

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

Addis Ababa, ETHIOPIA P. O. Box 3243 Telephone +251115- 517700 Fax : +251115- 517844
Website : www.africa-union.org

ACERWC/8/5

**GUIDELINES ON THE CONDUCT OF INVESTIGATIONS BY
THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS
AND WELFARE OF THE CHILD UNDER ARTICLE 45 OF
THE AFRICAN CHARTER AND ARTICLE 74 OF THE RULES
OF PROCEDURE**

SUMMARY

	Page
Introduction	1
I. General presentation of missions	2
I-A. Definition, aim and types of investigation missions	2
I-B. Initiative and composition of investigation missions	2
II. Preparation of investigation missions of the ACERWC	4
II-A Preliminary mission report	4
II-B Logistics	5
III Functioning of investigation missions	6
III-A Contents and procedure of investigation missions	6
III-B Guiding principles of Investigation missions	7
IV Report, publication and follow-up of investigation missions	7
IV-A Preparation of mission report	7
IV-B Publication of mission report	9
IV-C Follow-up of missions	10
Appendix 1	11
Appendix 2	12

INTRODUCTION

The African Committee of Experts on the Rights and Welfare of the Child is established under Article 32 of the African Charter on the Rights and Welfare of the Child. Its mandate is to, *inter-alia*, promote and protect the rights of children as enshrined in the Charter; Collect and document information; commission interdisciplinary assessment of situations on African Problems in the area of the rights and welfare of the child; formulate and lay down principles and rules aimed at protecting the rights of the child; and above all monitor the implementation and ensure protection of the rights enshrined in the Charter and to supervise their observance.

Article 44(1) provides that “The Committee may receive communication from any person group or non-governmental organisation recognised by the Organisation of the African Unity, by a Member State or the United Nations relating to any matter covered by this Charter”.

Further, Article 45 (i) of the African Charter provides that “The Committee may, resort to any appropriate method of investigating any matter falling within the ambit of the present Charter, request from the States Parties any information relevant to the implementation of the Charter and may also resort to any appropriate method of investigating the measures a State Party has adopted to implement the Charter”.

It would thus appear that on the basis of the ratification of the African Charter on the Child and without the need for a complementary acceptance of competence, the Committee of Experts is empowered to investigate any issue arising from the Charter, including alleged or observed violations of the rights and welfare of the child that could or could not have been submitted to it.

The Charter on the Child does not clearly or adequately stipulate the procedures for communication and investigation. Therefore, these guidelines have been drafted to provide regulations that will enable the Committee of Experts to conduct investigations within the framework of the Charter.

I. General presentation of investigation missions of the African Committee of Experts on the Rights and Welfare of the Child

A) Definition, aim and types of investigation missions

Article 1: Definition

An investigation mission shall be a mission of a team of the Committee of Experts on the Rights and Welfare of the Child to a State party to the Charter to gather information on the situation of the rights of the child in the State Party.

Article 2: Aim of investigation missions

The aim of the investigation missions shall be to seek and collect accurate and reliable information on any issue arising from the Charter in order to:

- a) assess the general situation of the rights of the child in a country;
- b) clarify the facts and establish responsibility of individuals and the State towards children who are victims of violations and their families, and/or
- c) promote and support the implementation of the rights and welfare of the child by the various administrative, legal and legislative institutions of the country, in conformity with the Charter.

Article 3: Types of investigation missions

1. The African Committee of Experts on the Rights and Welfare of the Child (hereinafter known as the Committee) may undertake two types of investigative missions:
 - a) Investigations on any matter referred to the Committee.
 - b) Investigations initiated by the Committee.

B) Initiative and composition of investigation missions.

Article 4: Initiative of Investigation Missions.

1. Investigative missions shall be undertaken on the initiative of the Committee, under the relevant provisions of the African Charter and its Rules of Procedure, on the basis of a communication admitted by the Committee indicating serious and systematic violations of the rights of the child in a State party.
2. The Committee may also undertake an investigative mission at the invitation of the State party concerned. Any invitation from a State party to undertake an investigative mission shall be considered by the Committee without delay.

3. In the event of refusal by a State party of an investigative mission on its territory, the State concerned should indicate the reasons for this refusal in a reasonable time. The Committee shall take note and report to the Assembly of the Union, which shall then decide on further action to be taken. States parties shall strive to adopt a policy of admitting investigative missions to their territories.

