



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

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## Guidelines on Reparations

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# African Committee of Experts on the Rights and Welfare of the Child Guidelines on Reparations

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## Definitions

For the purpose of these Guidelines,

**Amicus curiae:** refers to any person or organization that is not a party to a legal action or litigation concerning a child, yet with a strong interest in the matter. With the permission of the Committee, the person or organization advises the Committee on a point of law that directly affects a child in the case in question with the intent to aid the Committee's decision.

**Charter:** means the African Charter on the Rights and Welfare of the Child.

**Child:** means every human being below the age of 18 years.

**Child participation:** means a child's right to freely take part, express views, lead and be informed in all matters concerning him/her.

**Committee:** refers to of the African Committee of Experts on the Rights and Welfare of the Child.

**Communication:** shall be understood to be any complaint received by the Committee in accordance with Article 44 of the Charter.

**Evolving capacity:** refers to the process of maturation and learning through which children progressively acquire competencies, understanding and increasing levels of agency to express their views, and to take responsibility for exercising their rights.

**Guidelines:** refers to these Guidelines on Reparations.

**Reparation:** refers to the range of measures that should be taken to repair or remedy a violation, encompassing both procedural and substantive aspects including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

**Respondent State:** means the State against which reparation is made sequel to a determination of violation of the African Charter on the rights and welfare of the child.

**State Party:** means a Member State of the African Union which has ratified the African Charter on the Rights and Welfare of the Child.

**Victim:** refers to child victim, namely every human being below the age of 18 years at the time the alleged violation occurred, and who has suffered harm.

**UN Basic Principles:** refers to 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

**Abbreviations**

<b><i>ACHPR</i></b>	African Commission on Human and Peoples' Rights
<b><i>ACtHPR</i></b>	African Court on Human and Peoples' Rights
<b><i>ACERWC</i></b>	African Committee of Experts on the Rights and Welfare of the Child
<b><i>ACRWC</i></b>	African Charter on the Rights and Welfare of the Child
<b><i>ARSIWA</i></b>	Articles on Responsibility of States for Internationally Wrongful Acts
<b><i>AU</i></b>	African Union
<b><i>CSO</i></b>	Civil Society Organisation
<b><i>GC</i></b>	General Comment
<b><i>NHRI</i></b>	National Human Rights Institution
<b><i>NMIRF</i></b>	National Mechanism for Implementation, Reporting and Follow-up
<b><i>UN</i></b>	United Nations
<b><i>UNICEF</i></b>	United Nations Children's Fund
<b><i>UNHCR</i></b>	United Nations High Commissioner for Refugees
<b><i>ICRC</i></b>	International Committee of the Red Cross

## SECTION 1: INTRODUCTION

### Preamble

1. The African Charter on the Rights and Welfare of the Child (ACRWC/Charter) provides for substantive rights for children and sets forth a mechanism through which these rights can be protected and enforced. The Charter establishes the African Committee of Experts on the Rights and Welfare of the Child (ACERWC/Committee) to monitor the implementation of the rights embodied therein, and to receive and consider communications alleging 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, and if it considers there has been a violation/s by the State Party it makes recommendations, including the measures the State party needs to take to provide reparation. All of the decisions of the Committee contain various types of reparative measures to be undertaken by the respective Respondent States.
3. 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 States Parties are found to have violated the right(s) recognized in the Charter. However, the Committee notes that the Revised Communication Guidelines do not contain detailed rules on the reparations to guide the decisions of the Committee.
4. The ACERWC recognizes that its decisions arising from communications 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 removes or redresses the consequences of the wrongful acts or prevents and deters violations is key to the full realization of children's rights.
5. There are evolving laws in the area of the right to reparation, reflected in the 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 ("UN Basic Principles") adopted by the UNGA in 2005 and the "Articles on Responsibility of States for Internationally Wrongful Acts" (ARSIWA), adopted by the UN in 2001. There are also similar Guidelines developed by regional human rights treaty bodies such as the African Court on Human and Peoples' Rights (ACtHPR). The UN Basic Principles, for example, set forth the various forms of reparation, their scope and content. These cover monetary and non-monetary reparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
6. Considering the several key issues and challenges that arise when assessing reparation claims, such as valuing monetary damages and assessing the quantum of reparations, the Committee underscores the importance of developing Reparations Guidelines to ensure the consistency of its jurisprudence with the organs of the African regional human system and other international standards. The Committee notes that such Guidelines will further support its work in assessing violations, identifying victims, and considering specific form of reparation to award.
7. The present Guidelines on Reparations establish and regulate the procedure for dealing with reparations arising from communications submitted to the Committee under Article 44 of the Charter.

8. The Guidelines shall be applied in conformity with existing Committee General Comments and Guidelines, including, the Revised Guidelines on Consideration of Communications, Guidelines on Child Participation, Guidelines on Ending Violence Against Children, as well as the Committee's Rules of Procedure.

### **Objectives**

9. The objectives of these Guidelines on Reparations are to:
  - j. Enhance the effectiveness of the Communications Procedure by ensuring the best interests of the child and by providing for reparations that are victim centered.
  - k. Enhance the implementation of Committee decisions through concrete and measurable reparations.
  - l. Facilitate the follow-up activities of the Committee to monitor the implementation of its decisions.
  - m. Assist the Committee to identify suitable reparations to issue, considering the alleged violations.
  - n. Enable the Committee to assess the effectiveness of reparation awards.

