

Follow-up as a ‘choice-less choice’: towards improving the implementation of decisions on communications of the African Children’s Committee

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ABSTRACT: A fundamental component of the protective mandate of the African Committee of Experts on the Rights and Welfare of the Child (the African Children’s Committee) is the communications procedure, which allows the Committee to receive and consider complaints on issues that fall within the scope of the African Children’s Charter. In its early years, the African Children’s Committee did not have a smooth take-off, especially in relation to its communications procedure. In the last decade, however, it has managed to rise above the challenges that affected its communications procedure in its early years. It has since then made significant strides by considering the communications submitted to it and rendering decisions on the merits of these communications. It has also resolved one communication through an amicable settlement. This indeed offers an opportunity to interrogate the efforts made by the African Children’s Committee to follow up on the implementation of these decisions. The follow-up is crucial to ensure that these decisions have an impact on the lived realities of children at national levels. The article argues that, despite the fact that the African Children’s Committee recognises the importance of the follow-up process and has undertaken a broad range of measures to this effect, there is still a great need for improvement in this regard. The article proposes some possible additional approaches that the African Children’s Committee could explore in order to improve its follow-up procedure to facilitate the implementation of its decisions on communications.

TITRE ET RÉSUMÉ EN FRANCAIS:

‘Suivi’ en tant qu’un choice-less choice: vers l’amélioration de la mise œuvre des décisions du Comité africain sur le droit et le bien-être de l’enfant sur les communications

RÉSUMÉ: Un élément fondamental du mandat de protection du Comité africain d’experts sur les droits et le bien-être de l’enfant est la procédure de communication qui permet au Comité de recevoir et d’examiner des plaintes sur les droits des enfants africains. Dans ses premières années, le Comité a eu quelques défis, notamment en ce qui concerne sa procédure de communication. Au cours de la dernière décennie, le Comité a réussi à surmonter les difficultés qui ont affecté sa procédure de communication dans ses premières années. Depuis ce temps, il a fait de grands progrès en examinant les communications qui lui ont été soumises et en rendant des décisions sur ces communications. Il a également résolu une communication par un règlement à l’amiable. Cela offre en effet l’occasion d’interroger les efforts déployés

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par le Comité pour faire un suivi de la mise en œuvre de ces décisions. Le suivi est crucial pour garantir que ces décisions ont un impact sur les réalités vécues par des enfants aux niveaux nationaux. Malgré le fait que le Comité reconnaisse l'importance du processus de suivi et qu'il a pris toute une série de mesures à cet effet, il reste encore beaucoup à faire à cet égard. Cet article propose également des approches supplémentaires possibles que le Comité africain des enfants pourrait explorer afin d'améliorer son suivi.

KEY WORDS: African Committee of Experts on the Rights and Welfare of the Child, Children, Africa, communications procedure, follow-up, implementation

CONTENT:

1	Introduction	201
2	The communications procedure of the African Children's Committee: A brief overview	204
3	Summary of the communications	207
4	Framework for the African Children's Committee's follow-up on its decisions on communications	211
5	Conclusion	220

1 INTRODUCTION

The African Union (AU) has established a robust legislative framework for the promotion and protection of children's rights in Africa.¹ This was achieved in 1990 with the adoption of the African Charter on the Rights and Welfare of the Child (African Children's Charter),² which entered into force on 29 November 1999. The African human rights system is the only regional system that has a separate child rights instrument. As Sloth-Nielsen puts it, the African Children's Charter is the 'principal framework' for addressing child protection in the African regional context.³ As a continent-specific instrument, the African Children's Charter addresses a number of issues that are very relevant

1 The African Charter on the Rights and Welfare of the Child. For a detailed discussion of the Charter, see: A Lloyd 'Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: Raising the gauntlet' 2002 (10) *International Journal on Children's Rights* 179; D Chirwa 'The merits and demerits of the African Charter on the Rights and Welfare of the Child' (2002) 10 *International Journal on Children's Rights* 157; D Olowu 'Protecting children's rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child' (2002) 10 *International Journal of Children's Rights* 127; J Sloth-Nielsen 'Regional framework for safeguarding children: The role of the African Committee of Experts on the Rights and Welfare of the Child' (2014) 3 *Social Sciences* 951; M Gose 'The African Charter on the Rights and Welfare of the Child' (Community Law Centre, University of the Western Cape) (2002).

2 African Union Commission 'African Charter on the rights and Welfare of the Child', <https://www.au.int/web/en/treaties/african-charter-rights-and-welfare-child/> (accessed 7 May 2017).

3 J Sloth-Nielsen 'Regional framework for safeguarding children: the role of the African Committee of Experts on the Rights and Welfare of the Child' (2014) 3 *Social Sciences* 951.

to the situation of children in Africa.⁴

The background to the African Children's Charter has been traced as far back as 1979 when the Organisation for African Unity (OAU) adopted the Declaration on the Rights and Welfare of the Child,⁵ which is considered the 'precursor' to the African Children's Charter.⁶ A relatively short period of two years elapsed between the drafting and adoption of the African Children's Charter, as opposed to the nine year-period between its drafting and entry into force. The African Children's Charter was first ratified by Seychelles in 1992,⁷ and the 15th ratification, which was needed for its entry into force only came in 1999, seven years after the first ratification.⁸ As at August 2018, the African Children's Charter has 48 state parties, leaving seven AU members yet to ratify it.⁹

It has been argued that 'a human rights guarantee is only as good as its supervision.'¹⁰ This explains why the African Children's Committee is established under the African Children's Charter as an elected oversight body charged with supervising the implementation of the African Children's Charter. The African Children's Committee consists of 11 independent experts elected by the Assembly of Heads of State of the African Union.¹¹ The experts serve on the Committee in their individual capacities.¹² The Committee generally meets in an ordinary session twice a calendar year, but also holds extraordinary sessions as required. So far, the African Children's Committee has held only one extraordinary session.¹³ The African Children's Committee has both a promotional and protective mandate. Under its protective mandate, it receives, considers and issues decisions on communications relation to

4 A Lloyd 'Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: raising the gauntlet' (2002) 10 *International Journal of Children's Rights* 180.

5 www.chr.up.ac.za/chr_old/hr_docs/african/docs/ahsg/ahsg36.doc.

6 BD Mezmur 'Happy 18th birthday to the African Children's Rights Charter: not counting its days but making its days count' (2017) 1 *African Human Rights Yearbook* 127.

7 Seychelles ratified the African Children's Charter on 13 February 1992.

8 In accordance with art 47(3) of the Charter which states that '[t]he present Charter shall come 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'.

