



**ACERWC**  
African Committee of Experts on  
the Rights and Welfare of the Child

**DAY OF THE AFRICAN CHILD 2023**

***THEME: THE RIGHTS OF THE CHILD IN THE DIGITAL ENVIRONMENT***

**CONCEPT NOTE**

## A. INTRODUCTION AND BACKGROUND

1. The theme for the Day of the African Child (DAC) 2023 is titled “***The Rights of the Child in the digital environment***”. The African Committee of Experts on the Rights and Welfare of the Child (the Committee/ ACERWC), established under Articles 32 and 33 of the African Charter on the Rights and Welfare of the Child (the Charter/ ACRWC) selected this theme for the commemoration of the DAC in 2023.
2. In 1991, the Assembly of Heads of State and Government of the OAU instituted the DAC in memory of the 16<sup>th</sup> June 1976 student uprising in Soweto, South Africa. At that time, students marched in protest against the poor quality of education they received and demanded to be taught in their languages.
3. The DAC serves to commemorate these children and the brave action they took in defence of their rights. The DAC thus celebrates the children of Africa and calls for serious introspection and commitment towards addressing the numerous challenges facing children across the continent. The celebration should be contextualized by Member States as a build-up to the realization of the rights of children from the family/community level to national and international levels.

## B. CONTEXT OF THE DAC 2023 THEME

### ***Understanding the rights of the child in the digital environment***

4. Internet access and usage has been increasing globally. As of May 2022, there were about 590 million users (43% internet penetration) in Africa.<sup>1</sup> These figures include children, who represent a third of all internet users in the world,<sup>2</sup> and are increasingly exposed to the virtual environment. The ACERWC notes that the digital era has fundamentally changed the way in which children exercise and realise their rights.
5. Noting that the lives of children are mediated by the digital environment in ways that impact how they can enjoy their rights and how their rights may

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<sup>1</sup>Internet World Stats Usage and Population Statistics <https://www.internetworldstats.com/stats1.htm> (accessed 17 August 2022).

<sup>2</sup> S Livingstone *et al* ‘One in three: Internet Governance and children’s rights’ (2016) 7.

be improved or transgressed, it is clear that the effect of the digital environment for children needs to be considered in the context of rights set forth under the African Children's Charter. The relevant rights include not only children's rights to protection from all forms of violence, but also their rights to participation and provision. In the absence of proper mechanisms of protection, children will be susceptible to greater risks of harm online.<sup>3</sup> A child acting in the online environment is not different from a child offline,<sup>4</sup> and the same rights that children have offline must be protected online. In that regard, the ACERWC emphasizes that the rights of children enshrined in the ACRWC also apply in the online context. Legislative, policy, and other responses must reflect this understanding.<sup>5</sup>

6. It should be also understood that the ACERWC has identified four rights in the ACRWC which serve as guiding principles underpinning all children's rights. These are non-discrimination (article 3), the best interests of the child (article 4), survival and development (article 5), and child participation as reflected under the right to freedom of expression (article 7). These guiding principles should be applied in all measures taken to guarantee the realization of children's rights in the digital environment.
7. The African Children's Charter stipulates that the promotion and protection of the rights and welfare of the child also implies the fulfilment of duties by all relevant stakeholders.<sup>6</sup> In understanding children's rights in the digital environment, it is critical to highlight that a number of stakeholders have a role to play in ensuring promotion and protection of children's rights in the digital sphere. These are the State, the private sector, and parents/guardians/ caregivers, as well as CSOs, UN Agencies, NHRIs, and child and youth-led organisations.

### C. RATIONALE OF THE DAC 2023 THEME

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<sup>3</sup> ACERWC General Comment No.7 on article 27 'Sexual Exploitation' (2021) para 10.

<sup>4</sup> ACERWC General Comment No. 7, para 55.

<sup>5</sup> Media Monitoring Africa 'Children's Rights Online: Towards a digital rights Charter' (2020) 10.

<sup>6</sup> Preamble to the ACRWC.