Article 5: Composition of investigation missions

1. On the basis of Article 62 of its Rules of Procedure, the Committee could, depending on the case:
 - set up sub-committees and/or ad hoc working groups in order to prepare for the investigations as per the provisions of Article 45 of the Charter and these directives;
 - designate a Head of mission to lead a mission;
 - designate a special Rapporteur from among its members to investigate in accordance with the above mentioned provisions;
 - designate independent experts to back the sub-committees, ad-hoc working groups and special rapporteurs in their missions.
2. The number and designation of the sub-committee and/or working group members thus established shall be determined by the Committee, taking into consideration the aim and scope of the mission. In the event of emergency, these decisions shall be taken by the Chairman and submitted to the Committee for approval.

Article 6: Inability of a member to take part in an investigation mission

1. A Committee Member may not take part in an investigation mission if:
 - a) he/she is a national of a State in which the mission takes place;
 - b) he/she resides on the territory of the State party in which the mission takes place; or
 - c) the mission is undertaken in the State party on behalf of which he/she has been elected to the Committee.
2. Any issue raised within the context of this Article shall be resolved by the Committee without the participation of the member concerned.

Article 7: Organization/functioning of investigation missions

Ad hoc sub-committees and working groups set up under Article 5 (1) above shall organize their proceedings. In this respect, they shall in consultation with the Chairperson of the Committee assign duties to each of their members and, notify the secretariat staff on the composition of the team(s).

II- Preparation of investigation missions of the African Committee of Experts on the Rights and Welfare of the Child.

A. Preliminary mission report

A preliminary Mission Report is a report that will be prepared prior to proceeding on a mission

Article 8: Aim of the preliminary report

1. A preliminary mission report shall be prepared before each investigation mission.
2. The aim of the preliminary report shall be to collect all available information on the country concerned in order to give an overview of the situation of the rights of the child in the country.

Article 9: Substantial points of the preliminary report

1. The preliminary mission report should contain relevant information such as:
 - a) the general situation of the country : political, economic, social, cultural and security issues;
 - b) the country's legal system'
 - c) the status of ratification of the major international instruments on human rights, particularly the United Nations Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child concerning the Sale of children, Prostitution of Children and Pornography that displays children, the Additional Protocol to the Convention on the Rights of the Child concerning the involvement of children in armed conflicts and the African Charter on the Rights and Welfare of the Child and the status of the submission of the reports to the UN Committee on the Rights of the Child and the African Committee.
 - d) The status of ratification of the regional and sub-regional instruments of cooperation and development and also information on the accession of the country to the African Peer Review Mechanism of the NEPAD;
 - e) The major constitutional and legislative provisions on the rights and welfare of the child;
 - f) Analysis of the major policies for children and information on budgets allocated to issues on education and maternal, child and youth health.
2. The preliminary mission report shall also mention the possible difficulties of the mission and include a list of potential interlocutors.

Article 10: Sources of information

Information contained in the preliminary mission report shall be collected from the African Union, the United Nations and other international organizations with expertise on the country or the situation of the rights of the child in question, from the government of the State party concerned and from non-governmental organizations with observer status on the committee, as well as official opposition political parties,

local representatives of international or regional organizations and civil society organizations.

B. Logistics

Article 11: Mission dates

1. The Committee should, through its Chairperson and the Chairperson of the AU, send through the official channel, three (03) months before the dates scheduled for the mission, a letter to the government of the State party to inform it of the objective, timetable and venues of the investigation mission. The State party shall be obliged to send its reply within one (01) month after reception of the letter.
2. In agreement with the State party, the Committee shall finally fix the dates of its investigation missions six (06) weeks before the beginning of the mission. In the event of emergency, the Committee shall decide on its investigation missions within a shorter period.

Article 12: Need for independent arrangements

1. In order to ensure the independence and impartiality of the mission, the Committee shall undertake to organize the collection of information necessary for the preparation of the mission.
2. The Committee shall also make the necessary arrangements for the journey through its Secretariat. These arrangements shall include, *inter- alia*, air and hotel reservations, travel insurances and necessary visas, transport in the country, organization of meetings with the various interlocutors as well as arrangements necessary for communication on and during the mission.
3. All expenses incurred by the mission shall be borne by the Committee.

Article 13: Mission programme

1. The mission programme shall be prepared by the Committee Secretariat, in collaboration with the Committee Chairman and mission members.
2. In order to ensure the smooth functioning of the mission, the Secretariat of the Committee shall transmit to the State party, a draft mission programme. The Secretariat shall draw the government's attention on the mission's terms of reference, its mandate as well as its privileges and immunities. The agreement of the government on these terms of reference should be obtained in writing before the onset of the mission.
3. The mission programme shall include meetings with national and local authorities, including members of government, the judicial authority and Parliament, representatives of national institutions of human rights and rights of the child, civil society organizations, representatives of United Nations agencies and other inter-governmental organizations and if need be, children who are victims of violations and their families or representatives, and presenters of petitions submitted under Article 44 of the Charter.