9 These countries are: the Democratic Republic of Congo (DRC), Saharawi Republic, São Tome and Príncipe, Somalia, South Sudan, Tunisia and Morocco. Initially there were six countries that had not ratified the African Children's Charter, but with the re-admission of Morocco into the AU, the number increased to seven.

10 GM Wachira & A Ayinla 'Twenty years of elusive enforcement of the recommendations of the African Commission on Human and Peoples' Rights: a possible remedy' (2006) 6 *African Human Rights Law Journal* 466.

11 The 11 elected experts serve on the African Children's Committee for a five-year term, renewable only once. They are supported by a Secretariat, which currently operates within the Department of Social Affairs of the African Union Commission in Addis Ababa, Ethiopia.

12 Art 3(2) African Children's Rights Charter.

13 The African Children's Committee held its first extraordinary session on 7 October 2014 at the African Union Commission Headquarters, Addis Ababa, Ethiopia.

violations of the provisions of the African Children's Charter. As of March 2018, the African Children's Committee had issued decisions on the merits of four communications and also had one amicable settlement agreement negotiated under its auspices.¹⁴

This article offers a brief description of the communications procedure of the African Children's Committee, as well as a summary of three communications decided and one amicable settlement agreement.¹⁵ The Communications Guidelines require that the African Children's Committee allow the state party a period of six months to implement the decision, following which it should submit a report on the measures taken to implement the decision.¹⁶ Therefore, the African Children's Committee does not consider its task completed by simply issuing decisions on communications, but undertakes follow-up measures with a view to facilitate a prompt and effective implementation of its decisions.

Murray and Long describe follow-up as the

process by which a treaty body, political body or other actor monitors and seeks information on what steps have been taken by the state following the delivery of a finding.¹⁷ The implementation of decisions is considered the 'process by which states take measures at the national level to address issues of concern raised by the human rights treaty bodies in their decisions.'¹⁸

The premise for this article is that an effective follow-up on communication decisions by the African Children's Committee can significantly contribute to compliance by state parties. Since children often not form advocacy groups, or organize themselves to promote their own causes, follow-up in the context of children's rights is even more important. Nonetheless, the African Children's Committee's follow-up on the implementation of its decisions is still faced with a number of challenges. This article therefore examines the legal framework for the African Children's Committee follow-up on its decisions on communications. The article also examines the practical role played by the African Children's Committee in the follow-up of its decisions on communications, as well as some of the key challenges it is

This extra-ordinary session focused on the consideration of state party reports on the implementation of the African Children's Charter. The state party reports considered during this extraordinary session had been submitted by: Ethiopia; Guinea; Kenya; Mozambique and South Africa.

- 14 The four communications decided by the African Children's Committee were against Kenya, Uganda, Senegal and Mauritania. The lone amicable settlement agreement involved Malawi.
- 15 The discussion will not include the African Children's Committee's decision on the communication against Mauritania, issued during the 30th ordinary session of the African Children's Committee, which was held from 6 to 16 December 2017 in Khartoum, Sudan.
- 16 Less than a year after the issuance and publication of the decision against Mauritania, it is too early to make any real assessment of the efforts made by the African Children's Committee to follow up on the decision's implementation. The discussion is therefore limited to the other three decisions on communications and the amicable settlement.
- 17 R Murray & D Long *The implementation of the findings of the African Commission on Human and Peoples' Rights* (2015) 30.
- 18 Murray & Long (n 17) 27.

facing in doing so. The article draws some examples from other treaty bodies especially the UN treaty bodies. Finally, this article contends that not undertaking a systemic follow-up is not a cost neutral exercise, and as a result it explores possible approaches and proposes some recommendations with a view to improving the African Children's Committee's follow-up on its decisions on communications.

2 THE COMMUNICATIONS PROCEDURE OF THE AFRICAN CHILDREN'S COMMITTEE: A BRIEF OVERVIEW

A fundamental component of the protective mandate of the African Children's Committee is the communications procedure,¹⁹ which allows it to receive and consider complaints and make decisions on issues that fall within the scope of the African Children's Charter.²⁰ In fact, the communications procedure is so fundamental to the object and purpose of the Charter itself that the African Children's Committee has taken exception to the reservation that the Government of Egypt entered in relation to article 44.²¹ In two communications, *Dalia Lofty on behalf of Ahmed Bassiouny v Egypt*²² and *Dalia Lofty on behalf of Emad v Egypt*,²³ the African Children's Committee did not dismiss the communications by declaring that it does not have jurisdiction to deal with them because the state party against whom they had been lodged entered a reservation to article 44. Rather, the Committee found this reservation to be incompatible with the object and purpose of the Charter,²⁴ thereby considering itself as having the mandate to entertain the two communications.²⁵

19 Communications are submitted to the African Children's Committee in terms of article 44 of the African Children's Rights Charter.

20 The decisions from the African Children's Committee are not binding and they are 'decisions' as compared to 'judgments', however, the Committee has so far seen a lot of good will on the part of states to comply with its decisions. This is also manifested in the fact that to date, all state parties that have been approached for investigative missions have accepted and some states actually invite the African Children's Committee and facilitate its missions.

21 The current reservations to the African Children's Charter are those entered by Botswana, Egypt, Mauritania, and Sudan. See, for more details on these, Mezmur (n 6) 131.

22 Decision 8/Com/001/2016, African Committee of Experts on the Rights and Welfare of the Child.

23 Decision 9/Com/002/2009, African Committee of Experts on the Rights and Welfare of the Child.

24 See art 19(c) Vienna Convention on the Law of Treaties.

25 Ultimately, the Committee declared the communications to be inadmissible. Fortunately, the AU Executive Council has recognised the far-reaching consequences of reservations, and in 2014, and 2016, it called on states parties to withdraw their reservations to the African Children's Charter. AU Executive Council EX.CL/Dec.843(XXV) Decision on the Report of the African Committee of Experts on the Rights and Welfare of the Child) para 3; AU Executive Council EX.CL/Dec.923(XXIX) Decision on the Report of the African Committee of Experts on the Rights and Welfare of the Child Doc. EX.CL/977(XXIX) para 3.

The provisions of the African Children's Charter regarding who can lodge a complaint are very generous. Communications can be submitted by: specialised organs or agencies of the African Union (AU) or United Nations (UN); intergovernmental or non-governmental organisations; state parties to the African Children's Charter and any individual or group of natural or legal persons including children.²⁶ It is mandatory for communications submitted to the African Children's Committee to first satisfy the admissibility requirements with respect to form and content. Based on strict admissibility requirements, communications received by the African Children's Committee could be declared either admissible or inadmissible.²⁷ Unless the African Children's Committee decides otherwise,²⁸ it is only after a communication has been declared admissible that it proceeds to consider the merits thereof.

