

GUIDELINES ON ACTION FOR CHILDREN IN THE JUSTICE SYSTEM IN AFRICA

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PREAMBLE

Recalling:-

The African Charter on the Rights and Welfare of the Child (1990)

The African Charter on Human and Peoples' Rights (1981)

The African Youth Charter (2006)

The Declaration and Plan of Action for an Africa Fit for Children (2001)

The Kampala Declaration on Prison Conditions in Africa (1996)

The Robben Island Guidelines (2002)

The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (1999)

The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (2004)

The Call for Accelerated Action towards an Africa fit for Children (Cairo, 2007)

The Lilongwe Commitment on Justice for Children (2009)

The OAU Convention Governing the Specific aspects of Refugee Problems in Africa (1969)

The UN Convention on the Rights of the Child (1989)

The Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (2000)

The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (2000)

The UN Standard Minimum Rules for the Administration of Juvenile Justice ('the Beijing Rules', 1985)

The UN Guidelines for the Prevention of Juvenile Delinquency ('the Riyadh Guidelines', 1990)

The UN Rules for the Protection of Juveniles Deprived of their Liberty ('The Havana Rules', 1990)

The UN Guidelines for Action on Children in the Criminal Justice System (1997)

The UN Guidelines on Justice in matters involving Child Victims and Witnesses (ECOSOC Res 2005/20, 2005)

General Comment No. 5 of the CRC Committee on Implementation of the Convention on the Rights of the Child (CRC/C/GC/5)

General Comment No. 10 of the CRC Committee on Children's Rights in Juvenile Justice (CRC/C/GC/10 (25 April 2007))

General Comment No. 12 of the CRC Committee on Child Participation (CRC/C/CG/12

Basic Principles on the use of Restorative Justice Programmes in Criminal Matters (ECOSOC Res 2002/12) and Optional Lima Declaration on Restorative Justice (2008)

The UN Guidelines for the Appropriate Use and Conditions of Alternative Care for Children (2009)

The Guidance Note of the UN Secretary General: UN Approach to Justice for Children (2008)

United Nations Resolution on the Human Rights in the Administration of Justice, in particular juvenile justice (2011)

The Hague Convention on the Protection of Children and Co-operation in respect of Inter-country Adoption (1993)

The Hague Convention on the Civil Aspects of International Child Abduction (1980)

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (the Palermo Protocol, 2000)

UN Convention on the Rights of Persons with Disabilities (2006)

The Paris Principles and Guidelines on Children associated with Armed Forces and Armed Groups (2007)

Reports of the UN Special Rapporteur on Violence against Children and the UN Special Rapporteur on Children in Armed Conflict

Recalling further that:

- The Declaration and Plan of Action of an Africa Fit for Children commits States to protect children from all forms of abuse, neglect, exploitation and violence. The Declaration records that there is inadequate data on most issues of child protection, and that few children enjoy the rights that have been articulated in the

ACRWC and the CRC and many do not have adequate access to legal protection and remedial measures.

- The African Youth Charter requires, amongst others, States to develop programmes of action that provide legal, physical and psychological support to girls and young women who have been subjected to violence and abuse such that they can fully re-integrate into social and economic life;
- The ACRWC recognises that the best interests of the child shall be the primary consideration to be respected at all times including by taking into account the need for child-sensitive procedures at all times
- States which have ratified the ACRWC have undertaken to promote to the fullest extent the rights of the child, as enshrined in Charter provisions;
- The ACRWC and the African Youth Charter recognise the responsibilities of the child towards the State, the continent and the international community, which includes the duty to become the custodians of their own development; to protect and work for family life and cohesion; to have full respect for parents and elders and assist them anytime in cases of need in the context of positive African values; to engage in peer-to-peer education to promote youth development in areas of violence prevention and peace building; to work towards a society free from substance abuse, violence, coercion, crime, degradation, exploitation and intimidation; to promote tolerance, understanding, dialogue, consultation and respect for others regardless of age, race, ethnicity, colour, gender, ability, religion, status or political affiliation; and to promote, preserve and respect African traditions and cultural heritage and pass on this legacy to future generations;
- Human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated;
- The child occupies a unique and privileged position in African society and for the full and harmonious development of the child's personality, the child should grow up in a family environment and, to this end, families and communities bear a primary responsibility for the child's development and fulfilment of the child's rights;
- The promotion and protection of child friendly justice systems implies the performance of duties on the part of everyone, and particularly African states;

Noting that:

- A number of significant achievements have been made in Africa in the promotion of child survival, protection, development and participation, although progress has been slow;
- There is a need to strengthen mechanisms for accountability to ensure more consistent and comprehensive progress;
- Children face persistent barriers to the fulfilment of their rights in the justice system, such as non-existing or partial access to justice, diversity in and complexity of procedures, possible discrimination on various grounds, and lack of access to services;
- The risk of secondary victimisation of children by the justice system in procedures that involve or affect them is evident;
- Plans and programmes must take account of the difficult situation of African children and youth, many of whom are marginalized from mainstream society through inequalities in income, wealth and power, unemployment and underemployment, are infected and affected by the HIV/AIDS pandemic, are living in situations of poverty and hunger, experiencing illiteracy and poor quality educational systems, have restricted access to health services and to information, risk exposure to violence including gender violence, are engaged in armed conflicts and experience various forms of discrimination, suffer the effects of migration and the disintegration of family structures, are liable to experience the negative effects of urbanization, and are exposed to justice systems which do not take account of their needs.
- Justice systems often fail to take into account the needs of children with special vulnerability, including abandoned children, children living and working on the street, migrant, refugee and displaced children, children with disabilities and the girl child

It is resolved to adopt the following Guidelines on Action for Children in the Justice System in Africa.

A. AIMS AND OBJECTIVES

1. The Guidelines for Action are: -
 - (a) A framework to achieve full implementation of AU and related international instruments such as are outlined in the Preamble above;
 - (b) An instrument to give practical guidance to African governments to assist them meet their treaty obligations at both regional and international level;
 - (c) An instrument to guide law reform and harmonisation efforts amongst States
 - (d) A tool for the co-ordination and direction of actions by various role-players in the formal and informal justice systems in Africa, including non-governmental organisations, professional associations, the judiciary, the media, academic institutions and training bodies, traditional authorities, members of civil society, participants in the social workforce, and children;
 - (e) A framework for the facilitation of international co-operation and technical and other assistance to States and other actors in the achievement of child friendly justice for children in Africa;
 - (f) A call to the African Union Commission and other structures of the African Union to ensure that States respect the commitments made and fulfil the duties outlined in the present Guidelines by collaborating with governments, non-governmental institutions and developmental partners to identify best practices on child friendly justice policy formulation and implementation, and encouraging the adaptation of principles and experiences among States;
 - (g) A reminder to States to co-operate with the African Committee of Experts on the Rights and Welfare of the Child and the African Commission on Human and People's Rights and to support the work of the Special Rapporteur on Prisons and Conditions of Detention in Africa, the Special Rapporteur on Arbitrary, Summary and Extra-judicial Executions in Africa, and the Special Rapporteur on the Rights of Women in Africa and the UN Rapporteur on Violence against Children and the UN Rapporteur on Children in Armed Conflict insofar as their mandates overlap with actions and institutions in the justice system pertaining to children;

- (h) A mechanism to enhance understanding amongst the public in general and children in particular, as well as the media, of the spirit, aims and principles of child friendly justice systems as provided for in these Guidelines;
 - (i) A request for collaboration and co-ordination of efforts amongst African states for effective implementation of child justice legislation, policy, programmes and these Guidelines.
2. In the use of the Guidelines for Action, the principles of respect for children's dignity, their right to participation, non- discrimination (including non-discrimination on the basis of gender, disability and nationality or ethnic origin), the primary consideration of the best interests of the child and the child's right to protection shall be guaranteed.
3. The Guidelines for Action shall be implemented with due regard to:-
- (a) A holistic approach to the implementation of the rights of the child through the maximisation of resources and efforts;
 - (b) An interdisciplinary approach;
 - (c) Participation of children, families and communities;
 - (d) Progressive realisation of all social, economic and cultural rights and freedoms in the context of sustainable development;
 - (e) Accountability and efficiency, with emphasis on monitoring of outcomes to ensure that the desired goals are met;
 - (f) The need for continued specialisation and training for all actors involved with children in the justice system;
 - (g) The need to reduce secondary victimisation and re-victimisation through contact with the justice system by children, and to fully respect the rights of the child to rehabilitation, social reintegration and the full and harmonious development of the child's personality;
 - (h) The recognition of informal and traditional justice systems which can be harnessed and developed to ensure children's optimal access to justice with due respect for their rights and the avoidance of harm;
 - (i) The interdependence and indivisibility of rights;

- (j) Strengthening of existing structures to become more effective and human rights compliant for both children and their families;
- (k) The consideration of special needs of girls, children with disabilities, children separated from their families and children living with HIV/AIDs, children living with the effects of armed conflicts, refugee and displaced children, and other most vulnerable groups of children.