**Child Victims' right to reparation in the context of the Charter**

10. Under Article 1 of the Charter, States Parties have an obligation to respect rights enshrined in the Charter and ensure their fulfillment to all children in their territory.
11. Consequently, a child is entitled to a right to a remedy and reparation for violation of any right guaranteed in the Charter.
12. As outlined in the Committee's General Comment No. 5, Article 1 requires that there should be a rights-based approach, with an acknowledgment of the urgency of implementation of the rights in the Charter and therefore reparations for any violation that has occurred.
13. In determining the reparations to be awarded, the Committee shall take into account the obligations imposed by the Charter, in particular Article 1, as articulated in its General Comment No. 5. When considering reparations, the Committee should include the requirements that the respondent state adopt a systems-strengthening approach, coordinate responses to implementation, and make available sufficient resources through child-sensitive budgeting, to implement the reparations awarded.
14. In implementing reparations, respondent states should also be required to gather disaggregated data on measures taken. The Committee should also include the training of state authorities and others to guarantee non-repetition. Reparations should include the requirement for the respondent state to collaborate with civil society, communities and the business sector, where appropriate, in the implementation of the reparations, and to independently monitor progress made. The participation of the child victim should be integral to the implementation of reparations.
15. The Committee can determine the reparation, *suo motu*, where it considers it necessary to address the harm caused in the interest of justice and the best interest of the child.
16. Reparations should be tailored to the specific rights of the child in accordance with the Committee's guiding principles.
17. Reparations should be fair, adequate, effective and prompt. They should be proportionate to the damage suffered. The Committee shall be the final arbiter in determining what is fair and just in the circumstances and what reparations are required to address the harm suffered.
18. For child victims of certain violations, such as sexual violence, gender-based crimes, and violations that occurred from and during conflict situations, the Committee, when considering reparations, shall take into account the multi-dimensional and long-term consequences of the violations on the child, their families, and communities.
19. In addition to providing reparations for individual victims, reparations must also be holistic and transformative, occasioning changes in social, economic and political structures and relationships. They must envisage processes with long-term and sustainable perspectives that are responsive to the multiple needs of victims and therefore restore the human dignity of child victims as individuals or as a group.

## **Consistency with other human rights bodies**

20. The Committee shall endeavour to ensure consistency with the approach of the African Commission on Human and Peoples' Rights (ACHPR) and the African Court on Human and Peoples' Rights (ACtHPR) and other human rights bodies in their approach to award reparations as it deems necessary.
21. Consistency with international and regional human rights norms on reparations can be achieved, for example, by making reference to the jurisprudence of the relevant bodies, respective guidelines; convening joint discussions, planning sessions and retreats to align reparations principles and practices; and development of their reparations and implementation strategies as well as practice notes that track trends. It can also be achieved by sharing information through formal and informal communication channels, in line with the Memoranda of Understanding signed between the organs, and with their respective strategic frameworks and the Committee's Strategic Plan.

## SECTION 2: GUIDING PRINCIPLES

### Introduction

22. The following principles guide the Committee in drafting and monitoring the implementation of reparation measures:
  - a. A child victim-centred approach,
  - b. The age and evolving capacity of the child,
  - c. Non-discrimination (Article 3),
  - d. The best interests of the child (Article 4(1)),
  - e. Life, survival, protection and development (Article 5),
  - f. Participation (Articles 4(2) and 7),
  - g. Reparations should be adequate, effective, sufficient, inclusive and proportionate,
  - h. Reparations should be Specific, Measurable, Achievable, Relevant and Timebound (SMART).

### ***Child and victim-centred***

23. The child should be at the centre of processes for determining reparations.
24. A child victim-centred approach to reparations requires an analysis and full understanding of the harm suffered and of the child's wishes. It needs to reflect their experiences and realities, so that the reparation provided is responsive to the child's needs.
25. A child victim-centred approach includes the adoption of a victim-sensitive approach during Committee proceedings, respecting the dignity of the child at all times, and understanding the child's particular conditions and needs.
26. Legal representatives of child victims should work with them and not on them. Child victims should be enabled to actively participate in the process of obtaining reparation without fear of stigma and reprisals. They should not be viewed as passive recipients of reparations.
27. Each child victim is unique. Therefore, the Committee shall tailor its reparation approach to the specific identities, characteristics, groups, and contexts. These include taking into account their age, gender, evolving capacities, resilience, relationships and connections to others, socio-economic and political situation, cultural backgrounds and the discrimination they may face. The Committee recognizes that such elements change over time; thus, its approach to determining reparations needs to be adjusted as necessary.
28. Reparations should, as far as possible, aim to put the child victims in the position they would have been had the violations not occurred.
29. Reparations should address both the harm to the individual child victim(s) and systemic issues in order to prevent further violations occurring.
30. In any determination of reparations, it is essential to avoid retraumatization of the child victim.