At the conclusion of deliberations on the merits of a communication, the African Children's Committee issues a decision based on its findings. Where the African Children's Committee finds that provisions of the African Children's Charter have been violated, it ensures that its decision includes recommendations on actions to be taken in order to remedy the violations.

The African Children's Committee has so far declared three communications inadmissible, while four communications have been decided on their merits, and violations were found. Of the three communications the Committee declared inadmissible, two were against the Government of Egypt,²⁹ and one was against the Government of Cameroon.³⁰ The cases declared inadmissible do not contain any recommendations hence there is no follow-up that needs to be undertaken. This article therefore focuses only on the communications that were decided on their merits, they actually require follow-up measures.

The initial years of the African Children's Committee and its work on communications did not have a smooth take-off. Some of these challenges were due particularly to the delay in establishing the secretariat of the African Children's Committee, developing its communications Guidelines and eventually issuing the first decision on a communication. By 2005, a secretary for the African Children's

26 Art 44 African Charter on the Rights and Welfare of the Child.

27 Section IX(1) African Committee of Experts on the Rights and Welfare of the Child Revised Guidelines for the Consideration of communications.

28 The African Children's Committee may decide to defer its decision on admissibility until the final determination of the merits of the communication. In such a case, the African Children's Committee sends a formal notification to the parties informing them of its decision to defer its decision on admissibility until the final determination of the merits.

29 *Ahmed Bassiouny* (n 22 above); *Emad* (n 22 above).

30 *Etoungou Nko'o on behalf of Mr and Mrs. Elogo Menye and Rev Daniel Ezo'o Ayo v The Government of Cameroon* Com/003/2016, African Committee of Experts on the Rights and Welfare of the Child.

Committee had still not been recruited and this greatly delayed its work.³¹ This caught the attention of the Executive Council, and the AU Commission was urged to strengthen the African Children's Committee by urgently ensuring a secretariat that functioned fully and effectively.³²

The first communication was submitted to the African Children's Committee in 2005. At that time, the Communications Guidelines had not been developed, and so the consideration of this communication was deferred to a future date, and a decision on it was only issued in 2013.³³ It therefore took the African Children's Committee about eight years to finally issue a decision on the first ever communication that was submitted to it.

While on the topic of the time-lapse between submission of, and the issuance of decisions on communications, it is necessary to mention, the peculiar working methods that the Committee has implemented. Prime among these, is the practice of undertaking field visits before deciding on the merits of a communication. The two good examples in respect of this practice are the *Northern Uganda case*³⁴ and the *Mauritania case*,³⁵ where members of the Committee spent a number of days in the two countries and engaged with not only the complainants and the Government, but also various other stakeholders, including children.

While the African Children's Committee experienced a 'slow start',³⁶ over the years it has been able to gather the necessary momentum to enable it to make its mark on the child rights landscape of the African continent. According to Viljoen, 'the Committee has clearly taken significant strides forward ... and overcome some of the challenges it seemingly faced at the outset'.³⁷ In the last few years, the African Children's Committee has undoubtedly made progress, particularly with respect to its protective mandate. This is clearly reflected in the progressive decisions that the African Children's Committee has issued following its consideration of a number of communications, as well as the efforts made to follow up on the implementation of these decisions.

31 BD Mezmur 'The African Committee of Experts on the Rights and Welfare of the Child: an update' (2006) 6 *African Human Rights Law Journal* 557.

32 AU Executive Council Decision on the Report of the African Committee of Experts on the Rights and Welfare of the Child, EX CL/Dec 233 (VII), para 9.

33 *Michelo Hansungule & Others (on behalf of children in Northern Uganda) v The Government of Uganda (Northern Uganda)* Com/1/2005, African Committee of Experts on the Rights and Welfare of the Child para 13.

34 See 3.2 below for the summary of the communication.

35 <http://www.acerwc.org/the-committee-has-ruled-on-the-communication-against-mauritania/>

36 Mezmur (n 6) 127.

37 F Viljoen *International human rights law in Africa* (2012) 408.

3 SUMMARY OF THE COMMUNICATIONS

The communications that form the basis for this article are: *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of children of Nubian descent in Kenya v The Government of Kenya*;³⁸ *Michelo Hansungule & Others (on behalf of children in Northern Uganda) v The Government of Uganda*³⁹ and *Centre for Human Rights (University of Pretoria) and la Rencontre Africaine pour la Défense des Droits de l'Homme (Senegal) v Government of Senegal*.⁴⁰ As mentioned above, the African Children's Committee has also dealt with *Institute for Human Rights and Development in Africa (IHRDA) v The Republic of Malawi*, which led to an amicable settlement,⁴¹ that was reached between the parties under the auspices of the African Children's Committee.⁴² This section of the discussion will provide summaries on the decided communications.

3.1 Children of Nubian descent in Kenya case

The case of the children of Nubian descent in Kenya is the second communication that was submitted to the African Children's Committee. It was jointly submitted by the Institute for Human Rights and Development in Africa (IHRDA) and the Open Society Justice Initiative (OSJI) on behalf of children of Nubian descent in Kenya against the government of Kenya. The Nubians in Kenya came from the Nuba Mountains, which are current part of Sudan, but find themselves in Kenya as the British colonial administration that used their services as part of the Queen's Army did not return them at the time of decolonization. The IHRDA and OSJI, in their complaint to the African Children's Committee, alleged that the British colonial authorities allocated the *Kibera* area in Kenya to be settled by the Nubian descendants but this was not accompanied by the grant of Kenyan citizenship. Subsequent Kenyan Governments have followed this same path by denying Kenyan citizenship to Nubian descendants in Kenya. A major difficulty arising out of this situation has been the inability of the

38 *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of children of Nubian descent in Kenya v Kenya* Com/002/2009, African Committee of Experts on the Rights and Welfare of the Child.

39 *Northern Uganda* (n 33).

40 *Centre for Human Rights (University of Pretoria) and la Rencontre Africaine pour la Défense des Droits de l'Homme (Senegal) v Senegal* Com/001/2012, African Committee of Experts on the Rights and Welfare of the Child.

41 *Institute for Human Rights and Development in Africa v Malawi* Com/001/2014, African Committee of Experts on the Rights and Welfare of the Child.

42 Report on the consideration of an amicable settlement under the auspices of the Committee in *Institute for Human Rights and Development in Africa (IHRDA) v The Government of Malawi* Com/001/2014, African Committee of Experts on the Rights and Welfare of the Child <http://www.acerwc.org/amicable-settlement-on-commu-nication-no-004/#> (accessed 15 November 2017).

