

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

**DECISION ON THE COMMUNICATION SUBMITTED BY LAWYERS
ASSOCIATED FOR HUMAN RIGHTS IN AFRICA (LAHRA) (ON BEHALF OF
CHILDREN OF JEHOVAH'S WITNESSES) AGAINST THE STATE OF ERITREA**

**Communication No. 0020/Com/002/2022
Decision No: 007/2023**

November 2023

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 April 8, 2022, according to Article 44(1) of the African Charter on the Rights and Welfare of the Child (the Charter/ACRWC). The communication was submitted by Lawyers Associated for Human Rights in Africa (LAHRA) (on behalf of Children of Jehovah's Witnesses) against the State of Eritrea.
2. After consultations on the issue during its 40th Ordinary Session held from 23 November to 01 December 2022, the Committee requested that the applicants revise the communication and re-submit it only on behalf of children of Jehovah's Witnesses domiciled in the State of Eritrea because the Communication submitted was composed of alleged violations of the rights of adults, which the Committee has no mandate to deal with.
3. The applicants have accordingly re-submitted the communication on behalf of children of Jehovah's Witnesses domiciled in the State of Eritrea on 02 May 2023.
4. The Secretariat sent a request Note Verbal to the State of Eritrea on 05 May 2023, with reference number ACE/OL/10/216.23, to submit its arguments on the admissibility of the Communication within 60 days from the date of the request per Section IX(2)(iv) of the Revised Guidelines for Consideration of Communications by the Committee. The 60 days period has lapsed on 28 July 2023, and the Secretariat has sent a reminder Note Verbal with reference number ACE/OL/10/370.23 on 31 July 2023.
5. Despite the reminders, the Secretariat did not receive any submissions from the Respondent State. The Committee thus decided to deliberate on the admissibility of the communication without any submissions from the Respondent State, in terms of section XII (1) of the Revised Communication Guidelines.

II. Summary of Alleged Facts

6. The children mentioned in the Communication were all born in the territory of the State of Eritrea. The Communication involves both named and unnamed children victims.
7. The named victims domiciled and resident in Eritrea and their date of birth:
 - a) Y.H. 01 August 2006,
 - b) M.A. 03 December 2011;
 - c) B.A. 03 December 2011; and
 - d) L.M. 12 May 2022.
8. The Complainants also included victims, domiciled in Eritrea but residing elsewhere under compulsion:

- a) Y.H.A. 16 July 2007;
- b) N.Y. 24 November 2006;
- c) Y.H.T. 18 August 2010.

9. The Communication is also covered other unmade victims, children of Jehovah's Witnesses presently domiciled in the State of Eritrea.
10. The Complainants allege that on 25 October 1994, the State of Eritrea issued a decree revoking the civil rights of all Jehovah's Witnesses, including the children mentioned as victims in the Communication. It is alleged that one of the consequences of the decree was that from then on, all Jehovah's Witnesses and their children were denied access to any state or judicial services, including education, employment, citizenship, and the right to exercise their freedom of worship, expression, and conscience.
11. Further, the Complainants allege that the named child victims have been subject to imprisonment, physical abuse, expulsion from school, and separation from parents due to their religious affiliations. The resulting destruction of family life, economic and social damage, and traumatic stress have left them scarred and have delayed their development. Further, it is alleged that the State-sanctioned harassment of the children of Jehovah's Witnesses has driven the named Complainants from the country, and in all cases, they risked their lives to escape.
12. It is further alleged that these violations are historical and ongoing for all the unnamed victims who remain within the State of Eritrea.

III. The Complaint

13. The Complainants submit that the Government of The State of Eritrea violated the following provisions of the African Charter on the Rights and Welfare of the Child:
- I. Article 6 (Name and Nationality);
 - II. Article 9(Freedom of Thought, Conscience and Religion);
 - III. Article 11(Education);
 - IV. Article 19(Parent Care and Protection);
 - V. Article 25(1) (Special Protection and Assistance During Separation of Parents);
 - VI. Article 26 (Protection Against Apartheid and Discrimination) and,
 - VII. Article 30(1) (Children of Imprisoned Mothers)

IV. Request for Provisional Measures

14. Based on the allegations, the Complainants further requested the Committee to order the Government of the State of Eritrea to undertake the following provisional measures until the hearing and final disposition of the complaint:

- a) The State Party immediately ceases its harassment, discrimination, and abuse of the children of Jehovah's Witnesses within its borders by permitting them to continue their schooling without requiring, directly or indirectly, that they perform acts of worship contrary to their conscience or be compelled to conduct military training or to engage in or support any military activity and be permitted to worship freely in association with their families and others sharing their religious beliefs;
- b) The State Party immediately releases any child of Jehovah's Witnesses who may be currently imprisoned without due process or solely because they exercised any of the fundamental rights guaranteed under the African Children's Charter or other international human rights treaty ratified by the State Party and where any child is dependent upon a parent who is similarly arbitrarily detained, that the State Party release the parent forthwith to protect the rights of the Child under the African Children's Charter;
- c) The State Party immediately implements provisions for the remedial schooling of any child who has been adversely affected by the actions of the State or State employees to put the Child in the position that he would have been in but for the wrongful act of the State;
- d) That the State Party immediately compensate the families and children for their out-of-pocket expenses for private schooling where such was necessary because of the action of the State or State employees, and compensation for missed schooling and educational opportunities due to suspension or expulsion from school for the exercise of their religious conscience;
- e) That the State Party immediately appoint an independent investigator, with the powers of a Special Rapporteur, to be accountable to the Committee, to confirm the allegations of the mistreatment of children of Jehovah's Witnesses, including the victims, and, where appropriate, to refer any individuals or institutions within the State of Eritrea who have acted contrary to domestic or international criminal law to a proper international tribunal, and to exercise such power of enforcement or implementation of any provisional measure or other direction provided by the Committee or other agencies of the African Union; and
- f) That the State Party be directed to cooperate with the entry of any Special Rapporteur or investigator into the jurisdiction of the State Party and assist in the investigation by the Rapporteur of the allegations made in the complaint, and on conclusion of such investigation, make a report to the Committee and such other organ of the African Union or international bodies, including the ComRC, as may be appropriate.

V. Issuance of Provisional Measures

15. The Committee notes that, a provisional measure can only be granted considering, among other things, the gravity and urgency of the situation, and the irreparable nature and imminence of the harm in question. In the current Communication, the Committee is of the view that the Communication does not raise situations which result in the victims suffering an irreparable harm if

provisional measures were not granted. The Committee notes that the relief sought in the Communication is identical to that sought in the request for a provisional measure. The Committee, therefore, decides not to grant the requested provisional measure.

VI. Admissibility

A. Complainants' Submission on Admissibility

16. The Complainants submit that the Communication fulfills the requirement of admissibility under Section IX (1) of the Revised Communications Guidelines. The Complainants' submissions on admissibility focus on two admissibility requirements provided for in section IX (1) of the Revised Communication Guidelines, that is, that the communication does not raise matters pending settlement or previously settled by another international body or procedure in accordance with any legal instruments of the Africa Union and principles of the United Nations Charter; and that the communication is submitted after having exhausted available and accessible local remedies.
17. The Complainants submitted that they had not submitted their complaint under any other international procedure for investigation or settlement.
18. The Complainants also submit that it is impossible to exhaust domestic remedies in Eritrea because domestic systems are practically unavailable in the Respondent State, and there is no independent bar. They submit that they were unable to obtain legal assistance because none was available in Eritrea, a situation persisting to date. They submit that they have been compelled to retain international lawyers to act from outside the country.
19. It is the Complainant's submission that domestic remedies are not considered available if the victims cannot turn to the judiciary because of legal or administrative obstacles. International norms require that it is insufficient if a remedy is merely nominal; for a remedy to be available, effective, and sufficient, it must be at least accessible and certain.
20. Based on these submissions, the Complainant seeks to declare the communication admissible.

B. The Government of the State of Eritrea has not submitted any arguments about the communication.

21. It is worth mentioning that despite being given an opportunity to do so, the Government of the State of Eritrea has refrained from submitting any arguments related to the current Communication.