8. The ACERWC acknowledges that the internet has provided invaluable opportunities for the realisation of children’s fundamental rights and freedoms such as the right to education, freedom of expression, and freedom of association, among others. Access to the internet has also ensured that some children still have access to these rights in the event of emergencies, such as the COVID-19 pandemic. However, the ACERWC notes that lack of access to the internet still remains a primary challenge to children meaningfully participating in the digital sphere. According to a UNICEF report that was published in 2020, as little as 1% of children living in the poorest quintiles of West and Central Africa have access to the internet.<sup>7</sup> The report further reveals that only 5% of children and young people aged 25 years or less and just 13% in Eastern and Southern Africa have internet access at home, compared to 59% in Eastern Europe and Central Asia.<sup>8</sup> These digital divides mirror broader socio-economic divides – between rich and poor, men and women, cities and rural areas, and between those with education and those without.<sup>9</sup> The ACERWC notes that lack of access to the internet impedes on children’s rights such as education, freedom of expression, freedom of association and the right to play, among others. Despite these challenges, the ACERWC notes that only a few African countries have scaled up digital access and many children still do not have access to the internet and technology in Africa.
9. Further, the Committee notes that the internet also presents risks for the infringement of children’s rights. An increase in internet usage comes with a bigger risk of children being susceptible to sexual exploitation online. Online child sexual exploitation and abuse (OCSEA) includes the use of children in pornographic activities, performances and materials (child sexual abuse material), sexual extortion, online grooming, and exposure of children to adult pornography. Children’s privacy can also be compromised in the online environment due to a number of practices such as the sharing of children’s personal information by children or adults; data collection and

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<sup>7</sup> UNICEF & ITU ‘How many children and young people have internet access at home? Estimating digital connectivity during the COVID-19 pandemic’ (2020), 10.

<sup>8</sup> As above, 2; 4.

<sup>9</sup> UNICEF ‘The State of the World’s Children’ (2017) 43.

processing by public institutions, businesses and other organizations; and criminal activities such as identity theft. Other threats to children online include cyberbullying and exposure to harmful content and advice.

10. The Committee notes that there is an information gap with regards to online harms affecting children, with only three countries (South Africa, Ghana and Kenya) having produced reports on children's online experiences, including on the violation of children's rights online. The ACERWC further notes that there are serious limitations in legislative frameworks including Internet Service Provider (ISPs) regulation, in law enforcement infrastructure to identify and respond to OCSEA and to ensure the protection of children's personal data among Member States. Awareness and understanding of these forms of criminality often remains limited among policymakers.<sup>10</sup>
11. Against this backdrop, the ACERWC decided to commemorate the DAC 2023 under the theme '***The rights of the child in the digital environment***' to encourage Member States to ensure the protection and promotion of children's rights in the digital environment.

### **D. INITIATIVES IN ENSURING THE REALIZATION OF CHILDREN'S RIGHTS IN THE DIGITAL ENVIRONMENT IN AFRICA**

#### ***Responses by the ACERWC, African Union and Regional Economic Communities (RECs)***

12. The ACERWC notes the normative and policy framework on children's rights online at the level of international law, particularly the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC), the UN CRC General Comment 25 on children's rights in relation to the digital environment, the Council of Europe's Convention on Cybercrime (Budapest Convention) and the Council of Europe's Convention on the Protection of children against sexual exploitation and sexual abuse; the International Telecommunications

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<sup>10</sup> African Union Initiative on strengthening regional and national capacity and action against online child sexual and abuse in Africa Strategy and Plan of Action 2020-2025 [https://au.int/sites/default/files/newsevents/workingdocuments/41106-wd-Continental\\_Strategy\\_POA\\_Draft-16\\_Oct\\_2020\\_-\\_English.pdf](https://au.int/sites/default/files/newsevents/workingdocuments/41106-wd-Continental_Strategy_POA_Draft-16_Oct_2020_-_English.pdf) (accessed 17 August 2022).

Unit (ITU) Guidelines on Child Online Protection; the ITU Resolution 179 (ITU's role in child online protection); the UN Guiding Principles on Business and Human Rights; and the Children's Rights and Business Principles.

