

CALL FOR INDIVIDUAL CONSULTANCY SERVICES

DEVELOPMENT OF A GENERAL COMMENT ON ARTICLE 11 ON THE RIGHT TO EDUCATION FOR THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD (ACERWC)

I. Background and justification

1. The Right to education is a human right that has long been accepted under international law since the adoption of the Universal Declaration on Human Rights in 1948. Other human rights instruments such as the International Covenant on Economic Social and Cultural Rights, Convention on the Elimination of Discrimination against Women, Convention on the Rights of Persons with Disabilities, as well as the UNESCO Convention on Discrimination in Education also contain provisions on the right to education. Children's rights to education are further profound on child-specific instruments, namely, the African Charter on the Rights and Welfare of the Child and the Convention on the Rights of the Child. Article 11 of the African Charter spells out every child's right to education, identifies the aims of education, provides for the obligation of States towards the provision of education for all, and underlines the specific support that should be provided to selected groups of children. Aspiration 6 of Agenda 2040 and Aspiration 1 Goal 2 of Agenda 2063 also set aspirations to provide quality education for all children. Moreover, other soft laws set normative standards on the right to education, including General Comment No. 1 on the Aims of Education developed by the Committee on the Rights of the Child; General Comment no. 13 on the Right to Education and General Comment no. 16 on The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights developed by the Committee on Economic Social and Cultural Rights, and other General Comments developed by other treaty bodies. The Sustainable Development Goals 4 (SDG4) along with its 7 targets and 3 means of implementation also sets goal for States to ensure inclusive and equitable quality education and learning opportunities for all.
2. Education is not only a substantive right, but the enjoyment of the right to education also facilitates the realization of other rights of children and the elimination of discrimination against children.¹ For this to materialize, the right to education should be applied in its most whole form. The implementation of the right to education involves ensuring the

¹ CESCR, General Comment no. 13 on the right to education, UN Doc. E/C.12/1999/10, 8 December 1999; CEDAW, General Recommendation no. 36 on the right of girls and women to education, UN Doc. CEDAW/C/GC/36, 27 November 2017.

availability, accessibility, acceptability and adaptability of education.² The African Charter on the Rights and Welfare of the Child under article 11 provides for some of the obligations of States in ensuring the right to education, such as the provision of free and compulsory primary education, support to girls who fall pregnant while being in school, prevention of dropout from schools, prohibiting inhumane disciplinary measures in schools, among others. Article 11 also outlines some areas towards which education in Africa should be geared.

3. African Governments have been and are undertaking various measures to realize the right to education of children, and this has resulted in an increase in the number of children in school across the continent. Steps have also been taken to provide free primary education and bridge the gender gap in school enrolment at the primary education level. However, the continent has not achieved its targets of universal education and statistics from UNESCO reveals that 20% of children between 6 and 11, 30% of children between 12 and 14, and 60% of children between 15 and 17 are out of school in Africa. This shows that even if school enrolment has increased, there is a high rate of dropouts from schools. Moreover, the physical and economic inaccessibility of education, poor quality of education, inadequate funding to the education sector, exclusion of children with disabilities from mainstream schools, and gender disparity in schools remain to be challenges in the realisation of children's rights to education. Other challenges include high violence in schools, including corporal punishment, lack of hygiene facilities including clean water in schools, and hidden costs attached to primary education even when education is free. Discrimination in education and exclusion of some groups of children, such as pregnant girls and children from economically disadvantaged and marginalized communities, continue to affect the right to education in Africa. Harmful practices prevalent in Africa, such as child marriage, FGM, child labor, child begging, and others, affect children's enjoyment of the right to education. The impact of lack of sexual reproductive and health services on the full enjoyment of the right to education is vividly observed in Africa. Accordingly, teenage pregnancy, and lack of access to sanitary pads are among the main reasons for the dropout of girls from schools which in turn perpetuates and increases the gender parity in higher grades. The high prevalence of sexual exploitation and abuse of children in Africa and lack of services for survivors is another factor that forces children to leave schools. Children's right to education is also greatly affected by conflict due to closure of schools, attacks on schools, and recruitment of children in armed forces. Emergency situations such as pandemics and natural disasters, climate change, and migration in the continent have resulted in relapse of some of the gains that had been achieved in realising the right to education. Lack of policies and strategies that respond to emerging situations and lack of emergency preparedness, especially in the education sector exacerbate the negative impact of emerging issues on the right to education. Poverty and unemployment of parents and caregivers are also factors that deprive African Children their right to education. Furthermore, pre-primary education is an area which has not been taken up by African Countries whereby public pre-primary education is at a very low rate and is mainly provided by the private sector. The impact of lack of education on children is

