

AFRICAN UNION

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



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

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P. O. Box 3243 Roosevelt Street (Old Airport Area), W21K19, Addis Ababa, Ethiopia  
Telephone: (+ 251 1) 551 3522 [Internet : http://acerwc.org](http://acerwc.org) Fax: (+ 251 1) 553 5716

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

**REPORT OF AN AMICABLE SETTLEMENT UNDER THE AUSPICES OF  
THE ACERWC**

**In the matter between:**

Project Expedite Justice, The Al Khatim Adlan Centre for  
Enlightenment and Human Development, The International Refugee  
Rights Initiative, African Centre for Justice and Peace Studies, Horn of  
Africa Civil Society Forum, and National Human Rights Monitors  
Organization  
(Project Expedite Justice *et al*/The Applicants)

And

The Republic of The Sudan (Respondent State)

**Communication N<sup>o</sup>: 0011/Com/001/2018**

## **REPORT OF THE ACERWC ON AMICABLE SETTLEMENT UNDER THE AUSPICES OF THE COMMITTEE**

1. The ACERWC received a Communication on 26 August 2018, 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 Project Expedite Justice, The Al Khatim Adlan Centre for Enlightenment and Human Development, The International Refugee Rights Initiative, African Centre for Justice and Peace Studies, Horn of Africa Civil Society Forum and National Human Rights Monitors Organization (herein after referred to as Project Expedite Justice *et al* or the Applicants), on behalf of children in South Kordofan and Blue Nile states (jointly the “Two Areas”) against the Government of the Republic of the Sudan (“the Respondent State”).
2. The Applicants allege that due to the conflict which erupted in June 2011 in the Blue Nile and South Kordofan regions the Respondent State has deliberately and indiscriminately targeted civilians and engaged in a campaign of aerial and ground attacks by the Sudanese Armed Forces (SAF). The Applicants stated that as a direct result of the Respondent State’s campaign, children, including infants, have been killed, entire towns and villages have been depopulated, and over a million people, including children, have been forced into camps as Internally Displaced People (IDPs) or abroad as refugees. According to the Applicants, children have been killed and maimed due to the Respondent State’s persistent bombing of civilians. The bombing campaign targeted Schools, destroyed hospitals and clinics and forced their closure, leaving only a few functioning health services in all of the Two Areas. It is alleged that the bombings intensify during key planting and harvesting seasons, thereby severely impacting civilians’ ability to cultivate crops, which leave millions of children in the Sudan (most live in the Two Areas) malnourished, and others starved to death.
3. The Applicants further allege that the Government armed groups have carried ground attacks on villages, looting and arbitrary arrests, including children, and these attacks are met with impunity. It is alleged that the Respondent State has also obstructed humanitarian access including the distribution of foreign food aid, and has failed to reach a permanent solution that will end the conflict and ease the suffering of the children in the Two Areas. It was alleged that the Respondent State employed anti-personnel mines despite its obligations under the Convention on the Use, Stockpiling, Production and Transfer of Anti-Personnel Land Mines.
4. Children of parents who perceived to be supporters of the SPLM/A-N

experience torture in detention such as beaten with sticks, hoses and gun butts, suspended up-side down from the ceiling and burnt with molten plastic bottles. They have been also victims of rapes including by the police, Government forces, and Government aligned militias. In other instances, it was alleged that children have witnessed rape and sexual violence against their family members including their mothers and sisters.

