living), participation rights (such as access to

29 ACERWC (n 16).

30 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa adopted on 29 January 2018 (Not yet in force at the time of writing).

31 The United Nations Convention on the Rights of Persons with Disabilities was adopted by the United Nations General Assembly on 13 December 2006 and opened for signature in March 2007 (the CRPD).

information, liberty and participation in sports, recreation, and culture), and cross-cutting themes (such as gender equality and addressing intersectional discrimination against children with disabilities).<sup>32</sup>

One area which has been overlooked in this document is guidance to Member States regarding the provision of alternative care of children with disabilities who are temporarily or permanently deprived of their family environment. The findings of the Continental Study indicate that the majority of the States included in the study rely on institutional care to provide alternative care for children with disabilities. In light of this, it appears that the Committee did not fully capitalise on the opportunity to clarify the obligations of Member States under article 25 of the Charter in the context of children with disabilities. In addition, as the Guidelines integrate and link obligations enshrined in the African Disability Protocol and the CRPD, the Committee could have used this as an opportunity to take a position on a number of issues not explicitly covered by the Charter, such as reconciling the issue of foetal impairment as a ground for abortion with reproductive rights, among others.<sup>33</sup>

#### **4.3 Resolution 19/2022 of the ACERWC Working Group on Children with Disabilities on the Situation of Children with Albinism in Africa (2022)**

The Committee, through its Working Group, has issued Resolution 19/2022 on the Situation of Children with Albinism in Africa, which acknowledges that this group of children face threats such as ritual killing and maiming, and the lack or inadequacy of measures aimed at improving their quality of life.<sup>34</sup> In this Resolution, the Committee notes with concern that these issues persist despite its recommendations to State Parties. The Resolution outlines a broad range of recommendations to State Parties including undertaking awareness-raising activities to 'dispel myths and harmful beliefs' that perpetuate discrimination against children with albinism and adopting enhanced social protection measure, and an intersectoral approach involving the justice, health and education sectors.

<sup>32</sup> ACERWC Guidelines (n 14) 22-37

<sup>33</sup> For instance, the CRPD Committee has declared disability-selective abortion incompatible with the CRPD. However, the prevailing approach taken by most human rights bodies has been to adopt a liberal stance on abortion to protect women's rights. The lack of consensus among United Nations (UN) treaty bodies was most evident in the comment submitted by the CRPD Committee in response to the Human Rights Committee's draft General Comment 36, which emphasised that laws explicitly allowing abortions on grounds of impairment are in violation of arts 4,5,8 of the CRPD. CRPD Committee Comments on the draft General Comment 36 of the Human Rights Committee on article 6 of the International Covenant on Civil and Political Rights <https://www.ohchr.org/en/calls-for-input/general-comment-no-36-article-6-right-life> (accessed 5 December 2023).

<sup>34</sup> n 13.

Civil society organisations (CSOs) are urged to assist State Parties in their efforts.

#### **4.4 Statement of the ACERWC's Working Group on Children with Disabilities in Africa on the International Day of Persons with Disabilities (2022)**

On 3 December 2022, the Working Group joined the global community in commemorating the International Day of Persons with Disabilities under the theme 'Transformative Solutions for Inclusive Development: The Role of Innovation in Fuelling an Accessible and Equitable World'. In line with this theme, the Working Group issued a Statement to emphasise that despite Africa experiencing 'significant growth in the development and utilisation of technologies in recent years', gaps remain for children with disabilities in accessing such innovative solutions.<sup>35</sup> The Statement also highlights the other factors contributing to widening these gaps, such as lack of access to the internet and assistive technology. In this regard, the Committee called on African Union (AU) Member States and other relevant stakeholders to amongst others take all appropriate measures to identify, remove, and prevent existing online and offline barriers.

