



# An African and International Perspective on Children's Rights

*Interview with Dr. Benyam Dawit Mezmur, Chairperson of the African Children's Rights Committee (ACERWC) and for Two Years (2015–2017) the Chair of the UN CRC Committee*

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## Abstract

On the occasion of continuation of *The International Journal of Children's Rights* with two eminent new Editors-in-Chief, the founder of this Journal (Dr. Philip Veerman) interviewed a rising star of children's rights: Dr. Benyam Dawit Mezmur (born in 1980 in Addis Ababa). Mezmur was elected at 30 years of age to the African Committee of Experts on the Rights and Welfare of the Child (ACERWC Committee) of the African Union (AU). Dr. Mezmur stands out not only by his great diplomatic skills, but also because he is a real builder. For instance, during his tenure as Chairperson of ACERWC this Committee obtained greater visibility for its work and secured a separate budget from the African Union Commission. Dr. Mezmur's vision and hard work contributed much to a new situation in which many colleagues in the children's rights field recognise that the ACERWC Committee is now doing significant and unique work of which the added value (next to the UN Committee on the Rights of the Child, the CRC Committee) has become clear. Dr. Mezmur was elected on 18 December 2012 (at 32 years of age) as a member of the CRC Committee and in May 2013 he became the Vice-Chair of the CRC Committee. From May 2015 until May 2017 he served with great dedication as Chairperson of the CRC Committee. This unique combination of two different key posts led to interesting observations on developments in the children's rights field. Through the interview we have a rare look behind the scenes of two important committees on children's rights.

## Keywords

ACERWC committee – CRC committee – African charter on the rights and welfare of the child – the UN convention on the rights of the child (CRC) – treaty body system

## Introduction

Already more than two years ago, Dr. Benyam Dawit Mezmur agreed to be interviewed for this volume of the *The International Journal of Children's Rights*,<sup>1</sup> but when and where to meet was not so easy. Then suddenly we were both speaking at the same International Seminar on 21 May 2016 at the Permanent Mission of the Republic of Poland to the United Nations in Geneva. Ambassador Piotr Stachańczyk was kind enough to give us his room and for two hours we dropped out of the Seminar. As soon as we started talking I was impressed by Dr. Mezmur's intelligence and it soon became clear soon to me that I was meeting someone who really has a vision on children's rights. Of course, you would hope that a person who at the time was the Chair of the UN Committee on the Rights of the Child in Geneva and combined this with being the Chair of the African Committee of Experts on the Rights and Welfare of the Child in Addis Ababa, will have such qualifications. But now this is really the case and I thought even, 'this is top notch'. One thing I observed: after achieving the important positions of Chairperson of two important committees, he had not become blasé. At the small International Seminar at the Permanent Mission of the Republic of Poland to the United Nations in Geneva on the Polish Jewish Pioneer on Children's Human Rights, Janusz Korczak (1878–1942),<sup>2</sup> there were not more than 40 people (including some members of the CRC Committee) and it was a Saturday and an exceptionally hot day. Many participants left in the course of the afternoon, but not Dr. Mezmur. He stayed until the end. I also found it striking how he started our meeting when he wanted first to talk about the importance of *The International Journal of Children's Rights*. Mezmur has

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- 1 Time flies since the *First International Interdisciplinary Working-group on Ideologies of Children's Rights* was held in Jerusalem and Haifa (9–14 December 1990), where the idea of the Journal was proposed and a founding meeting of the *Journal* held. This led to the start of the Children's Rights Publication Foundation (registered in the Netherlands as a Stichting) of which Michael Longford was the chair. For the first few years the Foundation tried to help the publishers realize the publishing of the Journal, see: Longford and Veerman (1993: i–ii).
  - 2 Veerman, 1992: 93–112 (chapter about "Janusz Korczak and the Rights of the Child to Respect").

published in our Journal<sup>3</sup> in 2009 and 2012. He is on the Editorial Board of the *Journal of African Law* and we compared notes. At the end of our talk we had both become very personal and during our conversations over time I felt the contact became more personal and intense. He told me, for instance, that he had just got married in Addis Ababa and his wife had initially wanted to prepare a surprise for his birthday (which was the day after the interview), but she had to forego the idea once she realised that he had to prepare for the session of the CRC Committee. I was happy to learn a year later they went on holiday to Greece. He gave credit to others who helped him in the past like Dr. Assefa Bequele (an Ethiopian who is an internationally recognised authority on child labour, with many years of service in the United Nations system). He also worked with Prof. Tilahun Teshome of the Law Faculty of Addis Ababa University and he mentioned him as well. He also gave credit to Professor Julia Sloth-Nielsen<sup>4</sup> (of the University of the Western Cape in South Africa). He wrote his PhD thesis under her guidance. On 4 August 2017 we had a additional, long Skype talk. He had returned to South Africa from a one-day at the African Union for a meeting with the Deputy Chairperson of the African Union and other heads of AU Organs and supervision meetings with students on the side and had had to spend two nights on the plane (each way).

In addition to travelling regularly to Addis Ababa for the ACERWC Committee and to Geneva for the CRC Committee, he is based in Bellville in the greater Cape Town metropolitan area in South Africa where he is heading the Children's Rights Project at the Dullah Omar Institute for Constitutional Law, Governance and Human Rights (named after its founder, the first Minister of Justice of democratic South Africa, formerly called the Community Law Centre). The Institute is part of the University of the Western Cape where he is employed as an Associate Professor.