Nubian descendants in Kenya to register the birth of their children, as well as to have access to education and health care services as they are stateless. Discrimination against children of Nubian descent permeated almost all aspects of life, depriving them of the basic and legitimate expectations that many Kenyans take for granted, including obtaining an identity card at the age of 18 years.

With this as the backdrop, the IHRDA and OSJI specifically alleged that the Government of Kenya had violated the right to freedom from discrimination;⁴³ the right to birth registration, and to acquire a nationality at birth;⁴⁴ the right to equal access to education;⁴⁵ and the right to equal access to health care and services.⁴⁶ Issued on 11 March 2011, the decision on the merits found the Government of Kenya to be in violation of the provisions of the African Children's Charter. The African Children's Committee did not stop at finding that the Kenyan Government had violated article 3; articles 6(2) - (4); article 11(3) and articles 14(2)(b), (c) and (g) of the African Children's Charter, but it also issued recommendations to the Government of Kenya.⁴⁷ In the recommendations, it asked the Government to report to the Committee on the measures it had taken to comply with the decision, and also explicitly indicated in the decision that it would appoint one of its members to do a follow up on the decision. It needs to be noted that the Government of Kenya did not cooperate - either by making written submissions or sending a delegation during the consideration of the case.

3.2 Northern Uganda case

This communication was submitted in 2005 by the Centre for Human Rights, University of Pretoria, and is based on the violations suffered by children in Northern Uganda during the long-standing armed conflict that took place in the area.⁴⁸ From 1986, the northern part of Uganda was plagued by insurrection, which brought great suffering to the people in the area. It also led to gross violations of human rights, especially against children, as they were often victims of abduction, sexual violence, displacement, and recruitment and use by rebel groups and the armed forces. On the strength of these, the complainants submitted a communication to the African Children's Committee alleging that the Government of Uganda had violated a number of provisions of the African Children's Charter. The rights that were alleged to have been violated included: the right of children to be protected from being involved in armed conflict;⁴⁹ the right to education;⁵⁰ the right to life, survival and development;⁵¹ the right to

43 Art 3 African Children's Charter.

44 Art 6(2)-(4) African Children's Rights Charter.

45 Art 11(3) African Children's Rights Charter.

46 Art 14 African Children's Rights Charter.

47 *IHRDA* (n 42) paras 69(1)-(5) <http://www.acerwc.org/communications/#> (accessed 28 November 2017).

48 *Northern Uganda* (n 33) para 13.

enjoy the best attainable state of physical, mental and spiritual health;⁵² and the right to be protected from sexual abuse and violence.⁵³

By the time the African Children's Committee was issuing its decision on this communication, the situation, including the child rights violations, in the northern part of Uganda had improved. The African Children's Committee did not pretend to be oblivious of these developments, and took them into consideration while deciding on the merits of the communication. After all, the Committee had undertaken a field visit to the affected area before deciding on the merits of the case. In its decision on the merits, the African Children's Committee only found a violation of article 22 (the right of the child to be protected from being involved in armed conflict) and a violation of article 1(1) of the African Children's Charter. The African Children's Committee did not find that there had been any other of the violations which the complainants alleged. Consequently, the African Children's Committee made six main recommendations to be implemented by the government of Uganda in order to address the violations of children's rights and to prevent any recurrence.⁵⁴

3.3 *Talibé* in Senegal case

In July 2012, the Centre for Human Rights and la Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO), Senegal jointly submitted a communication to the African Children's Committee against the Government of Senegal. The complainants alleged that in the urban centres of Senegal, instructors – *marabouts* – at the Qur'anic schools – *daaras* – had been forcing and still continued to force their students, *Talibé* children aged 4 to 14, to work as beggars on the streets. In spite of the fact that begging on the street is criminalised under Senegalese law, the *marabouts* set daily quotas for begging. These quotas were expected to be met by all the children in the *daaras*. On occasions when the *Talibé* children failed to meet the said quotas they were beaten and punished by the *marabouts*. The complainants further alleged that the Government of Senegal had failed to address this issue and protect the *Talibé* children. The right to freedom of religion and religious education, on the one hand, and the right to protection on the other, are the main competing rights covered in the case. The complainants alleged that the government of Senegal had violated articles 4, 5, 11, 12, 14, 15, 16, 21 and 29 of the African Children's Charter.

49 Art 6(2)-(4) of the African Charter on the Rights and Welfare of the Child 1990 African Children's Charter, art 22.

50 Art 11 African Children's Rights Charter.

51 Art 5 African Children's Rights Charter.

52 Art 14 African Children's Rights Charter.

53 Art 16 & 27 African Children's Rights Charter.

54 *Northern Uganda* (n 33) para 81.

On 15 April 2014, the African Children's Committee issued its decision on the merits of the communication and found multiple violations of the African Children's Charter. The specific provisions of the African Children's Charter that had been violated were articles 4, 5, 11, 14, 15, 16, 21 and 29. The African Children's Committee also made some extensive recommendations aimed at addressing the violations suffered by the *Talibé* children and preventing the recurrence of such violations. This decision makes no reference to article 12, which was specifically pleaded by the complainants in their communication.⁵⁵

In its finding, the African Children's Committee held the government of Senegal responsible for the activities of the *marabouts* in the *daaras*. This decision also signals that even in the instances where non-state actors within the territory of a state party violate the rights protected under the African Children's Charter, the state party still has the responsibility to protect. The recommendations also emphasize the need to bridge the gap between norms and practice.

3.4 The Malawian definition of a child case

The case of the *Malawian constitutional definition of a child* distinguishes itself as one of the African Children's Committee's most unique experiences with the communications procedure. This is due to the fact that although this communication was submitted to the African Children's Committee in accordance with article 44(1) of the African Children's Charter, it did not go through the 'usual communications procedure' which had been followed in the other three communications that had previously been considered by the African Children's Committee. Like other previously decided communications, the African Children's Committee considered the admissibility of the case of the *Malawian constitutional definition of a child*, and it was declared admissible.

This communication was initiated in 2014 by the IHRDA against the Republic of Malawi based on the fact that the definition of a child under the Malawian Constitution contrasted with the definition of a Child under the African Children's Charter.⁵⁶ The Malawian Constitution defined a child as any person under the age of 16, whereas the African Children's Charter considers a child to be a person below the age of 18. The complainant alleged that the respondent state had violated article 2 as well as articles 1 and 3 of the African Children's Charter, especially due to the exclusion of children in Malawi between the ages of 16 and 18 years from the protection to which they are entitled under the African Children's Charter.

55 It, however, comes as a surprise, arguably, that the African Children's Committee failed to adopt a gender sensitive approach in its decision on the merits of the *Talibé* case, as the forced begging by children on the streets, as well as issues of health, education, trafficking and abduction do not necessarily affect girl children in exactly the same manner as they affect boys.