13. The ACERWC has undertaken a number of initiatives to ensure the realization of children's rights in the digital environment. Agenda 2040 calls upon Member States to ensure that, by 2040, schools provide universal access to affordable ICT devices, content and connectivity, and integrate these into teaching and curricula;<sup>11</sup> and that no child is exposed to sexual exploitation and used for child pornography.<sup>12</sup> In 2019, the ACERWC conducted a Day of General Discussion on OCSEA during its 33<sup>rd</sup> ordinary session.<sup>13</sup>
14. In 2021, the ACERWC adopted General Comment No. 7 on Article 27 of the ACRWC (sexual exploitation). The General Comment describes legislative, administrative and other measures that should be taken by State Parties to protect children from all forms of sexual exploitation and abuse both offline and online. Most importantly, GC No. 7 stresses that legal and policy frameworks should be reviewed and where necessary adapted to rapidly changing realities concomitant with developments in the digital world.<sup>14</sup>
15. In 2022 the ACERWC's Working Group on Children's Rights and Business adopted Resolution 17/2022 on protection and promotion of children's rights in the digital sphere to offer guidance to Member States, businesses/ private sector and NGOs/ CSOs on this issue. During its 40<sup>th</sup> Ordinary Session, held from 23 November to 1 December 2022, the ACERWC held a Day of General Discussion on children's rights in the digital world to identify challenges faced by children in the digital environment and the possible solutions to those challenges.
16. The African Union has also taken notable steps in ensuring the realization of children's rights online. The AU adopted the Convention on Cybersecurity and Personal Data Protection (Malabo Convention) in 2014 which seeks, in terms of substantive criminal law, to modernize instruments for the

<sup>11</sup> Africa's Agenda for Children 2040 Aspiration 6, 33.

<sup>12</sup> Agenda 2040, Aspiration 7, 38.

<sup>13</sup> 33<sup>rd</sup> Session of the ACERWC (2019) <https://www.acerwc.africa/sessions/> (accessed 17 August 2022).

<sup>14</sup> ACERWC, General Comment No. 7 of Article 27 of the ACERWC 'Sexual Exploitation', para 132.

repression of cybercrime by formulating a policy for the adoption of new offences specific to ICTs, and aligning certain offences, sanctions and criminal liability systems in force in Member States with the ICT environment. Notably, the Malabo Convention has some provisions on the criminalization of child pornography.

17. AU also adopted a Data Policy Framework in 2022 which sets out a common vision, principles, strategic priorities, and key recommendations to guide African countries in developing their national data systems.
18. The AU Commission (AUC) has also undertaken some initiatives on children's rights online through its various departments. The Department of Health, Humanitarian Affairs and Social Affairs is implementing a project titled 'Strengthening Regional and National Capacity and Action against Online Child Sexual Exploitation (OCSE) in Africa. The AUC also developed a Strategy and Action Plan against Online Child Sexual Exploitation and Abuse (OCSEA) in Africa (2020-2025).
19. It is also noted that in 2019, the African Commission on Human and Peoples' Rights adopted the Declaration of Principles on Freedom of Expression and Access to Information in Africa which calls upon States to adopt laws, policies, and other measures to promote affordable access to the internet for children that equips them with digital literacy skills for online education and safety, protects them from online harm, safeguards their privacy and identity,<sup>15</sup> and provides for the duty of internet intermediaries to expeditiously remove online content that poses danger or may be harmful.<sup>16</sup> The Declaration also prohibits the harmful sharing of personal information such as child sexual abuse material.<sup>17</sup>
20. The ACERWC also notes efforts by RECs to tackle violations of children's rights online such as the EAC Framework for Cyber laws (2008) and the ECOWAS Directive on Fighting Cyber Crime (2011) which provide for offences related to child pornography.

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<sup>15</sup> Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019) Principle 37 (5)

<sup>16</sup> As above, principle 39 (5).

<sup>17</sup> As above, principle 42 (6).

