



Corporal Punishment and the African Children's Charter

An Advocacy Paper



Save the Children

Sweden

Save the Children Sweden is a member of the International Save the Children Alliance, a global organisation for children's rights.

Vision

Our vision is of a world in which the United Nations Convention on the Rights of the Child has been translated into practical reality, and all children's rights are fulfilled. Such a world is one which:

- respects and values each and every child;
- listens to, and is prepared to learn from, children;
- gives every child hope and opportunity.

Mission

Save the Children Sweden fights for children's rights. We influence public opinion and support children at risk, in Sweden and in the world. We strive to influence and change society, and the foremost priority for our work is to bring about permanent improvements in the circumstances of the world's most vulnerable children. Save the Children Sweden works together with children and young people, as well as with other actors who can influence children's situation. We emphasise the responsibility which parents, other guardians and public authorities have with regard to children and their conditions of life.

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Acknowledgements

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Acronyms/Abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Charter on Human and Peoples' Rights
ACJHR	African Court of Justice and Human Rights
ACPF	African Child Policy Forum
ACHPR	African Commission on Human and Peoples' Rights
ANPPCAN	African Network for the Prevention and Protection against Child Abuse and Neglect
AU	African Union
CSOs	Civil Society Organisations
CRC	UN Convention on the Rights of the Child
CRC Committee	UN Committee on the Rights of the Child
DAC	Day of the African Child
GC	General Comment
HRC	Human Rights Committee
MDGs	Millennium Development Goals
NGOs	Non-Governmental Organisations
OAU	Organisation of African Unity
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNICEF	United Nations Children's Fund

Part One

Setting The Scene

1.1 Introduction to the Advocacy Paper

The saying “spare the rod, spoil the child” may have fallen out of favour, at least in its literal form, in a number of countries in the world. However, it is a common saying which has found its way into various African languages and practices.

To date, only approximately 52 million of the world’s 2.2 billion children live in countries where the law gives them the same protection as adults from being assaulted. Unfortunately, the majority of these 52 million children do not live in Africa, as almost all (51 out of the 54) member states of the African Union allow corporal punishment at least in the home setting. Therefore, in Africa, it might not be superfluous to conclude that only few children mature into adults without ever feeling the pain of physical punishment, bruises and stinging sensations from whips, canes, slaps and paddles. This is against the fact that all states in Africa, with the exception of Somalia and South Sudan, have ratified the Convention on the Rights of the Child (CRC) while 46 countries in the continent are State Parties to the African Charter on the Rights and Welfare of the Child (ACRWC).

The issue of corporal punishment remains one of the least clarified and vague in the Charter. Unfortunately, there prevails a view within some quarters that the provisions of the African Charter do not ban (and in fact at times its provisions promote) corporal punishment. The list of provisions of the Charter that are marshaled to support this argument include Articles 11, 16, 19, 20, 21 and 31. In particular, one that is often relied upon for such an argument is Article 20(1)(c), which provides that:

...[p]arents or other persons responsible for the child shall have the primary responsibility of the upbringing and development the child and shall have the duty: (c) **to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.**

The investigation to determine whether corporal punishment is allowed in the African Children’s Charter relies on the interpretation of relevant provisions within the Charter. This is more so since the words “corporal punishment” do not get explicit mention anywhere in the Charter (and the CRC too).

This advocacy paper departs from the point that a child rights-based understanding of these provisions depends on an interpretation of the relevant provisions of the Charter in a holistic manner, which is compliant with international treaty law, treats the Charter as a living document, and also takes into account the intent and purpose of the drafters.

This advocacy paper attempts to offer this rights-based interpretation of the relevant provisions of the Charter pertaining to corporal punishment. It also identifies a number of activities that are very crucial for the clarification of ways to promote the rights of children in Africa against corporal punishment by using the provisions of the African Children’s Charter and the African Committee.

1.2 Objectives of the Advocacy Paper

- To assist the African Committee in addressing the issue of corporal punishment in its consideration of State Party Reports; Communications; Investigations; and (generally) in the exercise of its mandate;
- To assist national law reform efforts on the African continent in addressing the issue of corporal punishment by relying on the African Children’s Charter too;
- To promote a human rights/children’s rights culture to disciplining children and highlight that the rejection of any justifications of corporal punishment under the ACRWC would not in any sense be rejecting the positive concept of discipline;
- To map out advocacy strategies for CSOs and other stakeholders in promoting children’s right against corporal punishment through the work of the African Committee.

1.3 Some Conceptual Clarifications

In this paper, the term “child” is defined along the lines of Article 2 of the ACRWC, as any person below the age of 18. This paper uses the notion of “corporal punishment” as described by the CRC Committee in General Comment No 8. The CRC Committee defines “corporal” or “physical” punishment:

... as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading.

The terms “culture” and “tradition” are used interchangeably and the notion of “harmful traditional and cultural practices” also includes those practices that are condoned by society on the basis of religion or other similar grounds/beliefs.

The relationship between the CRC and the ACRWC is a complementary one. As proof of this fact, the ACRWC, in its Preamble, makes explicit reference to the CRC and indicates how the Charter draws inspiration from, amongst others, the CRC. As a result, the relationship between the CRC Committee and the African Committee, and their work, is also a complementary one.

1.4 The State of Corporal Punishment in Africa: A Brief Overview

Legal literature, based on the human rights imperative strongly argues that corporal punishment is prohibited under international law. Apart from the human rights imperative to prohibit corporal punishment, there is an overwhelming amount of recent scientific research that severely undermines the idea that corporal punishment is beneficial to children and helps them to become productive and responsible citizens.¹

However, such research has not yet led to significant law and policy reform on the African continent. In Africa, by the end of 2010, only 20 out of 53 African States had prohibited corporal punishment in schools while 21 had prohibited it as a disciplinary measure in penal institutions. Moreover, 38 had prohibited corporal punishment as a sentence for crimes committed by children. Reports of children dying, or becoming disabled, or their right to life, survival and development being affected as a result of corporal punishment in all settings are not new, and anecdotal evidence seems to suggest that these occurrences even seem to be on the rise.

Within the school environment, corporal punishment is also widely practiced in almost all African countries. For instance, just to highlight examples from all four corners of the African continent, there are reports that in Botswana 92% of children in school are beaten; 88% of girls and 87% of boys subject to physical violence in Togo; 34% physically punished in Ethiopia; and 80% of boys and 60% of girls physically punished in Egypt.² As far as law reform in the context of corporal punishment in schools in Africa is concerned, the practice is unlawful in only “43% of states in Africa”.³ Unfortunately, compared to all other regions in the world, this figure is reported to be the second lowest, next to South Asia.