5. Substantiating the above-mentioned allegations, the Applicants site various examples of instances of violations and attacks against children that took place in the Two Areas specifically in the following villages: Al Dar, Farandala, Heiban, Abu Lila, Um Serdiba, Adouna, Khour Fadila, Al Hadra, Mindi, Payam Wadaka, Gidel, Kauda, Jegeba, Enbal, Alabu, Nugra, Tangel, Dunya, Trugi, Dilling, Shamshaga, Alrosirs, Khor Maganza, Damazin and Al Abassiya.
6. On the basis of the above facts, the Applicants submit that the Government of The Sudan has failed to protect the children in the two areas from various forms of harms, hence it has violated the following provisions of the African Charter on the Rights and Welfare of the Child:
  - i. Article 1- obligation to give effect to the charter;
  - ii. Article 5- right to life, survival and development;
  - iii. Article 11- right to education;
  - iv. Article 14- right to health and health services;
  - v. Article 17- administration of juvenile justice;
  - vi. Article 22- rights of children during armed conflict and
  - vii. Article 27- sexual abuse and violence.
7. Following the submission, the Secretariat of the ACERWC, in accordance with Section III of the Revised Guidelines on Consideration of Communications by the ACERWC (the Revised Guidelines), has reviewed and duly registered the Communication. The ACERWC, during its 33rd Ordinary Session held from 18-28 March 2019, declared the Communication admissible. Following its ruling, the ACERWC, through Notes Verbal written on 18 September 2019 and 10 January 2020 requested the Respondent State to submit its arguments on the merit of the Communication. Despite the request, the Respondent State has not sent its submission on the merit. Hence, the ACERWC decided to proceed with the hearing procedure and invited the Parties for the same which was scheduled to be held on 03 September 2020 during the 35th Ordinary Session.
8. While the Committee remains seized on the Communication, the Applicants, through a letter dated on 31 August 2020, submitted a request for the matter to be settled amicably. In their request, the

Applicants stated that they informed the Respondent State through the Secretary General of National Council for Child Welfare, the Minister of Labor and Social Development, the Advisory Council of Human Rights and the Ministry of Justice about this proposed amicable settlement. In their request, the Applicants provide list of remedies that they seek for the children in the Two Areas including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

9. The Committee noted that the request for the amicable settlement was made under Section XIII of the Revised Communication Guidelines, which permits the Parties to a communication to resort to amicably settle their disputes any time before the Committee decides on the merits of the Communication. The Committee convened a consultation session on 03 September 2020 during its 35th Ordinary Session. During the consultation, the Committee sought clarification on the detailed considerations why the Applicants chose to request for an amicable settlement and whether the request is also accepted by the Respondent State in accordance with Section XIII(2)(ii) of the Revised Guidelines.
10. Hearing the respective Parties to the Communication, the Committee noted that the Applicants are pursuing the requested amicable settlement with hope and good faith resulting from the recent positive political transition and developments in Sudan. The Committee further noted that the Respondent State is also in agreement with the Applicants' proposal to settle the matter amicably. The Respondent State expressed its readiness to build on the positive political developments and the ongoing peace processes and enhance the protection of children's rights in the country and remedy the harm perpetrated against children in the Two Areas.
11. Against this backdrop, the Committee took the view that resorting to an amicable settlement procedure would help to address the challenges that the children in South Kordofan and Blue Nile states are facing more expeditiously. Hence, the ACERWC decided to accept the request made by the Applicants, as agreed by the Respondent State, to settle the matters in the current Communication amicably.
12. In this regard, in accordance with Section XIII(2)(iii) of the Revised Guidelines, the ACERWC appointed Hon. Benyam Dawit Mezmur (Country Rapporteur for the Sudan as well as Special Rapporteur on Children Affected by Armed Conflict) and Hon. Hermine Kembo to facilitate the negotiations between the Parties. The Committee further

decided for the two Parties to submit a written agreement outlining the terms and conditions of the amicable settlement.

13. Under the supervision of the assigned Committee Members, a series of negotiations took place and a total of 7 meetings were conducted from September to November 2020 on terms and conditions of the settlement based on draft agreement provided by the parties. The amicable settlement was subsequently agreed under the auspices of the ACERWC pursuant to Section XIII(2) of the Revised Guidelines. The amicable settlement Agreement is attached to this report.
14. In considering the amicable settlement the Committee is guided by, among others, the provisions of the Charter and the best interest of the child principle, and notes that the terms and conditions of the agreement are in line with the requirements outlined in the Revised Communication Guidelines and that both parties have clearly consented before the Committee to be bound by the contents of the agreement. After having deliberated on the details of the terms and conditions of the amicable settlement agreement, the Committee decides to adopt the amicable settlement.
15. The amicable settlement will remain in force provided that the elements of the agreement are upheld and in particular that:
  - i. Both parties to the agreement remain willing to continue with the amicable settlement
  - ii. The Committee remains convinced that the Respondent State undertakes to do everything within its power to implement the terms of the amicable settlement within the timelines provided therein; and
  - iii. The Respondent State complies with its reporting obligation as prescribed in the attached amicable settlement agreement.