### **5 ACERWC's conduct of missions on the situations of children with albinism**

As part of its promotion and protective mandate, the Committee is authorised to collect and document information, to commission inter-disciplinary assessments of situations on African problems in the fields of children's rights in Africa, and to organise meetings.<sup>36</sup> In addition to its promotion and protective mandate, the Committee also has an explicit investigative mandate under article 45 of the African Children's Charter. The Committee may undertake, for example, fact finding and investigation missions, follow-up missions, and advocacy missions.<sup>37</sup> In relation to the subject at hand, the Committee has undertaken crucial investigative missions that demonstrate the potential of this mechanism for the implementation of the rights of children with disabilities, especially those with albinism. In particular, the Committee has conducted investigative missions on two separate occasions to examine the situation of children with albinism. The first of these missions took place in the

35 ACERWC 'Statement of the African Committee of Experts on the Rights and Welfare of the Child – Working Group on Children with Disabilities in Africa on the International Day of Persons with Disabilities' (2022) <http://www.acerwc.africa/en/article/activity/statement-african-committee-experts-rights-and-welfare-child-working-group> (accessed on 5 December 2023).

36 Art 42(a)(i) of the ACRWC.

37 The ACERWC's Investigative Missions can be accessed at <http://www.acerwc.africa/en/missions/investigation-missions> (accessed 6 February 2024).

Republic of Tanzania in August 2015,<sup>38</sup> while the second one took place in Malawi in August 2022.<sup>39</sup>

The decision to undertake the investigative mission to Tanzania was prompted by a request received in 2013 from a CSO regarding the conditions of children with albinism who were at the time in temporary holding shelters in the country.<sup>40</sup> During the course of the mission, the Committee sought to obtain direct insight into the circumstances surrounding the removal of children from families and communities, and their placement in these facilities. The resultant report contains recommendations to the State Party for immediate, mid- and long-term measures such as combating the violence against children with albinism on a broader societal scale and ending the institutionalisation of children with albinism.<sup>41</sup> The findings of the report have played a pivotal role in the advocacy efforts aimed at safeguarding children and adults with albinism. The findings have also influenced the Working Group's Resolution, as evidenced by the Resolution's reference to the particular investigative mission in its Preamble.<sup>42</sup>

The Committee's investigative mission to Tanzania holds significant relevance due to the exceptional circumstances surrounding persons/children with albinism in the State Party. Tanzania is dubbed 'ground zero' for the crisis of albinism-related human trafficking.<sup>43</sup> The mission was further warranted in light of the large number of persons with albinism in the country and the alarming prevalence of reported attacks and killings.

Following a similar thread, the Committee undertook an investigative mission to the Republic of Malawi in August 2022 to assess the situation of children with albinism there.<sup>44</sup> In its findings the Committee, while acknowledging the State Party's efforts to protect children with albinism in the country, identified certain areas of concern, including a lack of

38 ACERWC 'Report on Investigative Mission on the situation of children with albinism in temporary holding shelters – Tanzania' (2016) [http://www.acerwc.africa/sites/default/files/2023-02/Investigative\\_Mission\\_on\\_the\\_Situation\\_of\\_Children\\_with\\_Albinism\\_pages.pdf](http://www.acerwc.africa/sites/default/files/2023-02/Investigative_Mission_on_the_Situation_of_Children_with_Albinism_pages.pdf) (accessed 1 October 2023).

39 ACERWC 'Report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) – Working Group on Children with Disabilities in Africa on the fact-finding mission on the situation of children with albinism in the Republic of Malawi and status of implementation of the ACERWC's Decision on Communication 004/Com/001/2014 submitted by the IHRDA against the Republic of Malawi' (2022) [http://www.acerwc.africa/sites/default/files/2023-02/17.23\\_Final%20Report%20on%20the%20fact-finding%20mission%20in%20the%20Republic%20of%20Malawi%20%281%29.pdf](http://www.acerwc.africa/sites/default/files/2023-02/17.23_Final%20Report%20on%20the%20fact-finding%20mission%20in%20the%20Republic%20of%20Malawi%20%281%29.pdf) (accessed 28 September 2023).

40 ACERWC (n 38).

41 ACERWC (n 38) 29-31.

42 ACERWC (n 13).

43 BD Mezmur 'A step to zero attacks: Reflections on the rights of persons with albinism through *X v United Republic of Tanzania*' (2018) 6 *African Disability Rights Yearbook* 251.