4. The mission programme shall be flexible and measures should be envisaged in the event of complementary meetings.

III - Functioning of investigation missions

A) Contents and procedure of investigation missions.

Article 14: Public Information

1. A general notice shall also be published on the mission, inviting the public and all individuals likely to contribute to the mission's success to cooperate with the Committee's representatives.

Article 15: Investigations on any matter referred to the Committee

1. The mission shall conduct in-depth and impartial investigations on alleged violations of the rights of the child.
2. In order to protect the identity of the victimized children and ensure their protection as well as that of the witnesses, these meetings shall be open and confidential, in the absence of government representatives and in a venue that is not supervised by government authorities.
3. The mission shall also meet authorities of public or private institutions responsible for victimized children and their families.

Article 16: Investigations initiated by the Committee itself

1. The mission shall focus on sensitisation on the African Charter and the African system of human rights in general by encouraging and indicating good practices in the effective implementation of the Charter.
2. Mission members shall meet government authorities, representatives of non-governmental organizations as well as any other person likely to provide information on the rights of the child in the country.
3. They shall also visit detention or rehabilitation centres for children, schools, hospitals, refugee camps, if need be, and any other centre that will enable a fair assessment of the situation of children in the country.

Article 17: Common procedures

1. Whenever possible, investigation missions shall visit the rural areas of the country and shall hold discussions with local government authorities, local authorities of institutions responsible for children, community organizations and local populations including children.
2. Mission members shall take notes at each meeting or visit, including the date, time, names and posts of persons met and subjects discussed. Notes of the meetings should be as complete and as detailed as possible.

3. Mission members shall meet, if possible, at the end of each day in order to report on activities carried out and the problems faced with a view to facilitating the preparation of the mission report. They shall also consider possible difficulties of the current programme that they could face and ways to resolve them.

B. Guiding principles of investigation missions

Article 18: Principles relating to mission members.

1. The investigation mission shall be conducted in total impartiality and independence.
2. Mission members shall strive to obtain any and all information necessary for their investigation.
3. The mission shall moreover have the obligation to act in conformity with its mandate. All mission members shall have the duty to participate actively in all activities envisaged by the mandate, including individual participation.
4. Mission members shall be obliged, prior to, during and after the mission, to respect the general principles for the implementation of the rights of the child, *inter-alia*, the principles relating to non-discrimination, participation of children and respect of the supreme interest of children.

Article 19: Principles relating to investigation methods

1. In carrying out their mandate, mission members shall have the obligation to respect the laws and regulations of the State Party visited without however being hindered by these laws and regulations in the conduct of the mission.
2. States Parties shall be obliged to take all necessary measures to protect the alleged victims of violations of the rights of the child, their parents or legal representatives as well as witnesses met in the course of the mission against threats, harassments or any other form of intimidation that could be related to the investigation.
3. The State Party shall have the opportunity, at every stage of the investigation, to comment on the information collected by the mission.

IV - Report, publication and follow-up of investigation missions

A) Preparation of mission report

Article 20: Preliminary results

1. At the end of the mission and before leaving the country visited, the delegation shall prepare a document presenting the preliminary results of its investigation that shall be communicated to the government and media.

2. The above-mentioned preliminary results shall be presented at a press conference and confidential information related to the consideration of certain violations of the rights of the child shall not be published.

Article 21: Mission notes

All notes taken during the mission shall be compiled and handed over to the Head of Mission. He shall transmit them to a member of the Committee's Secretariat who shall be responsible for drafting the mission's final report.

Article 22: Contents of the final report

1. The mission report shall be prepared within a period of one (01) or two (02) months after the mission. It shall include a description of the investigation, as well as procedures and methods used in the investigation.
2. The mission report shall also recapitulate all the substantial points included in the preliminary report, for example, information on:
 - a) the general situation in the country and the major political, economic, social and cultural issues on the protection of the rights and welfare of the child;
 - b) the legal system of the country and particularly the legal provisions and mechanisms established to guarantee the rights of the child proclaimed in the Charter;
 - c) analysis of the major national policies on children.
3. In addition, the mission report shall include:
 - a) a historical background, if need be, of actions taken by the Committee on rights and welfare of the child in the country;
 - b) a recapitulation of the correspondence exchanged by the Committee and the State party concerned;
 - c) the mission's terms of reference;
 - d) a copy of the form for the collection of information on the field;
 - e) An aide-mémoire of the mission, recapitulating its composition, mission programme, places visited and persons met, including government officials, representatives of institutions responsible for children and civil society organizations. The report shall also mention meetings with victimized children, their families or representatives, except those whose identity was not revealed for their protection;
 - f) press releases published;
 - g) a summary of communications submitted, if need be, under Article 44 of the Charter and information collected by the mission on every communication;

- h) information on the process to be followed with regard to these communications as well as on possible replies given by the government in response to the communications; and lastly
- i) an analysis of mission results in relation to all the issues for the investigation.