Chairperson of the ACERWC



Hon Ndayisenga Joseph

**Amicable Settlement Agreement reached under the auspices of the African  
Committee of Experts on the Rights and Welfare of the Child (ACERWC)**

**Communication No. 0011/COM/001/2018**

**Applicants**

Project Expedite Justice  
The Al Khatim Adlan Centre for Enlightenment and Human Development  
The International Refugee Rights Initiative  
African Centre for Justice and Peace Studies  
Horn of Africa Civil Society Forum  
National Human Rights Monitors Organization  
(Project Expediate Justice *et al*)

**Respondent State**

The Republic of the Sudan



## **A. Purpose of the Amicable Settlement Agreement**

**1. Purpose of the Communication and the Agreement.** Respondent State and the Applicants (collectively, the “Parties”), desirous of acting in the best interests of the children of the Two Areas, as defined in Paragraph A.2 enter into this Settlement Agreement (the “Agreement”). The Applicants initiated Communication No. 0011/COM/001/2018 (the “Communication”) to establish Respondent State’s violations of Articles 1, 4, 5, 11, 14, 17, 22, and 27 of the African Charter on the Rights and Welfare of the Child (the “Charter”) during the conflict in the Two Areas between 2011 and 2018; to seek the Respondent State’s acknowledgment of these violations; and to obtain remedies on behalf of the children of the affected communities and locations in the Two Areas. The purpose of this Agreement is to guarantee specific, measurable, and timebound remedies for the injuries suffered by these children and to facilitate closure of the Communication.

**2. Consultation with Affected Communities.** The implementation of these terms shall occur in consultation with and with the approval of the affected communities in the Two Areas. Any reference to the “Two Areas” in this Agreement is understood to mean the affected communities that are explicitly mentioned in the Communication. The Committee will conduct an on-site mission to the Sudan particularly to Blue Nile and South Kordofan before March 2021 to undertake an assessment and identify any other affected communities that might exist beyond what is explicitly mentioned in the Communication with a view to make its decision for their inclusion. The Committee, before arriving at such a decision, will engage with the Respondent State as well as the Applicants.

**3. Construal of this Agreement.** The interpretation and implementation of these terms shall not in any fashion be dependent upon or tied to any other current or future peace negotiations concerning the Two Areas.

4. The ACERWC will not entertain additional claims by the Applicants in relation to compensation covered in this amicable settlement and the Communication.

## **B. Acknowledgment and Apology**

**1. Acknowledgment and Public Recognition of Responsibility.** As a short-term remedy, Respondent State acknowledges its responsibility for the violation of its Charter obligations during the conflict in the Two Areas. At three public ceremonies—two in South Kordofan and one in Blue Nile—that shall occur no later than three months after the execution of this Agreement, a senior official of Respondent State at the rank of minister will reiterate Respondent State’s responsibility; offer Respondent State’s condolences to the victims’ relatives.

**2. Publicization of Agreement.** To raise awareness about and encourage unity throughout Sudan as to the effects of the conflict in the Two Areas, Respondent State will publicize, the Agreement by publishing the Agreement on the National Council for



Child Welfare, the Ministry of Justice, the Ministry of labour and social development, South Kordofan and Blue Nile Governments websites and the national and local radio/TV using Arabic, English, and the local language.

**3. Installation of memorial structure.** As a short term measure the Government shall install a memorial structure (such as a plaque, a garden) in memory of victims of the war in each of the Two Areas within 6 months after the execution of this agreement. In the long term the Government shall consider to name schools or healthcare facilities in the Two Areas in honor of the victims of the war.

