



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

Comité Africain d'Experts sur les
Droits et le Bien-être de l'Enfant

Comitê Africano dos Direitos e
Bem-Estar da Crianças

اللجنة الأفريقية المعنية بحقوق الطفل ورفاهه

Nala House,
Balfour Road, Maseru
Kingdom of Lesotho
Email:
acerwc-secretariat@africa-union.org

THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD (ACERWC)

ADMISSIBILITY RULING

Communication N^o: No. 010/Com/003/2016

Decision on Admissibility N^o:

Authors: Mr. and Mrs. Elogo Menye and Rev. Daniel Ezo'o Ayo
Represeted by Etoungou Nko'o Law Firm

Against: The State of Cameroon

I. Submission of Communication

1. The Secretariat of the African Committee of Experts on the Rights and Welfare of the Child (the Committee/ACERWC) received a communication dated 22 April 2016 pursuant to Article 44(1) of the African Charter on the Rights and Welfare of the Child (the Charter/ACRWC). The Communication is submitted by Mr. and Mrs. Elogo Menye and Rev. Daniel Ezo'o Ayo (the Complainants). According to Section IX (2) (i) of the Revised Guidelines on Consideration of Communications by the ACERWC (the Revised Communication Guidelines), the Committee transmitted a copy of the Communication to the respondent State Party. Upon receipt of the Communication, the State Party should have submitted its response within 60 days from the date of the request from the Secretariat. As the Committee did not receive a response from the Government, it decided to proceed considering the admissibility of the Communication without the response from the Respondent State.

II. Summary of Alleged Facts

2. The complainants allege that Elisabeth Gloria aged 4 and Jacques Le Juste aged 6 died on November 2012 at the Catholic hospital Notre Dame de l'Amour of Logpom in Douala, Cameroon. It is further alleged that the children lost their lives at the hospital because the person in duty was not a doctor and could not diagnose febrile gastroenteritis. The complainants allege that the fact that the children died of the reason stated above has been confirmed by the autopsy report conducted on 8 January 2013.
3. The complainants allege that the hospital refused to issue documents ascertaining the state of health of the children when they were admitted to the hospital or death certificate. Furthermore it is alleged that the hospital falsely stated that the children arrived at the hospital dead, after being ritually tortured by their parents who are members of a sect.
4. The complainants allege that after the death of the children, their corpses were sexually defiled as coitus was performed on the remains of Elisabeth Gloria and the remains of Jacques Le Juste was sodomized. These acts were allegedly undertaken as rites of worship that provide access to immeasurable degrees of power.
5. The complainants, taking the facts into consideration, claim the Republic of Cameroon is in violation of Articles 14 (Health and Health Services) and 16 (Protection Against Child Abuse and Torture) of the Charter by virtue of the sexual acts performed on the bodies of the children after they lost their lives.

III. The African Committee's Analysis on the Decision of Admissibility

6. The current Communication is submitted pursuant to Article 44 of the Charter which allows the Committee to receive and consider complaints from “any person, group or non-governmental organization recognised by the Organization of the African Unity, Member States, or the United Nations on matters covered by the Charter”. The Complainants, therefore, have identified themselves as Mr. and Mrs. Elogo Menye and Rev. Daniel Ezo’o Ayo represented by the law firm of Etoungou Nko’o Henry Charles. The Complainants also stated that the communication is directed against a State Party to the African Children’s Charter, as the respondent State ratified the Charter on 5 September 1997, and within whose jurisdictions the violations of the rights enshrined in the Charter have allegedly been committed.
7. As provided under Section II and Section IX of the Revised Communication Guidelines, the admissibility of a communication submitted pursuant to Article 44 is subject to conditions relating to authorship, form and content as considered below:

i. Requirement as to Authorship

8. Section I Article 1(C) of the Revised Communications Guidelines provides that a Communication may be presented by any individual or group of natural or legal persons.
9. The Committee notes that the Communication explicitly states the names of the authors, Mr. and Mrs. Elogo Menye and Rev Daniel Ez’o Ayo. Therefore, the Committee holds the view that the Complainants have complied with Section 1 Article 1(C) of the Revised Communication Guidelines.

ii. Requirements as to Form

10. The Complainants submitted that the present Communication satisfies the requirement as to form as set out in Section 2 (2) of the Revised Communication Guidelines, which states that a Communication can only be considered by the Committee if it is not anonymous, it is written in one of the official languages of the Committee, it concerns a State signatory to the Charter and it is duly signed by the complainant or her/his representatives. In this regard, the Committee notes that the Communication submitted is written in English and French, which are the Official languages of the Committee, and it is made against a State Party to the Charter. Therefore, the Committee concludes that the complainants have complied with the requirement as to form as laid down in the Communication Guidelines.