Dr. Mezmur is the second of four children. His maternal grandfather was one of the first pilots of the Ethiopian Air force. Mezmur's father worked for Ethiopian Airlines for close to 40 years and served in different outstations as a manager. His mother was a civil servant at the Ministry of Finance. Both his younger brother as well as only sister studied law and his older brother did nursing and lives in the United States. Mezmur went to the St. Joseph School in

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3 The article in 2009 was written together with Julia Sloth-Nielsen (Sloth-Nielsen and Mezmur, 2009). In 2012 he published an interesting article in our Journal about the pop star Madonna adopting children in Malawi (Mezmur, 2012).

4 The author likes also to thank Professor Julia Sloth-Nielsen for the information provided during a meeting with her in Leiden in the Netherlands. She gave valuable background information.

Addis and did his first law degree (LLB) at Addis Ababa University. His first job was at the African Child Policy Forum, where he served as a junior legal officer (from 2003–2005).

*How did you become interested in children's rights?*

Dr. Mezmur: I grew up in a poor part of Addis, called *Mercato* (which is considered the largest open market in Africa). We were middle class and lived there because my great grandmother was pushed out of her neighbourhood during the Italian occupation and her children and grandchildren (including my father) had to relocate to Mercato. So, we were middle class in the middle of a lot of poverty. After my high school and before going to University I had an internship at the orphan support programme of an organisation called the Medical Missionaries of Mary (MMM). Working with the children there made a huge impact on me in addition to the enormous poverty I had seen around me in Mercato. So immediately after University I started to work for the African Child Policy Forum, because I was so motivated to contribute to the improvement of the situation of children.

## 1 Differences between the Work in Addis-Ababa and Geneva

Dr. Mezmur did not shy away (at that time often together with Julia Sloth-Nielsen) from his criticism of the early work of the ACERWC. In 2007 he commented, still modestly formulated in the *African Human Rights Law Journal*, on the 8<sup>th</sup> ordinary session of the ACERWC from 27 November to 1 December 2006 (in which session of this African Committee of Experts many procedural issues were discussed and Committee members were informed that four State party reports were received and there was a debate on how to deal with them in order to prepare for the sessions in a more professional way). In another article Mezmur wrote for the same Journal on another session of the ACERWC, one could still read criticism between the lines. But with Sloth-Nielsen he (neither yet on the ACERWC at the time) commented in a much more critical manner on the 10<sup>th</sup> session of the ACERWC Committee in October 2007. Sloth-Nielsen and Mezmur (Sloth-Nielsen and Mezmur, 2008) stated that, 'this discussion highlights the inertia of the Committee, exemplified by its failure to examine any of the State reports submitted to it'. At that session the ACERWC finally was promised a permanent secretary instead of the *ad hoc* arrangement. At that stage the Committee was still busy mostly with procedural and organisational issues.

When we started to speak about the ACERWC, Dr. Mezmur (who is now the Chair for a second term having already served as Chairperson from 2012–2014), told me that he had to report at the African Union's Summit in Kigali (Rwanda) on 10 July 2016. Later I read that the Committee had succeeded in putting children's issues at the centre of the discussion of the Permanent Representatives Committee of the African Union (AU). I read on the website of the ACERWC Committee that Mezmur had brought the upcoming adoption of *Africa's Agenda for Children's Rights 2040*<sup>5</sup> to the delegates' attention,<sup>6</sup> which was later adopted at the June/July 2017 Summit in Addis Ababa, Ethiopia. Some of the discussions and decisions that were made by the African Union's Executive Council during the Kigali Summit included the importance of giving the ACERWC direct access to the African Court, which will inevitably make the protection mandate of the ACERWC stronger. And I realised that for the ACEWRC, having Benyam as the Chair was mostly what was needed to push the boundaries for children's rights through the ACERWC. This Committee had always rather languished. With Benyam at the helm, and with emphasis on teamwork, most of this started to change. To meet permanent representatives (Ambassadors), heads of states and ministers, he started putting the ACERWC Committee on the political agenda of States. To date the African Charter on the Rights and Welfare of the Child is ratified by 48 member States of the African Union (the Central African Republic being the latest to do so) and 36 States Parties have submitted reports on the implementation of the Charter. In January 2017, Morocco, which had left the Union in 1983, re-joined, taking the number of member states to 55. This means that six States Parties did not ratify the African Children's Charter. Not only had Mezmur and his team started to make the difference: meeting Ambassadors of States Parties and trying to convince diplomats to ratify this African Charter, justifying the budget of the African Committee to others, meeting UNICEF officials and other civil society partners, it was all hard work. After a lot of advocacy and team work, much was starting to change. For instance, the secretariat component expanded, the Committee held its first extraordinary session in October 2014 exclusively

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- 5 This Agenda was the outcome of the Conference on the 25 Anniversary of the African Children's Charter on the Rights and Welfare of the Child held from 20–12 November 2015 in Addis Ababa.
- 6 I later also read that Dr. Mezmur was one of the keynote speakers at the AU Peace and Security Council on 10 May 2016 when the PSC held its annual open session dedicated to children in armed conflicts in Africa.

dedicated for the timely consideration of State reports, the number of decisions on individual complaints increased, and the engagement of the Committee with the African Union organs, in particular the Peace and Security Council, was strengthened. The use of more social media such as Facebook and Twitter of the ACERWC increased. At the headquarters of the African Union in Addis Ababa, a functioning secretariat for the ACERWC Committee is in place (which was not always the case – in the early years of the ACERWC between 2001 and 2007) and paid for (there were in the past serious limitations on funding for holding regular sessions of the Committee meetings). With an autonomous budget, coverage of costs by the AU for most of the core business of the Committee, especially for the holding of the two yearly regular sessions, has significantly improved. In fact, in 2016, the ACERWC managed to get multiple year funding from the European Union along with the other two organs with human rights mandate, namely, the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights.