C. The ACERWC's Analysis and Decision on Admissibility

22. The ACERWC notes that the current communication is submitted according to Article 44 of the African Children's Charter, which gives the Committee the mandate to receive and consider complaints from "any person, group or non-governmental organization recognized by the Organization of the African Unity, Member States, or the United Nations on matters covered by the Charter". Furthermore, Section I (1) of the Revised Communication Guidelines stipulates that 'non-governmental organizations legally recognized by one or more of the Member States of the African Union or State Party to the Charter or the United Nations, among others, can submit a Communication before the Committee.' According to the Committees, Lawyers Associated for Human Rights in Africa (LAHRA) is an NGO based in the Gambia. Moreover, Eritrea is a State Party to the Charter, as it ratified the Charter on 02 December 1999.
23. Furthermore, in Section I (4) (a) of the Revised Communication Guidelines, the Committee's jurisdiction is determined by the Complainant's age at the time of the alleged violation. Thus, the applicants are all children, as per the definition provided in the Charter. In this regard, the Committee holds that the Complainants have *locus standi* to submit the case.
24. The admissibility of a Communication is determined based on the admissibility conditions provided under Section IX (1) of the Revised Communications Guidelines. The Committee has undergone the elements of Section IX of Revised Communication Guidelines on the conditions of Procedure of Admissibility. The requirements are analyzed as follows:
- i. The communication is compatible with the provisions of the Constitutive Act of the African Union and the African Children's Charter**
25. The first condition of admissibility set forth under Section IX (1) (a) necessitates that a Communication is compatible with the provisions of the Constitutive Act of the African Union and the Charter. The Committee has previously clarified that a Communication is compatible with the Charter if it reasonably alleges a violation of its provisions, thereby indicating a clear breach of the provisions of the Charter.¹ In the present Communication, the Complainants allege violations of Article 6 (Name and Nationality); Article 9 (Freedom of Thought, Conscience and Religion); Article 11 (Education); Article 19 (Parent Care and Protection); Article 25(1) (Special Protection and Assistance During Separation of Parents); Article 26 (Protection Against Apartheid and Discrimination) and, Article 30(1) (Children of Imprisoned Mothers). Thus, the Committee concludes that the Communication is compatible with the Charter.

¹ *Talibé case* (n 2) para 18; See also ACERWC, Communication No 0016/Com/004/2020, *African Centre for Justice and Peace Studies (ACJPS) (on behalf of Ms Umjuma Osman Mohamed) v The Sudan*, Decision on Admissibility No 002/2021, para 31.

ii. The communication is not exclusively based on information circulated by the media or is manifestly groundless

26. In this requirement, Complainants are not advised to rely on information circulated in the media for their alleged violations. In the Communication at hand, the applicants' allegation regarding the matter is based on Eritrea Presidential Decree, EG/HO3/0004/94, issued on October 25, 1994, and other factual evidence provided by the victims. . Consequently, the Committee is of the view that Communication meets the criteria outlined in Section IX (1) (b) of the Revised Communication Guidelines.

iii. The communication does not raise matters pending settlement or previously settled by another international body or procedure in accordance with any legal instruments of the African Union and principles of the United Nations Charter

27. Section IX (1) (c) of the Revised Communication Guidelines prohibits the Committee from considering a Communication which is being concurrently under consideration by other mechanisms. In this regard, in the absence of a response from the Respondent State, the Committee undertook an inquiry to the African Court on Human and Peoples' Rights and the African Commission on Human and Peoples' Rights. As far as the Committee's investigation goes, no similar matter is pending before other jurisdictions. Consequently, the Committee holds the view that the Communication complies with the requirement in Section IX (1) (c) of the Revised Communication Guidelines.

iv. Whether or not the Complainants have exhausted local remedies, and whether the Complainant should be exempted from exhausting local remedies

28. Section IX(1)(d) of the Revised Communication Guidelines provides that a Communication is admissible if submitted after having exhausted available and accessible local remedies, unless it is evident that this procedure is unduly prolonged or ineffective. The rationale for the exhaustion of local remedies is to ensure that before proceedings are brought before an international body, the State concerned must have the opportunity to remedy the matter through its local system. This prevents the international tribunal from acting as a court of first instance rather than as a body of last resort.² The exhaustion serves the purpose of enhancing the complementarity function of the international court.

v. The Applicants in this Communication allege domestic remedies are unavailable in the State Party

29. Section IX(1)(d) of the Revised Communication Guidelines provides that a Communication is admissible if submitted after having exhausted available and

²ACHPR, *Obert Chinhamo v Zimbabwe* Application No.307/05, para 52.

accessible local remedies, unless it is obvious that this procedure is unduly prolonged or ineffective. The rationale for the exhaustion of local remedies is to ensure that before proceedings are brought before an international body, the State concerned must have the opportunity to remedy the matter through its own local system. This prevents the international tribunal from acting as a court of first instance rather than as a body of last resort.³ The exhaustion serves the purpose of enhancing the complementarity function of the international court.