B. SCOPE OF APPLICATION

4. These Guidelines apply to: -
 - (a) All procedures of an administrative or judicial nature, whether formal or informal, where children are brought into contact with, or are involved in, civil, criminal or administrative law matters, whether as victims or witnesses, alleged offenders, persons who have been convicted or admitted responsibility for an offence or offences, or as subjects in care and protection proceedings or family law or succession and inheritance disputes;
 - (b) Traditional justice systems and justice systems of religious courts and bodies;
 - (c) All children aged below 18 years living in Africa;
 - (d) All violations of rights brought by children to the attention of justice systems.
5. These Guidelines shall take cognisance of the need for respect for family life, and the diversity of family and kinship forms in Africa that sustain and support children's growth and development. Where the Guidelines refer to a 'parent', the context may require that care-givers and members of the extended family or others who fulfil a parental responsibility role are accorded recognition. Appointed guardians or appointed legal representatives may substitute for parents or care-givers. Justice for children should include the recognition of the support role of parents, family members and members of the kinship group, and the need to reintegrate children who come into contact with the justice system into families and communities. Contact with parents family and friends shall be encouraged and supported, except where restrictions are required in the interests of the child.
6. These Guidelines shall also be implemented within the context of national legislation and international standards.

C. DEFINITIONS

7. **Child:** In accordance with the African Charter on the Rights and Welfare of the Child, a child is any person under the age of 18. States must ensure that domestic legislation recognises any person under the age of 18 as a child for the purposes of all justice proceedings, including criminal justice proceedings.
8. **Child friendly** shall mean attributes, attitudes and behaviours which take into account the need for justice systems to be sensitive to the evolving capacity and developing maturity of the child, and to their enhanced need for protection, to the need for participation of children, and to the requirements of respect for privacy, dignity and family life.
9. **Diversion** means channelling children alleged to be in conflict with the law away from formal court procedures into alternative processes or programmes, including restorative justice processes.
10. **Justice systems:** Justice systems include formal and informal systems, whether secular or religious, and including administrative systems, for the reporting, investigation, and resolution of disputes in criminal and other matters, for the allocation of legal responsibilities, for conferring and determining of legal status or the allocation of care-giving responsibilities, and for the social and economic protection of the child in legally recognised ways. Justice systems may, for the purposes of these Guidelines, include refugee status determination and immigration procedures, and transitional justice processes and structures.
11. **Restorative justice:** restorative justice is an approach to justice which seeks to involve the parties and their families and communities in addressing the causes and consequences of a dispute to promote a reconciliatory solution aimed at enhancing accountability and fostering reintegration.
12. **Social workforce** includes social workers, allied professionals, child and youth workers, community workers, volunteers and civil society participants who contribute to the functioning of child protection and justice systems.
13. **A risk assessment tool** is an instrument containing medical, psycho-social and social background information relevant to a reported instance of child abuse, child neglect or sexual abuse to enable a decision to be made concerning

treatment, psycho social support; to determine the level of risk posed to the child so as to enable informed decision-making about the progress of the case in the justice system; and to guide decisions about the appropriate measures to be taken to protect the child.

14. Traditional courts: traditional courts and other similar structures include structures for the resolution of disputes in criminal and other matters that derive their legitimacy and status from customary norms, unless traditional courts are also provided for in national law.

15. Transitional justice refers to specific measures, judicial and non judicial, adopted via national legislation in the aftermath of widespread conflict for the prosecution or perpetrators, the pursuit of reconciliation and the determination of reparations. Transitional justice is informed by a society's desire to rebuild social trust, repair a fractured justice system, and build a democratic system of governance. The core value of transitional justice is the notion of justice: not necessarily criminal justice, but other forms of justice as well. This notion and the political transformation, such as regime change or transition from conflict, are thus linked toward a more peaceful, certain and democratic future.

D. OVERARCHING PRINCIPLES

16. The right of children to participate shall be fully respected. It should be recognised that meaningful, effective and well informed participation of children and adolescents not only leads to better understanding and a possible solution to the problems they face, but is also one of the most effective ways to enhance their social development, self esteem as well as respect for others and the need for responsible behaviour. To enable children to exercise their right to participate, sufficient information on how the child may exercise his or her right should be provided by the competent authority, and views expressed by the child should be given due consideration, and decisions or rulings which do not accord with the child's expressed wishes or views explained to the child in language that the child can understand.
17. The best interests of the child shall be the primary consideration in the implementation of actions and decisions concerning children in the justice system, unless, exceptionally, the dictates of the communal good and public policy require otherwise. It must be recognised that the best interests of the child are best determined in a multidisciplinary approach in which the physical, social, psychological and emotional wellbeing of the child can be fully explored.
18. The child's right to non-discrimination shall be guaranteed with special protection to be granted to the most vulnerable children, including children with disabilities, children living or working on the street, the girl child, children affected by HIV/Aids, refugee and displaced children, and children who are separated from their families.
19. The child's right to dignity requires that all children in contact with justice systems be treated with care, sensitivity, fairness and respect throughout the procedure or case, regardless of their legal status or of the manner in which they have come into contact with the justice system.
20. The child's right to survival, protection and development, as provided for in the ACRWC (article 5.2), must be ensured to the maximum extent possible. The death penalty for children shall be absolutely proscribed for any offence committed whilst the child was aged below 18 years, including by any religious or traditional court.

