

CALL FOR INDIVIDUAL CONSULTANCY SERVICES

Development of Guidelines on Reparations under the ACERWC's Communications Procedure

Background and justification

1. The African Charter on the Rights and Welfare of the Child (Charter) provides for substantive rights for children and sets forth a mechanism through which these rights can be protected. The Charter establishes the African Committee of Experts on the Rights and Welfare of the Child (ACERWC/Committee), the treaty body in-charge of monitoring the implementation of the rights embodied therein, including receiving and considering Communications on alleged violations of the Charter pursuant to article 44.
2. The ACERWC provides for reparations through its decisions on Communications in relation to violations of the provisions of the Charter. In its decisions, the Committee makes recommendations, including the measures the concerned State party needs to undertake to provide reparation. As of August 2023, ACERWC had issued decisions on the merits of nine communications and had two amicable settlement agreements negotiated under its auspices. All of the decisions of the Committee contain various types of reparative measures to be undertaken by the respective Respondent States.
3. The ACERWC notes that its decisions arising out of its mandate could result in better implementation of the rights enshrined in the Charter if it provides adequate reparations for the harm suffered. A victim-oriented perspective that presupposes award reparations by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations, is therefore key to the full realization of children's rights.
4. According to Section XIX (1) (ii) of the ACERWC's Revised Guidelines for the Consideration of Communications and Monitoring Implementation of Decisions (Revised Communications Guidelines), "the decision adopted by the Committee shall contain recommendations on actions to be taken by the parties to remedy the violations found by the Committee and the operative aspects of the decisions including compensations if any". This provision, read with Article 44 of the Charter, mandates the Committee to order reparations when State Parties are found to have violated the right(s) recognized in the Charter. However, the Revised Communication Guidelines do not contain detailed rules on the reparations to guide the decisions of the Committee.

5. There are evolving laws in the area of the right to reparation, mainly reflected in the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations. These Principles set forth the various forms of reparation, their scope and content, covering both monetary and non-monetary reparations¹ including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.² There are also similar Guidelines developed by regional treaty bodies such as the African Court on Human and Peoples' Rights.

6. Considering the several key issues and challenges that arise out of assessing reparations, among others when valuing monetary damages and assessing the quantum of reparations, the Committee notes the importance of developing Reparations Guidelines to ensure the consistency of its jurisprudence with the organs of the African Human System and regional and international standards. The Committee notes that such Guidelines are further required to support the work of the Committee in the assessment of violations, identification of victims as well as specific considerations when awarding the different forms of reparation.

7. In addition, the AERWC's Strategic Plan for 2021-2025 includes a plan for strengthening follow-up on the decisions of the Committee, under objective 3.1 entitled "strengthen the ACERWC's key accountability mechanisms – state reporting & individual communications handling". The Strategic Plan states that the Committee shall endeavor to provide elaborate decisions outlining the measures that States need to take to rectify violations.

8. In this context, the Committee, through its Working Group on Implementation of Decisions, would like to procure an individual consultancy services to develop Guidelines on Reparations for its Communications Procedures.

Objectives

9. The aim of the Reparations Guidelines is to provide the Committee with guidance on the various substantive and practical aspect that it will need to consider in issuing decisions on violations of the Charter. More specifically, the objectives of the development of the Reparations Guidelines include:

- Enhancing the effectiveness of the Communications Procedure by ensuring the best interests of the child by providing for reparations that are victim centered;
- Increasing the implementation of decisions by enabling the Committee to provide concrete and measurable remedies;

¹ United Nations Audiovisual Library of International Law, Theo van Boven, the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: https://legal.un.org/avl/ha/ga_60-147/ga_60-147.html

² UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, principles 19 to 23.

- Facilitating the follow-up activities of the Committee to monitor the implementation of its decisions;
- Assisting the Committee to identify what kind of reparation to issue considering the violations alleged;
- Enabling the Committee to undertake assessment on the level of violations which can lead to reparations that are capable of addressing the harm caused