Until recently, Tunisia and Kenya were the only two African countries that passed legislation that provides for the prohibition of corporal punishment including in the home setting. A third addition came with the coming into existence of a new State - South Sudan - in July 2011, which prohibited corporal punishment in all settings through its Interim Constitution (2005) followed by its Child Act (2008) and Transitional Constitution (2011).

¹For example, research has repeatedly shown the negative effects of corporal punishment of children on individuals and societies: the emotional and physical effects on children hinder their ability to learn, undermining the very purpose of education (for a fuller discussion see the Global Initiative/Save the Children Campaigns Manual and other resources listed on p 15).

²Global Initiative to End all Corporal Punishment of Children “Prohibiting all corporal punishment in schools: a global report” p.7 <http://www.crin.org/docs/Schools%20Report%202011.pdf>

³As above.

Part Two

The African Children’s Charter, The African Committee, and Treaty Interpretation

2.1 The African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child (hereafter African Charter or “Charter”)⁴ is the first comprehensive regional children’s rights treaty specifically developed for children in Africa. A number of political and other substantive reasons, which could stand scrutiny, are forwarded to justify the need for a separate regional instrument,⁵ given the existence of the widely ratified and acclaimed United Nations (UN) Convention on the Rights of the Child (CRC).⁶

Mainly, it was in order to give the CRC specific application within the African context, and introduce an African fingerprint to our understanding of children’s rights, that the Charter was adopted. It creates an instrument that is more adequate to deal with children’s rights in an African context by placing some emphasis on some rights. As mentioned above, the relationship between these two instruments is a complementary one. Apart from being complementary, in instances where one of these two instruments provide **“more conducive”** provisions to the realisation of the rights of the child (Article 41 of the CRC and Article 1(2) ACRWC) it is allowed to take precedence. In other words, for African countries, in instances where the ACRWC provides for more protective standards, it **takes precedence** over the CRC and vice versa. In the context of this advocacy paper, arguably, it means that, since according to the CRC Committee corporal punishment is prohibited in all settings, the ACRWC expects States Parties to comply with the CRC if they understand the former as not prohibiting corporal punishment in all settings.

Moreover, at the regional level, the African Children’s Charter complements the African Charter on Human and Peoples’ Rights (African Charter)⁷ Currently, the African Children’s Charter enjoys ratification by 46 AU member states.

The African Children’s Charter adopts an integrated approach towards the concept of children’s rights, enshrining the two traditional generations of human rights – civil and political rights, and economic, social and cultural rights – in one document.

⁴African Charter on the Rights and Welfare of the Child (1990) OAU Doc. CAB/LEG/24.9/49 (1990).

⁵Some of the reasons for the need for an African Charter include the fact that during the drafting process of CRC, Africa was underrepresented. Furthermore, specific provisions on aspects peculiar to Africa were not sufficiently addressed in the UN instrument. Some of the peculiarities of the African situation were omitted from CRC, such as the situation of children living under the (then prevailing) apartheid regime in South Africa; practices and attitudes having a negative effect on the life of the girl child; and widespread harmful cultural practices in African society, such as female genital mutilation.

⁶United Nations Convention on the Rights of the Child (adopted November 1989 and entered into force September 1990).

⁷OAU Doc OAU/CAB/Leg/67/3/Rev 5; C. Heyns (ed) Human rights law in Africa (1996) 7.

It provides for the four cardinal principles, and in fact elevates the best interests of the child to being “the paramount consideration” (Article 4). Children’s right to and in education (Article 11); the right to health services; the right of children with disabilities, child soldiers and refugee children; the right against harmful traditional practices (Article 21); and the responsibilities of the child Article 31).

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

The implementation of the African Children’s Charter is monitored by the African Committee of Experts on the Rights and Welfare of the Child (hereafter the “African Committee” or “Committee”) (Article 32(1)). The Charter provides for an independent 11-member Committee that is appointed by the Assembly of Heads of State and Government of the OAU/AU (Article 33-36). Under Article 43, the African Committee has the mandate to receive state party reports on the implementation of the Charter at the domestic level of States Parties. The reporting process “serves as the essential vehicle for the establishment of a meaningful dialogue between the state parties and the Committee” (Para 4 of Guidelines on Initial State Party Reporting). To date, fifteen State Party Reports have been submitted.

The Committee at the same time has the mandate to receive individual complaints/communications (Article 44 of ACRWC). Parties that have standing before the African Children’s Committee are individuals, groups or non-governmental organisations (NGOs) recognised by the AU, a member state, or the UN (Article 44 of ACRWC). To date, the Committee has received two communications, one of which has already been decided in March 2011. The Decisions of the African Committee, in a similar fashion like that of the African Commission and other quasi-judicial or supranational judicial bodies “play a role not only as between the parties, but more generally as a method of elucidating, safeguarding and developing the rules of the Convention.”⁸

The African Committee further has the power to undertake studies and investigations and may, like the UN Committee on the Rights of the Child (CRC Committee), issue general comments. General Comments, as it is the practice in international law, constitute “the most authoritative interpretation”⁹ of the Charter’s provisions.

Thus, the African Children’s Committee, together with the African Commission on Human and Peoples’ Rights (African Commission) and the new African Court on Human and Peoples’ Rights (African Court) represent the foundational pillars of the African human rights system within the framework of the AU.

⁸Malcolm N. Shaw, *International Law* 263 (4th ed. 1997).

⁹See, for instance, ND White, *The United Nations System: Towards international justice* (2002) 178 (noting that “the decisions and views of the HRC are the most authoritative interpretation of its provisions”).

2.3 Treaty Interpretation: Some Preliminary Points in the Context of the African Children's Charter

One of the main objectives of this advocacy paper is to suggest a nuanced and rights-based interpretation of some of the provisions of the African Children's Charter that are relevant to corporal punishment. As a result, it is important to proffer some important insights from international law on treaty interpretation. In this regard, the Vienna Convention on the Law of Treaties (VCLT) (1969), which is a "treaty on treaties" and has an internationally recognised authoritative status should be mentioned as it represents the culminating achievement of a decades-long effort to establish an international grammar for treaty interpretation.