In Geneva the work of the CRC Committee has always been supported by staff at the secretariat of the UN High Commissioner of Human Rights at the Palais Wilson. Benyam's luck is that the schedules of the ACERWC Committee never overlap with the sessions of the UN Committee on the Rights of the Child in Geneva: in April and November he is in Addis Ababa (where, as an Ethiopian, he knows his way around in Addis, including within most of the 115 Embassies and diplomatic representations in Addis Ababa). The sessions of the CRC Committee are held in Geneva in January/February, May/June and September/October.

Dr. Mezmur notes that the engagement of the African countries with the ACERWC Committee has improved over the years, and is now 'more open, in part because they feel and say that the African Committee knows the issues better, especially the cultural and regional issues'.<sup>7</sup> In relation to individual complaints, African States sometimes justify the slow pace of their ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OPIC) while still bound by an in-built individual complaints mechanism by the ACERWC by saying that, 'with the limited resources that they have they cannot compete against civil society organisations

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7 Veerman, 1992: 271–273, 'While international standards are made and/or approved by international bodies, national and regional Charter are often tuned in with specific cultural settings. If, therefore, certain international standards are elaborated upon and translated into national and regional standards, the international standards (often described in very vague terms) will be strengthened.'

that are relatively well funded which might allege violations of children's rights and draw the attention of the CRC Committee to them'.

Mezmur also highlights the complementary relationship between the Charter and the Convention and underscores how some specific issues of greater relevance for children in Africa are covered by the former. Take the issue of child marriage, for instance, says Mezmur: 'in the African Charter this is more clear<sup>8</sup> and the ACERWC Committee is more clear on how harmful it is'. This shows the added value of a regional instrument and a committee that monitors implementation of children's rights, says Mezmur. In any case, the complementary relationship that exists between these two instruments is also legally imbued, as a result of the 'more conducive environment' provisions contained in Article 41 of the CRC and Article 1 of the Charter.

In Africa engagement with and within human rights institutions is very limited and, in this regard, the ACERWC still has a long way to go. The ACERWC started to cooperate with the African Commission on Human and Peoples' Rights (ACmHPR), the premier human rights monitoring mechanism of the African Charter on Human and Peoples' Rights (based in Banjul, The Gambia). The two bodies of the African Human Rights System will now regularly compare their analysis. Like the ACmHPR,<sup>9</sup> under the new Protocol on the Statute of the African Court of Justice and Human Rights, adopted by the AU Assembly in 2008, the ACERWC is eligible to submit cases to the Court. 'Cooperation between the two bodies in Addis Ababa and in Banjul that have standing before the African Court of Justice and Human Rights will be mutually beneficial and therefore critical to our development' says Dr. Mezmur. In 2013, the ACERWC submitted a request for an advisory opinion to the African Court on Human and Peoples' Rights requesting, similar to the ACmHPR, to be declared as having a direct access to the Court. The Court gave its Advisory Opinion in 2014 indicating that it is 'highly desirable' that the ACERWC be given direct access, but that the Court does not have the mandate to do so and such mandate will need to be provided by the policy organs of the AU by amending the Status

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8 Paragraph 2 of article 21 of the African Charter on the Rights and Welfare of the Child reads: 'Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory'.

9 The African Commission on Human and Peoples' Rights is the premier human rights enforcement mechanism of the African Charter on Human and Peoples' Rights. It was created to promote and protect human rights in Africa and it was established on 2 November 1987 and is based in Banjul, The Gambia.

of the Court. As a positive development, in early 2017, it is reported that, the Court exercised its mandate in accordance with Article 35(2) of the Court Protocol which indicates that the 'Court shall also be entitled to propose such amendments to the present Protocol as it may deem necessary, through the Secretary-General of the OAU' to request for the amendment of the Protocol to allow the ACERWC to have direct access to the Court.

One point the African Children's Charter differs clearly from the UN Convention on the Rights of the Child and that is articulated in article 31 of the African Charter (which states that 'every child shall have responsibilities towards his family, the society and the State').<sup>10</sup> To me, Janusz Korczak's remarks came to mind who wrote in 1929 as a comment on the Declaration of Geneva of 1924 adopted by the League of Nations: "the authors of the Declaration of Geneva have mistaken duties for rights" (Verman, 1992 :196). But it is interesting that Mezmur, together with Sloth-Nielsen, gave this in the *Journal of African Law* a positive turn and a 'purposeful interpretation' and they wrote that article 31 of the African Charter called for –

children to play their role at family, community, national and continental levels, in accordance with their age and maturity as they grow up, as part and parcel of their heritage, empowerment and developing citizenship ... We should conclude that the drafters did not intend governments to make the enjoyment of human rights dependent on the fulfilment of duties, but rather saw duties as the balancing elements to reinforce rights.