### **Age and evolving capacity of the child**

31. The Committee shall evaluate the evolving capacity of the child when determining reparations, in line with the requirement in Article 4(2) of the Charter that a child should be “capable of communicating their views.”. This should be balanced against the importance of protection.
32. Evaluating the evolving capacity of the child requires engaging with the child victim(s)’ expectations and their wishes and providing age-appropriate information on the types of reparations available.
33. Before the Committee reaches a decision, it should ask the complainants and child victim if there has been any change in circumstances, taking into account the difference in age of the child victim from the time the Communication was submitted and their evolving capacity. Reparations should factor in any such change of circumstances.
34. Reparations should take into account the context, culture, circumstances of the violations, any vulnerabilities of the child victim and how these may impact on the victim’s evolving capacity.
35. The Committee recognizes the need to adopt flexible procedures that provide opportunities for the child victim to engage with it when determining reparations.

### **Non-discrimination (Article 3)**

36. The principle of non-discrimination requires that all children, regardless of gender, race, ethnic group, colour, sex, language, religion, political opinion, birth, or any other status, are entitled to reparation for any violation of their rights. All children shall have an equal opportunity to participate in the decision-making process in all matters concerning reparations.
37. In line with the Committee’s General Comment No. 5, when applying principle of the non-discrimination in the context of reparation, the Committee should consider whether the child victim(s) may require certain special measures in order to diminish or eliminate conditions that cause discrimination and impede the effective enjoyment of any of the rights in the Charter.
38. In determining reparations, and without prejudice to section 36 of these Guidelines, the Committee shall prioritise the needs of the poorest and most marginalized of the child victims. It shall identify the particular needs of the girl-child when drafting reparations. The intersecting and compounding layers of marginalization that shape a child’s vulnerability should be also taken into account. These may include, for example, the combined impact of poverty, disability, and migration status, etc.
39. In drafting reparations, the Committee shall ensure that those child-victims who are most marginalized have the opportunity to participate in processes that determine the reparations to be awarded to them. For children with disabilities, they should be provided with the necessary equipment, support and tools to enable them to express their views freely and in the best way possible.....Reparations should be tailored to meet the unique circumstances of each child, considering personal as well as social, cultural, and economic factors.

### **Best interests of the child (Article 4(1))**

40. The best interests of the child shall be the primary consideration in the identification and implementation of reparations.
41. The best interests of the child has procedural and substantive contents.

- a. Procedurally, decisions concerning children must be undertaken only after assessing the possible implication on the rights and welfare of the child.
  - b. Substantively, the reparation itself should be in their best interest.
42. The best interest of the child principle strengthens the reasons why a child should be involved and be encouraged to express an opinion. Importantly, it also enables and guides the authority concerned to make decisions that are in the best interest of the child.
43. The process to determine what is in the best interest of the child should start with the proper assessment of the child's evolving capacity. A child's evolving capacity should be based on the child's ability to communicate an opinion as stated in Article 4(2) and (7) of the ACRWC.
44. The child's best interest includes immediate best interest and those in the future.
45. The concept of the best interest of the child is flexible and adaptable so that it can be applied to the needs of children, taking into account their specific circumstances.
46. In determining whether reparations are in the best interest of the child, the Committee shall have regard to:
- a. The views and wishes of the child-victim;
  - b. The child-victim as the right-holder;
  - c. The specific situation of the particular child-victim(s), their identity, vulnerabilities, and place in their families and communities;
  - d. Short, medium ,and long term effects of the violations on the child victim; and
  - e. The enjoyment of rights of future generations of children, in particular those in the community of the child-victim.

### **Life, survival and development (Article 5)**

47. The principle of life, survival, and development requires safeguarding the child's right to life and ensuring the child's development, which encompasses the physical, psychological, emotional, social and spiritual aspects of the child's life. The reparations awarded should secure the principle of life, survival and development.
48. Reparations should be aimed at achieving the optimal development for all children, including their physical, mental, spiritual, moral, psychological and social development.
49. The Committee has affirmed that all Charter rights are interdependent and indivisible for children, as they aim to progressively facilitate the proper development of children from childhood to adulthood.
50. In line with the provisions on participation, child-victims should be protected during the reparations determination process.
51. A holistic approach should be adopted when considering reparation decision, including:
- a. Considering where child-victims have been, or is living in situations of on-going violence or conflict or subject to practices that predate or caused the violations;
  - b. A psychological evaluation to identify the impact of the violations on the child's development;
  - c. An analysis on how reparations benefit the child victim themselves now and in their future;

- d. Awarding reparations that have a positive effect on the child-victim's safety, development and reintegration within the family and community;
- e. Addressing systemic causes of violations in order to prevent future violations;
- f. Considering how reparations address both violations of human rights as well as humanitarian law; and
- g. Adopting a systems-strengthening approach to reparations, as provided for in the Committee's General Comment No. 5.