56 Sec 23(5) Constitution of Malawi.

In conformity with section IX of its Revised Guidelines on the Consideration of Communications (Revised Communications Guidelines), the African Children's Committee considered the admissibility of the communication, and set a date to hear both parties on the merits of the case. However, before considering the merits of the communication, the African Children's Committee received a request for an amicable settlement from the parties to this communication. The African Children's Committee, in line with section 13 of its Revised communications Guidelines, granted the parties' request. Subsequently, the parties agreed on the terms of the amicable settlement and this was presented to the African Children's Committee, which adopted it.⁵⁷

The amicable settlement approach taken by the African Children's Committee is commendable as it helps to reduce potential tensions that may arise during contentious proceedings. It also eases follow-up since both parties willingly agreed to the terms of the amicable settlement. This approach also allows more room for constructive dialogue between the parties and contributes to the creation of an environment for mutual respect and understanding between the parties. This also paves the way for stronger collaboration at the follow-up and implementation phase. Following the adoption of this amicable settlement, Malawi amended its Constitution to raise the definition of a child to 18 years of age.

4 FRAMEWORK FOR THE AFRICAN CHILDREN'S COMMITTEE'S FOLLOW-UP ON ITS DECISIONS ON COMMUNICATIONS

The ratification of human rights treaties does not necessarily guarantee respect for human rights and the implementation of the decisions of human rights treaty bodies. There are a variety of reasons that explain states' failure to implement or comply with the decisions of international human rights treaty bodies, including: the lack of political will; resource constraints, the binding and non-binding nature of human rights treaty bodies' recommendations; as well as other competing national interests.⁵⁸ It has been argued that one of the major reasons for non-compliance in the case of the African Commission on

57 Pursuant to the provisions of section XIII(2) of the Revised Communications Guidelines, the African Children's Committee adopted this amicable settlement. Although the amicable settlement had been reached under the auspices of the African Children's Committee, it was maintained that the African Children's Committee continued to be seized of this communication.

58 F Viljoen & L Louw 'The status of the findings of the African Commission: From moral persuasion to legal obligation' (2004) 48 *Journal of African Law* 2.

Human and Peoples' Rights (African Commission) is 'political unwillingness' on the part of state parties.⁵⁹ Wachira and Ayinla also lay emphasis on the fact that political will is crucial to the implementation of the decisions of human rights treaty bodies, and that without it compliance can hardly be guaranteed.⁶⁰

In spite of the fact that the political will of state parties has been found to be a decisive factor in the implementation of and compliance with, the decisions of human rights treaty bodies, it is not a 'magic wand'.⁶¹ Implementation of decisions does not depend exclusively on the political will of state parties. There are other aspects that need to be addressed in order to enhance human rights implementation and compliance, one of these is the issue of follow-up.

Previous research on the implementation of decisions issued by the Commission reveals the need for follow-up by treaty bodies in order to improve implementation and compliance.⁶² Follow-up has been found to be important, because it has a huge potential to influence implementation and also nurture the much needed political will.⁶³ It has been argued that follow-up and implementation require a 'multi-tiered approach and a coalition of actors' at both national and international levels.⁶⁴ While follow-up could be undertaken by both state and non-state actors, the role played by human rights treaty bodies is crucial to improving states' compliance with decisions on communications. This can be achieved through various means and more importantly through the 'carrot and stick' approach, as well as constructive dialogue between the treaty body mechanisms and state party concerned.⁶⁵

Human rights treaty bodies, through their follow-up procedures, have huge potential to enhance states' compliance with their decisions on communications.⁶⁶ The absence of such follow-up by human rights treaty bodies is often associated with greater uncertainty about

59 Viljoen & Louw (n 58) 3.

60 Wachira & Ayinla (n 10).

61 Human Rights Implementation Centre, University of Bristol 'Follow-up and implementation of decisions by human rights treaty bodies' <http://www.bristol.ac.uk/law/research/centres-themes/hric/hricdocs/semrep2009.pdf> (accessed 20 May 2017).

62 F Viljoen & L Louw 'State compliance with the recommendations of the African Commission on Human and Peoples' Rights, 1994-2004' (2007) 101 *American Journal of International Law* 1.

63 R Eno 'The place of the African Commission in the new African dispensation' (2002) 11 *African Security Studies* 63, 67.

64 R Murray & D Long *The implementation of the findings of the African Commission on Human and Peoples' Rights* (2015) 35.

65 As above.

66 To achieve this, various follow-up measures have been used by different UN treaty bodies including the UN Human Rights Committee (CCPR Committee), the Committee against Torture (CAT), the Committee on the Elimination of Racial Discrimination (CERD), and the Committee on the Elimination of Discrimination against Women (CEDAW).

compliance with human rights treaty bodies' decisions on communications.⁶⁷ In the case of the UN Human Rights Committee (CCPR Committee), for instance, the 'Special Rapporteur for Follow-up on Views' (Special Rapporteur on Views) was established by the CCPR Committee as early as July 1990.⁶⁸

The African Children's Committee, like the African Commission, lacks an institutionalised follow-up mechanism. This notwithstanding, the Guidelines for Periodic Reports of states parties, as well as the Revised Communications Guidelines of the African Children's Committee make reference to issues relating to follow-up on the implementation of decisions on communications. The African Children's Committee has also undertaken other follow-up measures: country visits, implementation hearings, and reporting under amicable settlement agreements. It has also used its reporting opportunity to AU political organs to solicit positive political pressure for compliance with decisions on communications by states concerned. The article now turns to these issues.

4.1 State party reporting as a tool for follow-up

The Guidelines for Periodic Reports of state parties clearly lay down the form and content of such reports. According to these Guidelines, among others, state parties to the African Children's Charter are required to provide information on the implementation of and compliance with decisions of the African Children's Committee.⁶⁹

It is important for the Committee to be proactive, and for instance, at the time of drafting the List of Issues, to include a question on follow-up on decisions on communications.⁷⁰ This could assist to receive a written response, but also to send advance notice to the state party that one of the issues on which the Committee plans to engage with the state party is in relation to implementation of decisions. Also, the African Children's Committee, similarly to many other treaty bodies, undertakes to implement the practice that if an issue is not raised either in the List of Issues, or during the constructive dialogue with the state report, it cannot be included in the Concluding Observations that

67 R Murray 'The African Charter on Human and Peoples' Rights 1987 – 2000: An overview of its progress and problems' (2001) 1 *African Human Rights Law Journal* 10.