**Position in Member States**

21. Beyond the formulation of constitutional protections for children's rights, a number of Member States have introduced specialised legislation for navigating the digital world. There are several recent reforms relating to data protection with more than half of African countries having enacted privacy and data protection laws. Whilst these laws are also applicable to children by virtue of the universality of rights, notably, some countries such as South Africa, Kenya, Egypt, Tunisia, and Mauritius have taken a step further in ensuring that these laws have child sensitive provisions and safeguards.
22. It is also noted that in most cases, national legislation includes legal stipulations relating to child sexual abuse material and some countries are in the process of reviewing existing legislation and drafting legislative instruments addressing OCSEA. Zambia and South Africa have also introduced laws that address cyberbullying.
23. It is also notable that some Member States have been instituting plans for the roll out of internet access throughout their countries. For instance, Namibia's 2020 Broadband Policy expressly includes children in the development of its advocacy and dissemination strategies.<sup>18</sup> It is further committed to ensuring all schools have broadband infrastructure by 2023.<sup>19</sup>

**Legislative, institutional and administrative gaps in the realization of children's rights online**

24. Although the efforts made by some Member States are commendable, the Committee observes that some countries lack capacity-development incentives for cybersecurity – which aim to bridge the digital divide, build institutional knowledge, and address policy awareness limitations and skills shortages for cyber protection.<sup>20</sup> Further, there is a lack of child-specific legislation and policies as pertains to the digital environment. There is limited awareness and capacity amongst some governments and policy

<sup>18</sup> The Republic of Namibia, *National Broadband Policy* (2020), 8.8.

<sup>19</sup> As above, 32.

<sup>20</sup> ITU 'Are African countries doing enough to ensure cybersecurity and Internet safety?' September 2021 <https://www.itu.int/hub/2021/09/are-african-countries-doing-enough-to-ensure-cybersecurity-and-internet-safety/> (accessed 20 July 2022).

makers within Africa on the need and manner in which to prioritise child online safety.

25. Whilst a number of African countries have enacted Data Protection Laws, only a few have comprehensive provisions on the protection of children's data hence there is no standardised way of protecting children's personal data. The same applies to online exploitation and abuse wherein most laws focus on child pornography while other forms of online exploitation such as online grooming, cyberbullying, and exposure to harmful or inappropriate content are not addressed.
26. Further, as of August 2022, the Malabo Convention has only been ratified by 13 countries and is still not in force. Such a slow pace towards ratification will impede the timely achievement of the objectives of the Convention hence jeopardizing the protection of children's rights online.
27. There is a further gap as pertains to ensuring that Member States, themselves, do not infringe on the rights of children in the digital sphere. For example, between 2016 and 2021, 68 internet shutdowns were documented in 29 African countries.<sup>21</sup>
28. Lack of access to the internet is a further impediment to the realisation of children's rights in the digital environment as concerns the African context. It is imperative that Member States make concrete arrangements to address this disparity.

### **E. OBJECTIVE OF THE DAC 2023**

29. The overall objective of the DAC 2023 is to raise awareness on the promotion and protection of children's rights in the digital environment and to encourage Member States and other relevant stakeholders to make commitments towards the realisation of children's rights in the digital environment.

### **F. EXPECTED OUTCOMES/ACTIVITIES TO BE UNDERTAKEN BY THE ACERWC TO COMMEMORATE THE DAC 2023**

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<sup>21</sup> African Internet Rights Alliance, *Study on Internet Shutdowns in Africa* (2021), 4.

30. The ACERWC envisages the following outcomes/activities during the commemoration of the DAC in 2023:

- a. Establishment of a Children’s Committee made up of child representatives from varying identities to provide input and consult on the formulation of the continental commemoration;
- b. Continental commemoration of the DAC 2023;
- c. Compilation and publication of best practices on the state of children’s rights in the digital sphere in Africa;
- d. Creation and launch of child-friendly content on ACERWC website i.e. illustrated summaries of communications, accessibility tools, podcasts, child-friendly videos etc; and
- e. Conducting a study on an issue that is pertinent to the theme

#### **G. RECOMMENDATIONS FOR MEMBER STATES**

30. The Concept Note aims to inform specific activities that Member States should undertake in line with the theme of DAC 2023. These recommendations have the objective to inform the content and structure of Member States’ reports to the ACERWC on how their commemoration of DAC 2023 has played a crucial role in promoting and protecting children’s rights in the digital environment. The recommendations are as follows:

- a. Ratify and domesticate the AU Convention on Cybersecurity and Personal Data (Malabo Convention) and other applicable international instruments;
- b. Set aside sufficient resources for the provision of ICT services, particularly in schools;
- c. Develop online child protection frameworks which tackle violation of children’s rights online, including OCSEA, with a reporting and investigation mechanism and precise conditions and rules for extradition, extra territorial jurisdiction, mutual legal assistance, and the seizure and confiscation of goods;
- d. Enact Cyber Security and Data Protection legislation, which also offer guidance on the protection of children’s privacy and personal data;

- e. Create toll-free national emergency numbers that are always available for reporting online violations and for the provision of information on and referral to protection and support services for survivors;
- f. Establish by law the responsibility of ICT companies and financial institutions to protect children's rights online and hold business accountable for child rights violations online;
- g. Adopt appropriate regulatory frameworks to hold businesses accountable where they are found to have participated in online sexual abuse and exploitation;
- h. Mandating for the participation of children in decision-making processes through the use of digital technologies presented in a child-friendly format;
- i. Ensure caregivers and teachers are sufficiently equipped to assist children in safely navigating the digital environment;
- j. Initiate training for members of law enforcement and the judiciary to capacitate them to comprehensively address issues of child online protection;
- k. Take steps to remove existing barriers faced by children with disabilities and other children from marginalized and vulnerable communities (refugee children, IDPs, migrants, children affected by armed conflicts, etc.) in relation to the digital environment;
- l. Explore mechanisms through which the digital environment can be utilised to enhance children's rights, e.g. online birth registration services, soft-copy publication of key legislation and statistics relating to children, and updated online platforms; and
- m. Establish accountability mechanisms to ensure State Actors do not infringe on children's rights in the digital world such as through unethical surveillance practices, internet shutdowns, etc.

### **H. METHODOLOGY**

31. The Committee, in collaboration with a Member State of the African Union will conduct a Continental Commemoration of the DAC on June 16, 2023.
32. The Committee recommends that all AU Member States, in collaboration with civil society, UN agencies and other partner organizations, celebrate the DAC through a wide variety of national and sub-national events and activities.

Member States and partners are also encouraged to promote the DAC through local and national media coverage.

33. The Committee strongly recommends the active participation of children in the planning, implementation and monitoring of DAC activities.

**ANNEX**

Monitoring Framework for Reporting on Commemoration of the Day of the African Child 2023: Template: **‘The rights of the child in the digital environment’**.

This template is a reporting framework that the AU Members States and other stakeholders may use to report to the Committee on the celebration of the DAC on 16 June 2023, on the theme, **‘The rights of the child in the digital environment’**.

**Country/Organization:**

**Partners:**

**Measures and Activities undertaken:**

- **Summary/Analysis of the theme as it applies to national, local or organizational context**
- .....

- **Legal, policy, administrative and other measures in place to ensure that every child has access to the internet and technology devices**
- .....

- **Groups of children who are particularly affected by the digital divide and the measures undertaken to address their specific challenges**
- .....

- **Legal, policy, regulatory, administrative and other measures in place to ensure the protection of children’s rights in the digital environment (protection from online sexual exploitation and abuse, cyberbullying, and mitigating threats related to privacy and personal data protection etc)**
- .....

- **Groups of children who are particularly affected by the violation of children’s rights online and the measures undertaken to address their specific challenges**

- **Measures to be undertaken to identify, reach and promote awareness about the safety of children in the digital environment**

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- **Campaigns launched, studies conducted, partnerships established to tackle violation of children’s rights in the digital sphere**

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- **Key progress achieved at country level with regards to online child protection**

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- **Major challenges at country level with regard to the promotion and protection of children’s rights in the digital environment**

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**Report on events organized on or leading up to 16 June 2023**

<b>EVENT</b>	<b>DETAILS OF EVENTS</b>	<b>NO. OF PARTICIPANTS/THOSE REACHED (CHILDREN)*</b>	<b>DETAILS OF IMPLEMENTING AGENCY</b>	<b>NATIONAL, REGIONAL OR DISTRICT LEVEL IMPACT</b>

**\*Provide disaggregated data on age, sex, place of origin, etc.**