

AFRICAN UNION  
الاتحاد الأفريقي



UNION AFRICAINE  
UNIÃO AFRICANA

Addis Ababa, ETHIOPIA

P.O. Box 3243

Tel: +251 115 5517 700

Fax: +251 115

517844

[www.au.int](http://www.au.int)

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The Commission of the African Union presents its compliments to the Ministers of Foreign Affairs /External Relations of all Member States of the African Union, and has the honor to refer to the theme of the African Child for the year 2020. The theme proposed by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) and endorsed by the Executive Council under Decision No. EX.CL/Dec 1043 (XXXIV) at its 34th Ordinary Session held from 7-8 February 2019 in Addis Ababa, Ethiopia is titled as follows: "**Access to a Child Friendly Justice System in Africa**".

The Commission would like to inform that the ACERWC has developed a Concept Note (attached) on the theme of the day of the African Child 2020 to guide Member States and Partners on the objectives and expected outcomes of the theme.

The Commission of the African Union wishes to invite all Member States to commemorate the day of the African child on 16 June 2020 and to accentuate the need to facilitate an access to a child friendly justice system in Africa for Children who come into contact with the law as stated in the Concept Note.

The Commission would like to invite the Member States who will be interested to host the Continental commemoration of the Day of the African Child 2020, to communicate with the Commission before **30 March 2020**.

The Commission of the African Union would be grateful to receive (through note verbal and email to: [Anadjib@africa-union.org](mailto:Anadjib@africa-union.org); [PhilippeS@africa-union.org](mailto:PhilippeS@africa-union.org) and [mainaC@africa-union.org](mailto:mainaC@africa-union.org)) from Member States in accordance with the reporting guidelines attached herewith before 1 October 2020.

The Commission of the African Union avails itself of this opportunity to renew to the Ministries of Foreign Affairs/External Relations of the African Union Member States the assurance of its highest consideration.

Addis Ababa, 22 January 2020

To: **Ministries of Foreign Affairs/External Relations of all African of the AU Member States.**

Copy: **Embassies of AU Member States  
Addis Ababa**

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## **DAY OF THE AFRICAN CHILD 2020**

**Theme:**

**“Access to Child-friendly Justice in Africa”**

### **A. Introduction and Background**

1. The theme for the Day of the African Child (DAC) 2020 is “Access to Child-friendly Justice in Africa”. The African Committee of Experts on the Rights and Welfare of the Child (Committee), established in accordance with Articles 32 and 33 of the African Charter on the Rights and Welfare of the Child (the Charter) selected this theme for the commemoration of the DAC in 2020.

2. In 1991, the Assembly of Heads of State and Government of the then OAU instituted the DAC in memory of the 16th 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 own languages.

3. The DAC serves to commemorate these children and the brave action they took in defence of their right. The DAC thus celebrates the children of Africa and calls for a serious introspection and commitment towards addressing the numerous challenges facing children across the continent. The celebration should be contextualised by States Parties as a build up to the realisation of the rights of children from at the family/community level and up to national and international levels.

#### *State of Child Justice in Africa*

4. 4. State Parties have adopted laws that are specific to children following the coming in to force of the Convention on the Rights of the Child and the African Charter on the Right and welfare of the Child. Despite the fact that children’s rights have been recognised in many of the African States, the implementation of these rights requires much effort. This is especially true in the case of children’s right to access child friendly justice.

5. 5. States follow different approaches in relation to child justice. Some States have legislation that provide mechanisms for dealing with children in conflict with the law - from arrest, to consideration of diversion, the trial system, and disposition of the cases.

Other States have vested the juvenile systems with both civil and criminal jurisdiction,<sup>1</sup> while others have different regimes to deal with the various kinds of cases involving children.<sup>2</sup> This shows the inconsistent legal approaches in dealing with children in domestic child justice systems.

6. Some of the child justice reforms that have been undertaken by States Parties remain hinged on inherited legislation. This has led to inadequate child justice laws that do not adequately deal with children. This has in some cases led to children being dealt with like adults. This is exacerbated where there is the existence of humanitarian crises, armed conflict, tension or strife.

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

7. The African Committee of Experts on the Rights and Welfare of the Child believes that access to justice is a fundamental right in itself and an essential prerequisite for the protection and promotion of all other human rights. It is a means for the exercise of other universally recognized human rights. In many cases, even when rights exist on the paper, enforcement of these rights is weak. This is especially true in the case of children. Where effective human rights protection mechanisms are lacking, children are often vulnerable to abuses and face significant challenges to exercise their rights, including within the formal justice system. The Committee understands that without ensuring access to justice, child rights commitments will remain only promises on paper that do not serve the interest of children.