68 Rule 101(1) of the UN Human Rights Committee Rules of Procedure CCPR/C/3/Rev.10 (2012).

69 Guidelines on the Form and Content of Periodic state party Reports Submitted Pursuant to article 43(1)(b) of the ACRWC sec D(12) <http://www.acerwc.org/download/acerwc-state-parties-reporting-guidelines/?wpdmdl=8694> (accessed 7 September 2018).

70 It is to be noted that Kenya, Uganda, Senegal and Malawi – countries that have been a subject of a communication under the African Children's Charter and been dealt with in this article, have submitted a state party report to the Committee.

recommend measures to the state.⁷¹ As a result, the extent to which the Reporting Guidelines are explicit and detailed on follow-up on decisions could also chart the way forward on the nature of discussions held during the dialogue, and the extent to which specific recommendations on follow-up can be included in the Concluding Observations issued by the Committee.

4.2 Follow-up in the Revised Communication Guidelines

Section XXI(2)(i) – (iv) of the Revised Communication Guidelines of the African Children's Committee briefly address the issue of follow-up on the implementation of decisions on communications by providing as follows:

- (i) The Committee shall appoint a Rapporteur for each communication for the purpose of monitoring the implementation of the Committee's decision by the State Party concerned.
- (ii) The Rapporteur for a Communication shall monitor the measures taken by the State Party concerned to give effect to the Committee's recommendations made in its decision on the communication.
- (iii) The Rapporteur for a communication may make such contact as is necessary with the relevant persons and institutions in the State Party concerned and take such action as may be appropriate to ascertain the measures adopted by the State Party concerned in implementing the recommendations of the Committee made in its decision on the communication.
- (iv) At each ordinary session of the Committee, the Rapporteur for a Communication shall present a report during the public session on the progress of the State Party concerned in implementing the Committee's decision and make any necessary recommendations for improving the State's implementation of the decision.

The provisions of section XXI(2) of the Revised Communications Guidelines appear to provide adequate room for proactive measures by a designated rapporteur for a communication. For instance, on the basis of section XXI(2)(iii), the rapporteur could request the development of compliance plans⁷² by the state concerned, which could include timetables for implementation of specific decisions, as well as precisely defined levels of compliance. This facilitates monitoring the progress on implementation and provides clarity in terms of the specific steps required to achieve full compliance. The CCPR Committee traditionally distinguished between three different levels of compliance with its recommendations. These grades correspond

71 This approach is intended to guarantee that a state party has an opportunity to have its views heard on a matter either through the state party Report, its response to the list of issues, or during the constructive dialogue.

72 ESCR-Net 'Discussion paper on key proposals regarding the follow-up on views issued by UN human rights treaty bodies' https://www.escr-net.org/sites/default/files/attachments/key_proposals_regarding_the_follow-up_on_views_issued_by_un_human_rights_treaty_bodies_o.pdf (accessed 7 September 2018).

with two broad categories of compliance, namely; cases where compliance has been 'satisfactory',⁷³ and cases where compliance is deemed not to be satisfactory.⁷⁴

Moreover, the extent to which section XXI(2)(iv) is utilised by the African Children's Committee is questionable. Do all decisions designate a rapporteur for follow-up? When was the last time a designated rapporteur presented a report to the plenary in open session? If this is done, is it done at 'each ordinary session' in terms of section XXI(2)iv? These questions need reflection within and outside the African Children's Committee.

4.3 Country visits

As reflected in the report of the 19th ordinary session of the African Children's Committee, it is its practice to set up different teams to follow up on the implementation of its decisions on communications.⁷⁵

Three members were designated for the children of Nubian descent in Kenya case and two members for the *Talibé* children in Senegal case.⁷⁶ During these follow-up missions, the members of the African Children's Committee are accompanied by members of its secretariat. The mandate of members designated to follow up on the communications typically involved on-site visits to the relevant countries and engaging the various stakeholders, and reporting back on their findings to the African Children's Committee.

In January 2013, the African Children's Committee undertook a mission to Kenya to follow up on the implementation of its decision on the case of the children on Nubian descent in Kenya.⁷⁷ During this follow-up mission, the African Children's Committee engaged with a range of stakeholders on the situation of children of Nubian descent in Kenya. The government entities with which the African Children's Committee engaged while in Kenya included the Attorney General's Office; the Department of Civil Registration; the Ministry of Education; the Ministry of Gender, Children and Social Development; the Ministry of Justice, National Cohesion and Constitutional Affairs; the Ministry

73 This is defined as 'the willingness of a state party to implement the Committee's recommendations or offer the complainant an appropriate remedy'.

74 This usually refers to instances where state parties do not respond to the Committee's finding or do respond, but 'do not address the Committee's Views at all or relate only to aspect of them (sic)'. Further to this, the CCPR Committee developed even more complex compliance categories, which include different levels- A, B, C, D and E. See, CCPR Committee 'Follow-up progress report on individual communications received and processed between June 2014 and January 2015' CCPR/C/113/3, 29 June 2015.

75 Report on the 19th Session of the African Committee of Experts on the Rights and Welfare of the Child, held in Addis-Ababa, Ethiopia, from 26-30 March 2012 ACERWC/Rpt (XIX).

76 As above.

77 Report on the 21st Session of the African Committee of Experts on the Rights and Welfare of the Child, held in Addis-Ababa, Ethiopia, from 15-19 April 2013 ACERWC/Rpt (XXI) para 56.

of Medical Services; the Nairobi City Council; the National Assembly; the National Gender and Equality Commission and the State Law Office. The African Children's Committee equally engaged with the country offices of UN agencies in Kenya such as the United Nations International Children's Emergency Fund (UNICEF) and the World Health Organisation (WHO), and with NGOs in Kenya. At the community level the African Children's Committee also met with the Nubian Council of Elders. The African Children's Committee concluded this follow-up mission by calling on the Kenyan government to expand and accelerate its efforts to fully implement the decision on the case of the children on Nubian descent in Kenya.⁷⁸

In 2015, the African Children's Committee undertook an on-site visit to Senegal with a view to follow up on the implementation of its decision on the *Talibé* case. During this follow-up mission the African Children's Committee engaged in constructive dialogue with the government of Senegal and also facilitated dialogue between the parties to the case. This visit to Senegal also laid the foundation for eventual follow-up, such as the African Children's Committee's first implementation hearing, which brought together representatives of the government of Senegal and the complainants, RADDHO and the Centre for Human Rights.

Regarding the Northern Uganda case, the African Children's Committee is yet to undertake a follow-up mission to the country. It is important to note that the mission undertaken in February 2013 by the African Children's Committee to Uganda at the time the communication was being considered, although not a follow-up measure in itself, laid a good foundation for subsequent follow-up.⁷⁹ This is because the African Children's Committee had already engaged with the Government of Uganda during the investigative stage and that it is more likely to be easier to resume discussions on this issue when the follow-up eventually begins.