### **Participation (Article 4(2) and Article 7)**

- 52. This principle highlights the role of the child as an active participant in determining the reparations awarded for the violations suffered.
- 53. The Committee's Guidelines on Child Participation shall be taken into account in all matters relating to reparations.
- 54. Processes must empower the child, or those acting in the child's best interest, to determine for themselves what forms of reparation are best suited to their situation. This applies equally to all measures adopted by States Parties in their overall efforts to implement the Charter.
- 55. The Committee shall take into account the views of children in crafting its reparations.
- 56. This Guidelines on Reparations take cognisance of the fact that the best interest of the child principle requires that a child-victim participates in all matters on reparations.
- 57. Special care should be taken in order to avoid re-victimisation and re-traumatising during the participatory process.
- 58. Child participation efforts should comply with the nine basic principles of child participation. Processes should be:
  - a. transparent and informative;
  - b. voluntary;
  - c. respectful;
  - d. relevant;
  - e. child friendly;
  - f. inclusive;
  - g. supported by training for adults;
  - h. safe and sensitive to risk; and
  - i. accountable.
- 59. After a hearing on the merits has been conducted, but before adopting a decision, the Committee may request further information from the complainants, in particular the child-victim(s), subject to their age and capacity. This should be achieved by:
  - a. A child-friendly process, offering flexible means by which to engage with the Committee such as in meetings, through videos or recordings, etcetera;
  - b. Offering opportunities to identify any changes in circumstances since the Communication was submitted;

- c. Obtaining the child victim's views on the extent of the violation, the damage they feel has been done, and what they consider is needed to rectify the harm they have suffered; and
  - d. Seeking the child victim's views on what reparations may be suitable to address the harm to their development.
60. In addition to reporting on all measures taken to implement the measures of reparation awarded in the Committee's decision, the Respondent State that is found to have violated any provisions of the Charter shall provide details on steps it has taken to involve and/or give feedback to the child-victim(s) of the violations.
61. The Committee may call for hearing on implementation of recommendations by inviting a respondent state to a Communication to present an oral report before the Committee on all measures taken to implement the decision of the Committee. During such hearing, the Committee shall provide an opportunity to the child-victim(s) in addition to the respondent state and the complainants, to present views on the extent to which the State Party has implemented the reparation measures of the Committee. The principles of a child-friendly justice shall apply during such hearings.
62. In issuing guiding recommendations to the respondent state following an implementation hearing, the Committee shall provide relevant recommendations for the meaningful engagement of children in fully implementing the decision of the Committee.

### **SMART reparations**

63. The Committee shall consider drafting reparations that are specific, measurable, achievable, relevant, and time-bound (SMART) to facilitate their implementation and assist it in monitoring progress by the respondent state.
64. A *Specific* reparation is one that addresses a particular issue and considers who may be responsible for its implementation, and the steps that may be taken to achieve it.
65. A *Measurable* reparation is one that can be quantified, for example where indicators for implementation can be articulated and progress tracked by the Committee or other authorities.
66. An *Achievable* reparation is one that is feasible and sets realistic goals.
67. A *Relevant* reparation is one that considers the result aimed at, for example by identifying what is hoped to be achieved in the future (such as full time education for the child-victim).
68. A *Time-bound* reparation is one that sets out a time-frame for its implementation, bearing in mind that these may differ depending on the type of reparation being recommended.
69. The Committee could consider setting out, in the section on reparations, different deadlines to specify certain actions that should be taken by the respondent state. These deadlines could require the respondent state to:
- a. Identify the ministry or focal point responsible for coordinating implementation of reparations;
  - b. Send an implementation action plan to the Committee;
  - c. Identify mechanisms providing for compensation, like those coordinating the allocation of monetary reparations; and
  - d. Draft amendments to legislation.

## SECTION 3: DEFINITION AND IDENTIFICATION

### Definition of a child-victim

70. A child-victim is a person or persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or impairment of their fundamental rights, through acts or omissions that constitute violations of international law.
71. The victim should be below the age of 18 years at the time the violation occurred.
72. A child victim can be someone who has directly suffered harm or who suffered harm indirectly; for example, someone who intervened to assist victims in distress or to prevent victimization. Indirect victims may or may not be related to the direct victim.
73. The Committee recognises that the concept of “family” may have many cultural variations, and it should therefore have regard to the applicable social and familial structures. A family includes both a nuclear and extended family from which duties and obligations to the well-being of the child are derived.
74. A child shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial or other relationship between the perpetrator and the victim.
75. The Committee shall take a broad approach to defining a victim. Identifying a victim should be made on a case-by-case basis without discrimination and should be guided by the particular harm experienced by the individual or collective.
76. A child victim can suffer harm individually or collectively and reparation can include both individual and collective measures.
77. In cases of serious or massive violations, or where there are numerous victims or collective harm has been caused, the Committee may make a recommendation for collective reparations to respond to the collective/common harm suffered by the group.

### Identification of child victims and potential beneficiaries of reparation

78. As provided for in the Revised Communications Guidelines, “The identity of the complainant or victim shall not be revealed in the presence of an express request of anonymity”.
79. Identification of child victims should be based on the principle of good faith, that what has been said is a statement of truth, and on the finding of the Committee after assessing the submissions of both sides and other relevant evidence.
80. The Committee shall be conscious of obstacles that child victims may face in providing identification and relevant documentation. For example, the Committee should have regard, in particular, to literacy, language, disability barriers, and lack or loss/destruction of legal identity documents and/or nationality for children in conflict situations and displacement, as well as children born of rape or who are stateless. The Committee therefore takes a flexible approach, accepting both official and unofficial documentation.
81. The Committee may also accept declarations, witness statements and affidavits attesting to the identity of the child victim.
82. Lack of identification documents should not *per se be used to deny access to reparations*.
83. *Processes adopted by the Committee, whereby complainants are required to provide evidence*

*of victimhood and harm, should be confined to essential information, such as personal information, statement of facts and of violations suffered. Information on such processes should be available in a child-friendly format.*