Elsewhere (*African Child Information Hub of the African Child Policy Forum*, 2011) Mezmur said:

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<sup>10</sup> Article 31 on Responsibility of the Child reads:

Every child shall have responsibilities towards his family and society, the State and other legally recognized 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; (b) to serve his national community by placing his physical and intellectual abilities at its service; (c) to preserve and strengthen social and national solidarity; (d) to preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well-being of society; (e) to preserve and strengthen the independence and the integrity of his country; (f) to contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African Unity.



If you look at the Child Rights Act of Nigeria, it talks about duties of the child in a similar way that Article 31 of the African Children's Charter talks about duties of the child. The same with South Africa's Children's Act.

This is another example that within the African context children have corresponding duties which come with their age and when their evolving capacity is taken into account, mark my words, do not violate any of their rights that they have under the African Children's Charter.

## 2 Motivating States Parties to Overcome Their Reporting Fatigue

Mezmur:

At the time I was elected into the CRC Committee, many States were awaiting the consideration of their Periodic Reports which was very frustrating for some of the State Parties. To give you a perspective there were a little more than 100 reports awaiting consideration, with a scheduling time between submission and consideration of up to three years. So by the time when the CRC Committee was considering the States Party's reports there was a significant likelihood that some of the information were already outdated. As a Committee, and with support from the Office of the High Commissioner for Human Rights and State Parties, we worked hard to do away with the backlog.<sup>11</sup>

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11 The enormous reporting pressure on States Parties to the international human rights Conventions had been a concern of Ms. Louise Arbour, High Commissioner for Human Rights, who said in 2005 to the Inter-Committee Meeting on 22 June 2005:

the system faces significant challenges, not least because many States parties fail to report in a timely fashion, or at all, and the committees themselves, as part time bodies with unremunerated, but highly dedicated, members, are unable to keep up with the volume of important work that is before them. As a result, reports may sometimes not be considered for at least two years after submission. Similarly, it may be several years after submission that treaty bodies with competence to consider petitions are able to take up complaints.

The year later she proposed to do away with the treaty body system with all the different reporting and replace this by a single standing body. If her aim was to promote the discussion she certainly succeeded. However, in the meantime more international human rights Conventions have been coming into force and more ratifications took place. The problem has only grown since Ms. Arbour's thought-provoking comments.

At the time of this interview, there were only about 40 reports awaiting consideration of the CRC Committee, which is considered by many as a "healthy backlog".

Mezmur says that the ACERWC, through its consultation with State parties, recognised the reporting fatigue that many State Parties were experiencing as a result of the requirement to report to the CRC Committee and the ACERWC on the same topic of children's rights. Therefore the ACERWC devised a mechanism to reduce the reporting fatigue and focus on the specific elements of the African Charter. The ACERWC Committee suggested in its States reporting Guidelines (2007) that 'a State Party that has already submitted to the UN Committee on the Rights of the Child a report based on the provisions of the CRC may use elements of that report for the report it submits to the Committee as required by the [African] Children's Charter'. This, Mezmur believes, is another practical example of the strong complementarity that can exist between regional and global human rights mechanisms.

This African Charter for the Rights and Welfare of the Child gives the opportunity to carry out inquiries. The earlier investigation mission that the ACERWC undertook was to Northern Uganda in August 2005 to see for itself the situation of children in the conflict in that territory. And at the time of Mezmur's Chairmanship, the ACERWC further consolidated its use of these options (as it did on alleged violations of children's rights of children with albinism in Tanzania).<sup>12</sup>

12 Several months before the interview a field mission was undertaken by the African Committee to the Buhangija in the Shinyanga Region of Tanzania, see Press Release on the Investigation Mission of the ACERWC on the Situation of Children with Albinism in Tanzania, African Union, Addis-Ababa, 11 August 2015. Dr. Mezmur remarked in the interview that the African Charter on the Rights and Welfare of the Child is stronger on forbidding traditional practices (which they call social and cultural practices) than the CRC, which mentions it under paragraph 3 of the child's right to health and health services, article 24. The CRC demands from states Parties to abolish traditional practices prejudicial to the health of children. The African Children's charter puts it more in the social and cultural context (see the text of art. 21 of the African Charter) which also makes it possible to see as a cultural practice, for instance, accusing children of witchcraft which is also seen by the ACERWC Committee as a traditional practice.

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. 2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

Other missions were undertaken to the Central African Republic and South Sudan (neither of which are State Parties to the African Charter) and the fact that both reports were published in 2014 by the ACERWC are innovative. The fact that the Central African Republic and South Sudan were at the time not State Parties to the Charter allowed a mission of the Committee into their respective jurisdictions is probably a combination of good will on the part of the States, solid support by partners, and proactive efforts on the part of the Committee and its Secretariat. Mezmur said that, 'it is our interpretation that in our missions we are allowed by the Charter to engage with all including non-State parties, and we started to use that opportunity as an opportunity to advocate for the respect for the rights of children including in the context of conflict'.