### **C. Humanitarian Aid Access**

**1. Guarantee of Unfettered Access by Aid Organizations.** As a short- to long-term remedy, Respondent State commits to facilitating unfettered access to the Two Areas by humanitarian aid providers so that they can provide material and other essential support, such as food, health care, and educational supplies, to the children there. To this end, Respondent State will facilitate the unimpeded passage of impartial humanitarian aid, including by permitting aid organizations to directly provide aid to the County Commissioners in territory held by the SPLM-N. Further, Respondent State shall not hinder the ability of aid organizations to timely provide aid by imposing arbitrary constraints. To this end, Respondent State shall not levy permits, fees, or administrative costs against humanitarian action or employ military apparatuses or national security laws to impose burdens on aid providers.

**2. Circumstances for Limitation of Access and Reporting Procedures.** Should Respondent State opt to limit or deny access to an aid provider or to a geographical area, it must provide a reason to the aid provider; a date as to when access will resume or the decision will be reviewed; and permit the aid provider to offer information as to why access should be restored. If a civilian population is threatened with starvation, Respondent State shall not deny access to aid providers capable of offering humanitarian assistance. Should limitation or denial occur, Respondent State and the aid provider shall each report this to the Humanitarian Aid Commission (HAC)

### **D. Assessment of Educational- and Health-Based Harms**

**1. Obligation to Investigate in Blue Nile.** No later than six months after the execution of this Agreement, the Parties shall designate a third party organization to conduct an independent and impartial assessment in the Blue Nile areas held by the SPLM-N of the damage done to educational and health services and infrastructure during the conflict. Such an investigation shall inform the restoration of educational and health infrastructure set out in Sections E and F (as per the conditions mentioned in that sections).

**2. Acceptance of Civil Society Reports in Blue Nile and South Kordofan.** In the short term, until such an assessment has been completed, Respondent State shall accept reports from civil society organizations that operated in said Blue Nile areas between 2011 and 2018. Respondent State, bearing in mind restricted access to South Kordofan, shall accept reports from such organizations as to South Kordofan to inform the terms of Sections E and F.



## **E. Education**

**1. Restoration of Educational Infrastructure.** The parties agree on the need to restore educational infrastructure destroyed during the conflict. Priority shall be given to communities who are affected the most and are left with no or least educational infrastructure. Within six months of the execution of this Agreement, Respondent State shall present the Committee with a plan that demonstrates how it will fully effectuate the right to education of the children in the affected communities pursuant to the principle of equity. In creating this reconstruction plan, Respondent State shall ensure that:

a. All necessary measures are taken to ensure that there is sufficient funding to finance the reconstruction work, including but not limited to, through soliciting international cooperation and funding;

b. The process of reconstruction shall commence within a reasonable time, but no later than June 2021; and

c. Respondent State shall report to the Committee on progress made in reconstruction every six months.

**2. Provision of Education, School Supplies, and Teacher Training.** As a short- to long-term remedy, Respondent State agrees to guarantee that all children in the affected communities will receive free basic education; that it shall facilitate such education through direct cash transfer to the affected families, as set out in Paragraph F.2; and that it shall bear the costs for teacher salaries, teacher training, and educational supplies.

**3. Development of Curriculum.** Respondent State shall also bear the costs associated with the development of a curriculum that shall:

a. Include, but not be limited to, the following subjects: teaching English and Arabic; religious education; local history and geography of the Two Areas; and practical content for math and science;

b. Promote the development of, at a minimum, the following skills: agriculture, health, construction, business, and transportation;

c. Integrate the values of cooperation, respect, honesty, generosity, equality, faithfulness, and loyalty; and

d. Incorporate elements of local culture in extracurricular activities (recreational activities), including but not limited to: traditional dance and wrestling, mother tongue, methods of traditional cultivation, and the local history and heritage of the Two Areas.