30. The Applicants in this communication allege that domestic remedies are not available in the State Party.

31. Deducing from the practice of the Committee in determining compliance with the rule of exhaustion, the rule of exhaustion of domestic remedies is only applicable when the remedies are '**available**', '**effective**' or '**sufficient**.'⁴

32. As was held by the African Commission in *Jawara v The Gambia*,⁵ 'a remedy is considered available if the petitioner can pursue it without impediment; it is deemed effective if it offers a prospect of success and it is found sufficient if it is capable of redressing the complaint.' The African Commission went on to further clarify that 'the existence of a remedy must be sufficiently certain, not only in theory but also in practice, failing which, it will lack the requisite accessibility and effectiveness.'⁶

33. A number of factors come into play when assessing the availability of domestic remedies. Among the factors is the issue of lack of standing in the national courts. An exception to the exhaustion requirement applies if the complainants do not have the ability to institute any legal proceedings domestically. This may be the case in instances whereby the complainants in question do not have the legal ability to bring the matter in the State in question because the complainants have been stripped of legal status.⁷ In the present communication, the Committee notes that in 1994 Eritrean President Isaias Afwerki signed a decree revoking civil rights of members of Jehovah's Witnesses. In that regard, Jehovah's Witnesses do not have any rights and thus cannot approach the domestic courts for redress. Domestic remedies are therefore not available for the Complainants.

34. Another factor in assessing the availability of domestic remedies is an instance whereby the victim or claimants are in fear or under threat. Exception has also

³ACHPR, *Obert Chinhamo v Zimbabwe* Application No.307/05, para 52.

⁴ See for example ACERWC, *Institute for Human Rights and Development in Africa (IHRDA) and others (on behalf of children of Nubian descent) v. Kenya*, Communication No. Com/002/2009, para 28 and ACERWC, *Minority Rights Group International and SOS-Esclaves (on behalf of Said Ould Salem & Yarg Ould Salem) v. Mauritania*, Communication No.007/Com/003/2015, para 23.

⁵ ACHPR *Jawara v The Gambia*, Application No. 147/95-149/96, para 32.

⁶ *Jawara v The Gambia* (n 3 above) para 35.

⁷ Admissibility of complaints before the African Court Practical Guide (2016) 49.

been found in cases where the victim, their potential lawyers or both would face a serious threat of harm should they pursue domestic remedies.⁸ In **Jawara v The Gambia**, the Commission held that that ‘if the applicant cannot turn to the judiciary of his country because of fear for his life (or even those of his relatives), local remedies would be considered to be unavailable to him.’⁹ The Commission further held that ‘there was terror and fear for lives in the country’ and that therefore ‘it would be an affront to common sense and logic to require the Complainant to return to his country to exhaust local remedies.’¹⁰ This does not only apply to victims who have fled their country but to victims who remain in their countries but live in fear reprisal if they brought the matter to the local courts– the logic underlying the possibility of requesting anonymity too.¹¹ From the statements submitted by the named Complainants, it is noted that all of them fled the country due to the violations they were facing and they cannot return to the Respondent State.

35. In light of that, the Committee holds that local remedies are not available in the Respondent State.

36. The Committee notes that other exceptions to exhaustion of local remedies are when the violations of rights are on a large scale, documented over a long period of time and when there is ongoing harm or possibility of repetition of harm. In its case of **Michelo Hunsungule & Others (on behalf of children in Northern Uganda) v. Uganda**,¹² the ACERWC acknowledged that ‘violations of rights on a large scale that were well documented over a long period of time in the international community need not necessarily exhaust local remedies as the State has presumed awareness of the serious human rights violations in the country/region.’ In the present Communication, the Committee notes that the violations are on a large scale, against children of Jehovah’s Witnesses in the State of Eritrea. The violations have been well documented in the past few years by the international community.

37. Regarding ongoing harm, the Committee notes that , systemic violations also typically involve ongoing violation and the possibility of repetition of injury, providing an additional ground upon which supranational intervention is justified as an attempt to prevent that harm.¹³ In the present communication, it is noted that the alleged violation of the rights of children of Jehovah’s Witnesses has been ongoing since 1994 when the Presidential Decree revoking the rights of Jehovah’s Witnesses was signed. It is alleged that children of Jehovah’s

⁸ Admissibility of complaints before the African Court Practical Guide (2016) 53.

⁹ *Jawara v The Gambia*, para 35.