iii. Requirements as to Content

11. Laying down the conditions of admissibility, Section IX (1) (A) of the Revised Communication Guidelines (Revised Guidelines) prescribes that a Communication has to be compatible with the provisions of the Constitutive Act of the African Union or with the Charter on the Rights and Welfare of the Child. The complainants submitted that this condition is satisfied since the Communication is presented pursuant to Article 44 of the African Children's Charter.
12. The Communication is brought on behalf of two children who have passed away. The Complainants allege that the Communication concerns violations of the provisions of the Charter. They further argue that the Charter should protect the rights of deceased children.
13. According to Section II (1) of the Revised Guidelines, the Committee considers Communications alleging violations of the rights and welfare of the child pursuant to the Charter. The complainants allege that the Communication concerns violations of articles 14, 16 and 44 of the Charter. In this regard the Committee would like to refer to the decision of the Commission in *Korvah v Liberia* in which it was decided that the case is inadmissible due to the fact that the allegations thereunder did not amount to human rights violation under the African Charter on Human and Peoples' Rights.¹ Hence, for the purpose of admissibility of this Communication, it is paramount to analyse if the allegations relate to violations of the rights and welfare of the child under the Charter.
14. Taking in to consideration the fact that the Communication was brought mainly on the assertion that acts committed on the deceased children should be considered a violation of their human rights under the Charter, the main issue in assessing the admissibility of the communication is the extent of protection accorded in the Charter as a human rights instrument. In other words, does the Charter protect the right of deceased children? The Committee duly notes that, according to article 2 of the Charter (definition of a child), it is stated that a child is a **human being** under the age of 18. This provision makes the extent of protection of the Charter clear and excludes deceased children. However, the Complainants request that the Charter should be interpreted to extend its protection to the remains of deceased children. Responding to this request demands an exploration of the issue in relation to foundations of human rights.
15. The Committee recognises that the philosophical foundation of human rights is a contentious matter, however the Universal Declaration of Human Rights (UDHR) and consecutive instruments indicate that the justification for human rights is the inherent dignity of human beings. The Vienna Declaration and Plan of Action (VDPA) on the other hand states that human rights emanate from 'the dignity and worth inherent in the human person.'² The key in these justifications is human beings or the human person; the obvious question with a seemingly obvious

¹ *Korvah v Liberia* (2000) AHRLR 140 (ACHPR 1988)

² Vienna Declaration and Programme of Action, preamble

answer is what is a human being? Moreover, the less obvious question is where does dignity, which is the source of the inalienable rights bestowed upon the human beings emanate from? Central to being a human being is life, as simple as that appears the question of when does life begin is rather a difficult one on which consensus is very far from being reached. However, the question of when does life end is far less controversial, death is the end of life and thereby the end of being considered a human person.

- 16.**In addition to the theoretical bottlenecks, the Committee notes the practical problems that may arise in attributing human rights to the dead. Dignity, as a foundation for universal human rights, needs a universal standard; that is how rights such as prohibition of cruel and inhumane treatment can be implemented. Human rights bodies develop standards that can be applied universally to ensure the implementation of such rights. However, if remains of humans are to be granted dignity and human rights this will prove to be an impossible task. Remains of humans are treated differently in different cultures, religions and jurisdictions. There are ancient ritual such as mummification, the most common once such as burial and cremation as well as the latest modern once such as Plastination, Eternal-reefs, Freeze-drying and Space Burial. There rituals range from preserving the body in a recognisable form up to mixing the crushed bones of the remains of a human with concrete to make underwater reefs that can be habitat for fish.
- 17.**The Committee notes that jurisprudence dealing with a human rights question in relation to the remains of a human is rare. The European Court of Human Rights (ECHR) in the case of *Elberte v Latvia* dealt with an issue concerning removal of a body tissue from a corpse, for pharmaceutical use, without the consent of the deceased's wife according to an agreement approved by the state. The court ruled that the removal is violation of article 3 (prohibition of inhumane and degrading treatment) and article 8 (the right for respect to private and family life) of the European Convention on Human Rights.³ However, the violations were not of the rights of the deceased but of the rights of the applicant who was the wife of the deceased under the European Convention. The court stated that the applicant's right to private life was violated and she suffered mental torture 'due to the intrusive nature of the acts carried out on her deceased husband's body and the anguish she suffered in that regard as his closest relative.'⁴
- 18.**The Committee recognises that the universality of human rights comes from its definition, it refers to rights human beings possess simply because they are human beings. Human beings have basic life sustaining interests that inspired and helped formulate various groups of rights. Human corpses on the other hand do not have any vital, life sustaining, interests. Human rights are intended and

³ *Elberte v Latvia*, ECHR Para 117

⁴ *Elberte v Latvia*, ECHR Para 142

designed to protect human beings and not remains of humans. The treatment of human corpses is at best a question of Ethics and morality, which should be dealt with in private or criminal law. Therefore, the Committee concludes that all the allegations of the Complainants relating to the postmortem treatment of the Children do not relate to the rights and welfare of the child under the Provisions of the Charter.