² CESCR, General Comment no. 13 on the right to education, UN Doc. E/C.12/1999/10, 8 December 1999.

holistic as it affects children's right to development, excludes them from future work opportunities, resulting in a cycle of poverty, and exposes them to further violence, abuse and exploitation.

4. The African Committee of Experts on the Rights and Welfare of the Child is an African Union Organ established under article 32 of the African Charter on the Rights and Welfare of the Child to monitor the implementation of the Charter. Pursuant to article 42(c) of the Charter, the Committee is mandated to interpret the provisions of the Charter. The Committee notes that article 11 of the Charter on the right to education holds very broad and complex concepts in the realisation of the right to education which can be better explained in a General Comment. Moreover, the Committee believes that a better explanation of the obligation of States under article 11 as well as the measures that should be undertaken to ensure the implementation of each of the sub-articles therein facilitates improved implementation of the right to education. While the Committee is aware of the current existing General Comments of other norms on the right to education, it observes a gap that a comprehensive general comment on the right to education of children is absent. The Committee observes closely the peculiar challenges African Countries face to realize the right to education from its engagement with State Parties in the State Party reporting and the complaints procedures. Hence, these challenges shared by many African Countries can be explored further and a detailed explanation of article 11 in relation to the challenges can support States to better understand their obligations in redressing the challenges. Taking these into consideration, the Committee decided to develop a General Comment on the Right to Education of Children during its 39th Ordinary Session held from 21 March to 01 April virtually.
5. In this regard, the Committee, through the support of the European Union within the AGA Support Project, would like to recruit **a consultant** who can support the development of the General Comment on its behalf.

II. Objectives of the General Comment

6. The General Comment aims to:
 - Provide clarity on the elements of the rights to education as enshrined under article 11 of the Charter including the clarification of technical terminologies;
 - Expounding the nature of State Party obligations that arise from Article 11 on the right to education;
 - Provide guidance on the main legislative, institutional, and other measures that should be taken by Member States to ensure the right to education of children;
 - Provide Member States with a standard for a harmonized implementation and monitoring of the right to education with regards to advances in laws, policies, programs and budget allocations;
 - Identify the main challenges of African Governments in fulfilling their obligations to realize the right to education of children;
 - Provide an explanation about the main aspects of the right to education of children including aspects of availability, accessibility, acceptability and adaptability;

- Elaborate the relationship of the right to education of children with other rights in the Charter;
- Provide insight into the implication of the general principles of the Charter mainly the right to non-discrimination, the best interests of the child, the right to life, survival and development, and the right to participation of children in the implementation of the right to education;
- Identify measures that States should undertake to ensure the right to education of children in vulnerable situations, particularly children with disabilities;
- Spell out directions towards integrating social security services with the education sector such as school feeding programs, grants and cash transfers to cover for costs of education, scholarships;
- Illustrate the relationship between sexual reproductive and health rights and the right to education in Africa;
- Identify the main reasons for non-enrolment in education and dropout from schools and provide guidance on steps to be taken to increase school retention;
- Identify measures that States should take to reach out to children out of school to bring them back to school or provide alternative education programs which are fit to their circumstances;
- Elaborate measures that should be undertaken to provide education for refugees, asylum seekers, stateless children and children on the move;
- Provide guidance on the measures that should be taken to enhance the provision of vocational training and how such efforts contribute towards ensuring the right to education;
- Examine the intersection between risk factors, including armed conflict, public emergencies, poverty, and access to education; and
- Provide guidance on policies and strategies that are adaptable to emergency situations and ensure preparedness of States to respond to emergency situations with respect to the right to education;
- Identify the role of States in building partnerships with various stakeholders to fulfil the obligation to realize the right to education.