84. *In situations where there are a large number of child victims or where mass atrocities have occurred, and where it is not possible to identify individual child victims, the Committee can encourage the respondent state to set up a national process to identify victims ensuring that all individuals involved in the national processes of identification of child victims be trained on children's rights, trauma-informed approaches, and the specific needs of children as victims.*
85. Such a national process should offer flexibility in terms of access criteria, application processes, and timeframes. They should engage with civil society organisations which have links with the relevant communities, developing registries, and reaching out to inform all potential child victims of their rights to reparation.
86. The national process should acknowledge the barriers for those who are victims of sexual violence, child victims with particular vulnerabilities, and those who are illiterate, to avoid them being exposed to further stigma or victimization, or fear of reprisals.
87. In considering the identification of child victims during the process of drafting reparations, the Committee shall ensure that children are able to provide information confidentially and without fear of reprisals or other negative consequences.

## SECTION 4: TYPES OF REPARATIONS

### Types of reparations

88. The Committee may award a wide range of reparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The Committee shall be creative and innovative in its award of reparations, depending on the circumstances of each case.

#### i. Restitution

89. *Restitution* aims, to the greatest extent possible, to restore the child victim to the original situation before the established violation occurred. It may include restoration of liberty/release from imprisonment, restoration of their status or citizenship, reintegration into families, reintegration into the school system, returning the children affected by armed conflict to positions they were in before.

#### ii. Compensation

90. *Compensation* provides for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from violations of the Charter. In calculating compensation, regard shall be had to factors such as:

- a. Physical or mental harm;
- b. Lost opportunities, including employment, education and social benefits;
- c. Material damages and loss of earnings, including loss of earning potential;
- d. Moral damage, such as pain, suffering, harm to dignity, and mental and emotional harm;
- e. Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

#### iii. Rehabilitation

91. *Rehabilitation* includes medical and psychological care as well as legal, educational, re-integrative, social services and alternative vocational training. It should be holistic and aims to restore the child-victim's health and well-being, their independence, physical, mental, social, cultural, spiritual and vocational ability, dignity, reputation and full inclusion and participation in society.

#### iv. Satisfaction

92. *Satisfaction* aims to acknowledge the harm that has occurred. It aims to end continuing violations, verify the facts and make full and public disclosure of the truth, and restore the dignity and reputation of the child victim. A decision of the Committee could be a form of satisfaction, as could an official declaration, public apology, commemoration or tributes to the child victims. Satisfaction is also important for members of the child-victim's family and their community. Such may involve reopening of cases, retrial, effective investigation, guaranteeing the right to a fair trial, prosecuting those responsible for the violations, and bringing them to justice. Satisfaction should take into account the potential for re-traumatization.

*v. Guarantees of non-repetition*

93. *Guarantees of non-repetition* aim to prevent the commission of similar child rights violations against the same or other potential child victims and to break the structural causes of societal violations. They can include setting minimum standards, training State and law enforcement and other officials on children's rights and Charter standards, reviewing and reforming legislation, **repeal and abolish existing laws in contradiction with the Charter and adopt new laws to give effect to violated rights**, raising awareness, and establishing mechanisms to monitor compliance with standards.
94. In the drafting of reparations, the Committee shall take into account that the process of obtaining reparation should itself be empowering, transformative, sustainable and child-victim-centred. This is particularly necessary where there are guarantees of non-repetition and reparations address underlying structural causes.
95. Reparations can be both procedural and substantive. Procedural reparations include enacting legislation, establishing mechanisms or bodies to investigate violations or provide medical care, or compensation. They can ensure that processes are child-friendly, provide them with information in appropriate forms, and designed around the best interests of the child. Substantive reparations include compensation or rehabilitation of child victims.
96. Reparations can be for individual and collective harm. Reparation for collective harm shall complement, not substitute the individual's right to reparation.
97. In providing reparation for collective harm, the Committee shall require that the respondent state ensures full and informed participation of the collective in the reparation process, and special measures may need to be taken to ensure that the voices of the most at risk members of the collective can be heard and taken into account. States Parties shall also be required to consider that inequalities within the collective may have an impact on child victim participation. Even where child victims have been provided with space to participate, there is no guarantee that all individual members of a collective have equal levels of influence.