E. GENERAL MEASURES OF IMPLEMENTATION

21. Legislative review to ensure compatibility of national laws with these Guidelines and other international and regional instruments, declarations and related guidance from UN and AU bodies is a necessary part of implementation. States shall undertake these reviews on a regular basis.
22. States shall develop a comprehensive and coherent national policy for 'Children in the Justice System' which shall consider the interrelatedness of the challenges facing children in contact with the law, be informed by extensive consultation with children and enable their active and meaningful participation in decision-making at all levels of governance.
23. States shall develop and effectively implement the required protocols, training and directives for professionals and other actors working with children in the justice system to ensure respect for rights, co-ordination of services, avoidance of delay, and the development of specialised skills and services.
24. The necessary information and management systems pertaining to children in the justice system to enable effective monitoring, to further systems development, and to be enabled to measure progress towards full implementation of these Guidelines and other relevant instruments shall be implemented.
25. States shall allocate sufficient resources in the national policy for 'Children in the Justice System'. These policies shall seek to enhance co-operation among those involved in or affected by this process and to encourage the sharing of experiences and best practices.
26. States must ensure the effectiveness of birth registration systems. Where the age of the child involved in the justice system is material, measures must be put in place to ensure that the correct age of the child is established by independent and competent assessments, and where evidence of age is inconclusive or there is conflicting evidence, the child shall have the right to benefit from the most favourable dispensation related to his or her age..

27. The desirability of alternatives to contact with the formal justice system where children are alleged to be in conflict with the law ('diversion') must be recognised and promoted wherever this is consistent with the best interests of the child and other human rights standards. Alternative measures of an educative, vocational and reintegrative nature must to this end be developed and sustained on the basis of equal access for all children.
28. Wherever appropriate and consistent with human rights standards, alternatives to formal adjudication, such as mediation, conciliation, restorative justice practices, and traditional dispute resolution mechanisms, the essential aim of which is the child's reformation, re-integration into his or her family and social rehabilitation, must be promoted.
29. In developing systems for the protection and advancement of justice for children, priority attention shall be given to children in need of special protection, including those deprived of their liberty, girl children, children with disabilities, children living or working on the streets, children deprived of a family environment, refugee and displaced children, children affected by HIV/Aids and other most vulnerable groups of children.
30. The need for speedy justice procedures in the best interests of children in contact with justice system must be emphasised.
31. The interests of affected children must be included in the conceptualisation of transitional justice processes in order to ensure their inclusion in reconciliation processes and their reintegration into their community and society.
32. The vital role of social assistance programmes in reducing the vulnerability of children in Africa to rights violations and as an element of prevention or and protection against these violations should be fully appreciated. States should establish, operate and support these programmes to the maximum extent of available resources.

F. GENERAL ELEMENTS OF CHILD FRIENDLY JUSTICE

33. Access to justice systems must be possible for children to initiate as parties in own name, in class or collective actions, and via interested parties, legal representatives, parents or guardians pursuing justice on their behalf.
34. From their first involvement with the justice system, and throughout their contact with the justice system, children and their parents must be provided with information and advice in a language and at a level that they understand, relating to: -
 - (a) their rights, what options for non-judicial or judicial procedures exist, the likely duration of procedures, and access to remedies, appeal or review, reparations, and the availability of any independent complaints mechanisms
 - (b) the time and place of any court or other relevant hearings
 - (c) the general progress or outcome of proceedings
 - (d) what protective measures are available and how and where support services can be accessed
35. Professionals, non-professionals and auxiliary social workforce staff working directly with children in the justice system, including community volunteers where the justice system relies on their services to children in the justice system, must be screened for suitability to work with children.
36. Professionals and auxiliary social workforce staff working with children in the formal justice system and where possible in traditional and religious justice systems, should receive training on child rights in the African context, alternatives to formal judicial proceedings, child development and child protection.
37. Justice proceedings where children are involved should be completed without undue delay and as speedily as possible, bearing in mind children's age, maturity and stage of development, and postponements of proceedings must be kept to the minimum.

38. States must progressively ensure the availability of child rights-oriented legal representation for children in the justice system. Legal representatives dealing with children in the justice system should provide the child with all necessary information and guide the child as to the progress and conduct of any proceedings. Priority should be given to setting up agencies and programmes to ensure the availability of legal and other assistance to children in the justice system, free of charge, and in particular to ensure that the right of every child deprived of his or her liberty to have access to such assistance from the moment that the child is detained is respected in practice. The special needs of children with disabilities to have access to information shall be accommodated in the development and provision of information about the justice system to children.
39. Non-intimidating and child friendly settings shall be made available in African justice systems to the maximum extent possible. States shall strive towards the establishment of specialised courts, recognised in law, in line with child friendly justice principles, and in the absence of specialised courts, regular courts shall be empowered to adopt and implement specialised procedures for children.
40. Due attention shall be paid to the safety and dignity of children who are displaced, illegally retained across borders, or who find themselves otherwise outside of their country of origin. Upon return of the child to the country of origin, adequate family based social reintegration measures should be provided.
41. Children shall not be subjects of justice procedures in military courts, or of martial courts established in times of civil unrest or states of emergency. The decision to intern or administratively detain a child during any period of armed conflict must be reviewed as soon as possible by the detaining authority and further detention must comply fully with the requirements of the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and these Guidelines.
42. Children who are accused of crimes under international law allegedly committed while they were associated with armed forces or armed groups, should be considered primarily as victims and not as perpetrators. Where possible, alternative accountability mechanisms to prosecution and trial in a criminal court for former child soldiers should be provided for.