19. The Committee notes that the Communication is not strictly limited to the abuse of the children's bodies postmortem, albeit that is the main focus. The facts of the case include scattered allegations of lack of professionalism leading to the death of the children in Catholic Hospital Notre Dame de l'Amour. The Complainants allege that the person on duty was not a doctor but a nurse and was not able to properly diagnose the children, resulting in their death.
20. The Committee notes that at the admissibility stage complainants are not required to provide detailed arguments on the alleged violations, however, in order to comply with the requirement of compatibility stipulated in the provisions of the Charter under Section IX (1) (A) of the Revised Communication Guidelines, the applicants have to establish a *prima facie* violation of the right. In the same manner, the African Commission has interpreted compatibility with the African Charter on Human and Peoples' Rights to mean that "the communication must reveal a *prima facie* violation of the Charter"⁵
21. In the case at hand, the complainants did not adequately explain the facts of the case in light of article 14 of the Charter in order to establish a *prima facie* violation of the provision. Furthermore, under the allegation of article 14, the Complainants stress on the need to establish jurisprudence on dead children without explaining how it is connected to article 14. Even though article 14 of the Charter provides various protections relating to the right to health of the child, the Complainants fail to establish a *prima facie* violation of the right in conjunction with the facts of the case in accordance with the provision of the charter and to substantiate such allegation.
22. The Complainants further allege a violation of article 44 of the Charter, which is a procedural provision on the mandate of the Committee to receive Communications. This allegation does not relate to the rights and welfare of the Child under the Charter. Moreover the facts under this allegation are related to the action taken at the High Court of Wouri in Duala and the cause of death of the Children, which are not related to the general provision of the Charter under article 44 that bestows the mandate to receive Communications to the Committee.
23. Section IX Article 1(d) of the Revised Communication Guidelines provides that the author of a communication should exhaust all available and accessible local remedies before it brings the matter to the Committee, unless it is obvious that

⁵ Mouvement Ivoirien des Droits Humains (MIDH) v Côte d'Ivoire (2008) AHRLR 75 (ACHPR 2008) para 44.

this procedure is unduly prolonged or ineffective. The rule of exhaustion of local remedies reinforces the subsidiary and complementary relationship of the international system to domestic system. In principle a tribunal like the ACERWC should not assume the place of first instance court or appellate court. It should come in to the picture only as a last resort after the domestic remedies have been exhausted and failed. In the case of *Mouvement des Réfugiés Mauritaniens au Sénégal v Senegal*, the African Commission stated that failure to provide a proof of attempting to exhaust local remedies available to complainant can render a communication inadmissible.⁶

24. Furthermore, in the case of *Anuak Justice V Ethiopia*, the African Commission held that "Applicants must indicate that they have had recourse to all domestic remedies to no avail and must supply evidence to that effect. If they were unable to use such remedies, they must explain why."⁷ In the case at hand, the complainants have stated that they have taken unsuccessful action at the High Court of Wouri in Duala. Moreover, aside from stating the failure of this one action at the high court, the Complainants did not indicate all the available remedies and the steps taken to exhaust them, nor did they explain why or adduce evidence to that effect.

iv. Decision on Admissibility

25. On the basis of the aforementioned arguments and analysis, the African Committee of Experts on the Rights and Welfare of the Child notes and concludes that the Communication submitted by the author has not fulfilled the admissibility conditions as laid down in the Charter and the Committee's Guidelines on Consideration of Communication. The content of the Communication is outside the mandate of the Committee and beyond the scope of protection given in the Charter. Furthermore the Complainants failed to establish a *prima facie* violation of the Charter and to exhaust local remedies. The Communication is accordingly declared inadmissible.

Done in _____

Prof. Benyam Dawit Mezmur

⁶ *Mouvement des Réfugiés Mauritaniens au Sénégal v Senegal* (2003) AHRLR 131 (ACHPR 2003)

⁷ See *Anuak Justice V Ethiopia* (n 2 above) para 50.

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