However, I heard that the diplomatic skills of Mezmur were often needed and that without his charisma and diplomatic skills the ACERWC Committee would not have been taken seriously at some missions. Mezmur downplays that: 'Our approach is that we are not out there to shame States but to help and assist and therefore we are hardly seen with suspicion by States Parties'. The ACERWC Committee does not need an Optional Protocol to accept individual complaints (as is the case with the CRC) because such option is incorporated in the African Charter for the Rights and Welfare of the Child (and only Egypt made reservation on this point). A unique provision is found in paragraph 6 of article 11 (on education) of the African Charter on the Rights and Welfare of the Child because it safeguards the rights of pregnant girls to education.<sup>13</sup> Engagement with the media by the ACERWC Committee has been very low, states Mezmur, compared to the UN Committee on the Rights of the Child which released statements and press releases in a number of occasions. The ACERWC has started to do the same. If you look at the text of the UN Convention on the Rights of the Child the words "State Party" appears about 120 times in the text (the word "child" or "children" appears about 190 times) and the words "State Party" appears less in the African Charter, says Mezmur. 'Still, we have to speak with those in power, otherwise we will not succeed in implementing the rights of the child. We have to try that States take the Conventions more seriously. Some letters by the Chair of

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13 'States Parties to the present Charter shall have all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability'. Tanzania issued a ban on these girls from attending school – actually directly from the President's office – and the African Committee and the African Commission issued an urgent appeal: see <http://www.acerwc.org/acerwc-achpr-joint-appeal-to-tanzania>.

the different Committees should follow up on matters between sessions', is Mezmur's opinion.

### 3 Concerns of African Countries

Very few African countries, such as Senegal, participated in the drafting process of the UN Convention on the Rights of the Child, but some African countries felt that a number of their concerns were not incorporated enough into the CRC, explains Mezmur. On juvenile justice, for instance, the African Charter for the Rights and Welfare of the Child is more fitting to the African situation, he says. As Danwood Mzikenga Chirwa wrote on the issue of juvenile justice in this Journal in 2002, the African Charter 'expressly provides that rehabilitation of the child must be the essential treatment of the child during trial and conviction. This provision does not come out clearly in the CRC'. Mezmur: 'I agree with Robert Johnson, who noted in this Journal in 2015 that in the African Charter there are stronger provisions for the child's "best interests", stronger safeguards in areas of traditional or "cultural" practices, and provisions concerning the "duties" of the child and its implications for the child's empowerment'. It was the impression of African diplomats that the CRC was not drafted with the African child in mind and that it might not be relevant therefore, however, the African Charter corrected that. But Dr. Mezmur says,

it is not true because the CRC is still relevant in all African countries which we as the CRC Committee looked at.

However, the literature on the CRC [see also most of the articles in this Journal] is mostly very Western.

He hopes that more African academics will start to write more about children's rights as Julia Sloth-Nielsen and he proposed in the *African Human Rights Law Journal* in 2007 where they also proposed specific research themes. Mezmur believes that the more attention which is paid in the African Charter for the Rights and Welfare of the Child to the extended family will help to get support for this Charter. Situations which were omitted in the CRC (e.g. living under apartheid, the explicit role of the extended family, and so on) as Muthoga (1992) explained, did not help Africans to be terribly satisfied with the CRC. Mezmur: 'The African Charter for the Rights and Welfare of the Child as an addition and supplement makes it easier for us to feel more ownership of the CRC as well'. The difficulty that birth registration gives in Africa to implement CRC, art. 28 (the right to education) shows the harsh reality of Africa and is, of

course, well understood by the ACERWC and now also by the CRC Committee which at the present includes five African members. Mezmur: 'In the General Comments<sup>14</sup> of the ACERWC we covered in 2013 areas not covered by the CRC Committee such as the first ACERWC's General comment which was on incarcerated parents and primary caregivers'.

Since the interview in Geneva, the Committee on the Rights of the Child concluded on 3 February 2017 its seventy-fourth session after adopting its concluding observations and recommendations on the reports of several States parties. During that session, the Committee held its ninth informal meeting with States, during which it discussed the global study on the situation of children deprived of liberty, the simplified reporting procedure, the Optional Protocol on a communications procedure, and concluding observations. In the discussion, a Press release by OHCHR in 2017 reported that,

States inquired about the integration of the Sustainable Development Goals into the work of the Committee, and about the possible themes for general comments. Speakers suggested some measures that the Committee could adopt to strike a better balance between the time allocated to questions and to answers during the consideration of State reports.

At the closing meeting, Benyam Dawit Mezmur informed the Committee members that there were now 196 States parties to the Convention, whereas there were 166 States parties to the Optional Protocol on children and armed conflict, 173 to the Optional Protocol on the sale of children, child prostitution and child pornography, and 31 States parties to the Optional Protocol on a complaints procedure.<sup>15</sup> During the session, the Committee adopted its General Comment number 21 on children in street situations, which was supported by the London based Consortium on Street children.

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14 General Comments are tools used by Treaty Bodies such as the ACERWC Committee and the CRC Committee to provide substantive elaboration of the meaning of treaty provisions, as well as an in-depth analysis of procedural concerns regarding the human rights treaties. Treaty Bodies also give in General Comments their interpretation of the content of the specific human rights provisions of the particular treaty.

15 The Third Optional Protocol to the CRC on a Communications Procedure (OP3 CRC), which sets out an international complaints procedure for child rights violations, entered into force in April 2014. This allows children from States that have ratified the third Optional Protocol to bring complaints about violations of their rights directly to the UN Committee on the Rights of the Child if they have not found a solution at national level.