## Determining what reparations to award

98. Once the Committee has found a violation of the ACRWC, the next phase is reparation. In doing so, the Committee should take a proactive role in determining what reparations to award.
99. In considering what reparations to award in each Communication, the Committee shall have regard to the following matters:
  - a. The variety of damages and loss suffered by the child victim(s);
  - b. The principles in the Charter and these Guidelines;
  - c. The Committee's jurisprudence, case law, internal documents, and other standards;
  - d. The nature and magnitude of the violation;
  - e. The way the violation occurred;
  - f. The nature of the harm suffered, distinguishing between and combining systemic measures of reparation that can address collective victimization, and remedies for individual harm;
  - g. The conditions of the child victim before and after the violation occurred;
  - h. The physical and psychosocial effects of the violation on the child victim; and
  - i. any other impact of the violation on the child victim's well-being or livelihood;
  - j. The ability of the Committee to seek further information from parties, at the time of drafting the reparations, in order to clarify whether the reparations are still relevant;
  - k. The views of the child victim(s), subject to their capacity;
  - l. The context and specific situation of the child;
  - m. The specificities of the continent, the national context, jurisprudence and standards from the ACtHPR, and ACHPR, and other international human rights bodies.
100. The Committee should acknowledge the level of understanding it has over the domestic context in drafting reparations, taking into account the Guiding Principles, in order to avoid unintended consequences. Where appropriate, it should seek from the parties, as well as national human rights institutions with affiliate status, amicus curiae, and other relevant organisations further guidance on the national context.
101. Complainants should be encouraged to reflect on the nature of the reparations sought. The Committee should require complainants, when making submissions on reparations, to be as specific and detailed as possible.
102. The Committee may conduct oral hearings on reparation for the purpose of requesting additional information, in accordance with Sections XI(4)(v) and XII(vii) of its Revised Communication Guidelines.
103. The Committee could consider requesting advice, including amicus curiae submissions, in line with Rule 72 of its Rules of Procedure, on all matters relating to reparations.
104. When drafting reparations, the Committee shall consider whether the Respondent State should prioritize certain awards in implementing reparation, in order to address urgent needs of the child victim.
105. In the section on reparations in its decision, the Committee shall provide reasons on how it reached these recommendations, if this does not flow from its reasoning on the merits.

106. With respect to mass atrocities or where there are large number of child victims, the Committee shall consider the broad range of reparations and the need to adopt different measures to redress the damage fully. In so doing, it shall recognize that guarantees of non-repetition have special relevance owing to the severity of the effects and the collective nature of the damage suffered.
107. All forms of reparations may be part of an amicable settlement. The Committee should encourage the parties to facilitate the involvement of child victims in reparation discussions. The parties should agree on the mode/process of, and timeframe for, implementation measures. Child victims should be involved in monitoring implementation.

### **Assessing and quantifying compensation**

108. Compensation can be pecuniary and non-pecuniary.
109. Pecuniary or material damages refer to the financial loss of the child victim, including any expenses incurred and any special or consequential damages resulting from the violation.
110. Non-pecuniary damages seek to compensate child victims for the loss in dignity and for suffering, including the physical, psychological harm, anguish, grief, sadness, distress, fear, frustration, anxiety, inconvenience, humiliation, and reputational harm caused by the violation. In addition to these emotional harms, non-pecuniary awards may also compensate a child victim for the effect of the violation or crime on their family life and relationships. They can also acknowledge the process the child victim had to go through at the national level to try to seek a domestic reparation which could have added to their suffering.

### **Determining if compensation should be awarded**

111. The Committee can decide, on its own motion or at the request by the complainants, if compensation is an appropriate reparation to address the harm caused. The Committee shall proceed on a case-by-case basis, taking into account the following factors:
  - a. The principles of equity, fairness, reasonableness and non-discrimination;
  - b. Whether the parties have consulted with the child victims at the stage at which reparations are being drafted;
  - c. Whether the award of monetary compensation complies with the principles in Articles 3, 4, 5 and 7 of the Charter, in particular whether this is in the best interests of the child;
  - d. The age of the child when the decision is adopted, recognising that a child may have become an adult since the submission of the Communication. If the victim is still a child, then the Committee could consider, for example, recommending that the Respondent State establish a trust or other means to protect the funds, under the most favourable conditions permitted by the Respondent State's banking practice, until the child becomes an adult.
  - e. Whether, a national victim compensation fund or other relevant mechanisms to pay monetary compensation to victims of Human rights violations exists in the Respondent State.
  - f. The impact of a child victim(s) receiving monetary compensation on the family, community, and the risk of exploitation if carers have responsibility for managing the funds.

- g. Whether, as an alternative to cash payments, compensation may be provided in the form of financial or other support for education and/or income-generating activities, which could benefit the child victim in the long term.

### Deciding whether to determine quantum

- 112. The Committee should take a child victim-centred approach. It should acknowledge that the harms suffered by a child may not be possible to quantify, particularly if they have a life-long impact.
- 113. If the complainant requests a specific amount, the Committee shall consider the following factors in deciding whether this amount should be granted:
  - a. Whether the Committee is reasonably satisfied that the basis for this figure is sufficiently specified.
  - b. Whether the complainants provide clarification and detail on how the amount was reached, for example, breaking it down into specific items, and provided, for example, documentary evidence, examples of comparative regional bodies, and national standards.
  - c. Whether the Respondent State contested the figure and the extent to which it has cooperated with the Communication process.
- 114. In addition to the above factors, and in the event of the complainants not requesting a specific amount, the Committee shall also have regard to the following issues in deciding whether to specify a certain amount of compensation:
  - a. Whether the amount provides for full reparation commensurate with the prejudice suffered.
  - b. Reparations should not make the victims or their successors either richer or poorer and they should be proportionate to the violations found in the decision.
  - c. The various circumstances of a given violation, such as, but not limited to, the age of the child, the number and type of violations, the lasting impact on the child, the process for trying to obtain reparation at the national level, and the impact on the child's parents, family and community.
  - d. Whether the Committee has comparisons in its own jurisprudence.
  - e. Whether there are precedents where a similar amount has been awarded either before comparative global and regional bodies, sub-regional courts or at national levels.
  - f. Any advice that the Committee has sought from amicus curiae and other organisations.
- 115. If the Committee does grant a specific amount of compensation, it shall consider the appropriateness of awarding this in the local currency. It shall take into account the specific circumstance of the case, the requests of the complainants, the currency of the Respondent State, and the currency of the State where the victims reside if different from the former.
- 116. If the Committee considers compensation to be an appropriate reparation, and the complainants have either not requested a specific amount, or the Committee is unable to determine such, it can decide that the amount is best determined at the national level. This can only be recommended if:
  - a. The Respondent State has indicated its willingness to provide compensation.
  - b. The availability of a domestic mechanism by which the quantum can be determined.