G. TRADITIONAL JUSTICE AND RELIGIOUS COURTS

43. Traditional courts, religious courts or other similar structures, where they exist, are required to respect international standards on the right to a fair trial and children's rights. The following provisions shall apply, as a minimum, to all proceedings before traditional courts and other similar structures:
- (a) equality of all children without distinction as regards race, colour, sex, gender, religion, creed, language, political or other opinion, national or social origin, fortune, disability, birth, or other status;
 - (b) respect for the inherent dignity of children, including the right not to be subject to torture, or other cruel, inhuman, humiliating or degrading punishment or treatment; no physical punishment of any kind shall be imposed by any such court or structure; undue pressure and duress shall not be used;
 - (c) respect for the right to liberty and security of every child, in particular the right of every child not to be subject to arbitrary arrest or detention;
 - (d) respect for gender equality in all traditional justice and religious proceedings, and the recognition of the special vulnerability of the girl child;
 - (e) adequate opportunity to prepare a case, present arguments and evidence and to challenge or respond to opposing arguments or evidence;
 - (f) an entitlement to the assistance of an interpreter if the child cannot understand or speak the language used in or by the traditional court or other similar structure;
 - (g) an entitlement to seek the assistance of and be represented by a representative of the child's choosing in all proceedings before traditional courts, religious courts and informal justice proceedings, unless the child chooses not to avail herself of such legal representation or where such choice is not in her best interests;
 - (h) an entitlement to have rights and obligations affected only by a decision based on evidence presented to the traditional or religious court;

- (i) an entitlement to receive a decision without undue delay and with adequate notice of and reasons for the decision;
- (j) an entitlement to an appeal to a higher traditional court, administrative authority or a judicial tribunal;
- (k) all hearings before traditional courts shall respect children's rights to privacy, including proceedings concerning matrimonial disputes, child support or the guardianship of children;
- (l) All proceedings shall also give due consideration to the human rights of parents, guardians or care givers representing the child;
- (m) State parties shall abolish systems for the administration of justice for children conducted by secret societies;
- (n) States parties shall ensure the impartiality of traditional courts. In particular, members of traditional courts shall decide matters before them without improper influence, inducements, pressure, threats or interference, direct or indirect, from any quarter;
- (o) Religious leaders and educators are bound to exercise any jurisdiction on matters involving child justice in a manner that is fully compatible with these Guidelines and international standards.

H. FAIR TRIAL RIGHTS FOR CHILDREN IN CONFLICT WITH THE LAW

44. Children are entitled to all the fair trial guarantees applicable to adults and to some additional special protection.
45. States must ensure that law enforcement and judicial officials, as well as staff at institutions from which children are not free to leave at will, are adequately trained to deal sensitively and professionally with children who interact with the criminal justice system whether as suspects, accused, complainants or witnesses.
46. States shall establish laws and procedures which set a minimum age below which children will be presumed not to have the capacity to infringe the criminal law. Unless already set at above this level, the age of criminal responsibility should not be fixed below 12 years of age, and States must endeavour to progressively raise this age to at least 15 years of age. No child below the age of 12 (or the minimum age of criminal responsibility where this is higher than 12) shall be arrested or detained on allegations of having committed a crime. The importance of effective birth registration systems, as noted in Guideline 23, for the implementation of this Guideline is underscored.
47. No child shall be subjected to arbitrary arrest or detention. Offences which can be committed only by children ('status offences') shall be expunged from the statutes.
48. Law enforcement officials must ensure that all contacts with children are conducted in a manner that respects their legal status, avoids harm and promotes the well-being of the child. When a child suspected of having infringed the penal law is arrested or apprehended, his or her parent, guardians or family relatives should be notified immediately.
49. The child's right to privacy shall be respected at all times in order to avoid harm being caused to him or her by undue publicity and no information that could

identify a child suspected or accused of having committed a criminal offence shall be published.