Various approaches to the interpretation of treaties have been established in practice – namely the subjective, textual and teleological approaches. The subjective approach seeks out the actual intention of the parties to elucidate the text of the treaty. The textual approach on the other hand places the greatest emphasis on what the parties said as opposed to what they actually meant. Strict textualism is however susceptible to absurdity and unreasonableness, in which case extrinsic sources may have to be applied to ascertain the meaning of the treaty. Lastly, the teleological approach seeks to interpret the treaty in light of its objects and purposes. Thus the individual articles of the treaty are construed so as to give effect to the object and purpose of the treaty.¹⁰

The object and purpose of a treaty is usually ascertained by reference to the preamble and to the circumstances in which it originated.¹¹ In the context of a treaty for the protection of human rights such as the ACRWC, this requires that the provisions of the treaty be interpreted and applied so as to make its safeguards practical and effective.¹² In its Preamble, the ACRWC recognises the physical and psychological vulnerability of the child and therefore their need for special safeguards and care (paragraph 5). It recognises that the child needs to grow up in a family environment with an atmosphere of happiness, love and understanding (paragraph 6), and that the child requires particular care with regard to their health, physical, mental, moral and social development in conditions of freedom, dignity and security (paragraph 7). The Preamble to the Charter also indicates explicitly that the Member States of AU reaffirm adherence "... to the principles of the rights and welfare of the child contained ... in particular the United Nations Convention on the Rights of the Child...". In fact, the CRC is mentioned in a total of three places in the Charter. As a result, it is possible to make the assertion that the drafters of the Charter have had the intention to have the Charter be a complementary document to the CRC and support each other in their implementation and interpretation of their respective provisions.

Moreover the ACRWC is founded on **the four cardinal principles** of non-discrimination (Articles 3 and 26), survival and development (Article 5), participation (Article 7) and the best interests of the child (Article 4) by which all the other provisions of the treaty are to be interpreted and implemented.¹³ According the ACRWC's Reporting Guidelines,¹⁴ state parties are required to provide relevant information on the application of these principles in the implementation of the other articles of the ACRWC. In the present context, this demands that the approach to child discipline as deduced from the Charter be in consonance with and promote the child's development, participation and best interests.

¹⁰F G Jacobs Varieties of Approach to Treaty Interpretation: With Special Reference to the Draft Convention on the Law of Treaties before the Vienna Diplomatic Conference, 18 Int'l & Comp. L.Q. 318 (1969) 320-323

¹¹Jayawickrama Nihal The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence 161

¹²Loizidou v Turkey, European Court (1995) 20EHRR 99.

¹³A Lloyd 'The African Regional System for the Protection of Children's Rights' in Sloth-Nielsen Children's Rights in Africa: A legal perspective, (2008) Ashgate Publishers 36.

¹⁴The Guidelines for Initial Reports of State Parties (2003) part IV, section 12.

In the context of the principle **prohibiting discrimination**, some distinction might need to be made between the notions of “equality before the law” and “equal protection of the law”. The purpose of some of the rights defined in the Charter is to put children on an equal footing with adults, while other parts of the Charter deal specifically with the particular human rights needs of children and make an exception to the “equality before the law” notion. Nonetheless, the argument that children should be protected on an equal basis with adults, including a prohibition on corporal punishment, does not forfeit but rather consolidate some of the main tenets and underlying principles of the Charter, such as the right to life, survival and development and the prohibition on discrimination.

The preparatory document of a treaty, the *travaux préparatoires*, also plays a significant role in determining the intent and purpose of the drafters. While repeated efforts were made to establish the existence of a *travaux préparatoires* for the African Children’s Charter from different sources (both individuals and organisations), such efforts have been unsuccessful. This leads to the conclusion, until proven otherwise, that there is no such document on the African Children’s Charter.

The principle of *pacta sunt servanda* in treaty law states that a treaty is binding upon the parties to it and that it must be performed in good faith (Article 26 of VCLT). Good faith requires that the expressed will be consistent with the real will and that the legal reality be consistent with what is undertaken in practice.¹⁵ In *Libya v. Chad*, for example, the International Court of Justice (ICJ) specifically emphasised the customary status of Article 31 of the VCLT and recalled that, in accordance with customary international law, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its direct words.

Another rule of international human rights treaty interpretation is that **a State cannot legitimately invoke its domestic law** to avoid or limit its obligations under international law. Jurisprudence from the African Commission reinforces this argument. For instance, in *CRP v. Nigeria*, the African Commission reaffirmed that “[t]o permit national law to take precedence over international law would defeat the purpose of codifying certain rights in international law and indeed, the whole essence of treaty-making.”¹⁶

On a related note, reservations entered into a treaty have the capacity to limit the comprehensive application of a treaty in a State Party. In general terms, a reservation is a statement made by a state by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that state. A very limited number of reservations are entered into the ACRWC – namely Sudan on Article 2, Egypt on Articles 21(2), 24, 30(a-e), 44, and 45(1), Mauritania on Article 9, and Sudan on Articles 10, 11(6), and 21(2). Therefore, it is worthy of note that no **African country has entered reservations** to Articles 11(5), 16, 17, 20 and 31, provisions that are directly relevant for the issue of corporal punishment and form a substantial portion of the discussion below. As a result, no African country could possibly have any legally valid claim to limit the application of these provisions in their respective domestic settings.

¹⁵Michael Virally ‘Good Faith in Public International Law’ in the American Journal of International Law Vol. 77 No. 1 (Jan 1983) 131

¹⁶Constitutional Rights Project v. Nigeria, Comm. No. 140/94, para. 40.

Part Three

An Analysis Of The Most Relevant Acrwc Provisions On Corporal Punishment

3.1 Introduction

As already outlined above, this advocacy paper attempts to offer this rights-based interpretation of the relevant provisions of the Charter pertaining to corporal punishment. The investigation to determine whether corporal punishment is allowed in the African Children's Charter relies on the interpretation of relevant provisions within the Charter. The list of provisions of the Charter that are most relevant for such an exercise in interpretation are Articles 11, 16, 19, 20, 21 and 31. The following sections undertake a closer look at the potential rights-based interpretations of these provisions in the context of corporal punishment.

3.2 Education

Article 11: Education

...

(5) States Parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.

Article 11(5) of the ACRWC expressly obliges the States Parties in the framework of the education rights to “take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter”. This requirement is also in line with the internationally endorsed understanding that the content of education should be “acceptable” to the child.

Looking at the nature of State Party obligation, it is understood that “shall take” is a very strong term with no leeway for the discretion of States parties, creating a very strict obligation on State Parties to undertake “all appropriate measures” to fully implement this right for all children. Moreover, the duty to “ensure” as incorporated in Article 11(5) is a duty of result as opposed to a duty of conduct. In the meantime, the obligation to “take appropriate measures” is couched in strong terms contrary to obligations such as the duty to take “feasible measures”.