¹⁰ *Jawara v The Gambia*, para 36.

¹¹ Admissibility of complaints before the African Court Practical Guide (2016) 53-54

¹² ACERWC, *Michelo Hunsungule & Others (on behalf of children in Northern Uganda) v. Uganda*, Communication No. 1/2005, para 27.

¹³ Admissibility of complaints before the African Court Practical Guide (2016)62.

Witnesses are still not enjoying their rights-hence an indication of ongoing harm/violations.

38. In light of the above, the Committee holds that the complainants are exempted from fulfilling the requirement of exhausting local remedies provided in section IX(1)(d) of the Revised Guidelines.

vi. Whether or not the communication is presented within a reasonable period after the exhaustion of local remedies at the national level

39. Section IX(1)(e) of the Revised Communications Guidelines provides that to declare a Communication admissible, the Committee shall ensure that the communication is presented within a reasonable period after the exhaustion of local remedies at the national level. The notion of this requirement is to ensure that Complainants who allege violations act with due diligence in pursuing their cases.¹⁴

40. The provisions of section IX(1)(e) of the Revised Communications Guidelines are clear in that the requirement is intended to be applied when remedies are exhausted-not when an exception to the exhaustion rule is invoked. Where an exception to exhaustion is invoked, a sharp delimitation on the timeliness of the submission is unreasonable.¹⁵ This is the case for a variety of reasons, including the fact that, in most instances where exceptions to the rule of exhaustion are invoked, the type of violation in question is likely to be ongoing on the national level-whether in terms of the effects on the individual victim, and/or in terms of a continuous pattern of violations in society at large.¹⁶ The Committee draws inspiration from the jurisprudence of the African Commission in the case of *Interights (on behalf of Pan African Movement and Citizens for Peace in Eritrea) v. Eritrea & Ethiopia*.¹⁷ where the Commission confirmed the rule that Article 56(6) (submission within a reasonable time) will not apply when an exception has been found to Article 56(5) (exhaustion of local remedies).

41. The Committee further looks the jurisprudence of the African Commission in its case of *Obert Chingamo v. Zimbabwe*, where the Commission observed that the 'communication was received ten months after the Complainant allegedly fled from the country by which the Complainant is not residing in the Respondent State and needed time to settle in the new destination, before bringing his complaint to the Commission given the circumstances in which the Complainant finds himself, that is, in another country, it would be prudent, for the sake of fairness and justice, to consider ten months as reasonable.'¹⁸

¹⁴ ACERWC, Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) v. United Republic of Tanzania, Communication No. 0012/Com/001/2019, para 22.

¹⁵ Admissibility of complaints before the African Court Practical Guide (2016) 27.

¹⁶ *Id.*

¹⁷ ACHPR, *Interights (on behalf of Pan African Movement and Citizens for Peace in Eritrea) v. Eritrea & Ethiopia*, Application No.233/99-234/99, para 39.

¹⁸ *Obert Chingamo v Zimbabwe*, para 89.

42. In the present communication, the Committee noticed that some victims still face ongoing violations. The Committee, therefore, assessed this requirement based on the allegations of ongoing violations on those victims currently residing in the Respondent State.
43. The Committee observes that it was not possible for the Complainants to exhaust local remedies and the Communication asserts that ongoing violations continue to impact children in the Respondent State. Consequently, the Committee finds that the Communication complies with the 'reasonable time' requirement.

vii. The Communication Does Not Contain Any Disparaging or Insulting Language

44. The Committee has thoroughly reviewed the provisions of Section IX (1) (f) of the Revised Guidelines, which stipulate that a Communication must not contain any disparaging or insulting language. It is worth noting that the language used in the communication in question fully complies with these guidelines, as it does not contain any derogatory or offensive remarks. Therefore, the Committee has concluded that the communication has met the standards in Section IX (1) (f) of the Revised Guidelines.

VII. Decision on Admissibility

45. Based on the analysis above, the Committee concludes that the Communication submitted by the Complainants fulfils the admissibility criteria outlined under Article 44 of the Charter and Section IX (1) of the Revised Communication Guidelines, therefore, declares it admissible. This decision was taken with utmost care and respect for the principles of fairness and integrity that guide the Committee's work.

**Done at the 42nd Ordinary Session of the ACERWC
08-17 November 2023**

Wilson de Almeida Adão

**Hon. Wilson Almeida Adão
Chairperson of the African Committee of Experts
on the Rights and Welfare of the Child**