## **F. Health**

**1. Restoration of Health and Water Infrastructure.** The parties agree on the need to restore health and water infrastructure destroyed during the conflict. The restoration of health and water infrastructure shall be undertaken in accordance with parameters put in place under Paragraph E.1, mutatis mutandis.



**1. Restoration of Health and Water Infrastructure.** The parties agree on the need to restore health and water infrastructure destroyed during the conflict. The restoration of health and water infrastructure shall be undertaken in accordance with parameters put in place under Paragraph E.1, mutatis mutandis.

**2. Provision of Health Services to Children.** The Parties recognize that during the conflict, the rural families of the affected communities in the Two Areas were directing revenue from the sale of crops to cover the costs of medical, nutritional, and educational needs that should have been covered by Respondent State. As a short- to long-term measure, Respondent State agrees to providing: (1) direct cash transfers to these families covering current needs as per the Federal Government policies and accountability framework on direct cash transfer. and (2) free health insurance and the standard five vaccines, to all children under five years old in the affected areas to facilitate the provision of health services. The Government shall take all necessary measures to explore, within available resources and through international cooperation, funding to support children who have become disabled as a result of the war.

### **G. Treaty Ratification**

**1. Commitment to Ratification of Human Rights Treaties.** As a short- to long-term measure to ensure continued respect for the rights of the children in the Two Areas, Respondent State agrees to undertake the process of signing and/or ratifying the following human rights instruments as per the requirements of the 2019 constitutional document.

**2. Tier 1.** As a short-term measure, within six months of the execution of this Agreement, Respondent State shall begin the process of signing and/or ratifying the following instruments:

- a. The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the "Kampala Convention");
- b. The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (the "CAT"), as well as (1) a declaration for an Article 22 communications procedure and (2) the Optional Protocol on a system of regular visits;
- c. The Convention on the Elimination of All Forms of Discrimination Against Women (the "CEDAW"), as well as the Optional Protocol to the CEDAW on a communications procedure;
- d. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the "Maputo Protocol"); and
- e. The Optional Protocol to the International Covenant on Civil and Political Rights (the "ICCPR") on the abolition of the death penalty.

**3. Tier 2.** As a medium-term measure, within six months of the execution of this Agreement, Respondent State shall undertake the same as to:

- a. The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;



- b. The Protocol on the Statute of the African Court of Justice and Human Rights;
- c. The African Youth Charter; and
- d. The Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

**4. Tier 3.** As a long-term measure, within twelve months of the execution of this Agreement, Respondent State shall determine whether it intends to sign and/or ratify the following instruments, and submit a report to the Committee on its conclusions and reasoning:

- a. The Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights;
- b. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa;
- c. The African Charter on the Values and Principles of Decentralization, Local Governance, and Local Development;
- d. The Optional Protocol to the ICCPR on a communications procedure; and
- e. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (the "ICESCR") on a communications procedure.

**5. Withdrawal of Treaty Reservations, Understandings, and Declarations.** Within three months of the execution of this Agreement, Respondent State shall identify to the Committee which existing treaty reservations, understandings, and declarations—including its reservations as to Charter Articles 10, 11(6), and 21(2), and its declaration as to Article 3(2) of the Optional Protocol to the United Nations Convention on the Rights of the Child—it intends to withdraw. Within six months of the execution of this Agreement, Respondent State shall initiate the process of withdrawing such reservations, understandings, and declarations.

#### **H. Reforms to Laws Concerning Atrocity Crimes and Sexual/Gender-Based Violence and Harmonization with the 2019 Constitutional Document**

**1. Obligation to Investigate and Purpose of Legal Reforms.** The Parties recognize the commission of human rights violations, including atrocity and sexual/gender-based violent crimes, by Respondent State forces and aligned militia against children in the Two Areas since 2011. To promote the investigation of such violations and to prevent their repetition, Respondent State commits to undertaking legislative, administrative, educational, and other measures.