This as a backdrop, in order to determine whether there is any legally valid room for the application of corporal punishment in the education setting, a closer investigation of the notion of being **“treated with humanity and with respect for the inherent dignity”** of the child is necessary. This notion, in short, is similar to what is referred to as “inherent human dignity”, which is a fundamental principle of human rights that is enshrined in numerous international human rights treaties.¹⁷

In ordinary parlance, the term “inherent” means “intrinsic”, “essential character of something,” or “permanent or characteristic attribute of something.” For instance, under Article 5(1) of the Charter, “Every child has an inherent right to life”, which gives the implication that the right to life of the child is inborn, and is intrinsic to the child. When the term “inherent” is accompanied by the adjective “human,” it means that dignity is *inseparable from the human condition*.

To say that every human being has inherent dignity is to say that one's dignity inheres in nothing more particular than one's being a human being. Thus, dignity is not an accidental quality of some human beings, or a value derived from some specific personal, (geographical, genealogical etc) features based on one's age, behavior, sex, colour, race, language, religion, national or social origin, birth or other comparable status.¹⁸ Another important consequence of the meaning of “inherent human dignity” is that if human dignity is the same for all, then all human beings possess equal basic rights. In addition, stressing that rights *derive* from human dignity means that, if basic rights are not given by authority, but are pre-existing values which are inherent in every human being, then they cannot be legitimately taken away.¹⁹

As a result of the above, corporal punishment, as understood and used in this paper, can hardly respect a child's humanity and inherent dignity. Put differently, how is it possible that smacking, slapping, throwing children, scratching, pinching, kicking, shaking, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding etc comply with respect for the humanity and inherent dignity of a child? How is it possible for these acts to comply with the Charter's aspirations of “RECOGNISING that the child, due to the needs of his physical and mental development requires particular care with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security”? Rather, corporal punishment belittles, humiliates, ridicules, degrades the child, and appears invariably against the inherent human dignity of the child.

¹⁷See, e.g., UDHR, preamble.

¹⁸Roberto Androno “Human dignity and human rights as a common ground for a global bioethics” available at <http://www.unesco.org/uy/shs/red-bioetica/uploads/media/dignidad_Androno.pdf> Journal of Medicine and Philosophy (2009) 5.

¹⁹As above. There is no doubt that the concept of “dignity” is very close to that of “respect” but the two are not synonymous as respect for persons is just the consequence of human dignity, not dignity itself.

To argue that African children have less (or different) inherent human dignity than their counterparts in other part of the world is not tenable, as the notion of “inherent” is not geographically bound. As a result, an argument on the basis of “cultural relativism” does not benefit from any support in issues related to inherent human dignity.

A more nuanced understanding that is in line with the object and purpose of the Charter is to understand the concept of “discipline”. Admittedly, discipline and particularly one that is positive, emphasises treating everyone, (including children), fairly than treating everyone in the same way. This in turn means that, even within the children’s rights framework established by the African Children’s Charter, individuals take responsibility for their actions. Such responsibility, however, needs not violate any of the provisions of the Charter. Moreover, proportionality needs to be maintained in such a way that whatever disciplinary measures are taken on children, it should not compromise their inherent human dignity. The idea that discipline should be prospective rather than retrospective and that emphasis should be placed on prevention rather than punishment,²⁰ could also be reinforced by the wordings used in the Preamble of the Charter that “on account of the child’s physical and mental immaturity he/she needs special safeguards and care”. It also means that the interests and welfare of the individual child should have priority over the sole interest of parents, teachers, or society at large.

The power relation that is created as a result of the authority to use corporal punishment puts educators, hierarchically, in control and embeds a sense that they are the authority. However, a human rights framework puts a child on an equal footing with an adult not (necessarily) in relation to authority, but in relation to dignity and respect for their humanity worth of equal respect. This is in line with the understanding that one important technique to maintaining classroom control is creating an environment that conveys a mutual sense of value and respect.

When it happens in schools, corporal punishment violates children’s right and access to education, and could also prove to be a barrier to the realisation of some of the Millennium Development Goals (MDGs). This is because, for the students who are struck in school, it is reasonable that they would fear returning to school out of fear of being hit again.

In other words, when children are subjected to corporal punishment, they are in effect forced to trade their right to education for their right to physical integrity. Corporal punishment can leave students disengaged in school, less likely to succeed, and more likely to drop out. Such an understanding is reinforced by Article 11(3)(d) of the Charter that requires that States Parties “shall take all appropriate measures with a view to achieving the full realisation of this right and shall in particular... (d) take measures to encourage regular attendance at schools and the reduction of drop-out rates”.

From a cursory reading of the provisions of the ACRWC, it is not quite clear if there is a threshold of severity that needs to be met in order to qualify a certain action constituting a degrading treatment.

²⁰S Coetzee “Discipline in Nigerian schools within a human rights framework” (2010) 10 AHRIJ 482

In the Costello Roberts case regarding corporal punishment in a private school, the European Commission decided that giving three “whacks” with a gym shoe on the bottom of a seven-year old boy could not be considered as severe enough to constitute degrading treatment.²¹ This is different from “degrading treatment” by the African Commission, the sister organisation to the African Committee. In the Gambia mental health case, for instance, the African Commission has concluded that the mental health act expressly refers to persons with mental disabilities as “lunatics” and hence considered as a “degrading treatment”.²²

It is well known that some teachers and parents in Africa complain that they are increasingly becoming unable to create disciplined schools and classrooms because learners (and others) rely too much on a “human rights culture/ rights that leaves educators powerless.”²³ However, at the heart of the challenge is “not a human rights culture that leaves... educators feeling helpless, but a lack of knowledge and skills to create a disciplined school or classroom within a human rights framework”.²⁴ Thus, **the lack of proper training on alternatives to corporal punishment** still facilitates corporal punishment in schools even when law prohibits the practice. This is the case, for instance, in Algeria, where despite Law No. 08-04 of January 2008 prohibiting corporal punishment in schools, teachers still apply it.

Fortunately, there are clear indications that the African Committee seems to have an understanding that corporal punishment in the school setting is prohibited in the Charter. This can be inferred from its questions posed to State delegates during the constructive dialogue session, as well as from its concluding observations.

3.3 Parental Responsibilities

Article 20: Parental Responsibilities

1. Parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development the child and shall have the duty:

- (a) to ensure that the best interests of the child are their basic concern at all times-
- (b) ...
- (c) to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.