Scope

10. The Guidelines should include the below aspects:

- Definition of the right to reparation in the context of the Charter;
- Identification of victims while protecting the rights of children in the identification process;
- Determining reparations which may include the four general principles of the Charter namely non-discrimination, child participation, the best interests of the child, and the right to life, survival and development as well as other general principles of reparations such as adequacy, effectiveness, sufficiency, inclusiveness, and proportionality of reparations;
- Kinds of reparations that the Committee can resort to in its decisions on reparations along with guidance on which type of reparation applies to which kind of violation of the Charter;
- Guidelines on how the Committee can assess and quantify the damage that occurred due to the violation that took place;
- Mechanisms in which the Committee can identify and measure violations including the standard of proof of violations, the burden of proof of violation of rights as well as the standard and admissibility of evidence to prove the damage incurred due to the violation of rights;
- Aspects of execution of decision on reparations including how States should implement, how the Committee can engage States to adopt the reparations ordered and how the Committee can utilise the mandates of the policy organs of the African Union to ensure the execution of reparations;
- Issues in relation to implementation of decisions on reparation including mechanisms for reporting on implementation, and for monitoring implementation.

Methodology and Approach

14. The Consultant is expected to develop the guidelines by using both qualitative and quantitative data from primary and secondary sources. Information will be collected from desk reviews as well as interviews and discussions. The Consultant, in consultation with the Committee and the Working Group, will identify tools that will be used for the collection of data and information.

15. Primarily, the Guidelines will draw inspiration from the existing norms and practices on reparations from the jurisprudence of international and regional treaty bodies.

16. In particular, the Committee's working documents, and other established norms should be consulted which among others include:

- Rules of Procedures,
- Guidelines for Consideration of Communications,
- the United Nations (UN) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations,
- the African Court on Human and Peoples' Rights Reparations Guidelines and its Comparative Study on the Law and Practice of Reparations for Human Rights Violations,
- General Comment No. 4 of the African Commission on Human and Peoples' Rights on (Article 5) of the African Charter on Human and Peoples' Rights regarding the Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment,

Key Deliverables

- A detailed inception report outlining the understanding of the assignment, the methodology to be employed, and the proposed structure of the Reparations Guidelines. The inception report will be discussed prior to the commencement of the assignment in an inception meeting.
- Draft Reparations Guidelines
- Presentation of the draft during the Session of the Committee and during a Validation Workshop. The Consultants will be responsible for facilitating and being a rapporteur during the validation workshop.
- A detailed report of the validation workshop; and
- A Final Reparations Guidelines after incorporating all the comments which will be adopted during the Session of the Committee

Qualifications

19. The Consultant(s) should have:

- An advanced university degree in Law, International law, Human Rights, Child Rights,
- Minimum 7 years of demonstrated work experience related to children's rights/ human rights or related field in the African context;
- Demonstrated knowledge of the practice, procedure, and jurisprudence of the African human rights system;
- Demonstrated knowledge, experience and understanding of the African Children's Charter as well as the ACERWC and its Communications Procedures;
- Fluency in English or French is required; knowledge of additional African Union working languages is desirable; and
- Excellent writing and analytical skills, using both qualitative and quantitative methods.

Application

20. The ACERWC invites eligible Individual Consultants to indicate their interest in providing the consultancy services. Interested candidates must provide information demonstrating that they have the required qualifications and relevant experience to perform the services. Consulting firms may propose an individual consultant, but only the experience and qualifications of the individual shall be used in the selection process, and the contract will be signed with the proposed individual.
21. The application document should consist of the following:
- a) A cover letter summarizing the background of the applicant and with names and contacts of three references.
 - b) A Customized Curriculum Vitae not exceeding 3 pages.
 - c) A Technical Proposal on:
 - Understanding and interpretation of the TOR;
 - Methodology to be used in undertaking the assignment; and
 - Time and activity schedule
 - d) A Financial proposal on:
 - Consultant's Professional Fees in US\$
 - AU rates will be applicable where necessary on travel and Daily Subsistence Allowance.

The Financial proposal should be sent separately in a PDF format, and it shall be password-protected. However, the password shall be submitted by the Consultant to the ACERWC upon request and after concluding the evaluation of CVs.

- e) Evidence of educational background and professional experience; and Samples of publications, professional undertakings or related activities which demonstrate the applicants' expertise on the areas of children's rights/human rights.

Duration

22. The estimated duration of the consultancy is 20 working days.

Remuneration

23. The Consultant will be paid a fixed fee of **USD 8,000** (eight Thousand USD) for the assignment. The payment will be effected in accordance with the various deliverables as indicated above and is inclusive of all costs and profits as well as tax obligations that may be imposed on the Consultant.

Application deadline

24. Applications must be submitted via e-mail to ACERWC-SECRETARIAT@africa-union.org

The Deadline for submission is **18 October 2023 at 17:00 hours Southern Africa Time**. Late applications will not be considered.