50. Alternatives to criminal prosecution, with proper safeguards for the protection of the well-being of the child, may include community, customary or traditional mediation; warnings, cautions and admonitions accompanied by measures to rehabilitate the child; implementation of programmes of restorative justice such as conferences between the child, the victim and members of the community; and community programmes such as temporary supervision and guidance, or programmes involving restitution and compensation to victims.
51. Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time. Any child who has been arrested for having committed a crime shall be released into the care of his or her parents, legal guardians or family relatives unless there are exceptional reasons for his or her detention.
52. The competent authorities shall ensure that children are not held in detention for any period beyond 48 hours before appearing in a court. Children who are detained pending trial or finalisation of the proceedings shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults. Girl children shall be kept separately from males and boy children. Legislation shall specify a maximum period of pre-trial detention for children, upon the expiry of which a child shall be released from detention whether or not criminal proceedings have been concluded.
53. Pre-trial detention may not be used as a sanction, in violation of the right to be presumed innocent until proven guilty. No child shall be tried for an alleged offence committed whilst below the minimum age of criminal responsibility.
54. Every child arrested or detained for having committed a criminal offence shall have the following guarantees:
 - (a) to be treated in a manner consistent with the promotion of the child's dignity and worth;

- (b) to have the assistance of his or her parents, a family relative or legal guardians from the moment of arrest;
- (c) to be informed promptly and directly, in a language he or she understands, of the reasons for his or her arrest and of any charges against him or her, and if appropriate, through his or her parents, other family relative, legal guardians or legal representative;
- (d) to be informed of his or her rights in a language he or she understands;
- (e) not to be questioned without the presence of his or her parents, a family relative or legal guardians, and a legal representative;
- (f) not to be subjected to torture or any other cruel, inhuman or degrading treatment or punishment, any form of physical punishment, or any duress or undue pressure;
- (g) not to be detained in a cell or with adult detainees.
- (h) to have justice proceedings conducted without the public or the press being permitted to attend.

55. Every child accused of having committed a criminal offence shall have the following additional guarantees:

- (a) to be presumed innocent until proven guilty according to the law;
- (b) to be informed promptly and directly, and in a language that he or she understands, of the reasons for the arrest or bringing of charges, and if appropriate, to have his or her parents or legal guardians informed of these too;
- (c) to be provided free of charge by the State with legal or other appropriate assistance in the preparation and presentation of his or her defence;
- (d) to have the case determined expeditiously by a competent, independent and impartial authority or judicial body established by law in a fair hearing;
- (e) to have the assistance of a legal representative and, if appropriate and in the best interests of the child, his or her parents, a family relative or legal guardians, during the proceedings;

- (f) not to be compelled to give testimony or confess guilt; to examine or have examined adverse witnesses and to obtain the participation of supporting witnesses on his or her behalf under conditions of equality;
 - (g) if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law and without delay;
 - (h) to have the free assistance of an interpreter if he or she cannot understand or speak the language used;
 - (i) to have his or her privacy fully respected at all stages of the proceedings.
56. In disposing of a case involving a child who has been found to be in conflict with the law, the competent authority shall be guided by the following principles:
- (a) The action taken against the child shall always be in proportion to the circumstances and gravity of the offence and in the best interest of the child;
 - (b) Non-custodial options which emphasise the value of restorative justice should be given primary consideration and restrictions on the personal liberty of a child shall only be imposed after careful consideration and shall be imposed as a last resort after careful consideration and for the shortest appropriate period of time. Non-custodial measures could include:
 - i) Care, guidance and supervision orders;
 - ii) Probation;
 - iii) Financial penalties, compensation and restitution;
 - iv) Intermediate treatment and other treatment orders;
 - v) Orders to participate in group counselling and similar activities;
 - vi) Orders concerning foster care, living communities or other educational settings;
 - vii) referral to restorative justice processes for the furtherance of restorative outcomes
57. A child shall not be sentenced to imprisonment unless the child is adjudicated of having committed a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response which can result in rehabilitation of the child and

reintegration into society [note from author: comments from one participant did not take account of the fact that this is taken directly from the Beijing Rules.].

Time spent by a child in pre-trial detention shall be deducted from the period of imprisonment imposed.

58. Children deprived of their liberty shall have the right to maintain regular contact with families and to reintegration services upon release from detention or after serving any sentence.
59. Capital punishment shall not be imposed for any crime committed by children and children shall not be subjected to corporal punishment. The sentence of life imprisonment shall not be imposed for an offence committed whilst below the age of 18 years.
60. Criminal records should be non disclosable upon reaching the age of majority, unless exceptional circumstances exist in the interests of public safety.
61. Transitional justice processes which seek to enhance the accountability of children involved in offences committed during conflict situations shall seek to promote restorative justice solutions aimed at the reformation of the child, reintegration into his or her family and social rehabilitation.
62. These fair trial rights apply regardless of the charges, including charges related to terrorism, brought against the child, and States are reminded that derogation from rights enshrined in the African Charter on the Rights and Welfare of the Child is not permitted even during states of emergency.