44 ACERWC (n 39).

reporting of the abduction, and killings of children with albinism, as well as the lack of accountability for perpetrators of such attacks.<sup>45</sup>

While the Charter does not make explicit reference to the protection of children with albinism, the aforementioned initiatives are a clear indication of the Committee's recognition of their increased vulnerability to various forms of rights violations and its commitment to address these. The significance of these missions is underscored by the reported attacks on and killings of persons with albinism in at least 25 African countries.<sup>46</sup>

The Committee's reports on these missions bear significance not only for Tanzania and Malawi, but also for other African nations facing comparable challenges. It is imperative for these countries to implement the relevant recommendations within their own contexts. Furthermore, the Committee's approach for safeguarding the rights of children with albinism extends beyond prohibiting attacks and ritual killings. A comprehensive approach is adopted, as demonstrated by several of the recommendations addressing aspects such as conducting skin care screening and treatment, facilitating ophthalmological examinations, distribution of skin care products and the provision of adaptive and assistive devices to all children with albinism.<sup>47</sup>

The Committee's efforts in this regard are consistent with the wider initiatives at the African Union level aimed at improving the degree of protection provided to persons/children with albinism across the continent. The African Disability Protocol, for instance, expresses concern at the maiming and killing of persons with albinism, and prohibits harmful practices, including witchcraft, abandonment, concealment, and ritual killings. The adoption of the Regional Action Plan for 2017 to 2021 (RAP) is another initiative. Although this document was spearheaded by the UN Independent Expert on Albinism, the ACERWC was one of the AU organs that actively informed its development by contributing specific and

45 ACERWC 'Press release: Fact-finding mission in the Republic of Malawi to assess the situation of children with albinism' (4 February 2022) <http://www.acerwc.africa/en/article/press-release/press-release-fact-finding-mission-republic-malawi-assess-situati-on-children> (accessed 3 October 2023).

46 International Bar Association "'Waiting to disappear": International and regional standards for the protection and promotion of the human rights of persons with albinism' (2017) <https://www.refworld.org/pdfid/5a5f59da4.pdf> (accessed 27 September 2023); UN Human Rights Council 'Report of the Human Rights Council Advisory Committee on the study on the situation of human rights of persons living [sic] with albinism', 10 February 2015, UN Doc A/HRC/28/75 (2015) <https://www.refworld.org/docid/54f47ef94.html> (accessed 30 October 2023).

47 ACERWC (n 39).

concrete measures to promote and protect the rights of individuals with albinism.<sup>48</sup>

## 6 Children with disabilities under the Africa's Agenda for Children: Fostering an Africa Fit for Children 2040

A further important initiative of the Committee is the inclusion of aspects related to the rights of children with disabilities in Africa's Agenda for Children: Fostering an Africa Fit for Children 2040 (Agenda 2040). Agenda 2040, developed by the Committee in 2015 was prompted by a meeting convened to commemorate the 25th anniversary of the African Children's Charter to examine the state of children in Africa during the previous 25 years. The Agenda emanates from the outcomes of the conference but serves to elaborate Agenda 2063's vision in the context of children. It sets out ten aspirations to be achieved by 2040 and outlines steps that African governments should take to ensure the protection of the rights of children in Africa.<sup>49</sup>

The Agenda acknowledges the specific vulnerabilities of children with disabilities, including the neglect, mistreatment, and social exclusion that they face in African societies,<sup>50</sup> and their low enrolment rates in education.<sup>51</sup> While all ten aspirations are relevant to children with disabilities, specific aspiration targets make explicit reference to children with disabilities. For instance, one of the specific targets for Aspiration 6 is for education facilities to be 'disability-sensitive' and inclusive for all by 2020.<sup>52</sup>

The report on the assessment of the first phase of implementation (2016-2020) reveals that the implementation of the Agenda's aspirations

48 OHCHR 'Albinism in Africa' <https://www.ohchr.org/en/special-procedures/ie-albinism/albinism-africa> (accessed 19 September 2023). The African Union Executive Council endorsed the RAP as a continent-wide policy known as the Plan of Action to End Attacks and Other Human Rights Violations Targeting Persons with Albinism in Africa (2021-2031) and its Implementation Matrix in 2019.