*Can you explain why the African States were quick to ratify the CRC but delayed joining the African Charter on the Rights and Welfare of the Child?*<sup>16</sup>

The initial enthusiasm and support for the ACERWC – including reporting – was quite different, as Mezmur reported in 2006 in the *African Human Rights Law Journal*. While it took only nine months after adoption of the CRC from its adoption by the General Assembly on 20 November 1989 to come into force on 2 September 1990 (the fastest ratification of a human rights treaty), it took the members of the Organisation of African Unity (now called African Union) nine years to get the required 15 ratifications for the African Charter on the Rights and Welfare of the Child to come into force (the African Charter came into force on 29 November 1999).

Mezmur:

it took some time for African States to feel ownership and build the momentum, but now we are on the way.

The African Charter on the Rights and Welfare of the Child was adopted in 1990 and entered into force in 1999 (the CRC dates from 1989 and entered into force in 1990). The African States had a feeling that they were not well represented at the negotiations of the CRC, but it nevertheless took us nine years to get the needed 15 ratifications for this African Charter to come into effect. ANPPCAN (The African Network for the Prevention and Protection against Child Abuse and Neglect, headed by the Kenyan psychologist Dr. Philista Onyango) was the main driving force for this instrument and supported the drafting. But the organisation had few resources and UNICEF's mandate did not allow them to push for the ratification of this Charter. The African Union too had limited resources, especially in comparison with the legal counsel's office of the United Nations that kept pushing, and continues to push, for the ratification of the CRC. And some African countries were confused about the difference between the African Charter and the CRC. It were the chapters of ANPPCAN and Offices of Save the Children which started to include this African Charter in training activities and program activities and that started to make a difference. In addition, the ACERWC Committee was only created in 2001 and the Committee started to lobby for ratifications. The celebrations for the Day of the African Child (carried out continent-wide every

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16 This question was suggested to the author by Professor Olga A. Khazova, the Russian member of the CRC Committee.

16 June) also helped to mobilise support. With time, it increasingly became clear that this African Charter was not just copying the CRC, but that it had added value. For instance we did not need a new Optional Protocol for this African Charter to deal with individual complaints, because art. 44 is the basis for individual complaints/communications under the ACRWC. More than ten such cases have been received so far and various decisions – both on merits and admissibility – have been made by the ACERWC Committee. I refer, for instance, to the decision dealing with the communication about children in Northern Uganda and on children of Nubian dissent in Kenya. There was also a decision on a communication relating to Senegal and using children in the form of begging (some Qur’anic schools would send their pupils begging to get income for the school). These cases showed that this African Charter is stronger than the CRC as it included an individual complaints mechanism that is imbedded in it. Also, we have recently noticed that during the follow up meetings on implementations of decisions on individual complaints, governments are sending delegations of six to seven representatives and as well as reporting challenges on the implementation of decisions which is a very positive development.

#### 4 Not Avoiding to Speak Out

In a press release in October 2016 the Office of the UN High Commissioner for Human Rights<sup>17</sup> (UNHCHR, 3 October 2016) could quote Dr. Mezmur as follows:

‘Syria and Russia have both ratified the Convention on the Rights of the Child. In addition, they have ratified the Optional Protocol on the involvement of children in armed conflict’, said Benyam Dawit Mezmur, Chair of the UN Committee on the Rights of the Child. ‘This doesn’t solely mean not recruiting and/or using child soldiers. It means not targeting children in situations of armed conflict; it means not attacking places, such as schools and hospitals, which might amount to war crimes under international humanitarian law’, he said.

‘Yet in eastern Aleppo, this is what we are seeing. Children are being killed and maimed. Airstrikes are hitting the few remaining hospitals.

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17 Dr. Mezmur commented on several other situations: I found the comments on asylum seekers and Australia particularly interesting (UNHCHR Press release, 3 February 2016).

The use of bunker-busting bombs means children cannot even safely attend schools that are underground', Mr. Mezmur added.

The Geneva-based Committee recently heard accounts from visiting Syrian doctors who detailed their struggle, given the scale and extent of casualties among civilians, to treat the terrible injuries children are suffering. 'Children are not only being seriously injured but are trapped amid the continuing bombardment, unable to escape and receive life-saving medical care', Mr. Mezmur noted in the press release.

'Even if the war were to end today, it will take decades to recover from the destruction wrought on Aleppo and across Syria and the psychological wounds to heal from the trauma inflicted on these children. We are probably not talking of a lost generation, but quite possibly of lost generations', said the Chair of the UN Committee on the Rights of the Child.

'The stunned, bloodied face of five-year-old Omran Daqneesh sitting in an ambulance after being pulled from the rubble horrified the world, not least because it showed that war is all this child has known in his short life', said Mr. Mezmur.

Mezmur stressed in the press release:

We call on Syria and Russia, as well the international community, to show they abide by their human rights obligations set out in those treaties and find a way to end this raging conflict now. Omran must not be an adolescent or even a young adult before he knows what peace is.