I. FAIR TRIAL RIGHTS IN MATTERS INVOLVING CHILD VICTIMS AND WITNESSES IN ANY JUSTICE PROCEEDINGS

63. Child victims shall be treated with compassion and the development of child witness preparation schemes shall be encouraged.
64. States shall ensure that child witnesses are able to give their best evidence with the minimum distress, and children should be protected from hostile or intimidating questioning. Investigation and practices of judicial bodies should be adapted to afford greater protection to children and to respect children's rights without undermining the defendant's right to a fair trial. States are required, as appropriate, to adopt the following measures in regard to child witnesses:
 - (a) Child witnesses shall not be questioned by the police or any investigating official without the presence of their parents, a family relative or legal guardians, or where the latter are not traceable or where their presence is contrary to the best interests of the child, in the presence of a social worker;
 - (b) Police and investigating officials shall conduct their questioning of child witnesses in a manner that avoids any harm and promotes the well-being of the child;
 - (c) A child who alleges sexual abuse shall be given medical treatment immediately but not later than 72 hours of a complaint coming to the attention of the justice system;
 - (d) Police and investigating officials shall ensure that child witnesses, especially those who are victims of sexual abuse, do not come into contact with or made to confront the alleged perpetrator of the crime; As far as possible, interview and waiting rooms should be adopted to create a child friendly environment. Court preparation programmes to familiarise children with court environment should be implemented where possible;
 - (e) The child's right to privacy shall be respected at all times and no information that could identify a child witness shall be published;
 - (f) Where necessary, a child witness shall be questioned by law enforcement officials through an intermediary; legal provisions should make it possible for

a child's direct evidence in formal justice procedures to be dispensed with where this is allowed by the judge or presiding officer;

- (g) A child witness should be permitted to testify before a judicial body through an intermediary, if necessary;
- (h) Video-recorded pre-trial interviews with child witnesses should be presented in lieu of live testimony where resources and facilities permit; the development of such facilities should be encouraged;
- (i) Screens should be set up around the witness box to shield the child witness from viewing the defendant;
- (j) The public gallery should be cleared, especially in sexual offence cases and cases involving intimidation, to enable evidence to be given in private;
- (k) Judicial officers, prosecutors and lawyers should be permitted to wear ordinary dress during the testimony of a child witness;
- (l) Defendants should be prevented from personally cross-examining child witnesses;
- (m) Information about the previous sexual history of alleged child victims or witnesses may not be sought or presented as evidence in trials for sexual offences, and religious or cultural exceptions to this principle cannot be permitted;
- (n) A child's evidence should not be discounted or disallowed purely on the basis of the child's age;
- (o) Law enforcement personnel, parents and families of child victims of sexual abuse shall refrain from pressurizing the child victim not to testify; wherever possible and appropriate prosecutions for the commission of sexual offences against children should proceed even where the victim refuses to testify.
- (o) Court proceedings should be adapted to the child's pace and attention span. with regular breaks being provided for and disruptions kept to a minimum.

65. States should endeavour to develop common risk assessment tools for application in a multidisciplinary way in responding to child victimisation. These tools should have immediate child protection strategies and collection of the best evidence as their goals, and training on the use of the tools should be

provided to all actors, including health and medical personnel, police and members of the social workforce dealing with child victims.

66. Child victims and witnesses in formal and informal justice proceedings should be protected from threats, intimidation, reprisals or other forms of victimisation.
67. Child victims shall be given information about any opportunity to obtain compensation, redress and psycho-social support, whether this is available at the expense of the perpetrator or the state or any other agency or body. The information should specify whether compensation and redress are available in the civil or criminal justice system or elsewhere. States are reminded that statutory limitations period should not apply where redress or compensation is sought for actions committed whilst the victim was aged below 18 years.
68. States are reminded of the particular risks that extra judicial settlements, including those negotiated between families, pose to child victims and to rights of the girl child in particular where marriage is proposed as the settlement, and actors in affected justice systems should refuse to countenance private arrangements insofar as these do not promote the rights of the child victim.
69. States should enact legal provisions to give effect to the rights and protections accorded child witnesses and victims in these Guidelines, with particular attention to the protection of children's privacy where they have been involved in formal or informal judicial procedures.
70. Due consideration should be given to measures, including interim measures, that remove an alleged perpetrator from the immediate environment of an alleged child victim where the safety of the child is at immediate risk. Removal of the child should be considered a last resort.
71. Judges decisions or outcomes of justice proceedings should be communicated to child victims and witnesses in language that they understand, along with any further information about measures that could be taken, such as appeal or recourse to independent complaint mechanisms.