49 The ten aspirations of Agenda 2040 are as follows: 'Aspiration 1: The African Children's Charter, as supervised by the African Children's Committee, provides an effective continental framework for advancing children's rights Aspiration 2: An effective child-friendly national legislative, policy and institutional framework is in place in all Member States Aspiration 3: Every child's birth and other vital statistics are registered Aspiration 4: Every child survives and has a healthy childhood Aspiration 5: Every child grows up well-nourished and with access to the basic necessities of life Aspiration 6: Every child benefits fully from quality education Aspiration 7: Every child is protected against violence, exploitation, neglect and abuse Aspiration 8: Children benefit from a child-sensitive criminal system Aspiration 9: Every child is free from the impact of armed conflicts and other disasters or emergency situations Aspiration 10: African children's views matter.'

50 Agenda 2040 at 21.

51 As above.

52 Agenda 2040 at 58.

remains imperfect, including those related to children with disabilities.<sup>53</sup> For example, the Agenda's objective of ensuring inclusive education for students with disabilities,<sup>54</sup> as well as targets aimed at ensuring that every child, including those with disabilities enjoy access to the basic necessities of life, have not been met by Member States.<sup>55</sup> Despite these findings, the key recommendations set out in this report for the next monitoring phase under each Aspiration do not include specific measures to address the gaps in implementation of the Agenda's disability-specific targets.

## **7 Conclusions and recommendations**

Since dedicating the 2012 DAC to the theme 'The Rights of Children with Disabilities: The Duty to Protect, Respect, Promote, and Fulfil', a trend pertaining to the rights of children with disabilities has emerged developments in the work of the Committee. These developments reveal a strong commitment to strengthening the level of protection afforded to children with disabilities under the African Children's Charter. In particular, the establishment of a Working Group solely dedicated to safeguarding the rights of children with disabilities through a child-rights based approach and the subsequent activities of the Working Group are commendable advancements. The Committee's efforts towards addressing the specific challenges faced by children with albinism through its various mechanisms are also noteworthy. Nonetheless, the monitoring of implementing these developments require renewed commitment from the Committee itself, State Parties, CSOs, and other stakeholders.

Moreover, the Committee has other underutilised mechanisms, such as its Communication Procedure, which have not yet been tested in advancing the rights of children with disabilities. The reasons for this underutilisation need further research. The Committee also needs to adopt a holistic approach in its efforts to address the multifaceted challenges encountered by children with disabilities and elaborate on the full spectrum of obligations outlined in the Charter and other relevant instrument within this context. Some issues requiring the Committee's firm stance in this regard may include the institutionalisation of children with disabilities and settling the debate surrounding foetal abortion on the grounds of disability (as set out above), as well as substitute and supported decision making.

Furthermore, the emphasis placed on physical and sensory functioning in the activities of the ACERWC, with limited attention to

53 ACERWC 'Agenda 2040: Fostering an Africa Fit for Children: Assessment of the first phase of implementation' (2016-2020) [http://www.acerwc.africa/sites/default/files/2022-10/Agenda2040-Assessment%20of%20the%20first%20phase%20of%20imple mentation%202016-2020\\_0.pdf](http://www.acerwc.africa/sites/default/files/2022-10/Agenda2040-Assessment%20of%20the%20first%20phase%20of%20imple mentation%202016-2020_0.pdf) (accessed 18 September 2023).

54 ACERWC (n 53) 100-101.

55 ACERWC (n 53) 88.

psychosocial functioning, needs a closer look. In addition, the work done within the framework of the Sustainable Development Goals has assisted in data collection as well as in bolstering the synergy between development and disability. This can be tapped into more in the State Party reporting process.

As shown by the analysis above of recent activities, the Committee and its Working Group play a pivotal role in guiding State Parties to fulfil their obligations under the Charter. These developments provide a crucial framework for outlining the roles and responsibilities of various relevant stakeholders in ensuring the protection and promotion of the rights of children with disabilities in the African context.