Benyam Davit Mezmur also joined two other experts (Ms. Asma Jahangir, Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, and Ms. Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions) to call upon Iran to abide by its obligations under international human rights law and stop carrying out death sentences passed on persons who committed offences when they were children. They called on 20 April 2017 together<sup>18</sup> for an immediate halt to the execution of two persons, who were sentenced when they were both under 18. There were a few other important press releases, like the one on migration. Dr. Mezmur concluded, together with the Special Rapporteur on the human rights of migrants, the Chair of the Committee on the Protection of the Rights of All Migrant Workers

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18 The UNHCHR Press release was published on 28 April 2017.



and Members of Their Families, the Chair of the Working Group on Arbitrary Detention, that

governments should stop placing children and families in immigration detention. The detention of children has been increasing amid rhetoric and policies that seek to criminalise undocumented migrants, including children. However, there is never a justification for such detention.<sup>19</sup>

## 5 Ending Two Years of Serving as the Chair of the CRC Committee

*How would you value the relationship with States Parties?*

Mezmur:

I am very glad that the Committee managed to introduce more platforms for communications with representatives of States. One of these was for an informal meeting with State Parties, which was a good idea I thought, but has been discontinued. The opportunity offered to States to comment on advance versions of draft General Comments is another example. I also believe we need not only to put pressure on those in power, but make a distinction on when to scream truth to power, speak truth to power, and whisper truth to power. This means meeting Ambassadors, writing letters, and sometimes issuing press statements in addition to the usual review of State Party reports that we conduct as our core mandate. I am fully aware that some progress depends on the availability of resources, but there are States with enormous resources and very limited political will, which is a very serious issue we need to address in our collective efforts to create a better world for children.

Dr. Mezmur thinks that on certain subjects cooperation with, for instance, colleagues in the UN of the Committee on Economic, Social and Cultural Rights (CESCR) and with the Committee on the Elimination of Discrimination against Women (the CEDAW Committee), can help to follow up issues which were raised with certain States Parties. CEDAW and the CRC Committee, in 2014 already published a joint General Comment on Female Genital Mutilation.

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19 OHCHR, *Children and families should never be in immigration detention – UN experts*, Geneva, 18 December 2016.

*How do you look back upon the time as the Chair of the CRC Committee?*

Dr. Mezmur:

I have been very lucky with the confidence placed in me by my colleagues in serving at this period in time, as it was an exciting time but there were also a lot of unknowns and challenges. The first cases were coming in under the Optional Protocol on the communications procedure, which entered into force in April 2014. We had a number of new measures in place as result of the General Assembly resolution of 9 April 2014 on strengthening and enhancing the effective functioning of the human rights treaty body system (known as resolution 68/268). When I came in as Chair, we had already started working in dual chambers, and the use of dual chambers increased. As a result there was more work and a demand on the time of Members of the Committee and the OHCHR. We reduced the backlog of State Party Reports which were not yet reviewed. We also started to lobby to get more ratifications of the Optional Protocol on the Communications Procedure. We had three General Comments being processed (No. 19 on public budgeting for the realization of children's rights, No. 20 on the implementation of children's rights during adolescence, No. 21 on children in street situations) and one Joint General Comment with the Committee on Migrant Workers, and we were very busy working on them often during our free time in the weekends and lunch breaks.

There were also a number of world events that were taking place during this time. The issues related to the Ebola virus in Africa in 2014 and ZIKA in 2015 in Latin America comes to mind. It was also the height of the migration crisis. There was ISIS and the war on terror, and in a number of instances the response to it posed new challenges. A number of people were facing the death penalty for offences that they committed while below the age of 18. In some instances their ages were contested, and there was no conclusive evidence that they were above 18 when they committed the offence that lead to the sentencing of a death penalty. Children were being killed in Syria by cluster bombs and children were killed in Yemen. Sexual abuse cases involving peacekeepers, and the effect of climate change and the effects of global warming on children also needed our attention. There were also State Reports of a number of countries such as France, Central African Republic, Democratic Republic of Congo, Brazil, Mexico, the UK including Northern Ireland, Kenya, Iran, Pakistan, the Netherlands, and Saudi Arabia, that raised complex issues and needed very careful consideration. In a number of occasions,

we joined hands with several Special Rapporteurs, as well as the Special Representative of the Secretary-General on Violence against Children and the Special Representative of the Secretary-General on Children and Armed Conflict on a number of issues.

*Do you think it is a good idea to have a term of two years for the Chair of the CRC Committee?*

Dr. Mezmur:

The CRC Committee abandoned the idea of having a Chair for multiple terms as was the case before. We now go for one term, which is for a period of two years. We have changed the rules of procedure<sup>20</sup> of the CRC Committee to make this a rule. I think there are many advantages of this approach. Personally I feel that it in part helped me to be more focussed. As experience shows, with a pre-determined timeframe which is not renewable, it helps Chairs to make decisions more independently of other considerations such as wanting to be re-elected in two years' time to continue as Chairperson. You do less pleasing and focus more on the priorities and principles. Besides, as much as possible, it is good to have new blood in the CRC Chairperson position. Leadership qualities are abundant in the Committee, and it is important to give an opportunity to others. The amended Rule facilitates these aims too.

## 6 Do We Manage to Create a World Fit for Children?

*What do you think about the idea of the president of the World Bank (Jim Yong Kim, a former physician), as formulated in The Guardian of 1 October 2016, that he might 'shame countries that fail to tackle malnutrition and poor growth of their children'?*

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20 Rule 17 (Officers): ... (2) In order to ensure an equitable geographic distribution among the officers, the Chairperson and the four Vice-Chairpersons should as far as possible represent different geographic regions and the three different working languages of the Committee. (3) The Committee should as far as possible ensure geographic rotation of the Chairperson. Rule 19 (Elections): (1) Elections shall take place during a formal meeting of the Committee, at the opening of the May/June Session, every two years (*odd years*), in a closed meeting.