8. From the African Charter on the Rights and Welfare of the Child (ACRWC's) point of view, access to child friendly justice is the foundation of respect of all rights guaranteed by the Charter. In particular, a number of provisions including: article 4 (best interests of the child and respect for the views of the child); article 17 (administration of juvenile justice); article 18 (protection of the family, and the protection of children in the dissolution of marriage), article 19 (parent care and

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<sup>1</sup> This is the position in the child justice laws in Kenya and Uganda.

<sup>2</sup> This is the position in the child justice laws in South Africa, Namibia and Ghana

protection); article 24 (adoption); and article 25 (separation from parents) require existence of a child friendly justice.

9. The Committee will continue to explicate children's right to access to child friendly justice using all available mechanisms at its disposal such as the States Party Reporting and individual complaint Mechanisms.

#### *Position in the State Parties*

10. States Parties have different justice mechanisms for children, including the definition of who qualifies to be a child under different circumstances. This has led to lack of uniformity with regards to the effective use of these mechanisms to offer justice to a child in both civil and criminal cases. The domestic jurisdictions deal with various categories of children including children in conflict with the law who include both citizens and non-citizens), those affected by humanitarian situations, or those affected by armed conflict.

11. As such, lack of nuanced approaches to ensure access to justice to all categories of children affects its purpose. This calls for the need to ensure that the justice mechanisms embrace the best interest of the child, participation, non-discrimination and the right to life, survival and development. States have to evaluate the appropriateness of their child justice systems to establish whether they speak to the needs of the children in their jurisdictions. This is instructive in informing the need to revisit the substantive law and procedures in child justice, including the use of alternative justice mechanisms.

#### **B. Context of the DAC 2020 theme**

##### *Defining a 'Child Friendly Justice System'*

12. A child friendly justice refers to the justice system that is designed or adjusted to be sensitive to the particular issues that children face when they come into contact with the law and courts (or proceedings) for whatever reason. In its broader sense, a child friendly justice can be defined as a justice system which guarantees the respect and the effective implementation of all children's rights at the highest attainable level taking in to consideration the child's level of maturity and understanding and the

circumstances of the case. It is, in particular, a justice system that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights of due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity'.

13. A child friendly justice system requires that children who come into contact with the law are treated in a child-sensitive manner. This requirement extends to children as suspects or victim of a crime, and those who engage with the justice system for aid.<sup>3</sup> The detention of a child should consistently be used as a measure of last resort for the shortest possible duration. Alternatives to detention as well as rehabilitation and reintegration services for the child and caregivers have to be used.

14. A child friendly justice system requires that children who come into contact with the law are offered free legal aid. There should be a sensitisation of stakeholders in the child justice systems such as, police officers, prosecutors, defence lawyers, and judicial officers to the needs of the child in the justice system.

15. States have to set up mechanisms to ensure that all legal proceedings involving children are carried out in a child friendly manner, where children in conflict with the law who are at risk of turning into delinquents are identified and supported. Those children who are above the age of criminal responsibility should be diverted from the criminal justice system to mechanisms that encourage rehabilitation through psychosocial and psychological support.

16. A child friendly justice system requires that special consideration is accorded to vulnerable children who come into contact with the law. As children in conflict with the law, they should first be treated as victims. Children who seek justice should be treated in a child-sensitive manner that recognises their vulnerabilities and addresses them in a manner that ensures that they are not discriminated against on the grounds of their status.

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<sup>3</sup> ACPF (2018) Spotlighting the Invisible: Justice for Children in Africa.

## *Elements of a child-friendly justice system*

17. The fundamental principles of a child friendly justice include, inter alia:

a) the principle of the best interest of the child

18. The best interests of the child should be considered as the primary consideration in actions affecting children.<sup>4</sup> The child should be accorded an opportunity to be heard in any judicial and administrative proceedings affecting him/her in a manner that is friendly to the child. First, States through their justice mechanisms have to respect, protect and fulfil the best interest of children in all actions concerning children. Secondly, all stakeholders in justice systems that may come into contact with children or take decisions that affect children have to take in to account the best interests of children. Whenever two or more children are involved in a matter, the best interests of each child should be separately assessed and balanced with a view to reconciling possible conflicting interests of children. Thirdly, in terms of Article 4(1) of the Charter, persons dealing with matters involving children in the justice systems have to ensure that the best interest of the child is the final outcome.