Undertaking a country visit as a follow-up on the implementation of decisions is not without its limitations. For instance, it is usually expensive. So questions arise around who pays. Can the complainant contribute? What about the respondent state? If any of the parties were to contribute to the costs associated with the country visit, does that not affect the independence as well as credibility of the visit, and the findings? What alternate plans can be put in place if the state concerned refuses to allow a visit? And even worse, what if the state concerned changes its mind and withdraws the permission for the visit once the Committee members and secretariat have arrived in the state? Among others, the well-established experience of Special Rapporteurs of the UN human rights system as well as those of the African Commission could offer some guidance on the answers to some of these questions.

78 As above.

79 See *Northern Uganda* (n 33) para 17.

4.4 Implementation hearings

While the African Children's Committee carries out follow-up during on-site visits to the relevant states, it also acknowledges that a more detailed appraisal of the progress made by a respondent state towards implementing its decision is crucial to the follow-up process. According to its Revised Communications Guidelines, state parties to communications are required to report to the African Children's Committee on the measures taken towards the implementation of its decisions on communications.⁸⁰ Typically, a state party to a communication is required to provide the African Children's Committee with information on implementation within 180 days from the date of receipt of a decision on a communication. As is the practice of the African Children's Committee, the requirement to report on implementation within 180 days is always stated as one of the recommendations in the decision on a communication. Some of the states parties to the communications decided by the African Children's Committee have actually complied with this requirement by submitting their implementation reports, despite the delays that have been recorded.

As at August 2018, two state parties – Kenya and Senegal – have already submitted their reports on the implementation of the African Children's Committee's decisions on communications, and these reports were considered during an implementation hearing on each of the communications.⁸¹ These implementation hearings were held during the 29th ordinary session of the African Children's Committee in May 2017.⁸² The Centre for Human Rights and RADDHO, as complainants in the *Talibé* case, participated in the implementation hearing during which the African Children's Committee engaged with the government of Senegal and highlighted areas where further follow-up is still required in order to implement the decision.⁸³ This could be interpreted as an indication that the follow-up visits by the African Children's Committee to Kenya and Senegal yielded good results, which led to the participation of these countries in the implementation hearings.

80 Section XXI(2) of the Revised Communications Guidelines.

81 Centre for Human Rights 'Centre for Human Rights takes part in African Children's Rights Committee hearing on implementation' <http://www.chr.up.ac.za/index.php/centre-news-a-events-2017/1813-centre-for-human-rights-takes-part-in-african-childrens-rights-committee-hearing-on-implementation.html> (accessed 30 November 2017). Although the Revised Communications Guidelines provide that a state party to communication must provide the African Children's Committee with information on the measures taken to implement its decision, there is no provision that lays down the procedure for the consideration of implementation reports.

82 Centre for Human Rights 'Centre for Human Rights takes part in African Children's Rights Committee hearing on implementation' <http://www.chr.up.ac.za/index.php/centre-news-a-events-2017/1813-centre-for-human-rights-takes-part-in-african-childrens-rights-committee-hearing-on-implementation.html> (accessed 10 December 2017).

83 As above.

It is commendable that the African Children's Committee does not confine implementation hearings to closed sessions, which are only attended by its members. The implementation hearings have been held as open sessions where parties to a communication, as well as civil society organisations and other stakeholders can attend. However, only parties to a particular communication have been allowed to engage with the African Children's Committee during its implementation hearings and others merely observe the process. This prevents the broader civil society and other stakeholders, as well as national human rights institutions (NHRIs) from directly engaging and sharing information that could facilitate the follow-up process. Although the African Children's Committee has already conducted implementation hearings for two of its decisions, these were done without any laid down procedure. This is due to the absence of any text or approved standards to guide the process. There is therefore a need to address this gap by developing guidelines on how the implementation hearings should be conducted.

4.5 Reporting under amicable settlement agreement

In the course of the communications procedure, parties are allowed to amicably settle their dispute at any time before the African Children's Committee passes its decision on the merits of a communication.⁸⁴ Once an amicable settlement is reached, the Secretariat of the African Children's Committee prepares an initial report and submits it to the parties for endorsement.⁸⁵ The Secretariat then submits the final report to the African Children's Committee for adoption.⁸⁶ The African Children's Committee then follows up and supervises the implementation of the terms of the amicable settlement agreement. This is done through a reporting system that requires the state party to report to the African Children's Committee on the progress with respect to the implementation of the amicable settlement agreement.

In *Institute for Human Rights and Development in Africa v The Government of Malawi*,⁸⁷ the African Children's Committee noted that it remains seized of the communication, whereas the state party should comply with the elements of the agreement.⁸⁸ One of the obligations of the state party under this amicable settlement agreement is to report to the African Children's Committee on the implementation of the terms of the agreement. In this regard, the African Children's Committee has so far received three implementation reports from the government of

84 Sec XIII(1)(i) of the Revised Communications Guidelines.

85 Sec XIII(2) of the Revised Communications Guidelines.

86 As above.

87 *IHRDA* (n 42 above).

88 Report on the consideration of an amicable settlement under the auspices of the Committee in Communication No 004/Com/001/2014 - *Institute for Human Rights and Development in Africa v The Government of Malawi* <http://www.acerwc.org/amicable-settlement-on-communication-no-004/#> (accessed 15 December 2017).

Malawi in line with the amicable settlement agreement entered into with the IHRDA on 29 October 2016. The reporting under the amicable settlement agreements allows the African Children's Committee to keep track of the progress on implementation, and also to intervene if necessary.

4.6 Reporting to the AU political organs

It is argued that the lack of political will is one of the key challenges to the implementation of decisions of international human rights bodies.⁸⁹ Equally, emphasis has been placed on the fact that political will is crucial to the implementation of the decisions of human rights treaty bodies, and that without the requisite political will, compliance can hardly be guaranteed.⁹⁰

Considering that political will is of vital importance to implementation, the African Children's Committee has engaged the political organs of the AU to assist in influencing states to develop the requisite political will to implement its decisions on communications. For instance, in its reporting responsibility to the Executive Council of the AU, the African Children's Committee has engaged in efforts to bring issues of children's rights that it is dealing with in the context of the communications framework to the fore of the political agenda of the Union.⁹¹

During the 27th ordinary session of the AU Executive Council, the African Children's Committee presented its report, which also made reference to the *Talibé* decision. In its decision on this report, the AU Executive Council urged the government of Senegal to implement the *Talibé* decision.⁹² In its July 2012 decision, too, the Executive Council requested the Peace and Security Council to take into account the rights of the child in its work and also cooperate with the African Children's Committee.⁹³ This recommendation seems to have been triggered, at least in part, as a result of the communication against Uganda that the African Children's Committee was considering. As a result, in the same decision of the Executive Council, the Government of Uganda's invitation to the Committee to undertake a mission to the country to

89 Viljoen & Louw (n 62) 2.

90 Wachira & Ayinla (n 10) 490.

91 AU Executive Council EX CL/Dec 889 (XXVII) Decision on the Report of the African Committee of Experts on the Rights and Welfare of the Child – Doc. EX.CL/923(XXVII) para 7(ii) https://au.int/sites/default/files/decisions/31762-ex_cl_dec_873_-_898_xxvii_e.pdf (accessed 17 December 2017).