Dr. Mezmur:

I think the World Bank has a role to play. Still, I am very critical of the World Bank and the IMF, because they have not recognised the added value of the language of rights. Here I am inspired by the former Special Rapporteur of the right to education, Katarina Tomasevski, who spoke out against the mentality of the IMF and the World Bank.<sup>21</sup> Children's rights is not a panacea but the impact of projects the World Bank and the IMF finance and not only relating to food, also sanitation and education, would be bigger if children's rights would be introduced as a precondition. I am very critical how the World Bank is separating *hunger* from *poverty*, because they are linked. The SDGs are an improvement in this respect because their first goal states that we should end poverty in all its forms everywhere and the second goal is that we should end hunger.

'We did *not* yet manage to create a world fit for children' says Mezmur. He quoted a UN Inter-Agency Group (UNICEF, 2014) which reported that in 2013, 17,000 children under the age of five still died every day and mainly from preventable diseases. Mezmur is worried by another UNICEF report (UNICEF, 6 July 2015) which stated that by the end of 2015 almost 65 million adolescents between the ages of 12 to 15 years old were denied their right to an education, in addition to 59 million children of primary education that were out of school. Mezmur: 'We have to remedy these data. I am also worried that in rural places many children do not get the vaccinations they need' and he quotes the World Health Organisation (WHO, 2016) which reported that an *estimated 19.4 million infants worldwide are still missing out on basic vaccines*. He also quoted UNICEF (UNICEF, 23 April 2015) which stated that over 1,200 children die every day from malaria – 'about 50 children every hour'.

Mezmur:

Many African States Parties to the CRC and the African Charter to the Rights and Welfare of the Child are still struggling with these issues. In this light I favour a more focussed dialogue with the CRC Committee and more follow up recommendations by the CRC Committee with different networks, UNICEF, human rights institutions and the States Parties.

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21 Katarina Tomasevski, (2001).

## 7 Constructive Dialogue with State Parties

Dr. Mezmur thinks the follow up on specific issues (like the ones mentioned by UNICEF and the WHO) is critical in order to achieve more progress. And on every issue more and better research is needed, is his plea. Dr. Mezmur thinks that there are many other emerging issues which need to get adequate attention, both by the CRC Committee and the ACERWC: harm of children on the internet, surrogacy issues, euthanasia, child's rights in emergencies (like being exposed to the Ebola-virus, and Zika) are some of these issues. He believes that both Committees have to give guidance to States Parties by taking more nuanced positions and that the Committees need to contribute to a more solid jurisprudence including on emerging issues. And he also believes that the Committees have to take the latest sustainable development call<sup>22</sup> and the concerns about climate change<sup>23</sup> very seriously. He is of the opinion that the Committees have to show the way and tune in with the Post-2015 Development Agenda, overcoming poverty and insecurity, and ensuring sustainable development.<sup>24</sup> Therefore the Committees, in Mezmur's opinion, have to pull States into the work of the Committees. Mezmur is someone who sees the big picture but at the same time tries to find practical solutions. For the CRC Committee, Mezmur believes, for instance, in very practical solutions: he believes in scheduling States Parties in for a *constructive dialogue with the CRC Committee* at times when the delegation can call to the Ministries in the capital. Sometimes when delegation members do not know the answer, calling home is effective because they can get answers, which they will share with the CRC Committee. But for that they need to reach their colleagues in the office in the capital. To see as the CRC Committee a delegation in the afternoon and the next morning is sometimes such a practical solution. At night in Geneva they can call, because at the other side of the world it is morning. Mezmur: 'We organised a closed session with representatives of States Parties to which about 80 representatives of States Parties came' and have put there the Optional Protocol on the sale of children, child prostitution and child pornography on the

22 United Nations, General Assembly resolution A/RES/70/1 (25 September 2015).

23 The Day of General Discussion of the Committee on the Rights of the Child in 2016 was dedicated to Children's Rights and the Environment.

24 See also the Note to UN Member States by the President of the General Assembly, John W. Ashe, of 5 December 2013.

agenda. He said that the CRC Committee shared its disappointment with the low amount of reporting to the CRC Committee of this Optional Protocol (on the sale of children, child prostitution and child pornography).

'We are with the CRC Committee pushing for universal ratification (at the moment there are 173 ratifications, including the United States of America, 9 signatories and 16 States which have taken no action yet)' says Mezmur. But the CRC Committee is also, according to Mezmur, not shying away from criticism of its own functioning and he says 'we wanted to learn from the State Parties what we should do different'.

The ACERWC has interesting ways of following up which the CRC Committee does not do. The ACERWC Committee can send, for instance, a few committee members to a State Party two years after Concluding Observations are published, as a matter of follow up. There are, says Mezmur, important developments: France has ratified all three Optional Protocols to the CRC (the last one in January 2016), as did Samoa (as the first Pacific country to do so, Samoa ratified the last Optional protocol in April 2016). Mezmur is looking for new ways too to keep the momentum. He says that a delegation of a State Party often leaves Geneva after the constructive dialogue with the CRC Committee with a certain level of commitment and he wants to look for ways as to how this level of commitment can be kept up. In this respect Mezmur thinks that it is important that the follow up activities must extend to children.

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