III. Scope of the General Comment

7. The General Comment will adopt an interdisciplinary approach toward the implementation of the right to education with an emphasis on focusing on the root causes of inaccessibility of education and exclusion from education. The General Comment is intended to help synergise and streamline the existing normative standards and apply them to the context of the continent. The General Comment will draw inspiration from other regional and international frameworks on the Right to Education. It will incorporate measures that are best for the African Context by giving due regard to available mechanisms at the community level which are sensitive to the culture and customs of African States.

IV. Key deliverables

Activity	Deliverable/outcome
Prepare a draft outline of the General Comment and present it to the ACERWC and their partners	Draft outline prepared and submitted
Develop a first draft of the General Comment, based on the agreed outline; collect input and develop a second draft for presentation to ACERWC and their partners	First Draft of General Comment prepared and submitted
Participate in the ACERWC Sessions, coordination, planning, consultation, and validation meetings, as required	Participation in the ACERWC Sessions and validation workshop
Develop the final draft of the General Comment based on inputs, and revise it based on inputs, for adoption by ACERWC	Final draft prepared and submitted

V. References and methodology

8. The development of the General Comment will be undertaken by adopting a mixed methodology. An extensive desktop review will be conducted to draw inspiration from relevant international and domestic instruments and jurisprudence, the *travaux préparatoires* of various instruments, and existing soft law instruments in relation to education including General Comments and Declarations of other regional and international treaty bodies. A review of relevant academic commentaries on the issue will also be carried out. In addition, State Party reports, the concluding observations and recommendations and decisions of the Committee on the right to education, as well as outcome documents of other human rights organs and their special mechanisms, are useful resources that will inform the development of the General Comment. Questionnaires will also be used to gather data and information from Member States of the African Union and other stakeholders. Moreover, key informants' discussions in the form of an Experts' Consultation will be organized to gather information further.
9. A task force composed of stakeholders, led by a Member of the Committee, will be established to monitor the drafting process. A detailed work plan will be developed before the start off the development of the General Comment.

VI. Word count

10. The General Comment may not exceed 10,000 words excluding references.

VII. Educational Background and Experience

11. The Consultant should have the following qualifications and experiences:
 - Advanced University Degree in International Law, Human Rights Law, Child Rights, or a related technical field;

- Minimum 10 years of demonstrated work experience in the right to education, children’s rights, and human rights, or related field;
- Qualified education expert with child rights experience and has extensive experience in developing education related reports, tools and instruments;
- Thorough knowledge and understanding of the African Human Rights System, specifically the African Charter on the Rights and Welfare of the Child;
- Willingness to be guided by the ACERWC’s mission, vision and values as well as to adhere to its child protection, safeguarding and participation principles;
- Excellent writing, conceptual and analytical skills;
- Demonstrated professional experience on matters related to fulfilment of the right to education and research and writing experience on child rights-related issues;
- Good communications and facilitation skills; and
- Ability to work independently and achieve quality results with minimum supervision.

VIII. Application

12. The ACERWC invites eligible Individual Consultant to indicate their interest in providing the consultancy services. The application document should consist of the following:

- a. A cover letter summarizing the applicant’s background and with names and contacts of three references.
- b. A Customized Curriculum Vitae not exceeding three 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.

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

14. Applicants should submit evidence of educational background and professional experience; and samples of publications, professional undertakings or related activities which demonstrate the applicants’ expertise in the areas of children’s rights/human rights, food security or any related field.

IX. Evaluation criteria

15. For evaluation of the expressions of interest, the following criteria will be applied:

- General Education Qualification and Relevant Training (20 points);
- Experience Related to the Assignment (45 points);
- Technical approach and methodology (25 points)
- Work plan (10 points)

X. Duration

16. The estimated duration of the consultancy shall be 40 working days, which will be spread up to December 2023.

XI. Consultancy Fees

17. The Consultant will be paid a fixed fee of **USD 18,000** (Twenty 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.

XII. Expression of Interest

18. Qualified candidates should send their applications comprising an abridged resume (no more than three pages), a technical and financial proposal, and a writing sample or previously developed document or tool in children's rights, to ACERWC-SECRETARIAT@africa-union.org. The Deadline for submission is 18 January 2023 at 17:00 hours South African Time. Late applications will not be considered.