92 AU Executive Council EX CL/Dec 889 (XXVII) Decision on the Report of the African Committee of Experts on the Rights and Welfare of the Child – Doc. EX.CL/923(XXVII) para 7(ii).

93 AU Executive Council EX.CL/Dec 712(XXI) Decision on the Report of the African Committee of Experts on the Rights and Welfare of the Child – Doc EX.CL/744(XXI) para 7.

engage with stakeholders on the issue of children and armed conflict was also welcomed by the Council.⁹⁴

While the actual impact of such decisions by AU political organs needs further research, at face value they serve as an entry point for engagement with the concerned state by the African Children's Committee. In future, it might be useful if the content of such decisions is refined, for instance, to include the time frame with which compliance by the state concerned is expected. Also, in so far as the African Children's Committee is concerned, with a view to improve consistency and regularity, a leaf could be taken from the CCPR Committee, which in its annual report to the UN General Assembly also includes a chapter on follow-up.⁹⁵

5 CONCLUSION

This article canvassed the advantages as well as limitations of the current practice of follow-up on communications of the African Children's Committee. What is in part evident from the article is that no specific follow-up mechanism is probably fully effective in its own right. A combination of the various options for follow-up is relevant, and this needs to be decided on a case-by-case basis.

The African Children's Committee needs to develop an institutionalised follow-up mechanism to replace all ad-hoc follow-up procedures. As part of this process it should consider to develop comprehensive guidelines on follow-up that should clearly define issues such as: child participation; procedure to be followed before, during and after implementation hearings and collaboration with civil society organizations (CSOs), NHRIs and national follow-up mechanisms. The African Children's Committee equally needs to put in place a strong data collection and analysis system for its follow-ups, and also fully operationalise sections XXI(2)(i) – (iv) of the Revised Communication Guidelines, and for instance, appoint a rapporteur on follow-up, with a clear mandate to oversee and report on all follow-up of decisions on communications. The need to ensure that high-level state authorities with decision-making powers and appropriate expertise on child rights issues participate in implementation hearings is also critical.

While reporting to the AU political organs and its potential role in an effective follow-up on the implementation of decisions on a communication were rightly given due emphasis, what should not be lost sight of is the role of the African Court on Human and Peoples' Rights (African Court). In 2013, sensing the benefit that direct access to the African Court could herald for the protection of children's rights in

94 AU Executive Council EX.CL/Dec 712(XXI) Decision on the Report of the African Committee of Experts on the Rights and Welfare of the Child – Doc EX.CL/744(XXI) para 9.

95 Rule 101(1) of the UN Human Rights Committee Rules of procedure CCPR/C/3/Rev.10 (2012).

Africa, the African Children's Committee made an application for an advisory opinion from the Court. The submission requested the Court to declare the African Children's Committee as one of the bodies that is entitled to directly bring cases to the Court. Article 4(1) of the Protocol and Rule of Court 68(1), which allows a member state, the AU, or any African organisation recognised by the AU to access the Court directly, was invoked as a basis for seeking the advisory opinion. The African Court issued the advisory opinion⁹⁶ indicating that while the African Children's Committee was an organ of the AU,⁹⁷ it was not an 'intergovernmental organisation' and consequently lacked direct access to the Court.⁹⁸ Against this background, the Court advised that it was 'highly desirable' for the African Children's Committee to have direct access to it as a way of complementing its mandate in the protection and promotion of the rights of a child in Africa.⁹⁹ Subsequent to this advisory opinion, a process to amend the Court Protocol to give direct access to the African Children's Committee has been initiated, and this needs to be expedited in earnest, as, it will facilitate efforts to follow-up on decisions on communications.

Currently the number of communications that are decided on their merits by the African Children's Committee is quite limited. This also means that the human as well as financial resources required to undertake a meaningful follow-up on these decisions are more manageable now than they would probably be in the future, when the number of cases grows. As a result, now is the more opportune time to develop a more structured and effective follow-up procedure.

It is evident that this article is an initial attempt to explore the various issues that arise in the context of an effective follow-up of decisions on communications made by the African Children's Committee. A long list of questions not explored in this article can be raised. For example, what is the extent to which the wording used in a decision [for instance, very specific and demanding, on the one hand, and general and giving more leverage to the state party concerned, on the other] plays a role in the potential success of follow-up measures? How does the participation or lack of it by a state concerned in the consideration of a communication affect future follow-up on a decision? What should be the role of child participation in follow-up? How about the role of CSOs, NHRIs and the media? Also does an offer of technical cooperation from stakeholders such as UNICEF to a state concerned to implement a decision facilitate follow-up? Should the African Children's Committee be proactive in facilitating amicable

96 Advisory Opinion, Request 2/2013, 5 December 2014, <https://afchpr-commentary.uwazi.io/en/document/gvsqkyeyjtm4pldi?page=1> (accessed 19 December 2017); Report on the 27th Session of the African Committee of Experts on the Rights and Welfare of the Child, held in Addis-Ababa, Ethiopia, from 2-6 May 2016 ACERWC/Rpt (XXVII) para 93 <http://www.acerwc.org/download/27th-ordinary-session-report/?wpdmdl=9811> (accessed 19 December 2017); See also M Killander 'Human rights developments in the African Union during 2014' (2015) 15 *African Human Rights Law Journal* 552.

97 Advisory Opinion, Request 2/2013 paras 47 & 48.

98 Advisory Opinion, Request 2/2013 paras 66-74.

99 Advisory Opinion, Request 2/2013 paras 75.

settlements in relation to, most of its communications, with the assumption that follow-up on amicable settlement agreements is less difficult and more effective?

The answers to these and other related questions are not clear, and require further research. What is clear, however, is that an effective follow-up mechanism on the implementation of decisions on communications should be a choice-less choice that is high on the agenda of the African Children's Committee.