- c. The Committee has considered the practice of determining compensation in the Respondent State in question.
  - d. The wishes of the child victim(s) have been taken into account.
  - e. The child victim, subject to their capacity, will be involved in any national process for determining the quantum.
  - f. The willingness of the complainants to accept this process for determining quantum.
117. In cases set out in paragraph 119 above, the Committee shall set out principles for the Respondent State to follow by awarding a certain amount of compensation to the individual, in particular:
- a. The Respondent State should provide information to the Committee and complainant about the process which will be followed to grant the compensation;
  - b. The Respondent State should explain to the Committee, the complainants, and victims, in a child-friendly manner, the process by which the victim(s) will receive the compensation;
  - c. A consideration of which form of compensation is preferable for each victim, depending on their specific situation, personal opinion, and prospects for life;
  - d. Setting a timeframe by which compensation should be granted;
  - e. Consider involving the NHRI to facilitate any discussions between the Respondent State, complainants, and victims with respect to compensation.
118. In its decision, the Committee shall provide reasoning on how it determined that compensation should be awarded and, if applicable, how it arrived at a specific amount.

## SECTION 5: STANDARD AND BURDEN OF PROOF AND EVIDENCE

### Introduction

119. When deciding on reparations, the Committee shall take a flexible approach to the burden and standard of proof, the forms of evidence it will accept, and issues of causation. It shall base its approach on the Guiding Principles in these Guidelines.
120. The Committee should consider the circumstances of each case. It shall remain sensitive to the child victim's conditions of vulnerability affecting their access to evidence, taking into account that the child may lack the necessary documentation, may not have access to financial resources, or may be fearful of the consequences.
121. The evidence submitted in the context of the merits may be sufficient in addressing some of the claims for reparations.
122. The Committee shall assume in good faith that what has been said with respect to claims for reparations is a statement of truth, unless proved wrong.
123. The Committee recognises that in certain situations, such as conflict situations, documents may not be available or have been lost.
124. The Committee shall also recognise that in situations where the child victim has been subject, for example, to sexual violence, a flexible approach should be taken in obtaining to requiring legal or medical evidence.
125. In line with Section XI (1)(ii) of the Revised Communications Guidelines, the Committee may verify evidence on its own motion or at the request of the parties and conduct a hearing of witnesses or experts.
126. In line with Section XX (ii)(a) of the Revised Communications Guidelines, the Committee may, in considering reparations, review its decision if there is discovery of some decisive fact or evidence which was not known to the Committee and the party requesting the review, provided such ignorance was not due to negligence.

### Burden of proof

127. The burden of proof rests on the complainant to provide evidence that the victims suffered harm and that the harm was caused by the violation.
128. The proof should justify and support the requests for reparations.
129. Unless the Respondent State provides the contrary of what has been alleged, the Committee shall consider the allegations of the complainants are substantiated.
130. If the complainant can show that the Respondent State has more, or exclusive, access to relevant information about the case, the burden will shift to the Respondent State.

## **Causation**

131. The complainants should show a causal link between that harm alleged to have taken place and the violation that occurred and the reparation sought. The harm can be direct, or secondary and consequential.
132. In some instances, causation can be presumed, such as if:
  - a. A family member of the victim died, they do not need to prove the psychological suffering, nor the costs of a funeral.
  - b. Torture causes pain and suffering.

## **Forms of evidence**

133. The Committee shall consider a broad range of evidence with respect to reparations, such as, but not limited to, witness testimony, medical reports, photographs and videos, government reports, certificates, maps, and receipts.
134. The Committee shall be guided by the principles of equity, fairness and reasonableness in allowing and considering evidence.
135. The Committee shall be conscious of the difficulties faced by victims in obtaining evidence. It shall also acknowledge the retraumatizing effect of having to document harm, particularly on children.
136. In assessing requests for reparations where limited or no evidence is available, the Committee shall consider the internal consistency, level of detail, plausibility of the applications vis-à-vis the evidence as a whole.

## **Standard of proof**

137. The preponderance of evidence shall be the standard of proof, namely that the complainant carries the burden of providing proof to show that what has occurred is more probable than not. This principle also aligns with the approach adopted by the African Court and ACHPR.
138. The Committee shall adopt a flexible approach, allowing for the circumstances of the case to be considered and remaining sensitive to the particular vulnerabilities of children and access to evidence.

## SECTION 6: MONITORING THE IMPLEMENTATION OF REPARATIONS

139. The Committee provides in each decision that the Respondent State should report back on all the measures taken to implement its decision within 180 days, or six months from the date of receipt of the Committee's decision, in accordance with Section XXII (1) of the Revised Communications Guidelines.