19. The best interests' principle should be interpreted widely to offer a platform that ensures that the trial of a child embraces the right to access to information, right to an effective remedy, right to be heard, right to legal aid and the right to non-discrimination.

b) the Principle of participation

20. The principle of participation requires that State Parties ensure that a child who is capable of forming his or her own views exercises the right to express them freely on matters that affect him or her with regard to the maturity, age and other matters that show the evolving capacity of the child.<sup>5</sup> Participation entails the development of child friendly justice laws, policies, decisions and finance activities that allow child participation in matters that concern them. The matters raised in the participation of children should be extended to all categories of child who come into contact with the

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<sup>4</sup> Article 4(1) of the Charter.

<sup>5</sup> Article 7 of the Charter.

law. Special emphasis has to be placed on vulnerable children including those with disabilities.

c) the Principle of non-discrimination

21. Article 3 of the ACRWC provides that “every child shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in [the] Charter irrespective of his/ her parents’ or legal guardians’ race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.”<sup>6</sup> In a child friendly justice system, a child’s status cannot be a bar to a child who is in conflict with the law or who seeks justice.

22. In the justice system, discrimination is evident where the rights of children are not recognised or are accorded less weight. The realisation of the rights through the child justice systems should be accorded the same weight and degree of priority like other rights that are sought by adults in the domestic justice systems. As such, instances where a child gets less desired treatment in the justice systems should be taken as an indicator of discrimination.

23. The child justice system should not treat vulnerable children such as children with disabilities, internally displaced children, refugee children, and children in conflict with the law differently on the basis of their status. Discrimination is also evident where perpetrators of child rights violations are not investigated, or prosecuted on account of the children’s status.

d) Dignity

24. The principle of Dignity requires that children should be treated with care, sensitivity and respect throughout any procedure or case, with special attention for their well-being and particular needs, and with full respect for their physical and psychological integrity, in both judicial and non-judicial proceedings and irrespective of their legal status or capacity.

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<sup>6</sup> Reproduced in para 18 of the General Comment No. 1 (Article 30 of the African Charter on the Rights and Welfare of the Child) on “Children of Incarcerated and Imprisoned Parents and Primary Caregivers” 2013

e) The principle of rule of law

25. The principle of rule of law should apply fully to cases involving children as it also applies in the case of adults. States have to make sure that elements of due process such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to access to courts and the right to appeal, are guaranteed also for children and are not denied or minimised under the guise of the child's best interests.

26. In addition to the above mentioned fundamental principles, a child friendly justice also requires that children and their parents/guardians are provided with information and advice as soon as children are in contact with the justice system or other administrative system and throughout their cases. Information and advice should be given to children in a manner adapted to their age and maturity and in a language they understand. Child friendly justice also requires that the privacy and personal information of children who are or have been involved in court proceedings or administrative proceedings is protected. Furthermore, a child friendly justice system is a justice system in which children are protected from harm, especially from secondary victimization, in all judicial and non-judicial proceedings and other interventions.

27. All measures taken by the States Parties to improve child justice systems should not be limited to the criminal justice system, it should also include other systems such as civil, administrative and customary justice systems.

28. Children may come in contact with civil justice in cases of separation from parent, in proceedings relating to custody, adoption, dissolution of marriage, and etc.

29. Civil justice systems should be sensitive to the child who is using the system. States should endeavour to have less procedural aspects in these system such that the child is not affected by the procedure and bureaucratic tendencies of the justice process.



30. Children may come in to contact with administrative procedures in cases of nationality or immigration issues and other cases. States have to make sure that administrative procedures are child friendly.

31. In areas of administrative justice, there should be clear mechanisms that check off the human rights implications of administrative decisions against children. These decisions may be on matters that affect the legal status, birth registration or participation of the child. States should put mechanisms in place to deal with and reduce the use of administrative discretion to determine the enjoyment of rights of children.

32. In many African countries, customary and religious laws operate parallel to the formal justice system as long as they are in conformity with the constitutional principles. This means children are often dealt with by such systems, because the systems are close to the people and are inexpensive. Some countries have made efforts to harmonise these systems with the formal system by giving legal recognition to these structures. However, these customary and religious adjudication systems are not in many cases child-friendly. States have to devise mechanisms to make these informal justice systems child friendly.

*Implications of the right to access a child friendly justice system for the protection and promotion of other rights of children*

33. Children's access to child friendly justice in a number of ways enhances realisation of other children's right. Whenever there is violation of rights, individuals including children seek remedy from the justice system. This happens only if the justice system can be accessed properly. If children cannot access a justice system responding to their specific situations, it means they cannot benefit from the justice system and get redress even in the time of violation of rights. This increases vulnerability of children and makes protection of their rights unattainable. To the contrary, if children access a child friendly justice system, they can benefit from the justice system by seeking redress in case of violation of rights and it is high likely for their best interests to be well-taken care of. Hence children's access to child friendly justice facilitates protection and promotion of children's right. The presence or absence of children's access to

child friendly justice system has far reaching positive or negative implications for the protection and promotion of children's right.