J. Justice for Children as subjects of civil judicial or administrative proceedings, including alternative care proceedings and family law disputes

72. Where children are subjects of judicial or administrative proceedings where there is the likelihood of conflict between their interests on those of the guardians or care-givers, they should be provided with separate legal representation, or a guardian ad litem or an independent representative in accordance with national laws and policies.
73. The right to be heard in judicial and administrative proceedings is a right of the child, and the child has the right to exercise the option not to express an opinion.
74. In matters involving family disputes, measures which diminish or avoid the intensification of conflict should be chosen, except where these are not conducive to the best interests of the child.
75. In the ordinary course, actions or measures which would avoid or minimise further legal or administrative proceedings can be deemed to be in the best interests of the child.
76. Actions or measures which do not result in the separation of siblings can be deemed to be in the best interests of the children in the ordinary course.
77. Actions or measures which promote the right to the child to be brought up in a stable family environment, and where this is not possible, an environment closely resembling a family environment shall be deemed to be in the best interests of the child and legal provisions to this effect shall be included in national laws.
78. Actions or measures which protect the child from harm, violence, including family violence, and exploitation, are deemed to be in the best interests of the child and legal provisions to this effect shall be included in national laws.
79. After judgment in highly conflictual family proceedings, guidance and support should be offered to affected children, free of charge to the maximum extent of available resources, by specialised services. Judgements should be implemented without delay. Implementation of judgments by force should be a measure of last resort in family cases when children are involved.

80. Actions or measures which promote the child's ability to maintain a connection with his or her family, extended family and culture are deemed to be in the best interests of the child, and legal provisions to this effect shall be included in national laws.
81. Intercountry adoption of children which has the effect of severing the connection between the child and his or her culture shall be permitted only as a last resort, and when this is in the best interests of the child concerned. States shall enact national legislation regulating intercountry adoption and providing for the designation of a competent authority as specified in the Hague Convention on the Protection of Children and Co-operation in respect of Inter-country Adoption (1993).
82. States shall ensure that national systems for the regulation of alternative care for children deprived of parental care are established and fully monitored. All placement of children in alternative care shall be subject to periodic review, and institutions for the alternative care of children shall be subject to registration, regular inspection and quality assurance processes. These requirements shall form part of national legislation.
83. States shall ensure that orphaned children are assured of the appointment of legal guardians, either by operation of a will, by appointment by a court or other similar structure, or by operation of laws specifying which care-giver, member of the kinship group or other person will hold guardianship.
84. States shall ensure that adequate legislative and enforcement mechanisms in justice systems exist to ensure that children are not wilfully or otherwise deprived of inheritance rights, and due attention shall be paid to the right of the girl child to equality in the distribution or allocation of any estate property.
85. Justice systems shall recognise the primary duty upon parents and legal guardians for the support (maintenance) and upbringing of their children; States shall take appropriate steps to ensure the joint responsibility of both parents, whether married or not, for the fulfilment of this responsibility, and shall take measures, to the maximum extent of available resources, to assist parents or guardians who experience difficulties in the fulfilment of this obligation.

K. Monitoring and implementation

86. States must consider positively requests for access to institutions and to child friendly justice courts from African Union structures, including the African Committee of Experts on the Rights and Welfare of the Child, Special Rapporteurs of the African Commission on Human and Peoples' Rights, and from international humanitarian and human rights organisations, where appropriate. This provision applies to both signatory and non- signatory states to the African Charter on the Rights and Welfare of the Child.
87. In the light of existing international and regional standards, states should establish mechanisms for promptly investigating and prosecuting violations of the rights of children in the justice system, and ensure that there is no immunity for persons suspected of these violations.
88. In order to strengthen child friendly justice on a national level, states are encouraged to draw on regional expertise and technical and other assistance from intergovernmental, non-governmental, academic institutions, and international and regional financial institutions. These efforts should be directed towards research, disseminating information, strengthening infrastructure and information systems, including birth registration systems; training; the development of alternative measures (diversion) and services aimed at social reintegration and psychological recovery; and implementing these Guidelines.
89. States shall recognise the desirability of developing specialised courts to support child friendly justice principles and practices, and the necessity of a well trained social workforce to ensure the full implementation of these Guidelines.
90. In accordance with the National Policy for Children in the Justice System' referred to in Guideline 22 above, a monitoring framework, including independent mechanisms as appropriate, shall be established to oversee the implementation of these guidelines, in accordance with national judicial, administrative, social protection and traditional justice systems.

91. State reports to the African Committee of Experts on the Rights and Welfare of the Child and the African Commission on Human and Peoples' Rights shall reflect on the progress made towards the implementation of these Guidelines.
92. Civil society and in particular institutions and bodies which aim to promote and protect the rights of the child, including independent human rights institutions, shall participate fully in the monitoring of these Guidelines. The monitoring process should provide sufficient information so as to enable the identification of both good practices to be further developed, and to identify shortcomings in implementation warranting immediate attention.
93. States shall promote the dissemination of child friendly versions of relevant regional instruments, including these Guidelines.