It is important to note that the caption of Article 20 is not “Parental Rights” but rather “Parental Responsibilities”. The concept of parental responsibility depicts the child as the bearer of rights, and is a clear departure from the preceding understanding that depicted the parents as the bearers of power, authority and rights over their children. The “right of parents to beat their children” is traceable to this former understanding, which does not seem to have support from the text of Article 20.

²¹However, a violation of the pupil's right to respect his private life under Article 8 of the ECHR was found.

²²See *Purhoit V The Gambia* (2003)

²³S Coetzee “Discipline in Nigerian schools within a human rights framework” (2010) 10 AHRLJ 479

²⁴As above.

It is reported that Article 20(1) “appears to leave the door open for the physical and humiliating punishment of children by their parents or caretakers...”.²⁵ However, the structure of Article 20, sub-Article 1(a) of which emphasises the duty to “ensure the best interests of the child ... at all times” before discussing “domestic discipline” in sub-Article 1(c) is a confirmation that children’s best interests override any other potential considerations such as the administration of domestic discipline. As to the nature of States Parties obligations under Article 20, the combination of the words “shall” and “ensure” again creates a high degree of obligation on States Parties.²⁶

The arguments made above in the context of school discipline in relation to the notion of “discipline” as well as the “inherent dignity of the child” are equally valid here in the context of parental discipline. It is illogical to assume that the “inherent dignity of a child” could be of lesser importance in the home environment than one that exists in the school environment.

If arguments about a man's right to run his household as he saw fit were overcome in order to protect women, those same arguments should be overcome in order to protect children, who are far more in need of protection from harm than adult women. In fact, the African Children’s Charter clearly envisages possibilities whereby the State might intervene in a parent’s child rearing methods. For instance, in the sphere of freedom of thought, conscience, and religion, according to Article 9(3), while the Charter demands that States Parties respect parents’ guidance and direction in the enjoyment of these rights, such respect is “subject to the national laws and policies”. Article 19 of the Charter, entitled “parent care and protection”, also envisages the possibility of separation of children from their parents, against the will of the latter.

It seems to be the view of Article 20 of the Charter that if any of the spheres of a child’s development are being impaired by the avoidable actions of the parents, then the parents can be found to be failing in their responsibilities.²⁷ “The concept of ‘development’ is not just about the preparation of the child for adulthood. It is also about providing optimal conditions for childhood, for the child’s life now.”²⁸

Many of the obligations of the CRC including in particular those related to health, adequate standard of living, education, play and leisure (such as Articles 24,27,28,29 and 31) have been linked to ensuring the maximum development of the child, and individual articles expand the meaning of development.²⁹ Similarly, the corresponding articles of the ACRWC on similar issues are equally relevant to the proper development of the child.³⁰ Provisions protecting the child from violence are as vital to maximum survival and development as those on the provision of services, especially in view of the overwhelming research evidence on the adverse effects of violence on the development of the child.³¹ The principle of the protection of children from all forms of violence is thus linked to the right to life and to maximum survival and development in similar fashion as are Articles 19 and 6 of the CRC.³²

²⁵Plan Sweden and Save the Children Sweden, *Advancing children’s rights: A guide for civil society organisations on how to engage with the African Committee of Experts on the Rights and Welfare of the Child*, (2011) 14.

²⁶See Cohen and Davidson, (1990), 38 (discussing how the combination of the words “shall” and “ensure” imposes a higher level of obligation).

²⁷Hodgkin R & Newell P *Implementation Handbook for the Convention on the Rights of the Child* Unicef Revised Edition (2002) 246.

²⁸Hodgkin R & Newell P *Implementation Handbook for the Convention on the Rights of the Child* Unicef Revised Edition (2002) 103.

²⁹Hodgkin R & Newell P *Implementation Handbook for the Convention on the Rights of the Child* Unicef Revised Edition (2002) 104.

³⁰Such as articles 11, 12, 14, 19 and 20 of the ACRWC.

³¹Hodgkin R & Newell P *Implementation Handbook for the Convention on the Rights of the Child* Unicef Revised Edition (2002) 104.

³²Hodgkin R & Newell P *Implementation Handbook for the Convention on the Rights of the Child* Unicef Revised Edition (2002) 257

Hence, any interpretation of the parent’s responsibility for the upbringing and development of the child as a license to corporally punish the child would be retrogressive on the gains that have thus far been made in the understanding of the parent-child relationship.

Of course, just as with the principle of the best interests of the child, the whole content of the ACRWC must be taken into account in the interpretation of parental responsibility. In all circumstances, the rights of parents must be circumscribed by the best interests of the child as stipulated under the Charter.

The reference to “**parental discipline**” in Article 11(5) confirms that the level of obligation placed on parents is no less strict than that placed on schools and other educational institutions – and hence, parents, too, have the same level of obligation to adhere to the strict requirements of the Charter when it comes to disciplining children. It may also be argued that the inclusion of “parental discipline” might have envisaged the possibility of parents home-schooling their children. And irrespective of whether children are home-schooled or otherwise, and in line with the prohibition of discrimination, the Charter seems to suggest that parents have the same level of obligation like teachers when it comes to administering discipline. And as mentioned above, the African Committee has often highlighted, at times indirectly, that corporal punishment in the school environment is a violation of the Charter provisions. However, it has not been forthcoming and explicit in finding parental corporal punishment to be a violation, and the above interpretation provided in relation to Article 11(5) should be further evidence to the Committee that the drafters of the African Children’s Charter did not intend to make any distinction between school corporal punishment and parental corporal punishment.

3.3 Protection against Child Abuse and Torture, including in the Administration of Juvenile Justice

Article 16: Protection Against Child Abuse and Torture
1. States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.
...

Article 17: Administration of juvenile justice
....
2. States Parties to the present Charter shall in particular:
(a) ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;

The ACRWC provision on the general prohibition of violence against children is similar to that of Article 19 of the CRC. Unlike Article 19 of the CRC, however, the word “violence” does not appear in Article 16 of the Charter. But it is not very clear if such an omission would have any (significant) difference in the interpretation to be attached to the provision. The term “violence” which was used during the 2006 UN Study on Violence Against Children can be understood to mean “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”. Assessed against this description, it appears clear that Article 16 of the ACRWC has all the necessary elements of violence.