### **C. Expected results**

34. Through DAC 2020, the Committee affirms that a child friendly justice system should be embraced by all States in their domestic jurisdictions.

35. The Committee envisages the following results from the commemoration of the DAC in 2020:

- i. Continental commemoration of the DAC hosted by an AU Member State.
- ii. African governments publically reaffirm commitments to:
  - a) Use pro-active measures to improve justice system to deal with the violation of the rights of the child.
  - b) Prioritise the protection and promotion of children's rights during, before, and after trial to achieve the desired outcome of Aspiration 8 of Agenda 2040 and the broader Agenda 2063.
  - c) Develop strategies that indicate the steps to be taken to ensure that the best interests of the child in contact with the law are considered.
  - d) Report the steps taken to ensure the recognition and respect of the rights of the child in the course of both formal and alternative justice systems.
  - e) Report on child justice systems should indicate how the various categories of children are protected by the child justice systems where they are in contact with the law.
  - f) Develop national strategies to improve child justice systems, and where they exist, steps taken to ensure that the protection of the rights of all children is prioritised.
  - g) Regularly undertake consultative voluntary national reviews (VNRs) at national and sub-national levels to monitor access to justice for children.
- iii. DAC celebration events are held in two-thirds of AU Member States.

iv. The mass sensitisation and dissemination of DAC messages in national and regional media (such as TV, newspapers and the internet, especially social media).

v. Children at all levels and from various backgrounds play a major role in the planning and implementation of DAC 2020 activities.

#### **D. Methodology**

36. The Committee, in collaboration with a Member State of the African Union, will hold a Continental Commemoration of the DAC on June 16 2020.

37. 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.

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

#### **E. Key messages**

39. Member States and partners are encouraged to incorporate the following top-line messages into their activities, while highlighting issues specific to the national/local context, for example, a focus on the groups of children whose rights may be affected in a child justice system.

- *Africa's Agenda 2063 and 2040 cannot be achieved without attention to the children whose rights are continually violated in humanitarian emergencies. There is need for a concerted effort on the specific needs and concerns of these children.*
- *The States' approach to the possible violation of the rights of the child should engage a child based approach that uses the four principles of children's rights as a tool for realising a child-friendly justice system.*

## **F. Use of synergies on SDG 16.3 on access to justice**

40. A look at the Committee's jurisprudence implies an engagement of aspects of SDG 16.3. For instance in some Concluding Observations, it recommends that the State Party provides mechanisms and structures outside the prison to take care of minors in conflict with the law. In addition, where detention is inevitable, minors have to be detained separately from adults in all correction facilities in the country.<sup>7</sup> Other observations include the need for States Parties to apply non-custodial penalties on juvenile offenders, conduct training of judicial officers, prosecutors and police on rehabilitation and reintegration of juvenile offenders.<sup>8</sup>

41. As such the Committee plays a key role in ensuring that the child-friendly justice in the context of SDG 16.3 is realised. It should use its jurisprudence and modes of operation to concretise and improve child friendly justice.

42. The commemoration of the DAC and Reporting will turn out to be a process other than an event. This will build traction that will develop from previous DAC commemorations.

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<sup>7</sup> Concluding Observations on Algeria, paragraph 37. See paragraphs 46 and 47 of its concluding observations to the report of Gabon, paragraphs 42 and 44 with regard to Madagascar

<sup>8</sup> ACERWC (2018) *Concluding observations on Madagascar*. Available at [https://acerwc.africa/wp-content/uploads/2018/14/Concluding\\_Observations\\_Madagascar%20ENGLISH.pdf](https://acerwc.africa/wp-content/uploads/2018/14/Concluding_Observations_Madagascar%20ENGLISH.pdf) (accessed 20 September 2019).

## **ANNEX**

Monitoring Framework for Reporting on Commemoration of the Day of the African Child 2020: Template: 'Access to Child-friendly Justice in Africa'

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 2020, on the theme, 'Access to Child-friendly Justice in Africa'.

**Country/Organization:**

**Partners:**

**Measures and Activities undertaken:**

- Summary/Analysis of the theme as it applies to national, local or organisational context
- Legal, Policy, Administrative and other measures in place to improve access to justice.
- Measures to be undertaken to identify, reach and promote awareness about the dangers of a non-friendly access to child justice system

**Report on Events Organised on or leading up to 16 June 2020**

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

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