Article 23: Recommendations

- 1. On the basis of all the information collected, the mission report shall make recommendations on the implementation of the Charter in the State Party visited, or relating to allegations of violation of the rights of the child, including by presenters of petitions submitted under Article 44 of the Charter.
- 2. Recommendations of the Committee shall mainly be addressed to the State Party concerned, - indicating the measures that should be taken. They shall also be sent to other public and private institutions responsible for the monitoring and implementation of the rights of the child recognized in the Charter.

B. Publication of mission report

Article 24: Transmission of report

- 1. Once drafted, the mission report shall be sent to members of the delegation who shall have one (01) month to propose amendments. The amended report shall then be transmitted to the government of the State Party concerned which shall within thirty (30) days following transmission, be allowed to make its observations and indicate measures to be taken for a follow up.
- 2. In the case of investigation missions on allegations of violations of the rights of the child recognized in the Charter and communicated to the Committee on the basis of Article 44, the report shall also be transmitted to presenters of petitions. The Committee shall take into account comments made by the presenters of petitions particularly in the possibility of an amicable settlement of the dispute.

Article 25: Adoption and circulation of report.

- 1. After revision in conformity with the comments made by the State parties mentioned above by the Committee Secretariat, under the supervision of the Head of mission, the report shall be submitted to the Committee at its next meeting for approval.
- 2. The mission report shall be attached to the progress report submitted by the Committee to the Assembly of Heads of State and Government of the African Union. It shall be published after consideration by the Assembly of Heads of State and Government and the States parties concerned shall ensure its circulation in their countries.

C. Follow-up of missions

Article 26: Monitoring of investigation missions on any matter referred to the Committee.

1. Investigation missions of the Committee on petitions submitted under Article 44 shall be monitored by contacts inviting the State Party visited to present, within six (06) months after the mission or the adoption of a decision by the Committee, a written reply comprising information on any measure taken in the light of recommendations made by the Committee after the mission.
2. The Committee could also establish other contacts that will enable it to obtain additional information on measures taken by the State Party in reaction to its recommendations.
3. Lastly, the Committee could request the State Party to include in its subsequent reports presented under Article 43 of the Charter, information on any measure taken in reaction to recommendations made by the Committee after the mission.

Article 27: Monitoring of investigation missions initiated by the Committee

1. Investigation missions of the Committee shall be monitored by a periodic evaluation of the situation of the rights of the child in the country. The Committee could, for example, request the State party to include in its subsequent reports presented under Article 43 of the Charter, information on any measure in reaction to the recommendations made by the Committee after the mission.
2. The Committee could moreover invite specialized institutions and civil society organizations working for the protection of the rights and welfare of the child to provide it with information on the monitoring and implementation of the Charter in the countries concerned in the areas that shall be covered by their activities.

Appendix 1

Form for the collection of field information,

This form has been prepared in order to assist mission members in the collection of information – one form should be used for each of the meetings and/or interviews. All forms shall be collected and transmitted to the Committee Secretariat after the mission.

Date:

Time:

Venue:

Person(s) met:

Issues discussed:

Problems raised:

Results and conclusions (if need be, indicate reasons that prevented results from being obtained):

Appendix 2:

Mission – terms of reference.

During investigation missions of the African Committee of Experts on the Rights and Welfare of the Child, mission members shall have the following principles and guarantees, which shall be obligatory for the state party that has invited the Committee or agreed to the mission:

1. Freedom of movement on the whole territory of the country concerned and free access to all venues indicated on the mission programme.
2. Freedom of investigation, particularly as regards:
 - (i) contacts with central and decentralized authorities of all government sectors;
 - (ii) contacts with representatives of non-governmental organizations of the rights and welfare of the child, other private institutions and the media;
 - (iii) access to all institutions that host children, including detention and rehabilitation centres;
 - (iv) confidentiality of contacts and discussions with witnesses and other private interlocutors, including victimized children and their families and children deprived of freedom;
 - (v) free access to all documents needed for carrying out the mission's mandate and preparing the report.
3. Assurance by the government that no child, public or private person who has been in contact with one of the mission members as part of its mandate, shall, for that reason, be victim of harassment, retaliation or subjected to legal procedure;
4. Assurance by the government that appropriate security measures shall be taken, without however restricting the freedom of movement of mission members mentioned above;
5. Assurance that all the guarantees and facilities shall be extended to the African Union staff responsible for assisting the mission prior to, in the course of and after the visit;
6. Assurance that mission members and African Union staff responsible for assisting the mission shall enjoy privileges and immunities accorded by the African Union without undermining the laws and regulations in force in the territory of the State party visited.