It could be argued that the interpretation of the term “violence” differs depending on different customs and traditions in different sectors and beliefs that are part and parcel of a particular society. Admittedly, in some contexts, corporal punishment might be regarded as a form of domestic violence. In others, it could be seen as a form of education and correction. The latter view contributes to the opinion that corporal punishment, as long as it does not cause injury, is not included in the term “violence”. However, the list of types of harms in Article 19 of the CRC and Article 16 of the ACRWC, which seem to carry equal weight, do not make a distinction on the basis of severity. Moreover, the African Commission has stated that the prohibition of torture, cruel, inhuman, or degrading treatment or punishment is to be interpreted as widely as possible to encompass the widest possible array of physical and mental abuses.³³ This seems to help make a strong case that corporal punishment is not compatible with Article 16 of the Charter.

Treaty bodies at the UN level with similar mandates like the ACERWC to monitor international human rights treaties and offer authoritative interpretations have repeatedly emphasised that corporal punishment is incompatible with provisions prohibiting the use of cruel, inhuman, or degrading treatment or punishment. This is true for instance in relation to the monitoring committees of the Convention against Torture and the ICCPR that have indicated that corporal punishment is incompatible with the provisions of these instruments.

On a related note, it is important to note that, like many of the obligations enshrined in the African Children’s Charter, the treaty obligations considered in Article 16 are both absolute – as they are not expressed with any limitations- and immediate – as each State is bound to take the necessary steps to secure the rights from the moment that the treaty entered into force for that State. The provision does not make a distinction between intentional and non-intentional violence. As a result, any violence including corporal punishment, which is allowed or not proscribed and addressed by a state party could stand a strong likelihood of violating Article 16,

On a different note, in the context of the administration of juvenile justice, Article 17 explicitly prohibits torture cruel, inhumane and degrading treatment and punishment, and the arguments above in relation to these acts are valid here too. What is worth emphasising here is that the Charter, under Article 17(3) demands that the essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or he reformation, re-integration into his or her family and social rehabilitation. It is absolutely difficult, if not impossible, to argue that corporal punishment as a punishment for juveniles achieves any of these aims.

³³See Communication 225/98 Huri-Laws / Nigeria

This argument is further substantiated by the African Commission's case of *Curtis Francis Doebbler vs. Sudan*.³⁴ In this communication, on 13 June 1999, a group of female students at the Nubia Association at Ahlia University held a picnic in Buri, Khartoum, along the banks of the river. They were sentenced to 25 - 40 lashes for 'public order' offences, contrary to Article 152 of the Criminal Law of 1991, because they were not properly dressed or acting in a way considered immoral, for example girls danced and talked with boys. A complaint was brought to the African Commission stating that this punishment was carried out in violation of Article 5 of the African Charter on Human and Peoples' Rights which prohibits inhuman or degrading treatment. The Commission ruled the communication admissible and requested the government of Sudan to, amongst other measures, immediately amend the Criminal Law of 1991, in conformity with its obligations under the African Charter and other relevant international human rights instruments, and abolish the penalty of lashes.

3.5 Responsibilities of the child

Article 31: Responsibility of the Child

Every child shall have responsibilities towards his family and society, the State and other legally recognised communities and the international community. The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty;

(a) to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need;

...

The African Children's Charter departs from the premise that rights and duties inevitably exist concomitantly. The Preamble draws the inference that "the enjoyment of rights and freedoms also implies the performance of duties". The word "duty" appears four times in the Charter. In three of these occasions, it provides for the duty of parents or legal guardians.³⁵ In the fourth occasion, which is directly relevant to this advocacy paper, children are expected to assume some duties, depending on their age and capacity, and in compliance with all rights in the Charter, including the duty "to respect his parents, superiors and elders at all times".

Therefore, one can decipher from the above that the Preambular paragraph, which introduces the specifics of Article 31, contains within it two internal limitations. Firstly, the duties of the child are subject to his or her age and ability; and secondly, the child's duties are subject to "such limitations as may be contained in the present Charter".

³⁴Sudan: Communication 236/2000 - Curtis Francis Doebbler vs. Sudan

³⁵In two occasions, it is under Article 9(2) and (3) in the context of parents, and where applicable, legal guardians having a duty to provide guidance and direction in the exercise of freedom of thought, conscience and religion.

While the duty under Article 31(a) might arguably appear to give effect to the subordinate role of children within the strict age-based hierarchy of traditional African societies, as Viljoen rightly notes:

A child's 'duty to obey' must, for example, be counterbalanced with his or her right to freedom of expression and protection of privacy, to name but a few possibilities, as well as parents' duty to "ensure that the best interests of the child are their basic concern at all times"³⁶

For the purpose of this paper, it is important to note that corporal punishment cannot and should not be permitted under the guise of respecting parents and superiors and elders at all times – as the practice would constitute a violation of a number of provisions of the Charter – and hence, fall short of the requirement of Article 31, which demands "subject to... such limitations as may be contained in the present Charter".

Therefore, because the second qualifier contained in Article 31 of the African Children's Charter clearly subjects the duties of the child to the general clauses, as well as the specific protections, contained elsewhere in the African Children Charter's provisions. Having regard to the African Children's Charter provisions protecting children from violence, abuse, neglect, and sexual exploitation, it is untrue to suggest that the duty of a child to respect parents (for example) can lead to the perpetuation of violence against children including corporal punishment within the family, in that children would be duty bound to obey even commands which violate their rights.

3.6 Protection against Harmful, Social and Cultural Practices

Article 21: Protection against Harmful Social and Cultural Practices

1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

- (a) those customs and practices prejudicial to the health or life of the child; and
- (b) those customs and practices discriminatory to the child on the grounds of sex or other status.

...

It might appear an uncommon approach to view corporal punishment through a harmful, social, cultural and religious practice lens. Notably, earlier literature on the meaning of Article 21 of the ACRWC has mainly focused on practices other than corporal punishment, and especially on female genital mutilation.³⁷ However, the use of corporal punishment, especially in the family environment, is widely prevalent in part because it is culturally, socially, and religiously tolerated in most African countries.³⁸

³⁶ibid, art 29(1)(a).

³⁷See for instance Gose M 'The African Charter on the Rights and Welfare of the Child (2002) Community Law Centre 51, Kaime T 'The Convention on the Rights of the Child and the Cultural Legitimacy of Children's Rights in Africa: Some Reflections in Africa Human Rights Journal (2005) 5 233-7, Amanda Lloyd 'The Regional System for the Protection of Children's Rights' in Sloth-Nielsen (ed) Children's Rights in Africa: A Legal Perspective (2008) Ashgate Publishers 40. See also Manfred Nowak A Commentary on the United Nations Convention on the Rights of the Child: Article 6 The Right to Life, Survival and Development (2005) Martinus Nijhoff Publishers 31 – 34

³⁸Kassan D 'The Protection of Children from all Forms of Violence' in Sloth-Nielsen (ed) Children's Rights in Africa: A Legal Perspective (2008) Ashgate 172.