**2. Reforms to Laws Concerning Atrocity Crimes.** As a medium-term measure, within six months of the execution of this Agreement and in accordance with Annex A, Respondent State undertakes to begin the process, in consultation with civil society, of:

- a. Amending Article 186 of the Criminal Act of 1991 to ensure that (1) the definition of "crime against humanity" is consistent with international law, and (2)



accounts for the prosecution of those involved directly *or* indirectly in the commission of such crimes;

b. Amending Article 187 of the same Act to ensure (1) that the definition of "genocide" is consistent with international law, and (2) to criminalize conspiracy, public incitement, and attempt to commit genocide, as well as complicity;

c. Amending the same Act to (1) recognize command responsibility as a mode of liability, at least for atrocity crimes, and (2) include other modes of liability, such as attempt or co-perpetration;

d. Eliminating the same Act's statute of limitations as to atrocity crimes; and

e. Amending Article 3 of the Criminal Procedure Act of 1991 and Article 5 of the Extradition Restrictions Act of 1957 to facilitate the extradition of Sudanese officials to non-Sudanese tribunals for the purposes of a fair trial as to atrocity crimes.

Finally, as soon as is practicable, the Respondent State undertakes to begin the process of amending Article 34 of the Armed Forces Act and Article 45 of the Police Forces Act so as to eliminate conditional immunities for genocide, crimes against humanity, and war crimes.

**3. Reforms to Laws Concerning Sexual and Gender-Based Violence.** As a medium-term measure, within six months of the execution of this Agreement and in accordance with Annex A, Respondent State undertakes to begin the process, in consultation with civil society, of developing and ratifying a new SGBV law in line with international human rights law and the following amendments:

a. Amending Article 149 of the Criminal Act of 1991 so that (1) rape is clearly defined as a crime separate from adultery or sodomy; (2) the definition of rape recognizes instances of ongoing, continuous, or multiple acts of rape, as well as oral rape; and (3) the penalty for rape takes into account aggravating factors;

b. Amending all relevant provisions of the Evidence Act of 1994 (including Article 62) to ensure that (1) the rules of evidence for rape are not conflated with the rules of evidence for adultery; and (2) in cases of sexual violence there are evidentiary standards that permit the admission of medical or DNA evidence; and

c. Amending all relevant provisions of the Evidence Act (including Article 62) and Criminal Act so as to (1) fully incorporate the internationally-recognized evidentiary standards for consent and (2) unambiguously provide that the age of consent is eighteen years.

#### **I. Monitoring Mechanisms and Closure of the Agreement**

**1. Execution of the Agreement.** This Agreement shall be executed at the time of signature by all Parties and the approval of the Agreement by the Committee.


**2. Supervision and Periodic Reporting.** The Parties agree that the Committee will continuously supervise the implementation of this Agreement. To this end, Respondent State shall permit access to the members of the Committee who wish to undertake



monitoring missions in the Two Areas. Further, either six months from the date of the execution or at the time of the next session of the Committee in 2021, whichever is later, the Respondent State shall submit a report to the Committee on the measures it has undertaken to implement this Agreement. Thereafter the Respondent State shall submit reports every six months to the Committee highlighting the implementation steps it has taken in the past reporting period, and underscoring the steps it plans to take in the next period.

**3. Dispute Resolution and Closure.** The Parties agree that if a dispute arises over the interpretation and/or implementation of this Agreement, they shall attempt to negotiate a resolution. If negotiations are unsuccessful after a period of six months, they shall submit the dispute for resolution by the Committee. Finally, the Parties agree that the Committee shall remain seized of this matter until the Committee determines that the Respondent State has comprehensively implemented the terms of the Agreement, and shall close this Communication upon such a determination.

**For the Respondet State (the Republic of the Sudan)**

Signature .. 

Name .. LEVA EISUEIKU OMER MAUSOUR

Title .. MINISTER OF LABOUR AND SOCIAL DEVELOPMENT

Date .. 16/12/2020



**For Applicants (Project Expediate Juatice et al)**

Signature .. 

Name .. Cynthia T. Tai, Esq. ....

Title .. Executive Director .....

Date .. 18 December 2020 .....