### **Drafting reparations to facilitate monitoring**

140. The more specific the reparation recommended (SMART reparations), the easier it becomes to monitor any measures taken by the Respondent State.
141. The Committee shall consider including in the reparations section, a recommendation that the Respondent State produce an action plan identifying which ministry is responsible for monitoring each reparation, timeframes and indicators. Any action plan should explain how the Respondent State has consulted and involved children, including the victims, in the formulation of the plan. The action plan shall be submitted within a specified time frame, after which the Committee should, by order, review the Respondent State's plan of action and annex it to its decision.
142. The Committee shall consider including recommendations for the Respondent State to cooperate with relevant agencies and organisations in the implementation of the decision (e.g. United Nations Children's Fund (UNICEF), United Nations High Commissioner for Refugees (UNHCR), International Committee of the Red Cross (ICRC), etc.).
143. The Committee could also include a recommendation that the NHRI and national focal points designated by Respondent State monitor the implementation of the decision.
144. The setting of deadlines in the reparations section (as noted above) can facilitate ongoing dialogue with the Committee and the monitoring of the implementation of the decision.
145. The Committee could include a recommendation that the Respondent State shall permit access by the Committee members who wish to undertake follow-up missions on the implementation of reparations recommended in decisions and take all necessary measures to facilitate the missions.

### **Process for monitoring execution**

146. In line with Article 43 of the Charter and Rule 68 of the Committee's Rules of Procedure, Respondent States' reports shall indicate the measures taken to ensure implementation of the provisions of the Charter and progress achieved as well as the challenges faced, if any, affecting the implementation of the Charter.
147. In accordance with its Rules of Procedure and Revised Communications Guidelines, which set out the procedure for follow-up on the implementation of decisions, the Committee can appoint a Rapporteur. The Rapporteur can make such contact as is necessary with the national focal point and institutions in the Respondent State concerned and take such action as may be appropriate to ascertain the measures adopted by the Respondent State concerned in implementing the recommendations of the Committee made in its decision on the Communication.
148. The Committee can hold hearings on implementation to be informed on the extent to which the decision given by the Committee is implemented and to identify any factors or any difficulties

affecting the implementation of the decision. Such hearings can guide the Respondent State towards the full implementation of the decision.

149. The Committee, in line with its Revised Communications Guidelines, Section XXII, on receipt of the implementation report from the Respondent State, shall transmit it to the complainants. It shall recommend that the complainants report to the Committee upon receipt of the implementation report, in order for them also to take part in the implementation hearing.
150. The Committee can encourage NHRIs with affiliate status, in accordance with the Guidelines for Granting Affiliate/Associate Status to National Human Rights Institutions, to submit an alternative report to the Committee. This can provide updates on the status of implementation of recommendations and decisions by the Committee.

### **Engagement with AU policy organs and others**

151. In line with Rule 81 of the Committee's Rules of Procedure, the Committee shall bring all its recommendations to the attention of the AU Sub-Committee on Human Rights, Democracy and Governance.
152. The Committee can also transmit recommendations arising from its decisions to the Pan-African Parliament for follow-up.
153. The Committee may invite the African Union Organs and Institutions, the United Nations bodies, any intergovernmental or non-governmental organisation to submit to it reports and provide it with expert advice on the implementation of the reparations in its decisions, in conformity with Article 42 of the Charter.
154. The Committee shall regard as essential the independent monitoring of progress towards implementation by, for example, parliamentary committees, civil society organisations (CSOs), academic institutions, professional associations, youth groups and independent human rights institutions and child rights ombudsmen.
155. NHRIs and Children's Ombudspersons have a role in monitoring implementation of Committee decisions. The Committee expects the NHRI and Children's Ombudsperson to monitor government's implementation of the reparations measures recommended by the Committee in its decisions. Information can be received from the NHRI through, for example, written reports, in a private audience with the Committee during a Pre-session, at implementation hearings, and during field visits and investigative missions to the country.
156. NHRIs with associate status should, when participating in sessions of the Committee, and as part of their reports submitted to the Committee every two years, include information on the implementation of reparations in Committee decisions.

### **Role of national mechanisms for implementation, reporting and follow-up**

157. The Committee acknowledges that many States Parties to the Charter have established national mechanisms for implementation, reporting and follow-up (NMIRF).
158. The Committee shall require in the decision on the Communication that the Respondent State informs it, within one month from notification of the decision, of the contact details of the NMIRF within their country, if it exists. If such a mechanism does not exist, then the Respondent State shall be required to inform the Committee of the ministry responsible for coordinating the implementation of the reparations decision.

## SECTION 7: FINAL SECTIONS

159. The Committee shall have the mandate to interpret the present Guidelines in conformity with the provisions of the Charter and international law. For the purpose of the interpretation of these Guidelines, the headings are for reference purposes only and do not form part of the Guidelines. In case of doubt as to the interpretation of these Guidelines, the Committee shall decide. In the absence of provisions in these Guidelines, the Committee shall be guided by general principles of law on reparations.
160. The Committee may amend these Guidelines in conformity with the relevant provisions of the Charter. Any proposal for amendment shall, in accordance with Rule 49 of the Committee's Rules of Procedure, be adopted by a simple majority of members present and voting at a session where the proposed amendments are scheduled to be considered.
161. The present Guidelines shall not have any retrospective effect.
162. The Committee adopts the present Guidelines in accordance with Article 38 of the Charter.