The African Children's Charter neither overplays nor devalues the role of culture in Africa and African children's lives. The Preamble appears fairly straight forward in emphasising the importance of "the virtues of ...[African] cultural heritage, historical background and the values of the African civilisation...". Upfront, under Article 1, the Charter also entrenches that "[a]ny custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged". While the obligation to "discourage" is not a very strong one, Article 21 fortunately entrenches the obligation to "...take all appropriate measures to eliminate..." those harmful social and cultural practices that negatively affect children.

The protection and promotion of children's rights are culturally legitimate goals in Africa.³⁹ Children's right to fully participate in cultural life is also recognized by the ACRWC in Article 12. It is argued that the adoption of Article 21 of the ACRWC endeavours to take into account the special African context with regard to the rights of the child.⁴⁰

However, implementation of universal norms respecting children's rights within African cultures will in some cases be impeded by practices or values that enjoy cultural legitimacy but are incompatible with children's rights. There is a definite need to adopt culturally legitimate and acceptable forms of discourse to revoke the legitimacy of such practices.⁴¹

Further, the African culture recognises childhood as a "special, precarious and fragile stage of the human being which requires special protection".⁴² It is not therefore entirely correct to argue that African culture advocates for the use of corporal punishment in as far as it negates this understanding of a child. Moreover, there is a valid argument to be made, partly based on the arguments related to inherent dignity discussed above, that corporal punishment negatively affects "the welfare, dignity, normal growth and development of the child".

Even presenting corporal punishment as a religiously backed practice by invoking the right to religion under Article 9 of the Charter does not carry much weight as the "[f]reedom to practise one's religion or belief may be legitimately limited in order to protect the fundamental rights and freedom of others" on the basis of "national laws and policies" (Article 9(3) of ACRWC).

Corporal punishment can also be viewed as a practice discriminatory to the child on the basis of his or her age. This argument garners support from the textual interpretation of Article 21(1)(b) that prohibits discrimination to the child on the basis of "other status", which is a term that can include "age".

At this juncture, a point worth mentioning is the fact that, contrary to popular perception, neither tradition and culture nor religious practices are static. Rather, they constantly evolve, albeit only imperceptibly.⁴³ Culture and cultural practices are not immutable, but are rather inherently responsive to new ideas and ways of doing things suggested by external influences and demanded by internal needs.⁴⁴

³⁹Kaime T 'The African Charter on the Rights and Welfare of the Child: A Social Legal Perspective' (2009) PULP 40

⁴⁰M Gose 'The African Charter on the Rights and Welfare of the Child' (2002) Community Law Centre 51

⁴¹Kaime T 'The Convention on the Rights of the Child and Cultural Legitimacy of Children's Rights in Africa: Some Reflections' in African Human Rights Law Journal (2005) 5 222.

⁴²W Neube 'The African Cultural Fingerprint? The Changing Concept of Childhood' in W Neube (ed) Law, Culture, Tradition and Children's Rights in Eastern and Southern Africa (1998).

⁴³Van Bueren G 'Children's Rights; Balancing Traditional Values and Cultural Plurality' in Douglas G & Sebra L (eds) Children's Rights and Traditional Values (1998) Ashgate Publishing

Limited 18.

⁴⁴Kaime 233

These cultural and harmful practices can be overcome by understanding the reasons for the practice, providing solutions in consultation with the practising communities and by ensuring that adequate social support is given to individuals who choose to abandon them.⁴⁵

This means that there is an opportunity to effectively intervene and positively influence the course of society in relation to its harmful cultural practices. A Government White Paper in Botswana which outlined the role of traditional leaders, including their authority to administer corporal punishment, and the resistance from religious leaders that led to the deletion of the prohibition of corporal punishment in all settings in the Zanzibar Children's Bill are two examples that highlight the need to engage⁴⁶ community and traditional leaders as a means towards effective intervention.

In March 2011, the House of Representatives passed the Children's Act of Zanzibar. While the Bill initially included a provision that explicitly prohibited all corporal punishment of children, as a result of objections, some of it from traditional and religious leaders, this was withdrawn in the course of discussions on the Bill.

As a result of all the above, there is some room that allows, or even demands, the interpretation, based on Article 21 and other relevant provisions of the Charter, that corporal punishment should be prohibited as it is a harmful social, cultural and religious practice in violation of Article 21 of the Charter.

⁴⁵Kassan in Jsløth-Nielsen 172.

⁴⁶http://www.crin.org/docs/GL_Newsletter.pdf

Part Four

The Way Forward

4.1 Advocating for an Absolute Ban of Corporal Punishment by the African Committee

The textual analysis of the most relevant provisions of the ACRWC, as discussed above, seem to suggest an absolute prohibition on all forms of violence, including corporal punishment, in all settings. This is true not only in interpreting the most direct provisions of the Charter – namely Articles 11(5), 16, and 20(1) - but also by looking at other provisions such as on the prohibition on harmful social, and cultural practices as well as on the responsibilities of the child under Article 31. The interpretation of these provisions as imposing an absolute prohibition on all forms of violence, including corporal punishment in all settings, helps to view the African Children’s Charter as a living instrument that can be understood and interpreted to have more relevance for children’s lives in line with current circumstances.

Such an interpretation, however, mainly depends on the African Committee, which is mandated by the African Charter to offer an authoritative interpretation of the provisions of the Charter. The progressiveness of the Committee members, the Committee’s receptiveness to international human rights law, the Committee’s collaboration with other treaty bodies both at the UN and regional levels, the information base the Committee has while exercising its various mandates, and State practice in African countries in relation to corporal punishment are some of the factors that will influence the African Committee’s interpretation of Charter provisions related to corporal punishment. Whether the legal interpretation of the provisions of the ACRWC by the African Committee relies upon medical and social facts, and professional opinion also has its own role to play.

As a result, what is proffered below is, with no order of priority, a number of ways that can help achieve an interpretation from the African Committee that declares corporal punishment in all settings to be in violation of the African Children’s Charter.

A. State Party Reports

- The African Committee has developed the Guidelines for Initial State Party Reports. States are requested to use these Guidelines in submitting their initial reports. In order to have a meaningful constructive dialogue with State delegates, it is important that States submit a comprehensive report highlighting not only progress, but also challenges and opportunities to address the issues.

The experience from the Committee in considering State Party reports in the context of corporal punishment indicates that many countries either do not report in detail on the situation of corporal punishment in their country or only provide information that is incomplete (for instance, they report on corporal punishment only in the school setting). As a result, it is important to advocate for the amendment of the Guidelines for Initial State Party Reporting in order to require States to report in a detailed manner on corporal punishment in all settings. If such an effort proves impossible or difficult, it might also be possible to advocate for the inclusion of explicit and detailed requirements for reporting on corporal punishment in the Guidelines for Periodic Reporting that still remains to be drafted.

- - Moreover, it is important to urge the Committee to incorporate express recommendations to State Parties for the prohibition and elimination of corporal punishment of children in all settings within the African Committee's responses and recommendations to state party reports.
- The Global Initiative to End All Corporal Punishment of Children regularly submits briefings (that summarise the legality of corporal punishment and any relevant research in member states being examined during each of the sessions of the Committees, and call for specific recommendations to be made in relation to children's right to protection from all violence under the treaty concerned), to the pre-sessional working groups of treaty monitoring bodies. In the context of the African Committee, these briefings need to be submitted in a systemic and regular basis, especially targeting the Committee Member who is assigned as a Rapporteur for the specific country being considered and the Committee member whose thematic portfolio is "violence against children".

B. Complementary/Alternative Reports

The African Committee receives Complementary Reports from CSOs, and at the same time holds a pre-session to engage with CSOs based on these reports. It is important for Complementary Reports to highlight the state of corporal punishment in the country concerned in a detailed manner. Such detail should include the law and the practice, but also highlight children's opinions about corporal punishment as well as its negative effects in the realisation of a number of rights that children have under the Charter – allowing the African Committee the benefit to appreciate the magnitude of the impact of the practice. The recommendations section of the Complementary Report should make a clear proposal on an absolute ban. For instance, as was done before the consideration of Uganda's State Party Report to the African Committee, CSOs should recommend in their Complementary Reports that the State Party ban the practice in all settings, and also institute appropriate public education measures and professional training on positive parenting and non-violent forms of discipline.

C. Engaging with the African Committee’s Focal Person Responsible for the Theme “Violence against Children”

The African Committee has allocated 11 themes to its respective members as focal persons. These themes form the main portfolio of the respective Committee members they have been allocated. Thus, as much as possible, the Committee member with a specific theme serves as the focal person in engaging with partners, in representing the Committee in various forums related to the theme, and in keeping the theme on the agenda and work of the Committee. Since there is a focal person on “violence against children” within the Committee, it is important to meaningfully engage with such focal person in advocating for an absolute ban on corporal punishment.

D. Day of African Child (DAC)

The DAC, which is celebrated every June 16 (and the theme of which is selected by the African Committee) serves as a continent-wide awareness-raising tool on various children’s rights issues. In 2006, for instance, the theme was on violence against children. Since March 2011, the African Committee has started to ask for a joint CSO proposal on their preferred theme (especially from the CSO Forum members), and advocating for a theme focused on corporal punishment could help set the tone and build the momentum towards an absolute ban.

E. Individual Communications/Complaints

As mentioned above, Article 44 of the Charter empowers the African Committee to deal with individual complaints and issue its decisions/recommendations. During 2011, the African Committee has decided on its first individual communication. In this decision, the Committee has shown its receptiveness to international human rights law, as well as jurisprudence from African and other treaty bodies (though, by word of caution, it needs to be mentioned that this communication did not deal with an issue that is culturally and religiously charged as corporal punishment). As a result, it is possible to bring a communication on corporal punishment, alleging a violation(s) of Charter provisions in a State Party, to the Committee. However, in order to minimize the risk of a regressive decision that might set a bad precedent, it is important to prepare the communication well, choose a “winnable case”, and accompany it with the necessary advocacy that should also include child participation.

Moreover, before a communication is declared admissible, it should comply with some admissibility requirements. One of these requirements is that a communication must be compatible with the Children’s Charter **and allege a violation of a right guaranteed under the Charter**. As a result, in order to avoid a decision of inadmissibility, amongst other things, the way in which the communication on corporal punishment is drafted alleging “a violation of a right guaranteed under the Charter” is critical.

F. Other Engagement Opportunities

- It is important to engage and follow-up on various consultations relevant to corporal punishment that the African Committee is involved in. For instance, the preparation and review of the **“Africa Fit for Children: A Call for Accelerated Action”** (Review of “Cairo +5”), which is supposed to take place in 2012 offers such an opportunity for advocacy. Moreover, to add one more example, the Strategic Consultation to Ban and Eliminate Corporal Punishment in Africa held in Ouagadougou, Burkina Faso (28 February-1 March), in which the African Committee was actively involved. The outcome of the Consultation led to the development of a Strategic Plan that should serve as a tool, amongst other things, to keep corporal punishment on the agenda of the African Committee, and also hold members of the Committee “accountable” to commitments they might have made during and after the Consultation.
- In a significant move, and partly as a testament to its responsiveness to CSOs’ expressed concerns, the African Committee issued a **statement on violence against children in March 2011**. While the statement highlighted a number of general issues related to violence against children, it also declared that “corporal punishment and other harmful traditional practices should be publicly condemned and eliminated”. While this is a move in the right direction, it is important to consistently and regularly follow-up on this statement and advocate for a more specific and clear interpretation that prohibits corporal punishment in all settings, including in the context of the family.
- During the 15th Ordinary Session of the African Committee, the UN Secretary-General’s **Special Representative on Violence Against Children**, Marta Santos Pais made a presentation before the Committee. The Special Representative called on the Committee to develop an “advocacy campaign to call for an explicit ban on all violence against children, including corporal punishment”. As the Committee continues to engage with the Special Representative, it is important to support and follow-up on this call.
- In 2008, the African Child Policy Forum (ACPF) and the Southern African Network to End Corporal and Humiliating Punishment of Children presented a **submission on corporal punishment** to the African Committee. After the presentation and the discussions that followed, the African Committee agreed to draft guidelines on positive discipline and advise states parties to prohibit corporal punishment. A follow-up to this initial commitment is called for as part of the effort towards the absolute prohibition of corporal punishment by the African Committee.
- prohibit corporal punishment. A follow-up to this initial commitment is called for as part of the effort towards the absolute prohibition of corporal punishment by the African Committee.



Save the Children

Sweden